The Senate

Standing Committee on Legal and Constitutional Affairs

Social Security and Other Legislation Amendment (Welfare Payment Reform) Bill 2007 and four related bills concerning the Northern Territory National Emergency Response

August 2007

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MEMBERS OF THE COMMITTEE

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Ms Judith Wuest	Executive Assistant
Mr Michael Masters	Executive Assistant

Suite S1.61	Telephone: (02) 6277 3560
Parliament House	Fax: (02) 6277 5794
CANBERRA ACT 2600	Email: legcon.sen@aph.gov.au

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ABBREVIATIONS

AAT	Administrative Appeals Tribunal
ACOSS	Australian Council of Social Service
ANTaR	Australians for Native Title and Reconciliation
CDEP	Community Development Employment Projects
CLC	Central Land Council
EM	Explanatory Memorandum
FaCSIA	Department of Families, Community Services and Indigenous Affairs
HREOC	Human Rights and Equal Opportunity Commission
Law Council	Law Council of Australia
LHAI	Laynhapuy Homelands Association Incorporated
Minister	Minister for Families, Community Services and Indigenous Affairs
National Emergency Response Bill	Northern Territory National Emergency Response Bill 2007
National Emergency Response and Other Measures Bill	Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Bill 2007
NIC	National Indigenous Council
NLC	Northern Land Council
RDA	*Racial Discrimination Act 1976*
SSAT	Social Security Appeals Tribunal
Welfare Payment Reform Bill	Social Security and Other Legislation Amendment (Welfare Payment Reform) Bill 2007

RECOMMENDATIONS

Recommendation 1

3.17 The committee recommends that the operation of the measures implemented by the bills be continuously monitored and publicly reported on annually through the Overcoming Indigenous Disadvantage reporting framework.

Recommendation 2

3.18 The committee recommends that the Northern Territory Emergency Taskforce make publicly available its strategic communications plan as well as other operational plans, within six months, and the long term plans being developed in relation to the intervention, within 12 months; and that information regarding significant revisions to these plans should be provided in the Overcoming Indigenous Disadvantage report.

Recommendation 3

3.19 The committee recommends that the operation of the measures implemented by the bills be the subject of a review two years after their commencement, particularly to ascertain the impact of the measures on the welfare of Indigenous children in the Northern Territory. A report on this review should be tabled in Parliament.

Recommendation 4

3.20 The committee recommends that a culturally appropriate public information campaign be conducted, as soon as possible, to allay any fears Indigenous communities in the Northern Territory may hold, and to ensure that Indigenous people understand how the measures in the bills will impact on them and what their new responsibilities are.

Recommendation 5

3.21 The committee recommends that the Australian government develop, as a matter of high priority, explanatory material to assist people to understand what is meant in practical terms by the phrases 'a quantity of alcohol greater than 1350 millilitres' and 'unsatisfactory school attendance'.

Recommendation 6

3.22 The committee recommends that the Australian Government should closely examine the need for additional drug and alcohol rehabilitation services in the Northern Territory and, if necessary, provide additional funding support to those services.

Recommendation 7

3.23 The committee recommends that the Senate pass the bills.

CHAPTER 1

INTRODUCTION

Background

1.1 On 9 August 2007, the Senate referred to the Standing Committee on Legal and Constitutional Affairs five bills comprising the legislative package for the Australian Government's response to the 'national emergency' relating to the welfare of Indigenous children in the Northern Territory.

1.2 The bills were referred to the committee for inquiry and report by 13 August 2007 and are as follows:

- the Northern Territory National Emergency Response Bill 2007 (National Emergency Response Bill);
- the Social Security and Other Legislation Amendment (Welfare Payment Reform) Bill 2007 (Welfare Payment Reform Bill); and
- the Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Bill 2007 (National Emergency Response and Other Measures Bill);
- the Appropriation (Northern Territory National Emergency Response) Bill (No. 1) 2007-2008; and
- the Appropriation (Northern Territory National Emergency Response) Bill (No. 2) 2007-2008.[1]

1.1 Overall, the legislative package flows from measures announced by the Prime Minister and the Minister for Families, Community Services and Indigenous Affairs on 21 June 2007. This announcement followed the Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse, *Ampe Akelyernemane Meke Mekarle "Little Children are Sacred"*, authored by Mr Rex Wild QC and Ms Patricia Anderson and presented to the Northern Territory Government in April 2007.[2] The Minister noted in his second reading speech the relationship between this report and the new measures:

> Six weeks ago, the *Little children are sacred* report commissioned by the Northern Territory government confirmed what the Australian government had been saying. It told us in the clearest possible terms that child sexual

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1 The appropriation bills provide for spending in excess of $580 million in 2007-2008 to implement the measures contained in the national emergency response.

2 The report is available at http://www.nt.gov.au/dcm/inquirysaac/pdf/bipacsa_final_report.pdf (accessed 9 August 2007).

> abuse among Aboriginal children in the Northern Territory is serious, widespread and often unreported, and that there is a strong association between alcohol abuse and sexual abuse of children.
>
> With clear evidence that the Northern Territory government was not able to protect these children adequately, the Howard government decided that it was now time to intervene and declare an emergency situation and use the territories power available under the Constitution to make laws for the Northern Territory.[3]

1.2 The Minister explained how the emergency intervention package relates to longer term measures:

> The need is urgent and immediate and the government is stepping up to the plate to provide the necessary funding now for additional police, for health checks, for welfare reform and for other measures necessary to achieve these outcomes. But we also recognise that longer-term action is required to normalise arrangements in these communities. Funding for housing in remote communities received a major boost in this year's budget. Separate funds will be provided for other longer-term measures in the next budget process.[4]

1.3 Dr Sue Gordon, the Chair of the National Emergency Taskforce, outlined for the committee progress which has been made in relation to implementation of the intervention package to date.[5] The Minister also outlined to the House what implementation of the intervention package had already occurred including the response from volunteers:

> The government has been tremendously encouraged by the overwhelming support for this emergency response from ordinary Australians. There have been hundreds of people volunteering to help. Police across Australia are volunteering their services. The Australian public want to see real change and are willing to put their shoulder to the wheel when they feel that can finally help to improve the lot of their fellow Australian citizens—the first Australians.[6]

Conduct of the inquiry

1.4 Details of the inquiry, the Bill, and associated documents were placed on the committee's website. As of 9:00am on Monday, 13 August 2007, the committee had received 154 submissions which are listed at Appendix 1. Submissions were placed on the committee's website for ease of access by the public.

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3 *House of Representatives Hansard,* 7 August 2007, p. 7.

4 *House of Representatives Hansard,* 7 August 2007, p. 11.

5 *Committee Hansard,* 10 August 2007.

6 *House of Representatives Hansard,* 7 August 2007, pp 11-12.

1.5 The committee held a public hearing in Canberra on 10 August 2007. A list of witnesses who appeared at the hearing is at Appendix 2.

1.6 Due to the unusually short timeframe allowed for consideration of the bills, the committee did not have access to a full Hansard transcript when preparing its report. The committee therefore presents the proof Hansard transcript of the hearing at Appendix 3 of the report to assist the Senate in its consideration of the Bill. The committee thanks those organisations and individuals who gave evidence at the hearing, particularly given their cooperation and willingness to appear before the committee at very short notice. The committee is also grateful to those organisations and individuals who made submissions within these tight timeframes.

Main provisions of the bills

1.7 This section of the committee's report outlines the main provisions contained in the three main bills.

National Emergency Response Bill

1.8 The National Emergency Response Bill provides 'new principal legislation for the Australian Government's response to the national emergency confronting the welfare of Aboriginal children in the Northern Territory'.[7]

Part 2 – Alcohol

1.9 Part 2 of the National Emergency Response Bill introduces measures to modify the Northern Territory's *Liquor Act 1978*, Liquor Regulations and *Police Administration Act 1978* to give effect to restrictions on the possession, consumption, sale and transportation of liquor within prescribed areas.[8] There is an exemption for people engaged in recreational boating and commercial fishing.

Part 3 – Filtering of publicly-funded computers

1.10 Part 3 introduces a scheme of accountability intended to prevent, and detect, the misuse of publicly-funded computers located within prescribed areas. Essentially, Part 3 requires filters accredited by the Minister to be installed and maintained on publicly-funded computers, including computers owned or loaned by bodies or individuals that receive government funding, or that directly or indirectly receive funding for employment programs. There is an exemption for a period if, for work,

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7 Explanatory Memorandum, 'Outline'.

8 The measures in the National Emergency Response Bill generally apply in Northern Territory communities on: land scheduled under the *Aboriginal Land Rights Act 1976*; community living areas, which are located on a form of freehold title issued by the Northern Territory Government to Aboriginal corporations; town camps, in the vicinity of major urban areas, held by Aboriginal associations on special leases from the Northern Territory Government; and other areas prescribed by the Minister on advice from the Northern Territory Emergency Task Force.

research or study purposes, a person needs to access material that would otherwise be blocked by a filter.

Part 4 – Acquisition of rights, titles and interests in land

1.11 Part 4 provides for the immediate and later acquisition of five-year leases over certain Aboriginal townships in the Northern Territory for the purposes of the emergency response. The underlying tenure will be preserved and existing interests will be generally preserved or excluded. A 'reasonable amount of compensation' for any acquisition of property will be paid if the constitutional requirement for just terms compensation, under section 51(xxxi), applies including an option of paying rent. Provision will also be made for early termination of the five-year lease, including when a township lease is granted.

1.12 Part 4 also provides for the Australian Government to exercise the powers of the Northern Territory Government to forfeit or resume certain leases known as town camps during the five-year period of the emergency response, and the option of acquiring a freehold interest over these areas.

Part 5 – Business management areas

1.13 The most significant amendments in Part 5 are contained in Division 4, 'Commonwealth management in business management areas'. Division 4 of Part 5 modifies Northern Territory legislation so far as is necessary, in order to provide the Commonwealth with the same powers as the Northern Territory (with appropriate adaptations). These amendments are designed to bring particular types of 'community services entities' in 'business management areas' under external administration to enable the Australian Government to flexibly allocate resources including government funds and the assets used to provide services and, where required, effectively address the performance of those entities to deliver relevant services.[9]

Part 6 – Bail and sentencing

1.14 Part 6 amends Northern Territory law to prohibit the relevant authority, when exercising bail or sentencing discretion in relation to Northern Territory offences, from taking into consideration any form of customary law or cultural practice to lessen or aggravate the seriousness of the criminal behaviour of offenders and alleged offenders. Part 6 also aims to ensure that bail authorities give appropriate weight to the special circumstances of victims and potential witnesses in remote communities.

1.15 Part 6 is modelled closely on the *Crimes Amendment (Bail and Sentencing) Act 2006* which amended the sentencing and bail provisions in the *Crimes Act 1914*,

9 Explanatory Memorandum, 'Outline'.

in accordance with the decisions made by the Council of Australian Governments (COAG) on 14 July 2006.[10]

Part 7 – Licensing of community stores

1.16 Part 7 introduces a new licensing regime that will apply to persons who operate community stores in Indigenous communities. The new licensing regime will empower the Secretary of FaCSIA to grant 'community store licences'. The licensing regime is designed to enable the Secretary to assess a community store's practices, including:

- the capacity to comply with the 'income management regime' (see paragraph 1.18 below);
- the quality, quantity and range of groceries and consumer items, with an express inclusion of healthy food and drink;
- the business practices of the store, including pricing and other financial aspects (such as wages); and
- other matters considered relevant at the Minister's discretion, or those later specified by the Minister.

Welfare Payment Reform Bill

1.17 The Welfare Payment Reform Bill amends Commonwealth welfare legislation to provide new national welfare measures 'to help address child neglect and encourage school attendance'.[11]

Schedule 1 – Income management regime

1.18 Schedule 1 of the Welfare Payment Reform Bill establishes income management regimes both nationally, and in relation to the Northern Territory and Cape York.

1.19 Firstly, Schedule 1 establishes a *national* income management regime that applies to a person in receipt of welfare payments, whose child is at risk of neglect, is not enrolled at school, or fails to attend school adequately. The part of the affected person's payment that is subject to income management will, generally, be used to pay the priority needs of that person, their partner and their children.

1.20 Secondly, Schedule 1 establishes an income management regime that applies in respect of people on certain welfare payments in the Northern Territory, as part of the Commonwealth's Northern Territory national emergency response, and in Cape York. There will be no overall reduction in payments as a result of these measures.

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10 See further Senate Standing Committee on Legal and Constitutional Affairs, *Crimes Amendment (Bail and Sentencing) Bill 2006*, October 2006.

11 Explanatory Memorandum, 'Outline'.

1.21 Schedule 1 sets out the broad circumstances where the income management regime provisions are to be applied. The specific details of the circumstances in which an individual can be subjected to these provisions are to be described in principles to be set out in a Legislative Instrument made by the Minister.

Schedule 2 – Baby bonus

1.22 The baby bonus will be paid in 13 fortnightly instalments to claimants who are subject to the income management regime.

Schedule 3 – Northern Territory CDEP transitional payment

1.23 The Community Development Employment Projects (CDEP) program commenced in 1977. Under the CDEP program, members of participating Aboriginal and Torres Strait Islander communities or organisations can forgo any Centrelink Income Support benefit (except Abstudy or full time student Youth Allowance) for a wages grant paid to the community.[12]

1.24 Beginning in September 2007, the CDEP program in the Northern Territory will progressively be replaced with other employment services. The Explanatory Memorandum states that CDEP program participants, on a community-by-community basis, will move into 'real jobs, training or to more appropriate income support', including Work for the Dole.[13] The legislative amendments in Schedule 3 are broadly designed to assist CDEP program participants who move onto income support by establishing a Northern Territory CDEP transition payment. The payment will make up the difference between average earnings from CDEP program payments and income support payments at 23 July 2007,[14] and the payments made under income support arrangements after the changes to the CDEP program.

National Emergency Response and Other Measures Bill

1.25 The National Emergency Response and Other Measures Bill amends existing Commonwealth legislation to support and complement the legislation and welfare amendments contained in the previous two bills.

Schedule 1 – Prohibited material

1.26 Schedule 1 of the National Emergency Response and Other Measures Bill inserts a new Part 10 into the *Classification (Publications, Films and Computer Games) Act 1995*. It contains measures banning the possession of pornographic material within prescribed areas and prohibiting the supply of pornographic material

12 Parliamentary Library, *Northern Territory national emergency response Bills 2007 – interim Bills Digest* no. 15, 2007-08, 7 August 2007, p. 20.

13 Explanatory Memorandum, 'Outline'.

14 The Minister and the Minister for Employment and Workplace Relations announced the CDEP program changes on 23 July 2007.

in prescribed areas.[15] Schedule 1 also provides for new police powers in prescribed areas to seize and destroy material which may be prohibited under the new Part 10.

Schedule 2 – Law enforcement

1.27 The bill amends Commonwealth law enforcement legislation relating to the powers and functions of the Australian Crime Commission and the Australian Federal Police to 'facilitate implementation of the Australian Government's emergency measures to protect Aboriginal children in the Northern Territory from harm'.[16]

Schedule 4 – Access to Aboriginal land

1.28 The bill makes significant changes to the provisions governing access to Aboriginal land 'to increase interaction with the wider community and promote economic activity'.[17] It removes the requirement for people to obtain permits to enter and remain on certain areas of Aboriginal land, including common areas of townships, road corridors, airstrips and boat landings. It also allows for the placement of temporary restrictions on access to these areas to protect the privacy of cultural ceremonies or public health and safety.[18] Schedule 4 provides for a long list of people who may enter or remain on Aboriginal land, including government officials and members of Parliament.

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15 The measures in the National Emergency Response and Other Measures Bill generally apply to the same prescribed areas covered by the measures in the National Emergency Response Bill, that is: land scheduled under the *Aboriginal Land Rights Act 1976*; community living areas, which are located on a form of freehold title issued by the Northern Territory Government to Aboriginal corporations; town camps, in the vicinity of major urban areas, held by Aboriginal associations on special leases from the Northern Territory Government; and other areas prescribed by the Minister on advice from the Northern Territory Emergency Task Force.

16 Explanatory Memorandum, 'Outline'.

17 Explanatory Memorandum, 'Outline'.

18 Explanatory Memorandum, 'Outline'.

CHAPTER 2

KEY ISSUES

2.1 Virtually without exception, witnesses and submitters welcomed the intent of the Australian Government's intervention package and some were strongly supportive of the package itself. Mr John Moriaty of the National Indigenous Council (NIC) told the committee:

> I think that the intervention, as it is known, is a once-in-a-lifetime opportunity for people like me who have been involved in a long struggle for equality for Aboriginal people and bringing them into the mainstream of Aboriginal society. ...I find this a once-in-a-lifetime opportunity for fighters like me who want Aboriginal rights, and I think it should be supported. We have lost at least two, maybe three, generations in my communities up there in Borroloola.
>
> I think that our leadership has been lacking in the past and there is a lot of confusion as well. This has led to a lot of violence in the community. Also it has led to a dysfunctional community...[1]

2.2 Mr Moriaty further explained why he supported the Government's intervention:

> Under the current system, we have allowed the states to do their thing. Having been involved in Aboriginal affairs over many years, I have found that, in the states, as far as ordinary citizens are concerned, Aborigines do not rate very highly electorally. I find that this intervention is one of those aspects that will dig deep into the real issues and have Aboriginal people brought into the system.[2]

2.3 Similarly, Mr Wesley Aird of the NIC told the committee:

> I think the status quo is a result of a failed model in terms of funding and governance systems. I think it is destroying communities and lives. The obvious manifestation of this is child abuse and neglect as well as alcoholism and violence...
>
> I support the intervention. I think it is important that it is treated as a package.[3]

2.4 In relation to criticism of the intervention, Mr Aird stated:

> I am concerned that the critics of the intervention are losing the real focus here, which is the protection and safety of families and children.[4]

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1 *Committee Hansard*, 10 August 2007.

2 *Committee Hansard*, 10 August 2007.

3 *Committee Hansard*, 10 August 2007.

2.5 The committee also heard that many of the residents of Alice Springs and Katherine were supportive of the intervention package. The Mayor of Alice Springs Town Council, Councillor Kilgariff told the committee:

> I would like to start by saying that many people in this area have welcomed the federal intervention. They see it as a catalyst for change. Over very many years we have seen a deterioration in the quality of Indigenous lives brought about by many things but I would say principally by alcohol and welfare dependency. Although many people around here have tried a lot of initiatives over the years, it seems that the issue has been getting so big and so irreparable that people have been starting to feel that there will never be a change. So from that point of view, I think the intervention is very welcome.[5]

2.6 Similarly, the Mayor of Katherine Town Council, Councillor Shepherd noted that she and most of her community welcome the government's intervention.[6]

2.7 Other submissions and witnesses at the public hearing expressed concerns about the content of the intervention package, or the process by which it was developed and is being implemented. Some of the key issues raised in submissions and by witnesses are outlined below.

Consultation

2.8 Many submissions were critical of the haste with which the legislative package has been introduced into Parliament and argued that there should have been more consultation with those who will be affected by the proposed changes.[7] For example, Oxfam Australia submitted:

> Any truly effective strategy for combating child abuse in Aboriginal communities must involve the commitment and active participation of those communities. The Government's striking lack of consultation with Indigenous organisations and affected communities in the Northern Territory is both disrespectful and contrary to the development of good public policy. Moreover, it has resulted in a package of bills which are not supported by the vast majority of Aboriginal organisations in the Northern Territory. This does not bode well for the successful implementation of the legislation, the prevention of child abuse or the improvement of the health and well-being of Aboriginal people.[8]

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4 *Committee Hansard*, 10 August 2007.

5 *Committee Hansard*, 10 August 2007.

6 *Committee Hansard*, 10 August 2007.

7 See for example Law Council of Australia, *Submission 52*, pp 1-2; Victorian Aboriginal Legal Service, *Submission 92*, p. 1; Central Australian Aboriginal Legal Aid Service, *Submission 93*, p. 1; Be Ward, *Submission 106*, p. 1; Ms V. Burns, *Submission 107*, p. 1.

8 *Submission 51*, p. 2.

2.9 In a similar vein, Australians for Native Title and Reconciliation (ANTaR) argued that:

> Given the seriousness of the problem of child abuse, the scale of these legislative changes and the unprecedented power that they give to the Minister, it is scandalous that there has been so little time for consultation, scrutiny and debate on the Government's Northern Territory National Emergency response.[9]

2.10 Some submissions were also critical of the time allowed for the Senate inquiry process.[10] Catholic Social Services Australia suggested that the inquiry into the bills should be extended:

> Our sole recommendation is that the Committee recommend the further referral of the Bills to committee, for a period of at least two months. This would allow the beginnings of consultation on the far-reaching implications of these hastily conceived Bills – and on how they might be improved.[11]

2.11 The Human Rights and Equal Opportunity Commission (HREOC) accepted the need for urgent action in the Northern Territory but argued that consultation with affected communities is vital if the measures are to be successful in the longer-term:

> HREOC accepts the need for urgent action. However, the success of that action both immediately and in the long term will depend upon effective consultation. And such consultation is fundamental to respecting the human rights of Indigenous people.[12]

2.12 HREOC suggested that, given the complexity of the legislation and the fact that many of the laws will carry serious penalties for non-compliance:

> A culturally appropriate and effective public information campaign is critical to allay fears and ensure Indigenous communities understand how the NTNER measures will impact on them and what their new responsibilities are.
>
> HREOC understands that Centrelink and the Ombudsman's Office intend to provide public information to Indigenous communities. This is welcome but it must be done in a comprehensive and culturally appropriate manner. It is critical that information does not add to the fear and confusion in Indigenous communities about the legislation.[13]

2.13 In response to concerns regarding consultation, Dr Sue Gordon, Chair of the NIC and the National Emergency Taskforce, told the committee that consultation in

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9 *Submission 60*, p. 1.

10 See for example ACOSS, *Submission 97*, p. 1.

11 *Submission 58*, p. 1; see also Ms R Small, *Submission 123*, p. 1; Mr M Ramage QC, *Submission 124*, p. 1.

12 *Submission 67*, p. 3.

13 *Submission 67*, p. 17.

the context of a response to an emergency was necessarily limited and she drew a parallel with the imperative for governments to act swiftly in the face of other emergencies. She submitted that the protection of children, and indeed adults, in communities who suffer violence and abuse had been completely lost in the public debate and noted that in an emergency, like a tsunami or a cyclone, governments do not have time to consult people in the initial phases. In particular, she stressed to the committee that every day there is a delay in acting, means that another child is put at risk.[14] Similarly, Mr Aird from the NIC told the committee:

> [T]here has been so much consultation with Indigenous people over the years on so many topics. I think this one is different because we knew that the abuse and neglect of children was ongoing. So for every day, every week that you were out there consulting…the person who delayed action would knowingly allow more abuse, more neglect, and I think that raises some very serious moral questions about just how long you are going to knowingly allow that abuse and neglect to continue. So I would support the speed at which they have acted…
>
> …Now there must be consultation for the correct, professional, technical implementation of what they are doing. It is appropriate that the action was taken as quickly as it was, but, when it gets down to communities now, we should not be talking to the gatekeepers…we should now be coming up with localised solutions that actually address the core problems.[15]

2.14 Finally, the Northern Territory Emergency Taskforce has requested that the government, as a matter of priority, engage in local information campaigns, regarding the measures to be implemented as part of the intervention package, in order to share information with affected communities.[16]

The need for long term commitments

2.15 Some submissions and witnesses expressed concern that the measures proposed in the bills will not be effective in addressing problems in Indigenous communities unless longer-term solutions are also instigated.

2.16 For example, Oxfam Australia stressed the need for long-term measures to address the root causes of the endemic social problems in Indigenous communities:

> Revelations of deep social problems in many of our Indigenous communities are not new. Indigenous leaders have been warning for the past decade that a social crisis would emerge if federal, state and territory governments failed to provide Indigenous Australians with the opportunities and basic services other Australians take for granted: policing, primary health care, education, housing and real employment opportunities.

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14 *Committee Hansard*, 10 August 2007.

15 *Committee Hansard*, 10 August 2007.

16 Minister for Families, Community Services and Indigenous Affairs, *Media Release: First NT Emergency Response Taskforce Meeting*, 30 June 2007, p. 2.

> We are now reaping what we have sown through the failure of successive governments to address the root causes of this crisis.
>
> Now that this issue is finally on the national agenda, immediate action is required to protect communities – and children in particular – while also addressing the underlying factors contributing to the cycle of abuse. Oxfam Australia advocates both immediate and longer-term measures to tackle child abuse…[17]

2.17 Despite welcoming overall the government's intervention, the Mayor of Alice Springs Town Council, articulated her concern that the reforms contained within the bills will not be sustainable in the longer term:

> I think there is a real danger that, when all these things have gone through and if the enthusiasm and resources are not maintained, things will fall in a hole and Aboriginal people will be in a worse-off situation than they were before all of this started.[18]

Whether the bills are discriminatory

2.18 Many submissions and witnesses argued that the bills are discriminatory. For example, the Law Council of Australia (Law Council) stated that the bills 'raise fundamental and far-reaching issues in relation to racial discrimination, the human rights of Aboriginal people, land rights and 'just terms' compensation'.[19]

2.19 Amnesty International Australia noted its strong concern that:

> …the bills package as currently drafted contains discriminatory measures that have no demonstrated role in protecting Indigenous children. The most notable of these are proposed changes to the permit system and land tenure arrangements.[20]

2.20 In particular, a number of submissions and witnesses commented on the specific exclusion in the three main bills of the operation of the *Racial Discrimination Act 1976* (RDA). While the bills provide that any acts done under or for the purposes of their provisions are 'special measures' for the purposes of the RDA, at the same time the bills are excluded from the operation of Part II of the RDA.

2.21 The Law Council were extremely critical of this aspect of the legislation:

> …[T]he inclusion in legislation proposed to be enacted by the Australian Parliament in 2007 of a provision specifically excluding the operation of the RDA [is] utterly unacceptable. Such an extraordinary development places Australia in direct and unashamed contravention of its obligations

17 *Submission 51*, p. 1.

18 *Committee Hansard*, 10 August 2007.

19 *Submission 52*, p. 3.

20 *Submission 39*, p. 4.

> under relevant international instruments, most relevantly the United Nations Charter and the International Convention on the Elimination of All Forms of Racial Discrimination…
>
> The Law Council notes the claim by both the Government, and by the Leader of the Opposition in the House of Representatives on 6 August 2007, that the proposed legislation is consistent with the RDA. The Law Council rejects this assertion entirely. If such claim were correct, the Government and its advisers would not have considered it necessary to suspend the operation of the RDA.[21]

2.22 The Law Council also urged 'extreme caution in relation to the claimed justification of the proposed legislation as a "special measure"' and argued that 'the protection of "special measures", or measures of so-called affirmative action, preferential treatment or quota systems', does not 'justify a number of critical aspects of the proposed legislation'.[22]

2.23 HREOC submitted that the proposed measures in the bills, while intended for the overall benefit of Indigenous communities, also have a range of potentially significant negative impacts upon the rights of Indigenous people. Accordingly, HREOC argued that:

> The potential for the proposed legislation to breach the fundamental rights of Indigenous people means that, at the very least, the operation of the legislation should it be enacted must be subject to very careful scrutiny.[23]

2.24 Similarly, the Jumbunna Indigenous House of Learning submitted that:

> The measures contained in the Bills have been inappropriately characterised as 'special measures' within the meaning of the Racial Discrimination Act 1975 (Cth). By its nature, a special measure confers a benefit on a particular group, for the purpose of enabling that group to enjoy their human rights on an equal basis with the broader community. However, the measures contained in the…Bills will only limit the ability of Indigenous people in the Northern Territory to enjoy rights ordinarily taken for granted by most Australians, and in particular, the right to exercise control over land that they have property in.[24]

2.25 In response to these concerns about the operation of the RDA and its application to the bills, an officer of FaCSIA informed the committee that:

> The bills make it clear that those measures in relation to the emergency response are special measures, and special measures are based on the Convention on the Elimination of All Forms of Racial Discrimination, which allows concrete measures to ensure the adequate development and

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21 *Submission 52*, p. 4.

22 *Submission 52*, p. 4.

23 *Submission 67*, p. 5.

24 *Submission 47*, pp 1-2.

> protection of individuals. The provisions in the bills are intended to provide a benefit to Indigenous Australians and to secure their adequate advancement and enjoyment of their human rights on the same basis as others.
>
> The exclusion from part II of the RDA is limited to the five years of the emergency response and is necessary so that the special measures in the emergency response can be implemented without delay and without uncertainty. This is to allow the special measures to address the crisis in the communities in the Northern Territory and to build social and economic structures in those communities. The special measures are seen as measures to protect children in a way which is consistent with Australia's international obligations under human rights treaties. So, in short, the provisions are necessary to allow the emergency response to proceed without delay and without uncertainty so that the special measures contained in the legislation in the three bills can be implemented.[25]

2.26 The Explanatory Memorandum (EM) for the National Emergency Response Bill further explains the government's position on this issue:

> The Northern Territory national emergency response announced by the government recognises the importance of prompt and comprehensive action as well as Australia's obligations under international law:
>
> • The Convention on the Rights of the Child requires Australia to protect children from abuse and exploitation and ensure their survival and development and that they benefit from social security. The International Convention for the Elimination of All Forms of Racial Discrimination requires Australia to ensure that people of all races are protected from discrimination and equally enjoy their human rights and fundamental freedoms.
>
> • Preventing discrimination and ensuring equal treatment does not mean treating all people the same. Different treatment based on reasonable and objective criteria and directed towards achieving a purpose legitimate under international human rights law is not race discrimination. In fact, the right not to be discriminated against is violated when Governments, without objective and reasonable justification, fail to treat differently people whose situations are significantly different.
>
> The impact of sexual abuse on indigenous children, families and communities is a most serious issue requiring decisive and prompt action. The Northern Territory national emergency response will protect children and implement Australia's obligations under human rights treaties.[26]

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25 *Committee Hansard*, 10 August 2007.

26 pp 1 & 76.

Breadth of Minister's powers under the bills

2.27 The Law Council raised concerns regarding the breadth of the Minister's powers under the bills, in particular, the provisions which variously provide for the Minister to repeal provisions in the legislation (proposed section 114 of the National Emergency Response and Other Measures Bill) or to declare that certain Divisions, or specified provisions in Divisions, of the National Emergency Response Bill will cease to have effect (clauses 19, 22 and 24).[27]

2.28 Ms Raelene Webb QC of the Law Council advised the committee in answer to a question on notice:

> These are examples of Henry VIII clauses, so-called because they enable the Minister, simply by a stroke of the pen, to change the legal framework. Henry VIII clauses are regarded as contrary to fundamental legal principles as they give insufficient regard to the institution of Parliament as the supreme legislature; they erode the function of the Parliament to legislate.[28]

Permit system

2.29 Some witnesses criticised the current permit system in relation to Aboriginal lands in the Northern Territory for protecting perpetrators of violence and abuse in Indigenous communities and therefore expressed strong support for the proposed changes to the permit system.[29] The Mayor of Alice Springs Town Council told the committee:

> In regard to the permit system, the Alice Springs Town Council has resolved that it does agree with getting rid of the permit system in major communities and on major roads. It did that about six months or so ago and it did that because it felt that some of the issues that are happening in communities remain hidden because there is a permit system...[30]

2.30 However, others argued strongly against the proposed changes to the system. In a general sense, these submissions and witnesses suggested that a number of key measures in the bills, including the removal of land permits, are not related to the

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27 Ms R Webb QC, member of Law Council of Australia, *answer to question on notice*, received 12 August 2007, p. 1.

28 Ms R Webb QC, member of Law Council of Australia, *answer to question on notice*, received 12 August 2007, p. 1.

29 See, for example, Dr Sue Gordon, Northern Territory Emergency Task Force Leadership Group, *Committee Hansard*, 10 August 2007; the Hon John Cleary, *Committee Hansard*, 10 August 2007.

30 *Committee Hansard*, 10 August 2007.

'national emergency';[31] and their inclusion in this package of bills as a measure to address child abuse is not justifiable.[32]

2.31 More specifically, many argued that the removal of the permit system is inappropriate and will in fact be counter-productive.[33] The Central Land Council (CLC) stated its concerns as follows:

> Opening up road and community 'common areas' on Aboriginal land will open up Aboriginal land and communities more broadly. Once people enter Aboriginal land it is difficult to control their movement. Aboriginal landowners are concerned about the potential flow of visitors onto their land more broadly without permission and without guidance with regard to safety and important sites.
>
> The permit system is an important policing tool in remote communities. Police routinely ask unwanted visitors to leave communities because they do not have a permit. Applying trespass law is simply not practical on vast remote tracts of land. If more unwelcome visitors visit communities, such as grog runners and carpetbaggers, there will be greater demand for policing with fewer powers of enforcement…
>
> From a policing point of view the permit system offers a measure of protection for children, rather than putting them further at risk.[34]

2.32 CLC argued that Indigenous people themselves oppose the proposed changes to the permit system:

> Aboriginal people are totally against forced changes to the permit system because the permit system complements their responsibility for country under Aboriginal law and custom and is consistent with the land title they hold under Australian law.[35]

2.33 In a similar vein, the Milingimbi Community Council expressed its concern at the removal of the permit system:

> The removal of the Permit System is a cause of great concern. The system allows the community to monitor those who live in or visit the community. Milingimbi is very much an 'open' community and legitimate requests to visit are almost always granted. Will the Federal Government guarantee

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31 The proposed changes to the permit system are an outcome of a review of the permit system conducted by FaCSIA from October 2006 to February 2007.

32 See, for example, the Hon Marion Scrymgour MLA, Northern Territory Minister for Family and Community Services, *Committee Hansard*, 10 August 2007; Combined Aboriginal Organisations of the Northern Territory, *Committee Hansard*, 10 August 2007; Amnesty International Australia, *Submission 39*, p. 4; Law Council of Australia, *Submission 52*, p. 9.

33 See, for example, Central Land Council and Northern Land Council, *Committee Hansard*, 10 August 2007.

34 *Submission 84*, p. 3.

35 *Submission 84*, p. 3.

> that it will provide the appropriate level of law enforcement to ensure that the removal of the Permit System does not lead to 'rivers of grog' flowing into this community?[36]

2.34 ANTaR argued that removal of the permit system may actually increase instances of child abuse:

> No evidence has been provided to support the Minister's claims that scrapping the permit system will help overcome child abuse. In fact, Australia's leading expert on child abuse in Aboriginal communities, Professor Judy Atkinson considers that scrapping the permit system may actually increase the risk of child abuse by restricting the ability of communities to remove suspected paedophiles from Aboriginal land. Fears have also been expressed that removing the permit system will make communities more vulnerable to grog running.[37]

2.35 In response to concerns about the proposed changes to the permit system, the Secretary of FaCSIA told the committee that the review of the permits system conducted by FaCSIA revealed problems with the system:

> We did do a review of the permits system. The government announced last year a review of the system. We have received 100 submissions, including quite a lot of consultation. We had access to that information before making the decision. In Minister Brough's visits around the north of Australia, talking to people in many communities, in the community meetings, when everyone was present, rarely did the permit system being a problem come up. A number of times in private meetings after that, with Mr Gibbons and me, individuals certainly came up to him and talked about the permit system being a problem.[38]

2.36 The Combined Aboriginal Organisations of the Northern Territory gave evidence that the group had not made a submission to this review on the basis that it considered the issue of permits to be within the expertise of the Northern Territory land councils.[39]

2.37 In his second reading speech on the National Emergency Response and Other Measures Bill, the Minister noted that:

> After consultation the government has decided on balance to leave the permit system in place in 99.8 per cent of Aboriginal land in the Northern Territory.[40]

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36 *Submission 32*, p. 1.

37 *Submission 60*, p. 4.

38 *Committee Hansard*, 10 August 2007.

39 *Committee Hansard*, 10 August 2007.

40 *House of Representatives Hansard*, 7 August 2007, p. 8.

2.38 FaCSIA also provided the committee with a fact sheet explaining how the modifications to the permit system are linked to combating child sexual abuse. Importantly, the fact sheet notes that the proposed changes do not apply to sacred sites, private land or to the vast majority of Aboriginal land:

> They apply to towns only – places with roads, shops and public places like other towns. Currently, access to town is closed, with no justification. This sets these towns up as somehow different, and encourages the people who live there to have different expectations and aspirations – to think that because they are different they don't need to worry about having a job or sending their kids to school.[41]

2.39 The fact sheet suggests that the removal of the permit system will promote strong and safe communities in a number of different ways. It argues that allowing closed communities can allow bullies to dominate and stand over people, and even intimidate people so that they do not report abuse. Further, it makes the following case for changing the system:

> The question is often asked why we are removing the permits system in these towns, but a more pertinent question is: why would you have such a system in the first place? Why set up Indigenous people living in towns as different and prevent them from having access to normal experiences that see most Australian communities prosper and thrive?
>
> It would be easier to understand why some people argue so strongly for the permit system if these towns were well functioning havens. But the *Little Children* report clearly tells us this is not the case. The permit system has been one of the culprits in hiding an ever-worsening situation of child abuse from the public gaze.[42]

Compulsory acquisition of five-year leases

2.40 The Law Council queried whether the provisions providing for compulsory acquisition of five-year leases in the National Emergency Response Bill were necessary to achieve the aims of the intervention package:

> [T]he Law Council questions why compulsory acquisition is necessary to address child abuse, and notes that the Government has provided no adequate justification for compulsory acquisition on the scale proposed, or at all. Around 70 settlements have been designated for compulsory acquisition either now or at some stage in the future. The Government has excluded itself from NT town planning and building ordinances to accelerate the process of improvement. The Law Council submits that the

41 FaCSIA, *Fact sheet: How does changing the permit system link to child sexual abuse?*, tabled on 10 August 2007.

42 FaCSIA, *Fact sheet: How does changing the permit system link to child sexual abuse?*, tabled on 10 August 2007.

> Government's aims could be achieved without compulsorily acquiring a single township.[43]

2.41 Professor Jon Altman from the Centre for Aboriginal Economic Policy Research raised concerns about the practicality of the provisions relating to the compulsory acquisition of leases, particularly with respect to how those provisions will interact with the statutory rights to assets created by Schedule 3 of the National Emergency Response and Other Measures Bill:

> [T]he issue of compulsory acquisition of leases and the construction of assets on people's land that they will not own at lease expiry will leave a planning and real estate contestation nightmare.[44]

2.42 The committee also received evidence suggesting that the compulsory acquisition provisions in the bills may be unconstitutional.[45] Senator Bob Brown submitted legal advice prepared by Mr Brian Walters SC which stated that:

> Although some provisions in the legislation do require acquisition of property on "just terms", several provisions in the legislation refer to the acquisition of property but subject to the payment of "a reasonable amount of compensation", as distinct from "just terms"…
>
> No substantial guidance is contained in the legislation in respect of what is "reasonable" compensation.[46]

2.43 Mr Walters SC submitted that:

> In some cases, "a reasonable amount of compensation" probably would, in terms of content, amount to "just terms", but much will depend on factual detail. For example, the provision of educational services – which normally are available to all Australians of learning age – is unlikely to be seen as something which satisfies the requirement of "just terms".[47]

2.44 He concluded that:

> The present legislation in some places uses the expression "just terms", but in other places, in contradistinction to that expression, deliberately chooses

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43 *Submission 52*, p. 10.

44 *Opening statement of Professor Jon Altman*, provided to the committee secretariat on 10 August 2007, p. 1. Schedule 3 of the National Emergency Response and Other Measures Bill allows the Commonwealth, Commonwealth authorities, the Northern Territory and Northern Territory authorities to retain an interest in buildings and infrastructure constructed or upgraded on Aboriginal land in the future where they fund the construction or major upgrade. Schedule 3 also provides a mechanism for the statutory rights to come to an end once the buildings and infrastructure are no longer required.

45 There are several provisions in the bills which relate to compensation for the compulsory acquisition of property. Perhaps the most significant are proposed sections 60 and 134 of the National Emergency Response Bill.

46 *Submission 101*, pp 4-5.

47 *Submission 101*, p. 5.

> to use the term "a reasonable amount of compensation" rather than "just terms". This evinces a drafting intention to provide protection other than the constitutional guarantee of "just terms".
>
> In my opinion the legislation purports to authorize the acquisition of property on terms other than the "constitutional guarantee" of just terms.
>
> In those circumstances, the courts would not have a role of correcting the legislation by inserting just terms. Rather, the legislation purporting to authorise the acquisition of the property would be struck down as void.
>
> In my opinion all of the provisions in the legislation providing for acquisition of property other than on "just terms" would be struck down as void ab initio if they were enacted into law in their present form.[48]

2.45 By contrast, the Law Council submitted that the drafting of the National Emergency Response Bill may shield the Commonwealth from a requirement to pay compensation:

> The application of s 51(xxxi) of the Constitution to provide compensation for an acquisition of property in the Northern Territory is not a foregone conclusion. Under current High Court Authority there is no requirement to pay compensation for an acquisition of property referable only to the s 122 Territories power under the Constitution. The Bill makes it apparent (through reference to the non-application of s 50(2) of the Northern Territory (Self Government) Act 1978) that the power relied upon for the acquisitions is pursuant to the Commonwealth's s 122 Territories power.
>
> The Law Council notes that the legislation appears to shield the Commonwealth from its obligation to compensate the relevant Land Trust or pay rent, in circumstances where a lease is issued under section 31.[49]

2.46 FaCSIA rejected arguments that the compulsory acquisition provisions are unconstitutional and stated categorically that the National Emergency Response Bill provides for just terms compensation:

> Senator SIEWERT—Can you clarify whether we are talking about just terms compensation or reasonable compensation.
>
> Mr Gibbons—Just terms compensation.
>
> …
>
> Senator SIEWERT—There is also confusion about whether infrastructure or making your child healthy or being provided with a house equate to just terms.
>
> Mr Gibbons—We are talking about the lease-back of townships for five years and applying the constitutional provision about just terms compensation to the owners of the land, which are the relevant lands trusts.

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48 *Submission 101*, p. 6.

49 *Submission 52*, p. 13; see also Gilbert and Tobin Centre of Public Law, *Submission 40a*, pp 4-6.

