



COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

## SENATE

STANDING COMMITTEE ON COMMUNITY AFFAIRS

**Reference: Families, Housing, Community Services and Indigenous Affairs and  
Other Legislation Amendment (Emergency Response Consolidation) Bill 2008  
[Provisions]**

TUESDAY, 29 APRIL 2008

ALICE SPRINGS

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**SENATE STANDING COMMITTEE ON  
COMMUNITY AFFAIRS**

**Tuesday, 29 April 2008**

**Members:** Senator Moore (*Chair*), Senator Humphries (*Deputy Chair*), Senators Adams, Allison, Boyce, Carol Brown, Lundy and Polley

**Substitute members:** Senator Crossin for Senator Polley

**Participating members:** Senators Abetz, Barnett, Bartlett, Bernardi, Birmingham, Mark Bishop, Boswell, Brandis, Bob Brown, Bushby, Campbell, Chapman, Colbeck, Coonan, Cormann, Crossin, Eggleston, Ellison, Fielding, Fierravanti-Wells, Fifield, Fisher, Forshaw, Heffernan, Hogg, Hurley, Hutchins, Johnston, Joyce, Kemp, Kirk, Lightfoot, Ian Macdonald, Sandy Macdonald, McEwen, McGauran, McLucas, Marshall, Mason, Milne, Minchin, Nash, Nettle, O'Brien, Parry, Patterson, Payne, Robert Ray, Ronaldson, Scullion, Siewert, Stephens, Sterle, Stott Despoja, Troeth, Trood, Watson, Webber and Wortley

**Senators in attendance:** Senators Adams, Bartlett, Boyce, Crossin, Humphries, Moore and Siewert

**Terms of reference for the inquiry:**

To inquire into and report on:

Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Emergency Response Consolidation) Bill 2008 [Provisions]

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**Committee met at 9.05 am**

**CHAIR (Senator Moore)**—Welcome. As always, I begin by acknowledging the traditional owners. The Senate Standing Committee on Community Affairs is commencing our inquiry into the provisions of the Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Emergency Response Consolidation) Bill 2008. That is the last time I will be saying that today! This bill proposes amendments relating to access to Aboriginal land, pay TV and R18+ programs, transport of prohibited material through prescribed areas and roadhouses being licensed as the community store in certain situations. They are the key amendments that were brought forward in that piece of legislation.

[9.06 am]

**TILMOUTH, Mr William R, Chief Executive Officer, Tangentyere Council**

**CHAIR**—Welcome. Mr Tilmouth, there is one thing to discuss before we get to your welcome. We have been approached to have some filming of this committee today—you have seen the camera—and also some photographs during the day. That is the standard practice in public hearings, but if anyone does not want to have their photo taken or to have it appear just let us know and we will make sure that does not happen.

You are well experienced in this process, so we welcome you back to our committee. I know you have information on parliamentary privilege, the protection of witnesses and so forth. I invite you to make any short statement—or any statement—and when you have finished that we will go into questions. Unfortunately, one of our groups of witnesses this morning—the Ngaanyatjarra Pitjantjatjara Yankunytjatjara Women's Council—has withdrawn. So we have more time to spend on individual witnesses, so there is no restriction.

**Mr Tilmouth**—I will be brief, because our comments are brief. Basically, the following comments relate to the inquiry into provisions of the Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Emergency Response Consolidation) Bill 2008.

I will start with the permit system. The amendment to reintroduce the permit system for Indigenous communities is supported. Tangentyere Council believes that Aboriginal communities have the right to make decisions about who comes onto their land and that there is no evidence that the permit system has resulted in harm to children. On the contrary, it appears to have assisted police in controlling undesirable people entering communities or enabling them to be removed. Tangentyere Council has concerns, however, that the amendment enables the minister to authorise permits without being specific about the categories of persons to whom this should be limited. Tangentyere Council believes this power is too wide and that it should only apply to specific categories of persons, as with the power of the Northern Territory minister to issue permits to public servants. Otherwise it could be used so widely in the future as to make the operation of the permit system meaningless.

Regarding R-rated 18-plus programs, Tangentyere Council supports the amendment on the basis that it only imposes restrictions upon the request of and after consultation with the community. That is sufficient to enable an informed agreement. If the community does not clearly agree to the restriction, it should not be imposed.

Regarding community stores, Tangentyere Council supports the licensing of roadhouses, where those roadhouses meet necessary standards. It is our understanding that some communities have experienced hardship where they do not have a community store or a nearby store, either a roadhouse or a station store, that has previously been their main supplier of food purchases that they can access under income management. At the same time, Tangentyere Council questions whether the licensing of a store has resulted in a better supply of nutritious foods at reasonable prices.

Point 4 refers to the transport of prohibited material. Whilst Tangentyere does not oppose the specific measure, it notes that this prohibited material may end up in mining, in the community or in other nearby Aboriginal communities. Recent publicity about the purchase of sexual services from underage children begs the question about why material is being banned from one section of society and not from others. This is not an argument for censorship so much as a wish to highlight the ideological and racist nature of many aspects of the Northern Territory emergency response.

Overall, Tangentyere Council would like the opportunity to make some comments about the Northern Territory emergency response in its broader context. It is hoped that the Northern Territory emergency response may result in better health, education, housing, and law and order measures to improve the lives of Aboriginal people in the Northern Territory. Tangentyere Council expresses its strong opinion, however, that the means of imposing the intervention initially put back the ability of Aboriginal people to exercise agency over their own lives and the manner in which they might improve them.

It is noted that the current Australian government has been more open and consultative in its relationships with Aboriginal communities, and Tangentyere Council welcomes this. Tangentyere Council is still concerned, however, that there is no move by the Australian government to amend those parts of the legislation that exempt it from the provisions of the Racial Discrimination Act. Tangentyere Council believes that decisions related to the determination of what constitutes 'special measures' under the Racial Discrimination Act should be left to HREOC as the body that administers that act; otherwise, the act becomes meaningless and open for abuse.

That is just an opening statement and a submission that we put. I have not furnished everyone with a copy of that but, if you will accept it, I will do so now. I also give you a statement for Minister Macklin, which is accompanied by a matrix of the whole intervention, which is for you to peruse in your own time.

**CHAIR**—The committee will accept both those documents and will circulate them to the committee.

**Senator HUMPHRIES**—Thank you for your opening comments, Mr Tilmouth. Can you tell me about the application of the permit system in the community whose council you are representing today? The permit system, I assume, applied in your community and then, under the legislation that was passed last year, was removed. What specifically changed as a result of that? What particular things began to happen that had not happened before?

**Mr Tilmouth**—The permit system existed prior to town camp special purpose leases being legislated as prescribed areas and, as a result of that, the permit system was removed. There has not been open-slathe movement into those town camps, but unwanted media has been going into town camps or trying to access stories from individuals within town camps. Prior to the prescribed areas legislation, we never denied anyone access to the town camps—police, ambulances, health services, education services or welfare services. We did deny others who were unscrupulous dealers—people selling vacuum cleaners to people without carpets, people selling encyclopaedias to people who cannot read, people selling alcohol to grog runners and, ultimately, carpetbaggers in relation to art. We still want to retain that ability. It is those individual housing associations, which are autonomous independent bodies, that would like to retain that individual right to be able to do that. That protects people from being exploited.

**Senator HUMPHRIES**—While the permit system was in place, were there requests from the media to enter the township areas and were they refused?

**Mr Tilmouth**—They were refused. I think the main one was when Minister Brough went through on the night patrols. The town camp that was involved refused not Minister Brough's entry but the media's entry, because it looked like a convoy—a whole group of cars following each other. It was more like an invasion, if you like.

**Senator HUMPHRIES**—Can you understand the argument that says clearly there have been—it was demonstrated by the *Little children are sacred* report—very serious problems within some Aboriginal communities and that an air of openness and accessibility is an important part of the process of allowing people to know what is going on? It is an important part of having a sense of a record being kept of what is occurring. If some communities say, 'No, you can't enter to see what's going on,' it increases that sense of isolation and lack of accessibility to the views of others, when a decrease in that sense of isolation and greater accessibility might assist those who in that process are victims.

**Mr Tilmouth**—I totally agree with that comment, but I will reiterate what I said earlier. We have never denied to anyone with authority, like the police or welfare—anyone who has a direct interest in that process—access to those camps. We have denied access to unscrupulous dealers and unwanted media, yes, but not to anyone with authority. Where there is no report of abuse, access has never been denied to anyone.

**Senator HUMPHRIES**—Since the permit system has been lifted, have there been many occasions where people like vacuum cleaner salesmen, grog runners or others you would regard as undesirable have come into the areas that are now opened up?

**Mr Tilmouth**—A lot of people respect the permit system and have requested permits—hawkers, food dealers and those sorts of people. People will only allow into those town camps those that they know they can get a good service from. Each individual housing association makes those choices.

**Senator HUMPHRIES**—Is that working well? Do you think people are making choices about who comes onto their land?

**Mr Tilmouth**—Yes.

**Senator HUMPHRIES**—Can you comment on how communities make collective decisions about an issue, such as permitting the broadcasting of pornography into those communities? You comment that you support the idea of communities having to be consulted about whether they will agree to pornography being narrowcast into them. In the case of your council, how does the community make such a decision?

**Mr Tilmouth**—As I said earlier, each town camp is an autonomous body that is incorporated in its own right. They have their own committees; they have their own governance structure. It is through that governance structure that they elect their president, vice-president and office bearers. They call meetings,

when they need to, to discuss issues such as the permit system and the access that people want. We find that it is very hard to comment on the shows on World Movies and that sort of stuff because of our close proximity to the urban setting. To be able to edit those shows out would affect the entire town of Alice Springs. I think it would be a pretty hard ask to restrict Sky TV as well as SBS and all the other shows. As a result, we find it is very hard to comment on that.

**Senator HUMPHRIES**—If a town camp were to make a decision about this, would they hold a public meeting of all those who lived there, or would the elected leaders make that decision on behalf of the whole town camp?

**Mr Tilmouth**—Each town camp has a list of members. Members are permanent residents of the town camps. They hold meetings and discuss these issues amongst themselves. Then one representative from each town camp then makes up the executive of Tangentyere Council. So each town camp has a representative on the executive of Tangentyere Council. That is where they will instruct me on whether or not to permit certain people or to talk to people who are currently servicing their camps and ask them to upgrade their services to a standard they are used to, or whatever. That is where they give me the direction to move on that sort of stuff. If they put to me the need to stop broadcasting certain programs into town camps, I do not know how I would be able to handle that. But I have never had that concern put to me.

**Senator HUMPHRIES**—You would have seen what *Little children are sacred* had to say about pornography and how it appeared to be influencing behaviours in some communities. I do not know whether any of the town camps around Alice Springs are included in that description. But clearly there are some communities, according to this report, where there is an issue with pornography apparently playing a role in the behaviour of particularly some men towards women and children. For argument's sake, if women in a particular family or community in one of the town camps around Alice Springs were concerned about these sorts of things, do you think they would be likely to go to a meeting and voice those concerns, if the men they want to complain about are present at those meetings as well?

**Mr Tilmouth**—Let me say firstly that one of the criticisms I have of the *Little children are sacred* report is that they never came to Tangentyere and they never talked to town campers. I felt that was a failing on their behalf. With a population of around 1,600 to 2,500 people, that was a failing on their behalf in relation to writing up that report as being exclusive of all Aboriginal people's points of view. I think it would have been the first cab off the rank to go and talk to people who lived in town camps, and they never did that. We were never invited to participate in that report.

We also have, through the structure of Tangentyere, many avenues where we have a women's committee where women can talk women's business, and we have a men's committee where men can talk men's business. We run safe families programs. We have a community facility that nine times out of 10 has programs running, especially for women and children, including nutrition programs. There are many avenues in which concerns can be conveyed through the structure of the organisation itself. Aboriginal women will talk, they will come forward and they will express their views to the right authority. It is held confidential in that regard and, welfare being external from Tangentyere, the authority will then deal with it in the way that they see fit to deal with it. Tangentyere will pass that message on wherever and whenever possible.

**Senator HUMPHRIES**—In that context, have any women in any of the town camps in Tangentyere come to the council and said, 'We have a concern about the use of pornography in this area' or 'about the effect of pornography'?

**Mr Tilmouth**—There has been a lot of reporting to welfare for various reasons. A lot of that I am not privy to. As I said, things are dealt with confidentially. They are done through programs and they are done through very qualified staff who will deal with it with the proper authorities. I do not know of every incident or case that is reported. In fact, I get to hear very few. That to me is an indication that the system is confidential. I do know that there has been reporting happening every now and then as to what actually those cases are. I am not quite sure what they are and I do not really want to know the intricacies of that. I would rather the authorities deal with that and deal with it in the confidential processes that fully respect the individual.

**Senator HUMPHRIES**—Let me ask you one last question. Is it possible that there are women living in the Tangentyere Council area who are concerned about the use of pornography in their community who have raised their concern with some element of your organisation or with other authorities?

**Mr Tilmouth**—That is very possible. The only thing is that, if the report had visited those town camps, we would have known about it a lot louder. That was the sad thing about that. At the end of the day, I have no

doubt that there is reporting of a whole heap of issues happening every day. It is not my job—if it is confidential, I should not even know about the cases.

**Senator BARTLETT**—You mention your support for licensing of roadhouses. I presume that is because you would see that as smoothing out a little the ability of people to use the quarantining of income mechanism that is in place more easily?

**Mr Tilmouth**—Provided they meet a standard. But I do not endorse the quarantining stuff. It is imposed; it is not voluntary. People do not have options. If a particular roadhouse has always been their source of food and meets a standard that is acceptable by selling proper goods as opposed to just fast food and quick take-away, if it sells proper vegetables and meat and all that sort of stuff then I have no qualms with that. But, historically, a lot of those places do not sell the standard of food that enhances people's lives. In fact, it is quick and fast and makes people sicker than they are. So I think the standard really needs to lift.

There are cases where the quarantining of funds has really disadvantaged people such as those living on stations that are no longer licensed. They are at a loss as to where they can redeem those food cards—unless they go into town and do it at Coles, Woolworths and places like that. That seems to be the only avenue for a lot of people to get that quality of food.

**Senator BARTLETT**—As you know, this bill does not go to the whole area of quarantining, so I will not ask you about that more broadly. Are you being able to express those concerns to the government? Are you being consulted about the broader operation?

**Mr Tilmouth**—We have sent off a letter to Jenny Macklin, which I will submit as part of our submission. It covers the whole intervention as well as those points that we have talked about today. So it was a matrix of our position in relation to each of those points. I will submit that for you to have a look at.

**Senator BARTLETT**—I want to go back to the permit issue, which you have covered to some extent already. I want to tease it out a bit more. I am sure you are well aware of the arguments on all sides about it, but you said it has been of value in the past in keeping out undesirables. Obviously, the core focus of all of these measures, all the legislation, including what we are dealing with today, is meant to be about trying to improve the situation in regard to child protection in general. Do you think the permit system has actually helped in regard to child protection in the past? Could you perhaps be a bit more specific as to how it has helped, or do you think it is an important issue but not actually central to the whole child protection question?

**Mr Tilmouth**—I think the permit system gives the community the ability to weed out the undesirables living within their areas and then move on. They use that system quite effectively against Indigenous and non-Indigenous people. In the case of Indigenous people, where there is too much alcohol, too many family disputes and too much trouble going on they will issue trespass orders against those people to move them on. In cases of non-Indigenous people and unscrupulous dealings and that sort of stuff, they will use trespass orders to move people on. In regard to child abuse, I think the welfare department, family and community services, has the statistical details in relation to that. As I say, in most cases I am not privy to that sort of stuff because of the confidential nature of that. My staff will deal with that in a professional way with the appropriate authorities. I have full confidence in my staff. They are very good workers and at the end of the day I trust their judgement in relation to how they follow that through. As I said, we run a lot of programs that are directly related to children, including Safe Families.

**Senator BARTLETT**—So the permit system in the past has specifically been used in a number of cases to enable the removal of people who are causing problems with excessive drunkenness and those sorts of things. Are you less able to do that now?

**Mr Tilmouth**—You can question the validity now as to whether that permit system has the legality that it was meant to have. I think once you remove that ability to do that, people can say, 'That's not legal and therefore I can stay and still run amok.' I do not think that is something that anyone desires.

**Senator BARTLETT**—I appreciate that you are not aware of individual cases because of the confidentiality situation you have talked about. Are you aware in a general sense of the overall extent of child abuse over time and whether the trends are getting worse or better? The reason I ask, just to make it clear, is that there have been lots of statements and lots of reports about the seriousness of this problem. I have not met a person yet who does not think that it is an issue that should be addressed, but it is often hard to get actual data about how big the problem is and whether it is getting bigger or worse as opposed to people just saying it is bad. Do you have any information along those lines?

**Mr Tilmouth**—As I said earlier, the appropriate authorities can put a figure on the increase or decrease in this sort of behaviour. It is not behaviour that anyone condones. Yes, it is behaviour that has to be properly reported, but it has to be dealt with in a framework of confidentiality that protects the innocent. All I know is that our Safe Families Program is in pretty big demand and we have quite a few kids going through that service. That gives me an indication that not everything is well with the world. I know for a fact that you have dysfunctional families all over society, whether it is in the town camps or in urban settings. It is something that happens when you get overcrowding, high unemployment and extreme alcoholism.

**Senator ADAMS**—Thank you very much for your opening address. Could you tell me how far out from Alice Springs your furthest town camp is?

**Mr Tilmouth**—We are all within the municipal boundaries of the Alice Springs local government council, the town council. The camp furthest out would be within a six kilometre radius or even less.

**Senator ADAMS**—I see that you provide a night patrol service. How is that funded? Does that come out of your council funds or is it voluntary?

**Mr Tilmouth**—The night patrol service is funded through the Attorney-General's Department of the Commonwealth. We also run a day patrol service as well as a youth patrol service. The good thing about the intervention is that it made government departments pay proper wages, as opposed to using the CDEP top-up. The sad thing about that is that, without the CDEP top-up, we can only run one service a night whereas, with the CDEP top-up, we used to run two. We had two vehicles out on the road doing their shifts, and that is because we had the CDEP top-up. We were able to spread the government funded program a bit further because we could add in the CDEP component. As we no longer have CDEP, we no longer can do that, and therefore we run smaller services but with a better wage, as opposed to just having CDEP top-ups.

**Senator ADAMS**—Are you coping with just that one service, or would it be desirable to have another service going with it?

**Mr Tilmouth**—It would be desirable to have a fully functional youth patrol, a night patrol and as many services as we can run. The police have a lot of work to do. We work very cooperatively with the police. We have a good memorandum of understanding with the police. But we do fill the gaps when we need to, and I think boosting the night patrols and giving them a lot more opportunity to be a lot more effective would be a good way to go.

**Senator ADAMS**—Did the Northern Territory emergency response team go through your camps? Were they active in the area with the child health checks?

**Mr Tilmouth**—Child health checks are in existence. How that is going I am not quite sure, because that is the responsibility of the ICC and the local health council. We have a steering committee that sits there and meets every so often, but once again that is a prescribed solution. A lot of mothers are saying: 'Hang on, I take responsibility for my child. I do get my child checked up on.' They see that very much as an insult to their integrity and their ability to be responsible. At the end of the day, we cooperate and complement wherever we can, and that is what we are doing in this case.

**Senator ADAMS**—You commented on the Racial Discrimination Act. Could you just speak a little more about the real problem you feel there is with it?

**Mr Tilmouth**—The real problem, I feel, is that any law or any legislation that is discriminatory and is racially motivated against any people should not be a law in the first place. I think that is where it is wrong. Fundamentally, that is what it has done. It discriminates against Aboriginal people in the Northern Territory. It does not discriminate against anyone else. I think it is fundamentally flawed because of that.

**Senator SIEWERT**—Can I just pick up where we left off with that comment on the RDA. The new amendments are not going to be exempt from the RDA, which of course as we know makes them different to the various acts themselves which are exempt from the RDA. Can I make an assumption that you would prefer that the broader acts were also not exempt from the RDA? Now we have got two sets of legislation effecting the NT response. One set of legislation is not going to be exempt from the RDA, and the existing acts are exempt. How do you see the two fitting together?

**Mr Tilmouth**—I think they should be consistent with each other. If you abolish discrimination, you should abolish it across the board.

**Senator SIEWERT**—The amendments that are being proposed in this set of legislative amendments are being seen as special measures under the RDA but not exempt. There are arguments in the submissions that we

have had that say, yes, they do think that they meet the requirements for special measures because, for example, the amendments for the plus-18 material are voluntary—the communities make a decision as to whether they want to ban it or not. Do you accept that they are special measures under the act? Do you see them as special measures under the act?

