



COMMONWEALTH OF AUSTRALIA

# Proof Committee Hansard

## SENATE

COMMUNITY AFFAIRS LEGISLATION COMMITTEE

**Social Services and Other Legislation Amendment Bill 2013**

(Public)

MONDAY, 9 DECEMBER 2013

CANBERRA

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**SENATE**

**COMMUNITY AFFAIRS LEGISLATION COMMITTEE**

**Monday, 9 December 2013**

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

**Terms of Reference for the Inquiry:**

To inquire into and report on:

Social Services and Other Legislation Amendment Bill 2013.

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**STEWART, Mr Paul, Manager, ATM Industry Reference Group**

**WINGROVE, Mr Andrew, Member, ATM Industry Reference Group**

**Committee met at 16:10**

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

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

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

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

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

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

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

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

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

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

**CHAIR:** Mr Stewart, do you have a statement?

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

**CHAIR:** Senator Di Natale.

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

**Mr Wingrove:** In part, yes.

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

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

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

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

**Mr Wingrove:** Shall I proceed?

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

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

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

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

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

**Senator XENOPHON:** Per machine? How much per machine?

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

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

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

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

**CHAIR:** So it is different for each company?

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

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

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

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

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

**Mr Stewart:** Senator Boyce, that is absolutely correct.

**CHAIR:** Thank you.

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

**CHAIR:** Senator Xenophon, have you got questions?

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

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

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

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

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

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

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

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

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

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

**Senator XENOPHON:** Either equity or commercial relationships.

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

**Senator XENOPHON:** Anything with equity?

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

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

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

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

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

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

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

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

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

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

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

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

**Mr Stewart:** Yes, we are.

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

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

**Senator XENOPHON:** Per machine?

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

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

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

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

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

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

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

**Senator XENOPHON:** Rather than having six or eight jurisdictions?

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

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

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

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

**CHAIR:** Senator Brown.

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

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

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

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

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

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

**Senator CAROL BROWN:** Thanks, Chair.

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

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

**Mr Wingrove:** I think that is fair.

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

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

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

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

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

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

[16:35]

*Evidence from Mrs Phillips was taken via teleconference—*

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

**Senator XENOPHON:** No, still Independent.

**CHAIR:** You are just an Independent?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **Proceedings suspended from 16:45 to 16:58**

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

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

**CHAIR:** That would be fine.

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

**CHAIR:** That would be excellent. Thank you.

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

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

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

**CHAIR:** Was that 85?

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

**CHAIR:** Sorry, what was the 85 per cent?

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

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

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

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

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

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

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

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

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

**Mrs Phillips:** Yes, that is right.

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

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

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

**Mr Hatcliffe:** Absolutely.

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

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

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

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

**Mr Hatcliffe:** Correct.

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

**Mr Hatcliffe:** For me there is.

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

**Mr Hatcliffe:** I suspect it is, yes.

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

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

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

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

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

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

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

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

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

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

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

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

**COSTELLO, Reverend Tim, Chair, Australian Churches Gambling Taskforce****ALLEY, Major Kelvin, Salvation Army**

[17:16]

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

**Rev. Costello:** Yes.

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

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

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

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

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

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

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

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

**CHAIR:** Reverend Costello?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Major Alley:** Absolutely.

**CHAIR:** if the legislation does not happen—

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

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

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

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

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

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

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

**Rev. Costello:** Thank you.

**Major Alley:** Thank you very much.

**COSTELLO, Reverend Tim, Chair, UnitingCare Australia**

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

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

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

[17:38]

*Evidence from Mr MacDonald was taken via teleconference—*

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

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

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

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

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

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

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

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

**CHAIR:** Okay. Thank you. Mr Crosbie.

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

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

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

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

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

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

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

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

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

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

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

**CHAIR:** Thank you. Senator Siewert will start.

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

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

**Senator SIEWERT:** Have you asked them?

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

**Senator SIEWERT:** It depends where.

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

**Senator SIEWERT:** Mr Zabar?

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

**Senator SIEWERT:** Mr Crosbie?

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

**Senator SIEWERT:** Mr MacDonald?

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

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

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

**Senator SIEWERT:** What day was that?

**Mr Crosbie:** Wednesday.

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

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

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

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

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

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

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

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

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

**Senator SIEWERT:** You cannot speculate?

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

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

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

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

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

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

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

**Rev. Costello:** I am not.

**Mr Zabar:** I am not.

**Mr Crosbie:** I am not.

**Mr MacDonald:** No.

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

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

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

**Rev. Costello:** Yes.

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

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

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

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

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

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

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

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

**Mr Crosbie:** We often refer to that!

**CHAIR:** There are a lot of decayed persons around!

**Rev. Costello:** You are included, Senator Xenophon!

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

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

**Mr MacDonald:** That is right.

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

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

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

**Senator SIEWERT:** That is what I asked.

**Senator XENOPHON:** Sorry.

**CHAIR:** We have been there.

**Senator SIEWERT:** Ask again, because it is—

**Rev. Costello:** None of us know.

**CHAIR:** Have you sought information on it?

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

**Senator SIEWERT:** They only found out on Wednesday.

**CHAIR:** No, that is not quite true.

**Senator SIEWERT:** Yes, it is.

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

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

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

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

**Rev. Costello:** Absolutely.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Mr Crosbie:** No, only within charitable standards.

**Senator SIEWERT:** That is highly important for those organisations.

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

**Senator SIEWERT:** We had the full text put in.

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

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

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

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

**Committee adjourned at 18:13**