> It is unrelated to what we do to repair houses or provide other infrastructure in the context of the intervention.[50]

2.47 FaCSIA also submitted that the phrase 'a reasonable amount of compensation' is used in existing Commonwealth legislation including the *Customs Act 1901* and the *Commonwealth Radioactive Waste Management Act 2005*.[51]

2.48 Some parties have sought to characterise the National Emergency Response Bill as a 'land grab'.[52] The Secretary of FaCSIA responded to this assertion:

> We do not believe that it is at all correct to characterise this as a land grab. We are acquiring, temporarily, leases over the 73 communities to allow us to intervene on behalf of the children by putting police in there, by putting government business managers in there, by looking at the state of the housing et cetera. We need to do this to stabilise the communities such that they are safe places for the kids, basically. We are only doing it for a very small proportion of the land and for five years only.[53]

2.49 An officer of FaCSIA further explained:

> …[W]e are going to make an investment in these towns. Many of them are a liability in their current state. We will be improving the basic infrastructure, particularly that part of it that is relevant to environmental health as well as houses, such that when they are returned they will be in vastly better condition than when we took them over.[54]

Changes to CDEP program

2.50 Several submissions and witnesses expressed concern about the proposed abolition of the CDEP program in the Northern Territory, particularly with respect to the capacity to find enough 'real' jobs for the approximately 8000 CDEP program participants once the program is wound up.

2.51 For example, the Mayor of Alice Springs Town Council told the committee that:

> On the question of CDEP, we have felt for quite some time that the welfare system has been a poison for Aboriginal people and there has been intergenerational damage over the last 20 or 30 years. We support the removal of CDEP but in the context that real jobs must be created. Many of the communities depend very heavily on CDEP because there is, apart from

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50 *Committee Hansard*, 7 August 2007.

51 FaCSIA, *answer to question on notice 64*, 12 August 2007.

52 Australian Broadcasting Corporation, *Lateline*, 26 June 2007, transcript accessed at: http://www.abc.net.au/lateline/content/2007/s1962845.htm on 11 August 2007; see also Staff of Kingfisher Organic Foods, *Submission 103*, p. 1.

53 *Committee Hansard*, 10 August 2007.

54 *Committee Hansard*, 10 August 2007.

> that, little or no economic activity. You probably would have a copy of the [Local Government Association of the Northern Territory] survey, which showed that out in the bush there are around 3,000 real jobs. But if you look at those which are on CDEP and having a top-up, there are around 1,500 jobs. But there are jobs available in most communities. My concern is that there will not be enough jobs for people to move into when CDEP disappears…[55]

2.52 The Hon Marion Scrymgour MLA, Northern Territory Minister for Child Protection, noted that the Australian Government will create only 2000 jobs and expressed her concern that the remaining 6000 participants will not be provided with jobs. She also suggested that the abolition of the CDEP program would have a 'devastating' impact on the Indigenous art community.[56]

2.53 The Laynhapuy Homelands Association Incorporated (LHAI) was highly critical of the proposed changes to the CDEP program:

> LHAI is extremely concerned that the abolition of CDEP has not been undertaken in the best interests of the Aboriginal people affected. It is not being driven by the opportunities for 'real jobs' – but driven by the belief that it is necessary to 'strip the communities of CDEP cash' and so the government can legally quarantine payments to those forced onto Welfare.[57]

2.54 LHAI argued further that the CDEP program has served a valuable purpose, particularly in remote communities:

> The government has criticized CDEP as a 'destination' – we would strongly argue that we have secured 28 full time jobs off CDEP in 12 months, and that Work for the Dole will not have this employment success rate. Work for the Dole, rather than CDEP, is what will be the ultimate destination for many living in the remote communities.
>
> We question the Government's insistence CDEP must cease in remote areas, as it can work extremely well and services community needs effectively, and has been successful in placing participants into off CDEP work. We question why government feels the need to 'reinvent the wheel' when you have all the mechanisms already in place for community development, training and developing jobs off CDEP.[58]

2.55 In his second reading speech on the Welfare Payment Reform Bill, the Minister outlined the policy rationale for the changes to CDEP:

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55 *Committee Hansard*, 10 August 2007.

56 *Committee Hansard*, 10 August 2007.

57 *Submission 38*, p. 17.

58 *Submission 38*, p. 18.

> While CDEP has been a major source of funding for many Northern Territory communities, it has not provided a pathway to real employment, and has become another form of welfare dependency for many people.
>
> Instead of creating new opportunities for employment, it has become a destination in itself.
>
> It has also in too many cases been used as a substitute for services that would otherwise be the responsibilities of governments—services that should be provided through full-paid employment.[59]

2.56 A representative from the Department of Employment and Workplace Relations told the committee that, with the phased removal of CDEP, community brokers and transition officers will work on a one-on-one basis with each of the CDEP organisations to ensure a smooth transition:

> [W]e will have a group of people to work very closely with the organisations to make sure that we can track participants, that we can move participants into work and undertake the necessary actions to work with organisations to make sure that they can manage the change. We are also putting in place community brokers for this financial year. Hopefully most of the community brokers will be living within the community itself. Because there are significant changes to the CDEP and also the accelerated lifting of the remote area exemptions, we want to put people in place who can broker solutions between the new service providers that are coming through, work with the organisations to think about what they need to do to actually participate in that new service space and also work closely with participants to make sure that they are aware of their obligations. Particularly with the remote area exemptions, there is a new participation requirement for a lot of people. We need to make sure that we minimise the impact on those people and ensure that they do understand what their new obligations are. So there is one-off staffing required for this financial year for both of those obligations.[60]

2.57 Further:

> We also have some additional staffing in to manage the build-up of the new contracts. Part of the CDEP changes but also the acceleration of the lifting of remote area exemptions will involve putting in place an expanded provider of Australian government employment services contracts. There will be a lot more people accessing those services. We need to make sure that we have contract management staff that are working closely with all of those providers to make sure that they are actually undertaking services and delivering the services that we need. Also embedded is travel.[61]

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59 *House of Representatives Hansard*, 7 August 2007, p. 5.

60 *Committee Hansard*, 10 August 2007.

61 *Committee Hansard*, 10 August 2007.

Income management regime

2.58 Some submissions and witnesses expressed concern at the income management regime provisions of the Welfare Payment Reform Bill.[62]

2.59 For example, the Australian Council of Social Service (ACOSS) submitted that the proposed changes would be ineffective: the establishment of a compulsory income management regime will not, in and of itself, change the way people behave at a fundamental level; rather, Indigenous people should be encouraged to take responsibility for their own lives by adoption of voluntary approaches to welfare.[63] Indeed, ACOSS expressed the view that the proposed system of income management 'is unlikely to contribute to the solutions and would in a number of ways contribute to the underlying problems'.[64]

2.60 ACOSS also argued that:

> The Bill implements an apparently simple solution to a complex set of problems – attaching new conditions to social security payments and taking over family budgets to combat child abuse and truancy generally, and prolonged joblessness and social breakdown in remote communities. In practice, the income management system outlines in the Bill is very complicated. It is of concern that despite the complexity of this legislation, there is still a lack of precision as to who will be subject to income management, under what circumstances and for how long.[65]

2.61 Several submissions and witnesses also expressed concern about the practical impact of quarantining welfare payments. For example, HREOC submitted that quarantining measures designed to encourage school attendance may disproportionately impact on families in areas without adequate schools and teachers.[66]

2.62 Submissions and witnesses were also critical of the provisions of the Welfare Payment Reform Bill relating to the removal of rights to appeal to the Administrative Appeals Tribunal (AAT) and the Social Security Appeals Tribunal (SSAT). The Welfare Rights Network argued that the removal of appeal rights 'adversely discriminates' against people living in declared relevant areas in the Northern Territory:

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62 As outlined in Chapter 1, Schedule 1 of the Welfare Payment Reform Bill establishes income management regimes nationally, as well as specific regimes which are applicable only in the Northern Territory and Cape York.

63 *Committee Hansard*, 10 August 2007.

64 *Submission 97*, p. 4.

65 *Submission 97*, p. 4.

66 *Submission 67*, pp 11-12.

> The right to appeal has always been a fundamental protection for Social Security recipients against bureaucratic neglect and error. However, the Government intends to remove the rights to external appeal to the Social Security Appeals Tribunal (SSAT) for Northern Territorians who are subject to the Income Management of their welfare payments. This sets a very dangerous precedent to strip away this protection for an entire group of Australians based solely on where they live. These decisions could have huge implications for families.
>
> …
>
> It is difficult to accept the Government's rationale as to why Indigenous communities in the Northern Territory are to be denied access to independent review of decisions relating to the quarantining of welfare payments when other Australians in other parts of the country will be able to exercise their full appeal rights. [67]

2.63 In response to these concerns, a FaCSIA officer explained that:

> The primary purpose of the income management regime as it applies [in] the Northern Territory is, in those prescribed areas, to have an income management approach to all government welfare payments going into a community, to ensure that the flow of government assistance into the community is able to be managed as a whole to encourage expenditure on those services and goods that will lead to better outcomes for the children in those communities. On that basis, the government took the decision to apply the income management regime not just to payments associated with children themselves.[68]

2.64 On the question of removing appeal rights, FaCSIA advised that:

> There are standard appeal rights that apply to all decisions relating to social security. They involve an authorised review officer in Centrelink reviewing a decision, then appeals to the SSAT and the AAT and subsequently to the courts. In the case of the Northern Territory response, because it is time limited, 12-month quarantining, it was decided that the authorised review officer review would remain but that appeals to the SSAT and the AAT would take too long and would consequently undermine the timing of the emergency response. People will only have their income quarantined to the extent of 50 per cent of their income from welfare payments and for 12 months only.[69]

2.65 The committee also questioned FaCSIA about what is meant by the term 'unsatisfactory school attendance' in the income management provisions of the Welfare Payment Reform Bill. FaCSIA advised that the applicable state and territory

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67 *Submission 44*, p. 2.

68 *Committee Hansard*, 10 August 2007.

69 *Committee Hansard*, 10 August 2007.

laws would be used as a basis for assessing whether school attendance was unsatisfactory.[70]

Funding to address inadequate housing

2.66 The Northern Territory Minister for Child Protection raised concern that little of the $580 million in appropriations to be made as part of the intervention package was going towards addressing the backlog of Indigenous housing in the Northern Territory.[71]

2.67 In response to these concerns, the Secretary of FaCSIA pointed to existing government funding commitments in relation to housing:

> There is some money in this for the maintenance and the fixing up of houses and, as Mr Gibbons said, the government announced in the budget this year $1.6 billion for Indigenous housing over the next four years. A large proportion of that the minister has already made it clear will be available for the Northern Territory. We have considerable resources for housing already appropriated in the budget.[72]

Restrictions on the availability of alcohol

2.68 The Mayor of the Alice Springs Town Council gave evidence that 85 per cent of police work in Central Australia is alcohol related.[73] However, the Ngaanyatjarra Pitjantjatjara Yankunytjatjara Women's Council told the committee that the availability of alcohol through outlets in Indigenous communities was only part of the problem; the supply of alcohol from the major towns in the Northern Territory also presents a significant problem.[74] The submission of the Bawinanga Aboriginal Corporation similarly noted that the ready availability of alcohol in centres located close to Indigenous communities can undermine the effectiveness of prohibition measures:

> The majority of illegal drugs and alcohol are brought in by road during the dry season. By opening the roads and townships, there is significant evidence to suggest that these problems will be exacerbated. Another impact of prohibition experienced by Maningrida was an out-migration of residents to Darwin. This had the effect of significantly disrupting local

70 *Committee Hansard*, 10 August 2007.

71 *Committee Hansard*, 10 August 2007.

72 *Committee Hansard*, 10 August 2007.

73 *Committee Hansard*, 10 August 2007.

74 *Committee Hansard*, 10 August 2007. It should be noted that the initiatives relating to reducing the availability of alcohol in the National Emergency Response Bill extend beyond Indigenous communities – see for example proposed sections 20 to 22.

> employment outcomes, family structures and also resulted in a number of alcohol related deaths in Darwin.[75]

2.69 The mayors of the Alice Springs and Katherine Town Councils gave evidence regarding the number of takeaway liquor licences in each town:

> Councillor Shepherd—In Katherine there are probably eight or 10 where there is takeaway alcohol, and of course there are restaurants and other areas like that, and the clubs too. I do not really think the clubs are a problem, but the other takeaway outlets certainly are.
>
> Councillor Kilgariff—In Alice Springs we have over 90 outlets. Twelve of those are takeaway and the rest are restaurants. I agree with Mayor Shepherd that the restaurants are not really the point at issue here, but certainly the takeaway outlets are.[76]

2.70 The mayors were asked whether compulsory acquisition of some takeaway licences was being considered as a means of reducing the number of outlets:

> Councillor Kilgariff—It has certainly been the case in Alice Springs. We had a crime summit yesterday and that was strongly brought forward. For instance, there is a service station here which has a liquor licence for historical reasons. That would seem an obvious target for such a buy back. There are a couple of corner shops that have liquor licences. So there is a strong suggestion—and I think a growing suggestion—that those sorts of liquor licences should be bought back.
>
> Councillor Shepherd—I would say that is the same in Katherine. It certainly has been discussed at some length in Katherine.[77]

2.71 The Mayor of Katherine Town Council gave evidence that additional drug and alcohol rehabilitation services are needed in Katherine:

> While we do have a lot of agencies addressing alcohol concerns, we do not have the facilities to cope with the number of people. We need a rehabilitation centre that can house 50 or 60 people. We also need that follow-on care when they are reintroduced into the community as sober people so that there is help for them to maintain that. We desperately need better services. We in Katherine have been calling for a long time for better services to cope with the alcohol problems and the people who are victims of alcohol abuse.[78]

2.72 Under clause 20 of the National Emergency Response Bill, 1350 millilitres of pure alcohol is the threshold amount at which obligations to collect information about takeaway liquor sales in the Northern Territory are imposed. This clause also creates

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75 *Submission 3*, p. 20.

76 *Committee Hansard*, 10 August 2007.

77 *Committee Hansard*, 10 August 2007.

78 *Committee Hansard*, 10 August 2007.

associated offences for failure to meet those obligations.[79] A submission from Woolworths Ltd expressed concern about the difficulty involved in calculating the amount of alcoholic beverages which equates to 1350 millilitres of pure alcohol.[80]

Restrictions on pornography

2.73 The Festival of the Light and the Australian Christian Lobby argued that the provisions in Schedule 1 of the National Emergency Response and Other Measures Bill should go further.[81] The Festival of Light recommended extending the prohibitions on possession and supply of X18+ films across the Northern Territory:

> Those who live in the prescribed areas are not, nor should they be, prohibited from travelling outside these areas. The Northern Territory, unlike the six States, currently permits the sale of X18+ films to any person over the age of 18. If this is allowed to continue then it will seriously undermine the prohibitions being put in place in the prescribed areas.
>
> Furthermore, the Northern Territory's Classification of Publications, Films and Computer Games Act (NT) Section 50 (2) provides that "A person shall not sell or deliver to a minor a film classified X 18+ or R 18+, unless the person is a parent or guardian of the minor." This extraordinary provision means that it is not unlawful for a parent or guardian to give any child under their care an X18+ film. Videos and DVDs are very portable items. Unless their sale is prohibited not just within the boundaries of the prescribed areas but throughout the Northern Territory then X18+ films will most likely continue to play a role in the premature sexualisation and sexual abuse of indigenous children.[82]

2.74 Part 3 of the National Emergency Response Bill requires filters accredited by the Minister to be installed and maintained on publicly-funded computers as well as the maintenance of records regarding computer usage and six-monthly auditing of computers. Laynhapuy Homelands Association Inc expressed concern regarding the administrative burden imposed on organisations in order to implement these requirements:

> The recording of computer usage by staff can be automated through the server software. However there will be significant cost in installing 'filter' software because of the labour and travel costs (this will run to several thousands of dollars).

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79 See also subclause 12(6) which imposes harsher penalties in relation to possession or supply of alcohol in prescribed areas where the volume of alcohol exceeds this amount.

80 *Submission 41*.

81 Australian Christian Lobby, *Submission 2*; Festival of Light, *Submission 37.*

82 *Submission 37,* p. 3.

> The 'auditing' requirement would likewise impose a cost of several thousands of dollars, if physical inspection of the computers was required to be undertaken.[83]

2.75 On 10 August 2007, the Prime Minister announced new initiatives in relation to the provision of free online content filters to Australian families and public libraries, as well as access to Internet Service Provider filtering on request.[84] In relation to these new measures, the Minister for Communications, Information Technology and the Arts, Senator the Hon Helen Coonan, noted that Tasmania and the ACT have existing filtering strategies in their respective public libraries and she called on the other remaining premiers and the NT Chief Minister to 'take this matter seriously'.[85]

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83 *Submission 38*, p. 8.

84 Prime Minister of Australia, *Media Release*, 10 August 2007, accessed at: http://www.pm.gov.au/media/Release/2007/Media_Release24485.cfm

85 Minister for Communications, Information Technology and the Arts, *Media Release*, 10 August 2007, accessed at: http://www.minister.dcita.gov.au/media/media_releases/netalert_-_protecting_australian_families_online

CHAPTER 3

COMMITTEE VIEW

3.1 At the outset, the committee expresses its deep concerns in relation to the abuse and neglect of Indigenous children described by the *Little Children are Sacred* report as well as many previous government and media reports. The committee is of the view that immediate and absolute priority must be given to addressing the issues that affect the welfare of Indigenous children in the Northern Territory. Indeed, the protection of these children from violence and abuse, and the establishment of conditions that will allow them to lead healthy and productive lives, in which they achieve their full potential, is of the utmost importance. More broadly, there is clearly a need for immediate action to address the disadvantage all Indigenous people confront.

3.2 The committee welcomes the policy changes contained in this suite of bills as a genuine and enduring commitment from the Australian Government to tackle critical issues in Indigenous communities in the Northern Territory. These issues include high unemployment, alcohol and drug dependency, poor health and education outcomes, inadequate housing and child abuse. In saying this, the committee acknowledges that many of the issues that the bills seek to address are complex and entrenched; however, this is no excuse for failure or neglect.

3.3 The committee commends the holistic approach taken by the Australian Government in its policy formulation in this challenging area. The legislation contains 'on the ground' practical solutions which the committee believes will go a long way to addressing some of the inherent problems in Indigenous communities. In this context, the committee notes the close cooperation that has taken place throughout the policy formulation process between all relevant Commonwealth agencies.

3.4 The committee is concerned about the conflicting evidence it received on the issue of the compulsory acquisition provisions in the bills and whether they consistently provide for just terms compensation. The committee queries why some provisions in the bills have directly transferred the terminology used in section 51(xxxi) of the Constitution, while others have used the phrase 'a reasonable amount of compensation'. The committee believes the government should provide further clarification in relation to this complex issue when the Senate resumes its consideration of the bills.

3.5 The committee is also concerned about evidence it received regarding the difficulty individuals may face in calculating the amount of alcoholic beverages which would equate to 1350 millilitres of pure alcohol. In particular, the committee considers that there is a danger individuals may be liable to criminal penalties because they do not understand what the law requires. The committee recommends that the government develop explanatory material to assist people to understand this aspect of

the offences created under the National Emergency Response Bill as a matter of high priority.

3.6 In a similar vein, the committee believes that there should be further clarification of what is meant by 'unsatisfactory school attendance' in relation to the income management provisions of the Welfare Payment Reform Bill so that welfare recipients have a clear understanding of the requirements the bill imposes upon them.

3.7 The committee received some evidence that suggested there was a need to expand alcohol and drug rehabilitation services in some Northern Territory centres. The committee considers that the government should closely examine the need for these services to ensure that the measures in the intervention package are consolidated through direct support to individuals who are overcoming drug and alcohol addictions.

3.8 The committee believes that it will be important to carefully monitor the measures in the National Emergency Response and Other Measures Bill dealing with the possession and supply of X18+ films to assess their effectiveness in preventing the use of these films in the sexual abuse or sexualisation of children and young people in the prescribed areas. Given the ready access to X18+ films under the Northern Territory's *Classification of Publications, Films and Computer Games Act*, which will continue to apply outside the prescribed areas, these measures may not be sufficient to achieve the objective.

3.9 Consideration may need to be given to extending the prohibition on the possession and sale of X18+ films throughout the Northern Territory,[1] or to cutting off the supply of such films at their source through an amendment to the *Customs (Prohibited Imports) Regulations 1956*, a prohibition on the carriage of X18+ films by a carrier service or even a prohibition on the production and sale of X18+ films in the Australian Capital Territory.[2]

3.10 The committee welcomes the recently announced government initiatives in relation to internet content filtering. The committee considers that these initiatives may help to address the issue raised by Laynhapuy Homelands Association Inc about the cost of installing filter software.

3.11 As the Minister has publicly acknowledged,[3] the bills provide him with exceptionally broad powers. While the committee has some reservations about the breadth of those powers, it accepts that they are necessary in light of the urgency of the circumstances to be addressed. Moreover, the committee notes that several

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1 The Australian Christian Lobby draws a parallel between the prohibition of X18+ films and the replacement of regular petrol with Opal fuel to combat petrol sniffing. In both cases limiting the measure to the affected areas is ineffective. See *Submission 2*.

2 See Festival of Light, *Submission 37*.

3 Australian Broadcasting Corporation, *Lateline*, 6 August 2007, transcript accessed at: http://www.abc.net.au/lateline/content/2007/s1999216.htm on 11 August 2007.

significant parts of the National Emergency Response Bill and the National Emergency Response and Other Measures Bill are subject to sunset provisions (that is, they will cease to have effect at the end of a period of five years after commencement).

3.12 The committee acknowledges that the bills represent a significant departure from existing policies. Clearly, implementation of this legislation in the Northern Territory will provide lessons for Indigenous communities in other areas. As a result, the committee believes that it is essential that the impact of the legislation is closely monitored, and subject to regular review and reporting. The committee is of the view that annual reporting should occur through the existing Overcoming Indigenous Disadvantage reporting framework which provides for cross-portfolio annual reports that are publicly available.[4] In the committee's view, the outcomes of the intervention package should be measured against publicly stated key performance indicators and reported on in a dedicated section of the Overcoming Indigenous Disadvantage report.

3.13 The committee welcomes evidence from the Northern Territory Emergency Taskforce that a strategic communications plan is being developed in relation to the intervention.[5] The committee is confident that the taskforce will also be developing an initial operational plan as well as preparing longer term plans. These documents should all be made publicly available and information regarding revisions to these plans should be provided in the Overcoming Indigenous Disadvantage report. The committee considers that the strategic communications plan and initial operational plan should be published within six months while the longer term planning documents should be made available within 12 months.

3.14 In making these recommendations, the committee's intent is that there should be transparency in relation to the specific objectives of the intervention package, how it is planned to deliver those objectives and how the government will measure the success of these initiatives.

3.15 In addition, the committee recommends that a review of the legislation should be conducted two years after its commencement, particularly to ascertain the impact of the measures on the welfare of Indigenous children in the Northern Territory. The committee does not consider that there needs to be a legislative requirement for such a review but does recommend that a report on the review be tabled in Parliament.

3.16 Finally, the committee encourages the Australian Government to work closely with the Northern Territory Government and to engage in dialogue with Indigenous communities in the Northern Territory to ensure that this initial emergency response

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4 See further Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage: Key Indicators 2005*, Productivity Commission, Canberra, 2005 at http://www.pc.gov.au/gsp/reports/indigenous/keyindicators2005/keyindicators2005.pdf (accessed 9 August 2007).

5 *Committee Hansard*, 10 August 2007.

leads to long-term outcomes. The committee recommends, as suggested by HREOC, that this dialogue should commence with a public information campaign designed to allay the fears of Indigenous communities in the Northern Territory and ensure Indigenous people are fully informed about how this legislative package will impact on them.

Recommendation 1

3.17 The committee recommends that the operation of the measures implemented by the bills be continuously monitored and publicly reported on annually through the Overcoming Indigenous Disadvantage reporting framework.

Recommendation 2

3.18 The committee recommends that the Northern Territory Emergency Taskforce make publicly available its strategic communications plan as well as other operational plans, within six months, and the long term plans being developed in relation to the intervention, within 12 months; and that information regarding significant revisions to these plans should be provided in the Overcoming Indigenous Disadvantage report.

Recommendation 3

3.19 The committee recommends that the operation of the measures implemented by the bills be the subject of a review two years after their commencement, particularly to ascertain the impact of the measures on the welfare of Indigenous children in the Northern Territory. A report on this review should be tabled in Parliament.

Recommendation 4

3.20 The committee recommends that a culturally appropriate public information campaign be conducted, as soon as possible, to allay any fears Indigenous communities in the Northern Territory may hold, and to ensure that Indigenous people understand how the measures in the bills will impact on them and what their new responsibilities are.

Recommendation 5

3.21 The committee recommends that the Australian government develop, as a matter of high priority, explanatory material to assist people to understand what is meant in practical terms by the phrases 'a quantity of alcohol greater than 1350 millilitres' and 'unsatisfactory school attendance'.

Recommendation 6

3.22 The committee recommends that the Australian Government should closely examine the need for additional drug and alcohol rehabilitation services in the Northern Territory and, if necessary, provide additional funding support to those services.

Recommendation 7

3.23 The committee recommends that the Senate pass the bills.

Senator Guy Barnett
Chair

ADDITIONAL COMMENTS BY THE AUSTRALIAN LABOR PARTY

1.1 At the outset, Opposition Senators wish to reiterate Labor's support for the intervention and acknowledge the seriousness of the problem of child abuse both in the Northern Territory and nationally. The Leader of the Opposition has outlined the grim statistics relating to abuse and neglect of Indigenous children in the Northern Territory:

> In the five years to 2006 notifications of abuse and neglect of Indigenous children in the Northern Territory grew at more than three times the rate of that for non-Indigenous children. Between 2005 and 2006 Indigenous children in the Northern Territory were five times more likely than non-Indigenous children to be the victims of child abuse on the basis of substantiated reports of that abuse. Furthermore, of all sexually transmitted infections diagnosed in Aboriginal people in the Territory, eight per cent occurred in children under the age of 16. That is nearly three times the infection rate for non-Aboriginal children.[1]

1.2 Opposition Senators believe that addressing child abuse and neglect in Aboriginal communities is rightly designated as an issue of urgent national significance. We believe that federal, state and territory governments have obligations to take both immediate and sustained action to improve the lives of all children, especially those in Aboriginal communities.

Appropriations

1.3 The two appropriations Bills considered by this inquiry provide around $587 million in the current budget year for the government's Northern Territory intervention and associated measures. The committee did not have the opportunity to examine the appropriations in the same level of detail as provided for by the normal Budget estimates process, and as such only general comments can be made.

1.4 Opposition Senators welcome the increased expenditure on improved services, infrastructure and economic development in Aboriginal communities.

1.5 However, we note that the appropriations are for the current budget year only, and do not extend into the longer term. During the inquiry, the committee sought clarification on what this means for contracts funded under the initiative, and in particular the capacity to enter into contracts that go beyond 30 June 2008. FaCSIA responded to a question on notice regarding this issue:

> While the current bills contain some funding for activities linked to the second (normalisation) phase of the Emergency Response, it is recognised that further funding will be required to address the longer term issues.

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1 *House of Representatives Hansard*, 7 August 2007, p. 70.

> Further Commonwealth budgetary processes will include consideration of these requirements. Future year funding implications of measures contained in these bills will be considered at that time.[2]

1.6 Labor is concerned that the capacity to enter into long term contracts and funding commitments will be critical to the success of the intervention. Labor considers that the issue of the funding available in future budget years, to consolidate the outcomes of the initial intervention package, should be addressed as a matter of priority.

1.7 Labor Senators also note with concern evidence from FaCSIA that the two appropriation bills do not include any funds for additional housing for Indigenous people.[3]

Immediate and long term action, planning and response to the *Little Children are Sacred* report

1.8 Labor supports the need for an emergency intervention and immediate action to improve the health and wellbeing of Aboriginal children in the Northern Territory.

1.9 Labor is concerned that this intervention is part of a longer term strategy which has as its aims:

- the protection of children;
- the nurturing of children and ensuring they have access to appropriate health and education;
- strengthening Indigenous communities to take control of their own affairs; and
- assisting those communities to achieve economic independence.

1.10 These aims cannot be achieved unless the Commonwealth, after dialogue and genuine consultation with affected Aboriginal communities, sets out a comprehensive long term plan.

1.11 The intervention is silent on many of the recommendations set out in the *Little Children are Sacred* report and it is for this reason, that its authors, Ms Pat Anderson and Mr Rex Wild QC, have been critical. In particular, Ms Anderson's response to the intervention package has been reported as follows:

> 'Aboriginal families and Aboriginal people do want to own this problem, they want to be part of solving it. They want it fixed, they are sick and tired of their communities being sick,' she said.

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2 FaCSIA, *answers to question on notice 8 & 9*, 12 August 2007.

3 *Committee Hansard*, 10 August 2007.

> '[But] if we do this top down as proposed, there's a danger of it being seen as a cynical exercise.
>
> 'There's a real opportunity here to once and for all do something .... We need extraordinary interventions but not at the risk of infringing our fundamental human rights.' Ms Anderson said the opportunity presented by the report had been lost.[4]

1.12 Any longer term plan should establish a framework for the achievement, in partnership with the Northern Territory Government and Indigenous communities, of the recommendations set out in the *Little Children are Sacred* report.

Permit system

1.13 Opposition Senators do not believe that in their current form the proposed changes to the permit system will improve the security and safety of children in a practical way.

1.14 In its submission, the Police Federation Australia said:

> In relation to the long-standing permit system for access to Aboriginal communities, the PFA is of the view that the Australian Government has failed to make the case that there is any connection between the permit system and child sexual abuse in Aboriginal communities. Therefore, changes to the permit system are unwarranted.
>
> We note that the Government has decided, on balance, to leave the permit system in place in 99.8 per cent of Aboriginal land.
>
> Operational police on the ground in the Northern Territory believe that the permit system is a useful tool in policing the communities, particularly in policing alcohol and drug-related crime. It would be most unfortunate if by opening up the permit system in the larger public townships and the connecting road corridors as the Government intends, law enforcement efforts to address the 'rivers of grog', the distribution of pornography, and the drug running and petrol sniffing were made more difficult.[5]

1.15 The Northern Land Council noted that it had conducted comprehensive consultation in its region, in relation to changes to the permit system, in 2006 and that both traditional owners and Aboriginal people living on communities universally opposed the changes.[6] Similarly, the Central Land Council submitted that:

> Opening up roads and community 'common areas' on Aboriginal land will open up Aboriginal land and communities more broadly. Once people enter Aboriginal land it is difficult to control their movement. Aboriginal

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4 'Report authors see little changing from indigenous plan', *AAP*, 10 August 2007; see also 'Tactic a backward step say authors', *The Australian*, 11 August 2007, accessed at: http://www.theaustralian.news.com.au/story/0,25197,22225009-5013172,00.html

5 *Submission 24*, p. 3.

6 *Submission 154*, p. 3.

> landowners are concerned about the potential flow of visitors on to their land more broadly without permission and without guidance with regard to safety and important sites.
>
> The permit system is an important policing tool in remote communities. Police routinely asked unwanted visitors to leave communities because they do not have a permit…If more unwelcome visitors visit communities, such as grog runners and carpet baggers, there will be a greater demand for policing with fewer powers of enforcement.[7]

1.16 On the other hand, several submissions spoke of the need for greater public scrutiny of Aboriginal communities.[8]

1.17 The committee requested copies of the submissions provided to the 2006 review of the permit system. However, the Secretary of FaCSIA refused to provide the submissions on the basis that: 'It is advice to the government; it is a matter for the government.'[9] Opposition Senators believe that this is an example of the unnecessarily secretive approach the government has taken to the development of many aspects of the intervention package. Clearly, debate would be more fully informed if submissions to the 2006 review of the permit system were publicly released.

Additional Recommendation 1

1.18 Subject to additional recommendations 2 and 3 below, Labor Senators recommend that the blanket removal of the permit system on roads, community common areas and other places as specified in Schedule 4 of the National Emergency Response and Other Measures Bill be opposed.

Additional Recommendation 2

1.19 Labor Senators support access without a permit for agents of the Commonwealth or Northern Territory Government to facilitate service delivery (such as doctors or other health workers).

Additional Recommendation 3

1.20 Labor Senators recommend that greater public scrutiny of Aboriginal communities in the Northern Territory be facilitated by allowing access to roads and common town areas, without a permit, by journalists acting in their professional capacity, subject to the restrictions relating to the protection of the privacy of cultural events (such as sorry business) as proposed in schedule 4 of the National Emergency Response and Other Measures Bill.

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7 *Submission 84*, p. 3.

8 See for example Mr C Tangey, *Submission 1*.

9 *Committee Hansard*, 10 August 2007.

Compulsory acquisition of rights, titles and interest in land

1.21 Facilitating better housing and infrastructure has been central to the government's argument for needing five year leases over townships in Aboriginal communities. The government has argued that taking on the responsibility as the effective town landlord is necessary to quickly improve vital infrastructure and housing in these communities as well as to support the economic development of the communities.

Negotiation rather than compulsory acquisition

1.22 The committee received evidence regarding the significant disappointment of Aboriginal communities in the Northern Territory that the government has chosen to compulsorily acquire interests in land instead of negotiating with communities in relation to the best means of achieving the shared objectives of the intervention package. Mr John Ah Kit of the Combined Aboriginal Organisation of the Northern Territory told the committee:

> We have problems with the compulsory acquisition and the special purpose leases around the town camps, which are almost as good as freehold. You need to talk to the organisations that control those and you need to talk to the Territory government. I am sure some agreement can be struck, if there were a head-lease on offer for those organisations like Tangentyere ... But there is no real consultation.[10]

1.23 More broadly Mr Daly, Chair of the NLC advocated further negotiation between governments and Aboriginal people:

> We always thought that we would be consulted all along. Unfortunately, some things have been dropped in front of us and now we are running at 100 miles an hour. But what we have always said to the Commonwealth—and we say this to all governments within Australia—is: 'Come and talk to us. We're practical people and we're about getting the outcomes for our people.'[11]

1.24 Labor Senators note that the compulsory acquisition powers will be phased in, giving time for further negotiation with affected communities, and urge the Government to negotiate with the affected communities during this phase-in period.

Just terms

1.25 Labor Senators support the comments in the government report on the uncertainty over whether just terms compensation will be paid under the legislation and particularly note the evidence of the Law Council suggesting that:

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10 *Committee Hansard*, 10 August 2007.

11 *Committee Hansard*, 10 August 2007.

> [T]he provisions concerning compulsory acquisition of Aboriginal land are discriminatory, unnecessary and should be excised from the legislation—individual Aboriginal communities should be consulted and asked to assist and participate before compulsory acquisition could be contemplated…[12]

1.26 The Law Council also noted that:

> If it is the Territory's power that supports these parts of the legislation and no other head of power is referable—which, arguably, is the case—then compensation would not be required under the Constitution and the legislation would not require payment of compensation. That, to me, is the most fundamental difficulty. If compensation is payable, in my view, the legislation should clearly state that.[13]

1.27 Labor Senators consider it to be an absolutely fundamental principle that the Commonwealth Government should pay just terms compensation for the acquisition of property from anyone, anywhere in Australia. Further, Labor rejects absolutely any suggestion that services or infrastructure, which all Australians have the right to expect their governments to provide, should be considered as contributing to compensation for the acquisition of the property rights of Indigenous people.

1.28 We support comments in the majority report calling on the government to clarify the position in relation to the compulsory acquisition powers in the bills which provide for a 'reasonable amount of compensation' to be paid.

Compulsory lease provisions

Access for traditional usage

1.29 Opposition Senators believe that the operation of leases provided for under proposed section 31 of the National Emergency Response Bill should allow access to the leased land for traditional purposes consistent with section 71 of the *Aboriginal Land Rights (Northern Territory) Act 1976*.

Need for negotiation and a review in 12 months

1.30 This lease process will be new and untried, and could cause significant concern and confusion for Aboriginal communities if not handled sensitively by the Commonwealth Government. However, if this process is approached co-operatively, it has the potential to deliver significant benefits to those communities. Opposition Senators urge the government to use the Minister's powers under proposed section 36 as a basis for negotiating with affected communities in relation to the terms and conditions of these leases.

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12 *Committee Hansard*, 10 August 2007.

13 *Committee Hansard*, 10 August 2007.

1.31 Labor Senators believe a review to examine how effective the leasing provisions have been in achieving the aims of the intervention package should be conducted 12 months from the commencement of the legislation. The review should also assess progress in establishing infrastructure and housing in both towns and town camps. We cannot afford for the improvements to stall, or become mired in a legal process that does not deliver outcomes. Labor Senators believe that a co-operative attitude from both sides will yield the most effective outcomes.

1.32 The immediate infrastructure requirements of these communities have, justifiably, seen the government motivated to take immediate action. The success of the stabilisation phase in terms of infrastructure improvements is immediately measurable. In 12 month's time, the government will know how many houses it has built, or fixed, and how much community infrastructure has been improved.

1.33 Although the acquisition of the five-year leases will occur in three tranches, the first tranche is to be immediate and the others will occur within six months. Thus there will be a significant number of communities where immediate action can be taken and progress is capable of being reviewed after a year. To suggest otherwise undermines the argument in favour of the emergency measures.

Additional Recommendation 4

1.34 Labor Senators recommend that an independent review of the effectiveness of the measures taken under Part 4 of the National Emergency Response Bill should be conducted after 12 months.

Welfare reform

1.35 When this intervention was first announced, the Prime Minister and the Minister said that the income management regime for people in prescribed Northern Territory communities would apply for an initial period of 12 months.

1.36 In this period, the government should be able to measure how the behaviour of individuals has changed in terms of their spending on food and essentials, as opposed to other items such as alcohol. School attendance should also be a measurable indicator of performance of the welfare reforms.

1.37 Labor Senators want to assess the effectiveness of the income management measures at stabilising the communities, and to see how they are interacting with broader income management systems and welfare reforms.

1.38 Labor Senators also note that the quarantining of welfare payments and direction of where people can spend their money means travelling between outstations and homelands will be severely restricted. This means that people who may want to go back to remote areas for cultural and ceremonial reasons may be prevented from doing so on the basis that the legislation requires other expenditure. Labor Senators have concerns about how these provisions may operate in practice, particularly as these provisions have the potential to prevent Aboriginal people travelling for funerals.

Additional Recommendation 5

1.39 Labor Senators recommend that a review be conducted after 12 months of the operation of the welfare reform and income management system specific to the Northern Territory.

Racial Discrimination Act

1.40 Labor Senators are mindful of the Law Council's concern that exclusion in the three main bills of the operation of the Racial Discrimination Act is 'utterly unacceptable'.[14]

1.41 Labor Senators also note the comments by Mr John von Doussa, President of HREOC in relation to 'special measures', particularly the necessity of undertaking immediate and effective consultation with those affected by the measures:

> …a fundamental feature of 'special measures' is that they are done following effective consultation with intended beneficiaries and, generally, with their consent. In the present case, the absence of effective consultation with Indigenous peoples concerning the legislative measures is, therefore, a matter of serious concern. We accept that this is a case where urgent action is necessary. Nevertheless, it seems to us that the success of the action, both immediately and in the long term, will depend upon effective consultation. Effective consultation is fundamental to respecting the human rights of Indigenous people.
>
> We accept the reality of the situation that these bills are going to pass so quickly through parliament; therefore, what we want to emphasise today are some practical considerations. Ideally, to justify the legislation as 'special measures' there should have been comprehensive consultation beforehand and significant input from the communities concerned. That has not happened, but it is not too late now to embark upon a consultation process. [HREOC emphasises] the need for a culturally appropriate consultation process and a significant public information campaign so that the communities affected understand what is being done and why it is being done, and so that they have the opportunity to contribute to the decisions that are made now as to the implementation of this legislation.[15]

1.42 Given the need for consultation, Labor Senators are of the view that the government should consult now. We reiterate the view put by HREOC that it is never too late to consult.

1.43 The government has indicated in briefings to the opposition that they are confident that the legislation does not offend the Racial Discrimination Act. This advice was also provided by FaCSIA in evidence to the committee's inquiry.

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14 *Submission 52*, p. 4; see majority report at paragraphs 2.21 and 2.22.

15 *Committee Hansard*, 10 August 2007.

1.44 Labor Senators believe that, as legislators, we should be sending a clear message that we have confidence in this plan, we have confidence that it will be of benefit to the people of the Northern Territory, and we have confidence that it will achieve results against its aim – the protection of our children. In doing so, we must observe the integrity of the Racial Discrimination Act. This is a basic principle for the Opposition, a basic principle for this country and a basic principle for the Indigenous community of this country.

Additional Recommendation 6

1.45 Labor Senators recommend that the provisions in the bills suspending the operation of the Racial Discrimination Act be opposed.

Changes to CDEP

1.46 The government has indicated its intention to require CDEP participants in the Northern Territory to transition into mainstream work or onto income support and the Welfare Payment Reform Bill provides for a transition payment for existing CDEP participants. The committee heard that these changes will affect approximately 8,000 Indigenous people in the Northern Territory.[16] In addition, several submissions were received expressing concern in relation to these changes. The Bawinanga Aboriginal Corporation (BAC) submitted a report prepared by consultants engage by BAC. The report stated that:

> The extensive research base on CDEP has led the authors to believe that the Australian government's decision to abolish the program will have extensive socioeconomic impacts upon the constituents of BAC. Many of these impacts will be unintended, far reaching and difficult to predict. Most people going from CDEP to the Work for the Dole (WfD) program are likely to experience a significant drop in pay which could act as a serious disincentive to work. Of particular concern is that the abolition of CDEP may lead to a depopulation of the Outstations in the region. This is due to severe problems in the workability of the WfD program. The report finds that the impacts are not in the interests of the people of the region or the nation as a whole…[17]

1.47 Similarly, LHAI submitted to the committee that:

> [T]he Government response could well precipitate the collapse of generally well functioning organisations such a LHAI. This is because of the precipitous withdrawal of funding without time to plan or structurally adjust, the climate of extreme uncertainty which makes retention and recruitment of staff and the maintenance of morale extremely difficult, and the uncertainty as to security of land and assets. An organisation cannot

16 *Committee Hansard*, 10 August 2007.

17 *Submission 3*, p. iv.