**Mr Tilmouth**—Under the act I think that the communities have that right to choose, but the special measures and the suspension of the Racial Discrimination Act were done not by communities but by governments, and I think that is where the blanket discrimination happened. I disagree with that ever happening, but I do agree with individual community choice in relation to what they see as fit for their community. Special measures you could probably say are positive discrimination. Discrimination is the same. It is without consultation. It was done without consultation. How can it be positive? There was no consultation process in the whole thing; it was just a rollout of the emergency response. It was discriminatory.

**Senator SIEWERT**—You made a comment in your opening statement about how you would actually ban the materials just from the town camps without that then affecting Alice Springs. Could you elaborate a bit more on that?

**Mr Tilmouth**—I meant that it would be very hard for us to do that. It would be very hard for us because of the close proximity to the town area and people in town, which in a lot of cases is only 500 metres away. You cannot draw a thin line. Technology does not have the ability to do that.

**Senator SIEWERT**—So what you are saying is that if you ban it in town camps, you are banning it in the whole of Alice Springs?

**Mr Tilmouth**—I think that is what I am saying, yes.

**Senator SIEWERT**—And what do you think the rest of Alice Springs would think about that?

**Mr Tilmouth**—They would not agree, and I think that is what will happen. You cannot do it. I cannot see that happening, because of that close proximity to town areas.

**Senator SIEWERT**—As I understand it, Austar are saying that you could provide a PIN that would only allow adults to access the material, and children would not be able to. Previously, in speaking to people, one of the issues that has come up is that, particularly when you have overcrowding in accommodation, there is no way you could actually separate out children from watching the material.

**Mr Tilmouth**—That is for parental guidance stuff as well, and how many times does that get used?

**Senator SIEWERT**—Yes. You made some broader comments, and I am going to take that as leeway to move into some of the broader issues with the intervention.

**CHAIR**—Not too much leeway.

**Senator SIEWERT**—You made a comment about the Safe Families Program, and as I understand it you run some safe houses. Can you tell me about the funding and where that is up to? To put it on the record: I have visited one. Could you tell me where the funding is at for those safe houses?

**Mr Tilmouth**—That is the sad thing about it. We live with uncertainty. We are still negotiating with the funding body. I think the Northern Territory government and the Commonwealth government need to realise that this is a mainstream program that Aboriginal people have taken on and are doing better than mainstream agencies do. It is a unique program. It is a program that welfare and other agencies are not capable of doing. We use Aboriginal people—we employ Aboriginal people—and we look after Aboriginal families and children within those places. It is something that is unique in Australia. I do not think it is replicated anywhere else. I really think that, instead of having that sort of program in the uncertainty that we are in, governments really should bite the bullet and fund those sorts of initiatives. At the moment, we are still in negotiation. It was due to run out pretty soon, and we want to keep it going.

**Senator SIEWERT**—Are you saying that funding is due to run out? Within what period of time?

**Mr Tilmouth**—I think it is in June. I am not quite sure, but I can get those facts back to you.

**Senator SIEWERT**—If you could provide us with that information, that would be really useful. The other thing I have heard from various people is that there has been a drift of people into town and in fact in some cases more drinking in town than there was before the intervention. I have heard different stories, but the overwhelming story is that there have been more people in town drinking than in the past. Is that correct, or is that just a bit of scuttlebutt?

**Mr Tilmouth**—No, that is correct. The population within town camps fluctuates. We did a mobility study of remote people going to the town of Alice Springs. I think it is the first mobility study ever done on Indigenous people in Central Australia, and it was done by our Aboriginal research hub that we are developing to do our own research. It showed that, whilst we dealt with a population of 1,600 to 2,500 people, the actual service population was around 3,500 people at any given time, and the mobility of people to and from remote areas to this major service centre of Central Australia was enormous. That has increased dramatically with the financial income management. People do come to town. They do access Kmart, Coles and Woolworths to redeem their food cards. Yes, I would say there is a big increase. We need to do another mobility study, and I think we are planning on doing another one so that we can get a full picture of what actually is happening within the town.

**Senator SIEWERT**—Have the new restrictions on drinking in town camps been effective? Have they reduced the alcohol consumption? Have the camps that were previously dry remained dry? I have heard that there has been an increase in drinking in some of the previously dry camps.

**Mr Tilmouth**—I think it has increased. Based just on what I see, I think there has been a vast increase in the amount of alcohol being bought and consumed. Bear in mind that, in some cases, it is taken off people literally as they buy it because they are asked, ‘Where are you taking this to?’ If they say that they are taking it to Hidden Valley or another town camp, it will be confiscated pretty well straight away. I would say that there is a lot more drinking in areas where we have never known there to be drinking. There is a lot more drinking of things like Listerine mouthwash. Whilst people do not have access to alcohol as such, they do buy other substances that contain alcohol. I would say that there is a big increase in the amount of alcohol being drunk.

**Senator SIEWERT**—Can I ask one more question on the permit system. You made a comment earlier about the minister’s powers. If I understood you correctly, you would rather see the minister’s powers limited. What would you like to see that limited to?

**Mr Tilmouth**—That was something that we put in our submission. Tangentyere Council has concerns that the amendment enables the minister to authorise permits without being specific about the categories of persons to whom this should be limited. Tangentyere believes these powers are too wide and should only apply to specific categories of persons, such as the powers of the Northern Territory minister to issue permits to public servants. Otherwise it could be used so widely in the future that it makes the operation of the permit system meaningless. It has to stay within the confines of certain powers.

**Senator SIEWERT**—Would you rather it just reflects what the NT does or would you also look at specific criteria of things that people were going in for?

**Mr Tilmouth**—Both.

**Senator BOYCE**—You mentioned that, if the people who did the *Little children are sacred* report had gone to the town camps and taken evidence, it might have helped to get out more information about the problems families have and so forth. Is that correct? Is that what you were saying?

**Mr Tilmouth**—Yes.

**Senator BOYCE**—What other ways do you have to get that information collected?

**Mr Tilmouth**—As I said, the appropriate authorities are the only avenues that we have in relation to that sort of information. All our staff do mandatory reporting. They are qualified people and they would use the appropriate authorities in order to have those issues dealt with. That is where the information would lie.

**Senator BOYCE**—I am just concerned that there is no other way that problems can be collected up in such a way that they can be put to government or others who might be able to help solve them.

**Mr Tilmouth**—Yes, not specifically in relation to that. That is just one point. But we have statistical data on the whole gambit of town camp life, on everything from repairs and maintenance right down to night patrol statistics and youth patrol statistics. The whole organisation is geared up to collecting that data. Sometimes it is just data for data’s sake; sometimes it can be used in regard to such things as Senate inquiries or whatever. Where it is appropriate, we have statistical data. This is one case where you are talking specifically about the *Little children are sacred* report. That data does not sit with us. It sits with the authorities in family and community services.

**Senator BOYCE**—Within the Northern Territory department of family and community services?

**Mr Tilmouth**—Yes.

**Senator BOYCE**—That then leads me on to the next part. You mentioned that, quite rightly, information about individual families and their issues is confidential. But would not your council have some sort of sense of the incidence of issues around any sort of abuse or trouble within the family—whether there is more happening or less happening? These issues are not raised at all with the council?

**Mr Tilmouth**—Not necessarily, no. They are raised within the family group and—

**Senator BOYCE**—I am sorry; I just missed that last bit.

**Mr Tilmouth**—It is raised within the family groups, and the family groups deal with it with the authorities. It is something that, whilst we will work with families and we will case-manage with families, is within the programs themselves. And that is done on a very confidential basis. We are in such a small town—everybody knows everyone else's business, and it can be quite embarrassing for people.

**Senator BOYCE**—So you have all this data around hard services, so to speak, like night patrols and all that, but not a lot of data around the incidence of problems that might happen within families?

**Mr Tilmouth**—I can get that information through my manager, who works very closely with welfare.

**Senator BOYCE**—I guess my main interest there was more in whether there was a gap in the system where problems within families were almost outside the community, almost—they were not part of the concerns of the community.

**Mr Tilmouth**—They are the concerns of the community. I am surprised you think that they are in isolation from the community. Family disputes, family fights, family dysfunction are very much our concern and our focus; it is what we want to deal with. But when it comes to the specific individual or the individual family, I would rather that family dealt with the appropriate authorities who are qualified to deal with that, via the qualified people that we have to utilise that conduit into that service. I am not one to want to know everything about everything. I do not think it is my job.

**Senator BOYCE**—As I said earlier, I do not think we have any specific right to have any information about individual families. What I was trying to get to was the fact that the council is concerned about trends or the incidence of problems within the community, and that that is considered to be within your purview.

Going on to the permit system: it is accepted—universally, I would think—that perversion and corruption flourish when there is no transparency and no oversight of what is going on. What structures do you have in place to stop the permit system being misused or abused to protect undesirables who might already be in the community?

**Mr Tilmouth**—I do not think there is an opportunity now. You are talking about privacy being the main ingredient for all abuse—and privacy is. Aboriginal people's lives are not as private as yours or mine. We are open to scrutiny every day of the week. When anyone wants to orchestrate media against us, that will happen. We are under surveillance in every walk of life. We are not as private as people think we are. At the end of the day, abuse does thrive in privacy—yes, I agree with that—but media can utilise our lives for their own purposes. As I said earlier, the police have complete entry, the welfare services have complete entry and the medical services have complete entry. We do not deny those people access. If somebody wants to call the police, if somebody wants the welfare services to go in, they have complete access.

You were talking about openness to media. You know the media—it can manipulate a story so badly. In fact, this whole intervention has been the demonisation and denigration of Aboriginal people to the extreme. I think it is racist ideology that exists, and it exists in all walks of media—and even in this town it does. We sometimes feel socially excluded from this town. We do not even feel part of this town at times because of that surveillance. To live under that and to recommend that we continue to live under that—what sort of life do we have? You would hate it if a camera looked over your backyard every day of the week, surveying what you do. It is not something Aboriginal people enjoy.

**Senator BOYCE**—Going back to the con men you were talking about, who the permit system helps to keep out, are you aware if the Northern Territory has consumer protection legislation that includes cooling-off periods and the like?

**Mr Tilmouth**—I do not think we have time to cool off. What do you mean by 'cooling-off period'?

**Senator BOYCE**—A number of state governments have legislation that says, if you have bought something at the front door and you realise within three days or seven days that you were basically tricked into buying something that you did not need, you can return it and get your money back.

**Mr Tilmouth**—For me, I know my rights in that regard. There are a lot of people who buy things, do not know their rights, and at the end of the day their consumer rights are totally abused. You can never get that issue solved. That is the reason why we have a consumer rights person at Tangentyere. He is also a financial adviser. We are getting people stung by sharp loans, these Aussie loans sorts of things. Used-car dealers all park around Tangentyere. They are across the road. There are second-hand shops across the road. This is all because a lot of people know that Aboriginal people do not know their rights and are very prone to abuse. That has happened time and time again in the history of Aboriginal people.

**Senator BOYCE**—So some legislation to protect people would be—

**Mr Tilmouth**—There is enough legislation there. There is not enough education. There is not enough prosecution of people out there. People do it and they get away with it. It happens time and time again. Unscrupulous dealings—that is exactly what it is.

**Senator BOYCE**—I guess in that regard, certainly, the Indigenous people of Australia are not being discriminated against. It is happening to everyone.

**Senator HUMPHRIES**—Mr Tilmouth, you said in response to a question from Senator Boyce that you had some information or you had people who would be able to provide you with information—

**Mr Tilmouth**—I can have a talk to people and see if I can get that information, yes.

**Senator HUMPHRIES**—That would be great. Thank you.

**CHAIR**—It might be useful again if you provide for the committee the kinds of services that your council provides so that we all know the various community work that you do so that there is no misunderstanding about the way that your council is involved in the whole range of issues in the community. That might be useful to upgrade our knowledge.

**Senator CROSSIN**—It might be useful if you can explain to us the nature of the landownership on each of the town camps that you currently have jurisdiction for—whether it is private property, is communally owned or has been claimed by native title. I think it would be useful if this committee knew the statute of the land that is actually on the town camps.

**Mr Tilmouth**—They are special purpose leases in perpetuity issued from the Northern Territory government. They are not the only special purpose leases in perpetuity in town. That is really where they stand. They are for communal housing.

**Senator CROSSIN**—That is right. We heard during a Senate arts inquiry that we conducted some 18 months ago that there are quite a number of unscrupulous dealers entering town camps pressuring people to paint and to buy paintings off them. I am assuming there would be an expectation that these people would have had a permit to enter those town camps prior to the changes last year in the legislation.

**Mr Tilmouth**—No, we had to issue trespass orders against those people. They were encouraging remote area people to come into town because they did not want to go out to the remote communities, so people were bringing their paintings into town and then the art dealer would buy them off them in the town camps. These people were not permanent residents; they congregated on the fringes of the town camps or stayed with a relative. Ultimately every time an art dealer would go there, the money would be dropped off and the painting would be taken—and sometimes a car or two in regard to paintings. We found this out over time and had to put a trespass order against those art dealers because of the antisocial behaviour that was congregating around that activity. In the meantime we have set up Tangentyere Artists, which gives town camp artists the conduit they need to get through to the market in order to sell their paintings at a reasonable price.

**Senator CROSSIN**—So these art dealers were not required to have a permit to go into the town camps?

**Mr Tilmouth**—No, they assumed—everyone assumes—that they have the right just to drive in and do whatever deals they want to do.

**Senator CROSSIN**—But they should have had a permit?

**Mr Tilmouth**—They never did ask for one.

**Senator CROSSIN**—But they should have asked for one?

**Mr Tilmouth**—They should have asked for one.

**Senator CROSSIN**—So the situation under the current legislation at this point in time is that nobody needs a permit to go into the town camps—is that correct?

**Mr Tilmouth**—That is right.

**Senator CROSSIN**—There is discussion about moving the town camps into different arrangements. Where does the requirement for a permit sit with the proposed future arrangements for the leasing of the town camps?

**Mr Tilmouth**—You are talking about native title here I think.

**Senator CROSSIN**—I am talking more about specifically the discussion about the 20-, 40- or 99-year leases for the town camps to be upgraded. Is there any suggestion in that that the permit system would not be needed if those discussions come to some—

**Mr Tilmouth**—We have not crossed that bridge. People saw the proposal for 99 years as being too far into the future and they saw it was three generations away. People felt that it insulted their history and their struggle to just obtain a standard of living that society would reject but it is halfway there to what they used to have. So the permit system was never discussed in that whole debate. We had not crossed that bridge.

**Senator CROSSIN**—Currently, when people are in a town camp, such as salesmen, art dealers, is there no policing required? Is there no power by which you can stop these people and say, ‘Hey, what are you doing here?’

**Mr Tilmouth**—We went to the police and got a trespass order against those art dealers and that activity has stopped. The police know that they have to mop up the aftermath of such activities. That has actually worked and people have ceased to do that. It is every now and then when you have people exploiting people that we need to do that. When there is too much alcohol and families are fighting, we have to do that as well.

**Senator CROSSIN**—When the permit system was in place, how was that policed?

**Mr Tilmouth**—The same way as we are doing it now. We still issue trespass orders. The housing association will issue the trespass orders, not Tangentyere.

**Senator CROSSIN**—I want to ask you about the licensing of the stores. You made a pertinent comment that the licensing of the stores has not necessarily resulted in better foods or responsible prices. Will this enable stores such as Tilmouth Well to be licensed?

**Mr Tilmouth**—It would be a good thing if they were. I think all stores need to be licensed. All stores need to be accountable and ultimately to be of a standard to sell food and clothing that you and I would accept.

**Senator CROSSIN**—Your observations are that simply licensing a store does not necessarily mean that there has been a requirement for them to lift their game in terms of the quality of food that they produce. Do you think there is a problem with the licensing of the stores in the way that it is conducted?

**Mr Tilmouth**—When you get something licensed you have to reach certain criteria I believe. Is that what you are saying? Those criteria set the standard as to how you deal with it.

**Senator CROSSIN**—That would be the expectation. My observation of what is happening is similar to yours. There are stores out there getting licensed, but they are still selling food that is substandard and the prices are still unreasonable. That leads me to the conclusion that there is a problem with the licensing regime. It is simply a piece of paper without any quality attached to it. Have you come to the same conclusion?

**Mr Tilmouth**—I have come to the same conclusion. I think there have to be some conditions attached to it that they improve.

**Senator CROSSIN**—You do not think that those conditions are stringent enough?

**Mr Tilmouth**—I do not think they are.

**Senator CROSSIN**—Would you be aware of how many customers may subscribe to Austar television in the town camps?

**Mr Tilmouth**—Not that many, say a handful. I do not think there are that many who can afford it.

**Senator CROSSIN**—In the lead-up to this legislation and your submission have you had any discussion with those people that do have Austar to ask them whether they are using the PIN system? As a customer you can request to not have access to certain channels. Do you know if that is happening on an individual basis?

**Mr Tilmouth**—No, I do not.

**Senator ADAMS**—With alcohol consumption on the rise—we had the petrol-sniffing inquiry last year—have you had more problems with petrol sniffing?

**Mr Tilmouth**—Petrol sniffing has decreased dramatically since the rollout of Opal. There are those outbreaks of substance abuse whether it is petrol sniffing or cans but the program run by Central Australian Youth Link Up service is proactive in dealing with that. They work very closely with those kids. It is a manageable situation now.

**Senator ADAMS**—What about drugs?

**Mr Tilmouth**—The issue of drugs is not something I am totally familiar with. Drugs are just about in every society. I think there has been an increase in the use of harder drugs within society in the town of Alice Springs than there ever was before. I am talking about speed and things like that. I am not familiar with it, but I am pretty certain that there has been an increase in the use of ecstasy or whatever. I think it is only a matter of time before that gets into the Aboriginal community.

**Senator SIEWERT**—I want to pick up on the issue of stores. There were some media reports about a month ago around the reported increase in the sale of fresh fruit and vegetables. Any number of people have said to me that they did not believe that that was the case. What is your view on whether there has been a substantive increase in sales? Has there been a transfer of sales such that, instead of buying at one place, you are now buying at community stores? Do you have any information on that?

**Mr Tilmouth**—None whatsoever. It stands to reason that there would be more sales of food as opposed to alcohol, but I could not comment on the sale of food, whether it is fruit and veg or whatever. Fifty per cent of people's income is quarantined to be for either food or rent and that is not a bad thing. But it should be voluntary; it should not be prescribed for them.

**CHAIR**—Thank you, Mr Tilmouth, for your evidence. I know you have volunteered to provide more evidence to us, because senators have asked questions. If there is anything else you think about that you want to add, please do so because we need as much local input as we can get.

**Mr Tilmouth**—No worries. Thank you.

[10.17 am]

**MOONEY, Mr Rex Roger, Chief Executive Officer, Alice Springs Town Council**

**RYAN, Mayor Damien John, Alice Springs Town Council**

**CHAIR**—I know you have information on parliamentary privilege and the protection of witnesses in evidence. I invite you to make a short opening statement, if you have one, and then we will go to questions. You have seen how it works from the first evidence. You are experienced now.

**Councillor Ryan**—This morning we come to you with an Alice Springs Town Council perspective of this bill. Firstly, I would like to read the decision which was put through by the town council on 25 June last year. Point 1: the Alice Springs Town Council offer its strong support to the federal government's reforms to resolve Indigenous child abuse. Point 2: the Alice Springs Town Council offer in-kind support in order to facilitate the process. Point 3: the Alice Springs Town Council request to be informed during the implementation process.

Last night at the first ordinary council meeting of our new council, recently elected, those points were endorsed by our new council. But a series of issues that affect our town came out of that meeting, and that is what I would like to mention. These include the urban drift where, following the intervention, we are seeing more people move into the Alice Springs area. Last year, when the intervention first started, we had a river run, which is done by our rangers to determine the number of illegal campers in the Todd River area. In August last year that number dropped to a record low of 43. But then from September to December it came back up to the 200 or 250 mark. Figures for January and February this year pretty well reflect the figures for January and February last year. So we do not consider that people in that situation have been affected by the intervention. They are the people we originally had.

We are starting to get new camps around the town that were not traditionally used before. These are people who cannot find accommodation, either temporary or permanent, within Alice Springs. We have a series of photos here this morning, supplied by a local publication, of recent days, of these new camps. As we say, our rangers patrol the town and these camps have not been recognised camp positions before. But it is also disappointing that some of these camps are on sites that are sacred to the Lhere Artepe people; other people coming into town are not respecting the ownership of some of this land.

The reality is that our town camps are overflowing. They cannot accommodate the numbers of people there. And the town has a problem as to temporary housing and permanent housing. It is and will be a real issue for our town because we are a centre for a recognised 260 communities in central desert Australia. The issue of how we will accommodate these people is a very pressing one for our council.

Another very important aspect, as our town council sees it, is the survival of small business. Local business does not really have access to the respective 'store cards', as they are commonly referred to. It does, in that it can apply, but the consumer does not understand how they can use that card. We would very much like to see the store cards changed to EFTPOS or debit cards so that every business in Alice Springs could serve a customer with one of these cards, with the proviso that restricted publications, alcohol and cigarettes were blocked off that card. Otherwise we see a lot of small businesses falling over in town. It was reported recently in the press that a business of some 35 years was about to close because of the situation of the quarantining or controlled management of funds.

Another issue that has been raised recently is that there is a lot of wasted money on the designated cards because the consumer does not spend to the bottom line of that card. There is a fair wastage appearing in the marketplace. And, reportedly, 2½ thousand cards are given out a week by Centrelink. We only have to talk 10 per cent or less on those cards and it is a lot of wasted money, because it does not go back to that consumer on their next card. Those are very big issues for our town.

It must be understood that there are businesses doing well in Alice Springs out of the intervention. Anecdotally, car rentals, hospitality, communication and accommodation are all on the up, because, as our stats will show, there are 202 extra Centrelink staff in Alice Springs who are stretched through the remote area teams. So there are two sides to the coin. But the intervention money is not how we will survive going forward. The future for business in a centre like this is for people to be able to spend their money where they would like. They are the main issues that came from council at this stage. We also feel that, with the influx of people, it impacts on our police force, it impacts on our health system and it impacts on remote health. All of our services are being stretched. A classic case for our town council is liquor litter. Liquor litter is growing.

And our figures, which the CEO will back me up with, show that we are spending about \$600,000 a year on the collection of liquor litter. So it is a big impost on our ratepayers. Thank you.

**CHAIR**—Thank you, Mayor Ryan. And congratulations—I believe it is your first term as mayor.

**Councillor Ryan**—I have lived here all my life, but it is my first term on this council.

**CHAIR**—Mr Mooney, have you got anything to add at this stage?

**Mr Mooney**—Only to support the mayor, Madam Chair.

**CHAIR**—Which is the role of the CEO, Mr Mooney.

**Mr Mooney**—The council's area, of course, is the main urban area of Central Australia. It has a population statistically of about 28,000. We think it is more like 31,000 or 32,000. We could be a city by the stroke of a pen. However, in the public's mind we are 'a town like Alice', and the council will always be the Alice Springs Town Council. However, we are greater in population than Broken Hill or Mount Isa or those sorts of centres.

We have a major impost on our community with the urban drift, for example. We have a limited number of ratepayers in Alice Springs: 95 per cent of landmass is non-rateable, so only five per cent of the landmass in Alice Springs is subject to rates. So we have a constant battle in raising income to meet the expenditure. The total expenditure on litter across the board in Alice Springs per annum is conservatively estimated at \$2 million. As our mayor has said, \$600,000 of that is directly attributable to collection of liquor related litter. While the council is happy to meet these demands, financially they are stretching our resources to the limit.

**CHAIR**—Gentlemen, you are aware that our particular business in your town is to look at a specific piece of legislation that proposes to amend existing legislation. The issues you have raised are relevant to the wider legislation. We are happy, because you welcomed us into your town, to talk with you for a period, but I want to make it clear that the legislation before this committee is specifically on those issues of amendment. However, we are happy to take your concerns; they will be noted and also fed back to the government. I will ask senators to keep that in mind in their questions.

**Senator HUMPHRIES**—On the point that the chair has just raised, is there anything that flows from what you have told us about the number of illegal campers around Alice Springs that should change what is in this legislation, with respect to the permit system?

**Mr Mooney**—Probably not directly. About 18 months ago the council discussed a discussion paper on the permit system generally, and was of the view then that it supported the thrust of the discussion paper, which was that there are issues in enforcing the trespassing issues of the permit system. The council resolved that there should be a review of the permit system generally. In terms of the urban drift, it is difficult to find a nexus in relation to our urban centre between the two. All we do know is there has always been an urban drift. It is part and parcel of life in Central Australia and the mobility of Aboriginal people all over Australia. In terms of the situation exacerbating, there has been a very evident increase in the number of remote area people coming into Alice Springs, but it is very difficult to give you any formal response on how that relates directly to the permit system.

**Senator HUMPHRIES**—Is it fair to say that your view about the permit system is a bit mixed—that there are some good things and some bad things about it from your point of view?

**Mr Mooney**—That reflects our council's position on that, yes.

**Senator HUMPHRIES**—I would like to come back to the store value cards issue. We have seen the cards, but I cannot recall whether they are cards with the capacity to change the information in them as you pass them through the device in the shops.

**CHAIR**—No, it is not that.

**Senator HUMPHRIES**—Okay. So if you have got, say, \$50 value on the card and you only spend \$45, do you kiss the \$5 goodbye?

**Councillor Ryan**—Yes, unless you choose a product that is \$5. It does not really give you the option to use the card for a product that is \$6. There is not always clear communication—'There's \$5 on the card, plus if you give me another dollar, you can have it.' In that case your reaction tends to be, 'There's not enough on that card,' and so the card just goes in the bin.

**Senator HUMPHRIES**—Can you retain the value of what you have not spent in that card? If I go into a shop and I have \$50 on the card and I spend \$45, can I arrange with the shopkeeper to keep the \$5 I have not spent?

**Councillor Ryan**—When I have used a store card from those stores, I have been able to provide cash for the difference between what is on the card and what I want to buy. It comes back to education. You are giving somebody a card and saying, ‘You can go shopping with it,’ but it is not fully explained to them. There are too many examples of these cards not having enough left for the product they are buying, so it just goes into no-man’s-land. The company the card has come from have its full value—that has been paid for with the purchase of it. It is the end user who is not getting the full \$50.

**Senator HUMPHRIES**—Yes, I understand. I cannot recall where—someone else might—but I read in one of the submissions that it was easier to control and monitor the use of these cards in remoter communities, but in places like Alice Springs there tended to be more abuse of the system. People would get cash for the remainder of their card value and then spend it on things that they should not be spending it on. I forget who made that comment in their submission, but is it true that there is less monitoring of the use of the cards in a place like Alice?

**Councillor Ryan**—Anecdotal evidence from consumers in town is that the occasion does arise where I can work the system. I can buy a product and then go to the refund counter with no real questions asked. I say, ‘I don’t want it,’ and then exchange it for cash. With that cash I can then go and purchase whatever I want. This anecdotal evidence has been raised in council on numerous occasions, not just from one or two stores. The reaction is that it is a tradeable item.

**Senator HUMPHRIES**—So could you fix those two problems we have talked about with (a) better education about the way in which the cards’ surplus value or leftover value can be used and (b) perhaps having some kind of system—and I do not know how difficult it would be—such that, when you have a receipt, the receipt indicates on it that a stored value card has been used to purchase that item, so it cannot be refunded for cash in that way?

**Councillor Ryan**—The first issue I think will be very hard to communicate. That is why I believe a different card needs to be brought into play so that, if I have \$5 left over, when it is topped up it will always be in that card. Because it is my ‘bank’ card I am not going to discard it. The second issue will require more impost on business in changing systems. I do not know the answer to the second one.

**Senator HUMPHRIES**—Thank you.

**CHAIR**—Mr Mooney, you said in your comment on Senator Humphries’s questions that the council had been involved in discussion about the permits and concerned about the way they could be policed. Would you like to share with us the concerns you had about that system? This is my desperate attempt to bring it back to the legislation that is in front of us!

**Mr Mooney**—The discussion centred around a response that the council was preparing to a discussion paper regarding the permit system generally. There was not, I guess, a clear-cut decision from council one way or the other. The result of the discussion in council was that there needed to be a review of the permit system. That was acknowledged. It was seen that it was not working as well as it might otherwise. There were issues regarding the policing of trespassing. How does that occur? How does that happen? Basically, the council felt that there was a need to further explore what options might be available. Even last evening, at the council meeting, there were views expressed about the permit system, both for and against. The corporate view of our council is that there needs to be a review, but there is not a specific resolution coming from discussions. Council is a corporate body with perpetual succession, and that is the existing decision of the council. Our new council may well review that position and make a renewed view of the permit system. That is about the best answer I can give to that question.

**CHAIR**—So, when you said that the council felt it was not working, how?

**Mr Mooney**—Some of the comments that were made by Mr Tilmouth were the sorts of views that were expressed by council: how can unauthorised entry by people with undesirable motives be best combated? There have been issues regarding the media entering into lands requiring or not requiring a permit. There were issues regarding alcohol and the transportation of alcohol. All those sorts of things that I guess are well known to everybody discussing that permit system were raised by our council. As I say, with a number of aldermen having a number of views, the bottom line was, ‘Yes, let’s review the system but keep our options open until the review is finalised.’

**Senator BARTLETT**—You have raised a number of things which are broader than the legislation before us. I recognise that we cannot delve into those in detail, but, particularly given that this committee was not able to consult with people locally when all of this legislation was going through, I think it is at least important

to try and get a sense of whether or not you now feel your range of concerns is actually being taken on board. You mentioned the issues about the permit, the issues about the quarantining. Are you now comfortable that you have got enough opportunities to have those concerns considered in a genuine way by the government, and do you feel that there is movement, that there is genuine consideration being given to trying to address those?

**Councillor Ryan**—The housing issue is a very big issue here. When we talk about the protection of children, those children are living in these very bad situations. In the urban drift of people coming to town, those children are not really being protected now under the situation of these new camps, so it is an issue for the town council. It falls outside your direction, but the reality is that, with the extra urban drift and without temporary housing in our community, now heading into winter, it is going to be very difficult for the children that are affected by this. We have a drift every week for sporting competitions that happen within the town. People come to town. It is only five days to the next match. Some get to use store cards, get to stay in town, so they stay longer. Return to country is a problem overall within our community. My concern is: yes, the children do not have the facilities to go through this next winter. It is a housing problem that is very much upon the town. That is the only way I can relate it to your inquiry.

**Senator BARTLETT**—Just to be as clear as I can about the descriptions you are using, when you say ‘urban drift’, you are talking particularly in terms of the specifics of Central Australia and the drift of Aboriginal people in? It is not just your standard gradual change of people in regional areas moving to live in the cities; this is the general drifting of Aboriginal people into this town area? That was a yes?

**Councillor Ryan**—Yes.

**Senator BARTLETT**—I am just trying to move things along because we have given up space for others. You are saying that, whilst that is part and parcel of the nature of Central Australia up to a point, that has been exacerbated by some of the measures of the intervention, not necessarily the permit changes but perhaps other things like the alcohol changes or the quarantining?

**Councillor Ryan**—The quarantining of money I think is the biggest issue. We saw by the numbers that Mr Tilmouth gave, before us, that there are a considerable extra number of people in Alice Springs. As a council, we feel that the quarantining or the management of money has changed the structure of people shifting from where they did live into Central Australia. The coming in of store cards gave people a different outlook on purchasing. We talked of the mention of costs before. A consumer now realises that they can buy a lot more for their money in Alice Springs than they can in their existing community where they came from. It is natural then: ‘Well, I’ll hang around for another week. My card gives me more buying power in Alice Springs than it does in an outlying community.’

**Senator BARTLETT**—Just on the card thing—and I will not go into this in depth, because it is not really within the ambit of the legislation—you were talking about the wastage of money. If there is \$5, \$10 or \$1 left over, or whatever it is, that is money that has already gone to the retailer, so they just get it for nothing basically?

**Councillor Ryan**—The cards I understand are purchased from the retailer then distributed to the end user, so it is no different than dropping \$5 out of your pocket walking down the street. Although some people spend that \$5 when they find it, I do not know whether they ever find what was on the cards.

**Senator BARTLETT**—It is not on the street; it is in the pockets of the retailer.

**Councillor Ryan**—Yes.

**Senator BARTLETT**—I think you used the term ‘housing crisis’. Again, that is specific and in regard to Aboriginal people coming into the town area rather than what I think is also an important but probably separate issue of housing accessibility for the general community? Housing costs in the town have gone quite high as well, as I understand it, but that is a separate issue in that sense from what you are talking about when you are talking about the housing crisis for Aboriginal people?

**Councillor Ryan**—Yes. We do not have the accommodation available for those people coming to town. We do not have temporary accommodation. We are attracting bigger numbers. If we put the extra thousand people into town camps, as Mr Tilmouth said, the housing has not changed in town camps, so the overcrowding is just becoming grotesque.

**Senator BARTLETT**—When Aboriginal people come to town they will go to town camps. It is not that they would otherwise be staying in the town of Alice Springs except that it is full of Centrelink staff that have come here or anything like that. They would normally go to the Aboriginal town camps anyway.

**Councillor Ryan**—With family groups, yes. But if they are denied that access then they are creating illegal squatting, and then the problem arises that they are not recognising the traditional owners on some of those areas they are squatting on, so it is an all-of-town issue.

**Mr Mooney**—There is \$647 million committed at the moment for housing in the Territory and \$100 million of that has been allocated from the NT government. Alice Springs Town Council would ask the question: how much of that money is going to be spent on housing in Alice Springs? We are unclear as to how much that might be, if anything.

**Senator BARTLETT**—I guess that gets back to the broader question: do you feel satisfied at the moment that those sorts of concerns—all the things you are raising, which are broader than the legislation before us—are being heard and taken on board by the federal government? It is beyond the scope of the legislation before us, but I think it is an important message. We need to be satisfied as parliamentary representatives that these sorts of concerns, which you obviously want to take the opportunity to voice, are actually being heard in a genuine way and acted on—or at least you feel like they are going to be acted on.

**Mr Mooney**—Yes. We would ask that this committee does take back the message that we require additional housing and accommodation at Alice Springs. The \$647 million that has been allocated I think provides 750 new homes across the Territory. There are 2½ thousand homes that have been identified as requiring upgrading, and I am sure that Mr Tilmouth could comment about the standard of the housing on the town camps, for example. So that is a message that we would ask this committee to take back to the federal government. The council also said in the resolution read by the mayor at the opening of our address that council would like to be kept informed on the implementation process. That has happened to a certain degree, but we would like to see that improved.

**Senator BARTLETT**—I think you pointed out to us at the start that the council—I think it would have been the previous council, but I presume it is the same with the newly elected council—strongly supports the stated goals of the intervention. I do not think I have actually met a single person who disagrees with the stated goals the intervention is meant to achieve, but there is a desire to consider how best to achieve those goals. We still need to look at that. Is that a fair summary?

**Councillor Ryan**—Yes, I would agree with that.

**Senator ADAMS**—Thank you for your presentation. You mentioned health services. As for the Northern Territory emergency response, would a number of these people that are coming into town be coming in for health services? Are they people being sent in from the remote communities to have treatment?

**Councillor Ryan**—Yes, some would be coming in for that, but that always happened because we were a centre. It is when you bring in extra people that it puts stress onto all of those services. That was my point: the increase in numbers coming to town has increased stress on the services that the town provides. We have always been a centre for remote health.

**Senator ADAMS**—I understand the system. Because more people are being referred to Alice Springs for specialist treatment, how are they getting on with their accommodation?

**Mr Mooney**—That is always a challenge for Alice Springs. There has been some accommodation provided in town through the NT government, but I would suggest that there is never a sufficient amount to provide adequate housing for both the patients and their families when they come to town.

**Senator ADAMS**—When we were here doing another inquiry we heard about your program on excess dogs. How have you got on with that?

**Mr Mooney**—Dogs are always an issue in urban centres, and Alice Springs is no different. There is a perception that there is an issue at the town camps, but that is not the case. Like any other urban centre, the issue with dogs is across the board. Council has an arrangement with Tangentyere Council to enter the camps, and that works well. The council is in the process of drafting new animal by-laws, which have been presented to our new aldermen for discussion. They provide much harsher penalties and more descriptions of what a 'dangerous dog' is and that sort of thing. We are just moving with the times in terms of any urban centre of our size. I would suggest that, while dogs are an issue here, it is no more apparent in Alice Springs than elsewhere.

**Senator ADAMS**—Would you be able to give the committee your paper on what you feel should be reviewed in the permit system?

**Mr Mooney**—Yes, I can provide you with a copy of the reports that went to the council. I would be happy to do that for you.

**Senator SIEWERT**—I would like to ask you a question about income management and the comments you made. We were having a chat a bit earlier and we think it does relate to this legislation because, if you are licensing more stores, they are going to be involved in income-quarantining issues. My office reported the concern around the wastage on the cards some time ago. We asked departmental staff about it and we were told that, for a start, they are supposed to put a little sticker on the back of the card to say how much is on the card. They assured us the money can be rolled over and used and that it is not being wasted. So I am very interested to hear that what you are saying substantiates what we have been told previously—that is, there is a huge amount of wastage going on. You have not heard of the little stickers being put on the back?

**Councillor Ryan**—No, I have not. But it still comes down to education. You are handing out a card for somebody to use when they go to a store. When we are told we do not have enough money, shame is an issue, so we just walk away. We do not defend our rights like some other members of the community who would stand there and debate that there is money on the card.

**Senator SIEWERT**—The other thing we were told was that store staff were being trained to deal with the shame issue and also to make sure that people were properly informed about the use of the card. So the education is two-way: obviously you educate the consumers, but you also educate the staff helping people in the stores. That is relevant to the roadhouses being licensed. There should be education of their staff members. Are you aware of that happening?

**Mr Mooney**—I do not have any evidence of store education. I am just talking about what has been pointed out to me by some of the local consumers.

**Senator SIEWERT**—We heard evidence from Mr Tilmouth about the increase in drinking in town. That seems to be consistent with the information you have just given about the increase in liquor waste. Do you have an indication of an increase in drinking occurring in town?

**Mr Mooney**—The council led the representations to have Alice Springs declared a dry town. Enabling legislation to let that happen was passed by the NT government last year, and it is to be reviewed very shortly. There was an immediate improvement in town with a perception of a decrease in alcohol consumption. However, I think it is fair to say that that has now turned around and the issues in town might have even increased in terms of alcohol consumption.

**Senator SIEWERT**—Do you think that is related to the increase in urban drift that you have reported?

**Mr Mooney**—Yes, I think it is all associated with that. As indicated, 260 communities have been identified as having Alice Springs as their service centre. That comes from a report regarding the town camps. We are an attraction for many remote areas. I guess that, as part and parcel of coming into an urban centre, that is a pastime that some people participate in and it increases the alcohol issues.

**Senator SIEWERT**—You said there was going to be a review of the dry town legislation. Who is undertaking the review you mentioned and when will it be undertaken?

**Mr Mooney**—The NT government will be undertaking that review. I believe it has probably commenced already.

**Senator SIEWERT**—Do you know when it is reporting?

**Mr Mooney**—It would be still probably two or three months away.

**Senator SIEWERT**—I asked Mr Tilmouth about the issue around Austar. He said that he thought it would be difficult to just ban the specific channels we are talking about from only the prescribed areas. He said he thought it would have to cover the whole town. Have you given that issue any consideration? What is your view of his comments?

**Councillor Ryan**—We have not considered that issue at all. It has not come up within council.

**Senator SIEWERT**—It sounds to me that it would be extremely difficult, and obviously we will ask Austar when they appear. What do you think the town would say if it had to occur over the whole town?

**Councillor Ryan**—I do not have an opinion on that. It has not been discussed in council. Not subscribing to Austar myself, I do not really know what I would be missing out on.

**Senator SIEWERT**—Thank you.

**Senator BOYCE**—We also heard Mr Tilmouth this morning talking about people from the town camps having a sense of being excluded from Alice Springs. Would you like to comment on that?

**Mr Mooney**—The council supports what is called the normalisation of the town camps—that is, bringing the town camps up to a standard comparable with the rest of the Alice Springs urban area, allowing the payment of rates and the provision of services through the council. I guess there is some substance to what you say in terms of the comments made about town camps. However, the council is of the view that it will work with Tangentyere Council and all the relevant authorities to bring the town camps up to a standard where they are regarded as part and parcel of the fabric of Alice Springs. Only a couple of months ago the council wrote to the two levels of government asking for a renewed commitment to the normalisation process.

**Senator BOYCE**—Is there a strategic plan attached to this desire to bring Tangentyere up to—

**Mr Mooney**—There was a review of the town camps approximately two years ago. Out of that an implementation committee was formed working with all the authorities to go through the 18 or so recommendations that were raised from that report. Late last year, the former Minister for Local Government in the NT government dissolved that committee because unfortunately it ground to a halt. One of the reasons for that was an offer by the former minister for Indigenous affairs of \$60 million for the upgrading of the town camps. They were some conditions attached to that. Tangentyere Council declined that offer. At that stage things just seemed to come to a halt.