> plan if it has no idea what in 8 weeks time its income will be or what assets it can undertake its work with.[18]

1.48 In terms of the immediate impact of the changes, LHAI stated:

> Cessation of CDEP for LHAI will result in the direct loss of 17 individual full time Indigenous contracted staff positions in an already limited labour market area. The loss of these jobs will directly impact upon the remaining 11 Indigenous positions at LHAI as the resource centre becomes increasingly constrained in it's capacity to deliver core business services to homelands residents.[19]

1.49 While Opposition Senators support the intention behind these measures, we are concerned about evidence the committee received regarding the potential impact of these changes, particularly in the short term.

1.50 Given the significance of these changes for Aboriginal communities, in the Northern Territory it is extremely disappointing that the committee did not hear from CDEP organisations at its public hearing.

Minister's powers to give directions in relation to assets

1.51 Labor Senators also hold concerns in relation to the provisions which allow the Minister to give directions in relation to the use, management, possession and even ownership of assets which are provided for under proposed section 68 of the National Emergency Response Bill. The Law Council noted in evidence to the committee that:

> [S]ome Aboriginal associations…—some of them commercial and some of them for the provision of services—have had a variety of funding from both the Commonwealth and the Northern Territory governments. There is a concern that the act will be there [,] without any differentiation between those that had been obtained through commercial enterprise and those that had been obtained through funding… That is very much a matter of concern. Here we may well have organisations or associations who have been successful, worked hard and acquired assets and may well lose them under this type of legislation.
>
> Senator STEPHENS—In relation to the winding back of the CDEP program, would it be fair to say that the assets that have been built up by communities through the CDEP program would be the kinds of assets that would be affected under this clause?
>
> Ms Webb—Yes, I think that is certainly the case. It may be that those assets have been partially funded by CDEP funds or Commonwealth funds and partially funded by commercial enterprises or commercial activity, but they will be caught up with it.[20]

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18 *Submission 38*, p. 6.

19 *Submission 38*, p. 17.

20 *Committee Hansard*, 10 August 2007.

1.52 In terms of the practical effect of these provisions, Laynhapuy Homelands Association Incorporated (LHAI) advised that:

> [O]ver the 22 years of operation since formal incorporation, LHAI has acquired and maintained significant 'operational' assets in terms of staff housing, plant and equipment, workshops, administration building, etc. and the assets of our airline business. Many of these assets have been financed through bank loans, received as donations, 'scrounged', purchased from members funds through by royalties and income generating activities. Although some 'operational' assets have been wholly or partly acquired through government specific funding, the organisation more generally often bears the cost of maintenance, operation and depreciation.
>
> In recent years, the kava wholesale business allowed LHAI to also make significant investment of its own funds in infrastructure and housing improvements in the homelands.
>
> Very few of LHAI's assets are 100% government funded – either NT or Commonwealth.[21]

1.53 Labor Senators are concerned that the impact of proposed section 68 is that any asset can be directed to be transferred from an organisation, so it would be possible under the legislation to strip assets from organisations and prevent them from functioning at all.

Requirements for reporting

1.54 Labor Senators support the intervention, and want clear indicators of success. For the emergency phase, some key performance indicators should be able to be set after 12 months, and in any case a full range of performance indicators should be measurable after two years. Labor Senators support the recommendations in the majority report for annual reporting on progress, and for the overall two-year review (Recommendations 1 and 3).

1.55 Finally, Labor Senators urge the government to support the Opposition's recommendations outlined above, which are provided in good faith and in an attempt to work constructively with the government on this issue.

21 *Submission 38*, p. 9.

1.56 Labor Senators recommend that the Bills be supported.

Senator Patricia Crossin
Deputy Chair

Senator Linda Kirk

Senator Joseph Ludwig

Senator Ursula Stephens

Minority Report
Senator Andrew Bartlett, Queensland Democrats

"We are not saying 'don't do it'. We are saying it needs to be done properly[1]"
David Ross, Director of the Central Land Council

Many witnesses and submitters to this disgracefully and unnecessarily brief inquiry spoke of their support for at least some aspects of the legislation, as well as for much of the stated intent behind it. But there is a clear need both for further scrutiny of many parts of the legislation, and for significant improvements to be made to it.

A distinction must be made between the federal government's decision to make the issue a matter of urgent priority, which should be applauded, and those aspects of the plan which are flawed and must be changed.

There is almost universal support amongst Indigenous Australians, and amongst most of the wider Australian community, for strong and urgent government and community action to help Aboriginal children – a fact which provides a solid foundation and a real opportunity for major, long-term positive change. Unfortunately, the government's approach to addressing this issue has caused so much anxiety, distress and anger amongst many Indigenous and non-Indigenous people that there is a real risk that this opportunity will be lost. It is extraordinary that on an issue where there is enormous agreement and huge potential for common ground, deep divisions have been created so quickly as a result of the divisive and disrespectful attitudes and processes that have been followed.

To quote one Aboriginal leader from outside the Northern Territory, "*the difference between disaster and success will depend on whether Brough and Howard will engage with … the traditional leaders of the NT on a way forward*."[2]

The crucial task for those of us who want to ensure that disaster is averted and the priority goal of improving the lives and futures of Indigenous children and families is not subverted by partisan politics, is to do whatever is possible to maintain a consultative, common sense, evidence based approach which can be consistently adhered to for the long haul.

No one has a mortgage on concern for children. The public record shows that Aboriginal leaders and their communities have been calling for many years for help and support in tackling the scourge of child abuse; calls that have been regularly supported by the Democrats in the Senate and the general community. It is the height of stupidity, as well as arrogant and rude, to now refuse to listen to and work with

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[1] Senate Committee Hansard, 10 August, 2007, page 51

[2] Noel Pearson, "Tricky Hunt for Common Ground", The Australian – 11 August, 2007

Indigenous people in taking the major actions necessary to create lasting, positive change.

Sadly, anyone who raises any concerns about the details of the federal government's wide-ranging intervention into the lives and communities of Aboriginal people in the Northern Territory is smeared with allegations that they don't want anything done, or they don't care about protecting children. Similarly, people who call for consultation and cooperation in implementing the federal government's measures are criticised as just trying to delay action.

The Committee was subjected to several examples of this form of verballing of those who raised concerns with aspects of the legislation, such as the following:

"We have heard a number of parties give reasons why parts of the legislation should be delayed or changed. It concerns me that many would be happier—it would appear—if nothing happened."[3]

This sort of misrepresentation unfortunately makes it necessary to re-state a fact which should be so obvious as to be beyond dispute. Aboriginal people do want urgent action and major change in the approach of governments and the resources that are provided.

A crucial opportunity for the Government to show leadership in prioritising Indigenous issues and to finally do things right is at serious risk of being lost due to the arrogant and blinkered manner the Government has adopted, as evidenced by their determination to bulldoze this complex, wide-ranging legislation through the Senate as quickly as possible without consideration of the detail or potential consequences.

The extremely short timeframe given to the Senate Committee has been an insult to the Senate, to the electorate who entrust us with doing the job of properly scrutinising important legislation, and especially to Aboriginal people who have had virtually no chance to have a say on legislation and actions which dramatically and directly affect their lives. The language of "emergency" and "crisis" which the government has used has been deliberately employed to stifle debate and prevent scrutiny and consideration of their actions.

The Northern Territory government's lack of response to the *Little Children are Sacred* report was used by the federal government to justify their intervention in the Territory and the need for the legislative changes before this Committee. Yet now the federal government is not responding to the report either, but charging ahead with a separate body of action.

[3] John Cleary, Committee Hansard, page 83

It is important to note the comments of Pat Anderson, one of the authors of that report:

- *"There is no relationship between their emergency powers and what's in our report.*
- *"We did want to bring it to the government's attention but not in the way it has been responded to by the Federal Government."*
- *"We wrote the recommendations in a such way that they appeared so reasonable that you would feel any government would be absolutely unreasonable not to begin implementing what they said."*
- *"They behaved as though we all have done nothing and we don't know anything and we have all been sitting on our hands."* [4]

Concerns stated by many submitters that the government is more interested in using the issue of child abuse as a cloak for implementing its ideological agenda and grabbing more power will not be alleviated by answers from the Department of Family and Community Services and Indigenous Affairs confirming a total absence of any consultation with the authors of the *Little Children are Sacred* report, despite their expertise and direct knowledge of the issue developed over many months of consultations and extensive discussions with people directly involved with and affected by the issue:

Senator BARTLETT—Could you tell us what consultation your department or any other departments have had with the authors of the *Little children are sacred* report in putting together this legislative response?

Dr Harmer—I am not aware of any consultation with the authors of the report. It was a very long report with many recommendations, most of which were directed towards the Northern Territory government. The Australian government decided on viewing it that this was an emergency and required urgent action. The action that the government decided it needed is spelt out in the appropriation bills and the associated Northern Territory emergency response bills.

Mr Gibbons—We of course studied the report.

Dr Harmer—As Mr Gibbons has pointed out, we did not undertake this exercise without studying the report, but, in a big report such as that, the authors made their views on what is happening pretty clear. We did not feel the need to go back to talk with them. Frankly, in responding quickly to this, we did not feel that that was the highest priority amongst all the other things that we had to do.

Senator BARTLETT—I appreciate the comment about it being an emergency but, in the six weeks since it was announced, has there been no consultation at all with them?

Dr Harmer—No—at least, not that I am aware of.[5]

It is simply inexplicable that the authors of this comprehensive report were not invited by the Committee to give evidence to this inquiry. Despite this, in answers to

[4] Pat Anderson, as quote in submission 108, Aboriginal Health & Medical Research Council of NSW, page 2

[5] Committee Hansard, 10th August, 2007

questions asked in this inquiry, the federal government repeatedly referred back to the *Little Children are Sacred* report to justify its actions.

As Jon Altman told the Committee:
"There is another way possible: empower and work with communities; support what is working and build on it; address the deep backlogs that are a result of past policy, not Indigenous, failure; and learn from international experience where there has been much more success than here."[6]

Having outlined the serious problems with the government's approach, it is appropriate to outline what should be done instead. I believe that the guiding principals that the Combined Aboriginal Organisations of the Northern Territory have put forward should form the basis of the planning and implementation of any response. These include:

- Relationships with Aboriginal communities must be built on trust and mutual respect. All initiatives must be negotiated with the relevant communities.
- Cultural awareness and appropriateness.
- Actions should draw from and strengthen governance and community capacity.
- Build on the knowledge base already there in communities and in Government.
- Flexibility and responsiveness to local needs rather than a 'one size fits all' approach.
- Aboriginal communities are entitled to receive the same benefits and services and their children the same protections that are available to other Australians.[7]

The Government has failed to respond to or factor in any of these principles in any of their decisions.

Report after report, including the *Little Children are Sacred* report, and statement after statement from Indigenous Australians, reaffirms that the key to success in the implementation of any measures, let alone measures with respect to these bills, must be full and ongoing consultation and cooperation with Indigenous leaders and their communities. This is not technically difficult or complex, but it does take ongoing effort, commitment and respect.

This sweeping legislation seeks to vest the Minister with unprecedented powers of discretion which have the potential to control major aspects of the lives of most Aboriginal people in the Northern Territory. History shows us very starkly that, even when there are the very best of intentions, the exercise of such extreme powers by non-Aboriginal people in a top-down fashion will not work. The inevitable effect will be a further disempowerment of many Indigenous people and communities, which risks making the underlying factors at the heart of the problems worse rather than better.

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[6] Jon Altman, Committee Hansard, 10 August, 2007. page 79

[7] Submission 125, Combined aboriginal Organisations of the Northern Territory, page 4

It is for this reason that its implementation must be done correctly and with the full cooperation of all parties concerned, with appropriate levels of scrutiny at all stages.

Access to and control over Aboriginal land

The most consistent and widely expressed concern by witnesses and submitters to the inquiry, as well as with the many people I have heard from and consulted with in the period following the Government's initial announcement, concerns the measures which will remove aspects of the permit system and give the Federal Government control over key areas of Aboriginal land. Evidence to the inquiry, including from FaCSIA, showed it is also still very uncertain exactly how this will operate in practice and what the consequences will be.

The submission from the Gilbert + Tobin Centre of Public Law gives some indication of the uncertainty and inequality in the approach the legislation takes:
"A non-Aboriginal property holder in the Northern Territory whose property rights are
taken away by government has access to a statutory compensation regime. Why not accord the same respect to Aboriginal property rights in this instance? Why should traditional owners have to climb over numerous additional legal obstacles to obtain compensation, by proving that a constitutional 'acquisition of property' has occurred?
This relegates Aboriginal property rights to a lower level of legal protection. Whether intentional or not, it has the effect of capitalising upon numerous complexities and doubts surrounding the meaning of section 51(xxxi), to the advantage of the Commonwealth and to the disadvantage of Aboriginal people whose sole valuable asset is frequently their property rights."[8]

The importance to Aboriginal people in having control over their own lands is widely recognised. Such rights as do exist in law have been hard won over many years. To take key parts of these away without crystal clear evidence to justify such action is unacceptable, and will dramatically increase the difficulty in building the trust and long-term cooperation with Aboriginal people which is absolutely essential to the chances of success in this area.

Not one of the many reports into child abuse or family violence has ever drawn a link between the permit system on land tenure and child abuse, a view echoed in the majority of submissions. The government has failed to produce a shred of evidence demonstrating any such link, relying at best on simply repeating assertions without providing any material to back these up. My questioning of the Department during the inquiry did not produce any substantial evidence as to what the reasoning for this was.

Senator BARTLETT—I have just had a quick look at the page you put before us trying to indicate links between the permit system changes and combating child sexual abuse, which I note draws on the *Little children are sacred* report at least twice as part

[8] submission 40, Gilbert +Tobin Centre of Public Law, page 2

of its justification. Given that you just mentioned that you have read that report thoroughly, is there any mention in any of their recommendations about the permit system or land changes being linked to child sexual abuse?

Mr Gibbons—I do not think so.

Dr Harmer—No, there is not. I will stand corrected, but I do not think that there are any recommendations about police either in that report.

Senator BARTLETT—You have mentioned in this piece of paper that whoever comes into the community cannot replace an adequate police presence. I am presuming that means a permit. Is anyone suggesting that it is an either/or situation—permits or police?

Mr Gibbons—Up to this point in time, that is what it has been for a lot of communities. There has been an absence of police.

Senator BARTLETT—Are you saying that the communities did not want police?

Mr Gibbons—No. I am saying that, for a long time, there were no police in communities.

Dr Harmer—I will also say, because we now have quite a bit of information about community reaction to the intervention, that there has been a very positive response to the presence of police in the communities.

Senator BARTLETT—I do not think anything I said suggested otherwise. What I asked was why it was being put up as an overall option that you either have a permit or a police presence? I did not know that anyone was putting it up in that way. You put forward a few dot points to underline that the removal of the permit system will promote strong, safe communities. They are basically a few assertions. Is there any actual research or data that you can provide to the committee that demonstrates that those places without permits, either in the Territory or elsewhere, have lower levels of child abuse?

Mr Gibbons—I do not believe so.[9]

The most telling evidence against the Government's insistence that removing permit controls will help tackle child abuse came from the Police Federation of Australia (PFA). They state that operational police on the ground in the NT believe that the permit system is a useful tool in policing communities, particularly in policing alcohol and drug-related crime. Their submission points to the potential that its abolition may undermine police efforts to control grog and drug running and the distribution of pornography.

The PFA is also of the view that the Australian Government has failed to make the case connecting the permit system and child sexual abuse in Aboriginal communities. Therefore, changes to the permit system are completely unwarranted. [10]

Child protection issues

There is no doubt that major action needs to be taken to address child abuse. However, there has been little, other than by way of earnest assertions, to indicate how the majority of the measures in this legislation will address child abuse. The Secretariat of National and Islander Child Care (SNAICC) stated that this suite of bills fails to provide any certainty that the child protection system in the NT will work more effectively to protect children from harm or respond when they have been harmed.

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[9] Committee Hansard, 10 August, 2007

[10] Submission 24, page 3. Police Federation of Australia

Responding to child abuse in any part of the country and for any Indigenous community requires a sustained and coordinated response involving statutory child protection, police and community-based agencies with a primary focus on a child's circumstances and family. Without a robust statutory child protection system, notifications are not responded to and communities lose faith in the system. Without appropriate and adequate levels and forms of policing, prosecutions cannot proceed. [11]

The submission by the PFA also noted this aspect and commented on the complexity of penalties and measures that need a strong police presence, yet there has been no discussion or even mention about funding for further ongoing police in the region, nor any indication that much needed training for police to deal with these interventions had been addressed in any meaningful way.[12]

It is also important to note that there has not been any discussion at all about what measures will be put in place to support the development of community-based services to work with families affected by abuse or what shelters or safe houses there will be for families or children to seek refuge in or be adequately supported. There is also no discussion about additional resources for child protection staff or community-based services, nor any consideration given to the development of treatment programs for perpetrators of child abuse.

Discrimination

The exemption of these laws from the ***Racial Discrimination Act 1975 (RDA)*** is a major concern, creating a prima facie case that they will be blatantly discriminatory in their application. Continually repeating the mantra that "it's an emergency" is not sufficient justification for suspending the application of such a fundamental piece of law as the ***RDA***. The lack of consent from the people affected, the clear opposition from many Indigenous people and the lack of evidence to demonstrate that some of these measures will be either necessary or effective, all combine to make the Government's claims that these are "special measures" (that is, positive discrimination) very dubious. It is not good enough to assert that something is a special measure just because the Government says so.

The ***RDA*** is in place as a result of some terrible lessons learnt over a long period of time. It sets a very dangerous precedent to waive its protections on such flimsy pretexts. It is potentially highly destructive to implement laws and policies for which there is so clearly one set of standards for Indigenous people and another for non-Indigenous people. If the Government is serious about implementing positive measures to assist in lifting Indigenous people up and to achieve equality, this is certainly not the way.

[11] Submission 25, page 2. Secretariat National Aboriginal Islander Child Care (SNAICC)

[12] Submission 24, Police Federation of Australia.

Welfare issues

Abolition of CDEP

Concerns about the potential harm caused by the government's abolition of CDEP were also widely voiced. Unfortunately, it is still unclear precisely what actions and resources will be coming from the government in its place. Again, there has been a lot of rhetoric and assertions, but no concrete commitments or funding to indicate what will fill the substantial void which will be created by the scrapping of CDEP.

Quarantining of payments

The proposal to quarantine welfare payments is one I am prepared to give cautious in-principle support to as an idea to be explored in regards to child neglect and education, but I have major concerns about the lack of detail in the legislation about how this will be applied under this legislation. The approach which is being trialled in Cape York in Queensland is worthy of support, as it (a) has been developed with a reasonable degree of local community engagement, (b) is part of a wider package of integrated measures, (c) involves a significant degree of local community control and empowerment, and (d) is a trial. But none of these features apply in regard to the Northern Territory.

It is impossible to tell what will apply with future use of such measures in the wider community, as the detail has yet to be worked out. It is extraordinary that such far-reaching changes and major powers to intervene in the fine details of people's lives are being handed over to the Government with almost no examination of how it will work or consultation with the wider community.

Appeal rights

I am concerned about the fact that the rights of appeal for decisions over the quarantining of payments for Aboriginal people in the Northern Territory will not be subject to an independent review. This is extremely worrying, as the only independent alternative is to appeal to a Federal Court, which would involve significant and unnecessary cost. It should be borne in mind that there is only one Legal Aid office and only one general community legal centre in the NT. It is extremely difficult to accept the Government’s rationale as to why Indigenous communities in the NT should be denied access to review when other Australians in other parts of the country are able to exercise their full review rights. This is outright discrimination and should not proceed.

Resourcing

Whilst the Federal Government has now moved from its original ludicrous assertions that the overall cost of their intervention would be in the "tens of millions of dollars", there is still a major lack of detail about what sort of extra resources are going to be committed to properly tackle this issue. There is now over $500 million committed for this financial year, but unlike almost all other major Government announcements,

there are no forward estimates of anticipated ongoing extra expenditure beyond 1 July 2008. It is crucial that both major parties are held to account for providing further financial follow-up to ensure the job is finally done properly and fully.

KERRY O'BRIEN: Again on the promise made by the Prime Minister that the Commonwealth will pick up the resources, which actually pay and provide presumably the resources for follow up medical treatments.

If screening throws up eye disease, kidney disease, asthma, threat of diabetes, any one of a number of generic health problems throughout the Indigenous population you've undertaken to provide them all with on going treatment. Is that right?

MAL BROUGH: That's absolutely correct.[13]

Whatever form these Bills take when they are passed by the Senate, there must be concerted and continuing efforts made by the Senate and the community to ensure that commitments such as the above are stuck to.

Conclusion

It is an unfortunate fact that there is not a single Indigenous person in the federal Parliament able to speak on this legislation. There is nothing the Senate can do about this in this instance, but the Senate Committee process provided the only formal opportunity for the Parliament to hear directly from Indigenous people, particularly those in the Northern Territory who will be directly affected by the legislation. The calculated refusal of the Senate to enable adequate time for such views and voices to be properly heard and considered is disrespectful. It also compromises both the Senate's ability to make an informed decision on the legislation and the chances of the overall intervention producing a net positive rather than a net negative for Aboriginal children, families and culture.

However, whilst there is much to criticise about this legislation and even more about the deliberately antagonistic, non-consultative approach the Government has taken towards the issue, the opportunity has been created, buttressed by the community's general support and acceptance of the need for urgent action, to build a genuinely effective action plan, in concert with Indigenous communities, for a sustainable future for Indigenous children that is no less positive than we expect for our own children. There have been far too many false dawns in the past, built on grand promises with too little thought and commitment behind them. The Australian community should seek to take this current opportunity before it too crumbles and force all political parties to match their current earnest rhetoric with long-term properly-resourced commitment to see this issue through and to see it done properly.

[13] 7:30 Report, 27 June, 2007

Recommendation 1

The bills not proceed until there has been proper opportunity for the Senate scrutinise its measures and determine necessary improvements, in consultation with relevant Aboriginal people and organisations.

Recommendation 2

The intervention plan should be fully costed by both the Commonwealth and the Northern Territory Government, with the setting of appropriate benchmarks and measurable targets to be achieved within set time frames.

Recommendation 3

Urgent funding must go into the building of infrastructure of communities in order for them to adequately deal with the measures in the legislation in the long term. There must be a proper roll out of funded programs and projects that is developed with communities that sees that provision of the following:

- adequate and appropriate housing to deal with overcrowding, (currently not addressed in the half a billion dollars of new money allocated to the intervention by the Federal Government);
- improved health care – including an increase in the number of health care providers and the provision of proper health care services that are culturally appropriate;
- the creation of sustainable and meaningful employment for Indigenous people in communities. The abolition of CDEP creates an even greater need for alternative strategies to provide meaningful training and employment for the thousands of NT people who currently receive training or find employment under CDEP;
- increased numbers of centres which provide services to deal with alcohol rehabilitation, safe houses for abused children and families, and half way houses for men which provide adequate counselling and education;
- improved education – which means funding for more teachers and aides who should be culturally trained and more supplies for schools to provide for the sustainable full attendance of every child in school;
- law enforcement – to ensure that all aspects are adequately dealt with, there should be funding that goes into the provision of law enforcement in communities and for officers to be culturally trained to deal with all aspects of penalties introduced by the legislation as well as for reporting provisions to deal with sexual abuse;
- the development and implementation of effective treatment programs for offenders guilty of child abuse and family violence.

Recommendation 4

This legislation should be reviewed by an independent body 12 months (and every 12 months after until the application of the 5 year sunset clause) after its implementation, and its results tabled in parliament.

Recommendation 5

If the Senate insists on proceeding with debating and voting on the legislation immediately, the measures which seek to take control of Aboriginal townships, acquire rights, titles and interests in Aboriginal land and remove key parts of the permit system without the consent of Aboriginal people must be deleted. These measures are unnecessary, bear no linkage to child protection, are ideologically motivated and most importantly present a major barrier to building the trust and cooperation with Aboriginal people that will be needed in order for this intervention to succeed.

Recommendation 6

The sections of the legislation which remove the right of Indigenous people to have their cultural practices taken into account in bail sentencing decisions – a right which is available to non-Indigenous Australians – should be deleted

Recommendation 7

The provisions in the legislation which seek exemptions from the Racial Discrimination Act should be removed.

Recommendation 8

The measures regarding welfare quarantining which apply to the wider Australian community and have nothing to do with seeking to address issues in Indigenous communities in the Northern Territory and Cape York are not in any way urgent and are unlikely to come into force until well into 2007 at the earliest. These measures should be quarantined into a separate piece of legislation so that these far-reaching and potentially very cumbersome and expensive changes can be properly examined.

Recommendation 9

There are key components in the National Emergency Response Bill, the Welfare Payment Reform Bill and the National Emergency Response and Other Measures Bill which must be heavily amended or removed in order to make these Bills acceptable. These include, but are not limited to, the issues raised in my recommendations 5-8 above. If such amendments are not made during the Committee stage of the debate in the Senate, these three Bills should be rejected.

Recommendation 10

Due to the seriously constrained time frame, it has not been possible to properly scrutinise the expenditure of resources contained in the two Appropriation Bills. Whilst some major questions remain over how effectively some of this money will be spent, clearly a national emergency response will continue to be rolled out. The two Appropriation Bills should therefore be supported. The Senate, in cooperation with Aboriginal people and organisations, should do everything possible to maintain

oversight of the expenditure of these monies and seek to ensure it is spent in as effective a way as possible.

Senator Andrew Bartlett
Australian Democrats

Dissenting Report by the Australian Greens

Introduction

The Commonwealth Government's approach to the problems facing Indigenous communities in the Northern Territory, including the three Bills being considered by this Committee, is fundamentally flawed.

These three Bills are less about protecting children and more about implementing a previously developed ideological agenda to once again control the lives of Indigenous people and to restructure Australia's welfare system.

If the Government was genuine about protecting children it would be listening to the experts and implementing the recommendations from the *Little Children are Sacred* report and the other reports on child abuse in Indigenous communities released over the last decade. Instead the Government has ignored this expertise and rushed ahead with implementing a flawed agenda without any evidence of its likely efficacy.

These Bills represent the most significant changes to the relationship between governments and Indigenous people since the 1967 Referendum. They are a deliberate and calculated move away from efforts to build the capacity of Aboriginal communities, and a return to complete central government control over every aspect of the lives of Aboriginal Australians. As the Central Land Council submits, "The intervention also means that almost every aspect of Aboriginal life will be able to be controlled by the Commonwealth."[1]

To succeed in the long-term it is absolutely essential to have genuine community engagement and ownership of programs and initiatives addressing child abuse and the causes of child abuse.

Community consultation is the first recommendation of the *Little Children are Sacred* report and one of the key criticisms of the approach taken by the Federal Government is that they have failed to consult and failed to learn from the past. The Government has attempted to justify their lack of consultation by saying there has been consultation in the past, but there has been no consultation on the intervention measures.

Andrew Johnson (an expert in international child protection and former consultant to UNICEF and UNHCR on emergency interventions) provided the Committee with a useful comparison with how the UN would respond to an emergency situation:

> "In an emergency setting, the first thing a UN agency would do, under the direction of OCHA, is to ensure proper consultation on the ground. That is done within the first 24 to 48 hours and it is quite extensive. They then sit down with the communities to find out what supports and services they need. They set up safe houses and ensure that there are safe places for children to

[1] Submission by Central Land Council, Submission No. 84, p.2.

> play. The international community ensures that there is safe and proper housing, water and access to medical services. The international community is able to do things quite quickly in a refugee camp, and that is based on consultation and asking the population themselves what they need. The biggest lesson learnt from all interventions internationally is that they always fail when they do not involve and empower the local communities to take part in the interventions that are taking place. If you look across the world at the operations that have been successful in resource-poor communities, the fundamental thing that crosses through all those interventions has been the giving of ownership, empowerment and control to the people themselves to ensure children are protected and families and communities are safe."[2]

The Australian Greens want to see a more considered and comprehensive response leading to the development of evidence-based policy that builds on existing knowledge of successful programs to deliver long-term solutions that strengthen and empower communities.

There already exists clear information about what governments (Territory, State and Federal) should be doing to address child sexual abuse in Indigenous communities. In the past decade there have been a large number of reports from across the country, in addition to the *Little Children are Sacred* Report, which outline practical and proven measures to tackle this issue. There is also a body of knowledge arising from case-studies and pilot programs of a range of community programs both within Australian Indigenous communities and around the world of what type of interventions have proved successful and what obstacles have been encountered in trying to deal with child safety and well-being.

The federal government's response ignores all of these recommendations. The authors of the *Little Children are Sacred* Report have publicly stated that that Government's measures, including these Bills, do not deliver on their Report.

The Emergency Response and Development Plan to protect Aboriginal Children put forward by the Combined Aboriginal Organisations of the Northern Territory on 10 July 2007 outlines a comprehensive two-phase approach to this issue which the Australian Greens endorse. This plan is attached to Oxfam's submission (Number 51).

The Australian Greens are calling on the Federal Government to put aside its current intervention strategy and enter into a partnership with Aboriginal communities to deliver a comprehensive and considered proposal.

The Australian Greens believe that strategies and programs must ensure:

child protection

- Safe communities through adequate and appropriate policing and more resources to support safe houses, night patrols and Aboriginal community police and community-based family violence programs.

[2] Hansard, p. 62.

health

- Healthy kids and healthy families through increased resources and infrastructure to provide primary health and wellbeing services
- Urgent investment to reduce the gap in life expectancy and rates of chronic disease within a generation as part of a national Indigenous health strategy (a commitment of $500M/yr)
- Significant investment in programs to reduce alcohol and other substance abuse which includes education and demand-reduction strategies as well as rehabilitation and counselling services as part of a national strategy

housing and infrastructure

- Sufficient housing to reduce overcrowding and increase child health and safety ($2-3 billion nationally over ten years)
- Genuine employment opportunities providing community-based health, education and welfare services as well as housing and infrastructure maintenance and construction

education & training

- Delivery of quality education to all Aboriginal children, with a focus on early childhood development and with school attendance strategies that encourage family engagement (an extra $295 million for infrastructure plus $79 million a year is needed if all children in the Northern Territory attend school)

partnership and governance

- A human rights approach to partnering with communities in developing policies and programs
- Financial management education and services, and support for voluntary community-based financial management initiatives (such as Tangentyere's successful Centrecare scheme)

These are the matters that the government is not addressing and which are vital to protecting children and ensuring viable functional communities.

Legislative process

The Greens agree with the Law Council of Australia's condemnation of:

> "the timetable for considering this proposed legislation as disgracefully inadequate and an affront to fundamental democratic principles."[3]

The legislation presented to the Parliament is detailed, complex and of major significance. The Government's indecent haste to push the legislation through the Parliament is unjustifiable. The shortness of time given for this Committee to consider the Bills is unconscionable. This Government is showing great contempt for the Parliament and thereby also for the people of Australia by its actions.

The Greens also agree with these comments by the Law Council of Australia:

[3] Submission by the Law Council of Australia, Submission No. 52, p. 1.

> "The true situation about the government's stance on consultation is that it knows that its approach is over-bearing, intimidatory, discriminatory and designed for electoral consumption in parts of Australia far removed from the Northern Territory. It also knows that many elements of its emergency plan are not likely to be acceptable to the Aboriginal communities who identified the problem in the first place."[4]

This Dissenting Report by the Australian Greens is not as comprehensive as we would have liked, given we have not had the necessary time to adequately review the legislation.

The Majority Committee Report notes:

> Due to the unusually short timeframe allowed for consideration of the bills, the committee, the committee did not have access to a full Hansard transcript when preparing its report. The committee therefore presents the proof Hansard transcript of the hearing at Appendix 3 of the report to assist the Senate in its consideration of the Bill.

The Majority Report however falls short of the obvious conclusion that it is clearly not a satisfactory state of affairs when an inquiry is conducted under such a compressed timeframe that due process cannot be followed and the accuracy of its evidence considered.

Racial Discrimination Act 1975

The three Bills all state that the provisions of the Bills and acts done under the Bills are "special measures" for the purpose of the *Racial Discrimination Act 1975* (RDA). In addition to declaring the Bills "special measures," the Government has added an insurance policy by exempting the Bills from the operations of Part 2 of the RDA, effectively suspending the operation of the RDA.

The Australian Greens are in no doubt that the provisions of these Bill are racially discriminatory and cannot be characterised as "special measures," either under the RDA or in international law. It is of significance that this Government is prepared to suspend the operation of the RDA and introduce such explicitly racist legislation. This fact alone is reason enough for the Bills to be condemned and opposed.

Considerable concerns about the RDA were raised in the Senate Inquiry by a range of organisations including the Human Rights and Equal Opportunity Commission (HREOC) and the Law Council of Australia.

The significance of the RDA was summarised in HREOC's submission as follows:

> "The *Racial Discrimination Act 1975* (Cth) ('RDA') implements Australia's international obligations under the *Convention on the Elimination of All Forms*

[4] Submission by the Law Council of Australia, Submission No. 52, p. 2.

> *of Racial Discrimination* ('ICERD'). The RDA was Australia's first law to protect human rights and remains a cornerstone of human rights protection in Australia. Upholding the values of the RDA and ICERD is vital to ensuring community respect for government action and to maintain Australia's reputation as a nation committed to equality."[5]

The Law Council comments on the exclusion of the operation of the RDA as follows:

> "The Law Council considers the inclusion in legislation proposed to be enacted by the Australian Parliament in 2007 of a provision specifically excluding the operation of the RDA to be utterly unacceptable. Such an extraordinary development places Australia in direct and unashamed contravention of its obligations under relevant international instruments, most relevantly the United Nations Charter and the International Convention on the Elimination of All Forms of Racial Discrimination ("CERD"). In addition to its status as a treaty obligation, contained in all major human rights instruments, the prohibition of racial discrimination has attained the status of customary international law, and has been characterised as one of the "least controversial examples of the class" of *jus cogens*. *Jus cogens* or peremptory norms of international law are overriding principles of international law, distinguished by their indelibility and non-derogability. They cannot be set aside by treaty or by acquiescence. Other "least controversial" examples of *jus cogens* include the prohibition of the use of force, the prohibitions of genocide, slavery and apartheid, and the principle of self-determination."[6]

In relation to the issue of whether the Bills constituted "special measures," HREOC expressed doubts and the Law Council of Australia specifically denied that the Bills constituted "special measures". Of particular significance in their submissions on this point is the reference to the need for consultation before a law can be considered a "special measure."

It is notable that the authors of the *Little Children are Sacred* Report have commented that there would be no need to exempt the RDA in implementing their recommendations.

The Australian Greens do not consider that the provisions of the Bill are in fact "special measures" as we do not believe that they will lead to the advancement of Aboriginal people.

Northern Territory National Emergency Response Bill 2007 **(NTNER Bill)**

<u>Land acquisition</u>
The NTNER Bill gives the Minister extraordinary powers over Aboriginal land in the Northern Territory. The NTNER Bill provides for:

[5] Submission of Human Rights and Equal Opportunity Commission, Submission No. 67, p. 4.

[6] Submission by the Law Council of Australia, Submission No. 52, p. 4.

- 5 year leases over specified land, including land prescribed in regulations at a later date,
- Commonwealth Ministerial powers over town camps and local councils;
- That the terms of conditions of the leases are at the Minister's discretion;
- That the Minister can terminate any rights, title or other interests in the land at any time;
- That the Commonwealth can sublease and licence their interest in the land.

Even more exceptionally, the Government is giving itself the power to amend Northern Territory legislation through regulation (including the Special Purposes Lease Act) and to exclude the operation of Commonwealth laws through regulation to acts done in relation to land acquired by the Commonwealth under the NTNER Bill, and to declare certain Divisions of the NTNER Bill will cease to have effect. These are extraordinary provisions. Under these provisions the Commonwealth could for example exclude the operation of the *Environmental Protection and Biodiversity Conservation Act 1999* to the land it acquires.

The Law Council of Australia responded that it was "speechless" at the legislation providing the Minister the power to change the legal framework and the legislation. The Law Council of Australia comments that:

> "These are examples of Henry VIII clauses, so-called because they enable the Minister, simply by a stroke of the pen, to change the legal framework. Henry VIII clauses are regarded as contrary to fundamental legal principles as they give insufficient regard to the institution of Parliament as the supreme legislature; they erode the function of the Parliament to legislate….
>
> … Thus it is the constitutional intention that all proposed Commonwealth legislation affecting the people of the Australia, a State or a Territory should proceed through the Parliament. It is the responsibility of Parliament to express the views, and represent the best interests, of the people. The assumption upon which democracy proceeds is that the people, through their elected representatives, exercise a measure of control, and indeed ultimate control, over legislation which is enacted in the Parliament. Thus an Act of Parliament ought to be changed only by another Act of Parliament."

Through these provisions the Commonwealth Government seeks to give itself exclusive possession over the land, which would give it the right to exclude anyone from the land - including the people living there.

The lack of protection of native title rights is a further example of the racially discriminatory nature of these provisions. Under the provisions of this Bill, all other rights in land are protected (unless terminated by the Minister) except for native title rights.

Despite creating 'leases' over the land through this legislation, there is no requirement within it for Commonwealth to pay rent for these leases. Rent becomes a matter entirely at the discretion of the Minister.

Compulsory acquisition of land and interest in land by the Commonwealth is a serious matter, so much so that our Constitution provides for "just terms" compensation. There remain real questions concerning the provisions in the NTNER Bill as to whether they in fact provide for "just terms" compensation or merely "reasonable compensation".

It would seem from the provisions of this Bill that rather than acting in good faith, the Government will force Indigenous communities to Court to determine whether "just terms" compensation should be paid. The Australian Greens are appalled that the Commonwealth would not provide for "just terms" compensation for acquiring Aboriginal land by force of law.

It became clear in the course of the Inquiry that there is at the very least confusion as to the intention and operation of the provisions relating to compensation.In respect to town camps, the Greens note the comments of Mr William Tilmouth, Executive Director of Tangentyere Council:

> "Tangentyere Council has tried to enter into meaningful discussions with the federal and Northern Territory governments about the future of those town camps, including addressing issues such as inadequate funding, infrastructure and management. Time and again, the government has attempted to lay down what it wants, meaning Aboriginal people have to give up control over land on which they live, the way in which they live and how they will manage their communities. We have been at the negotiating table for some time and we have agreed to give up our land for 20 years, provided that we have an ongoing role in management. But that has been rejected. It looks like we are going to lose our land forever. All attempts for us to negotiate on an equal basis have been rejected. This legislation is the final step in removing our land, dignity and humanity. It removes our right to consultation, participation, stability and security. The explanatory memorandum speaks of a stable and secure environment being required to eliminate child abuse. This legislation provides neither security nor stability. It only provides uncertainty, and it is unclear how the act will work."[7]

The Greens have obtained legal advice indicated a legal challenge to the compensation provisions could have wide ranging effects on the validity of large parts of the NTNER Bill. The compensation provisions should be amended to make clear that "just compensation" is payable for the interests acquired in the land, and is not to be determined by offsetting improvements on the land.

The breadth of powers given to the Commonwealth over Aboriginal land is extraordinary and unnecessary. The Commonwealth Government has not provided a

[7] Hansard, p. 13.

sufficient explanation of why this level of control of land is necessary to protect children. There has been no attempt to substantiate a link between land tenure and child abuse.

In his briefing paper for Oxfam Australia, *"The 'National Emergency' and Land Right Reform: Separating fact from fiction",* Jon Altman, argues convincingly that there is:

> "…no evidence of any direct link between the compulsory acquisition of five year leases over prescribed townships and the problems of child abuse and dysfunction in aboriginal communities in the Northern Territory."[8]

The Australian Greens support the argument that:

> "Historically it is clear that traditional owners of townships have been disadvantaged by colonial administrations allowing the location of government settlements and missions at these locations without traditional owner consent. This new compulsory acquisition measure also disempowers traditional owners of townships. In so far as land ownership constitutes a form of property right, this measure will also economically disadvantage current and future generations of traditional owners."[9]

These provisions leave Aboriginal communities powerless in respect of their land including potentially the ability to remain living on their land. This is unacceptable.

For similar reasons the Australian Greens oppose the dismantling of the permit system. Our comments on the changes to permits are outlined below in relation to the *Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Bill 2007.*

A proper policy approach would dictate restraint on the powers of the Government over the lives of people and, if the purpose of the policy was not being met, a return to the Parliament to make the case for extra powers. This Government has turned this approach on its head by legislating extraordinary powers for itself upfront which trample the rights of Aboriginal Australians.

The Australian Greens do not support the compulsory acquisition of Aboriginal land or the extensive powers provided to the Commonwealth Minister.

<u>Business Management Areas</u>

The provisions relating to Business Management Areas provide for a substantial and we believe unnecessary level of interference and control in the affairs of communities, organisations and individuals.

The measures provide that the Commonwealth can:

- Unilaterally vary funding agreements;

[8] Attachment to Submission by Oxfam Australia, Submission No. 51, p.14.

[9] Attachment to Submission by Oxfam Australia, Submission No. 51, p.9.

- Direct services and use of assets where funding has been provided by the Commonwealth or Northern Territory governments that could be used to provide a service.
- Appoint observers in a community who are entitled to attend and participate in meetings (bot not to vote); and
- Appoint a statutory manager to administer the affairs of an association if the association is given government finding that could be used to provide services.

Of particular concern is the breadth of these provisions. The Minister can direct services or the use of assets in circumstances where the entity providing the service or in possession of the asset is funded by either the Commonwealth or Northern Territory governments and that funding could be used to provide the service. There is no need for a direct link between the government funding and the service or asset being directed, that is the government need not fund the service or asset being directed. There is a very real concern that these provisions will capture volunteer work in communities as well.

The provisions relating to the appointment of observers are extraordinary. A community or organisation does not have to be in receipt of government funds for the government to appoint an observer who, by force of law and backed by civil penalty provisions, can attend all meetings or deliberations of the organisation.

The Greens find these invidious powers unacceptable and cannot support such measures.

Bail and Sentencing

The Greens do not support the blanket prohibition on courts considering customary law or cultural practices in bail applications and conditions and in sentencing. These provisions limit the discretion of the court as to potentially relevant considerations to be taken into account and are therefore a denial of justice.