**Senator BOYCE**—So there has been a vacuum there since, has there?

**Mr Mooney**—That would be fair to say, yes.

**Senator BOYCE**—Who would lead that planning process?

**Mr Mooney**—The mayor and Mr Tilmouth have already been in discussions to re-energise that rescue plan, strategic plan, action plan or whatever we would like to call it. Our mayor and Mr Tilmouth are already in conversation about doing just that.

**Senator BOYCE**—Mr Tilmouth also gave us some evidence suggesting that the great advantage of the permit scheme was that it allowed communities to keep con men and other unscrupulous dealers et cetera out of their areas. What happens in Alice Springs if an unscrupulous door-to-door salesman sells something to someone, specifically within the town itself? If someone is conned into making a purchase by an unscrupulous door-to-door salesman, what happens?

**Mr Mooney**—I believe that would be a matter for the consumer affairs department. Council do not get directly involved with that. It is not one of their responsibilities under the Local Government Act, so we are not directly involved with that. I am sure that the relevant authorities in Alice Springs would be very interested in that.

**Senator BOYCE**—Are you aware of any cases in Alice Springs of someone seeking redress for a tricky dealing of any sort?

**Mr Mooney**—Only anecdotally we hear comments from time to time—nothing official that I could report through council, though.

**Senator BOYCE**—Would you have a sense that there were more unscrupulous merchants attempting to go into the town camps than might exist within the community of Alice Springs?

**Mr Mooney**—I really could not say.

**Senator BOYCE**—This might be people who are travelling from outside the area completely.

**Mr Mooney**—It certainly does happen but to what extent, I really am sorry, I cannot comment.

**Senator BOYCE**—Thank you.

**Senator CROSSIN**—Has the council had any discussion or forum with small businesses in town that have been affected by the income management regime?

**Councillor Ryan**—Not any organised discussions. We have had a considerable number of phone calls over the last three weeks and had discussions with different operators. The local chamber of commerce is running information sessions for local business on how to become part of the system, but it still falls down. My description of small business suffering is that the consumer would have to ask for a card that could go to Mary's dressmaker. That is where the problem falls. It is very easy, then, to use two or three major recognised

brands. My argument is that, for business to continue healthily in Alice Springs, we need to have the same patterns of business we had previous to this. That is why there is the suggestion of a card that anybody can use, versus a card that is specifically targeted to a particular dealer.

**Senator CROSSIN**—Are you aware of whether or not Centrelink, at the federal level, are devising such a card? Have they had any consultations with you about that?

**Councillor Ryan**—No. This is what has come through from council requesting us to mention today the fact that the store card or the quarantining of money to a select few is going to affect the lifestyle of a lot.

**Senator CROSSIN**—My understanding is that an individual can opt to have their money quarantined at Joe Smith's local supermarket this week and at Woolworths the following fortnight but that you need to actually request that. I have some doubts as to whether people know they can do that and how effective that is. Are you getting any businesses who are suggesting to you that people are aware of those options?

**Councillor Ryan**—No. Indications from businesses are that they do not have access to those customers. As a small business, you would not have a shop card or a store card that you could offer to Centrelink to be used. This is where the one-size-fits-all process of government buying some things will damage the town going forward if we end up with just two or three operators, and I do not think they will take up the employment of the people who will get put out of work from the other businesses.

**Senator CROSSIN**—Nor would they have the \$20,000 or so that is required to put the computer program in place.

**Councillor Ryan**—But all of those stores would have a point of sales system which basically was pushed onto business in Australia when we started GST. All of those stores would have an EFTPOS terminal in their store, so I am suggesting reinventing the front end of it, the actual card, would not be an impost on business to operate.

**Senator CROSSIN**—But as far as you are aware there is no proactive consultation with businesses about how this might go at the Commonwealth level?

**Councillor Ryan**—No, not that I know of.

**Senator CROSSIN**—In terms of the Astar regulation, I guess you as a council would have no idea how many customers there would be in Alice Springs that take up Astar?

**Councillor Ryan**—No, I have no idea of those numbers.

**Senator CROSSIN**—The current restrictions that are imposed by this legislation are not something the council has spoken about?

**Councillor Ryan**—It has not affected anybody within our area. We do not have people talking about the fact because it has not been an impost on the municipality of Alice Springs.

**Senator CROSSIN**—But it may well be because Astar—

**Councillor Ryan**—Then I think there will be lots of people talking about it. There will be lots of opinions in the marketplace then. But right now—

**Senator CROSSIN**—Yes, I see. Astar's submission to us today is that it is going to be difficult to achieve unless whole areas are blocked out which may well be outside the prescribed communities. In fact, they are actually talking about maybe having to block access to all of the Territory for some particular channels.

**Councillor Ryan**—To give you an example, when Imparja had to block out the television series made in Melbourne on the gangland killings because it leaked into a little part of Victoria, that created a huge uproar within our community. So, yes, I think there would be a lot of reaction to the blocking of Astar.

**Senator CROSSIN**—Okay. Thanks.

**Senator SIEWERT**—I do not know if you are aware of the select committee that is looking into the broader issues of the NT intervention, but I would strongly suggest that you make a submission to that inquiry on the issues that you have raised, because that inquiry can look at all the different issues related to the intervention.

**Councillor Ryan**—Thank you, Senator.

**CHAIR**—Now that we have had a free advertisement, we will be able to move on! Mayor Ryan and Mr Mooney, thank you so much for your time this morning and also for the evident interest that the council took

in our activities. If you think of anything you would like to add later, please get in contact. We deeply appreciate your involvement and your welcome.

**Councillor Ryan**—Thanks for the opportunity.

**Mr Mooney**—Thank you very much.

**Proceedings suspended from 11.02 am to 11.25 am**

**HENTY, Ms Georgia Page, Corporate Counsel, Austar United Communications Ltd**

**O'HANLON, Ms Tracey Lee, General Manager, Northern Territory, Austar United Communications Ltd**

**RAGG, Mr Elliott Hugh, Technical Operations Manager, Austar United Communications Ltd**

**RICHARDS, Ms Debra Shayne, Chief Executive Officer, Australian Subscription Television and Radio Association**

**CHAIR**—Welcome. I know that you have information on parliamentary privilege and the protection of witnesses and evidence. We had a copy of Austar's and ASTRA's submissions. My understanding is that you want to make an opening statement and then we will get into whatever is going to happen on that TV set. Is that right?

**Ms Richards**—That is correct.

**CHAIR**—I invite you to make opening statements.

**Ms Richards**—I might just make a few comments and then hand over to Page. We do have a summary of the issues, which we were asked to deliver to you. I think we have copies for you as well, which may be useful as we go through the presentation in particular. As the CEO of ASTRA, I just wanted to make the point that we represent subscription television in Australia. That includes the subscription TV operators—such as Austar, Foxtel, Optus and Telstra—and the many channels that are available across those services, whether they are in different packages or tiers and those sorts of things. As an industry, we create and aggregate content and distribute that to our subscribers via encrypted services. You need to decrypt the service as a subscriber. Examples of some of those packages, particularly the Austar packages, are at appendix 1 of the summary that has just been handed out.

As an industry body, ASTRA, among other things, develops and reviews codes of practice through public consultation and with the approval of ACMA, the Australian Communications and Media Authority. Those codes cover what we do as narrowcast services. The underlying principle of those codes—and it is also an object set out in the Broadcasting Services Act—is to protect children from material that may be harmful to them. As such, our codes include things—as do all broadcast codes covering radio and television, including ABC and SBS—like requirements for the classification of film and drama products, for classification advice and the provision of disabling devices or parental lockout, which is usually done through a PIN system. That is what we want to demonstrate later. ASTRA's codes cover subscription television broadcast channels. They are the sorts of main channels you would think of, such as documentary channels, movie channels, kids channels and those sort of things. There are also subscription narrowcast channels, such as World Movies, multilanguage services and our adults-only service. There is also subscription radio on open narrowcast TV, but it is of little relevance to this issue this morning.

The ASTRA members specifically impacted by this bill are Austar, as the service provider covering the Northern Territory, and the subscription television narrowcast channels or services, such as the adults-only service, World Movies and Box Office. Subscription broadcast channels, like all free-to-air channels, can only broadcast content MA and below, but subscription narrowcast channels, because they are narrow or limited in some way under the act, can legitimately broadcast R-rated material. They certainly cannot broadcast X-rated material on any of our channels. That is available in other forms in some territories, as you probably know.

We agreed with the release of the *Little children are sacred* report. We were actually encouraged by the recommendation about education in terms of how to use these services, particularly to try and address the issue about limiting children's access to anything that might be inappropriate or unsuitable. We were a bit surprised when the provisions came forward about banning R-rated material. Originally there was a call for a total ban in the prescribed areas.

We have worked with relevant departments to try to make the best of it and achieve the objectives of the provisions in the context of all the services that we ordinarily deliver to our subscribers. Overall we believe that the best way is to be part of that consultation and education, because we actually do communicate directly with our subscribers and we feel that we can be part of that solution.

Very briefly, we have asked for some amendments. They relate essentially to administrative matters such as record keeping and the ability to self-declare our services. We would much prefer to be upfront and say Adults Only is a service that is covered by these provisions, as opposed to laboriously going and checking the

percentages when we know full well that that is a service that needs to be captured. The other amendments are as to record keeping in terms of what we have to provide to ACMA. We do not want a whole new regime; we want to use the existing regimes that we currently use to pay underlying rights holders and do those sorts of things. That is very briefly the issues.

**Ms Henty**—Like many others, we were very concerned to read in the *Little children are sacred* report about the use of our programming and its possible contribution to some of the grave social concerns in the communities. As an organisation we noted the recommendation by the authors of the report that education might be a solution to some of the problems. We have already been in contact with FaHCSIA and in fact are actively working with them right now to develop that kind of program and, hopefully in partnership with the Indigenous communities and the responsible adults in them, go into those communities and help educate people about the kind of control they can take over the programming that appears on all of their television services including Austar.

If, however, the government thinks that legislation is necessary in order to stop the availability of pornography in these communities, the legislative framework that we would support to do this is the one that is set out in the current bill. For all of the reasons that we have set out in our submission and furthermore in the short summary today, we note that the implementation of a blanket ban in prescribed communities on our programming that is rated 18+ raises significant technical problems for us. In addition, we do not think that will be of as much benefit to these communities as a consultative program that would allow us to have some interaction with both the customers and the communities to determine what they are particularly concerned about in their communities. We welcome the opportunity to be here. We are very happy to answer any questions, both technical and legislative, that you might have.

**CHAIR**—My understanding is that you want us to have a look at something and that arrangements have been made for that. We will stand up incredibly professionally and move around the table so we can have a look at it.

*An audiovisual presentation was then given—*

**CHAIR**—Thank you for that presentation. I will speak to someone later about how I can make my PIN work at home. Now I know why it is there! We have that on record, and senators also know who to ask if they have follow-up questions. I think that is very valuable. Is there anything you want to add before we go to questions?

**Mr Henty**—I do not think so.

**Senator HUMPHRIES**—I would like to confirm on the *Hansard* record some of the things you told us in that presentation. What you have described to us demonstrates that it is reasonably clear that you need to be an adult in order to become an ‘account holder’—I think that was the phrase you used. Once a household becomes a subscriber, an account holder, the key to accessing an adults-only channel on that account is having the PIN and understanding how to go through the process.

**Mr Henty**—That is correct.

**Senator HUMPHRIES**—On page 7 of your submission you said:

... it is not possible for a child who lands on an ‘Adults Only’ movie on AUSTAR ... by continuing to watch a channel that has been left on, to obtain access to an AO movie unless they enter a pre-established PIN number ...

If an adults-only channel has been left on, why isn’t it possible for the child to watch that channel and see the AO movie?

**Ms Henty**—The comment was intended to illustrate that movies do not run from movie to movie to movie. You are absolutely right. If it is on the screen when the child enters the room, there is no question that, as for anyone else, he or she would be able to watch the movie. However, when that movie ends, or if the child channel-surfs away from the film and then comes back to that channel, a PIN will be required.

**Senator HUMPHRIES**—A comment was also made a little while ago that, in the average Australian household, if you want to steer your way through some electronic technology, the chances are that your 10-year-old or 12-year-old would have a better idea of how to do that than most of the adults in that household. That would be pretty right, wouldn’t it?

**Ms Henty**—That is correct.

**Senator HUMPHRIES**—I want to turn to the first dot point on page 9 of your submission. I take it that you are the lawyer, Ms Henty?

**Ms Henty**—I am.

**Senator HUMPHRIES**—You raise some of the issues or problems that Austar would have in preventing access to adults-only channels in prescribed areas. You say:

- if AUSTAR thinks a customer is outside a prescribed area and does not switch the customer off, but the customer is actually inside the prescribed area, AUSTAR would be in breach of the content prohibition

As you know, in most offences there is an intent requirement. Whereabouts in the legislation is the offence made an absolute liability provision whereby intent is not a factor?

**Ms Henty**—We have actually requested that there be an amendment to show that this is the case. Can I read the current language out?

**Senator HUMPHRIES**—Can you direct me to the section you are reading from?

**Ms Henty**—We are talking about schedule 1, paragraph 10. It starts at the end of part 7, schedule 2. It talks about amendments to the Broadcasting Services Act. We are talking about subclause 12 in the Broadcasting Services Act, which is titled, ‘Condition applicable to declared subscription television narrowcasting services provided in the Northern Territory under class licences’. The channels that we carry that would be subject to this are World Movies, the Adults Only service and Box Office movies. Those are the only three services that we are talking about. Subclause (1) states:

The provision by a person of a declared subscription television narrowcasting service under a class licence is subject to the condition that the licensee will not provide the service in a way that will enable a subscriber in a declared prescribed area to receive the service.

That in our minds, without any implied by law mens rea or more complicated legal theory, is a blanket prohibition that we are required to comply with in order to preserve the conditions under which we continue to broadcast World Movies, Box Office movies and the Adults Only service.

**Senator HUMPHRIES**—You would be well aware, Ms Henty, that bodies like the High Court have made it very clear that legislation intended to oust protections like the requirement for mens rea has to do so explicitly, not by implication?

**Ms Henty**—Absolutely. We are not seeking—

**Senator HUMPHRIES**—This does not do that, does it?

**Ms Henty**—The thing that might be useful for the committee to hear is that we do not disagree that the provision of adults-only services into these communities might be a bad thing.

**Senator HUMPHRIES**—With respect, I do not want to hear the principle; I want to come to the practical detail of your submission. Let us suppose that it was banned in prescribed areas. If you supply that material into an area that is outside the prescribed area, thinking that it is inside a prescribed area, you say you would commit an offence. Can you show me where in this legislation the intent provisions that are normally applicable in Australian law do not apply in this case?

**Ms Henty**—We would hope that the intent provisions do apply.

**Senator HUMPHRIES**—So, with respect, that first dot point is not accurate, is it?

**Senator CROSSIN**—Is it not the reversal of the onus of proof—in other words, you are guilty of that offence unless you can prove otherwise?

**Senator HUMPHRIES**—If it is clear that you are reversing the normal Australian legal position that you need to have a guilty mind to accompany your guilty action, if you create an absolute liability offence, you are quite right that you would be caught. But common law in Australia is quite clear that you need to expressly state that in a piece of legislation for it to occur; otherwise the assumption will be that a guilty act needs to be accompanied by a guilty mind—and that is not in this legislation, is it?

**Ms Henty**—With respect, I am certainly not prepared to talk about the significance of criminal intent in this legislation. We are trying to comply with it and we have raised the point just to indicate the difficulty that we have in locating individuals in these communities.

**Senator HUMPHRIES**—It also, with respect, sounds to me as if you are attempting to portray to the committee more problems and issues with respect to complying with the intent of the legislation than actually exist.

**Ms Henty**—That was not our intent.

**Senator HUMPHRIES**—All right. Let us move to the next dot point, which states:

- if AUSTAR thinks a customer is *inside* a prescribed area and switches the customer off, but the customer is actually *outside* the prescribed area, AUSTAR would be in breach of its Customer Agreement with the customer—

I agree with that; I think that is clear—

and may be in breach of the *Racial Discrimination Act 1975* (Cth)

Can you explain how that might occur?

**Ms Henty**—The Racial Discrimination Act in representing the relevant international convention would at least *prima facie* start a differentiation in the treatment of people on the basis of their race. There is an exception to that: if it is established that it is for the good of the local community. We have said, as noted in here, that our concern about the Racial Discrimination Act is that we may be in breach of it. I think the point was raised in the submissions made by the Law Council of Australia and some others that there is an open question that the bill and certainly a blanket prohibition may offend Australia's international conventions.

**Senator HUMPHRIES**—Yes, but that is a different question to the one I am raising. I am raising the issue you have raised in your second dot point as to why we should not support the creation of a ban on broadcasting or narrowcasting into prescribed areas: by switching off a customer because you believe he is inside the prescribed area when he is in fact outside the prescribed area you may be in breach of the Racial Discrimination Act. As you rightly point out, making that decision on the basis of the race of the person you are dealing with may well fall within the Racial Discrimination Act's provisions. But if you are making that decision based on your attempt to comply with federal broadcasting legislation how can that possibly be construed as a decision made with the intent of advantaging or treating differently a person of one race over another?

**Ms Henty**—There is, as I am sure you know, a significant legal debate about whether we would be actually up for breach of the Racial Discrimination Act if a group brought us to court for switching off someone on the basis of their race. It is not something that I feel qualified to discuss here.

**Senator HUMPHRIES**—With respect, nobody else has raised that particular point with us. The Law Council have not raised that point in their submission. They have raised the issue about the capacity to exempt some actions from the Racial Discrimination Act but they have not made the point that you have made in your second dot point. If you are not prepared to make that point here then why is it in your submission?

**Ms Henty**—The point in the submission was to highlight, as the Law Council of Australia and the department have, that there are issues in a blanket prohibition without a consultative process that raise racial discrimination problems. Like the government, we are concerned about these issues and, to the extent that we are the perpetrators of the activity that the legislation is trying to put in place, we feel that we are particularly vulnerable to any claim of breach.

**Senator HUMPHRIES**—I do not think that is the point that is being raised by the Law Council, but we can come back to that issue and examine it when the Law Council comes to speak to us. On the previous page, page 8, you make a point about the argument that the 35 per cent threshold might be thought to apply to the whole of Austar services, all 87 channels, rather than simply to a particular channel—namely, the adults-only channel, which is being assessed for its 35 per cent content. You say that you do not agree that the bill is capable of being read in a way that means you have to assess the adult content on the whole of Austar's broadcasting suite. I direct you to the explanatory memorandum to the bill and particularly to page 3 of the memorandum, which explains the provision of that 35 per cent rule. It says:

That Broadcasting Services Act licence condition would only apply to those licensees—

I am reading from the middle of the page—

**Ms Henty**—Sorry, Senator, can you say which page you are reading from?

**Senator HUMPHRIES**—Page 3 of the explanatory memorandum to the bill.

**Ms Richards**—Does it start 'as part of the special measures'?

**Senator HUMPHRIES**—Yes, that is right. That is the paragraph. Before the dot points, the sentence reads:

That Broadcasting Services Act licence condition would only apply to those licensees—

note it is not channels or programs—

who:

- allot more than 35 per cent of their total broadcast hours to programs that are rated R 18+; and

- are subject to a written declaration made by the Minister.

Wouldn't you say that that sentence, that the condition only applies to licensees who broadcast more than 35 per cent of their total broadcasting hours, does sound as though the assessment is being made on the total broadcasting hours of the licensee—namely, in this case, Austar—rather than on the particular content of a particular service or channel that you offer?

**Ms Henty**—I think the confusion has arisen because of the use of some of the terms for art that appear in the legislation. The licensee, as I read this legislation and knowing how 'licensee' is used in the Broadcasting Services Act, is of a subscription television narrowcasting service. So, when you are talking about the 35 per cent of the total broadcast hours to your programs, in my mind it refers to the programs of a licensed service, and a licensed service is those three that we have identified.

**Senator HUMPHRIES**—With respect, that may suit your purpose but that is not what it says, is it? It says the 'licensees'. Is there a separate licensee for each of the 87 channels?

**Ms Richards**—Yes.

**Ms Henty**—Yes, that is correct.

**Senator HUMPHRIES**—Separate licensees?

**Ms Richards**—That is how the Broadcasting Services Act operates, in that each single stream of programming, a channel, has a separate licence. Austar, Foxtel or whoever, as the operators, each have licences for each of those channels, so they are seen as the licensees.