The Greens agree with the comment of the Law Council of Australia as follows:

> "As argued in the Law Council's earlier submissions on this issue, Part 6, if implemented, will (among other things):
>
> • require courts to treat Aboriginal and Torres Strait Islanders, and those of different ethnic origins, as if they did not belong to a specific cultural group;
>
> • result in more Aboriginal people being incarcerated, for longer periods and with fewer options for rehabilitation within their communities; and
>
> • undermine the positive achievements of Aboriginal courts, which have relied on flexible sentencing and bail options and community involvement to strengthen compliance with the law, Aboriginal communality and leadership and, ultimately, reduce rates of imprisonment and recidivism."[10]

[10] Submission by the Law Council of Australia, Submission No. 52, pp. 12-13.

Alcohol

There is no question that alcohol and substance abuse contribute to poor child health and safety outcomes in Indigenous communities. The *Little Children are Sacred* Report identified alcohol abuse as an important factor to be addressed in reducing child sexual abuse.

The Australian Greens are not opposed to tougher restrictions on alcohol as part of a strategy to deal with alcohol abuse issues.

However, the Greens are concerned that the imposition of a law-and-order approach to banning alcohol on Aboriginal communities will prove ineffective and could increase the levels of violence and abuse - particularly if it isn't backed up by rehabilitation and counselling programs, and isn't part of a strategy that also tackles the problems in the larger regional centres.

The Greens are also concerned that there was no additional funding for rehabilitation and counselling included in the Bills, despite the clear evidence presented to the committee that existing levels of funding are inadequate to deal with the scale of the problem and the level of unmet need.

Concern was also raised in the Inquiry about possible unintended consequences of these measures such as increased incarceration of Indigenous people, including through not being able to pay fines particularly with income support being quarantined.[11]

Publicly funded computers

The provisions relating to "publicly funded computers" provide that the responsible person must:

- Install an accredited filter;
- Keep records of persons who use computer and the day and times of that use;
- Develop an acceptable use policy which states that a person must not use the computer to send anonymous or repeated communications designed to annoy or torment, or access, or send a communication containing, material or a statement that:
    - contravenes a law of the Commonwealth, a State or a Territory;
    - incites a person to contravene Commonwealth, a State or a Territory;
    - that si slanderous, libellous or defamatory;
    - that is offensive or obscene;
    - that is abusive or threatens the use of violence; or
    - that harasses another person on the basis of sex, race, disability, or any other protected status; and
- Audit the computer and give results of the audit to Australian Crime Commission.

[11] Submission of Human Rights and Equal Opportunity Commission, Submission No. 67, p. 14.

It is important to note that the definition of a "publicly funded computer" is very broad and is not limited to a computer that is actually purchased with government money or is used in the provision of a service funded by the government. The definition includes a computer that is owned or leased or in the possession of somebody who receives government funding and is in a prescribed area.

So these provisions can cover computers bought with private funds and not used in any way related to the provision of government funds. Indeed the phrase "government funded computer" is misleading.

The Greens believe the requirements placed on the responsible person in these circumstances are too onerous and are not the most effective means of addressing the key problem of accessing pornography over the internet.

We also note the requirement of the responsible person to have sufficient knowledge of the law to know when a computer is being used to commit a range of offences from slander and libel to offensive and obscene statement to harassment. We believe these represent unreasonable obligations, particularly given civil penalty provisions.

Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Bill 2007

Prohibited Material

The Greens support introducing further restrictions on prohibited material, although we have some concerns with the detail of these provisions. We are particularly concerned that there is potential for people to be innocently caught by these provisions, for example for inadvertently receiving explicit material sent in a 'spam' email or clicking on an ambiguous or deceptive html link.

Australian Crime Commission

The Australian Greens understand the amendments to the *Australian Crimes Commission Act* gives the Crimes Commission the same powers to investigate violence on Indigenous communities as the Commission has to investigate organised crime. These powers include covert surveillance and compelling people to give evidence. The Australian Crime Commission's Annual Report 2005-06 notes in relation to its special powers:

> "The ACC has a range of special coercive powers that are instrumental in combating serious and organised crime. These powers are often used when ordinary law enforcement methodologies prove ineffective in combating sophisticated criminal activity ….. The special coercive powers include the ability to summons a person to an examination to give evidence under oath or affirmation and the power to demand documents. Failure to comply is punishable with fines and imprisonment."

It is extraordinary for the Government to target Indigenous communities with these sorts of powers. Child abuse and violence in families occurs throughout Australia.

What possible justification is there for targeting Indigenous communities with these sorts of police powers?

At the Inquiry, the Law Council of Australia commented that it had previously raised concerns about proposals to extend Australian Crime Commission powers to investigating sexual crimes and violent crimes in Aboriginal communities:

> "The chief concerns that we raised were that the powers that the Australian Crime Commission has are not very well adapted to that kind of an investigation. We understand that the Australian Crime Commission largely deals—and quite effectively deals—with investigations against organised crime in urban areas and those sorts of much more organised and much more sophisticated kinds of criminal networks. We are talking about crimes in small communities where there has not been any indication or proof that there are any kinds of crime rings occurring. There is a real sense that these powers may be used or misused to intimidate to the detriment of the communities that they are supposed to be helping."[12]

It is extraordinary that the Government believes such extensive powers are needed in these circumstances. The Greens support the need for an increased and sustained police presence in Indigenous communities but we also recognise that in attempting to break the cycle of violence in some of these communities law enforcement officers need to gain the trust of the community. These sorts of powers will have the opposite effect.

The Australian Greens do not support these discriminatory and disproportionate measures.

Permits

The Australian Greens are opposed to the partial dismantling of the permit system over Aboriginal land in the Northern Territory. The permit system is important in giving Aboriginal people some control over their land and in offering a measure of protection against grog runners, carpet baggers, paedophiles and other criminal elements.

It is significant that there is no reference to land tenure or the permit system in the *Little Children are Sacred* Report.

In the Oxfam paper, *"The 'National Emergency' and Land Right Reform: Separating fact from fiction"*, Jon Altman outlines the Government's development of its proposals concerning the permit system and how they predate the *Little Children are Sacred* report.[13]

The Australian Greens are very concerned that the government is using child abuse as a pretext to implement a policy agenda which will not only do nothing to stop child

[12] Hansard, p. 67.

[13] Attachment to Submission by Oxfam Australia, Submission No. 51.

abuse, but in fact may prove detrimental to the safety and well-being of children in these communities. There is no evidence that there is a relationship between the permit system and child abuse.

The Greens are not convinced that the dismantling of the permit system is necessary to achieve increased accountability and openness of communities, as is claimed by the Government.

From the evidence presented by those with lived and practical experience in Aboriginal communities in the Northern Territory, the permit system does not impede service delivery to communities, prevent media scrutiny or stop economic development. In fact the recent Senate Inquiry into Indigenous Art heard evidence that the permit system is vital in ensuring the economic benefits from their art is enjoyed by the communities that produce the art.

Importantly, the Northern Territory police acknowledge that the permit system assists them and communities to enforce alcohol bans and regulate visitation to communities by outsiders.

The Central Land Council submission quotes the NT Police Association President Vince Kelly:

> "The Federal Government has failed to make a case in my view, about the connection between sexual assault in Indigenous communities and the permit system. These communities aren't like anywhere else in Australia; otherwise the Federal Government wouldn't be intervening in this matter. So to simply roll up the permit system I think is going to lead to problems that have probably been identified by Indigenous people around the Northern Territory".[14]

It is unclear how the partial abolition of the permit system will operate in practice. The definition of "common area" is inadequately defined, and this ambiguity is unacceptable in these circumstances. For example, how will the distinction between common and private areas be determined and policed? How will townships and access to roads be policed so that people do not wander off into sacred sites?

While the legislation provides only for a partial dismantling of the permit system, the legislation will effectively dismantle the whole system, because it is likely to prove impossible for the police to control access to the areas represented by the remainder of the permit system

It became quite clear in the course of the Inquiry that there was little support for dismantling the permit system and indeed that these provisions would create more potential for harm to occur to children in communities.

[14] Submission by Central Land Council, Submission No. 84, p. 3.

The Australian Greens oppose this dismantling of the permit system and the contempt shown by this Government for the land rights of Indigenous peoples in the Northern Territory.

Social Security and Other Legislation Amendment (Welfare Payment Reform) Bill 2007 **(Social Security Bill)**

The amendments to the social security legislation, taken together with the Welfare to Work legislation, are reshaping the very basis of our welfare system and moving it to a punitive and paternalistic system, which is based much more on ideology than it is on any kind of evidence-based policy.

Northern Territory provisions

The Australian Greens are in no doubt that the measures in the Social Security Bill breach the RDA and cannot be characterised as "special measures". This is particularly the case given the arbitrary nature of the operation of income management in a "relevant Northern Territory area," and the denial of appeal rights to those covered by this part of the income management regime.

The notion that these provisions are for the benefit of children are undermined by the fact that a person does not have to have responsibility for a child to be subject to income management in the Northern Territory. All they have to do is simply spend a night in a designated area.

The measures have nothing to do with how a person currently spends their money or how well they look after their children. The arbitrary nature of this regime defies belief. This law condemns the whole for the behaviour of a few, and is akin to guilt by association. This is an extraordinary measure to see in Australian law.

The Government clearly determined that it was too difficult to target individuals in Aboriginal communities in the Northern Territory and deal with their known mobility, and so have developed this extraordinary provision that places people onto income support if they spend a single night in a designated area. A person may have no problems managing their finances, may not spend any money on grog, and may look after their children in an exemplary fashion … and yet simply because they live in a designated area they will be subject to having 50% of any income support or family tax benefit they receive being quarantined.

It is easy to imagine circumstances under which a person who lives somewhere else and goes to visit a family member in a designated area and be caught in this regime. A tourist on a pension might visit a designated community overnight and conceivably become to subject to income management.

The ability to receive an exemption is not sufficient. The Government has this around the wrong way. Individuals should not have to be exempted from this kind of regime, but rather the regime should only apply to individuals based on specific relevant criteria. Furthermore, the denial of appeal rights for those who spend a night in a

designated area in the Northern Territory mean that these exemption provisions are fundamentally flawed.

The denial of appeal rights in circumstances of such arbitrariness is unjustified, racist and obscene.

The Greens support the comments of the submission of the National Welfare Rights Network on this issue:

> "The right to appeal has always been a fundamental protection for Social Security recipients against bureaucratic neglect and error. However, the Government intends to remove the rights to external appeal to the Social Security Appeals Tribunal (SSAT) for Northern Territorians who are subject to the Income Management of their welfare payments. This sets a very dangerous precedent to strip away this protection for an entire group of Australians based solely on where they live. These decisions could have huge implications for families.
>
> The Minister states that the alternative is to appeal to the Federal Court. This would require a barrister, enormous expense, the risk of paying the Government's costs and has a 28 day appeal limit.
>
> A person would also have to know how to fill in an application for the Federal Court, and there is a scarcity of free legal assistance in the NT, with only one Legal Aid Office and only one generalist Community Legal Centre.
>
> It is difficult to accept the Government's rationale as to why Indigenous communities in the Northern Territory are to be denied access to independent review of decisions relating to the quarantining of welfare payments when other Australians in other parts of the country will be able to exercise their full appeal rights."[15]

It is also important to note the distinction between an arbitrary Northern Territory regime and the Cape York regime - which is more community-based, and applies on an individual basis rather than targeting entire communities. This is a fundamental difference that belies the Government's claim to be implementing the regime proposed for Cape York.

A number of submissions have remarked on the potential for this regime and the other aspects of the Intervention to result in the movement of people out of communities and into the towns. This could put unsustainable pressures onto these towns. The impacts of these measures need to be carefully monitored to ensure they do not have these kind of unintended deleterious consequences.

Another potential effect of these measure is increasing numbers of people dropping out of the welfare system altogether and increasing financial strain on the limited

[15] Submission of National Welfare Rights Network, Submission No. 44, p.3.

resources of associated family members. Such outcomes cannot be considered to be assisting to protect the health and welfare of children.

Commonwealth Development Employment Program (CDEP)

There were also a number of submissions which commented on the implications of ending the CDEP system and moving Aboriginal people in the Northern Territory into unemployment and onto Work for the Dole.

Concerns were raised including the likelihood of many Aboriginal people, particularly those in remote communities, being unable to comply with the participation requirements therefore leading to even higher rates of 8 week non-payment periods for these people.[16]

The effects of the removal of CDEP on communities and their services was also raised in the Inquiry. HREOC noted that:

> "Many communities rely on the CDEP program to provide essential services, some of which are critical to improving law and order or the health of the community, such as night patrols, nutritional programs, garbage collection and sanitation programs."[17]

The Government has already acknowledged that only 2000 "real" jobs can be created, while there are 7000 Indigenous people on CDEP in the Northern Territory. Poverty is one of the key factors related to child abuse in Indigenous communities and the appalling health standards in some of these communities. These measures will only entrench poverty and do nothing to assist violence, abuse and health concerns.

Furthermore, the Greens question the Government's commitment to deliver greater opportunities or better outcomes for those on CDEP when they have provided for a reduction in the CDEP appropriation of $76 million and an appropriation of only $ 46.9 million for additional income support.[18] This effectively represents $30 million that is being taken out of Aboriginal communities in employment and training opportunities and in take home pay that can contribute to the health and well-being of Aboriginal children.

Income management regime in the broader Australian community

The Australian Greens are opposed to the income management regime in its entirety, and we also have some specific concerns with the detail in the Social Security Bill. We fail to understand how the quarantining of 100% of social security payments will advance the stated objectives of the Government.

The Greens agree with the Australian Council of Social Services (ACOSS) that the causes of the social problems that the Bill is seeking to address are complex, and that

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[16] Submission of National Welfare Rights Network, Submission No. 44, pp. 4-5.

[17] Submission of Human Rights and Equal Opportunity Commission, Submission No. 67, p. 9.

[18] Hansard, p. 6 and Answer to Question on Notice No. 59.

the income management regime "is unlikely to contribute to solutions but would in a number of ways contribute to the underlying problems."

As ACOSS says:

> "There is no evidence to suggest that making school attendance a condition of receipt of income support would actually improve attendance. Parents want their children to attend school but in cases of truancy they are often unable to enforce this without intensive and consistent support from the school, their families ad other services…
>
> …Similarly, Income Management is unlikely to prevent child abuse or neglect. The Government acknowledges that only ' a few thousand' families across Australia would be affected by Income Management as a result of notifications by state Welfare Authorities. Since the causes of child abuse and neglect are complex and multidimensional, single intervention will be ineffective and interventions such as quarantining welfare payments, which do not address causal factors, are the wrong place to start."

The Greens also agree with ACOSS that a top-down approach will prove ineffective, and that as a community we need to be empowering people to take responsibility:

> "Whatever system we have, it has to empower people to take responsibility for their own finances, for their own lives, for their own children and for their own communities. I think it is extremely unlikely that you will get those outcomes if you impose from above, particularly if people are not consulted about how best that should be done. If we are to have a compulsory system then the absolutely crucial thing is that the casework, the support workers and the services that are required—and also the specialist services that people will need—assist people to learn how to do these things for themselves, rather than being dependent on a government making decisions for them. For example, if people are not spending their money on food because of drug and alcohol abuse—and I think this is an extremely questionable proposition, but let us say for the moment that that is the case—they will not stop, they will not learn how to do things differently, unless there are intensive and ongoing drug and alcohol rehabilitation services for them. And there is no mention of services such as those in the proposals that have been put forward."[19]

Like the other Bills, the Social Security Bill leaves too much detail to the regulations and Ministerial discretion - including designating school areas and child protection areas, and the guidelines for defining school attendance. Aboriginal communities have also raised concern with the ability of existing schools to cope with increased school attendance.

It is also notable that the Government has yet to comprehensively consult with the State and Territory Governments or reach agreement on how the school enrolment,

[19] Hansard, p. 60.

school attendance and child protection triggers for income management will operate in practice.

The Australian Greens are concerned with the Ministerial power to designate school areas to the extent of designating individual schools. What criteria will be used to determine which schools and therefore which parents should be captured by this scheme, and which ones will not be captured?

We are also concerned with the retrospective nature of the Social Security Bill, capturing behaviour prior to the legislation becoming law. Retrospectivity is always to be avoided where possible.

The power for government departments to obtain and share personal information is also a concern. There are significant privacy issues with allowing government agencies to share information with school authorities.

How the system will be administered is also of grave concern to the Greens. The legislation raises many questions:

- What criteria will be used to determine which payment method is used? Will that be at the discretion of the Centrelink or other relevant agency officer?
- How is the Secretary or their delegate to become aware of a person's "priority needs" and what is a reasonable period to take action to meet those needs?
- How will the Secretary or their delegates be satisfied a person will not use the money or credit to acquire excluded goods and services?

We are very concerned about the ability of Centrelink or any other agency to adequately and efficiently become the financial managers for people caught in this system. For example, what happens if a utility bill is not paid by Centrelink or the relevant agency and a person's electricity, gas or phone is disconnected? What happens if there is not enough credit in a person's income management account to meet their "priority needs"?

The Australian Greens note with interest the questions asked by ACOSS in their submission concerning the administration of this system, and also note the answers to those questions provided by FaCSIA. We do not believe that the answers provided by FaCSIA are satisfactory, and uncertainty remains as to how the income management regime will actually work in practice.

The resources required to administer such a system will be large while the potential for benefits small. We note that in response to questions about the likely cost of administering the intervention during the inquiry FaCSIA indicated that the estimated cost for administering the income management regime within the Northern Territory for this year alone was $88 million.

At the Inquiry, Professor Altman referred to recent research by Professor David Ribar, an American economist currently visiting the Australian National University who notes that the United States of America's measures to control the spending of welfare

payments have had a high cost and limited benefits. Professor Altman noted that "In particular, [Professor Ribar] highlights the issues of fixed establishment costs and diseconomies of small scale in the proposed Australian measures. In the USA, such measures are applied to 26.7 million people. In Australia we are talking initially of 30,000 to 40,000 Indigenous people in 73 dispersed communities."[20]

The Greens are also concerned about the likelihood of resources being taken away from proven programs and measures, such as case workers and support workers, into the administration of this scheme.

The Greens believe it is unacceptable that if the government "overspends", the person through no fault of their own now have a debt to the Commonwealth. Furthermore it is also unacceptable for credit in an account once a person is off income management to be paid to that person in instalments over a12 month period or kept if Centrelink believes the person will be subject to income management again within 60 days. Once a person has satisfied the criteria and is no longer caught by the regime their money should be returned directly.

Once again we are seeing inconsistency in how shared parenting arrangements are treated. While only one parent can only receive the parenting payment, for the school enrolment, school attendance and child protection triggers, parents, including in shared parenting arrangements a parent with at least 14 % of time, are caught by income management.

The Greens are also very concerned about how the voucher and credit systems will operate. Will the Government for example enter into contracts with particular providers therefore limiting the choice for people as consumers and creating a cartel for the poor?

The Greens are also concerned to know whether the Government intends to outsource the administration of this scheme to private providers, like the job network. As ACOSS notes, "This raises issues of accountability to parliament for the exercise of considerable discretion over the use of income support payments that will apply."[21]

Baby bonus

The Social Security Bill provides that people on income management will get baby bonus in 13 instalments. However, the provisions also allow the Minister to specify in a legislative instrument other classes of individuals who are to receive the baby bonus in instalments. We will be watching any use of this power very closely.

Appropriations

There is no question that significant funds are needed to address problems facing Indigenous communities in the Northern Territory - including housing, health,

[20] Hansard, p. 78.

[21] Hansard, p. 59.

education and child protection. It is clear that there are significant amounts of money being made available by the Commonwealth to address these issues.

The Australian Greens have considerable concerns about the appropriations for these Bills. It is worrying that such a significant amount of the $587m is being used on the bureaucracy and in administration. It is also of concern that the Government is not appropriating specific amounts for rent or compensation in relation to the 5 year leases, and has not budgeted for the measures beyond 30 July 2008.

It is notable that none of the $587m will be used to address the chronic shortage of housing in Indigenous communities (both remote communities and in the towns) that is a key element in preventing child sexual abuse.

The Greens agree with the Combined Aboriginal Organisations of the Northern Territory that:

> "there should be comprehensive plan, fully costed, with financial commitments that addresses the underlying causes within a specific time frame, and mechanisms that would ensure transparency and ongoing independent, rigorous evaluation."[22]

Conclusion

For all the reasons outlined above the Australian Greens object to and will be opposing these Bills.

All three Bills should be withdrawn and the Government should rethink its intervention package and consult with the community.

In the meantime, the Government should begin to implement the 97 recommendations from the *Little Children are Scared* Report, including addressing the vital needs of housing, health and education.

The Government clearly has the money to start providing housing, education and health services which are the matters of urgent concern in Indigenous communities.

Senator Rachel Siewert
Australian Greens

[22] Hansard, p. 17.

APPENDIX 1

SUBMISSIONS AND ADDITIONAL INFORMATION RECEIVED

Submission Number	Submittor
1	Chris Tangey
2	Australian Christian Lobby
3	Bawinanga Aboriginal Corporation
4	Dr Catherine Boyd
5	Phil Hunt
5a	Phil Hunt
6	Kathryn Brown
7	Several Submittors
8	Several Submittors
9	Boudicca Cerese
10	Several Submittors
11	Nicholas McClean
12	Rosalind Berry
13	Keelin Turner
14	Sutherland Shire Citizens for Native Title and Reconciliation
15	Tom Smit
16	Cecilia Conolly, Consultant Psychologist
17	Tim Tabart
18	Dr Peter Lewis
19	UnitingCare Queensland
20	Several Submittors
21	Philip Minchin
22	World Vision Australia
23	Several Submittors
24	Police Federation of Australia
25	Secretariat National Aboriginal Islander Child Care (SNAICC)
26	Suzanne Dorrington

27 David T Bath
28 Centacare Pastoral Ministries
29 Australian Council of Trade Unions (ACTU)
30 Adrienne Patterson
31 Julie Pearson
32 Milingimbi Community Council
33 NSW Rape Crisis Centre
34 Reconciliation Victoria
35 Dr Gideon Polya
36 Kay McPadden
37 Festival of Light
38 Laynhapuy Homelands Association Inc on behalf of our members – Traditional Owners of the Laynhapuy, Djalkarripyungu and Miyarkapuyngu regions of North East Arnhem Land
39 Amnesty International Australia
40 Gilbert + Tobin Centre of Public Law
40a Gilbert + Tobin Centre of Public Law
41 Woolworths Limited
42 The International Feminist Summit 2007 - Townsville
43 Ben Aldridge
44 Welfare Rights Centre
45 David Barnett
46 Sally Fitzpatrick
47 Jumbunna Indigenous House of Learning
48 Medical Practitioners in the Northern Territory
49 Australians for Native Title and Reconciliation (Victoria) (ANTaR Victoria)
50 Judy King
51 Oxfam Australia
52 Law Council of Australia
53 Heike Hamann
54 Jennifer Clarke
55 Several Submittors
56 Jane VadivelooPsychologist/consultant
57 Jim Pashley

58 Catholic Social Services Australia
59 Christine Murphy
60 Australians for Native Title and Reconciliation (ANTar)
61 SafeCare Inc
62 Job Futures
63 Ken Blackman
64 Kristie Dunn
65 Joyce Dodge
66 Kathryn Jeffery
67 Human Rights and Equal Opportunity Commission
68 Ken Davies
69 CLE Consulting Australia
70 Independent Education Union of Australia
71 No To Violence Male Family Violence Prevention Association (NTV) Inc
72 David Hall
73 Peter Frank
74 Andreea Maddox
75 Linda Bennett
76 Human Rights Law Resource Centre
77 Confidential
78 Sandra Dureau
79 Berenice Buckley
80 Elaine Syron
81 Parry Monckton
82 Graham and Monique Bond
83 Babtabah Local Aboriginal Land Council
84 Central Land Council
85 Kenneth Fernandes
86 Bill South
87 Vincent Phelan
88 Aboriginal Medical Services Alliance of the NT (AMSANT)
89 Daniel Edgar
90 Afonso A Duque-Portugal
91 Don McArthur

92 Victorian Aboriginal Legal Service Co-Operative Limited
93 Central Australian Aboriginal Legal Aid Service Inc
94 The Australian Indigenous Doctors' Association
95 Reconciliation Australia
96 Susan Cleary
97 Australian Council of Social Service (ACOSS)
98 Rosemarie Gillespie Waratah
99 Office of the Victorian Privacy Commissioner
100 Office of the Privacy Commissioner
101 Senator Bob Brown
102 Australian Centre for Child Protection
103 Several Submittors
104 Tim Murphy
105 Native Title Services Victoria Ltd
106 Be Ward
107 Virgina Burns
108 Aboriginal Health & Medical Research Council of NSW (AH&MRC of NSW)
109 Northern Territory Legal Aid Commission
110 Professor Michael Rowan
111 Karen Paroissien
112 New South Wales Council for Civil Liberties Inc (NSWCCL)
113 Jan Wilson
114 Megan Williams
115 Australian Centre for Child Protection
116 Aboriginal and Torres Strait Islander Legal Service (QLD South) Ltd
117 Chien-Hue Chen
118 Santhini Haines
119 Graham Borrell
120 Carolyn van Langenberg
121 Adam Bonner
122 Louise Sullivan
123 Rosslyn Small
124 Malcolm Ramage QC
125 The Combined Aboriginal Organisations of the Northern Territory

126 National Indigenous Human Rights Congress Australia
127 Northern Territory Government
128 Bahtabah Local Aboriginal Land Council
129 Cowra Local Aboriginal Land Council
130 Anthea Nicholls
131 Margaret Beavis
132 Elspeth Stephenson
133 Whitehorse Friends for Reconciliation Inc
134 Carmel Flint
135 Dr Patricia Edmunds
136 Meredith Butler
136a Meredith Butler
137 Victorian Aboriginal Community Controlled Health Organisation
138 Barrie Griffiths
139 Sandra Dureau
140 National Native Title Council
141 Janeen Dale
142 Linda Bennett
143 Dr John F Cadden
144 Valerie Thompson
145 Annette Jackson
146 Helen Grimaux
147 Gaye Mitchell
148 Pia Cerveri
149 Marianne Kaspar
150 Cas and Chris O'Neill
151 Steve Kyneur
152 Professor Cathy Humphreys
153 Northern Land Council
154 Maggie Lawlor

ADDITIONAL INFORMATION

1. Response from a member of the Law Council to a question taken on notice.

2. Tabled document received from Department of Families, community Services and Indigenous Affairs (FaCSIA).

3. Tabled document received from Association of Northern, Kimberley and Arnhem Aboriginal Artists (ANKAAA)

4. Table document received from Northern Land Council (NLC)

5. Answers to Questions on Notice received from Department of Families, community Services and Indigenous Affairs (FaCSIA).

6. Blank Community Survey received from Department of Families, community Services and Indigenous Affairs (FaCSIA).

APPENDIX 2
WITNESSES WHO APPEARED BEFORE THE COMMITTEE

Canberra, Friday 10 August 2007

AH KIT, Mr John Leonard, Member
Combined Aboriginal Organisations of the Northern Territory

AHMER, Ms Kari, Assistant Secretary, CDEP Program Management Branch
Indigenous Employment and Business Group
Department of Employment and Workplace Relations

AIRD, Mr Wesley, Member, National Indigenous Council

ALTMAN, Professor Jon Charles, Director
Centre for Aboriginal Economic Policy Research, Australian National University

BAUMANN, Ms Miriam Rose, Member, National Indigenous Council

BOOKIE, Mr Lindsay, Chairman, Central Land Council

CALMA, Mr Tomas, Aboriginal and Torres Strait Islander Commissioner
Human Rights and Equal Opportunity Commission

CAMERON, Dr Lesley, Senior Ministerial Adviser, Northern Territory Government

CHALMERS, Major General David Hugh, Operational Commander
Northern Territory Emergency Taskforce

CLEARY, The Hon. John, Private Capacity

DALY, Mr John, Chair, Northern Land Council

DAVIDSON, Mr Peter, Senior Policy Officer, Australian Council of Social Service

DE CARVALHO, Mr David John, Department of Health and Ageing

DORE, Mr Jeremy, Lawyer, Central Land Council

FIELD, Mr Anthony, Branch Manager, Legal Services
Department of Families, Community Services and Indigenous Affairs

FRY, Mr Norman, Chief Executive Officer, Northern Land Council

GALLAGHER, Mr Jamie, Director of Communications
Office of the Chief Minister, Northern Territory Government

GIBBONS, Mr Wayne, Associate Secretary
Department of Families, Community Services and Indigenous Affairs

GIBBONS, Mr Wayne, Associate Secretary
Department of Families, Community Services and Indigenous Affairs

GILLICK, Ms Vicki, Coordinator
Ngaanyatjarra Pitjantjatjara Yankunytjatjara Women's Council

GORDON, Dr Sue, Chair, National Indigenous Council

GORDON, Dr Sue, Chairperson, Northern Territory Emergency Taskforce

HARMER, Dr Jeff, Secretary
Department of Families, Community Services and Indigenous Affairs

HARMER, Dr Jeff, Secretary
Department of Families, Community Services and Indigenous Affairs

HAVNEN, Ms Olga, Coordinator
Combined Aboriginal Organisations of the Northern Territory

HAZLEHURST, Mr David, Group Manager
Families, Department of Families, Community Services and Indigenous Affairs

HUNTER, Mr Bruce, Department of Families
Community Services and Indigenous Affairs

HUNYOR, Mr Jonathon, Director, Legal Services
Human Rights and Equal Opportunity Commission

JOHNSON, Mr Andrew, Executive Director, Australian Council of Social Service

KILGARIFF, Mrs Fran, Mayor, Alice Springs Town Council

LEVY, Mr Ron, Principal Solicitor, Northern Land Council

MANTON, Mrs Beverley, Chair, New South Wales Aboriginal Land Council
MARIKA, Ms Raymattja, Member
Combined Aboriginal Organisations of the Northern Territory

MARTY, Ms Sandy, Executive Liaison and Program and Policy Officer
Ngaanyatjarra Pitjantjatjara Yankunytjatjara Women's Council

McCALLUM, Mr Andrew George, Board Member
Australian Council of Social Service

McKAY, Ms Robyn, Acting Deputy Secretary
Department of Families, Community Services and Indigenous Affairs

MOODY, Ms Donna, Group Manager, Funding and Governance
Department of Families, Community Services and Indigenous Affairs

MORIARTY, Dr John, Member, National Indigenous Council

PARMETER, Mr Nick, Policy Lawyer, Law Council of Australia

ROSS, Mr David, Director, Central Land Council

SANDISON, Mr Barry, Group Manager, Working Age Policy Group, Department of Employment and Workplace Relations 2

SANDISON, Mr Barry, Group Manager, Working Age Policy Group
Department of Employment and Workplace Relations

SCRYMGOUR, Ms Marion, Minister for Child Protection
Northern Territory Government

SHAW, Mr Geoff, President, Tangentyere Council

SHELDON, Mr John, Principal Policy Officer, Northern Land Council

SHEPHERD, Mrs Anne, Mayor, Katherine Town Council

TILMOUTH, Mr William, Executive Director, Tangentyere Council

von DOUSSA, Mr John, President,
Human Rights and Equal Opportunity Commission

WEBB, Mr Peter, Secretary-General, Law Council of Australia

WEBB, Ms Raelene, QC, Member, Advisory Committee on Indigenous Legal Issues
Law Council of Australia

WILLIAMS, Dr Timothy Keith, Senior Medical Advisory
Department of Health and Ageing

WOODRUFF, Ms Jane, Adviser, Australian Council of Social Service

APPENDIX 3

COMMONWEALTH OF AUSTRALIA

Proof Committee Hansard

SENATE

STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

Reference: Social Security and Other Legislation Amendment (Welfare Payment Reform) Bill 2007 and four related bills concerning the Northern Territory national emergency response

FRIDAY, 10 AUGUST 2007

CANBERRA

BY AUTHORITY OF THE SENATE

[PROOF COPY]

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WITNESSES

SENATE STANDING COMMITTEE ON

LEGAL AND CONSTITUTIONAL AFFAIRS

Friday, 10 August 2007

Members: Senator Barnett *(Chair)*, Senator Crossin *(Deputy Chair)*, Senators Bartlett, Kirk, Ludwig, Parry, Payne and Trood

Substitute members: (As per most recent Senate Notice Paper)

Participating members: Senators Adams, Allison, Bernardi, Birmingham, Boyce, Bob Brown, George Campbell, Carr, Chapman, Conroy, Cormann, Eggleston, Chris Evans, Faulkner, Ferguson, Fielding, Fierravanti-Wells, Fifield, Fisher, Heffernan, Hogg, Humphries, Hurley, Joyce, Kemp, Lightfoot, Lundy, Ian Macdonald, Sandy Macdonald, McGauran, McLucas, Milne, Murray, Nettle, Patterson, Robert Ray, Sherry, Siewert, Stephens, Stott Despoja, Watson and Webber

Senators in attendance: Senators Adams, Barnett, Bartlett, Crossin, Kirk, Ludwig, Parry, Payne, Siewert, Stephens and Trood

Terms of reference for the inquiry:

To inquire into and report on:

Social Security and Other Legislation Amendment (Welfare Payment Reform) Bill 2007

Northern Territory National Emergency Response Bill 2007

Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Bill 2007

Appropriation (Northern Territory National Emergency Response) Bill (No. 1) 2007-2008

Appropriation (Northern Territory National Emergency Response) Bill (No. 2) 2007-2008

Committee met at 7.59 am

CHAIR (Senator Barnett)—Good morning, everybody. This is the hearing of the Senate Standing Committee on Legal and Constitutional Affairs inquiring into the Northern Territory National Emergency Response Bill 2007 and related bills. The inquiry was referred to the committee by the Senate on 9 August 2007 for report by 13 August 2007. The Australian government's legislation package for the national emergency in the Northern Territory comprises five bills: the Northern Territory National Emergency Response Bill 2007, the Social Security and Other Legislation Amendment (Welfare Payment Reform) Bill 2007, the Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Bill 2007, and two appropriation bills. The provisions of the legislative package flow from measures announced by the Prime Minister and the Minister for Families, Community Services and Indigenous Affairs on 21 June 2007. This announcement noted the significant reports of abuse and potential neglect of children, including the report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse.

The committee received submissions as at the close of business yesterday for this inquiry. All of those submissions have been authorised for publication and will be available on the committee's website. I am advised there are now 51 submissions. The committee appreciates the attendance of all witnesses at the hearing today, particularly those who have travelled from interstate. Your efforts are of considerable assistance, and I thank you. I remind all witnesses that in giving evidence to the committee they are protected by parliamentary privilege. 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 a witness objects to answering a question, the witness should state the ground upon which the objection is taken and the committee will determine whether it will insist on an answer, having regard to the ground which is claimed. If the committee determines to insist on an answer, a witness may request that the answer be given in camera. Such a request may of course also be made at any other time.

[8.02 am]

AHMER, Ms Kari, Assistant Secretary, CDEP Program Management Branch, Indigenous Employment and Business Group, Department of Employment and Workplace Relations

SANDISON, Mr Barry, Group Manager, Working Age Policy Group, Department of Employment and Workplace Relations

FIELD, Mr Anthony, Branch Manager, Legal Services, Department of Families, Community Services and Indigenous Affairs

GIBBONS, Mr Wayne, Associate Secretary, Department of Families, Community Services and Indigenous Affairs

HARMER, Dr Jeff, Secretary, Department of Families, Community Services and Indigenous Affairs

HAZLEHURST, Mr David, Group Manager, Families, Department of Families, Community Services and Indigenous Affairs

HUNTER, Mr Bruce, Department of Families, Community Services and Indigenous Affairs

McKAY, Ms Robyn, Acting Deputy Secretary, Department of Families, Community Services and Indigenous Affairs

MOODY, Ms Donna, Group Manager, Funding and Governance, Department of Families, Community Services and Indigenous Affairs

DE CARVALHO, Mr David John, Department of Health and Ageing

WILLIAMS, Dr Timothy Keith, Senior Medical Advisory, Department of Health and Ageing

CHAIR—I welcome representatives from the Department of Families, Community Services and Indigenous Affairs, the Department of Employment and Workplace Relations, the Department of Health and Ageing, and the Department of Education, Science and Training. I remind senators that the Senate has resolved that an officer of a department of the Commonwealth or of a state shall not be asked to give opinions on matters of policy and shall be given reasonable opportunity to refer questions asked of the officer to superior officers or to a minister. This resolution prohibits only questions asking for opinions on matters of policy and does not preclude questions asking for explanations of policies or factual questions about when and how policies were adopted. Officers of the department are also reminded that any claim that it would be contrary to the public interest to answer a question must be made by a minister and should be accompanied by a statement setting out the basis of the claim.

Before I invite witnesses to make a short opening statement I wish to make two further points. Firstly, I remind all witnesses that, in light of the tight scheduling of the hearing and the large number of senators with an interest in the inquiry, opening statements should be kept brief to enable members of the committee to ask questions. I ask all senators and witnesses to be alert to the program that has been agreed by this committee. I place on record my intention to apply the rules of the Senate to ensure that we keep to the program.

Secondly, it would be appreciated if one or several department representatives could remain during the hearing so that they could either table a response to questions or respond verbally at the conclusion of the hearing. Thank you very much. I now invite the department representatives to make a short opening statement.

Dr Harmer—I do not wish to make an opening statement. What I wish to do is to indicate that I have got a number of senior officers here, hopefully to assist the committee. I have also with us, as you indicated in your opening statement, officials from the Department of Health and Ageing, the Department of Employment and Workplace Relations, and the Department of Education, Science and Training. I propose to stay at the table and to call witnesses from those departments to assist us as necessary.

CHAIR—Thank you very much. Mr Gibbons or Ms McKay?

Mr Gibbons—No.

Senator CROSSIN—Senator Ludwig and I predominantly want to ask questions about the costings in the supplementary portfolio statements. We might have a few other issues that go to the implementation later on in our questioning. My first question to you is: most of the PBSs we had a chance to look at

overnight do not contain any specific information on the impact of these measures in the forward estimates years. Can you explain to me why that is the case?

Dr Harmer—The government, in putting the appropriation bill together for this emergency measure, appropriated funding for 2007-08. We and the government are still considering the implications of some of those measures into later years. That will be a matter for consideration shortly but is not included in the documentation at the moment.

Senator CROSSIN—To be really clear about that, are you suggesting, say, in the Health and Ageing portfolio—and I know we are probably going to jump across all six or seven that we have—where you might have an allocation for improving child and family health of $466,000, that at this stage you anticipate expending that by 30 June next year? If it is to move to another financial year, that information will come in the next nine months or so—is that right?

Dr Harmer—Yes. The money provided for in the appropriation bills that the senator referred to in his opening statement is for 2007-08. Some of those measures will clearly require funding into later years; some of them possibly will not. We have not yet established exactly which of those will and how much, and the government will be considering those shortly.

Senator CROSSIN—So, if we get to December and you find that certain measures will require an additional allocation or an ongoing allocation, we will see that before 30 June—probably, I suppose, in next year's budget. Is that correct?

Dr Harmer—You will certainly see it either at or before next year's budget, yes.

Senator CROSSIN—Has any provision been made for the measures into the forward estimates? It is just limited to the current financial year at this stage—is that right?

Dr Harmer—The appropriation bills that we are considering today are just for 2007-08.

Senator CROSSIN—What impact does that have on any contracts—for example, infrastructure construction contracts?

Dr Harmer—There will be some. Many of the departments have considerable funds in some of these outcomes which can accommodate longer term contracts, but the government will be looking at the implications of these first-year expenditures for the long term in the near future.

Senator LUDWIG—Does that mean a contract can only go up to 30 June 2008? How can you then make provision for a contract longer than that if some of these measures have to extend beyond that?

Mr Gibbons—Let's take the case of maintenance on housing. In the budget this year there was $1.6 billion provided over four years for housing and housing maintenance, and a significant proportion of that will be spent in the Northern Territory. There is some supplementary funding in this appropriation bill, but we do have the ability to commit to contracts longer than this year in key areas like housing maintenance, infrastructure works et cetera.

Senator LUDWIG—But do you have any detail as to which contracts you can and you cannot extend—in other words, which contracts will extend beyond 30 June 2008, which contracts you can apportion this amount of money to from the existing budget and on what basis or which contracts you cannot, which will make those contracts reliant upon waiting for future funds to be committed? Do you have any detail of that type?

Dr Harmer—We do not have that with us today, no. But, as Mr Gibbons has said, for some of the big elements of expenditure, like housing, there are sufficient funds in our current forward estimates budget to accommodate any contract we are likely to want to sign for the Northern Territory.

Senator CROSSIN—I specifically want to ask some questions about the FaCSIA supplementary PBS. Let us go to the figures here. If we look at the different programs, on page 3 I see five different areas in outcome 1. The majority of the funding it would seem, $54.6 million, will actually go to coordination. I am assuming that that is the administration, is that correct?

Dr Harmer—If you like, we can give you a bit of a run-down of what is included in 'coordination'.

Senator CROSSIN—That would be good.

Ms Moody—There are a number of things included in that item: the costs of the task force and the operations centre currently based in Alice Springs; the cost of government business managers; support for volunteers; community engagement; a range of whole-of-government support, including things like leasing motor vehicles that have been provided across all agencies working in the response; some additional policy

support for FaCSIA; and various corporate costs associated with supporting people, both government business managers and the ops centre, through the measure.

Senator CROSSIN—Is this the total allocation? So out of 'employment and welfare reform' we have around $39.5 million?

Ms Moody—For FaCSIA?

Senator CROSSIN—Yes, for FaCSIA.

Ms Moody—Yes.

Dr Harmer—Remembering that the appropriation for FaCSIA around welfare reform will also channel through to Centrelink, so there are considerable Centrelink costs included in that I think.

Ms Moody—Yes, in fact most of the money under 'employment and welfare reform' actually flows to Centrelink for their work.

Senator CROSSIN—That will be for additional officers and infrastructure in Centrelink? The payment for Work for the Dole will be in the DEWR PBS; is that right?

Ms Moody—I believe so, but I would need to consult with somebody on that.

Dr Harmer—I am pretty confident that that is true. For our part it will be for the employment of Centrelink officials who will go out and interview people, help manage the quarantining et cetera.

Senator CROSSIN—Is the housing and land reform of around $19.8 million to build new houses for Indigenous people?

Ms Moody—No. The money for the building of houses is contained within existing programs within FaCSIA, so there is no money for the construction of new houses for Indigenous people in the appropriation.

Senator CROSSIN—So of the $587 million there is no new money for any additional houses; is that what you are telling us?

Dr Harmer—There is some money in this for the maintenance and the fixing up of houses and, as Mr Gibbons said, the government announced in the budget this year $1.6 billion for Indigenous housing over the next four years. A large proportion of that the minister has already made it clear will be available for the Northern Territory. We have considerable resources for housing already appropriated in the budget. We also believe that, with government business managers on the ground and Work for the Dole projects initiated in many of these communities, we will be able to bring into operation considerable numbers of houses that are currently dilapidated or in disrepair.

Mr Gibbons and I, for example, attended Kintore, one of the towns in question, on the western border of the Northern Territory, between the Northern Territory and Western Australia. On the day we were there there were 12 houses that were uninhabitable because they had windows broken, doors knocked down, kitchens and/or bathrooms inoperable and lots of stones on the roof et cetera. Our conclusion was that, for a relatively small amount of additional money, with some Work for the Dole projects and with some volunteers who have electrical and plumbing skills, we will be able to bring those houses into operation for well below the cost of a new house, which may be up to $500,000 in those sorts of locations—probably for as little as $25,000 or $30,000. We will be spending quite a bit of time with those projects.

Senator CROSSIN—Where will the money to repair those houses come out of—this housing and land reform allocation?

Mr Gibbons—It is already provided for in the budget this year, in the ARIA program funds, the $1.6 billion that I mentioned earlier.

Senator CROSSIN—So exactly what is this $19.8 million going towards?

Mr Gibbons—This includes funds for the provision of demountable accommodation in remote communities for government business managers, for Centrelink officers and in some cases for temporary accommodation for police while permanent police accommodation is constructed. Given that we are becoming the landlord of these communities for a period, there are some responsibilities associated with the maintenance of infrastructure in these communities that this funding will cover.

Senator CROSSIN—So far we have got $54.6 million, $39.4 million and $19.8 million, all to be spent either within or on departmental areas.

Dr Harmer—To make a difference in some of these communities, we will need considerable additional support—policing, government business managers, increased Centrelink officials et cetera, and the task force, as Ms Moody mentioned. There is a considerable additional administrative workload in making this successful.

Senator CROSSIN—Is the $2 million for promoting law and order for additional AFP? Surely that would be in the A-G's PBS.

Ms Moody—The funding for AFP officers seconded to the Northern Territory is within the Attorney-General's portfolio. Within the FaCSIA portfolio is the cost of the state police who will be seconded to the Northern Territory. It also includes some support to the Northern Territory police for the cost of that deployment and some additional support for infrastructure for that deployment.

Senator CROSSIN—In general, how many staff do you anticipate will be deployed to the communities to be there permanently and how many will be there temporarily?

Dr Harmer—I am not sure we can give you a precise answer to that today. We can tell you that of the order of between 60 and 70 government business managers will be on the ground permanently. It is quite likely that Centrelink, to manage the quarantining et cetera, will need to deploy staff and open some new offices. It is not clear yet to us the extent that the Department of Employment and Workplace Relations will need permanent officials on the ground to manage the Work for the Dole and some of the CDEP reforms. As Ms Moody said, we will be partly paying for the deployment of some of the additional police, particularly the state and territory police.

Senator LUDWIG—Are you able to provide from each department output the number of staff that will be allocated to the Northern Territory response, whether they will be allocated in the Northern Territory or in Canberra or other locations and whether they are full time or part time and continuing or ongoing staff, so that we can understand the response that you are going to make in terms of staffing?

Dr Harmer—I do not believe we can give you a definitive answer on that today. We have done most of the communities in terms of the survey work, and made some assessments about what is needed. We have not completed that for the 73 communities yet. We have provisions in the budget which are estimates for what we think we will need. We can probably give you an indication around each department of what we think, but I am not confident it would be a final figure for the year.

Senator LUDWIG—An indication would be helpful—

Dr Harmer—Okay.

Senator LUDWIG—and the amount of appropriation that has been allocated to support those staff.

Dr Harmer—We will try and get that for you during the morning.

Senator LUDWIG—And then, in addition to that, can you indicate whether or not they will be permanent. I will use the general phrases I am more familiar with, but you can put them in the Public Service way—

Dr Harmer—Sure.

Senator LUDWIG—I am interested in those who are permanent, those who are secondees from other state or territory organisations, those who are Commonwealth secondees and those who are new employees and the basis upon which they will be employed.

Dr Harmer—We will do our best for you on that. Probably the best time to do it will be when Major General Chalmers is here as head of the task force operations in Alice Springs. I think he will be here at about 2.30 pm. We will try and have it ready for then.

Senator CROSSIN—So $235 million of the $501 million being appropriated in Appropriation (Northern Territory National Emergency Response) Bill (No. 1) 2007-2008 is for departmental outputs. Is that correct?

Ms Moody—That does not mean it is being spent, for instance, on departmental staff; it just means that, from a finance classification, it is appropriate to put it into the departmental budget. But it can then be spent on a series of different issues. For instance, our reimbursement of the state police costs is sitting in that figure.

Senator CROSSIN—But $235 million is the right amount, isn't it?

Mr Hunter—The total for FaCSIA is $261 million. On the departmental side it is $121 million with $34 million in capital. On the administered side there is an additional $105 million, which includes the payments to the states.

Senator CROSSIN—Is there any funding under any of the measures in any of the portfolios to improve roads in the communities?

Ms Moody—No, there is not.

Senator CROSSIN—I will take you to the DEWR PBS. As I understand it, under DEWR's PBS in outcome 3 there is a decreased administration appropriation of around $76 million. I am assuming that is for the abolition of CDEP. Is that correct?

Ms Ahmer—Yes. The amount that you have referred to is the offset—the reduction in the CDEP appropriation of $76 million.

Senator CROSSIN—Your departmental appropriations for this outcome, though, have increased by $23 million. Can you explain to me why your departmental costs have increased by that amount? I want to know why you have a decrease of $76 million in one area but an overall increase of $23 million.

Ms Ahmer—The departmental expenditure that has been referred to in the estimates statement is a mix of work. It is partly additional staffing that is required to implement the changes. With the phased removal of CDEP we need to put in place community brokers and transition officers for the department to make sure that we can have a smooth transition. The transition officers will be working on a one-on-one basis with each of the organisations to look at activities that are being undertaken to determine precisely what is happening to each of the close to 8,000 participants that are in place.

Senator CROSSIN—When you say 'organisations', you are talking about CDEP organisations, aren't you?

Ms Ahmer—Yes, CDEP organisations. So we will have a group of people to work very closely with the organisations to make sure that we can track participants, that we can move participants into work and undertake the necessary actions to work with organisations to make sure that they can manage the change. We are also putting in place community brokers for this financial year. Hopefully most of the community brokers will be living within the community itself. Because there are significant changes to the CDEP and also the accelerated lifting of the remote area exemptions, we want to put people in place who can broker solutions between the new service providers that are coming through, work with the organisations to think about what they need to do to actually participate in that new service space and also work closely with participants to make sure that they are aware of their obligations. Particularly with the remote area exemptions, there is a new participation requirement for a lot of people. We need to make sure that we minimise the impact on those people and ensure that they do understand what their new obligations are. So there is one-off staffing required for this financial year for both of those obligations.

We also have some additional staffing in to manage the build-up of the new contracts. Part of the CDEP changes but also the acceleration of the lifting of remote area exemptions will involve putting in place an expanded provider of Australian government employment services contracts. There will be a lot more people accessing those services. We need to make sure that we have contract management staff that are working closely with all of those providers to make sure that they are actually undertaking services and delivering the services that we need. Also embedded is travel.

Senator CROSSIN—In the PBS, what amount has been allocated against the Work for the Dole?

Ms Ahmer—Work for the Dole is close to $12 million.

Senator CROSSIN—So we have gone from $76 million, which was a payment out for CDEP, to $12 million for Work for the Dole?

Ms Ahmer—The Work for the Dole also covers off the accelerated removal of the remote area exemptions. There are 5½ thousand people who are currently subject to remote area exemptions in the Northern Territory. The measure that you see in the estimates covers both the phased removal of CDEP and the removal or lifting of remote area exemptions.

Senator CROSSIN—Is it anticipated that you would actually move the money for CDEP for individuals to an employer, as was the proposal in the budget, for the 825 Indigenous people in urban centres? Take, for example, Aboriginal education workers in schools. Is there a proposal in this budget that you would take the CDEP component for that salary and perhaps pass it on to the Northern Territory government so they can then top that up and employ people on a public sector salary?

Ms Ahmer—With the Australian government services we are looking at transferring funding. We are looking at working closely with the Northern Territory government, the other Australian government agencies and also private sector employers to look at how we can unpick some of the cross-subsidisation and make sure that we can have fully funded positions. That might include transfers of funds from the CDEP. It could include provision of STEP, the Structured Training and Employment Program, or it could include wage assistance. It will depend on the circumstances of each individual. We are planning to work very closely looking at individuals that are currently on CDEP to see how we can manage to transfer or convert those jobs that are currently being undertaken by CDEP to be full jobs.

CHAIR—Senator Crossin, I will ask you to put one more question, to allow time for other senators. We can come back to you if we have a little more time.

Senator CROSSIN—All right; I understand that. I have a question for DEWR. I cannot reconcile the figures for DEWR that are listed in the appropriation bills and in the supplementary estimates statement. The figure is $136 million appropriated for DEWR in bills 1 and 2, yet the figure in the supplementary estimates statement is $107 million. Can you explain that to me? In your PBS on page 4 you have $65.9 million and on page 10 there is $42.1 million.

Ms Ahmer—Page 10 is referring to Indigenous Business Australia.

Senator CROSSIN—I understand that, but it is DEWR's PBS. I get a difference, between $107 million compared to $136 million. Can you explain the difference there?

Ms Ahmer—I will have to take that on notice. I will have a look at that and when we come back this afternoon I can bring a statement forward for you on that.

Dr Harmer—Senator, clearly we have not got very much time to get back to you so we will try to get answers to some of these questions and provide them later in the day.

CHAIR—Thank you, Dr Harmer. Thank you, Senator Crossin; I will pass the questioning to Senator Trood.

Senator TROOD—Dr Harmer, there has been some controversy in relation to this package of legislative measures with regard to the application of the Racial Discrimination Act. Could you take us through why the act is suspended in relation to this matter and the constitutional basis upon which that is taking place?

Dr Harmer—I will ask my colleagues on my left to take you through that. I make the point that this has been a very intensive six-week exercise with a team of 20-plus lawyers, including very close work with the AGS et cetera, so there has been a lot of very intensive work over the last six weeks on this with a very big team of lawyers to put this important package together.

Senator TROOD—I think we fully appreciate the complexity of the matter, Dr Harmer.

Mr Field—The constitutional basis for the racial discrimination provisions is essentially the same basis as for the other measures in the legislation—namely, the Territory's power in the Constitution.

Senator TROOD—Can you explain to us why the suspension of the act is necessary in the context of these measures?

Mr Field—The three bills have slightly different provisions in relation to the RDA, so I will first focus on the measures relating to the Northern Territory emergency response. The bills make it clear that those measures in relation to the emergency response are special measures, and special measures are based on the Convention on the Elimination of All Forms of Racial Discrimination, which allows concrete measures to ensure the adequate development and protection of individuals. The provisions in the bills are intended to provide a benefit to Indigenous Australians and to secure their adequate advancement and enjoyment of their human rights on the same basis as others.

The exclusion from part II of the RDA is limited to the five years of the emergency response and is necessary so that the special measures in the emergency response can be implemented without delay and without uncertainty. This is to allow the special measures to address the crisis in the communities in the Northern Territory and to build social and economic structures in those communities. The special measures are seen as measures to protect children in a way which is consistent with Australia's international obligations under human rights treaties. So, in short, the provisions are necessary to allow the emergency response to proceed without delay and without uncertainty so that the special measures contained in the legislation in the three bills can be implemented.

Senator TROOD—My understanding is that the Racial Discrimination Act allows what we might call positive discrimination in favour of a group within a community as defined in the act; is that right?

Mr Field—It allows special measures.

Senator TROOD—Special measures; essentially positive discrimination. In your view and the view of the team working on this matter, this is in fact an act of special measures of positive discrimination in relation to a particular class of people within the Australian community; is that right?

Mr Field—Yes.

Senator TROOD—Therefore in your view there can be no question other than the fact that it is an appropriate exercise of the powers within the context of the act.

Ms McKay—Section 8 of the RDA does not prohibit acts that are special measures, so a special measure is a measure that aims to advance the rights of a particular group so that they can enjoy the same rights and freedoms as other people in society. However, section 8 also provides that a law that authorises property owned by an Indigenous person to be managed by another person without the Indigenous person's consent is not taken to be a special measure. It is for that reason that we are seeking to exempt the measures, for a limited period, from part II of the act.

Senator TROOD—Presumably we have to look at the totality of the actions being undertaken here.

Ms McKay—That is correct.

Senator TROOD—On my assessment, in relation to the totality of the actions, children, mothers or other people within the community are benefiting substantially as a consequence of these measures.

Ms McKay—That is correct.

Senator TROOD—Is there any question in your mind that this may be in any way a breach of any international obligations that Australia may have?

Ms McKay—No. We have considered that quite closely. It is important that we observe our obligations under the Convention on the Elimination of All Forms of Racial Discrimination and our obligations under the Convention on the Rights of the Child, and we believe these measures in fact fulfil our obligations internationally better than would be the case if no action were being taken.

Senator ADAMS—I have questions of the Department of Health and Ageing on the health issues. The Senate Standing Committee on Community Affairs has just been doing an inquiry into the patient assisted travel scheme and I would like to ask some further questions. With regard to the health checks for the children, ENT problems appear to be very much accentuated in a number of the Northern Territory communities, the problem being travel assistance and escorts to allow these children, if they do have problems, to go further afield for specialist treatment. ENT specialists, we were told, are not available in the Territory. A number of these communities are inside the limit of 200 kilometres for assistance for travel, so my question to you is: as far as the health budget for the health checks goes, has any allowance been made for extra travel costs?

Mr De Carvalho—In dealing with conditions that are identified as a result of the initial health checks, we have teams actually going into the communities, so there is not a major issue in terms of travel costs for the initial checks being done by the health teams. The health teams are likely to find a range of conditions that require follow-up. We expect that ear, nose and throat conditions will be amongst those, as well as a range of other conditions such as skin conditions, for example, and anaemia. They might require some specialist treatment. In those circumstances, the question of availability of specialists to deal with those conditions is a very real one. But the government is planning, as part of its initial follow-up to the health checks, to put together teams of specialists to go out to the communities again on a basis whereby they might be located in a regional centre, say Alice Springs, and then be able to travel out systematically to other communities which might have a higher incidence of those conditions and would justify a special visit by that group of specialists. So, while there is no additional money that I am aware of in the initial appropriations for this year for patient travel into regional centres, we have taken into account the problems that are likely to be experienced or identified by the health check teams as requiring specialist follow-up and we are planning to actually take the specialists out to the communities. In that sense, the travel and distance issues have been thought about, but it is about taking the specialists to the communities rather than the other way round.

Senator ADAMS—The second issue that arose was dialysis—that is, patients having to move to an area where they can have dialysis. Unfortunately, there appears to be quite a lack of available facilities in that

area, especially with the machines and the time that is taken. Are you looking any further forward with that issue?

Dr Williams—This initiative, as you know, is around Indigenous children. The issue of dialysis does not commonly come up in the cohort that we are looking at in this child health check initiative particularly.

CHAIR—I had two follow-up questions with regard to, firstly, the Racial Discrimination Act and, secondly, the permit system. The Law Council submitted a submission late last night, and it is now publicly available. On the permit system, they say that FaCSIA has not outlined the basis of the minister's decision to amend the permit system. Can you advise the committee what basis FaCSIA used and what reasons it has to amend the permit system?

Mr Gibbons—I have a short, one-page explanation of the relationship between the government's decision to change the permit system in a limited way and the initiatives more broadly. I am happy to table that.

CHAIR—Thank you very much. That is received. In terms of the RDA, the Law Council say that special measures must be 'reasonable and proportionate means of achieving substantial equality'. Ms McKay, you have indicated—and I think your other officer, Mr Field, has indicated—that you have assessed very carefully both the Constitution and our international obligations. You referred to a number of international treaties. In terms of the special measures being 'reasonable and proportionate means of achieving substantial equality', can you advise the committee if you believe that is the case and on what basis you believe that is the case.

Mr Field—The measures are time limited to the five years of the trial. On the Law Council's response: I looked late last night but did not see their submission up on the website, so unfortunately I have not had the opportunity to read it carefully. The approach that has been taken in the legislation appreciates the point that they are making but, again, in terms of implementing the special measures that are part of the emergency response, in reducing legal uncertainty so that the implementation can go forward, it has been necessary to take the approach—as Robyn McKay indicated—to, first, make it clear that the provisions in the bill are special measures and, second, exclude the operation of part II of the RDA for the purposes of dealing with section 10(3) of the RDA. Australia's international obligations go to the protection of children as well as its obligations in relation to the elimination of all forms of racial discrimination. In balancing those two measures, in the context of the emergency response, we have considered those matters and we consider that the legislation achieves that balance.

CHAIR—I assume you have obtained your own legal advice within the various departments to substantiate your comments to us today?

Ms McKay—We have worked extremely closely with the Attorney-General's Department and AGS on all aspects of these bills.

CHAIR—If there is any further response you would like to provide to us during the day in response to the Law Council's paper, the HREOC submission or any other submissions, please feel free to do so. Finally, there have been general allegations, Dr Harmer, that this proposal and initiative is essentially a land grab. Can you just respond to those allegations in a general way, please.

Dr Harmer—I will start off and let Mr Gibbons follow. We do not believe that it is at all correct to characterise this as a land grab. We are acquiring, temporarily, leases over the 73 communities to allow us to intervene on behalf of the children by putting police in there, by putting government business managers in there, by looking at the state of the housing et cetera. We need to do this to stabilise the communities such that they are safe places for the kids, basically. We are only doing it for a very small proportion of the land and for five years only.

Mr Gibbons—The other point I would make is that we are going to make an investment in these towns. Many of them are a liability in their current state. We will be improving the basic infrastructure, particularly that part of it that is relevant to environmental health as well as houses, such that when they are returned they will be in vastly better condition than when we took them over.

CHAIR—I am advised that Senator Ludwig will be placing some questions on notice. I understand that he will get those to you as soon as possible. I understand that there are time constraints today, but your response to the best of your ability would be appreciated.

Dr Harmer—We will do our best.

Senator BARTLETT—Could you tell us what consultation your department or any other departments have had with the authors of the *Little children are sacred* report in putting together this legislative response?

Dr Harmer—I am not aware of any consultation with the authors of the report. It was a very long report with many recommendations, most of which were directed towards the Northern Territory government. The Australian government decided on viewing it that this was an emergency and required urgent action. The action that the government decided it needed is spelt out in the appropriation bills and the associated Northern Territory emergency response bills.

Mr Gibbons—We of course studied the report.

Dr Harmer—As Mr Gibbons has pointed out, we did not undertake this exercise without studying the report, but, in a big report such as that, the authors made their views on what is happening pretty clear. We did not feel the need to go back to talk with them. Frankly, in responding quickly to this, we did not feel that that was the highest priority amongst all the other things that we had to do.

Senator BARTLETT—I appreciate the comment about it being an emergency but, in the six weeks since it was announced, has there been no consultation at all with them?

Dr Harmer—No—at least, not that I am aware of.

Senator BARTLETT—I have just had a quick look at the page you put before us trying to indicate links between the permit system changes and combating child sexual abuse, which I note draws on the *Little children are sacred* report at least twice as part of its justification. Given that you just mentioned that you have read that report thoroughly, is there any mention in any of their recommendations about the permit system or land changes being linked to child sexual abuse?

Mr Gibbons—I do not think so.

Dr Harmer—No, there is not. I will stand corrected, but I do not think that there are any recommendations about police either in that report.

Senator BARTLETT—You have mentioned in this piece of paper that whoever comes into the community cannot replace an adequate police presence. I am presuming that means a permit. Is anyone suggesting that it is an either/or situation—permits or police?

Mr Gibbons—Up to this point in time, that is what it has been for a lot of communities. There has been an absence of police.

Senator BARTLETT—Are you saying that the communities did not want police?

Mr Gibbons—No. I am saying that, for a long time, there were no police in communities.

Dr Harmer—I will also say, because we now have quite a bit of information about community reaction to the intervention, that there has been a very positive response to the presence of police in the communities.

Senator BARTLETT—I do not think anything I said suggested otherwise. What I asked was why it was being put up as an overall option that you either have a permit or a police presence? I did not know that anyone was putting it up in that way. You put forward a few dot points to underline that the removal of the permit system will promote strong, safe communities. They are basically a few assertions. Is there any actual research or data that you can provide to the committee that demonstrates that those places without permits, either in the Territory or elsewhere, have lower levels of child abuse?

Mr Gibbons—I do not believe so.

Ms McKay—The evidence on child abuse in Australia is published every two years in the AIHW report called *Australia's welfare*. It provides comparisons of notifications, investigations and substantiations by state. They are all derived initially, obviously, from notifications. There are quite differential rates of notifications by jurisdiction. You can find them in *Australia's welfare 2005*; the 2007 report is not out yet.

Senator BARTLETT—Yes, in those statistics they asked whether there was any data that demonstrated different levels of abuse. You specifically link changes to the permits system with combating child abuse. I presume there would be some evidence to back up why that is needed and some evidence to demonstrate that those communities that do not have permits have lower levels of child abuse.

Dr Harmer—We did do a review of the permits system. The government announced last year a review of the system. We have received 100 submissions, including quite a lot of consultation. We had access to

that information before making the decision. In Minister Brough's visits around the north of Australia, talking to people in many communities, in the community meetings, when everyone was present, rarely did the permit system being a problem come up. A number of times in private meetings after that, with Mr Gibbons and me, individuals certainly came up to him and talked about the permit system being a problem.

Senator BARTLETT—Are you able to make submissions for that public? Have the submissions from that inquiry been publicised?

Dr Harmer—No, they have not been.

Senator BARTLETT—Why is that?

Dr Harmer—It is advice to the government; it is a matter for the government. We receive lots of submissions and lots of reports on things that are not necessarily public. There are 100, and we have not at this stage considered making them public.

Senator BARTLETT—I guess it is a matter for government, as you say, but could you perhaps make a request that through this process they be made public?

Dr Harmer—I will ask the minister if he is prepared to make them public.

Senator PAYNE—Or perhaps, Senator Bartlett, if not the submissions themselves, the names of the submitters.

Senator BARTLETT—As much detail as possible is always handy. I appreciate it—well, I don't appreciate it; it is whatever the opposite of 'appreciate' is. But I note that we are limited for time, so I will ask a final question. I noted the comments by Noel Pearson about the process the government was following. He said that the government or relevant ministers 'will make a historic mistake if they are contemptuous of the role that a proper and modern articulation of Aboriginal law must play in the social reconstruction of Indigenous societies'. Are you able to indicate what components of the response and what components of the legislation are focused on ensuring the role of Aboriginal law in the reconstruction of Indigenous societies in the Territory?

Dr Harmer—Senator, that is a rather complex question; I would prefer to take it on notice. We will see if we can get you a response. As we mentioned before, that will be difficult but we will do that today if we can.

CHAIR—We are very tight on time and I am aware of Senator Siewert's interest in asking questions.

Senator SIEWERT—I notify you now that I have got a lot of questions; I will want to put some on notice.

Dr Harmer—If there are a lot we will do our very best, but—

Senator SIEWERT—I will obviously limit it to the ones that I believe are absolutely essential in the time frame.

Dr Harmer—Thank you.

Senator SIEWERT—Can we go back to the issue of costs. Can you clarify for me the cost of implementing the quarantining of the welfare payments process?

Dr Harmer—I think we can probably give you an estimate of that quite quickly. While the officers are coming to the table, Senator Crossin asked about roads. I did not want to give the wrong impression in saying that there is no funding available in this package for roads. As you know, Senator, roads are a long-term proposition and there are considerable funds—I think in the order of three quarters of a billion dollars—available to the Northern Territory for roads under the GST component. So there is a lot of money available for roads in the Northern Territory. In staffing costs, again we are coming back to you on the specifics of that. This is a very staff intensive exercise on the ground, making a difference. We have made the mistake in the past of not putting people on the ground. That is why, in many respects, we have not been able to make such a difference with the money we have been spending. We think that that was wrong.

Dr Hazlehurst—The overall costs of implementing the welfare reform changes in the Northern Territory in the first year are $88.5 million.

Senator SIEWERT—How much of that relates to implementing the quarantining process?

Dr Hazlehurst—That is it.

Senator SIEWERT—That relates specifically to that? Okay. I want to clarify something in the social security bill. Clause 123UB talks about who will be subject to the income management regime. From my

reading of that, and as I understand it from government announcements, it will apply to everybody in the particular designated areas, not just those people with children.

Dr Hazlehurst—That is correct.

Senator SIEWERT—What is the reason for it applying to everybody?

Dr Hazlehurst—The primary purpose of the income management regime as it applies the Northern Territory is, in those prescribed areas, to have an income management approach to all government welfare payments going into a community, to ensure that the flow of government assistance into the community is able to be managed as a whole to encourage expenditure on those services and goods that will lead to better outcomes for the children in those communities. On that basis, the government took the decision to apply the income management regime not just to payments associated with children themselves.

Senator SIEWERT—Can you explain the rationale for removing the requirement to tell people of their appeal rights under the emergency response? I have been told that it is because it undermines the emergency response. Could you please explain that rationale?

Ms McKay—There are standard appeal rights that apply to all decisions relating to social security. They involve an authorised review officer in Centrelink reviewing a decision, then appeals to the SSAT and the AAT and subsequently to the courts. In the case of the Northern Territory response, because it is time limited, 12-month quarantining, it was decided that the authorised review officer review would remain but that appeals to the SSAT and the AAT would take too long and would consequently undermine the timing of the emergency response. People will only have their income quarantined to the extent of 50 per cent of their income from welfare payments and for 12 months only.

Senator SIEWERT—Can you clarify whether we are talking about just terms compensation or reasonable compensation.

Mr Gibbons—Just terms compensation.

Senator SIEWERT—We are definitely talking about just terms?

Mr Gibbons—Yes. Compulsory leasing of townships.

CHAIR—Senator Siewert, you have one more question.

Senator SIEWERT—There is also confusion about whether infrastructure or making your child healthy or being provided with a house equate to just terms.

Mr Gibbons—We are talking about the lease-back of townships for five years and applying the constitutional provision about just terms compensation to the owners of the land, which are the relevant lands trusts. It is unrelated to what we do to repair houses or provide other infrastructure in the context of the intervention.

Senator SIEWERT—So all those issues will be separate from the just terms compensation?

Mr Gibbons—The issue of compensation negotiations will proceed if the legislation passes. I am not going to say anything to prejudice that process.

Senator SIEWERT—You cannot guarantee that they are separate?

Mr Gibbons—I do not quite understand your question.

Senator SIEWERT—What has been implied in the media is that the provision of infrastructure may be used as compensation. I have just asked you to guarantee that that is not the case—that the issues around compensation are completely separate from the other interventions and the other provisions of infrastructure and things like that. You have basically just said that you are not prepared to talk about the compensation issue now.

Mr Gibbons—No, because I believe I would be prejudicing the position of the Commonwealth in those negotiations.

CHAIR—Thank you, Mr Gibbons. On behalf of the committee, I thank you for your willingness to come back later in the day, within time constraints and within your abilities. We appreciate that.

Dr Harmer—Because it is only a one-day hearing and I do not have the advantage of giving questions on notice or coming back, I have had people watching. There are a couple of things I said about which I want to make a correction. Regarding the advice I received about people coming to talk to the minister about the permit system, I am told that was actually people talking to the review teams—the teams that are going out there and talking individually about the problems with the permit system. The reason that we are

not going to be able to make available the 100 submissions that came in on the permit system is that we have apparently told the people who provided submissions that they would be submissions for the government and would not be made public. So the answer to that question is that we will not be able to make them available.

CHAIR—Thank you.

[9.02 am]

TILMOUTH, Mr William, Executive Director, Tangentyere Council

SHAW, Mr Geoff, President, Tangentyere Council

Evidence was taken via teleconference—

CHAIR—Welcome to this Senate committee inquiry. I now invite you to make a short opening statement, at the conclusion of which I will invite members of the committee to ask some questions.

Mr Tilmouth—Tangentyere Council represents the Alice Springs town camps. Those town camps are independent, autonomous bodies that are incorporated in their own right but make up Tangentyere Council as a federation. Tangentyere Council has tried to enter into meaningful discussions with the federal and Northern Territory governments about the future of those town camps, including addressing issues such as inadequate funding, infrastructure and management. Time and again, the government has attempted to lay down what it wants, meaning Aboriginal people have to give up control over land on which they live, the way in which they live and how they will manage their communities. We have been at the negotiating table for some time and we have agreed to give up our land for 20 years, provided that we have an ongoing role in management. But that has been rejected. It looks like we are going to lose our land forever. All attempts for us to negotiate on an equal basis have been rejected. This legislation is the final step in removing our land, dignity and humanity. It removes our right to consultation, participation, stability and security. The explanatory memorandum speaks of a stable and secure environment being required to eliminate child abuse. This legislation provides neither security nor stability. It only provides uncertainty, and it is unclear how the act will work.

At any time in the next five years the land can be taken from the town camps by the Commonwealth, with 60 days notice. There is no certainty that there will be any compensation if the leases are resumed. What will become of the people who have to live in those camps and who have lived there for some generations—in some cases, five to six generations? Where is the explanation that removal of the land for any period will address child sexual abuse, alcohol addiction and will create a stable and secure environment? The explanatory memorandum refers to human rights and freedoms being achieved. It is offensive to claim that you are protecting human rights and freedoms when you remove other human rights such as the right to land, the right to racial equality, the right to engage in consultation on housing, income and security and your right to hand down your culture to your children.

With regard to the permit system, Tangentyere has never denied any authority—whether it be welfare, the police, health, education or ambulances—access to those town camps. The reason we have the permit system is to avoid unscrupulous dealers, carpetbaggers, grog runners and paedophiles entering those communities. We feel that, if you take away the permit system, it will just be open slather for any of those sorts of people who want to come in and sell vacuum cleaners to people who do not have carpets, to sell encyclopaedias to people who cannot read and to also run grog and commit other unscrupulous behaviour in those camps.

Tangentyere has always worked in a complementary way with governments. Tangentyere has always sat down in consultation with governments and tried to negotiate some meaningful outcomes. Tangentyere believes that we need to have a say in housing management, because public housing has consistently failed Aboriginal people within the Northern Territory. People have waited 18 months to get a house. Within three weeks they are evicted and they fall back into the town camps. We now have 26 renal patients from remote areas living in town camps. We have a high rate of overcrowding because of failed public housing. With respect to housing management, we feel that the Northern Territory government has consistently failed Aboriginal people in Central Australia. I now wish to introduce Geoff Shaw, who is the president of Tangentyere Council, so he can comment before you ask questions.

CHAIR—Thank you. Mr Shaw, could you just keep your comments as brief as possible so there is an opportunity for questions.

Mr Shaw—What Mr Tilmouth said is correct. I am president of this organisation and we are in line with the comments which have been made by our director, William Tilmouth. What William has presented to you is exactly our position at Tangentyere Council.

Senator PAYNE—Thank you both for your time this morning. I want to get an idea of the funding and the operations of the council. Can you indicate to us how you are funded by both the NT and the Commonwealth governments?

Mr Tilmouth—We are funded through a whole myriad agencies and various departments within the Commonwealth. I cannot disclose for you the full detail of that because I do not have that with me. We manage programs from the Commonwealth and the Northern Territory government in accordance with those guidelines.

Senator PAYNE—What is the funding worth in dollar terms?

Mr Tilmouth—A quick estimate: around $10 million to $11 million worth, considering $3 million to $4 million of that is CDEP.

Senator PAYNE—That is from the Commonwealth. What about from the Northern Territory?

Mr Tilmouth—That is a combination of both.

Senator PAYNE—You were speaking previously about the proposals for further funding. I understand that there have been some discussions about housing and infrastructure packages and that your council has rejected the housing and infrastructure package which was offered by the Commonwealth?

Mr Tilmouth—We welcomed the announcement that $60 million would be made available for upgrading the infrastructure—water, sewerage, electrical, telecommunications and street lighting. We welcomed it because it was high time that governments recognised the need of town campers, and the infrastructure is so antiquated that we have continuous amounts of water leaking underground. We welcomed it, but we welcomed it not at the expense of the land itself. Ninety-nine years is a long, long time and that is why we proposed a 20-year proposal. When you get a bank loan for a house they offer you a 30-year loan when the lifespan of the house is around 20 to 25 years. That is the reason why we have gone to a 20-year proposal, but that was rejected.

Senator PAYNE—But other councils have accepted the offer, as I understand it.

Mr Tilmouth—Yes, they have, and I think that is their choice to do that.

Senator PAYNE—Thanks for clarifying those issues for me, Mr Tilmouth.

Senator CROSSIN—Can I follow up that question. We had news this week that Julaikari council in Tennant Creek, as I understand it, have not necessarily accepted the offer of the 99 years and have signed a memorandum of understanding.

Mr Tilmouth—I am not quite sure where Julaikari is up to but the situation in Tennant Creek is entirely different to what is in Alice Springs. With Alice Springs being the service centre for the whole of Central Australia, there is a different balance in relation to how things work there.

Senator CROSSIN—Did Tangentyere Council get around to signing the MOU?

Mr Tilmouth—No, we didn't. We agreed in principle to look at the MOU. We never did sign the MOU.

Senator CROSSIN—So where do you believe the impasse lies now in resolving the additional funding for Tangentyere camps?

Mr Tilmouth—The impasse that we have found is that there is no flexibility in the proposal from the Commonwealth and the Northern Territory government. There is no flexibility in allowing a 20-year lease with a board of management sent in to manage the housing stock. We find those two points are the points that we are stuck on.

Senator CROSSIN—So the Commonwealth government are saying it is 99 years or nothing and the Northern Territory government is saying the management of the homes must go to the housing commission without a board of management representative of the town camp?

Mr Tilmouth—Exactly. The Commonwealth is saying 99 years, the Territory government is saying 99 years and the Territory government is saying it must come under the Northern Territory housing management, while knowing damn well that it has failed and failed badly.

Senator CROSSIN—Are there plans for further meetings to try to keep negotiating through this?

Mr Tilmouth—Tangentyere will always leave the door open for further negotiations.

Senator CROSSIN—So where is it at this stage?

Mr Tilmouth—At the moment the door has been closed. I think the Territory and the Commonwealth have walked away from the table.

Senator CROSSIN—So the passage of this legislation this week will see the Commonwealth able to compulsorily acquire the leases to the town camps?

Mr Tilmouth—I believe they will be able to resume the leases. That leaves people in fear for their homes. People are confused. Really we do not understand the reasons why.

Senator SIEWERT—Mr Tilmouth, could you tell us what is the feeling in the town camps at the moment and of any action that has already been taken in the camps that you are aware of.

Mr Tilmouth—At the moment people are apprehensive. People are uncertain. The whole negotiation process has stalled. They did not allow for interpreters or people to convey to the members of the town camps the full picture. The executive dealt with this time and time again, trying to work out some agreement, but to no avail. At the moment, on the camps, we are just working as normal. There have not been any moves on those camps as yet.

Senator SIEWERT—I understand that the council has been running a Centrepay scheme for a long period of time. Is that correct?

Mr Tilmouth—Yes, it is. It is a voluntary scheme that the executive, in their wisdom, decided a long time ago to implement, where people can quarantine their funding in relation to the income that they receive—for food, for rent, for electricity. We did not go down the road of school attendance, but I think that the executive have had this implemented for quite some years now.

Senator SIEWERT—How many people have you been helping through Centrepay?

Mr Tilmouth—There are over 800 people on the books, and $1.4 million, I think, goes through that system.

Senator ADAMS—Good morning, Mr Tilmouth and Mr Shaw. It is nice to speak you again. I think we were at your house about four weeks ago with the patient assisted travel scheme inquiry.

Mr Shaw—At my daughter's house.

Senator ADAMS—At your daughter's house; that is right. We are looking to see how you are feeling. The camps are overcrowded, as you have said. To what extent have you found any violence, child abuse, domestic violence, or any of the children having real problems? Have you been able to cope with that, or is it causing you problems?

Mr Tilmouth—Child sexual abuse is something that we deal with with the authorities. It is not public knowledge. It is not something that we disclose to any staff member. In fact, I am outside that loop as well. That is something that is dealt with directly through the programs that we run and directly with the authorities. With regard to violence and domestic violence, we have the assistance of the night patrols, we have the assistance of day patrols, and we will call in the police when necessary.

Senator ADAMS—As far as the children with infections or any problems like that are concerned, do you have a lot of dogs coming in with these extra people that are coming to your camps?

Mr Tilmouth—We have always had a dog problem, but the dog problem is in hand now with the relationship with the Alice Springs Town Council. We have a lot of overcrowding. We work on a population of 1,600 to 2,000 people, but sometimes the floating population brings our service population up to 3,500 people, especially on sports weekends and show weekends.

Senator LUDWIG—Good morning. To follow up: in terms of the program that the government has announced, what has happened to date? Could you just provide a snapshot of how it has affected your area. Have the government been in consultation with you about what might happen into the future—in other words, have they outlined the initiatives, have they spoken to you about what they want to be able to do and those types of things?

Mr Tilmouth—The only consultation we have with any government agency is with regard to CDEP. CDEP is on the way out. There are 230-odd participants on CDEP. With regard to the remote area exemption, we do have a lot of people coming into town camps seeking further employment or seeking more opportunities. But, with regard to the implementation of the strategy for the upgrade of town camps, there has been no consultation since the executive said no.

Senator LUDWIG—What I am keen to understand is what has happened to date. Has anything changed for you?

Mr Tilmouth—No, nothing has changed. There has been no consultation. There have been no discussions with regard to the future of Tangentyere and the town camps. We sit in limbo. Quite frankly, we feel abandoned and quite demoralised because we are not consulted as a people.

Senator LUDWIG—It is not only the consultation. Has the government outlined what it intends to do in terms of issues such as health services, housing, infrastructure—any of those matters?

Mr Tilmouth—No, we have not had any feedback on that. With regard to health, we do not get health services. We are not recognised as a primary health care provider, yet we deal with that on a day-to-day basis, especially with regard to overcrowding and cross-infection.

CHAIR—Thank you very much, Mr Tilmouth and Mr Shaw. We appreciate your time today.

Mr Tilmouth—Thank you very much for giving us the time to talk.

Mr Shaw—Thank you.

[9.28 am]

AH KIT, Mr John Leonard, Member, Combined Aboriginal Organisations of the Northern Territory

HAVNEN, Ms Olga, Coordinator, Combined Aboriginal Organisations of the Northern Territory

MARIKA, Ms Raymattja, Member, Combined Aboriginal Organisations of the Northern Territory

MANTON, Mrs Beverley, Chair, New South Wales Aboriginal Land Council

CHAIR—I welcome witnesses from the Combined Aboriginal Organisations of the Northern Territory. If we are able to get back online with the NPY Women's Council later then we will do so.

Ms Havnen—I have with me here this morning Ms Raymattja Marika, a senior traditional owner from Yirrkala; Mr John Ah Kit from the Jawoyn Association and a member of the Combined Aboriginal Organisations of the Northern Territory; and Mrs Bev Manton from the New South Wales Aboriginal Land Council. We would like to thank you for the opportunity to appear today.

CHAIR—I invite you to make a short opening statement, at the conclusion of which senators will ask questions.

Ms Havnen—As many people would know, the Combined Aboriginal Organisations of the Northern Territory have developed a preliminary response to the federal government's proposed emergency intervention in the Northern Territory. We would like to formally submit that particular document to this committee for its consideration.

CHAIR—Do you have that with you and are you happy to table it?

Ms Havnen—We do and yes, we are.

CHAIR—Thank you. The secretariat will receive that.

Ms Havnen—Very briefly, the combined organisations represent Aboriginal organisations from Darwin, Tennant Creek, Alice Springs and Katherine. The preliminary response that we developed takes into consideration a two-stage response to the problems of child abuse in our communities. We believe that it is absolutely imperative and important that there is an immediate response to try to combat child sexual abuse in our communities. However, more importantly, we are absolutely concerned that there should be a comprehensive plan, fully costed, with financial commitments that addresses the underlying causes within a specific time frame, and mechanisms that would ensure transparency and ongoing independent, rigorous evaluation.

I also suggest that these stages are not mutually exclusive. We absolutely believe that, given our current predicament, a long-term plan must be developed, negotiated in partnership with our people and our communities, and be implemented as soon as practicable. Further, we believe that a nationally led agency is needed to oversee and monitor the coordination and planning for the necessary services, infrastructure and support for communities in the Northern Territory to ensure that all of our children are protected. Furthermore, the lead agency must take overall responsibility for the development and resourcing of the emergency response and development phase.

As part of our submission we will also include not only our preliminary response from the combined organisations but a snapshot, a short document, which outlines some of the critical data and information with respect to the current context of the Northern Territory, together with letters that we have sent to the Prime Minister requesting that we meet with him and that people consult and work with us. The final document we provide is a copy of a 10-point plan developed by the Secretariat of National Aboriginal and Islander Child Care. It is a 10-point plan in response to the Northern Territory's situation and it goes to the heart of preventing child abuse and neglect in our communities. They are all my comments, thank you. I will hand over to Raymitja.

Ms Marika—Thank you for the opportunity to talk. I would like to talk about the context of my community and to have a say. There is no connection between the abolition of the permit system and child abuse. In Yirrkala the permit system has not stopped economic development: the arts centre does big business locally and internationally. If there are problems and corruption in Indigenous community organisations, then the answer is not to change the permit system. The answer is to invest in governance and capacity building with the Indigenous people. Yolngu people have not been listened to. We know what needs to be changed. We know our own communities. We need more resources for education, health and employment opportunities for our young people.

Yirrkala school does not have enough desks now for our teachers. We do not have enough desks or chairs for any extra children. Quarantining welfare payments will not make our children go to school. We want our children to go to school. We want our children to learn. There is no evidence that taking welfare payments from us will make our children go to school or help us to make our kids go to school. Could the government senators please provide evidence to explain to me how the abolition of the permit system and the taking of our land will stop child abuse. We Yolngu parents desperately want our children to grow up healthy and well educated. We expect the government to treat us with respect. That is the only way: to listen to us, to talk with us and work with us. That has not happened with this legislation. This legislation feels like a return to the old protection system under which the government decided everything about our lives. That did not work. Thank you.