**Senator HUMPHRIES**—So there are 87 licensees? I do not mean licences; I mean licensees. I appreciate that you have a different licence for each channel, but surely there is only one licensee?

**Ms Henty**—That is correct. But Austar—and it need not have been the case—is a licensee of every separate service that we carry. Foxtel is a licensee of every separate service it carries.

**Senator HUMPHRIES**—I appreciate that you have a different licence for each channel, but there is only one licensee. The sentence I read to you could easily be construed to mean that the 35 per cent assessment is calculated across the whole of the broadcast hours broadcast by that licensee—singular licensee.

**Ms Henty**—Correct. I think it is clearer in the legislation itself.

**Senator HUMPHRIES**—But the point is that there is a difference, isn't there, between what appears to be in the legislation and what appears to be in the explanatory memorandum.

**CHAIR**—And the primary document is, Senator?

**Senator HUMPHRIES**—Of course it is the legislation. The legislation has also got to be read in the light of the explanatory memorandum. You would agree that there is some confusion about that.

**Ms Henty**—I agree that there may be some ambiguity in the explanatory memorandum.

**Senator HUMPHRIES**—Okay. So you would support the idea of this committee calling for a clarification of that matter, making it clear that the 35 per cent rule applies to each channel, not to the whole of the broadcasting offering of a particular licensee.

**Ms Henty**—Correct. Each subscription narrowcasting service.

**CHAIR**—On this page your submission refers quite specifically to the bill. So that is yes in terms of the process. I understand the need for clarification, but I think that your evidence there is particularly on the bill.

**Ms Henty**—Certainly in any discussions we have had with the government and the previous government there was never any query in our mind as to the 35 per cent being applied over any more than a single narrowcasting service.

**Senator HUMPHRIES**—If prescribed areas are worked out and identified by geographical limits, it is possible, isn't it, for you to take the billing address—you have a physical billing address for each subscriber or account holder, don't you?

**Ms Henty**—Yes.

**Senator HUMPHRIES**—It is possible for you to identify whether an individual billing address falls within those prescribed areas and then make a decision about whether to continue narrowcasting the adults-only channel into that prescribed area.

**Ms Henty**—There is actually some information in front of you that might help illustrate this point. If you go to appendix 4 in the short summary that we have given you this morning, at page 8—

**Ms Richards**—It looks like a map, an aerial photograph.

**Ms Henty**—What we have on the left-hand side of the page, which is the yellow map, is the government's description of a prescribed area as it appears in the current legislation. We have an area where you will notice that there are not any streets inside and there is no indication in that area of where the actual houses are. What we have done in trying to correlate the government map with our own information is we have taken a satellite image from Google Earth and tried to superimpose the government's map on top of the map of the streets. In particular what we are looking for are the houses, because that is where we think our dishes are. Our billing addresses are defined in most areas by reference to street address. In some of these remote communities, though, the billing address is the local post office; it is not specific to an actual street address. So, if we impose the map over the top of those streets, you will see the left-hand side broadly correlates with the smaller road on the left-hand side of the main road, where we have got the arrow. We then have houses, clearly homesteads, some of which appear to fall within, but some may be without as well. Bearing in mind that we do not have or may not have street addresses for all of these houses, we are unsure how that map superimposes onto this community. What would be of help to us is to actually be privy to a consultation process where we, as the managers of the account information, while keeping our customer information private can actually identify individual account holders in communities so that we can switch them off if that is what the community wants.

**Senator HUMPHRIES**—You do have an issue about whether an account holder falls inside or outside an area, but that could be cleared up, presumably, by consultation, first of all, with the government about whether a particular customer falls inside or outside that area.

**Ms Henty**—I am not sure how that consultation would take effect.

**Senator HUMPHRIES**—If this is being imposed through the Broadcasting Services Act—and I am not sure exactly how these maps are published—presumably there are officers in the Department of Broadband, Communications and the Digital Economy for Austar to go to and say, 'We have an issue about whether we are complying with this legislation by turning off the service to this customer. Can you tell us whether or not the customer falls within the area?' Surely you would expect to get an answer from them on that question.

**Ms Henty**—With respect, neither DBCDE nor FaHCSIA can help us with that question. We have asked.

**Senator HUMPHRIES**—You are saying you have asked them whether they can identify whether particular households fall within their maps and they have said to you that they cannot help you with that issue?

**Ms Henty**—We do not have the street address for some of these places. What we have is an account number. I do not know that we could expect the government to say, 'Mr Foster is inside this area,' because that is the kind of—

**Senator HUMPHRIES**—Are you saying that you could not expect that? I thought you said you already asked the department and they said they could not help you with that. How have you asked the department to help you with that?

**Ms Henty**—Our mapping experts sat with mapping experts from FaHCSIA when this legislation was first introduced, and it was agreed between the FaHCSIA representative we were working with and our representative that the correlation between the government's information and ours was not certain.

**Senator HUMPHRIES**—I agree with that. But, if a particular household may or may not fall within the area, why is it not possible for you to approach the federal communications department, which administers this act, and say, 'We have a question of whether we can continue to supply a service to this household. Is it or isn't it inside your area?' If they are prepared to give you an answer to that, you have some protection against any prosecution for having breached the provisions of this legislation, haven't you?

**Ms Henty**—We have never sought that kind of certainty from the department. Personally, I would be very surprised if they would give it to us.

**Senator HUMPHRIES**—With great respect, that is supposition. The situation has not arisen yet. You cannot know what they are going to say if you ask the question. If you are subject to prosecution by that agency for failure to comply with their legislation, surely they are going to have an obligation to tell you whether or not your supplying of a service to a particular place is or is not caught by that provision.

**Ms Henty**—As you said, that would be supposition. It does not give us much comfort that we would get that kind of protection under this legislation.

**Senator HUMPHRIES**—By looking at your submission and the raising of all these issues as to why you cannot comply with measures of this kind, wouldn't it be open to somebody to assume that bodies like Austar are more concerned to protect the profits that they make from the sale of these services into Indigenous communities than to protect vulnerable people from the sorts of issues that have been raised in the *Little children are sacred* report?

**CHAIR**—Senator Humphries, Ms Henty can answer that question but I think it is touching on whether it is an appropriate question to ask in that way.

**Ms Henty**—I would be happy to respond.

**Senator HUMPHRIES**—Before we go on, I want to clarify the ruling on this issue, Chair.

**CHAIR**—I was questioning the way that question was phrased in terms of saying that profit was before the safety of children. I think that is a particularly difficult and outrageous statement to make. That is my ruling, but Ms Henty is prepared to answer the question.

**Senator HUMPHRIES**—I want to press the question. Are you ruling that the question cannot be asked?

**CHAIR**—No. If Ms Henty is prepared to answer it, she can go ahead.

**Ms Henty**—I am grateful for Senator Moore's statement and I agree with her point. However, we sat here this morning and listened to both Mr Tilmouth and the representatives of the Alice Springs Town Council respond when asked the question about how many people they were aware of in their communities who both had Austar and were concerned about the R-rated content. Neither of those groups said that they were aware of any concern in these communities. In particular, Mr Tilmouth said that he was aware of only a handful of people in his community who had Austar.

**Senator HUMPHRIES**—Because he said it was not his business to make inquiries about those matters.

**Ms Henty**—With respect, our own research indicates that there are not very many people at all in these communities who have Austar and, more specifically, who take an adults-only service. I would agree with Mr Tilmouth that it looks like a handful of people. Our concern about profitability is not the money that we would lose; it is the expense to the business of putting in place information technology systems and changing whole business processes that this legislation would cost us. It is not about protecting revenues. If we could do it reliably, we would have no concern about turning off adults-only or other services where there is evidence to indicate that it is being misused in these communities. However, a blanket ban will impose on us significant expense and significant time constraints in how quickly we can comply with that. That is our financial concern and, if there is going to be legislation, it is the reason why we are very supportive of working with the relevant departments and communities to understand what is happening in the communities and to help them one by one to address their issues.

**Senator HUMPHRIES**—Should I take it from that that you do not agree with the finding in the *Little children are sacred* report that there is an issue with a link between accessing pornography in Indigenous communities and other problems with respect to violence and abuse of women and children?

**Ms Henty**—No, that would be incorrect. I think we were surprised, as were others, to see that our programming, at least in the reported commentary in the report, appears to be contributing to what we consider is a grave social concern. What we did think was confusing about the report was the definition of pornography. As a company that is trying to control the programming that we have going into those communities, we are concerned about that ambiguity. In some places it was music clips, in others it was SBS, in others it was gangster movies. We have no confusion at all that adults-only programming that may be going into those communities that is seen by children is not good for them.

**Ms Richards**—That is illegal.

**Ms Henty**—And it is illegal.

**CHAIR**—You stated at least three times in your submission your willingness to be involved in discussions on these issues and to seek community consultation about the issues.

**Senator CROSSIN**—Thank you for your efforts today and your submission to us. Can I just ask you to clarify your role for us? For example, you have given us additional information today where you outline the fact that you have got 21,000 customers around the Northern Territory. Have you got a rough idea of how many of those would be in the 70 prescribed communities?

**Ms O'Hanlon**—We have around 3½ thousand remote customers across the Territory.

**Senator CROSSIN**—Okay.

**Ms Henty**—We have done some research into trying to identify how many there are. I do not have those figures here. I would be happy to get back to the committee members with that information.

**Senator CROSSIN**—I would be interested to know how many of those 3½ thousand would actually subscribe to World Movies or adults-only channels.

**Ms Henty**—Tracey, the World Movies service is available in our normal movies package; is that right?

**Senator CROSSIN**—That is right. World Movies is available under your Showtime package.

**Ms Henty**—That is right.

**Senator CROSSIN**—So a lot of people would subscribe to that. But it would be interesting to know how many of your 332 adults-only subscribers are actually in the prescribed communities, if that information can be ascertained.

**Ms O’Hanlon**—We can ascertain that.

**Ms Henty**—We will come back to you with that information.

**Senator CROSSIN**—The *Little children are sacred* report only had a couple of pages about the issue. When I watch certain ordinary TV shows on television, *Desperate Housewives* and the current *Underbelly*, for example, there are pretty explicit sex scenes in them as well, which, I am assuming, all children around the Territory would be watching—should not be watching but probably are. There was no recommendation in the *Little children are scared* report to look at pay TV in this way, was there?

**Ms Henty**—Correct. There was no recommendation.

**Senator CROSSIN**—So the recommendation just went to better education to parents about what children should and should not be allowed to watch?

**Ms Henty**—That is right.

**Ms Richards**—We certainly supported that recommendation.

**Senator CROSSIN**—I am therefore somewhat perplexed why we have got this legislation to the degree of detail that we have when in a household, to access your adults-only channel, you would need to know your account number, which, from my memory, is at least eight to 10 digits long, and a PIN. Given that a lot of people usually share an Indigenous household, is this legislation premised on the idea that those numbers are readily available amongst all members of that household?

**Ms Henty**—I am not sure exactly what the premise was. My understanding in speaking with government and certainly in reading the report is that someone in the household has access to those numbers and that the television set is left on and children have incidental access to it because someone else in the household has that information.

**Senator CROSSIN**—So the premise would be that either someone is watching an adults-only movie at two o’clock in the afternoon when kids ought to be at school anyway or they might be watching it at eight, nine or 10 o’clock at night when kids ought to be in bed; hence the emphasis more on the education aspect rather than the legislative aspect.

**Ms Henty**—That was my understanding from our discussions with government.

**Senator CROSSIN**—You say in your submission on page 7 that you are not technically able to block the supply of restricted 18+ rated programs to ‘prescribed areas in Australia on a program-by program basis’; in other words, if we go to World Movies, to block the channel World Movies, not film by film? Is that correct?

**Ms Henty**—That is correct.

**Senator CROSSIN**—What effect does that have then on the implication in the bill that it may not be possible to do that and that it would have wider ramifications across the Territory?

**Ms Henty**—I think the point that you are addressing is that the only way we might be able to comply with a blanket ban is to switch off everything across the entire Territory. The program by program issues that we have are that classification and the ability to control it is in the box rather than at our head end. So if we are going to stop the supply of R-rated programming into prescribed communities, wherever they are, we would always have to switch off a service.

The issue about switching off a service across the Territory is that because we have such difficulty identifying people who are inside communities it may be that the best way for us as a company to do that is to take a view of a population as a whole, like a state-wide population where we can identify people within the state and without the state, and so block off a service across the entire Territory.

**Senator CROSSIN**—Have you yet made a decision to move down that path?

**Ms Henty**—We have not, and my hope is that we would not have to because the bill in its current form would, hopefully, mean that we never got to the point, that we would address the issues in these communities efficiently and completely so that we did not have to look at blanket bans across large numbers of small prescribed areas.

**Senator CROSSIN**—This legislation talks about prescribed areas, and outstations and homelands are not part of prescribed areas. So I am assuming that this legislation will not apply to people in outstations who would have Austar accounts.

**Ms Henty**—That is correct. That is our understanding of the legislation. It only applies to households that we can identify that are inside prescribed areas.

**Senator CROSSIN**—It does not apply to Indigenous families who live in Alice Springs or Darwin who might be urban residents of those communities either, does it?

**Ms Henty**—Correct; it does not.

**Senator CROSSIN**—There is a provision in this legislation, though, for meetings community by community to see whether they want this service to be blocked. I think there is a lot of inconsistency in the explanatory memorandum. The schedule requires particular pay television services to not provide television channels that contain a large amount of R18+ programming, but there can be up to 35 per cent, can't there?

**Ms Henty**—That is right.

**Senator CROSSIN**—There is some suggestion in the explanatory memorandum that only one person has to request it, but the legislation actually suggests that a community has to request it.

**Ms Henty**—It does talk about a community consultation process.

**Senator CROSSIN**—Currently, government business managers and community employment brokers have Austar paid for them as part of their incentives to work in these remote communities. You would know that because you are currently providing that service wherever there are government business managers' accommodation.

**Ms Henty**—I do not personally know, but certainly our business would.

**Ms O'Hanlon**—I am aware that that does happen in some instances, yes.

**Senator CROSSIN**—Do you know how many of those services are being funded by the Commonwealth government?

**Ms O'Hanlon**—No, but it is information that we could get.

**Senator CROSSIN**—Let us take, say, Wugularr in outer Katherine. I assume if Wugularr make a decision as a community that they want access that is provided under this legislation to be stopped that that would include all services in that community—not just the Indigenous services but also any Austar account that is going into a non-Indigenous home in those communities. Is that your understanding of the legislation?

**Ms Henty**—That is correct.

**Senator CROSSIN**—And there is no provision for a non-Indigenous person in those communities to opt out, get a permit or object?

**Ms Henty**—No, not in the current bill.

**Senator CROSSIN**—Are you aware if non-Indigenous people and government business managers are conscious of the fact that this is what this legislation might imply for them?

**Ms O'Hanlon**—I have heard nothing in the Territory. I am not quite sure if they are aware.

**Senator CROSSIN**—Have you done anything to communicate to, say, teachers or nurses who live in remote communities that have Austar to alert them to the fact that these might be the consequences?

**Ms O'Hanlon**—Not at this point.

**Ms Henty**—No. Our discussions to date about the effects on customers in the Northern Territory have been through the government and with the government. Obviously when we know what the legislation is and the extent to which our customers are going to be affected we will, absolutely, communicate with them about the likely impact on them.

**Senator CROSSIN**—It may well be that, despite this legislation going through, if no community requests then there would be no change. Is that right?

**Ms Henty**—That is correct.

**Senator CROSSIN**—Can you tell me what consultation is happening regarding education processes? Are you the only people involved in this discussion with FaHCSIA, or are we also including adult-only pornographic shops out of Canberra that might be sending this sort of information via the post to communities? Is it just Austar that has been targeted?

**Ms Henty**—I am not aware of any discussions that the governments have had with other providers, but certainly ASTRA, as an industry body, and Austar are the only television operators I am aware of who are working with FaHCSIA or have mentioned to FaHCSIA the education program.

**Senator CROSSIN**—So when you come together in these consultations with FaHCSIA there is not a pornographic industry collective that are meeting with FaHCSIA? Is it being done individually—say, DVD and magazine sales versus the ASTRA body—or are you all coming together in the one room to talk about an education process that would go right across the board?

**Ms Richards**—It has only been us in the instances that we have been speaking to government because it is proposed that we are the only ones who should be banned. The other provisions do not apply to DVD, video or other material that may be R-rated and above that is sourced by other means of distribution and delivery.

**Ms Henty**—This legislation only affects the Austar service—

**Ms Richards**—and subscription television.

**Senator CROSSIN**—What is your process inside Austar and ASTRA to constantly do some sort of active research on and self-evaluation of how strict the access provisions are? You have already come to a process whereby one has to ring a number and give an account number and the account information has to match the telephone number that one is calling from. For example, I cannot sit in my home and ring on my mobile. I have got to ring from the home number that is attached to the account. I then have to key in a PIN. Are there any further access requirements that you have thought of to make it harder for households to access the services? Otherwise, do you think it is pretty strict as it is now?

**Ms Richards**—I would say that we have the most hurdles that anyone has to go over to actually access R-rated material, as opposed to other services that might be available. We certainly promote the parental lockout system. Particular channels have it. The Comedy Channel says: ‘The following programming on our channel is usually rated M. We recommend the parental lockout system.’ We have pieces in our magazines, for example, that go out to our subscribers that promote the use of parental lockout. It is certainly an issue within our codes of practice, which go through public consultation to make sure that we have protection provisions for various stages of classification as to how you can restrict access, because the fact is R-rated material is legally available only to those over 18.

**Senator CROSSIN**—Has any thought ever been given to making R-rated movies on the World Movies channel or adults-only channels available only after 10 o’clock at night and before seven o’clock in the morning?

**Ms Richards**—Where the adults-only service has previously been deemed by ACMA to be a narrowcast service, it has only been narrowcast not because it is of limited appeal but because ACMA takes the view that adults-only material is of broad appeal but that it is limited by things such as the access—the fact that you have to put a PIN in, the fact that you have to pay more for it—whereas previously it was to do with things like being on late at night or early in the morning. I know that World Movies, if they do have R-rated material, usually show their R-rated material beyond a certain time. I think it is shown beyond 9.30 pm, which I think is the accepted watershed in the free-to-air environment as well.

**Ms Henty**—Exactly. Of the three services that do carry R-rated programming, one—it is World Movies—is the type of service that does program according to a daily schedule. World Movies do not schedule any R-rated programming until after 9.30 pm. The way that we offer both adults-only movies and movies that might be R-rated on our Box Office service is by pay per view. It is intended to be there at a time that is convenient for

viewers and there is an active demand for it by each customer. We have not considered making those other services not available until after a certain time at night. Our philosophy as to protecting children is that it is important to inform parents, as the people who effectively have control over the television set, about how best to do that.

In answer to your question about what happens internally about keeping child protection issues in the foreground, certainly within Austar the development of the technology that goes into parental lockout and the hide-and-show folder for adults is very sophisticated. It actually takes a lot of people quite a lot of time to put in place. As technology changes, we are constantly making sure that those systems are kept up to date, kept user friendly, kept intelligible and also kept as effective as possible with a view to what our obligations are under the legislation and also in terms of being corporately responsible for children and our programming.

**Ms Richards**—I might add there has been research done by the regulator, which was then the Australian Broadcasting Authority, in terms of Australians' views about R-rated material. It came up with an assessment that 80 per cent of Australians thought that R-rated material should be available but it should be available with things such as parental lockouts. That is why we have that within our services—in response to that research in the community.

**Senator CROSSIN**—My final question is this. Given the statistics you have given us today, you have 332 adults-only subscribers. Are they people who subscribe each month?

**Ms Henty**—It is an average of 332 per month who have called us and booked a single session.

**Senator CROSSIN**—The 567 purchasers could be 567 individual clients or they could actually be 20 clients buying multiple movies a month, couldn't they?

**Ms Henty**—The 332 subscribers bought 567 single-session movies.

**Senator CROSSIN**—I see. So, out of 21,000 customers in the Territory, only 332 are accessing adults-only channels each month?

**Ms Henty**—That is on a per session basis. The next bullet point shows the monthly subscribers, so it is a total of about 700 or 800.

**Senator CROSSIN**—Given these numbers, I think the percentage is particularly low and I am surprised that they are so low given the emphasis that is being given to this legislation. Have you ever gone back to the authors of the *Little children are sacred* report and asked them to further clarify, expand or explain to you the basis on which they made those observations in their report?

**Ms Henty**—We have not but I think that is a great idea and certainly we have touched on those issues.

**Ms Richards**—There were some initial discussions with the authors, particularly when the report first came out, and there was a lot of publicity about what might be done. Austar may have been contacted by those authors in trying to explain and seek clarification about what was meant by the term 'pornography', particularly when the report refers to SBS and other free-to-air services and DVDs et cetera. But there has not been a formal process.