CHAIR—Thank you for the opening statement, Ms Marika. Just to let you know, the government senators' views and the views of all members of the Senate committee will be expressed in the Senate committee report when it is delivered on Monday.

Mrs Manton—I am here today as Chairperson of the New South Wales Aboriginal Land Council to demonstrate the solidarity of the Aboriginal people of New South Wales with the Combined Aboriginal Organisations of the Northern Territory. As a mother and a grandmother, I share the Prime Minister's concerns about the physical and sexual abuse of our children. As an Aboriginal and proud Australian and proud member of the Worimi nation, however, I cannot comprehend how our parliament could consider the introduction of such draconian and radically discriminatory legislation.

The New South Wales Land Council represents 121 local Aboriginal land councils and has a combined membership of 23,000. We are absolutely appalled by these proposed laws, the main thrust of which is clearly a punitive social welfare experiment and the theft of hard-won land rights. I urge the Senate to at least be seen to be properly examining these proposed laws. A short deferment of the vote until next month would enable the Senate to give consideration to the proposed actions of the Northern Territory government when it responds to the Anderson-Wild report on 21 August.

All available personnel assisting in this Northern Territory intervention are already on the ground working, and the speeding up or slowing down of the passage of these bills will not affect this work in any way. I thank you. The council will also be providing a written submission to the committee.

CHAIR—Thank you. Is that likely today?

Mrs Manton—Not today.

CHAIR—No. Mr Ah Kit.

Mr Ah Kit—I want to say from the outset that, if we are going to do things properly in respect of the Territory and this intervention, then let's do them properly. As a former minister in the Territory government, this is worrisome to me. There is chaos. People out there are really concerned. Their future once again is being decided by politicians. I had a look, in the passageway as we were coming to this room, at the Barunga Statement. I was involved as a director of the Northern Land Council when we put that statement together back in 1988. My, haven't we gone backwards since? What we have today is a winding back of the clock to the welfare days, to the missionary days, to the superintendent days.

I think what is happening with this legislation going through the House of Representatives and now moving on to the Senate and being rushed through is totally unacceptable. It is very much un-Australian. There has been no consultation, no respect for Indigenous people and Indigenous leaders in the Northern Territory. As far as the minister is concerned, we are a bunch of riffraff. It is okay for him to be representing his electorate in this parliament, but it is not okay for us to be Indigenous leaders representing our people's interests in the Northern Territory.

Let me make it clear: we have no problems with the legislation that deals with getting on top of the child sexual abuse stuff, the pornographic stuff, the policing. There are not the rivers of grog that are the perception that the Prime Minister and Minister Brough are putting out there. There are problems with alcohol in the Northern Territory. If you do your research, you will find there are 10 communities that have liquor licences. Four of them are only allowed to sell mid-strength or low alcohol. The other six, which are all in the Top End—none in Central Australia—have their licences. But the alcohol is getting in through vehicles, aircraft and boats. The policing is more than welcome, because people want to live comfortable lives, people want to live in harmony with the land and people have cultural responsibilities.

We do not agree with how the government has tied the land rights stuff to this. It is a tricky way of going about taking people's hard-won rights away, rights that were recognised through the referendum so

that we could be treated as equal 40 years ago—now we have the anniversary and it is being wound back—rights that were recognised in the High Court with Wik and native title, rights that were given to us by this very parliament in respect of the Aboriginal land rights act. There has been no consultation. It is a national emergency response. If you are serious enough, you should be up there, Prime Minister, with the Leader of the Opposition, to talk to us and to tell us why you have cloaked it in this national emergency response—otherwise Indigenous leaders see it as smacking of political opportunism on the way to a federal election.

We have problems with the compulsory acquisition and the special purpose leases around the town camps, which are almost as good as freehold. You need to talk to the organisations that control those and you need to talk to the Territory government. I am sure some agreement can be struck, if there were a headlease on offer for those organisations like Tangentyere et cetera. But there is no real consultation. And when the minister puts $60-odd million on the table, that is not new money—that is ABA money. It is unacceptable. That money comes from mining royalty equivalents on Aboriginal land. That money has always been determined by the Aboriginal Benefits Account committee. Now the minister controls it. I think the minister is morally wrong in putting money from that ABA into his own electorate when it was in Maroochydore, or doing that sort of thing. We feel that that money is hard-earned. It comes off deals that are on Aboriginal land in the Northern Territory. As I say, we believe he is morally wrong.

CHAIR—Mr Ah Kit, if you could wrap up your opening comments we can leave some time for questions.

Mr Ah Kit—Sorry, Mr Chair. I was wondering whether, because we got in early, we could still go to 10 o'clock.

CHAIR—Yes, you can certainly go to 10 o'clock. We are going to have some questions from the senators and you will have an opportunity to answer those questions.

Mr Ah Kit—In closing, the suspension of the Racial Discrimination Act is unprecedented and unacceptable, especially when we saw that the former Prime Minister Gough Whitlam signed that convention back in 1975. With the social security stuff, there is no right of appeal. These are all concerns. I may leave it there and allow the senators to ask the panel questions.

Senator CROSSIN—Can I start by asking what you would like to see happen immediately?

Mr Ah Kit—We would like to see some respect being shown by the Prime Minister and Minister Brough coming to the Territory, sitting down with Indigenous leaders and talking about what they are doing and what their intention is and working out with us how we move forward together. The first recommendation of the Wild-Anderson report mentioned a cooperative relationship. That was totally ignored. So we are having all this stuff forced on us. There is a lot of Commonwealth taxpayers' money being thrown at this intervention. We want to make sure that there is value for the dollar. We could do this properly if we were invited to have input and be a part of the team and the planning.

Senator CROSSIN—Ms Havnen, I am assuming you have sent your response and the 10-point plan that has come from SNAICC to the Prime Minister and Minister Brough?

Ms Havnen—If you have a look at the preliminary response that was prepared by the Combined Aboriginal Organisations, it addresses all of the key elements of the federal government's proposed intervention plan. It deals with child protection issues, alcohol and a range of other matters. I think the thing that has concerned us the most is that, while it took us two weeks to pull that response together, it has been extremely disappointing to note that there has been very little response, if anything, from the government or from the minister. Given the wealth of experience, knowledge and expertise that we have as Aboriginal people and organisations, the proposals that are contained in our submission are very well-considered ones. These are things that we know work and things that we know need to be done as a matter of urgency.

Senator CROSSIN—So there has been no attempt from this government to actually engage with you in a discussion about this emergency response and how it might be used as a way forward?

Ms Havnen—Unfortunately, that has been the case. We have, first of all, provided an open letter to Minister Brough, asking him to engage and consult with us. To that we have had no response. We have subsequently submitted a copy of the combined organisations proposals to the minister and have written to the Prime Minister on two occasions now, to no avail. We find, as I think others have said here this morning, that it is extremely distressing and disrespectful to the very senior people that have been here in Canberra particularly over the last week or so. It bewilders us completely that the government could

possibly believe, if you are going to try to have any kind of intervention in our communities that will be effective, that it could be achieved without the cooperation and active engagement of Aboriginal people.

Mr Ah Kit—Might I add that there was an offer to Pat Turner and Olga to have a briefing on Monday afternoon at three o'clock. That was rejected because the rest of the delegation were arriving that night. The minister was asked for a more convenient time on the Tuesday. As we understand it, he rejected that and said that that was the only time slot in which he could organise a briefing. Although on Tuesday morning at 10 o'clock there was a briefing offered over at Woden by bureaucrats, we did not have the time to do that, because we had other appointments arranged around Parliament House and felt it would not be worth while leaving the building and stopping the lobbying that we had continued doing early on Tuesday morning.

Senator CROSSIN—There must be programs and projects in communities that are working successfully. Has there been any suggestion from this government that those programs will continue? Is there talk that they may be defunded or not funded? What are you actually hearing is happening on the ground?

Ms Havnen—From the concerns that we have—and I am sure that they were raised and covered by Tangentyere Council—the nature of the services and programs that they provide to town camps have been greatly underresourced for a very long time. Very quickly: one of the programs that Tangentyere provide is a banking and financial service for their clients. Many of those people do not have basic literacy and numeracy skills, do not speak English as a first language and do not have proof of identification to be able to operate a normal bank account. Should Tangentyere cease to exist, some 600 to 800 clients per week will have to be handled by the particular banks who manage their accounts. It begs the question as to how they are going to be able to do that efficiently and effectively, given the language and other difficulties that I have identified. That is one area that is of enormous concern to us.

The other thing I mention very quickly—having chaired the task force and the review of the Alice Springs town camp—is that in Alice Springs we were very conscious about the lack of attendance at school by Aboriginal kids, particularly the boys. Since the beginning of this year there has been a program in place called the Clontarf program. This is designed specifically to re-engage boys back at school. In the six months that that program has been operating, for the kids that are involved in that program we have got something like a 92 per cent attendance rate—significantly better than attendance by non-Aboriginal boys in the same schools. Those kinds of programs are particularly valuable because, first and foremost, they are not coercive—they are not punitive. Secondly, they are enormously effective in terms of changing behaviour and getting the outcomes that we are all seeking—that is, improved school attendance, changes in behaviour, and for kids to transition into work.

It would be very helpful if this committee would perhaps pay some closer attention to that particular program. I can think that there are a whole range of other things that are particularly effective and are probably 'good buys', if you like, in terms of government. The one that I would mention again would be to call on governments to invest in the rollout of comprehensive primary health care programs and comprehensive primary health care services rather than this ad hoc, fly-in fly-out series of visits by health professionals and health experts. It does not work. It is costly. You get much better services and much better outcomes by providing sustainable services.

Senator CROSSIN—In finishing, you would put to the committee that further investment in programs such as Clontarf that encourage children to come to school would have a far better result than, say, quarantining welfare payments?

Ms Havnen—Absolutely. The experience in Halls Creek, where this was done on a voluntary basis—trying to quarantine Centrelink payments—was that kids did not attend school. It was evaluated by DEWR. It was found to be spectacularly unsuccessful. It did not improve school attendance. It was inordinately expensive for them to do. It begs the question as to how you can do this to 40,000 people across the whole of the Northern Territory in some 600 communities.

Mr Ah Kit—There are lots of programs that have been cut. Senators, a situation has developed in the Territory since the death of ATSIC. People are still getting over that. People are trying to come to grips with the new processes that have been put in place, and now these programs to a certain extent are being cut. The abolishment of CDEP or new changes to the rules with a different name is just going to take people backwards. It creates all this confusion, is unnecessary and should be done better. In closing later on, I will be making an appeal to senators on how they should be dealing with this.

Ms Marika—And for some families in Yolngu communities CDEP is the only means of income. We ask that you continue to support and fund many of our really good existing programs that operate in our communities like the businesses and that you let us keep those instead of taking control of all the things that we have worked hard for. The government also has not provided us with measures and assistance to deal with the overcrowding in housing and how they will deal with that.

Senator PAYNE—Ms Havnen, could you explain how your organisation is brought about; is it an elected body?

Ms Havnen—The Combined Aboriginal Organisations of the Northern Territory have worked together cooperatively on and off over the last 20 years. Meetings have been held at various times—at some times more regularly than others. They have certainly been conducted at regional centres—for example, in Alice Springs; the organisations within that town include the medical services, the legal service, land council, resource organisations and so on. They have been meeting regularly, particularly during this period; likewise in Tennant Creek, Katherine and Darwin. There is voluntary attendance at those meetings, and I think people are generally quite comfortable about the level of representation and the way in which we have been delegated to continue to do this work.

Mr Ah Kit—That came out of some 20 years ago in the eighties when—

Senator PAYNE—I gather that.

Mr Ah Kit—there was a national coalition of Aboriginal organisations and the Territory went back and established their Combined Aboriginal Organisations throughout the Territory.

Senator PAYNE—So is the coordinator's position an elected position or a remunerated position; how does that work?

Ms Havnen—It is a nominated position, which I currently hold in a voluntary and unpaid capacity.

Senator PAYNE—Thanks. The question of the permit system has been raised in your presentations this morning. I understand last year in about October the minister initiated a review of the permit system. Did the Combined Aboriginal Organisations make a submission to that review?

Ms Havnen—Not that I am aware of.

Senator PAYNE—It has been a significant issue of concern according to the evidence that you have given this morning. Why wouldn't you have made a submission to that review?

Ms Havnen—Principally because the organisations, as I say, have thematic areas of expertise and the areas in which they work tend to be according to the particular services they provide—that is, legal services, medical services et cetera—whereas the permit system is something that is managed and administered by the land councils and therefore it is appropriate that the land councils take the lead on responding to those it issues.

Senator PAYNE—So in making your submissions today you are not doing that from an expert position; you are doing it from a different position. I am not sure that I understand why it is an issue for you now but was not an issue for you then.

Ms Havnen—It is something that we try to work together with in much the same way that I suppose government agencies would not necessarily make specific comment across every single issue that happens in government. It is left to lead agencies to do that work and provide that information. The point that I would also make is that of course the land councils are also the representative bodies for traditional owners and they have a statutory responsibility to respond to those matters.

Senator PAYNE—In the discussion you were having before with Senator Crossin in relation to valuable programs, I was not sure what indication you had received from government that indicates those are under threat; could you clarify that for me?

Ms Havnen—Is not so much a question of whether or not they are under threat; I think the point we are trying to make is that those programs and services that are currently delivered that we know are enormously effective tend to struggle for the kind of resourcing and the long-term secure funding base that they need in order to enable them to be rolled out and expanded.

Senator PAYNE—But you don't have any indication from government that these are under threat, do you?

Ms Havnen—There are in some cases—

Senator PAYNE—Which cases?

Ms Havnen—I know of two youth programs that in the last two months have not been funded.

Senator PAYNE—Does that relate directly to this particular package of legislation?

Mr Ah Kit—Yes.

Senator PAYNE—I am seeking clarification because I am not aware of the particular programs of which you are speaking.

Mr Ah Kit—There are two youth programs which many kids at risk attend. One is run by Michael McLean, out at Palmerston, and the other was run by Mark Motlop—both Indigenous footballers with excellent reputations. These programs have been cut by the Commonwealth and the kids will be back out on the street. More kids are going to be wandering around getting up to mischief, rather than attending these very good programs. That is just another concern we have with respect to kids out on the streets not being able to go to these types of activities that keep them in healthy mind and shape.

Senator PAYNE—How does this relate to the emergency response package we are discussing today?

Mr Ah Kit—Because many Aboriginal kids go to those programs.

Senator PAYNE—I understand that, but I thought the link you were making before—and please correct me if I am wrong—was that as a result of the package of legislation we are looking at today the flow-on effect was the abolition of other programs. I have seen no evidence of that, and I am trying to understand how you make that link.

Ms Havnen—What we are trying to say in relation to the vast sums of money that are currently being spent and invested by government is that, while we are grateful and pleased to see the level of attention that we are finally getting for our needs in our communities, what concerns us enormously is that there seems to be an extraordinary amount of money being committed in this first phase for things that I guess will support and staff the bureaucracy, look after the administration and house the bureaucrats and managers out in those communities and yet there does not appear to be a parallel investment in those areas of urgent need, particularly in early childhood, maternal and child health services and Indigenous housing in our communities. That is an enormous matter of concern for us. The point we are also trying to make is that the round of current health checks, as they are currently being conducted, are not a sustainable way to deliver health services to people. It begs the question as to whether or not those funds might have been better used if we had tried to strengthen and support the services and health programs that we know are currently working and that are underresourced. I am not making the argument that you are actually taking money away from things. I am just saying that I think the money could have been better invested elsewhere.

CHAIR—Senator Payne, can we make this your last question?

Senator PAYNE—We can, and I thank Ms Havnen for clarifying that point for me. She answered the question that I was asking.

CHAIR—Thank you. Senator Bartlett.

Senator BARTLETT—What time have I got? Till 10. Mr Ah Kit, I got the impression from your statement that you did not have a problem with the pornography components of this legislation in general terms.

Mr Ah Kit—No, we do not. Look—

Senator BARTLETT—That is fine; I only have two minutes. Are there other bits that you think are acceptable—that might not be perfect but are acceptable?

Mr Ah Kit—All that stuff that takes away that rubbish and gets rid of it is stuff we support. We do not see how there is any connection to the land issues and the permit issues. And we are willing to work with both governments, if we get invited.

Senator BARTLETT—I appreciate that. Are there other measures, perhaps the alcohol measures or the community store measures, that you think are at least—

Mr Ah Kit—The community store stuff.

Ms Havnen—The community stores approach is a little bit problematic, given that some of the stores are independently and privately owned enterprises by those communities or community organisations. To attempt to control and regulate our stores in this way I do not think is particular helpful. It might have been

better perhaps to invest in strengthening the capacity of stores and store operators to run them better. I can understand what the government is trying to do in terms of standardising and protecting the access, I suppose, to healthy foods and so on. I was involved with the Fred Hollow stores programs so I am familiar with the approach that the government is taking.

To respond very quickly to your question around alcohol, again I think the issue has been correctly identified but the strategies and approach are misguided and misdirected. As Mr Ah Kit has already said, out of 640-odd communities in the Northern Territory, between eight and 10 of our communities have liquor licences, which are enormously restrictive. The major problem for us, and it has been for the past 20 years and more, has been the ready availability of alcohol in towns. The supply side has not been addressed, nor have the pricing issues being adequately addressed. I think the sale of takeaway alcohol is the biggest problem we have and that happens in our major urban centres, not out bush.

CHAIR—Senator Bartlett: last question.

Senator BARTLETT—Apart from in your major centres, such as Alice Springs and Katherine, is it also able to be purchased at roadhouses?

Ms Havnen—That is correct.

Senator BARTLETT—So it is not just in towns; it is also in roadhouses.

Ms Havnen—The issue is the availability of takeaway alcohol at roadside outlets.

Ms Marika—It is not just alcohol; it is substance abuse. Hardcore drugs are available there also. Measures need to be taken into account for music, such as that by Tupac.

Senator SIEWERT—We heard this morning from the government departments, and you will be aware that they believe that these measures that are being introduced qualify as special measures under the RDA. Firstly, what is your opinion about them? Secondly, what do you think will be the consequences of the provisions that are being introduced by these bills?

Ms Havnen—I am not a lawyer; however, I would say that we do not hold the view that these are special measures for our benefit. I think that they are somewhat misguided, although perhaps well intentioned. I think the consequences of the quarantining payments and trying to regulate people's behaviour will be additional problems for our major urban centres, as we will see an increased drift into towns. These are towns and regional centres that are already overstretched. They do not have the necessary visitor accommodations. Nor do the services in these regional centres have the capacity to meet this extra inflow of people.

It also worries me enormously that people may potentially drift across borders into other jurisdictions, such as Western Australia and South Australia, where people already have social and cultural connections and ties. The other thing that I think will happen is—and we have had anecdotal reports of this already from Darwin—increased numbers of women and children in town living in the long grass. I am not clear at this stage as to why this might be happening. That is some work I will need to do when I get back home. But if the intention of these measures is to protect women and children then this displacement of women and kids into town, into the long grass and into town camps cannot possibly be a better outcome for them.

Senator ADAMS—You mentioned ATSIC. Were any initiatives put in place while ATSIC was still established regarding reducing any child abuse or domestic violence?

Ms Havnen—Up until the cuts to the ATSIC budget when the Howard government first came into office, ATSIC did have a dedicated women's program. That program funded women's resource centres and provided safe houses for women and children in situations of crisis. When $400 million was taken off the ATSIC budget, the board of commissioners had to make a call on which of ATSIC's so-called discretionary programs they would not continue to fund. It was a question of sport and rec, arts and culture or the women's program. Unfortunately, it was the women's program that was cut. I think that some of the problems that we see today in our communities are a direct result of those funding cuts.

Mr Ah Kit—I would like to make a short closing statement. Our evidence is before you. We are appealing to the Senate. The legislation is going to the Senate next week. We ask for senators to individually get across the issues and understand them and concentrate a fair bit on what is right and what is wrong, but more so on the tying of permits and leases and the land issues to the rest of the stuff. We are seeking for the Senate to defer those matters to give senators an opportunity to get their heads around them, get more advice and then debate them in the next sittings of parliament, beginning 10 September.

CHAIR—Thank you for your evidence today.

[10.04 am]

GILLICK, Ms Vicki, Coordinator, Ngaanyatjarra Pitjantjatjara Yankunytjatjara Women's Council

MARTY, Ms Sandy, Executive Liaison and Program and Policy Officer, Ngaanyatjarra Pitjantjatjara Yankunytjatjara Women's Council

Evidence was taken via teleconference—

CHAIR—Welcome. I invite you to make a short opening statement, at the conclusion of which I will invite members of the committee to ask questions. We have a tight time frame and we will conclude at 10.20, so please bear that in mind.

Ms Gillick—We were ready this morning, but, unfortunately—I don't know if people were distracted by Sol Trujillo's latest salary announcement—Telstra could not seem to hook us up. I apologise that our member from Imanpa, Margaret Smith, has not been able to join us as arranged. I have emailed to the committee some background and a map of the women's council area, so I will not go into huge details. Most of you would be aware that women's council is a cross-border women's organisation. It has been operating for nearly 28 years in WA, NT, and the South Australian central region. We provide human services in a range of areas: domestic violence, child nutrition, disability, case management service for the region, and Commonwealth carer respite. We run the Tjanpi basket-weaving enterprise for women. The organisation advocates on behalf of its adult women members, and our services are provided, with the exception of domestic violence services, a lot to men and women across the region, including frail aged people.

Our executive met in July and considered both the Anderson-Wild report, to which we had submitted, and the announcements that had recently been made by Mr Brough and the Prime Minister in relation to the emergency measures. I can tell the senators that there is general acceptance on the part of our members—who are from the cross-border region; we have Northern Territory representatives on our executive or governing committee—of the measures, with some reservations. The women have no problem with the policing, and they have met with the minister and spoken to him about this. He has explained some of the measures further. They, of course, have not had a chance to go through the legislation as yet, and I have only looked at a summary.

The women's council has a long history of lobbying for a sworn police presence in all its major communities; that is well known. It has pushed for cross-border policing and for police in individual communities. We very much hope that all four of our Northern Territory communities have police. Imanpa and Mutitjulu now have police. We are lobbying strongly to ensure that there are police placed at Docker River and at Finke-Aputula, as part of this process. The women do not have any problem with NORFORCE and the type of support that they are giving. We have worked with NORFORCE before on the APY lands in South Australia. The medical checks, as they have been explained and carried out, appear to have been well received. They have had some questions about how the Centrelink reforms will apply and whether they should really apply differently in the Northern Territory. For a number of years, our members have argued that, if people do not use family allowances and so on to feed their children, or do not send their children to school, then there should be another way for that money to be paid, and they do not approve of food programs through schools, for example, unless parents are chucking in or contributing.

We have not had the opportunity to discuss the CDEP changes yet. I imagine that there will be some objections to the wholesale changes to CDEP, given that, while there are problems with CDEP, there are many communities which rely on it and many people who, to put it bluntly, have work to do which they would not otherwise have in the community, and they actually value that work. I think our members would be very interested, and perhaps a bit worried, to see how that pans out. Just briefly, in relation to the Anderson-Wild report which we submitted to. While, obviously, Mr Wild QC and Pat Anderson did a very extensive job of collecting information, we do not believe that the recommendations properly reflect the extent of the problem. From our point of view, there are gaps in their recommendations in relation to issues such as policing, the supply of alcohol, men's behaviour in communities and the very large problem of reporting sexual assault and other abuse in communities which are small and kin based. Hopefully, senators should be fairly aware that that is a problem.

The policing is not just about child sexual abuse; there is general community dysfunction. A sworn police presence should put a dampener on that sort of dysfunction and the violence and drug and grog running. This is something that our members have been very vocal about for years. I do not think people

should underestimate the usefulness of having some law and order up front. It is something we have been arguing about in relation to petrol sniffing, grog running, drug running and domestic violence for many years. The rights of women, children, the frail aged, people with disabilities and other vulnerable people in communities really need to be considered a priority, rather than some other rights. Some other rights may have to take a back seat at times.

We note that, as of yesterday, the Martin government seems to have finally become aware of the need for some serious reform in relation to liquor supply. Clare Martin has made some announcements about further grog restrictions, the possibility of a takeaway ban day in Alice Springs and the possibility of an ID system. The government seems to have generally woken up to the need to reduce supply. We hope that that will also assist in stopping the grog supply. I just heard Olga Havnen talking about the supply of liquor out of the towns. That is one of the biggest problems. We note the very considerable penalties that are going to be imposed on people having certain amounts of liquor in communities. That is great, but the supply needs to be restricted out of Alice Springs.

CHAIR—Ms Gillick, could you wrap up your opening statement, and we will leave time for questions.

Ms Gillick—Our members have expressed concerns about the permit system. I would like to make a couple of points in relation to that. We know the federal government has been looking at this for some time, and there are arguments for some relaxation, but I really do not think the federal government appreciates quite how many predatory exploiters are out there. There are also economic exploiters. I am talking about not just sex abusers but what I refer to as a general white trash factor—people who would love to go and attach themselves to Aboriginal families in communities and find themselves an Aboriginal girlfriend. I am talking about used car salesmen. We think some store managers are poorly behaved now, but I think you could probably find some worse ones out there.

As we know, people generally have very low educational attainment and life skills in the Northern Territory. They have just been given the opportunity, with the policing and some assistance from NORFORCE and some other reforms, to get communities in order. The last thing that they need is busloads of people, for example, in places like Imanpa and Mutitjulu, staring at people—which is what I think what will happen. They do not need people wandering around the community and the community being unable to find ways to prevent this. Just putting up signs is not going to work. I do not think there are many of our members who are really up with writing out trespass notices and handing them to people. We think people should have the opportunity to have life settle down a little bit, finally, with some of these reforms, before it is open slather in their communities.

CHAIR—Ms Gillick, I will have to ask you to conclude your opening statement so that we have time for questions.

Ms Gillick—I think that will just about do it. We suggest that the federal government should seriously negotiate with land councils to implement any changes to the permit system in a moderate and slow fashion and not concurrently with these reforms.

CHAIR—Thank you.

Senator TROOD—Ms Gillick, in your opening remarks you have emphasised the importance of the policing presence. Can you help me, please, in relation to the Mutitjulu community, where, as I understand it, a police station was constructed but there was no police presence. Can you explain that for us?

Ms Gillick—I can try. I am sure the Northern Territory government could do a better job. The Commonwealth funded the police post. The police posts these days are of a fairly flash design. The Commonwealth view at the time was that the Northern Territory would then staff that police station. They did recruit two newly graduated Aboriginal community police officers from Darwin, who I think were very keen and very enthusiastic. One of them, unfortunately, did not last long. They did not provide a sworn police presence. It is extremely difficult for the ACPOs, as they are known in the Northern Territory. They are not sworn police, they do not have the same powers and they are not armed and so on.

That was the first time that there had been any police presence in Mutitjulu since the previous ACPO left in, I think, the late 1990s. The women's council lobbied for it. I can remember going to Sid Sterling with a member from Mutitjulu in February 2002, pleading and lobbying for a police presence in that community and being told that the community had to do more and that they were looking for an ACPO that the community council would approve. So it has just gone on and on. When we have argued this with successive Northern Territory police ministers and commissioners, a lot of the response has been about resources, but that is not an argument that the women have accepted. There is a police post there and at one

stage I think there was only one ACPO. There is now another one, but now we have a sworn police presence and that should continue. If that had been done in Mutitjulu in 1996 when there were enormous problems with drugs and so on down there—which I can recall from personal experience—Mutitjulu would not have ended up in the situation that it has been in in recent years. I am sure of that.

Senator TROOD—Do you regard the police presence in that community in particular, and more widely, as absolutely critical to addressing these conditions, particularly for children and women?

Ms Gillick—It is probably the most glaring example because of where it is and because it has been a honey pot for people who have availed themselves of the cash flow in that community. It has been a distribution point for sniffable petrol—although it is not now—and marijuana. It has been a very violent place. We have dealt with a number of domestic violence clients over the years there, as well as neglected children and so on. It is a glaring example because of its particular circumstances. But it is not unique in needing a police presence because, without that, the vulnerable in the community—and they are not all women and kids—have no voice. They cannot stand up to the people there. You cannot expect middle-aged diabetic women or women my mother's age—that is, in their sixties—to get around at night with sticks and confront drug dealers and grog runners. That is one of the solutions that have been suggested over the years, and it is absolutely absurd.

Senator STEPHENS—Thank you for your evidence this morning. You have made some very critical points about the importance of a much more consultative approach, particularly around the issue of the economic independence of your communities. What is your understanding of the changes to CDEP and the way in which they will impact on your community, particularly in relation to the resources that are within the CDEP programs? What will happen to those resources?

Ms Gillick—I cannot pretend to understand all the technicalities. The women's council has occasionally used CDEP with some success to top up salaries for youth workers in communities, but we are not a big CDEP organisation by any means. I am aware that in a number of communities CDEP is a fairly useless 'make work' proposition and it has needed a good review for a long time. However, there are a number of places where it is used, for example, to top up and pay a reasonable wage to health workers, HACC workers, art centre workers, women's centre workers—where women's centres still exist—and other workers in the community. I have heard the minister say that there are all these jobs in communities that should be going to Aboriginal people, and that is fine. But when you have an educational attainment level of a fairly poor grade 3 in many parts of the region, that does not provide a lot of skills for all of those jobs in the communities. If there is not going to be a transfer of funds, for example to allow a health service to employ Aboriginal health workers with proper salaries, then some health services will simply not be able to employ them.

There are a number of communities where people are on CDEP and they do actually get something out of working. They like to work; they like to produce something; they like to be doing something useful for their community. At least that money is going to be truly transferred so that it can be used to pay proper wages. We understand that the federal government want to quarantine money so that it cannot be used for gambling, drinking and dope, but to take away CDEP means, in a fashion, that you may have people not being able to do useful work and have some pride in it. If that is what is going to happen, it will be pretty devastating.

Senator STEPHENS—In one of the submissions I read an appeal that customary law in Indigenous communities is about reconciliation, whereas our law is about justice, and that there are serious concerns about removing the capacity for customary law to be used to resolve issues. What is your opinion of that?

Ms Gillick—That is a very broad question. Are you talking about it in bail and sentencing or are you talking about people being allowed to use customary law generally?

Senator STEPHENS—Generally.

Ms Gillick—I hardly think I am an expert on that.

Senator STEPHENS—I just thought that there might be something you wanted to add to that in terms of your particular expertise.

Ms Gillick—Our executive at its last meeting determined that it supported the removal of customary law as a mitigating consideration in bail applications and in sentencing. This is a very difficult question. As a legal practitioner, I am aware that a person's circumstances can be taken into account all over the country in the criminal justice system. I tried to go over it very carefully with the women, and they were very much of the view that these matters should not be a consideration in bail and sentencing—that customary matters

should have no place in what they refer to as the ‘white courts’. This is not precisely the same as saying it, for example, about someone making an application for bail or being released on bail to attend a funeral. They were not quite talking about that. But they did, somewhat to my surprise, say that they supported the removal of customary law as a consideration in bail.

If you are talking about customary practices, we assist our members to have a law and culture meeting each year where the women renew their traditional practices in a more, if you like, contemporary setting in that they travel there by vehicles and so on. I think that gives them a lot of emotional and psychological strength to carry on. But customary law is a pretty broad area and I do not pretend to be an expert in it. I am not an anthropologist.

CHAIR—Thank you very much, Ms Gillick and Ms Marty. We appreciate you giving us your time today.

[10.23 am]

AIRD, Mr Wesley, Member, National Indigenous Council

BAUMANN, Ms Miriam Rose, Member, National Indigenous Council

GORDON, Dr Sue, Chair, National Indigenous Council

MORIARTY, Dr John, Member, National Indigenous Council

Evidence from Mr Aird and Ms Baumann was taken via teleconference—

CHAIR—Welcome. As Mr Wesley Aird is not yet online, Dr Gordon, I invite you to make a short opening statement, at the conclusion of which I will invite members of the committee to ask questions.

Dr Gordon—I would like to start by referring to an extract from the Vision of the National Indigenous Council on law and justice issues. The NIC developed and adopted its vision in November 2006. Goal 2 of our vision refers to actions to develop 'Strong parents, families and communities' that encourage Indigenous Australians to participate to the full. On law and justice issues related to this goal, we identified several key issues, including the aim to reduce the incidence of violence and an increased focus on early intervention by preventative measures. On families, we identified three issues: the need to reduce the impact of family violence; the need to ensure that there is preventative early education for children regarding family violence; and the need to address feuding as an unspoken element of family violence. So the NIC has focused on these issues for some time, and sees them as critical for Indigenous people.

Key initiatives we have taken in the area of law and justice go back at least two years, and include the following. In September 2005, the NIC members met with the then Minister for Justice and Customs, Senator the Hon. Chris Ellison. At that meeting our advice was sought on revising and refocusing the National Indigenous Justice Strategy. Following NIC comments, this was renamed the National Indigenous Law and Justice Strategy. This meeting also led to invitations being extended to me to speak at the Australian police ministers conference in October 2005, where I was asked to speak on Indigenous youth offending and issues relating to how the dysfunction in Indigenous families and communities contributes to this. Ms Tammy Williams, a member of the NIC, was to attend the Standing Committee of Attorneys-General in November 2005. In December 2005, the NIC raised concerns about the lack of communication between agencies responsible for funding programs in addressing family violence.

In the period from June 2006 leading up to the summit, we met with the Ministerial Task Force on Indigenous Affairs. We raised various issues, including: support for communities to understand court processes and the need to collect good evidence; the fast-tracking of cases involving violent crime; the mandatory reporting of child sexual abuse; and protective bail conditions. We wanted it stated that we were not targeting all Indigenous men in this issue. There was to be treatment of perpetrators, and they would not necessarily be removed from communities. We also supported a submission by the Ngaanyatjarra Council to the Law Reform Commission of Western Australia's discussion paper on customary law. We also called for a 'fit and proper person' requirement for chief executive officers and boards of funded organisations and for there to be police checks done on all staff.

In relation to those, at the Intergovernmental Summit on Violence and Child Abuse in Indigenous Communities, we were briefed by Minister Brough and commented on the issues prior to the summit. We said it was a key step in addressing law and order, and agreed that other important issues, such as health, education and housing, would also need to be addressed once community safety was established. The NIC expressed our wholehearted support for the summit, and committed ourselves to work on it. We also stated adamantly that child abuse is not part of Indigenous culture and is not acceptable in any form. We recommended a comprehensive national response to address the levels of violence and child abuse in communities. We had a strong focus on building safer communities by addressing these issues.

The NIC has continually stressed the need to keep focused on the United Nations Convention on the Rights of the Child. With the audit of national policing, we identified the need for a comprehensive audit of safety and the level of policing in remote communities. And, as you are aware, the Valentin report, titled *The assessment of policing in remote Indigenous communities*, was released in March this year.

In relation to customary law, we provided the Hon. Philip Ruddock MP, Attorney-General, with advice on the issue of customary law. Members advised specifically on bail provisions and professional development of judicial officers. The National Judicial College of Australia, the NJCA, of which I am a

member, was subsequently funded to provide guidance and professional development to assist judicial officers working in the area of customary law.

The NIC have been asked in recent weeks to look at the NJCA's draft curriculum and to make comments as we see fit. The National Indigenous Violence and Child Abuse Intelligence Task Force, currently based in Alice Springs, which was launched on 3 October last year, is making some progress. I personally have ongoing contact with senior Australian Crime Commission officers, and they are now getting the trust of people. They have collected a huge load of evidence. Coupled with that is support by the NIC of the Drug Desk, which is cross-jurisdictional, and of South Australian, Western Australian and Northern Territory police in Alice Springs—they are also having very good successes with grog and drug-running.

Concerning inappropriate use of government computers, at a joint meeting with the Ministerial Taskforce on Indigenous Affairs in June last the NIC raised with them the problems of internet pornography being accessed in Indigenous communities via government supplied computer equipment. That followed the formal complaints by Aboriginal people to NIC members. The Australian government responded by reviewing its policy on the use of all equipment supplied by the government.

In relation to the Northern Territory emergency response, it was against this background of long-established concerns by the NIC that we welcomed the government's Northern Territory emergency response on the day it was announced. I accepted the role as chair of the task force because of my experience as a magistrate of 18 years in the Perth Children's Court dealing with crime and child abuse on a daily basis. We issued a media release. We have not been involved in the legislation, as such. I will be speaking as the chair of the national emergency task force later today.

Dr Moriaty—As a member of the NIC I have been very concerned about the way Aboriginal people's lives have been affected over the many years that I have been involved in Aboriginal affairs. I have been very strong on the Aboriginal land rights issues, starting in South Australia with Don Dunstan, pushing for those land rights acts then for FCATSI and their movement in trying to get equality for Aboriginal people.

I come from Borroloola in the Gulf of Carpenteria. I have a strong relationship with my people up there. I come from a tribal community. I feel that that community is very much lacking in law and order and is quite a dysfunctional community—and I say that even though a lot of my relatives are there. I think that the intervention, as it is known, is a once-in-a-lifetime opportunity for people like me who have been involved in a long struggle for equality for Aboriginal people and bringing them into the mainstream of Aboriginal society. My society up there is a tribal one. Before I was taken away and since I have been reconnected with my mother and the tribal elders, I have been very strong in the promotion of traditional Aboriginal culture. A lot of that is very old traditional stuff which we do not speak about in public. Even my kids are part of that now. We would like to push on that side to maintain a stable and good, strong community which, I think, will stand us in good stead for many years to come. I find this a once in a lifetime opportunity for fighters like me who want Aboriginal rights, and I think it should be supported. We have lost at least two, maybe three, generations in my communities up there in Borroloola.

I think that our leadership has been lacking in the past and there is a lot of confusion as well. This has led to a lot of violence in the community. Also it has led to a dysfunctional community and a mish-mash of ways people should relate to one another. On the traditional tribal side people have some knowledge—and in fact the old ones have very strong knowledge—but the younger ones have moved to one side and they accept a lot of the stuff that is coming in now with modern television, lack of schooling, a lot of drug culture, alcoholism and so on. That has been quite a debilitating process in our community, and of course alcohol problems, coupled now with drugs, are decimating our people up there.

We need the educational process up there to take place. We are not participating as we should in the educational process even though there is a lot of goodwill up there in the community of Borroloola. Borroloola wants to establish a relationship with the McArthur River mine for jobs and we are looking at a possible hostel for Aboriginal kids at Borroloola as well. Health is failing there too. Through the NIC we have been promoting things at various levels, things including general education, sport, mental health, and other things that the chair just raised concerning violence and issues specific to this particular intervention.

CHAIR—Could you just conclude your opening statements, Dr Moriarty.

Dr Moriarty—The policing up there I think has been lacking for some time, even though there is a lot of goodwill there. I think Borroloola has been a forgotten part of the Northern Territory for many years. An intervention such as this, I find, is a breath of fresh air, and I hope that that intervention will bring about all those aspects that can bring us into the mainstream of white society.

CHAIR—Thank you very much. Mr Wesley Aird and Miriam Rose Baumann are now on the line. Do either of you have any comments on the capacity in which you appear?

Ms Baumann—I am a member of the National Indigenous Council and also a member of the emergency task force.

CHAIR—If you would like to make a short opening statement, Mr Aird and Ms Baumann, please do so; otherwise we will move to questions.

Ms Baumann—Yes.

CHAIR—Are you happy to move to questions?

Mr Aird—I would like to make a few comments.

CHAIR—Mr Aird, please make a short opening statement.

Mr Aird—I think the status quo is a result of a failed model in terms of funding and governance systems. I think it is destroying communities and lives. The obvious manifestation of this is child abuse and neglect as well as alcoholism and violence. I think that there is a risk that, by overprotecting people, we are basically knocking out of those people the stuff of life. We are removing people's responsibility, and I think a lot of people have given up hope because of that.

I support the intervention. I think it is important that it is treated as a package. Of course, there must be consultation. It should not remove any economic base. I am concerned that the critics of the intervention are losing the real focus here, which is the protection and safety of families and children. I would agree with the chairperson's remarks earlier that there are no surprises in the package of the intervention and that the items within the package are things that the NIC has been pushing for some time for better outcomes for Indigenous people. Thank you.

CHAIR—Thank you. Ms Baumann?

Ms Baumann—I am quite happy to move to questions.

Senator CROSSIN—Dr Gordon, hello and welcome. Can I just say at the outset that I think that your comments over the radio in the Northern Territory have done a lot to dispel fears that were in Indigenous people when the task force was first established and the groups started going into communities. I personally got a lot of positive feedback about the radio ads that were run on the Indigenous radio there through the Larrakia nation and TEABBA, and I just thought I would give you that feedback.

Dr Gordon—Thank you.

Senator CROSSIN—You mentioned something in your opening statement with regard to the National Indigenous Council—and I did not quite pick this up, because it was a bit quick—and the lack of communications between government agencies. Did you say that you had raised concerns through the council about the lack of communication between government agencies in the past?

Dr Gordon—There has never really been a whole-of-government approach in any state or territory—or the feds—to working with Aboriginal people. Everyone has operated in their own silos. To some extent, that still exists. What governments have been saying and are starting to do is to work as whole of government, so that every agency that is involved in Indigenous affairs should be talking to each other. That is what is happening on the ground with the task force, but I will talk about that this afternoon with General Chalmers. Suddenly people know that they have to talk to each other and work to each other to get an outcome, and that is what has been lacking in the past. We raised that. We were concerned that it was still happening.

Senator CROSSIN—Are you seeing evidence already that perhaps some of those silos are breaking down?

Dr Gordon—Yes, I have seen that. That is done through Peter Shergold, who heads up the Secretaries Group on Indigenous Affairs. The NIC meet with the secretaries group each time we meet in Canberra, four to five times a year. We have access to the secretaries, and they are working as a group. That has to go back down through their agencies, and we are seeing signs of that.

CHAIR—Secretaries of the departments?

Dr Gordon—Secretaries of the federal departments.

Senator CROSSIN—I assume the NIC has been briefed on this intervention proposal.