**Ms Henty**—In the development of an education program, I would be recommending to the people in our shop to do that. We need to try and make sure that we have an education program that addresses the things that they heard in those committees.

**CHAIR**—We are close to being out of time. Has anybody got any further questions for these witnesses?

**Senator BARTLETT**—I just wanted to explore the bit in your supplementary submission where you talked about the ability to identify customers misusing the service by giving children access to R-rated programs. You said that you would be able to cancel their services. Firstly, I presume that is a capacity you have across the board, anywhere in Australia, regardless of racial background. Are you able to give any indication of whether or not you implement that provision? I would assume it would be fairly rare, but do you ever do that? Do you discover that and cancel services for that reason?

**Ms Henty**—I will check to see whether we have done that. To my knowledge we have not. I can say with authority, were we to become aware that anyone, regardless of where they were living, was exposing children to R-rated content then we would have no hesitation in cancelling their service.

**Senator BOYCE**—Have you ever done that?

**Ms Henty**—Not to my knowledge, but I will check.

**Senator BOYCE**—If you could provide the answer to the committee, that would be good.

**Ms Henty**—Certainly.

**Senator BARTLETT**—I do not know if this is a broader industry question. In the context of child abuse, when actual incidents are identified, as opposed to general blanket allegations being made, and those involved—whether child welfare authorities, police or whatever—have identified that, as part of that abuse, there was grooming or the deliberate exposure of children to this sort of material, one would hope that they would notify you of that. Would it be normal practice for child welfare authorities or police to notify you about that, or have you ever had any examples of that?

**Ms Henty**—I am not aware of any examples of it happening. Tracey, have you heard?

**Ms O’Hanlon**—No, not in the four years I have been in the Territory.

**Ms Henty**—I will make inquiries to see whether we have ever been contacted. I would hope that it would be normal practice for community service operators to contact us. Were we to have even a reasonable suspicion that someone was using our services in that way, we have a discretion under our contract with our customers that we would certainly consider using.

**Senator BARTLETT**—We appreciate the time constraints, and I think we have witnesses tomorrow—police et cetera—we might be able to ask this. But do you not have any memorandum of understanding or procedural arrangement with police or child welfare where you would expect them to do that? It may just be because it is sufficiently uncommon that there has been no need to develop it, but you cannot be going around to everyone’s lounge room and assessing. It is more likely to be child welfare authorities and police who would discover this sort of misuse, although I appreciate you make the efforts. You would want to have a process in place where they would notify you.

**Ms Richards**—I cannot comment on the specifics of the child welfare issues, but we do have a close relationship with police, particularly the AFP. We have been working closely with them, but it is on a specific issue of piracy. So there is already that established relationship in terms of sharing information where you may have situations where there is illegal use of the services.

**Senator BARTLETT**—I think you said this earlier, but I just want to satisfy myself—there is no X-rated material at all?

**Ms Richards**—Correct—none. It is not allowed on subscription television services, whether they are narrowcast or broadcast services. Only—

**Senator BARTLETT**—It is allowed in hotel rooms in the Northern Territory, I happened to notice.

**Ms Richards**—In the Northern Territory and the Australian Capital Territory, yes, it is—but not on our service.

**Senator SIEWERT**—What does the education program that you are talking to FaHCSIA about cover? I noticed that you said earlier it talks about how to stop the programming and how to use your system, whereas the *Little children are sacred* report mentioned things like explaining the meaning and rationale for the classifications and that the Criminal Code makes it illegal to show minors pornographic material et cetera. Are you including that in your education program?

**Ms Henty**—We have not yet gone to that level of detail in the program. As you noted, that is what the recommendation was about—the significance of classifications across all of television. I think that any program that we were involved in would hopefully include that, whether we were to do it ourselves or whether it were to be done in conjunction with DBCDE—the government agency. I do not know at this stage.

**Senator SIEWERT**—We are talking about 3,500 remote customers, as I understand it. Is it fair to say that, if you applied the two per cent of the 21,000 subscribers to the 3,500, it would come down to a very small number of people in remote communities that appear to be accessing adult-only channels?

**Ms Henty**—That is correct. We will send you the details of how many adults-only subscribers we believe may be in these prescribed areas specifically, but yes.

**Senator SIEWERT**—That does not include World Movies, though, does it?

**Ms Henty**—Correct. We can give you that information as well.

**Senator SIEWERT**—That would be appreciated too. Thanks.

**Ms Richards**—That would be part of subscribing to a package of movies, of which World Movies is one.

**Ms O'Hanlon**—And the 3,500 are all Northern Territory remote customers—

**Senator SIEWERT**—Yes, they are not necessarily in prescribed communities.

**Ms O'Hanlon**—That is exactly right. They might be living in Gove—wherever.

**CHAIR**—Thank you very much. You have already given us an average cost but, in view of the flow of the questions, it would be interesting to see whether you could give us some costings on those numbers so that we can be clear about the costing packages.

**Ms Henty**—The cost to the customer?

**CHAIR**—Yes. Thank you so much for your time; we appreciate it. We have asked for a number of supplementary pieces of information. It would be useful if we could get those as quickly as possible. You know, from the kinds of questions the senators have been asking, the way this is going so we would be grateful for anything you could possibly provide to us on this topic; it has generated enormous interest.

**Proceedings suspended from 12.55 pm to 1.33 pm**

**ALTMAN, Professor Jon Charles, Private capacity**

*Evidence was taken via teleconference—*

**CHAIR**—I welcome our next witness. I know that you have information about parliamentary privilege and the protection of witnesses, so I invite you to make an opening statement, and then we will go to questions.

**Prof. Altman**—Thank you very much. I will make a very brief opening statement. I only addressed two issues in my submission: the reinstatement of the permit system and the issue of the licensing of roadhouses. In relation to the permit system, I guess I would note that it is always hard and expensive to unmake bad law. But I think it is good that this is being done in relation to the permit system that was abolished in August 2007 with implementation from February this year. The reason for this, I think, is that there is a spurious link that has been made between the permit system and the issue of child sexual abuse.

I guess I felt it important to make a submission because there is still a view being run that because the permits were abolished for prescribed areas by the Howard government this abolition should remain in place. And this is despite the wishes of landowners who were consulted in 2006 and early 2007, and it is despite the fact that many submissions to a pre-intervention review of the permit system, a review that was allegedly open, expressed the view that the permit system should remain in place, and I think the Law Council of Australia has summarised the submissions to that review that it received under freedom of information.

I would say that the Rudd government did make an election commitment to reinstate the permit system. I am a little bit concerned about attempts to influence policy making by the media, and in particular by the *Australian* newspaper, that in my view should be resisted. If we do not resist this attempt to make policy by the media, we may privilege some voices but these voices are not the government of the day. I particularly note, for example, that Sara Hudson from the Centre for Independent Studies wrote in the *Australian* on 21 February suggesting that the minister, Jenny Macklin, is mistaken in her decision to reinstate the Northern Territory permit system. But Sara Hudson makes it quite clear that she herself does not understand how the permit system operates. I also noticed that neither she nor the Centre for Independent Studies has made a submission to your enquiry.

So I am a little bit concerned that even minor concessions might be misconstrued as responsiveness to media campaigning on this issue and might send the wrong message. And I should say that that also applies to some comments made by the opposition spokesperson for Indigenous affairs, Tony Abbott, who, similarly, has suggested in the *Australian* newspaper in an opinion piece, 'Caring involves sharing', in March of this year, that the permit system should be abolished, despite providing no evidence or cogent argument of a link between the permit system and child sexual abuse.

Like other people, I think, who have made a submission, I do have one minor issue with the reinstatement of the permit system. That is that I am not sure why the minister needs to retain authorisation powers. This seems to me to be administratively clumsy, potentially costly and a form of unnecessary remote managerialism of Aboriginal lands that I cannot imagine would be tolerated for other sections of Australian society. So I think that some additional thought needs to be given to why section 70(2BB) has in fact been introduced, unless Minister Macklin is being responsive to the media campaign in relation to the issue of access of journalists to Aboriginal land without requiring permits.

The second issue is much more straightforward because it does not involve an amendment to the law and the reintroduction of a statute. The permit system has been in place for over 30 years, and that is the issue when it comes to the licensing of roadhouses. It seems to me that this amendment is responsive to an anomaly that would occur if one introduced blanket quarantining of people's welfare incomes. That is something which I think the committee would be aware I do not support, but this is a provision that is currently the law. I think policy needs to ensure that people have the means to shop. In some situations people clearly do not have access to community stores and are required to place bush orders to gain access to food and basic necessities. This is expensive and can be problematic. It seems to me that either it might be useful to licence as many outlets as possible—bearing in mind that licensing requires stores to meet certain minimum requirements—or we need to ensure that income quarantining is managed in a better way. Certainly increasing the number of outlets that are licensed would seem to me to be positive because it would increase competition and that logically seems to suggest that we would see decreased prices and an increase in choice for Indigenous consumers.

I would also add that licensed storehouses would be beneficial for Indigenous people when they are travelling, as they often do, especially if they can have access to a generic customer reference number linked debit card or some photo ID system that could be used in any licensed store in the Northern Territory. Again, my only minor problem with this proposed amendment is the need for substantial dependence on a roadhouse to be proven in some way to allow such licensing. It seems to me that some thought might need to be given to this issue of substantial dependence in paragraph 92(2)(b). These are the two issues that I have raised in my submission. I have tried to summarise them briefly. I will be happy to try to answer any questions on them.

**CHAIR**—We will go to Senator Siewert first because Senator Siewert and Senator Adams have to go off to another meeting soon.

**Senator SIEWERT**—Thank you. Professor, you will be aware that this particular piece of legislation is actually not exempt from the RDA as opposed to the other bits of legislation in the NT response. Do you think that it would be possible to amend the other pieces of legislation to ensure that it is no longer exempt from the RDA?

**Prof. Altman**—I think that the main issue that would arise in terms of other parts of the legislation would be in relation to income quarantining. I dare say that there could be ways of ensuring that income quarantining is not discriminatory, but that might then require the introduction of discretion. For example, if it were done in consultation with a community and the entire community believed that it would be a beneficial special measure, one could see blanket income quarantining occurring consistent with the provisions of the RDA. I do note that great care has been taken with these amendments to ensure that they do comply with the RDA.

**Senator SIEWERT**—If my understanding is correct you are saying that you could do a similar sort of thing to that being done with the Austar provisions, where they can implement the ban only if the majority of the community say they want it. You are saying that there could be similar provisions with income quarantining.

**Prof. Altman**—I think so, yes. But it would be a different system. It would not have blanket provisions and would not be non-discretionary, as at the moment. It would introduce an element of discretion.

**Senator SIEWERT**—Yes. You commented on the ministerial powers. As you are probably aware, if you have looked at some of the other submissions, a number of people—and Tangentyere Council raised it this morning—have commented on the extent of the ministerial powers. They have said that they would like the legislation amended to limit those powers, and presumably you would also like it amended to limit those powers. What would you limit those powers to?

**Prof. Altman**—Again, I will put this in some context. It seems to me that if somebody has watched the evolution of the land rights act since its passage in 1976, ideally they would want to see less and less ministerial oversight of this law. I am thinking particularly of the ministerial powers in relation to payments from the Aboriginal Benefits Account and in relation to the reduced independence of land councils. It seems to me that, given that you have complementary Northern Territory legislation, there is no need for any ministerial powers in relation to the permit system. I believe the authorisation powers have been in response to some view that journalists have difficulty getting onto Aboriginal land to be involved in bona fide reporting. I have not seen any evidence that that is the case. If you are interested in evidence based policy making, I do not see the evidence that the minister should have powers in relation to the permit system at all.

**Senator SIEWERT**—In relation to my previous question on the RDA, how do the ministerial powers under this legislation sit with the RDA? Is it still consistent? It seems to be slightly inconsistent. However, if this legislation is not exempt from the RDA but the minister has these powers, which are fairly broad, is it consistent, in your opinion, with the RDA?

**Prof. Altman**—If the minister made blanket decisions about access to Aboriginal land or to prescribed areas without appropriate consultation, it could be inconsistent with the RDA.

**Senator SIEWERT**—We had a conversation here this morning with several people in relation to roadhouses, food standards and the quality of food now being provided by stores, and they were questioning whether food standards have improved. How do you think food standards could be improved through the licensing process, particularly at roadhouses? William Tilmouth from Tangentyere said that he is concerned about food standards as roadhouses are not known to have high food standards.

**Prof. Altman**—To be fair, obviously in the Northern Territory you have issues of scale of business and distances which make monitoring and regulation extraordinarily difficult, so, as Mr Tilmouth says, there may be problems in ensuring that standards are maintained—although one would think that with the growth in

tourism in the Northern Territory it is really in the interests of the Northern Territory generally to make sure that the standards of food and remote roadhouses, which would service not just Indigenous clients but also visitors from interstate and internationally, should be at the highest standard. It is just not clear to me why fair-trading provisions and the Trade Practices Act, ACCC et cetera cannot be as effective in the Northern Territory as they are in other parts of the country, except for this issue of remoteness. It is a little bit like the whole issue of policing. In some ways it resonates with why we need a permit system, because one can easily say, 'Oh, look, Aboriginal people can have similar rights in relation to trespass onto land as other Australians,' but in reality we know that the presence of police on the ground is very thin in the Northern Territory, and if you have a complaint about trespass it could be weeks before it is looked into.

I guess my bottom line, and what I was trying to hint at in my submission, is that the way we can raise food standards surely is by encouraging competition. Certainly in some Indigenous communities that I have been to where you have three, four or five food outlets in the same community—and these are larger communities like Maningrida, with a population of between 2,000 and 3,000 people—it is quite evident that the quality of the food and the price of the food is kept under control by competition between different outlets and different organisations.

**Senator SIEWERT**—So you are saying that licensing roadhouses is going to increase the competition?

**Prof. Altman**—That is right. It certainly will increase the competition in relation to Indigenous people. There may be a small Indigenous community that has a small community store or uses an outlet on a pastoral property, but then if it has the roadhouse as well it could increase competition. But I am also conscious that you could have a general increase in pricing for all consumers from a roadhouse, as I think the Northern Territory government has suggested. But, in some ways, if that is the case, it just reflects the inefficiencies that are inherent in the income-quarantining system. I guess what I was saying in my opening remarks is that maybe we can find a more efficient way of administering income quarantining by having some generic customer reference number linked to a debit card or some photo ID system, as apparently occurs in relation to the purchase of alcohol in Alice Springs at the moment.

**Senator HUMPHRIES**—Professor Altman, how are you?

**Prof. Altman**—Good, Senator Humphries.

**Senator HUMPHRIES**—I have looked at the comments you have made about the permit system. You have made the comment about there not being much evidence on which the original decision to remove the system was based, and I take your point about that. I suppose that, if we removed from the statute books all of the legislation that was not based on solid evidence, we might have an edition that we could put in our pockets, but that is as may be. It does seem to me that there is a reason for treating this Indigenous land— notwithstanding that it is freehold—in a different way to other land that would be regarded as freehold.

In a non-Indigenous community, there are public places abutting the private residences of people, and that flow of the public to and from and between and around communities has a certain sort of social value. It opens up to some extent the community. It is harder for things to happen privately or secretly in those communities. In Indigenous communities of the kind we are talking about here, what are usually regarded as public places are in fact technically freehold land, but the movement of the public freely around those areas would have the same beneficial effect, wouldn't it, that it would in public places in non-Indigenous communities? So isn't there some basis for saying that we should not simply treat this as private property and allow people to be excluded from that private property, because in fact it operates in a socially important way that ought to permit some access to those 'public' areas on Indigenous land that are helpful to the good functioning of those areas?

**Prof. Altman**—I certainly accept the point you are making. I should say that, when I visit Indigenous communities with a permit, I find that public areas are in fact areas that are like civic areas in other small townships. You have a lot of public interaction there. You have traditional owners, other Aboriginal people and non-Indigenous people milling about. I think that there is just this view with popular images of the permit system that somehow it is restricting interaction or restricting access to these communities. My experience is that that is far from the case. In most communities that I visit, if somebody has a legitimate reason for being there then they will get a permit, and that legitimate reason can extend to being somebody who wants to engage economically with the community—for example, buying Aboriginal art; somebody who wants to report on an issue in that community; or somebody who wants to look at commercial possibilities and developments in that community. In my case it is often being somebody who wants to come to that community to undertake research that the community believes is legitimate in some way. I guess I do not see the permit system as being such an onerous barrier to people visiting communities.

Again, I think that there is a bit of a media campaign that is trying to present these communities as if they are closed, but when you actually visit these places you find all sorts of people from other parts of Australia or from other parts of the world that are actually in the public places, and many of those people have got permits that traditional owners may grant on a blanket basis, as they can under the land rights act, because they see it as being beneficial to them or their community. There may be people who are tourists or there may be people who are participating in a recreational fishing venture who want to come to the town to shop or to use the public facilities that are available there. So I am not sure that the issue is as problematic as you present it.

**Senator HUMPHRIES**—Let us focus on media access to those areas. In your submission, you say that the amendment ‘is responding to spurious claims that some people like journalists have difficulty gaining access to Aboriginal communities’. In what sense do you use the word ‘spurious’ there? Do you believe that it is spurious to claim that journalists have been refused access or that the basis on which they have claimed to have had their access refused is spurious?

**Prof. Altman**—Again, I have not seen evidence that journalists have been excluded. I have seen one very well publicised case where a journalist was prosecuted for being at an Aboriginal community without a permit. Other than that, this just seems to be an issue that is run on principle, as this journalist should be able to go anywhere on private land without permission. If you ran some equitable test in terms of other owners of land then you would find that journalists are not allowed to have access to their landholdings without the permission of the landholder. I guess I am suggesting that similar rules should apply in Indigenous communities. Also what we miss a little is that the permit system can operate to the benefit of a person who gets a permit. Once people have a permit and people know their purpose in being in the community, they can get guidance about places where they should not go. For example, they may get a direction about not inadvertently stumbling into a sacred site or a place that has a lot of meaning because people have been buried there. Even on the issue of gaining access to townships and the proposal that people should be able to drive across vast tracts of Aboriginal land, if people did that without a permit and, for instance, broke down, their personal safety could be jeopardised. But if they have a permit that makes it clear where they are travelling and for what purpose they are travelling, if they do not turn up at the destination then they have some protection because people realise they have not turned up. Sometimes people are travelling on roads that are bush tracks in remote communities where people are out hunting and there is potential for accidents to happen. So, in a way, it is much better for a visitor to have a permit than to have no system to regulate their travel.

**Senator HUMPHRIES**—I take your point. There are possible advantages from that. But if people were required to get local knowledge before they entered an Australian town they would probably be better off in many respects as well. But we do not generally require that.

**Prof. Altman**—I would argue that, cross-culturally, it is not the equivalent of entering an Australian town or the equivalent of entering somebody’s backyard. For Indigenous people, that sense of space and the way people live is not just bound by discrete private households, private blocks and public space. I think that, for Indigenous people, private space often extends beyond the front fence.

**Senator HUMPHRIES**—I suppose it depends on the motivation behind the decision not to issue a permit, particularly to members of the media. You said you had not heard any evidence of any exclusions. We were told this morning by the chief executive of the Tangentyere Council that they had made the decision to exclude the media because of what he termed ‘unwanted media attention’. If something happens in the street where I live in Canberra, a journalist can come down the street and take film footage of my house if he wants to. He can come up and knock on my front door to ask me questions about what happened. If there has been some sort of incident in my home, camera people can and would set up outside my home—however unwelcome they might be to me—to take footage of that. In a sense, isn’t that a healthy phenomenon? We might dispute whether it is healthy to have the extent of attention that sometimes arises in those circumstances, but if the availability of those settings is a healthy thing in a democratic society isn’t it healthy in an Indigenous community as well?

**Prof. Altman**—I think it is healthy in an Indigenous community, but I think we just face the practical problem that policing the boundaries between what is reasonable and what is not is far more difficult in a remote Indigenous community than it might be in a suburb in Canberra. I guess this does go back to the whole issue of why trespass law might be suboptimal for Aboriginal people. And that is because—for a whole range of issues to do with the level of police presence, the remoteness of places and also cross-cultural communications—it is much more difficult to ensure that the boundary between reasonable and unreasonable behaviour is properly policed. We do see instances where media scrutiny goes too far in metropolitan areas and

we see legal measures taken to restrict the media from crossing unreasonable boundaries. I just think that doing that in remote Indigenous communities—in part, because of their historic underservicing with police services et cetera—is very problematic.