Dr Gordon—We were briefed on the intervention. Obviously, I was briefed earlier, because the minister asked me whether I would take a leading role—he did not actually say he wanted me to chair it. So I was briefed some days before, and the NIC as a whole was briefed by the minister himself, as well as Peter Shergold.

Senator CROSSIN—I am trying to get a handle on exactly where and how some of the $587 million is going to be spent. Like you, I travel around to communities. I hear people say, 'We've asked for this women's resource centre to be built for a long time,' or, 'We've wanted this recreation centre to be upgraded for a long time.' In reading the PBSs today, I see that nearly $226 million of this money is actually going to go into the bureaucracy and departmental outputs such as more Centrelink people on the ground. Has the NIC had a briefing about the costings and where the money is going?

Dr Gordon—No, we have not. There is always concern about where the money is going to go. The money will not go directly to Aboriginal people on the ground. We have been told there is no wish list by communities—and communities may well want that. You are obviously aware that the Chief Minister of the Northern Territory has said she would like 5,000 new houses, but they are the sorts of things that are not going to be funded. You obviously have to have administration by agencies. There are already lots of new people working as part of the task force in Alice Springs and, of course, they have to have their expenses met. There is always going to be an administration cost. I have not seen all those figures that you are privy to. I do not have that information.

Senator CROSSIN—Those figures are in the portfolio budget statements. So the NIC has not been briefed about the costings and how much money each department will get and what the money will be spent on?

Dr Gordon—No. The NIC's terms of reference do not have us being involved in that sort of thing. We are there to provide expert advice on Indigenous issues, not budget issues or submissions. So we have not been asked about that.

Senator CROSSIN—It is indirectly linked, in a way, if there are recommendations from the NIC about improved law and justice programs or support for women on domestic violence issues. What I am hearing today is that not 1c of this $587 million will go towards a new house or towards upgrading roads. We did not get to drill down in terms of other resources and assistance. How do you expect the policy you put to government to be resourced?

Dr Gordon—With respect, our terms of reference do not cover us being involved in the actual finalising or configuration of the budget for this. We can address policy issues. Obviously, if we get involved in the nitty-gritty of funding, that opens up a can of worms. The NIC was not set up to be involved in that area but purely to give advice as individuals. We do not represent any Aboriginal organisation. But I am aware that money will be spent on the maintenance of houses and the upgrading of infrastructure in communities, so some of the $587 million will be going to help Aboriginal people on the ground.

Senator TROOD—Dr Moriarty, I was struck by your phrase that, in your view, this is a once in a lifetime opportunity. Do you think that once in a lifetime opportunity would have come if we had continued on our present course before the intervention?

Dr Moriarty—Certainly not. Under the current system, we have allowed the states to do their thing. Having been involved in Aboriginal affairs over many years, I have found that, in the states, as far as ordinary citizens are concerned, Aborigines do not rate very highly electorally. I find that this intervention is one of those aspects that will dig deep into the real issues and have Aboriginal people brought into the system. In my community of Borroloola, we are disadvantaged on any aspect of life you would like to look at. Over the years, even during the ATSIC days, we have had in the vicinity of $3 billion spent each year on Aboriginal affairs and this has not made any inroads in bringing Aboriginal people into the mainstream of Australian society, on any aspect you would like to look at.

Senator TROOD—Do you think the time had come for a profound change in the paradigm—a change in attitude, a change in direction?

Dr Moriarty—I think it has been a godsend, in that sense. People like me have been battling to have traditional Aboriginal culture recognised but also to be practised within Aboriginal society. My uncle, who is our ceremonial head, always said: 'We don't want anyone teach us to be Aboriginal people and to teach us Aboriginal culture. What we want is to become part of the mainstream of Australian society. We should have education and all those other things taught to us. We should have decent jobs that can bring us into

the mainstream of society so that we can look after our own kids in our own way yet maintain that traditional culture.' At Borroloola we still practise those old traditions. I am one of those who very strongly want to maintain those aspects but also bring to the forefront those aspects which would allow us to have decent housing and good education so that we can get good jobs and so on and then become mobile in this society.

Senator TROOD—Are you concerned that these measures might in some way threaten those aspects of your culture that you treasure in the Borroloola community?

Dr Moriarty—I think that is a task for our own people. I have travelled extensively around the world. I have been to places in Africa. Those Africans who attended the Sorbonne, Oxford or Cambridge are no less African because they have undertaken those studies; they go back to Africa and they are forever Africans. I think we should be working along the same lines.

Senator SIEWERT—Did you talk to the combined Aboriginal organisations of the Northern Territory or any of the other organisations before coming to your opinion on this package?

Dr Gordon—No, we did not. Our terms of reference say that we are to give advice to the federal government. We only meet four or five times a year. We do not have a budget that would allow us to go out and consult with Aboriginal organisations. I can speak to you this afternoon with my task force chairperson's hat on about what I am doing on the ground.

Senator SIEWERT—Is the council aware that the government did not consult Aboriginal organisations before it came out with the package and that the first recommendation of the *Little children are sacred* report is consultation?

Dr Gordon—Yes, we are aware of that, but the minister has also said in a press release that this is a response not to the *Little children are sacred* report but to the fact that nothing is happening about the protection of children on the ground.

Senator SIEWERT—Are you concerned that there was not any consultation by the government before they put this package in place?

Dr Gordon—I do not get into political fights or arguments. As a magistrate, I take an oath to act without fear or favour or ill will or affection. If the government does not consult with other Aboriginal people, that is not really a matter for the NIC. We can talk to the government when we next meet, which is next week. We have had some correspondence from some Aboriginal organisations—not a lot—asking us to mention it.

Mr Aird—In relation to the consultation, there has been so much consultation with Indigenous people over the years on so many topics. I think this one is different because we knew that the abuse and neglect of children was ongoing. So for every day, every week that you were out there consulting—and with some known outcomes, dealing with personalities that you would expect to be consulted—the person who delayed action would knowingly be allowing more abuse, more neglect, and I think that raises some very serious moral questions about just how long you are going to knowingly allow that abuse and neglect to continue. So I would support the speed at which they have acted.

Senator BARTLETT—Following on from that, Mr Aird, I wrote down when you spoke before briefly that you said, 'Of course, there must be consultation.' You are now saying that there cannot be consultation. I am a bit confused about that. Is it actually not possible to consult alongside as part of implementing?

Mr Aird—I took the earlier question as being in terms of when the emergency response was announced a few weeks ago. Now there must be consultation for the correct, professional, technical implementation of what they are doing. It is appropriate that the action was taken as quickly as it was, but, when it gets down to communities now, we should not be talking to the gatekeepers—we should not be talking to the personalities that have such a good run with funding and organisations; we should now be coming up with localised solutions that actually address the core problems. That is the consultation now that I am talking about.

Senator BARTLETT—Okay. Thank you for that. Mr Moriarty, you said that this is a once-in-a-lifetime opportunity. I hope that it is not just once in a lifetime that governments actually decide to pay attention, but I appreciate why you would perceive that and it is a reasonable feeling. Given that it is potentially a once-in-a-lifetime opportunity, and obviously it is a major opportunity, don't we have an obligation to make sure that that opportunity has as big a chance of success as possible?

Dr Moriarty—Absolutely. I go back to my community quite regularly—in fact, six or seven times a year. I have aunties. My mum died. In my kinship system, I have many mothers, and one has taken on the responsibility of being my mother because my other mother has gone, if you know what I mean. Many of my aunties of that generation are looking after grandkids and great-grandkids, six and eight at a time, constantly. They are dirt poor. They are culturally rich in the old traditions, yet they cannot look after these children.

Senator BARTLETT—Sorry to interrupt. I only have a couple of minutes. I am really reluctant to interrupt you, but my point there is: is this package of legislation not able to be improved? Are you confident that it is totally right? Should we as a Senate have an obligation to do everything we can to make sure it is as good as possible—to take advantage of this once-in-a-lifetime opportunity?

Dr Moriarty—Yes, I think we should take advantage of that. I must commend the Leader of the Opposition for taking a bipartisan approach, which encouraged me tremendously. If we can take that role, the intervention is one aspect, but we have to look at many aspects of the society that I come from at all those various levels. Of course there is housing, education—all those other aspects that I mentioned. We have got to talk to the people. It is important while they are doing that. Of course, the removal of the CDEP in a staged manner is one of those aspects that have to be looked at carefully as well. But I think that is one of those aspects that I hope will come about in an appropriate way where people will not be too disadvantaged in those isolated communities like mine.

Senator BARTLETT—I can only, I suspect, ask you one more question. It is a bit unfortunate in terms of what I was just saying about making sure we take every chance to get it right. You have mentioned culture a number of times, which I would certainly agree with and I think the examples you have given are very valuable—and I apologise for cutting one of them off. One of the measures amongst many in this legislation removes the opportunity for cultural practices of Indigenous people to be taken into account in bail and sentencing. Do you think that is a necessary move?

Dr Moriarty—I think the old Aboriginal law is much tougher than the law that we live under in normal circumstances. Aboriginal people know right from wrong, and if you treat that any differently, we will come to grief here and there. But, when we talk about customary law, I ask: 'What part or what aspect of customary law are we looking at?' It is a very involved area, and it is fraught with real issues. But I think we should be looking at where we fit into the mainstream of Australian society.

Senator BARTLETT—You do not think any cultural practices of Indigenous people should be taken into account in bail and sentencing decisions?

Dr Gordon—Senator Bartlett, if I could answer that: I was the one who actually raised that at the NIC, as a magistrate, along with Tammy Williams. We have protective bail conditions in our legislation in Western Australia. We were talking specifically about Commonwealth crimes. The Commonwealth cannot expand that out to states which do not have it. Under protective bail conditions we can put a person on bail with varying conditions. One of the things that we raised for protective bail conditions, which the federal government took on board, was that if there was a man who had been violent to his wife, as happens on a regular basis through alcohol or drug related incidents, then there should be a cooling down period. So protective bail conditions could see that person being excluded from the community, so as not to remove the victim but the perpetrator, to reside at another residence and not go back. That is how we were viewing the protective bail conditions. We also felt, as part of those protective bail conditions, that a man who is drunk or under the influence of drugs and who then bashes his wife—or perhaps an Aboriginal woman who bashes her husband; it would relate more to a man—could not say, 'I have the right to bash my wife under customary law.' That is the context that we were putting it in.

CHAIR—Thank you, Senator Bartlett and Dr Gordon. I would like to, in conclusion, ask you, Ms Baumann, if you would like to make a concluding comment. You have been very patient and have not made a contribution as yet.

Ms Baumann—Yes, I would like to say something in relation to what John Moriarty said, because we are both from the Territory—if I can class John that way. I agree with what John said earlier in the piece because, in the area of the once-in-a-lifetime opportunity, if it is going to make things for the betterment of the people in our communities, why not take up the opportunity that is there with both hands? This community is 50 years old, and there have been several attempts made before by various government departments and nongovernment organisations, whether it be in health, education, housing or the various other issues that are included in the intervention, such as the welfare of the people and the children especially.

CHAIR—Thank you very much for that. Mr Aird, would you like to make a concluding comment?

Mr Aird—Yes. I think that one of the longstanding problems with Indigenous affairs has been low expectations, the removal of people, the removal of responsibility from individuals, and some bad governance and bad funding arrangements. I am hoping that the emergency response is able to start looking at how to build communities, how to build their capacity and to overcome some of the problems that have endured in the past.

CHAIR—Thanks very much for that. Thanks to the witnesses for appearing today.

[11.09 am]

CALMA, Mr Tomas, Aboriginal and Torres Strait Islander Commissioner, Human Rights and Equal Opportunity Commission

HUNYOR, Mr Jonathon, Director, Legal Services, Human Rights and Equal Opportunity Commission

von DOUSSA, Mr John, President, Human Rights and Equal Opportunity Commission

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

Mr Calma—I am also the Acting Race Discrimination Commissioner.

CHAIR—Thank you. I now invite you to make a short opening statement at the conclusion of which I will be inviting committee members to ask questions.

Mr von Doussa—HREOC welcome the opportunity to make submissions to the committee today. We have in recent moments given you a written submission. I regret that time did not permit us to get it to you in advance. I do not wish to speak at length to that, but simply to record that HREOC welcomed the recognition by the government of the serious, broad-ranging social and economic disadvantage which exists in many Indigenous communities. We share the view that has been expressed by others this morning that this presents a historic opportunity to deal with a national tragedy.

HREOC strongly supports the aims of the legislation, namely to produce the wellbeing of certain communities in the Northern Territory. However, we would like to stress that the legislation and the action taken under it must seek to achieve its goals consistently with fundamental human rights and, in particular, the fundamental right of racial equality. HREOC does not support the bills insofar as the measures seek to exempt them from the Racial Discrimination Act.

The laws plainly impact to a significant extent—almost entirely, in some instances—on Indigenous communities. It is inevitable that there will be discriminatory effects. The laws generally must, therefore, be justifiable as 'special measures', taken for the advancement of Indigenous people, to be consistent with human rights principles. As a general proposition we take the view that, if the measures cannot be justified as 'special measures', they should not be enacted.

HREOC submit that a fundamental feature of 'special measures' is that they are done following effective consultation with intended beneficiaries and, generally, with their consent. In the present case, the absence of effective consultation with Indigenous peoples concerning the legislative measures is, therefore, a matter of serious concern. We accept that this is a case where urgent action is necessary. Nevertheless, it seems to us that the success of the action, both immediately and in the long term, will depend upon effective consultation. Effective consultation is fundamental to respecting the human rights of Indigenous people.

We accept the reality of the situation that these bills are going to pass so quickly through parliament; therefore, what we want to emphasise today are some practical considerations. Ideally, to justify the legislation as 'special measures' there should have been comprehensive consultation beforehand and significant input from the communities concerned. That has not happened, but it is not too late now to embark upon a consultation process. In section F of our submission, towards the end, we deal at length with the need for a culturally appropriate consultation process and a significant public information campaign so that the communities affected understand what is being done and why it is being done, and so that they have the opportunity to contribute to the decisions that are made now as to the implementation of this legislation.

It seems to us also—and we deal with this in section E of the submission—that, with the haste with which this legislation has been put forward and the complexity of it, it is highly likely that there will be areas where measures taken do impact in a way which is not beneficial to the communities that the measures are intended to assist. Some of these things perhaps can be anticipated at this stage, at least as potentials. Others might be quite unexpected at this stage. We have identified in the paper a number of issues where we see the potential for the measures working in a way that is not constructive. We, therefore, put the argument that this is a case where it is crucially important that there be an ongoing monitoring of the effects of the legislation and its implementation. We make a plea for a parliamentary review to be held within 12 months, by which time the major impacts of this legislation should be apparent. We think there needs to be a proper public review so that, where disadvantages in the system are identified, steps can be

taken for legislative amendment and improvement to increase the prospects of this legislation achieving its stated aim.

CHAIR—Mr Calma, do you wish to make an opening statement?

Mr Calma—Yes, just to support what the president has just said but to also point out that it is unfortunate that everybody sees this as a once in a lifetime opportunity, particularly when we are celebrating the 40th anniversary of the 1967 referendum, when the federal government has had the opportunity for the past 40 years to be actively involved in Indigenous affairs. This once in a lifetime opportunity cannot be just for the duration of this exercise. We need to look at measures that will be sustainable, and that will only happen if Indigenous people are involved in the process. We need to learn from whatever experiences are gained in the Territory. We cannot persist in having report and review after review and taking no notice of them, running COAG trials and not taking notice of the evaluation of those trials and not learning the lessons that we could have learnt, both positive and negative, from any of those. Let us take this as an opportunity to progress.

You will also see in our submission—I believe it is around point 80—that we strongly urge the government to consider dedicating some funds to provide human rights education to Indigenous Australians, as the government has done in providing human rights education for Muslim communities as part of the national action plan. We have been pushing this with the government for the past three years and, as yet, have not been able to get any satisfaction.

Senator LUDWIG—It is always worth while to have your submission before us. One of the critical issues which you raised was the need for a review. The matter has now occurred and you seem to suggest that the matter needs a review. You have mentioned a Senate committee. Is it broader than that? In other words, do you accept that all of these parts need review? As to how that review is conducted, we need to ensure that there is a comprehensive review. Are you saying that a Senate committee would be the appropriate way of going forward or are you saying there are also broader ways?

Mr von Doussa—The submission we have put forward is that there be a Senate committee. It seemed to us that, firstly, it would be a public hearing where people can make their contributions by way of submission and, secondly, because it would be a Senate committee, it would already be in the parliamentary process in terms of recommendations about changes, improvements and so on that may arise. In addition, we have suggested that the committee be assisted by a group of experts who would also have a monitoring function. We have made some broader suggestions about the composition of that group, but it would be a group which had significant Indigenous representation, mental health contributions and somebody expert in trying to benchmark our success of projects like this. So there would be an ongoing process through a monitoring committee, which would report periodically to the parliamentary committee or to parliament. Then there would be a 12-month review, at which stage, insofar as there may be downsides to all of this, they will be apparent, and appropriate consideration could be given to amendments that will better achieve what is intended.

Senator LUDWIG—The other matter you mentioned is the need for consultation. If I juxtapose that with the report in 1995 about alcohol—I am sure you are familiar with that—and then move forward, it seems the point you make in your submission is that it is never too late to consult. Also, that there is now an opportunity for the government to consult, if they have not consulted sufficiently, or an opportunity to encourage them to continue to consult where they have started that consultation process, and to ensure that, within a short while or as soon as possible, they can communicate their measures? Am I right about that? That will, in some part assist—I do not know to what extent—in ensuring that the matters that fall under this bill are special measures?

Mr von Doussa—Yes, I think you have summed it up. It is rather a better-late-than-never approach. But it does seem to us that the legislation provides a framework that could be consistent with special measures in almost every respect. Whether it is or not really depends on the process that lies behind it. Regrettably, there has not been significant consultation and input from Indigenous communities in advance, which you would normally expect with a special measure, but it seems to us that it is not too late to have the consultation now and ensure that the administration of the act is designed and implemented in a way that advances the aims of the legislation in ways where the communities have some input to designing and in ways that meet their aspirations.

Senator LUDWIG—That is very helpful to understand. The task force will be here this afternoon, so we can ask their view on that as well. The next area goes to some of the individual measures, like the

permit system. Do you have a particular view about how that should work now, given the way the bill addresses it?

Mr von Doussa—I think Mr Calma can speak from the more immediate reports that he gets about the downside of this. It seems to us that this is one of the areas where there is a real risk that it might not work to the advantage of the communities and there may be a need to modify it quite rapidly.

Mr Calma—Our general position is that, firstly, we cannot see the link between the extinguishment of permits and child abuse or any access. As I covered very clearly in the native title report in 2006, when we looked at the issue of permits, and in our submission, there is no evidence to demonstrate that any government officials have been restricted from participating in any community activities in allowing them to perform their official functions. We have seen the abuses of permits already, where you get fishermen, hunters and general visitors who want to go to communities for an experience. Our grave concern is that, firstly, there is every potential that those visitors could be doing anything in communities—so that is a bit of a problem; and, secondly, if our major concern is to look at law and order issues—and we fully support that, and we support additional police in the communities—we do not want police to be diverted in their attention and have to be out there trying to police the roads and all those who are off the roads.

Last Monday night I met with the Laynhapuy homeland group in Arnhem Land. One of their grave concerns, which has been expressed by many others, is that once the roads are opened, whilst the intention might be that the major road is permit-free and there is an expectation that you require a permit once you get off that main road, most people will not honour that and they will find any dirt road and look for fishing or shooting spots. The concern of many Aboriginal people is that there is a potential that people could be out there recreationally shooting—they referred particularly to pig shooters—and that could create a danger for Indigenous people who are hunting.

Senator LUDWIG—You may not have had an opportunity to see this, but I note that the police federation said in their submission that the changes to the permit system were unwarranted and that the police on the ground indicated that they believed the permits are a useful tool and that the government's proposed changes will make it more difficult. Do you have a view about that?

Mr Calma—I would fully endorse what they are saying—I outlined some of the reasons. That is really the only way that Indigenous communities can control who goes out there, and the unscrupulous. As people with a sales background will know, the experience in the Territory—I am a Territorian and have worked under the permit system since its introduction in 1976—is that that is really only the way that communities can control the undesirables from going into the communities.

Linked to that, the other measure that is missing in this whole incursion into the Territory is the need for the volunteers and other public sector workers who are going out there to undergo police checks themselves, and the child safety checks that they currently administer. If that is going to be administered by the local police, that will be another impost, and there is the question of whether they have the skills to do that. We are just introducing a whole range of new people who may have the best intent to work in communities, but, as was pointed out in the Anderson-Wild report, many of the perpetrators of child abuse are in fact non-Indigenous people and people who are in those communities for an official purpose or another purpose.

Senator KIRK—Thank you very much for your submission. I am trying to have a look through it now. I would be interested to find out your view in relation to section 132 of the national emergency response bill. The first subsection of that, if you have it in front of you, is the one that purports that the measures amount to special measures under the legislation. I am interested in your view about the effect of subsection (2) and whether or not that is necessary. That is the section that purports to exclude entirely the acts under this legislation from the operation of part II of the RDA.

Mr von Doussa—That is a matter of concern to us, and we have expressed that concern, because it puts the act to one side. In terms of Australia's international reputation, it seems to us that that would be a very unfortunate thing to do. If these measures fulfil their requirements of being special measures, you would not need that. As I said earlier, the acts have the framework appearance of being consistent with a special measure and it is a question of the process. There has not been consultation up to date, but that could possibly be rectified now.

There is a problem in section 8(1) and section 10(3) of the Racial Discrimination Act, dealing with the management of lands. That was advanced by the department this morning as the reason for subsection (2). It seems to us that that requirement of the RDA could have been met by appropriate consultations and

consent. Again, consent has not been obtained in advance, which the act would anticipate, but consent after the event would be better than no consent. That seems to us to be a problem. The other side-effect of that, of course, even if the explanation is section 10 through the RDA, is that it has the effect of exempting acts done in the course of the administration of this legislation, so that any discriminatory act by a bureaucrat or someone else in the administration of otherwise justifiable provisions will be outside the scope of the act.

Senator TROOD—Thank you for your presentation and the paper, which I have been trying to get my head around quickly. In relation to your proposal for a review proposal after 12 months, one of the points that the government makes about the overall package is that it is a staged intervention: it runs through stabilisation, normalisation and then the longer term. It seems to me that 12 months is not going to carry us very far in the overall process of trying to address the concerns that exist in these communities. In that context, do you think that 12 months is rather early to have a review of the process?

Mr von Doussa—We accept that it is a staged process and that there are aspects of this that will happen in 12 months time. But it did seem to us that the section 31 leases would have impacted. It would be clear by that stage how they were operating. Some of the welfare provisions would then be in force. It just seems to us that it would be undesirable to leave it for too long in case some major problems come to light. The sooner they are addressed the better. It may be that what we have suggested needs to be expanded—to have a review in 12 months and in 24 months—but it seems important to us to not defer it for too long in case the opportunity for identifying, discussing and considering amendments for issues were put off.

Mr Calma—One of the specific elements of a special measure is that it can only be in force for the duration, until the objective has been reached. One of the concerns is that there are no benchmarks, no baseline data, so that we can, in human rights terms, look at progressive realisation—that is that, over a period of time, we can see that there has been some advancement. Unless there is any mechanism in place to measure that, it will not happen. Our suggestion for the Senate committee was as much about the bipartisan approach that is currently being demonstrated, and that needs to be extended all the way through this process.

Senator TROOD—Did you have in mind certain benchmarks, Mr Calma, that might be appropriate? For example, there is one with the five-year lease—after five years, or indeed earlier, the land or property that might be resumed is returned to its original owners in the way it was previously. So there is a benchmark there.

Mr Calma—That could very well be a benchmark. There are a couple of issues. One is that if we look straight down the line of addressing child abuse, which is one of the measures, how do we know what has been addressed and what programs are in place? The data that people were referring to from the Australian Institute of Health and Wellbeing shows that 12 in 1,000 Indigenous people are reporting child abuse or neglect. It does not get down to the specifics. So do we see in one year or in 10 years time whether we have reduced that benchmark? Part of the whole idea of a review—and one can only assume that what we learn here is not just going to be pertinent to the Territory—is that since the new arrangements for Indigenous affairs were put in we were to have the whole-of-government approach; we were to have much more coordination in our efforts. A lot of that has not taken place. So this is looking at both the existing measures to address child abuse and the broader issues of addressing the wellbeing of Indigenous peoples.

Senator TROOD—The implementation group has obviously got that on its agenda into the future. Concerning the special measures matter, the government's position, as I understand it, is that this program of activity includes things such as prosecuting criminal activity that has not previously been prosecuted, encouraging children to return to school where they have not previously been attending and addressing questions of alcoholism, of children and women at risk and of inadequate housing in these communities. Overwhelmingly, I would have thought there was a case for benefit to the community by these actions. We are breaking new ground here. It seems self-evident that there is an overwhelming benefit here for the community which must justify the case for special measures.

Mr von Doussa—As I think I have said, the legislation has the framework of a special measure, but the outcome, I think, will depend upon the processes that are involved in it. If these measures are introduced with discussion with the communities and the communities understand what is going on, there is a fair chance that these things will work beneficially. On the other hand, if the community does not understand them, the processes just become another cause for concern, fear, depression and so on and it is going to have a counterproductive effect. For example, if the alcohol provisions turn out at the end of the day to put a lot of people, because of fines and things, back into the justice system so you get into that terrible bind of contact with the police, resisting arrest, being charged, imprisonment et cetera and the end result was to put

up the prison population of Indigenous people markedly, that would be a really serious downside and you would need to deal with it quickly. It is those things that we think need to be the subject of review and, if they happen, then what looks like a good special measure might not actually be working as one.

Mr Hunyor—The commission, in its submission, at paragraph 28, acknowledges that it is appropriate to look at the package as a whole when determining if it is a special measure. But it is still necessary for its parts to be appropriate and adapted for the purpose. There may be parts—and this goes to the need for the monitoring and review—that are not appropriate and adapted to this purpose and that is why careful attention needs to be made. We have noted some of the areas of concern that have been raised by Indigenous groups as to things that they say are not appropriate for this purpose.

Senator SIEWERT—I would like to pick up from there. It seems to me that there could be an argument that the government is changing the definition or the understanding of what a special measure is. The argument being put to us is that in fact these special measures may not have to be for the benefit of the Aboriginal community. If that is the case, what does that mean in terms of Australia's understanding of the definition of a special measure and that that is internationally accepted?

Mr von Doussa—I do not think it has any bearing on that at all. International human rights law is plain. It sets out a number of things that are expected of a special measure. One of them is consultation and participation in an Indigenous community. If that has not happened it is not going to change the international understanding of what a special measure is. It just means that there may be an argument that this one, for one reason or another, is not meeting this test.

Senator SIEWERT—Sorry, I have obviously stated that badly; I did not mean how it would change the international definition. Let me put it another way. How do we relate to the convention if we are using a different definition of what is a special measure to that which is the commonly accepted definition through the international convention?

Mr von Doussa—The act does not purport to define 'special measure', and I do not understand that the government is suggesting that a special measure is anything other than the internationally understood concept. It is just a question of whether, in the processes that have led up to the legislation, there has been adequate consultation to fulfil the general understanding of what a special measure is.

Mr Hunyor—Senator, I think the purpose of the provisions in relation to special measures in the legislation is effectively to deem that these are special measures, and so, to avoid the question of whether or not they in fact are, it deems them to be. We do not expect that that would have a flow-on effect in law. It may have a broader effect on how those concepts are understood, but, in our view, it will not have an ongoing legal effect.

CHAIR—Thank you, Senator Siewert. I appreciate that. Senator Bartlett.

Senator BARTLETT—Given that some areas have been covered by other people, I want to ask about the welfare measures and quarantining payments. We have not had much chance to look at those today. You touch on them a bit in your submission but I am wondering whether you examined them in the context of the way they are applying in the Territory, which is universal for everybody in designated communities, as opposed to the way they are being proposed to apply for the rest of the country and, within that, the way they are being proposed to be applied in Cape York. Are there any problematic aspects about that, from your point of view?

Mr von Doussa—I have to say I found that part of the act very complex. One of the difficulties there is that that is an area of the legislation which is plainly discriminatory in the sense that it impacts on Indigenous people where it is not impacting on others, so there is a significant onus on those who propound the legislation to explain why it is so much in the interests of the Indigenous people that it overrides the human rights issues that are involved. There is a balancing exercise. Again, we find it difficult to express a firm view about that because the outcome is going to depend upon the way in which that legislation is explained, the background information that is available to the communities, the discussion that occurs with them and then the way in which, in each individual case, it is administered. It is encouraging to see—I think it is section 123TE—the matters that the minister must take into account before he declares a particular area as a relevant area. Those matters do address consultation with the community in advance of declaring a particular community subject to those provisions.

Senator BARTLETT—With regard to the principles you apply, you have spoken about the issue of informed consent and consultation, certainly in relation to special measures but also, I think, more broadly. Does that apply in terms of the individual people affected, which is how it is going to apply for the rest of

the country, including Cape York, as opposed to in the Territory, where it is going to be whole communities, en bloc, having a measure applied to them?

Mr von Doussa—As I have said, there is an element of discrimination involved in that. Can you justify it overall? I think at the end of the day that will depend on how it is administered. But you are quite right: for a 12-month period or for any extended period thereafter for which that operates, it is a fairly harsh measure. But the harshness will depend upon how it is administered. Plainly, it is anticipated by the legislation that—and, as I understand it as to what the government propose to do—they will consult with individual people as to how that is to operate in each individual's case: how the money is to be made available for the purposes for which it is intended and so on. That might all work quite well at the end of the day. On the other hand, it might be a disaster, and that is why we think that it is necessary to look at this sooner rather than later and preferably monitor it.

CHAIR—Senator Bartlett, we are pretty much out of time. Do you want to ask one last question? I am happy to allow that. Otherwise, we will go to the Alice Springs and Katherine mayors, whom we have on the line.

Senator BARTLETT—I want to ask about the consultation in putting this together. Witnesses, my understanding, from your statements and certainly from the statements that I have seen elsewhere, is that there was not any engagement with any of you in putting this together. I appreciate there was urgency and the like; nonetheless, it does perplex me, given there were six or seven weeks in which this was put together and there would have been some possibility of even a limited consultation or seeking of views. Has there been any effort to seek your opinions?

Mr von Doussa—We were not consulted before 21 June, when the major announcement occurred.

Senator BARTLETT—I appreciate that.

Mr von Doussa—We were given a briefing as to what was proposed shortly thereafter, but we were not otherwise closely involved in the preparation of any of these matters.

Mr Calma—I was not involved at all. This is the frustration, given the social justice reports that I provide to parliament each year and that are tabled. One was tabled on 14 June this year. It clearly outlines ways in which governments should consider engaging with Indigenous people, based on international best practice. A lot of that has been totally dismissed. Unless we set up a significant review process and make sure that we do follow that through, we will find again another endeavour where Indigenous people will be blamed for the failure if it falls over.

CHAIR—I thank the representatives of HREOC for being with us today and also for the submission that they got to us. We appreciate that.

[11.42 am]

KILGARIFF, Mrs Fran, Mayor, Alice Springs Town Council

SHEPHERD, Mrs Anne, Mayor, Katherine Town Council

Evidence was taken via teleconference—

CHAIR—Welcome. I invite you to make a short opening statement, at the conclusion of which I will invite members to ask questions. Mrs Kilgariff, would you like to kick off?

Councillor Kilgariff—Yes, I will. Thank you, Chair. I would like to start by saying that many people in this area have welcomed the federal intervention. They see it as a catalyst for change. Over very many years we have seen a deterioration in the quality of Indigenous lives brought about by many things but I would say principally by alcohol and welfare dependency. Although many people around here have tried a lot of initiatives over the years, it seems that the issue has been getting so big and so irreparable that people have been starting to feel that there will never be a change. So from that point of view, I think the intervention is very welcome. As I said, we see it as a catalyst for change.

I have two major concerns about it and its consequences. The first is that I see that many of these measures, such as CDEP, welfare changes, alcohol and the leases, might actually encourage people to migrate into the larger towns—Alice Springs and Katherine, in particular. Our towns are already overflowing with Indigenous people. Alice Springs is a service centre for some 260 communities in the Northern Territory, Western Australia, South Australia and Queensland. We have so many people coming in that we are struggling as it is to cope with those numbers. My fear is that this will encourage other people to come into town and, I suppose, burden our resources even further.

My other concern is that these reforms will not be sustainable. I think there is a real danger that, when all these things have gone through and if the enthusiasm and resources are not maintained, things will fall in a hole and Aboriginal people will be in a worse-off situation than they were before all of this started. They are my two concerns, but as I said, I find it positive overall that all these things are happening. Would you like me to go through my reaction to some of the proposals now?

CHAIR—We will need to have the Mayor of Katherine make an introductory statement and then we would like to move to questions. So if you would like to conclude your opening statement we will move to the Mayor of Katherine.

Councillor Kilgariff—I will just go on to a few other things, then. With regard to the permit system, the Alice Springs Town Council has resolved that it does agree with getting rid of the permit system in major communities and on major roads. It did that about six months or so ago and it did that because it felt that some of the issues that are happening in communities remain hidden because there is a permit system and also because people can come into Alice Springs—this is an open town—and that is not reciprocated by the Indigenous people here. The native title holders here feel very strongly that Alice Springs is an open town, but they require permits to go out to other Aboriginal people's land. It is discriminatory in that sense. So we have that policy.

On the question of CDEP, we have felt for quite some time that the welfare system has been a poison for Aboriginal people and there has been intergenerational damage over the last 20 or 30 years. We support the removal of CDEP but in the context that real jobs must be created. Many of the communities depend very heavily on CDEP because there is, apart from that, little or no economic activity. You probably would have a copy of the LGANT survey, which showed that out in the bush there are around 3,000 real jobs. But if you look at those which are on CDEP and having a top-up, there are around 1,500 jobs. But there are jobs available in most communities. My concern is that there will not be enough jobs for people to move into when CDEP disappears. I think that is going to be an issue. CDEP is also an important component of the local government reform, which is currently happening in the Northern Territory and is set to start on 1 July next year. It is not only the jobs that local government provides—and they are by far the largest provider of jobs in communities—but also the fact that the $20 million or so, which is the recurrent capital funding for CDEP, is underpinning, I believe, some of the budgets of the proposed nine new shires. That will be an issue as well for local government reform.

When we come to alcohol, all Central Australian communities without exception are supposed to be dry now, but there is still alcohol that gets through. I do not really see that any new proposals are going to change that. I guess there will be extra policing, and that might be one of the reasons that grog runners are

caught. But to all intents and purposes now, all communities are supposed to be dry. In Alice Springs we are introducing a system of photo ID so that all people who buy alcohol here in another month or so will be required to present some sort of photo identification—it will be a passport or a drivers licence or whatever. That will help us regulate people who are buying alcohol and also those people who might not be able to buy it, such as those on a prohibition order or on some sort of bail condition or whatever. That will also make it easier for the federal government to actually catch grog runners. I know that that is a concern with some of the alcohol resolutions that they have brought in.

CHAIR—Mrs Kilgariff, could you conclude your opening statement, please—

Councillor Kilgariff—Sure.

CHAIR—and then we will move to the Mayor of Katherine.

Councillor Kilgariff—In conclusion, real work and the results of alcohol are the big concerns. Eighty-five per cent of police work here in Central Australia is alcohol related, and that is a huge factor in what is happening.

CHAIR—Thank you very much indeed. Mrs Shepherd?

Councillor Shepherd—I agree with much of what Mayor Kilgariff has said. I would just like to paint a quick picture of Katherine. We have a population of 9,000 people. About a third of our population is Indigenous. We have a very large region. It extends from the Western Australian border to the Queensland border, and it is roughly the size of Victoria, so we are the centre for many and diverse Indigenous communities. These communities see Katherine as a party town—I have often heard it referred to as that—and on any day we can have 100 to 300 itinerants camping illegally in the town and in the river corridor and, in the wet season, sleeping in the shopfronts.

Since the intervention—which I welcome, as most of my community welcome the government's intervention—we have seen a dramatic increase in the itinerants in Katherine. We have now about 20 illegal camps in the river corridor. All these people are drinking. I believe the major health clinic also has increased numbers coming through its doors. Unfortunately, we do not have the facilities to cope with these people. We do not have the facilities to cope on any ordinary day. We do not have any transient accommodation. We do not have somewhere safe and secure to send these people—even where they can drink safely. We have a sobering-up shelter, but it is very derelict, and we certainly need a new one. As for detoxification beds, we need rehabilitation. We have a rehabilitation centre here, but it has a capacity of about 24 beds and it is operating at about eight at the moment. There are no activities there for those people, and when they are released from rehabilitation they are dumped in the main street of Katherine, where there are four liquor outlets.

I would ask that the government does not push aside the work that the Indigenous health organisations are doing and the services that they are providing to the people. I think they need to be listened to and considered seriously. The problems our Indigenous people have are generational. I think we have had a system of welfare that has been systematically killing them at a very early age, so we desperately need long-term solutions. I would guess that more than a generation is needed to address many of these serious situations.

The fact that food vouchers are not transferable could cause some unnecessary hardships for some people, because often it is not the biological parents who are looking after the children; it is probably a grandmother who is on a single pension. I think that needs to be considered as well. There is a lot of fear in the communities—

CHAIR—Mrs Shepherd, could you conclude your opening statement, please.

Councillor Shepherd—Certainly. To conclude, I would like to say that there is more abuse against Indigenous children than sexual abuse. The malnutrition and general neglect is also very serious and certainly contributes to ill health as early as in their 20s, with kidney failure and dialysis.

CHAIR—Thank you.

Senator CROSSIN—I will just go to you, Mayor Shepherd, in Katherine. Is the chronic lack of accommodation for people coming into town something you would like to see addressed as part of this task force and the intervention? I suppose most of the attention has been focused on the 70 remote communities. We have really yet to see this government talk about or address support for towns like Katherine and Alice Springs.

Councillor Shepherd—We desperately need some transient accommodation that is properly managed, somewhere that is safe and secure and where the children, particularly, can be safe. We do not have that at the moment. We have one camp in Katherine that is dominated by one tribal group. The other groups are too afraid to go there for fear of being knifed or other violence against them. So I think that is an integral part of what is needed in Katherine.

Senator CROSSIN—How many alcohol outlets are there in Katherine and Alice Springs? Could you each give the committee an idea of that?

Councillor Shepherd—In Katherine there are probably eight or 10 where there is takeaway alcohol, and of course there are restaurants and other areas like that, and the clubs too. I do not really think the clubs are a problem, but the other takeaway outlets certainly are.

Councillor Kilgariff—In Alice Springs we have over 90 outlets. Twelve of those are takeaway and the rest are restaurants. I agree with Mayor Shepherd that the restaurants are not really the point at issue here, but certainly the takeaway outlets are.

Senator CROSSIN—So in Katherine you have about eight places where you can buy alcohol and take it away, between 3,000 people?

Councillor Shepherd—Yes, that is correct.

Senator CROSSIN—And in Alice Springs about 12 outlets?

Councillor Kilgariff—Yes—remembering, of course, that we do not know to what extent the 450,000 visitors that go to Alice Springs contribute to that issue. We heard a statistic yesterday that enough pure alcohol has been drunk in Alice Springs in the last three months to fill six million cans of beer. That is not six million cans of beer being drunk, but it is enough pure alcohol to equate to that.

Councillor Shepherd—The Northern Territory has the highest consumption of pure alcohol. I am ashamed to say that Katherine has the highest in the Northern Territory. I guess that equates to Katherine probably having the highest in Australia.

CHAIR—Is that on a per capita basis, Mayor?

Councillor Shepherd—Yes.

Senator CROSSIN—I thought in Alice Springs it was more like 38 outlets where you could buy alcohol.

Councillor Kilgariff—No, there are only 12 takeaway ones. That is some clubs—which, of course, are membership based—a number of supermarket outlets, and a couple of pubs that have bottle shops as well.

Senator CROSSIN—Has there been any consideration by either of your councils to suggest, say, to the Commonwealth government—in the prawn industry, for example, when there were too many prawns being caught and they wanted to reduce the catch, they bought back the licences—that perhaps these licences could be bought out or places encouraged not to sell alcohol in return for some sort of monetary compensation so the number of outlets is reduced?

Councillor Kilgariff—It has certainly been the case in Alice Springs. We had a crime summit yesterday, and that was strongly brought forward. For instance, there is a service station here which has a liquor licence for historical reasons. That would seem an obvious target for such a buyback. There are a couple of corner shops that have liquor licences. So there is a strong suggestion—and I think a growing suggestion—that those sorts of liquor licences should be bought back.

Councillor Shepherd—I would say that is the same in Katherine. It certainly has been discussed at some length in Katherine. I would agree with Mayor Kilgariff on that.

Senator ADAMS—Thank you both for your evidence. I would like to ask a question about the permit system. Firstly, is Katherine a permit-free area as well?

Councillor Shepherd—The Katherine township?

Senator ADAMS—Yes.

Councillor Shepherd—Yes, of course.

Senator ADAMS—So how many communities in the Northern Territory are not under a permit system?

Councillor Kilgariff—I guess you would have the major towns up and down the Stuart Highway. There would be Jabiru and Yulara, which are off the bitumen, but nevertheless you do not need permits to go there.

Senator ADAMS—Is there any different behaviour that you would note in these towns that are not under permits as opposed to towns which are under permits?

Councillor Kilgariff—Most of the towns that are under the permit system have a majority of Indigenous people. They are also, as I said before—in the Central Australian region anyway—supposed to be grog free. Employment is scant, I suppose, and there is certainly not enough employment in these towns for the number of people who might well be employed. They are not open towns, so there is very little tourist travel there. I guess most of the visitors would be people that are on government or public service business, CLC or NLC and people such as that. Is that what you meant, Senator?

Senator ADAMS—I am interested in how the behaviour in the closed communities compares with the behaviour in the others—and Mutitjulu would be one of them. I am trying to get some evidence on how the closed communities conduct their business and how that compares with the open communities. Are there any further problems with open communities?

Councillor Kilgariff—I suppose it is fair to say that the open ones would have a wider range of businesses and a greater diversity of economic activity, sporting facilities and those sorts of things. I guess that is partly because of their size, but it is also because more people are coming through.

Senator ADAMS—Do you have any comments on the Tangentyere position on the federal government's town camp offer?