**Senator HUMPHRIES**—All right. I suppose it is a philosophical question. I take your point. Thank you very much.

**Senator BARTLETT**—Having listened to all the arguments you put forward—and I am not particularly disagreeing with a lot of the rationale you have put forward justifying the benefits of the permit system in a general sense—I suppose I want to come back to what you said, I think, in your very first sentence this afternoon: that there is a spurious link being drawn between the permit system and child sexual abuse. I want to ask you, almost leaving aside all the arguments for and against that we have just gone through, is there actually any evidence of the permit system having any impact one way or another, even in a beneficial sense, in regard to preventing or addressing child sexual abuse—or is it actually just an important but basically separate issue to the issue of child protection?

**Prof. Altman**—From my point of view it is a separate issue, because I see the whole issue of social dysfunction, which can lead to child sexual abuse, as being very much linked to the historic neglect of Indigenous communities and some of the resulting social problems. Again, if we look at this historically, we see that some of these problems of relative neglect have escalated in recent years and so has some of the reporting of child sexual abuse. Obviously we have problems with historical data on notification and child sexual abuse. Clearly, if there were more policing, a better level of service, then one might see greater notification and reporting. If you look historically at the whole issue of the permit system, the abolition of the permit system was promoted by the Howard government in the period between when your committee looked at the amendment of the land rights act in August 2006 and the declaration of a national emergency in the Northern Territory in June 2007. So that inquiry, in my view, seems to have been driven by some notion on a philosophical basis that Aboriginal landowners should not have a permit system. I think it had nothing to do with child sexual abuse and it was a little bit opportunistic to link it to the Northern Territory emergency intervention.

Having said that, given the way that the government embarked on the national emergency intervention, it clearly required the suspension of the permit system in prescribed townships because the whole notion that the military, the bureaucracy and other people who were assisting in the intervention could just go into prescribed communities was greatly assisted by the fact that there was not a permit system. So it makes sense to get rid of the permit system if you are having some sort of national emergency.

But I can see no connection with the issue of child sexual abuse. I can see it as just being a historic discomfort with the particular property right that traditional owners of townships have enjoyed. In my brief submission to your inquiry I have tried to suggest that there are just elements of historical accident there that these townships that on 21 June last year, where they were on Aboriginal land, became prescribed communities happen to lie on land that Aboriginal people actually owned under inalienable freehold title. To some extent one of the things that I think the intervention has highlighted and that perhaps we have tended to neglect is that these townships have been placed on land that is actually owned by Aboriginal people. To some extent one of the unintended consequences of the intervention might result in greater respect for that land ownership and maybe better forms of agreement making with traditional owners of townships in relation to developments that are occurring on their land.

**Senator BARTLETT**—Taking on board all you have said there, and I do not dispute any of it, you again said there is no connection between child abuse and the permit system. I want to ask, given your very extensive experience in studying all of these sorts of issues, including some of the issues around child abuse and the like, whether there is any data at all that demonstrates that communities with permits have a better outcome in regard to child abuse than areas without permits, including outside the Territory? The issue I am driving at, I guess, is that we have a lot of people having a big political stoush about permits, with front-page campaigns on various newspapers you have named, over a long period of time, when we are all actually meant to be focusing on child abuse, which has no link with it at all, either positively or negatively.

**Prof. Altman**—I certainly agree with that statement. I do not think that there is a positive or negative link. I certainly take on board your point, which I may have made in other contexts, that we have again got a lot of media attention on other parts of Australia where we have got clear problems with child sexual abuse statistically which may in fact, according to data provided by the Australian Institute of Health and Welfare, have higher levels of notification but there is no permit system in those jurisdictions. The logical corollary

there would be that whether or not you have a permit system does not seem to influence positively or negatively the rate of child sexual abuse. That just makes intuitive sense because, when somebody applies for a permit, the questions they have to answer are not, 'Have you got a record as a child sexual abuser?' or 'Are you a potential child sexual abuser?' That might sound flippant but the reality is that, for the permit system to have a positive impact, they are almost the sorts of questions that one would need to ask people.

**Senator BARTLETT**—Thank you.

**Senator BOYCE**—We had evidence this morning from Mr Tilmouth from the Tangentyere Council that suggested that one of the major benefits of the permit system was that it allowed communities to protect themselves from not just the unwanted media that Senator Humphries mentioned but also—and he gave the example of the vacuum cleaner salesman who was going to sell equipment to people without carpets—unscrupulous people who might be going to exploit or abuse the lack of sophistication, perhaps, of people within the community. Would you agree that protection is one of the benefits of the permit system?

**Prof. Altman**—I think I would agree with that. I am not sure if Mr Tilmouth made reference to this, but two or three years ago there was in fact an ACCC prosecution of somebody who was going into Alice Springs town camps and getting people to sign on to a scheme for, I think, buying children's books. But after people had signed on nothing was delivered. I think that there is some evidence that unscrupulous people could take advantage of the absence of either a permit system or effective policing of a permit system. I think that in Central Australia there is a fair bit of sensitivity in relation to issues like unscrupulous art dealers. Again, the historical evidence is not just that a permit system will stop unscrupulous art dealers but also that you need legitimate organisations that are located in communities or that can service communities and that will provide a proper, scrupulous, community owned, often publicly funded art collection service that is transparent in its operations.

Issues to do with the permit system and the issue of 'protecting' Indigenous producers or consumers from unconscionable conduct have to be seen in the context of a lot of other complexities in these situations such as what level of servicing people are receiving and what their capacity is to engage at this point in time with people who might be unscrupulous. Something else that is not often said in relation to the permit system is that in general Indigenous people, from my experience, tend to be extraordinarily hospitable on their land, and there are protocols that in some ways require people to take responsibility for visitors. Sometimes that sense of hospitality, of welcoming people and being gracious, backfires when people are not there with legitimate reasons or when they are unscrupulous. Again, one should not be naïve in this. I think there are times when there is Indigenous agency in dealing with unscrupulous people as well, but that is often linked to the fact that people are underserved in terms of gaining access to goods or services and let unscrupulous people interact with them because they basically have no choice in having a more legitimate deliverer of goods or services.

**Senator BOYCE**—I must admit I share the concerns of some committee members that the permit system itself, unless there is some sort of oversight of it, is also open to being captured by unscrupulous or undesirable people. What do you propose would be the sorts of structures that would ensure that the permit system could not be captured by one particular view? At the very extreme that might be a group of paedophiles or people who are sympathetic to paedophilia but, as we have discussed here, this is all about value judgements. What is reasonable or unreasonable, what is scrupulous or unscrupulous may very well be in the eye of the beholder. What do you do to prevent this becoming a very paternalistic system?

**Prof. Altman**—Again, I think a misunderstanding that we tend to have about the permit system—and you see this often in the media—is that somehow it is the Indigenous community that administers the permit system and so some powerful members of the community would be in a position to capture the system. In fact, the permit system is at the behest, if you like, of the traditional owners of the land. They generally constitute a corporate group. Decision making generally tends to be undertaken by consensus. I do not think that capture of one powerful traditional owner to monopolise the system for spurious or negative ends is straightforward, either under Aboriginal custom or in relation to how the statute actually interprets that in relation to the permit system. In other words, if one traditional owner tries to block your legitimate reason for being in a community, there are other traditional owners who can be approached.

It is not uncommon for there to be debate between traditional owners about whether or not a permit should be granted to somebody. I think the system has its checks and balances by the very fact that you have a number of traditional owners who have rights in relation to Aboriginal land. To some extent—and I am speaking now more from an anthropological perspective—we tend to gloss the permit system in relation to traditional owners, but there are other categories of people with managerial rights in relation to Aboriginal

land who would also have a say in whether people should have access to land and whether they have legitimate purpose.

It is hard for me. I know some of the concerns about capture by sectional interests. But it is interesting that even those sorts of concerns, when they are articulated by the media, are generally reported by somebody who, pre February 2008, was able to access somebody in the community to talk to in relation to these issues. With regard to the problems that, as a nation, we have become very aware of since June last year, we have to bear in mind that up until February this year we got all that information and all that media coverage when the permit system was in place. The permit system has only been abolished since February this year, yet the media coverage from June last year to February this year has been at unprecedented levels. The general knowledge and information that has flowed to the Australian community generally from prescribed communities has been at levels that we have never seen before in Australia's recent history.

**Senator BOYCE**—I want to get back to the sort of protective benefit evidence that we have had regarding the permit system. We have also had substantial evidence this morning from Austar which raises the point that there are many ways to get into and/or exploit a community that do not involve physical presence. How does that relate to this protective aspect of the permit system?

**Prof. Altman**—I think that is quite right. Clearly, with access to e-commerce for example, people can be exploited. Again, historically, in places that do not have the permit system as well as probably places that do, we have seen people prosecuted for unconscionable conduct in that way. The point that has been made in relation to protection is that it is not a total protection; it is only a partial protection.

**Senator BOYCE**—It could not be full protection, could it?

**Prof. Altman**—No. We know that the access of remote Indigenous people to the internet, e-commerce, e-banking et cetera is far more limited than for Australians generally, but there are still some people who would be vulnerable to other forms of exploitation, yes.

**Senator BOYCE**—Thank you.

**Senator CROSSIN**—Thanks for your submission. On page 2 you suggest that paragraph 92(2)(b) of the act be amended to allow roadhouses to be licensed stores as long as they met licensing requirements. My understanding is that outback stores issue the licences. My observation in recent months as I go to different communities is that the requirements and the standards are not particularly high when these stores are licensed. What is your observation? Is it similar to mine or do you have a different perspective as to what is happening out there with outback stores and licensing?

**Prof. Altman**—I have not done a rigorous survey of the stores that have been licensed since the passage of the legislation last August. I think that the whole issue of the quality of outback stores is very much linked up to questions of store governance, questions of populations and the business acumen of people who are running the stores. To be fair to these stores, they often operate in very remote and difficult circumstances. If there is the potential for some sort of state regulation to ensure that stores meet a certain minimum requirement, one would want to encourage that. If we are hearing that, despite the efforts of the Australian government to increase standards, this is not happening then I think that would be of enormous concern. Also I think it would be of enormous concern if it is linked to income quarantining where arguably you are reducing people's choice in terms of ease of shopping across a spectrum of outlets. If an unintended consequence of income quarantining is that you have more monopolistic behaviour and higher prices and you do not get a better quality of service then that unintended consequence really needs to be looked at very urgently.

**Senator CROSSIN**—I note you have done some research on competition and consumer issues for Indigenous Australians, although it was done six years ago. Do you think there would be a need to update that research and have another look at what is happening, given outback stores, licensing and the income management regime that is operating now?

**Prof. Altman**—I think it would be very useful. One of the things that came out of that research is that there are issues to do with stores. I think one of the areas we looked at was also to do with this issue of unconscionable conduct in relation to arts marketing. What we found was that where you have robust institutions things can work very well. It has been my view that there is some exemplary practice out there in many Northern Territory remote communities. We really want to see that extended to other communities. This may require levels of state underwriting of, for example, Aboriginal art centres. But other situations are not to do with state underwriting at all. It is actually private sector enterprise at the community level that is delivering a good service. I think there is probably a need for us to look at some of the reasons why some

communities do these things well, other communities do them less well and in other situations you have elements of dysfunction in terms of how services are provided.

**Senator CROSSIN**—Professor Altman, I will ask you to do us one other favour if you have got the time. On page 2 of your submission you comment:

There are still powerful forces in Australian society that are looking to abolish the permit system (see e.g. Tony Abbott ‘Caring involves sharing’, *The Australian*, 25 March 2008) and suggest a link between permits and child sex abuse. Such views are not based on cogent argument, lack facts and show a complete disregard for Aboriginal property rights.

If you do have the time, would you take on notice expanding on that and giving us some examples as to that speech that you have based your criticism on?

**Prof. Altman**—What Tony Abbott did was write an opinion editorial. That was published in the *Australian* on 25 March. I have got a letter to the editor of the *Australian* dated 26 March that was unpublished. I would be very happy to pass that on to you.

**Senator CROSSIN**—Thank you, Professor.

**CHAIR**—If you send us that letter, Professor Altman, we will certainly publish it on our website. Thank you for your time and argument, Professor. We look forward to hearing from you again.

**Senator BOYCE**—Madam Chair, we were supposed to hear from the NPY Women’s Council. I note that they came to the hearing but did not submit. Did they give us a reason for that?

**CHAIR**—They chose not to give evidence.

**Senator BOYCE**—When did they advise us of that?

**CHAIR**—Yesterday afternoon.

[2.33 pm]

**MILLER, Dr Patricia, Chief Executive Officer, Central Australia Aboriginal Legal Aid Service**

**O'REILLY, Mr Mark, Principal Legal Officer, Central Australia Aboriginal Legal Aid Service**

**CHAIR**—Welcome. I know that you, Dr Miller, have given evidence to a Senate committee before. I do not know about Mr O'Reilly. I know that you both have information on parliamentary privilege and the protection of witnesses and evidence. I invite either or both of you to make a short opening statement and then we will go to questions.

**Dr Miller**—First of all, I do apologise on behalf of our president, Robert Le Rossignol, and just bear with me as I am getting over a cold. We were asked to appear here today, so we are actually here to answer any questions. We have not written a submission because we just got the invite late last week.

**CHAIR**—Dr Miller and Mr O'Reilly, you know that this legislation puts forward a number of amendments to the existing NT legislation. You may have heard some of the witnesses. We are concentrating on that piece of legislation.

**Mr O'Reilly**—We are aware of the legislation that is being looked at today. In relation to these issues, we do not have a lot of specific contributions to make. In relation to the broadcasting issues, we welcome the fact that there is community consultation involved in the process. That was a criticism of a lot of the initiatives of the intervention early on. That is welcomed. In some ways it is akin to some of the liquor restrictions in various communities. From our point of view, we represent a lot of communities around Central Australia which have varying views on what is good for them, and so the fact that they will be consulted is welcomed. In relation to the defences arising out of those issues, again that puts this restricted material into a position that is similar to the liquor laws at the moment and raises a possible defence in relation to passing through. In relation to access to Aboriginal land, we have seen submissions from the CLC and we have heard Professor Altman today, who was very impressive. We really are in a similar situation. We welcome the fact that the changes to the permit system are being contemplated. That was something that we were opposed to at the outset. We really do not have anything particular to say in relation to community stores and the roadhouses issue. I suppose that spells out philosophically where we stand in relation to these issues.

I might just add that, looking through the submissions that have been put for the purpose of this committee, it is notable that there is a lot of energy out there to address concerns about the intervention much broader than the ones that are involved in this legislation. We understand there will be a broader review in the not-too-distant future and that is something that we will welcome the opportunity to be involved in. We are interested particularly in these issues I suppose as a precursor to a broader review of the intervention as it is at the moment. That is the position that we are in after we have discussed this legislation and the committee today.

**CHAIR**—Thank you, Mr O'Reilly. The issues you have raised about the wider involvement in the NT intervention had been raised in the submissions and in evidence today. People are seeking to have their voices heard very strongly in whatever process of review there will be later this year.

**Senator ADAMS**—We heard evidence today from the Alice Springs Town Council regarding the cards. Have you had any issue with that and the fact that the card system is only accessible in some of the larger stores and the smaller businesses are suffering through actually not having that set-up and people being unable to access their goods through the smaller businesses?

**Dr Miller**—There is quite a lot of difficulty with the card system and the voucher system. First of all, there is a lack of knowledge and understanding of exactly what the voucher system means. I have had personal experience with people right next to me at a checkout with a trolley load of goods and attempting to use the voucher system only to be told that there was no money on it. So they did not know that they could not get more food on that particular voucher. That was only Anzac Day. So people are really lacking knowledge about it, so they have to wait for somebody who understands the system to relay the messages. Some people agree that the voucher system is really working; others say that they have managed their money for a long period of time and now they are being treated like children. Other people processing their money is quite insulting to people. So I do not think one size fits all at all.

**Senator ADAMS**—Do you have any comment, Mr O'Reilly?

**Mr O'Reilly**—You asked a question relating to the larger stores. There has been an issue in relation to that. The reality is that some of the town camps in Alice Springs are located next to the smaller outlets and it can be

difficult for people on the outskirts of town to get into Woolies, Coles or one of the major stores. I understand that may have changed recently and some of the smaller stores are now able to be accessed. But I am not 100 per cent sure of that. That has certainly been an issue from the consumer point of view as well as the outlet point of view. Like a lot of things with the intervention, there is good and bad arising out of all of this. Some people do benefit, it seems, from the voucher system and the ability to access what they need without interference from people who may squander money. But we also hear stories about the gambling of cards and the sale of cards for cash—much less cash than the cash value of the card in the store. I think one of the problems is the indiscriminate nature of it. But there are certainly good and bad stories coming out of the card issue.

**Senator HUMPHRIES**—You mentioned that you are pleased about the opportunity for consultation on future steps; I think you mentioned the broadcasting provisions. Do you have an impression as to whether there are many, or any, communities in Central Australia at the moment which would take advantage of those provisions to put up their hands and say they wish to have a ban on the narrowcasting of pornography into their communities?

**Dr Miller**—I have not formally been approached at that level. But, informally, older women and younger women are saying they would be glad if people were not able to access R-rated material.

**Senator HUMPHRIES**—The question of whether that view by individual women will actually trigger a ban is problematic under this legislation. It is not really clear what the requirements are and how much weight the minister needs to place on those sorts of comments. Is it likely that many communities, through their elected councils or whatever mechanism they have for making decisions, will officially come forward and say they want to be subject to bans on pornography?

**Dr Miller**—It depends on the community structure. If traditional owners and elected council members join forces and agree that that is their aim then it will happen. But if there are two different divisions, with traditional owners and elected council members having a difference of opinion, I do not think they will reach a stage of agreeing that that will be the way they go.

**Senator HUMPHRIES**—I cannot base this comment on any bit of evidence we have heard, but I have the overwhelming feeling that, once this legislation is introduced, we will see very few, if any, communities on which this ban is effective. Is that a flight of fancy on my part, or do you think there might be some basis for that fear?

**Dr Miller**—I think there is a lot of goodwill and good intentions among people to get back a quality of life. At the moment, everything is so dysfunctional. People often refer to ‘the good old days’. A lot of people who would now be aged over 55 are not alive, but they should still be living. The younger people who lived in the communities prior to the introduction of alcohol and grew up here in the sixties realise that there was a good side of life. But now they have to live with full-on, mainstream pressures and this brings about dysfunctionality within their communities. I think that a lot of the people we see, who are very sad people at the end of the day, want quality of life. I am sure that the strength is coming through those communities, but it is going to take time. That is why some people are saying the intervention has assisted them and made their steps towards progress a little bit easier to take.

**Mr O’Reilly**—It seems to me there is a recognition of the fact that alcohol and violence are really destroying people’s lives. It is not a situation where people do not welcome attempts to do something about it; people are often crying out for things to happen that are constructive and beneficial. Communities are still, on the whole, pleased about alcohol restrictions within communities. I think if there is consultation and communities are aware that this is an option, then they will consider it and consider it seriously. There are a lot of very strong women in the communities we visit who will have a very strong say in whether it is an appropriate measure for their community or not and there will be a real debate. They will welcome that consultative process. I think they are able to make sensible decisions themselves about what is going to benefit their communities. They have done it in the past. If there is a view that it will assist, then they would be ready to take it up.

**Senator HUMPHRIES**—I want to ask a question on the permit system. As a legal service, have you been called upon very often to give advice or make comment on the application of that system by, say, people who have been refused access to a community by virtue of a refusal to issue a permit or by others who perhaps believe permits have been issued in inappropriate circumstances? Or is it a system that functions entirely by itself and does not involve lawyers at any stage?

**Mr O'Reilly**—I have been with the legal service for 10 years and I have not really seen any issues arising out of the permit system, except for a situation where there were tourists in a particular community who were on sacred ground. There were some prosecutions arising out of that. That was some years ago. I have not had to give advice. I suppose that is something that would be more likely to come to the notice of the land council than to our service, but I would have to say no.

**Senator BOYCE**—Following from that, have you been involved in any cases regarding trespass that have arisen from people ignoring the permit system? By that, I mean the service.

**Mr O'Reilly**—No. We would not be the prosecuting body, so we would not ordinarily be involved in that. Again, the land council would probably have more knowledge of it than we would. I know most of the matters that come before the courts and I have to say I have not seen any of it.

**Senator BOYCE**—So there have been no cases regarding trespass in the recent past?

**Mr O'Reilly**—Not recently—apart from that one I mentioned about the tourists.

**Senator BOYCE**—When was that, do you know? Was it last year or the year before?

**Mr O'Reilly**—No. It was some years ago. It was about five years ago, possibly.

**Senator BOYCE**—On the same basis, we heard from Mr Tilmouth this morning. He suggested that one of the benefits of the permit system was that it kept unscrupulous people who might want to con people into buying a fish for their nonexistent fish tank or whatever out of communities. Have you had any involvement in cases where people have sought to enforce their rights as consumers against unscrupulous dealers?

**Mr O'Reilly**—Yes. I was here earlier when the reference was made to the book sales. That has been an issue here and also in Tennant Creek—again, it was some years ago. It is always something where you need to be mindful that it has happened in the past.

**Senator BOYCE**—Were these people who had permits or people who did not have permits?

**Mr O'Reilly**—No, I imagine they did not. I am not sure about that, but I do not think so. I cannot imagine how they would have had permits.

**Dr Miller**—There were incidents of salespeople actually going onto town leases and approaching people when they did not have permits and selling insurance, children's books, \$7,000 vacuum cleaners and things like that. So there have been people who have targeted people who are not in a position to pay.

**Senator BOYCE**—Were those people operating within the town of Alice Springs as well?

**Dr Miller**—Some of them actually were, yes.

**Senator BOYCE**—So they were targeting the Indigenous and the non-Indigenous community, to your knowledge?

**Dr Miller**—I do not know about the non-Indigenous community, but I know about the Indigenous community on town leases. Several people who I know personally were approached by them.

**Senator BOYCE**—Does your legal aid service have any sort of educative role in terms of consumer rights and the like?

**Dr Miller**—I have redirected people to consumer affairs over a period of time. Whenever there is a lawyer available, they definitely advise people on their rights. We are now just getting into a program of restorative justice and education on preventive measures. They are targets we are setting over this next period of time.

**Senator BOYCE**—What else would that involve apart from consumer issues?

**Mr O'Reilly**—Can I more fully comment on that. When the legal aid services were put out to tender three or so years ago, specifically part of the contract was that we not provide any legal education initiatives. So the core function of the service is specifically not to do that. Having said that, there are grants of money which involve community education and there have been some funds that have come through emergency response as well which involve some education about issues arising out of the emergency response. That continues to develop those trends in what we are doing. The community education we are doing does revolve around legal issues to do with criminal law. We deal with matters involving family issues, child protection and those sorts of issues and we try to provide community legal education to communities here in Alice Springs and also more remotely and we are fostering a prevention program which is designed to focus on some rehabilitative issues. I suppose the issues in relation to some of the civil and consumer matters arising connected with the intervention are expanding at the moment and that brings in a whole range of consumer type issues.

**Senator BOYCE**—Does your service have a policy on representing people who are accused of child sexual abuse?

**Mr O'Reilly**—Unless there is a particular conflict, we would represent people who are charged with child sex offences.

**Senator BOYCE**—You would?

**Mr O'Reilly**—Yes.

**Senator SIEWERT**—Can I just pick up on the comment you just made, as I understand what you said, about an increase in consumer related cases.

**Mr O'Reilly**—I suppose what I was referring to there is just the issues arising out of, for example, the card system and issues that consumers have in relation to how they access and can use their funds. That is what I was referring to.

**Senator SIEWERT**—That is what I thought you meant. What sorts of issues are arising out of that?

**Mr O'Reilly**—Pat mentioned earlier the fact that one of our council members was recently explaining that he had been working since he was 12 years old and had been responsible for managing his funds since he was that age. He is obviously a responsible, functional member of the community who these days receives a pension. He was having issues in relation to being able to access his money and whether or not it was quarantined. We get issues in relation to that where people feel unfairly treated and insulted about the fact that they are suddenly not allowed to access money that they have always been able to access and spend responsibly. We get a lot of questions in relation to those sorts of issues.

We have had questions about accessing stores, that I referred to earlier, and some stores that cannot be accessed that always had been accessed in the past. Really, it is just basically trying to understand how the intervention in terms of quarantining affects individuals. The thing is as simple as being able to liaise or get assistance liaising with Centrelink and putting them onto the right people at Centrelink and having explained to them where they can use cards and how the system works. It is a pretty fundamental level of explanation about how it all works.

**Senator SIEWERT**—What has been the percentage increase in those consumer related inquiries?

**Mr O'Reilly**—I could not tell you off the top of my head what the percentage increase has been. They have noticed generally an increase in matters arising out of intervention issues, so we get more inquiries of the civil section. There has been more of a focus and expansion on child protection matters. I think it is a bit hard to relate this specifically to the intervention but there seems to be more care and thought taken in core processes in relation to matters concerning a child in need of care and so they are more lengthy and time-consuming and more numerous. We also get a number of criminal charges arising out of the intervention as well. So there is an expansion in all areas, but I cannot quantify that at this stage. We are working on that.

**Senator CROSSIN**—Have you had any need to represent people in Central Australia who have been accused of child sex abuse in the last 12 months?

**CHAIR**—Senator Boyce has already asked that question.

**Mr O'Reilly**—I do not think the question was about whether there has been an increase but the general question as to whether we represent people. We do represent people and there has been an increase over the last 12 months or so. Without fail, every example that we have had has been to do with situations where there has been a relationship between teenagers. There has been no paedophilia at all that we have seen. It has concerned relationships some of which have been customarily sanctioned relationships between, say, an 18-year old and a 15-year old. I think that the youngest we had was a 13-year-old. There have been children of these relationships and there has been an increase in those sorts of matters. But there has been no paedophilia that we have seen.

**Senator CROSSIN**—And just to clarify that, the increase in those sorts of matters is that even if the sex is consensual—

**Mr O'Reilly**—It has been in every case.

**Senator CROSSIN**—it is still prosecutable because it is under age. Is that correct?

**Mr O'Reilly**—Yes.

**Senator BOYCE**—Who was the oldest alleged perpetrator, so to speak?

**Mr O'Reilly**—I think maybe 20. From memory, I think that 20 was the oldest.

**CHAIR**—Thank you, Dr Miller and Mr O'Reilly. Thank you for your patience.

[2.59 pm]

**PARMETER, Mr Nick, Policy Lawyer, Law Council of Australia; and Member, Advisory Committee on Indigenous Legal Issues**

**WEBB, Ms Raelene, QC, Member, Advisory Committee on Indigenous Legal Issues**

*Evidence from Mr Parmeter was taken via teleconference—*

**CHAIR**—I welcome our next witnesses. I would imagine that both of you are very familiar with information on parliamentary privilege and the protection of witnesses. We would welcome an opening statement from either or both of you and then we will go to questions.

**Ms Webb**—I will make a short opening statement and then we will be happy to answer any questions. Mr Parmeter is encouraged by me to join in when he thinks I am going astray or if he has something to add.

Senators, there is nothing that screams discrimination more than suspending existing antidiscrimination laws when you enact legislation. Article 1 of the 1689 English Bill of Rights addressed King James II's pretended power to suspend laws or to refuse to enforce them without the consent of parliament if he did not agree with them. Amongst the very serious concerns that the Law Council addressed in its submission to the Senate inquiry on the original national emergency response legislation was the suspension of the Racial Discrimination Act in a number of specific provisions. But, unlike James II's pretended power, this suspension was the will of parliament.

The Law Council welcomes the approach in this bill, which ensures that new measures proposed under the bill will be subject to the operation of the Racial Discrimination Act, and we would support, and we urge, the repeal of provisions under the original national emergency response legislation which suspend the operation of the Racial Discrimination Act. We note that the decision not to suspend its operation in relation to the provisions in the present bill appears to demonstrate an acceptance of the inappropriateness of doing so.

The exclusion of section 49 of the Northern Territory (Self-Government) Act also requires some comment. The provision, as we note in our submission, mirrors section 92 of the Constitution. If the affected Aboriginal communities were in a state, the Commonwealth legislature could not brush aside section 92. It is only the fact of their residence in the Territory that allows this to happen.

In its evidence to the Senate inquiry on the original legislation, the Law Council remarked on the critical importance of taking into account the wishes of the relevant community in order to support special measures. We note with approval the provisions in this bill that require consultation with affected communities before the minister makes a determination restricting the broadcasting of R18+ material in particular areas—although we should go one further and note that consultation alone may not make a discriminative measure a special measure. There is a concern here perhaps with section 127C(2), which in its terms says that if you do not have adequate consultation it will not mean that the determination is invalid. This could mean that consultation may never take place or may not need to take place for a determination to be valid. That is something that perhaps should be highlighted.

In its submissions to the Senate committee during the inquiry on the original legislation, the Law Council opposed changes to the permit system, which were seemingly pushed through without any justification or established link to child sexual abuse or economic development. It is clear, as we have outlined in our submissions, that the vast majority of Aboriginal communities in the Northern Territory did not support the changes to the permit system. The Law Council believes that, in accordance with the fundamental right of self-determination, the wishes of the relevant Indigenous communities should be the paramount consideration. That is a point we made earlier.

We generally support the amendments which repeal the provisions that gave public access to certain Aboriginal land and reinstate the permit system for communities. However, we do have concern as to the power that is given to the minister to authorise access to Aboriginal land, including on conditions. This concern exists particularly in respect of sacred sites which are protected under the Northern Territory Aboriginal Sacred Sites Act and in respect of which there is already a procedure established under Territory law involving consultation with traditional owners in respect of access to and conditions which may be imposed on entries to a sacred site. I apologise for my voice, which now seems to be departing from me. I will keep with it if I can.

**CHAIR**—Thank you, Ms Webb. Mr Parmeter, do you want to add anything at this stage?

**Mr Parmeter**—No, not at this stage. I think we should just proceed straight to questions.

**CHAIR**—Okay, that is fine.

**Senator HUMPHRIES**—I take it both of you work in the Northern Territory or are practitioners in the Northern Territory?

**Ms Webb**—I am a barrister in the Northern Territory.

**Senator HUMPHRIES**—Mr Parmeter, are you also in the Northern Territory?

**Mr Parmeter**—No, I am ostensibly based in the ACT although at the moment I am currently based overseas and conduct my work from here.

**Senator HUMPHRIES**—I would probably know you if I saw your face—sorry about that. On this point about the exclusion of the RDA from the provisions of this legislation, as I understand it, the capacity to make certain communities dry also relies on a suspension of the Racial Discrimination Act. Am I correct in that assumption?

**Ms Webb**—I am not sure that it actually relies on a suspension of the Racial Discrimination Act. My understanding is that it is argued that it is a special measure, rather than setting it aside. Perhaps Mr Parmeter—

**Senator HUMPHRIES**—That is what I meant. It avoids the provisions of the RDA by virtue of being a special measure. Is that the case?

**Ms Webb**—It is an exception but it is an exception that is within the Racial Discrimination Act. It does not mean the actual setting aside of Racial Discrimination Act provisions.

**Senator HUMPHRIES**—That is what I meant.

**Ms Webb**—Yes.

**Senator HUMPHRIES**—As I understand it, you are opposed to those suspensions of the RDA. In principle you say that they should not occur. Is that your position?

**Ms Webb**—No. We are saying that, if it is indeed a special measure, there is no need to set aside any provisions of the Racial Discrimination Act by saying, ‘We set aside these provisions of the Racial Discrimination Act.’ A particular act, if it is indeed a special measure, will not contravene the Racial Discrimination Act because that is provided for within that act.

**Senator HUMPHRIES**—Could the operation of the permit system or the arrangements that are being proposed with respect to limiting access to pornography in Aboriginal communities fall within the category of special measures?

**Ms Webb**—There are two separate areas there. On the permit system, the Law Council made submissions and gave evidence previously about this and has serious concerns about the setting aside of the permit system and that being a special measure under the Racial Discrimination Act. The reason for that is that the wishes of the community are critical to considerations of whether something can be a special measure. They are a large part of something being a special measure. If you go to what the law says on being a special measure, it is to implement the wishes of the community to discriminate in a way that provides benefit to or will assist the community. The problem with the permit system of course is that, based on the information that is now available, it was definitely not the wish of the communities to have that permit system set aside or repealed. That is a huge barrier for any argument that that is a special measure. If we go to the present bill, there is a different argument there because within the bill there is a process for consultation.

**Senator HUMPHRIES**—I just point out that that provision does not have to be triggered. The minister can in fact make the decision without there being any consultation.

**Ms Webb**—Indeed. The consultation is one thing; ascertaining the wishes of the community and doing what the community wishes is another. However, we do recognise that there might be other considerations that have also to be taken into account in a situation like this. But the wishes of the community would need to be ascertained. There would be other considerations, some of which are addressed in the legislation as it is, as to what the minister must take into account. So in order to overcome the Racial Discrimination Act as a special measure within that act then you would look at: what were the wishes of the community; what was the benefit to the community; and were there other reasons why that measure might be taken. So there certainly is the grounding in the present bill to work with the Racial Discrimination Act and for something to be a special measure. I might make one comment there though. It may be a special measure for one community and not for

another. I think that is the other positive comment that I can make about this bill: it does look at whether or not these determinations are to be made in particular areas rather than just applying it across a range of areas.

**Mr Parmeter**—To add to something that Ms Webb has said: in relation to the provisions concerning access to land, the Law Council, in its original submissions to the Senate inquiry into the legislation—it originally proposed the changes to the permit system last year—indicated that it did not accept that there was any established link between child sexual abuse or economic development and the permit system as it had stood since 1976. So we tend not to accept the argument that the measures as they were put forward under that legislation were special measures because they did not appear to be directed, in our view, toward addressing the fundamental concern under that legislation, which was the protection of Aboriginal children.

**Senator HUMPHRIES**—You touch on this in paragraph 21 of your submission where you support the use of discriminatory measures, providing they are done with the support of the majority of people in an affected community. My concern about that is that I am not sure how robust the provisions are in some communities for, first of all, determining what a majority view is and, secondly, making those decisions in such a way as to protect minorities within the community. Is it not possible, at least theoretically, that there are some communities where there are women with concerns and anxieties about, for example, the narrowcasting of pornography into the community whose views cannot be characterised as a majority view and who are, therefore, vulnerable—notwithstanding that there is a good case on paper for, for example, a decision being made to exclude pornography from those communities?

**Ms Webb**—Yes, definitely. And perhaps we should add to that position that we have put there, that really we have to acknowledge that there might be other considerations and indications that might require steps to be taken. But I guess the question is whether the considerations are a satisfactory safeguard against decisions that have been made against the wishes of the community in order to provide something to benefit a significant proportion of the community. There is a balancing act. Do we have safeguards? Do we have a situation where there is tangible evidence that to do something, whilst it might be against the decisions or the expressed wishes of a community, would in fact benefit a significant proportion of the community? So there is that balancing act. I have perhaps not put it very well. This is a discussion I had with Mr Parmeter this morning. Perhaps he can add to that.

**Mr Parmeter**—As Raelene has said, there is a balancing act and we do have to accept that there are a range of considerations that are involved, particularly in these circumstances, and that the wishes of the community should be one of those considerations. Accordingly, we would support the relevant matters to which the minister is to have regard under the proposed section 127D(a) to (f). However, in order to ensure that the measures are special measures, we believe, first of all, that section 127C(2) should be removed in order to require consultation in every instance; and, secondly, that section 127D should be amended so that, among those other matters that the minister is to have regard to, the minister should also consider the wishes of the community before any determination is made under section 127B(1).

**Senator HUMPHRIES**—I suppose that could cut the other way, though, couldn't it? If consultation could be said to actually show up the position of minorities in the community, or the interests of minorities in the community, you might say that perhaps the requirement to act on the basis of what consultation demonstrated should be removed and the minister should have the power to impose a ban even if, supposedly, the representative organisations in the community said, 'No, no, we don't think we need a ban here; we're quite happy with our access to porn as it is.'

**Mr Parmeter**—I think, under what we propose, that power would continue to exist because the wishes of the community would be a relevant consideration but not the only relevant consideration. In terms of the minister's power to, I suppose, go behind the veil and examine whether or not children are actually being illegally exposed to harmful content, we believe that power would exist if the amendments that we are proposing were implemented.

**Ms Webb**—Senator Humphries, I agree with that. If we look at the actual criteria for making the determination, that certainly covers those as critical aspects.

**Senator SIEWERT**—At point 32 in your submission you offer to provide some of the documents that you got from FaHCSIA, if the committee so requests. I request that that information be provided, because I think it would be useful.

**Ms Webb**—Certainly.

**Senator SIEWERT**—That would be great. I am not sure if you were in the room when I asked Professor Altman how you would amend the current legislation to make it comply with the RDA rather than being exempt from the RDA. I should point out that the legislation is exempt in two ways. It is exempt through the government claiming that it is a special measure; and, secondly, if it does not happen to meet special measures requirements, it exempted all the legislation from the RDA. So there are two ways that it is exempt, or could be dealt with under the RDA. Professor Altman said that his major concern with exemption from the RDA was as it relates to income quarantining. He said that the way you could amend the legislation would be to require a similar sort of consultation process as the government now proposes under this bill in relation to the Astar amendments. Do you think that would be a way that you could ensure that the legislation is compliant with the RDA?

**Ms Webb**—Senator, that is a very big question. To make it compliant with the RDA, we are asking what we should do now to make what we have done previously comply. That is the difficulty that we have, particularly when you take into account that a special measure is something that generally has its impetus from the community. I would like to give a bit more thought as to how or if the present legislation can be amended or if there should be some consideration as to what can now be done to see if that is what is wanted at all. I would really like to take that one on notice, if I could. Mr Parmeter might feel a bit more confident in answering that, but I think that is a very large question.

**Senator SIEWERT**—If you could take it on notice, I would very much appreciate it, because the legislation will consist of a series of provisions, some of which are compliant with the RDA and some of which are now against it.

**Ms Webb**—What I can say quite plainly is that if you were to remove the suspension of the RDA provisions now there would be no protection for some of the earlier provisions. Those provisions would not fall within special measures.

**Senator SIEWERT**—That is what I take from, particularly, the social justice report from HREOC, which I consider sets it out pretty clearly.

**Senator CROSSIN**—Can I ask you about the issue that is in the explanatory memorandum and in your submission under ‘Free trade and commerce’. What clearly is the implication of having section 49 of the Northern Territory (Self-Government) Act suspended? Why would there be a need to put this in this legislation?

**Ms Webb**—Section 49 of the self-government act is the provision that deals with free trade between states. There is a question as to whether that might apply in relation to transmissions from state to state that you could not prevent by Commonwealth legislation intercourse between one state and another. So it might apply to the broadcasting—that would be the consideration—from interstate into the Territory. The reason for putting that in might be to ensure that that does not fall foul of section 49. When you say ‘absolute freedom of movement’ it would be not just movement of people but movement of goods, and that might apply to broadcasting. I would think that might have been what was underlying what went into it to make sure nothing got caught in relation to the broadcasting restrictions.

**Senator CROSSIN**—I still cannot see the relevance of suspending section 49. No clear reason is given in the explanatory memorandum. Astar would have the capacity to block some channels in remote communities, but they would not be doing it in the major centres; it is only the prescribed communities. So that is within the state rather than interstate, and I just cannot grasp why it is needed.

**Ms Webb**—I did wonder about this, except that what did occur to me was that there might be broadcasts from, perhaps, Queensland or Western Australia to communities in the Northern Territory and that that might in fact be the basis for the possible concern. That was the only consideration I could think of—that it was not something being broadcast from within the Territory to a Territory community but from a state to a community within the Territory. That was the only possibility I could think of as to why it might have been in there.

**Senator CROSSIN**—Astar is the licensee, so I am not sure why it is still relevant, that is all.

**Ms Webb**—As to why it should be in there? We would support it not being in there.

**Senator HUMPHRIES**—Section 92 refers to trade and commerce between the states being absolutely free. I have not looked at section 49 of the self-government act but that deals with movement. Does that mean people movement?

**Ms Webb**—No, it reflects section 92 of the Constitution—it is the mirror—but it applies it to movement between states and territories because section 92 does not apply. So it is trade and commerce. Movement is just the gloss that is put on it.

**Senator HUMPHRIES**—Can I quickly ask one question about broadcasting. There has been some debate about the provisions in the legislation dealing with 35 per cent of a service being R18+ material and whether that 35 per cent applies to an individual channel's content or the suite of content provided by a broadcaster. You touch on that in sections 9 and 10 of your submission. I do not know whether you have looked at the legislation with respect to the wording of that compared with the wording of the explanatory memorandum.

**Ms Webb**—No. I think what is in paragraphs 9 and 10 is simply setting out a summary of what we read from the explanatory memorandum. I certainly have not looked at that issue.

**CHAIR**—Thank you very much, Ms Webb and Mr Parmeter, for your evidence and for your submission.

**Committee adjourned at 3.26 pm**