Councillor Kilgariff—Yes. I was very disappointed that that offer was not taken up. The money has now gone north to Tennant Creek, and I believe the town camps there are the beneficiary of $30 million of that. In Alice Springs we have been working with Tangentyere Council for a number of years to try to make some changes in the town camps. I believed we were at the point where some change would happen, and the money that was offered seemed to be the resources that would make that change. So, yes, I was very disappointed that that did not happen. The town camps are an embarrassment to the town because of the quality of life of the people that live there and the fact that the services that are offered to people there and their access to town facilities are so much worse than for people in the wider population. They are, for all intents and purposes, ghettos that are in the town but not part of it. That is something that really has to change. I saw that money as being the vehicle by which that could change so that those areas could become much more a part of Alice Springs.

Senator SIEWERT—What sort of rehabilitation services are available in both of your centres for people who need help with alcohol dependency, counselling and those sorts of services? Are they available? Do you think they are adequate?

Councillor Shepherd—They are certainly not adequate in Katherine. While we do have a lot of agencies addressing alcohol concerns, we do not have the facilities to cope with the number of people. We need a rehabilitation centre that can house 50 or 60 people. We also need that follow-on care when they are reintroduced into the community as sober people so that there is help for them to maintain that. We desperately need better services. We in Katherine have been calling for a long time for better services to cope with the alcohol problems and the people who are victims of alcohol abuse.

Councillor Kilgariff—In Alice we are in a peculiar position, as I heard yesterday, in that the facilities we have are underutilised the moment. We have a sobering-up shelter. We have the CAAPU residential rehabilitation and detoxification centre. We recently opened a 20-bed detoxification centre which is mainly for inhalants such as petrol. So we have quite a few facilities, but they are underutilised. I think that is because people are not being referred there; it is not because of the lack of people needing rehabilitation or detoxification. I think it is a process that needs to be reformed to channel people into these areas.

Councillor Shepherd—In Katherine there are many people who are asking for help and there is no help for them here for their rehabilitation.

Senator SIEWERT—Mrs Kilgariff, I would like to separate rehabilitation and counselling from detoxification. Are those services available? We heard from Mrs Shepherd that there have been a number of people coming into town in Katherine. Is that happening in Alice Springs?

Councillor Kilgariff—Yes, rehabilitation and detoxification are separate in Alice Springs. A detox centre was recently opened. The sobering-up shelter is an overnight shelter and nothing more, but there is

rehabilitation available as well; it is mainly for Indigenous people. There is a need for a drug rehabilitation centre. Drugs are becoming an increasingly big issue in town. As to your second question, we have not noticed a larger number of people coming into town in the last couple of weeks since the initiative started. But I think that is more to do with the fact that our dry town initiative started on 1 August and we have had intensive advertising going out to all the communities that says, 'When you come into Alice Springs, you have to respect the town and the culture and you cannot drink in a public place.' Both the police and I think the fact that there does not seem to be more people here is due to that.

CHAIR—Thank you to both of you. We appreciate you making your time available for us today.

[12.06 pm]

BOOKIE, Mr Lindsay, Chairman, Central Land Council

DORE, Mr Jeremy, Lawyer, Central Land Council

ROSS, Mr David, Director, Central Land Council

DALY, Mr John, Chair, Northern Land Council

FRY, Mr Norman, Chief Executive Officer, Northern Land Council

LEVY, Mr Ron, Principal Solicitor, Northern Land Council

SHELDON, Mr John, Principal Policy Officer, Northern Land Council

CHAIR—Welcome. I now invite you to make a short opening statement, after which we will have questions.

Mr Daly—The NLC supports the Commonwealth program of assistance to NT communities. This is the natural result of decades of neglect by NT and federal governments of both political persuasions. While the current focus is on the failure of the present NT government, we should not forget the 25 lost years of CLP control of the Territory. One simple fact to ponder is that the provision of secondary schools outside Darwin is still extremely limited. However, we continue to question the need for the totality of this package of legislation. In fact, we doubt that most members of the lower house have any idea of the detail of the amendments they voted for this week. MPs used to be legislators, but now they appear to vote for press releases.

The land rights act was passed by this parliament on a bipartisan basis in 1976, and it marks the high point of Indigenous affairs in this country. Since then, our people in the Top End have been through a long land claims process, which is now largely completed. Our focus now is on economic development. We are turning our land and assets into investments, businesses and jobs which will eventually replace welfare. This is a lengthy and challenging task for all of us, requiring a new approach to how we live and work together. The cattle stations, timber works, aquaculture projects, feral animal harvesting, CO_2 abatement, which is the only program in Australia, mining operations, railways, gas pipelines and major infrastructure projects throughout the Territory are proof of progress. The NLC also took the initiative of engaging directly with the Commonwealth to assist in resolving the national problem of safe storage of low-level nuclear waste. I reiterate that, as far as non-government organisations and government organisations are concerned, we are the only one that took the initiative to engage the Commonwealth on this issue.

The land rights act has been our great strength. It has defined our economic progress. This strength has been denied other Indigenous communities in Western Australia and Queensland. That has caused those communities to seek other solutions to the problems caused by welfare dependence—solutions which seem to us to cost the taxpayer a lot of money in various experiments such as hype by the media. We have been ahead of the game for a few decades because we have the land rights act. We do not wish to be compared with communities outside the NT or to have their solutions visited upon us. We do not have a public relations outfit which tells you about our successful communities, and we do not do weekly columns in national newspapers moaning about our failures; we are just getting on with it, slowly but surely.

The Commonwealth policy package includes some changes to the land rights act. We do not support these, particularly the removal of permits and compulsory acquisition. We do not think they are necessary for the current task. We question the right of a government at the end of its parliament to trifle carelessly with this iconic legislation when it has never campaigned on the matter or had a serious dialogue about it. We also address that point to the Labor Party. But we are realists; we take the long view, as always. We would like to think beyond the current short-term politics to the next decade. We seek some assurances from both major parties that essential strengths of the land rights act are still valued by senior people who can see the progress which it has caused. We hope that this tendency to trifle needlessly with the act is temporary. We invite both parties to study the history of this matter and understand how this act was born and the contributions of some great people who brought it about. These were people who knew the Top End and understood its potential. We would like to assume, as well, that senators who vote on this matter next week will have some idea of the detail of what they are doing. We commend the efforts of this committee in that regard.

CHAIR—Thank you. Mr Daly, would you like to table that opening statement?

Mr Daly—Yes.

CHAIR—Thank you. Who would like to make an opening statement from the Central Land Council?

Mr Bookie—I will say a few words, yes. With regard to the permit system, we would like the permit to stay. It is not causing any trouble on the communities. The people still go out; they just go through the communities. People do not stop them. They are free to go wherever they want as long as the people know where they are going. The Tanami is the main road that goes right through to the Western Australian border, and the people go on that road. They just get a permit to travel on that road; there is nothing to stop them. But they are not allowed to go off the road. The permit system has nothing to do with child abuse and things like that. Permits are there for travel. They get their permits with no trouble. Nobody is stopping people from getting permits.

CHAIR—Thank you. We will move to questions.

Senator PAYNE—Gentlemen, thank you very much for your attendance today and for your opening statements and submissions. I have not had a chance to read all of them, but we will get there. I wonder, as this package progresses—and, Mr Daly, I heard clearly your concerns about the voting process, but let us assume it progresses—what positions are the land councils in to assist in the process? What role do you think you will have as the impacts of the legislation unfold?

Mr Daly—We always thought that we would be consulted all along. Unfortunately, some things have been dropped in front of us and now we are running at 100 miles an hour. But what we have always said to the Commonwealth—and we say this to all governments within Australia—is: 'Come and talk to us. We're practical people and we're about getting the outcomes for our people.'

Aboriginal people have changed over a period of time. We are becoming better and better at what we do, and we see the need for us to do things independently. There is one thing in life that I have learned: you need to be able to do things for yourself to fix up some of the problems that you have within your own lifestyle. So a lot of the answers that we seek in regard to Indigenous communities need to come from within those communities; they will not come by writing legislation and overriding the communities.

I think we need to engage with all Indigenous people because we are talking about Indigenous people's lives, and I think there is no better way to deal with the issue at hand than for you to consult with us. Let us work through the issues and let us try and get positive outcomes for our people. For too long, my people have been sitting in the doldrums like second-rate citizens within Australia, and we are now at the point where we need to move forward. We have always wanted to move forward.

The other thing I want to put to the senators here today is: does every Aboriginal person necessarily want to be like you guys? Or would they prefer to live their traditional lifestyle, which has been a milestone for this country? If you talk to any tourist who comes here, the main reason they come here is to look at our culture and our art, and Australia seems to sell itself on the back of Indigenous art and Indigenous culture. Yet we tend to hamper it.

I would also like to say something about tribal law and culture. There are people who do not know it, do not talk about it, have never done it and never lived it. If it is not your lifestyle and you do not understand it, you really need to become a part of this lifestyle to understand it and really know the dynamics of it.

Senator PAYNE—Let me be more specific then. The initiatives that are in the legislation cover a range of areas—health, education and housing, just for starters. If they are implemented, is there a role at all for the land councils—either of the two represented here today—in that process?

Mr Daly—Yes, definitely.

Mr Ross—The whole issue is that we have not been consulted on this legislation. It has been put together without anyone talking to us about these issues and how to make them work et cetera. We have put forward a number of areas that we think should be amended, which would make some improvements to the proposed legislation. We also say quite clearly that without those amendments we think you ought to throw it out and go back and start again, because it will be a mess without them. Having said that, we also see the need for addressing the areas of health and education, and we agree with that being done. We see that they are very important and need to be dealt with and addressed by everyone.

The issue of improving the lives of children we think is a huge issue and needs to be addressed properly. It is very important that the land councils are involved and consulted. If you pass this legislation next week and it becomes law, then, in terms of people getting out on the ground and getting work done, and in terms of infrastructure et cetera, the traditional landowners need to be involved and consulted as to what happens

on their land. The land councils need to be heavily involved in that process. That gets to the guts of your question because, under the laws of the Northern Territory, on anything that happens on their land, any disturbance to land—regardless of whether it is in a major town like Alice Springs or an Aboriginal community—you must consult with the landowners to protect sacred sites so that there is no disturbance to sacred sites. It all comes back to the work that we need to do through that process. So, yes, we need to be heavily involved at that point.

Senator PAYNE—Thank you very much. I have one more question and it is in two parts. First of all, the Mayor of Alice Springs indicated that her position and that of her town council was to support the permit system's removal. I am interested in your observations on that.

Secondly, in quickly looking over your submission, there is one specific item you refer to, from the Central Land Council, in relation to community stores and the store assessment process. Could you expand slightly on your suggestion that you think it would be useful to include an assessment measure for the capacity of the store to train and employ local community members. What did you have in mind there?

Mr Ross—Mayor Kilgariff raised the permits and, from listening to her, she put it from two points of view. One was from the town council. All non-Aboriginal people make up that town council. They voted some six months ago, as she said, to support removal of permits from Aboriginal communities and townships. She also mentioned that some of the local traditional owners of Alice Springs, some of the members of Lhere Artepe, have made noises about having permits removed from communities because everyone comes into their country.

They are the personal opinions of a few people. What they need to understand is that the understanding between Aboriginal people to visit and remain on each other's country is a personal thing between Aboriginal people. There is no such thing as Aboriginal people requiring another Aboriginal person to have a permit. It has never been a part of any understanding. Aboriginal people have the right to come and go on each other's country if they are going to behave themselves. If they are going to go there and run amok then, yes, people want to do something about it. That was pretty much the point that she raised.

In terms of the stores, yes, we think there should be assessments done as to how the takeover of stores is to take place. We think that some stores are operating really well. Others are not. We just recently helped the IBA with their community stores program to help a community with that process. There are a different variety of things that are taking place within stores, and there has to be some analysis of what is being proposed before anything takes place on the ground.

CHAIR—Thank you very much. Senator Crossin?

Senator CROSSIN—Good afternoon to you both. I want to ask you some specific questions about the submission that you have given us. You talked about the operation of section 50(2) of the self-government act being excluded from the bill. As I understand it, that then leaves a question over the intent of the Commonwealth to compensate landowners justly in terms of the lease of the land. Is that correct?

Mr Dore—That is correct. The self-government act does have a provision requiring the Commonwealth to pay just terms compensation. This bill sets aside that provision and just gives compensation by reference to the Constitution, which, arguably, is a different standard. On current law, I think it would be fair to say that the Commonwealth will still be required to pay compensation, but it is certainly less clear.

Senator CROSSIN—That is the question that we were trying to drill down to this morning when the departments were before us: exactly what a definition of 'just compensation' would be. Is it your understanding that it would be monetary, or could the Commonwealth say that they have justly compensated Indigenous people by virtue of the fact that this measure is in place and they will be fixing up housing and infrastructure in communities?

Mr Dore—I think that would be a matter for negotiation.

Senator CROSSIN—If, though, section 50 of the self-government act is overridden, and therefore the Constitution's just compensation terms apply, does it not lower the bar in terms of compensation? Are we really talking about monetary compensation or are we talking about compensation in kind by actions of the department because they are applying the test against the Constitution and not the self-government act?

Mr Dore—I think the issue we have alluded to the submission is whether or not just terms compensation applies, not necessarily the level or standard of that compensation.

Senator CROSSIN—I see.

Mr Dore—They are both about just terms compensation, but the standard of accessing that just terms compensation under the Constitution is a little higher in a territory.

Senator CROSSIN—I see. Mr Levy or Mr Sheldon, do you want to say anything?

Mr Sheldon—I would emphasise it a little differently. An issue has been raised as to whether the just terms provision applies in the Northern Territory. It probably does. The Commonwealth might want to argue otherwise, but I suspect that they will not. It is not just about houses. We do not have maps yet, but we have looked at the coordinates and mapped them. It is quite clear, understandably, that the Commonwealth wants to control areas where there are extractable minerals—that is, gravel, sand and that kind of thing for construction. We regularly do agreements with local councils and others close to communities about that gravel, and we know what the rate is. We would expect to be paid for that immediately, not paid in the form of houses or things built for people to live in. I would imagine that the Northern Land Council will write to the Commonwealth shortly wanting to have a position on that—to have it all sorted out and have the government paying immediately for use for extracting minerals.

Senator CROSSIN—What is the process if, in fact, the government is not prepared to compensate readily, or the negotiations over that compensation—

Mr Levy—Go to court?

Senator CROSSIN—take more than a year?

Mr Levy—First, you try and negotiate an arrangement. There are pastoral leases, for example, on clapped-out pastoral properties. We regularly do agreements where, for the first 10 years, there is little or no rent, but in return the land is improved, so that in 10 years time traditional owners have viable, productive, improved land. That is not uncommon in commercial deals. But, if you cannot reach agreement about a compensation package, then you have to go to court.

Senator CROSSIN—Your submission talks about amending clause 35 in section 4. Unfortunately, I did not get to ask the department today about what they meant by 'quiet enjoyment of the land'. Unless that is a legal term, I found it a fairly quaint combination of words in legislation, I would have to say. Regarding compulsory acquisition of leases, according to the GPS coordinates we have seen in the legislation, does that actually mean that, if a certain block or blocks of land within that lease are going to be used by the Commonwealth to put demountables on, build a new school oval or create something different, they do not necessarily have to consult the TOs under this proposal?

Mr Levy—That is correct, except in relation to sacred sites. I notice that the document provided by the Commonwealth this morning, I understand, says that the changes regarding the permit system do not apply to sacred sites; they only apply to towns. But, of course, almost every town includes sacred sites.

Senator CROSSIN—So in this legislation there would be nothing stopping the Commonwealth from building any sort of facility by any means, with any structure, within a town lease, at this stage?

Mr Levy—Legally, there is nothing stopping the Commonwealth. It needs to be remembered that the Commonwealth, no doubt, can put in temporary accommodation and that kind of thing—that is one thing—and that might last for a year or two or five, but I would have thought that for practical reasons it is unlikely that the Commonwealth would build major infrastructure that will last for 40 or 50 years, without legal title being organised. Under this legislation, that would require the consent of the land trust on behalf of the traditional owners.

Senator CROSSIN—So your recommendation to this committee is that we should at least propose that clause 35 is amended?

Mr Levy—I think that is the Central Land Council's submission. We certainly would have similar views. I think you are looking at their submission.

Senator CROSSIN—Yes, that is right.

Mr Levy—We have not yet got to the detail of it in the time available. I am sorry.

Senator CROSSIN—I think some of us can relate to that, actually. The Central Land Council have also suggested—and maybe, Mr Ross, I will ask this of you—that clause 60 be amended to ensure that Aboriginal landholders are entitled to just terms compensation. Does that mean that, as the legislation is currently written, you do not believe that that is guaranteed?

Mr Dore—I think that was the question we were dealing with before. That is exactly the point that we were raising: that the bill, as it stands, does not guarantee that there will be just terms compensation; it just makes a reference to the constitutional provision for that.

Senator CROSSIN—Yes. Clause 60 says that 'just terms' has the same meaning as section 51 of the Constitution. But the clause does not actually say that that will then be applied. Is that correct?

Mr Dore—In that clause it has the words 'if required', so it is clearly leaving open whether just terms compensation would be required.

Mr Levy—I think the Law Council has made a submission about that issue.

Senator CROSSIN—You can appreciate that some of us are still trying to read 500 pages of the bill, let alone the 65 submissions that have come in overnight!

Mr Levy—I do not want to take up time, Chair. I will let that go to the Law Council.

CHAIR—Thank you. Senator Crossin, we need to leave time for Senator Bartlett and Senator Siewert.

Senator CROSSIN—Can I just ask about one other issue in the land council submission. You are suggesting that we should amend clause 93—this is in relation to the community stores—regarding the assessable matters, by adding a new assessable matter for community store capacity to train locally employed community members. So you would be suggesting that in part 7 of the bill, relating to community stores, the legislation should guarantee that local Indigenous people are trained as part of these changes?

Mr Ross—They certainly should be. That is what Aboriginal people need to be involved in. If part of the government's argument is about getting people off welfare and into real work then proper education and training need to be put in place. If they are going to put in some requirements then some of these things probably should be looked at.

Mr Bookie—There are young people who work in the shop. They go away and learn to run the shop. They go to town and have training and they come back. The people in the shop never train them, so they go away for training. Then they come back and get work packing stuff and unpacking, instead of working the tills and things like that. There is not enough training in the shops. You have white people there with their five- or six-year contract. They never train anyone up. Young people go away and do these courses to run the shop but they never get the opportunity to do it. So they go back and say, 'Oh, well, we can't get in there, so what's the good?'

Senator SIEWERT—I want to go back to the issue of the permits for a minute. This came up earlier, during HREOC's presentation. The permit system applies to communities and supposedly not beyond them. The issue of policing came up. When I first read this legislation, it seemed to me that it was going to be very difficult once somebody got a permit to go into a township to explain to them that they were only allowed to stay there. Who or what is to stop them going anywhere they want to after that? Is that a concern that groups have or am I jumping at shadows?

Mr Daly—It is extremely difficult in the Territory to police the whole permit system. The police use the permit system as a deterrent for criminals. There was a question asked earlier about whether there was a town that did not have a permit system. There is an Aboriginal town that does not have a permit system. It is a privately owned Aboriginal town, and that is my community, which is also Miriam-Rose Baumann's community, which is Nauiyu Nambiyu. If you have a look at the crime statistics there and the crime statistics in a community that has a permit system, you will see that there is no difference. So it does not really matter whether you have the permit system there or not; there is still the same amount of crime. Whether that helps you a bit, I do not know.

Senator SIEWERT—Mr Ross, did you want to say something?

Mr Ross—I think part of what you are saying is correct. People will go onto Aboriginal land, permit or no permit. There are a number of them around, and it is a matter of people reporting them, then we follow that through. That is a part of policing. The police have picked up people on that basis, and people have been reported on that basis. There was a big thing a year or two ago where all these people who worked at Yulara decided to go and have a big party on Aboriginal land in the middle of the night—some New Year's party or something, a big celebration—with no permits at all. The traditional owners were very upset about that, and most of these people were taken to court and fined. A couple of them were Aboriginal people from interstate. Part of their defence was that they were Aboriginal people. As I said earlier, it is an agreement between Aboriginal people that you can come and go on their land if you behave yourself. If

you are going to go on there carting grog and drugs and having a party, which is what they were doing—the traditional owners were happy for those people to be prosecuted like anyone else, and they were. These things go hand in glove with policing and permits.

CHAIR—Senator Siewert, I have to make time for Senator Bartlett.

Senator SIEWERT—I just wanted to clarify something, because I think I may have slightly misstated my question. When people are going into town in the future, without permits, because they can go into the designated town, they obviously will still require permits to go beyond the town. Is that going to be a policing issue?

Mr Daly—Definitely. It will definitely be a policing issue. Currently, if you have a look at the situation of policing in the Territory, you will find that policing is inadequate as far as Aboriginal land is concerned. That is a major concern for us, but it is also a major concern for the police department with regard to safety. But it will definitely be an issue with regard to policing.

Senator BARTLETT—Given the reality, I will just ask one question. Perhaps each of you could answer. I think you both mentioned that, despite all of your concerns, you are both realists, and the realistic situation is that this is going to be guillotined through the Senate next week, probably unamended, regardless of—

Mr Ross—That would be very sad.

Senator BARTLETT—I note that. The question is: assuming that happens—which I think is a reasonable assumption, although I do not pre-empt what this committee may do; perhaps they may make some recommendations and perhaps the government will listen—what do you think is the most important thing that should happen next to try and maximise the chances of all of this activity actually generating some positive results, as opposed to negative ones?

Mr Ross—I think the government have to be realistic about some of the things that they are putting forward in terms of education, health and housing. If, tomorrow, every Aboriginal kid in the Northern Territory turns up to school—you have probably already heard this—there are not enough classrooms, there are not enough desks, there are not enough chairs and there is nowhere near the amount of teachers that are needed. It is not going to happen. You have all of these problems. So, to start quarantining people's money up front and removing the CDEP—you are going to put this logjam in place.

This needs to be done properly. We are not saying, 'Don't do it'; we are saying that it needs to be done properly. There needs to be a hell of a lot more thought and effort and involvement of Aboriginal people in this whole process and how we move it forward. There are long-term solutions, and Aboriginal people certainly want to be involved in this whole thing. There are no two ways about that. You need to involve Aboriginal people and you need to involve the Northern Territory government. We are going to live with this for the rest of our lives, not for just five years. We are going to be there forever, and our kids are going to be there and our grandchildren. So we need to deal with this properly.

The housing situation needs to be dealt with properly. I heard what the department said earlier about 12 houses at Kintore. Okay, that is 12 houses, but what about every other community that does not have enough housing and that needs all these problems addressed? So there are housing issues.

There are the health problems. It is fantastic that we have got people running around out there at the moment checking children; that is great. But there is not much point just having them run around checking people. We have got to look at the long term. How do we address having people employed full time, long term, to address these issues? There have to be proper clinics so that all these things—the diabetes problems, all these things—are addressed properly. There are the issues about stores and the food that is in those stores, and about employment. We are not saying: chuck the baby out with the bathwater. We are saying that long-term solutions are needed for what are long-term problems. In order to address them properly the government, the Commonwealth, need to think seriously about what they are doing and stop banging the gavel and saying, 'We will tell you what to do,' and ramming this legislation through without some amendments, as we have suggested. They need to get to the table with the Northern Territory government and with Aboriginal people and start working out what the long-term solutions are. That is what I think is the starting point.

CHAIR—Thank you, Mr Ross. Do you want to make a concluding comment, Mr Daly?

Mr Daly—Can you repeat the question?

Senator BARTLETT—Assuming this legislation passes basically unamended, regardless of what we might or might not like, what do you think is the one key thing that needs to be done and that perhaps the Senate, through another mechanism, could try to keep a focus on to make sure it does happen and maximises the chances of this opportunity producing positives rather than negatives?

Mr Daly—I think the key thing in the whole exercise—and this is a must for the government and for future governments as well—is full engagement with Indigenous people on the ground there. I agree with everything that Mr Ross said with regard to education, health and things like that. The systemic breakdown in society itself out in those communities is due to a lack of education, to a lack of funding basically. I think all of this can be seen qualitatively through the John Taylor report, which was commissioned by COAG out at Port Keats.

For me, the key point in this whole amendment that I would like to see them come and talk to us about is landownership, and when you get down to landownership, the permit system specifically and these communities it is a breakdown of property rights within Australia. If it starts here with the Indigenous peoples and Indigenous lands, where does it end? Property rights are the same all around Australia. Quite a few of us have individual properties of our own. If this law is applied to Aboriginal land then why isn't it applied to the rest of society with regard to child abuse in major centres?

Other than that, I think there needs to be more work done by the Commonwealth and the Territory to come together with regard to addressing education out there. Education is the key within all of this, and that has been left out on its own. I think that is the key issue we need to fix for our people on the ground there. The key is education and employment, and I am talking about full-time employment. We also need to build an economic base for Aboriginal people to get ahead in life. For far too long we have been left out in the cold. All the money has been spent in the major centres around town within the Northern Territory. The Northern Territory have failed miserably to come to the table with Aboriginal people and work out good systems of governance within the Territory government so they can come out and talk to us on the ground and we can deliver good economic outcomes for our people. We need to get our own economic future coming up ahead and we need to move on it now for the future generation of kids.

CHAIR—Thank you very much to both the Northern Land Council and the Central Land Council for your evidence and your submission. We appreciate it.

[12.44 pm]

CAMERON, Dr Lesley, Senior Ministerial Adviser, Northern Territory Government

GALLAGHER, Mr Jamie, Director of Communications, Office of the Chief Minister, Northern Territory Government

SCRYMGOUR, Ms Marion, Minister for Child Protection, Northern Territory Government

CHAIR—At the outset, I especially welcome Ms Scrymgour. Thank you for taking the time to be here. I understand that you have travelled through the night or in the very early hours and we appreciate you taking the time to be with our committee today. I invite you to make a short opening statement, after which we will have questions.

Ms Scrymgour—I must thank all senators for the opportunity to appear at this inquiry. I would like permission to table a submission from the Chief Minister of the Northern Territory and then I would like to make some brief remarks regarding the intervention legislation.

CHAIR—Permission is granted to table that submission.

Ms Scrymgour—Everyone in this room, and I am sure we are joined by members of the Senate, rejects the scourge of child abuse wherever it occurs in the country. No-one owns a moral position that has greater prominence than any other. We all want to prevent child abuse. In broad terms, the Northern Territory government has supported the federal government's intervention where it directly targets child abuse. The Northern Territory government has been calling for increased federal government investment for Indigenous Territorians since at least 2001. The Northern Territory government supports proposed changes to access to pornography laws, we support the additional police and we support additional medical resources. We welcome these things. But since the federal government has announced its legislative follow-up to the intervention, the Northern Territory government has become increasingly concerned.

Our government has made it clear from day one that it does not support the removal of the permit system or the compulsory acquisition of Aboriginal land. Neither of these measures directly targets child abuse. The removal of the application of the Racial Discrimination Act is also of concern. The immediate abolition of the CDEP scheme is another area we believe needs much more consideration. Senators should know that this decision will have a devastating effect on the Aboriginal arts community. With the permission of senators, I would like to table the release from ANKAAA, which is the Association of Northern, Kimberley and Arnhem Aboriginal Artists. I do so as the Minister for Arts and Museums as well as the Minister for Child Protection in the Northern Territory.

We have a remarkable opportunity before us, perhaps a once in a lifetime opportunity. Why would the government not want to consult and involve Aboriginal people in this intervention? Why seek to deliberately rush and exclude us? The Northern Territory government takes the issue of child abuse very seriously. We commissioned the *Little children are sacred* report. On Tuesday there was a reshuffle within our cabinet and the Chief Minister appointed me as Minister for Child Protection. I am concerned that the children we need to protect are getting a bit lost in this whole debate. It is not about leases and access to Aboriginal land. What started this is the need to protect children. Since the intervention and this legislation, the protection of those children that we wrote about in that inquiry have been taken off the radar.

Senator CROSSIN—Minister Scrymgour, we certainly appreciate your efforts to come to our committee in person rather than communicating with us by telephone. I put on record our appreciation of the efforts of you and your people in doing that. What sort of interaction has the Northern Territory government had with the Commonwealth government since the day that this was announced some six weeks ago?

Ms Scrymgour—Very little. There have been discussions between us and the federal government for some time, particularly on policing resources. The most important issue is that we also lose housing. Ever since the intervention six weeks ago, there has been no contact whatsoever.

Senator CROSSIN—In terms of resources, we only had an hour this morning for all of the eight departments who presented us with additional budget portfolio statements today. We only had an hour to question them about it. But, from what I could ascertain, there is no new money in the $587 million for additional housing—that money has been appropriated already in this year's budget. There is no new money for roads—that money has already been appropriated. In fact, almost half of the $587 million will

go into more Commonwealth public servants' facilities or Centrelink operations. Has there been any discussion or disclosure with you about whether there may be additional money for programs, for wages for people on CDEP in these discussions?

Ms Scrymgour—No. Going back to your first question, there has been some low-level ministerial engagement with ministers who have had appropriate portfolio responsibility—with the police minister, with the former minister who had the child protection portfolio and with the minister for housing. So there has been that low-level engagement and discussion across those areas on what the intervention would involve at that time, bearing in mind we have seen the goalposts shift quite dramatically from what we saw six weeks ago to what we are seeing now.

In relation to the question you just asked, there has been no discussion about the appropriation. I think we heard it was $500 million to start off with. My understanding is that it has gone up to about $580 million. I could be corrected on that, if I am wrong. Our concern is that very little of that money is going towards probably one of the biggest issues in the Northern Territory: the backlog of Indigenous housing in those communities. There is very little that is going to be spent on housing in communities to address the overcrowding. If we look at the issue of child protection, and where children are at risk, that goes to the heart of trying to ensure that we can remove children from at-risk environments in those communities and give them some quality of life, like a decent house, which every other Australian takes for granted.

Senator CROSSIN—I understand that Mr Tyrrell is on the Northern Territory task force, so the Northern Territory has one representative out of five or six. Is that correct?

Ms Scrymgour—Given the importance of this intervention, that is right.

Senator CROSSIN—Can I ask about the health checks that have been started and are ongoing. There are issues with protocols with health departments, and obviously with costs with health departments. I imagine when these health teams move into communities they are probably using resources in health clinics. Has there been an expectation that your government will pick up these costs, or is there some process whereby you will be billing the Commonwealth and the money comes out of this $587 million?

Ms Scrymgour—As I understand it, we will share that cost—and that is something that is being worked out from health minister to health minister. We welcome the medical resources that are going into this. But we also want to state from the outset that the medical resources cannot be short term. We have to be able to access GPs or doctors out on the ground in those communities for the longer term so that we can continue the work, the screening, that is going on. There are many non-government organisations or Aboriginal medical services that have been doing this process for such a long time with limited resources, so that capacity needs to be built.

Senator CROSSIN—I asked questions this morning of people from DEWR with respect to the abolition of CDEP. That will save the government $76 million. And the cost of implementing Work for the Dole will be $23 million. They seemed to indicate to me that there has not been any discussion yet about transferring Northern Territory Commonwealth jobs, such as health workers or people in schools, and no discussion about transferring CDEP moneys across to the NT government, or in fact whether they will transfer that across. Are you aware whether you are being pressured or asked to pick up the employment costs for those people under this scheme?

Ms Scrymgour—There are some positions, such as Aboriginal health workers and Aboriginal teachers, in schools that our government recognises are part of our core service delivery, which we are now making adjustments for. Just on CDEP, we are talking about 8,000 recipients across the Northern Territory. As I understand the policy decision by the federal government, it is to provide only 2,000 full-time jobs. What happened to the other 6,000? We sing the mantra or the rhetoric about welfare to work, but I am afraid we are going back to 'work to welfare'. People need to work through the logic of the policy that is about to come out, including the implications and ramifications on the ground in those communities. I put this to all senators. Everybody loves Aboriginal art. Let me tell you, in the Northern Territory CDEP is at the heart of every art centres and the capacity for artists to stay on country and work in those art centres. Gut the CDEP program, and all those artists and the beautiful artworks that you hang in your offices and see in Parliament House will be gone, because those people will not be able to continue that work.

Senator CROSSIN—Finally, I would like to ask you about the long-term implications of this. This is about money and programs for 12 months. I know that the Northern Territory government is preparing its response to the report that triggered this action. You are due to hand down your response at your next sitting, which I think is the week after next. Do you have a view as to whether this Senate committee

should in fact wait, look at that response and then report following your response, in case there is anything in your response that we in the Senate committee could perhaps pick up?

Ms Scrymgour—We would love to see that it is not rushed. I think that there are some very important aspects of this legislation, such as welfare reforms, pornography, alcohol areas. By the way, if people looked at our liquor acts and what we are already putting in place in the Northern Territory, it is probably a lot tougher than some of the measures that are certainly outlined in the intervention bill. There has been no coordination, communication or working together with our government. Our liquor act already has restricted area provisions and they actually apply quite tougher. Sure, under the national intervention bill there is a greater dollar figure in terms of a penalty. I would like to see that it is not rushed, particularly in the areas of land and permits. I think that a bit more thought needs to go into that. I think that the CDEP issues need to be looked at a bit more and given more thought. There are a whole lot of areas. Not applying or exempting the Racial Discrimination Act certainly shows some contempt towards Aboriginal people in this country.

CHAIR—Minister Scrymgour, you have just mentioned contempt for Aboriginal people. Could you advise the committee as to why you think we are sitting here today? Why do you think the Australian government, with the support of the federal Labor Party, is actually intervening in the Northern Territory? Could it be that there has been a denial of what is exactly happening to the health, safety and interests of children in the Northern Territory? Is it because your government has failed to protect Aboriginal children in the Northern Territory? Could you inform the Senate or answer that question?

Ms Scrymgour—I am not going to sit here and, as usual, play the blame game and say that it is either the Commonwealth or the Northern Territory government. That is not what I am here for. I am here to say very clearly that this is about child protection and child abuse. We both need to work together to get over this scourge. I also said at the outset that no-one owns this; we all need to own it. We all need to take responsibility and we all need to work together.

As an Aboriginal person, prior to coming into politics, I worked in the health sector for a long time and saw the political football that has constantly been played out between state, federal and local governments in relation to Aboriginal people on the ground in those communities. Communities do not need that. They do not need the silence or the ignorance from governments to ignore this problem anymore. It is about working together and moving forward. I have used the word ‘contempt’. I have spoken to the minister who has carriage of this bill on several occasions. I have had the privilege of sitting down and talking to him on the Tiwi Islands with the work that is being done over there, and I said that the draconian response and the top-down process does show some contempt. It means that Aboriginal people should not be included. Talk to us. Work with us. People are open to moving forward on this. I thank the Senate; I do appreciate that you have only this one day to do the inquiry.

CHAIR—Some people would say that one of the reasons we are sitting here is the contempt that has been demonstrated to Aboriginal children in the Northern Territory. I want to ask you about the police. It is my understanding that there are no police in Galiwinku, where there are about 2,000 people. I wonder what the reason is for that. I am also interested to know why, after the Australian government has paid for the construction of a police station at Mutitjulu, that station has been left unmanned.

Ms Scrymgour—I will get on to Mutitjulu in a minute. I do not know if you know the history of Galiwinku, but many years ago, when there were police on the island, there was an unfortunate shooting of a young man at Galiwinku. Since that time the community had not wanted police on the ground, not because they did not want to institute law and order in the community but because they saw the issues that happened years ago.

CHAIR—And you consented to that request?

Ms Scrymgour—The local member is working with the community.

Senator CROSSIN—You have not yet built the police station in Galiwinku that you promised, Senator Barnett.

CHAIR—I am just asking the question and allowing the minister to respond.

Ms Scrymgour—The police station needs to be built there. We are working with the community to address the issue and get full-time police on the ground, and it is the same with Mutitjulu. We can all do better, and I am not denying that from our government’s point of view we need to work with the Commonwealth to make sure that we get policing on the ground in these communities. Aboriginal people are entitled to the same levels of law enforcement and police in their communities as everywhere else.

CHAIR—And the second question?

Ms Scrymgour—With Mutitjulu, I understand there were two ACPOs out there on the ground. One of the ACPOs, due to a death, had left the community. That left one ACPO. At the moment, there are two Northern Territory Aboriginal community police officers, one Northern Territory constable and two Australian Federal Police officers based on the ground at Mutitjulu.

CHAIR—Two AFP officers and—

Ms Scrymgour—Two Australian Federal Police officers in addition to one Northern Territory constable and two Aboriginal community police officers. Not far from Mutitjulu, there are five officers stationed at the Yulara police station.

CHAIR—The Combined Aboriginal Organisations of the Northern Territory made a suggestion about the buyback of existing alcohol licences. I wonder if that is under consideration by the government. What is your position?

Ms Scrymgour—I cannot give you an answer on that. On whether or not we do it, there has been discussion. That issue has been long looked at. I was the chair of the substance abuse committee in the Northern Territory when we looked at the oversupply of alcohol outlets and licences in the Northern Territory, but it is something that is certainly receiving some discussion within our government.

Senator PAYNE—Can you explain for us which members of the NT government bureaucracy are engaged in the process of advancing this legislative package, what briefing processes are underway and which ministers Minister Brough has had an opportunity to meet with in recent times?

Ms Scrymgour—In my department, Ms Jenny Scott, who is the director of child protection services, is part of that process. I think there is a representative from the police, from housing and from the Chief Minister's department. I could not give you those names, Senator, but we could certainly find out and forward them.

Senator PAYNE—So your officials are being briefed and engaged in the process?

Ms Scrymgour—They are being briefed and engaged in the process of the welfare reforms and the alcohol initiatives.

Senator PAYNE—And CDEP?

Ms Scrymgour—They are being briefed. But, again, the whole point of the exercise is being briefed but not being able to negotiate how those processes or systems are going to be rolled out across the Northern Territory, which are two separate issues.

Senator PAYNE—I think you will acknowledge, Minister, that there is a degree of frustration from the direction of the Commonwealth and the government which I perhaps felt myself in some of your observations when you were speaking earlier about things not being rushed. One of the problems that I think the government has tried to address with this package is the very long time that it has taken to do a range of things, not the least of which is the 12 months taken to produce the report in the first place and the six weeks after it was finalised before it was released and that we are, as Senator Crossin acknowledged, still waiting for your government's response. I think that frustration is evidenced in part of this process, frankly.

Ms Scrymgour—My frustration or your frustration?

Senator PAYNE—No, the Commonwealth's frustration, Minister.

Ms Scrymgour—Since 2001 there has been consultation and discussions with federal ministers highlighting this problem. I can also recall a delegation of Aboriginal women who personally tabled to the Prime Minister a report in 2000 which highlighted these issues and who called on the Prime Minister to deal with this issue.

Senator PAYNE—Then you must be grateful for the response.

Ms Scrymgour—So bear in mind the frustration of Aboriginal women and children that this has taken a long time. What I am saying is that the political football has to stop. I acknowledge that. The issue of child protection has to be addressed; it is fundamental. We welcome parts of the intervention that go to the heart of child protection and look at dealing with the scourge that is in some of our communities. We admit that. We are not blind to that. We see that all the time, and we are and have been addressing it. Can I say that when we came to government in 2001 the child protection budget was $8 million. That budget now sits on

well over $94 million, so that is a substantial increase over five years to deal with the issue of child protection.

We talk about frustration when we have had discussions with federal ministers to deal with the issues of housing, education and all the other areas that need to be worked on in Aboriginal communities and there has been no cooperation, particularly in relation to this intervention. We have talked to and the Chief Minister has talked to the Prime Minister. The Chief Minister took the 20-year intergenerational plan to the Prime Minister and said, 'These things can't be done in the short-term; they are long-term strategies.' They are long-term strategies, Senator, and I think that whilst people may get frustrated and the Commonwealth are frustrated, there is a fair amount of frustration in the Northern Territory as well with the lack of transparency of working together to deal with this issue on the ground.

Senator PAYNE—Minister, if a budgetary increase from $8 million to $94 million in five years has ended up in the production of this report, then I am not at all surprised that this is the approach that the Commonwealth has taken.

Ms Scrymgour—I agree that is why we have now had a reshuffle. One of my first jobs will be to look at our system's responses to those communities. The *Little children are sacred* report highlighted that in some of the 47 communities the committee visited there are problems on the ground. I will be immediately looking at our system's response to those communities. Where is our capacity? Where are those resources? Are they out there and are we are dealing with them appropriately? I certainly welcome the new-found interest of the Commonwealth in this issue, when it has been missing for a long time.

Senator PAYNE—In your view, Minister.

Senator CROSSIN—We have a minister of the Crown before us, with all due respect, Chair.

CHAIR—Yes. Minister, thank you for your evidence today. We appreciate your being here and providing evidence to the committee.

Proceedings suspended from 1.10 pm to 1.46 pm

DAVIDSON, Mr Peter, Senior Policy Officer, Australian Council of Social Service

JOHNSON, Mr Andrew, Executive Director, Australian Council of Social Service

McCALLUM, Mr Andrew George, Board Member, Australian Council of Social Service

WOODRUFF, Ms Jane, Adviser, Australian Council of Social Service

CHAIR—I welcome the witnesses from the Australian Council of Social Service.

Ms Woodruff—I am from Uniting Care Burnside but here with ACOSS.

Mr McCallum—I am also CEO of the Association of Childrens Welfare Agencies in New South Wales.

CHAIR—Would you like to make a short opening statement and then we will ask questions?

Mr Johnson—We thank the committee for the opportunity to speak. We refer the committee to the Combined Aboriginal Organisations of the Northern Territory's request that there be a delay in the legislation's passage so that it can be properly assessed by the Australian community via the parliament and that negotiations and consultations be urgently begun with the Aboriginal people of the Northern Territory.

The submission which we have provided to you deals with the emergency response in the Northern Territory's Indigenous communities, the proposed system of income management in those communities and finally the proposed system of income management across Australia in respect of children at risk and children not enrolled in or regularly attending school. We submit that these bills should not be passed in their present form and that more time be given to review them to make best use of the increased resources, increased opportunities and increased attention for the protection of children.

The federal government can take action today to fund effective and proven programs to ensure that children and families are safe and to ensure that investigations are begun to bring perpetrators to justice. The parliament can then take the time to ensure that legislation which is eventually passed focuses on effective and proven ways to protect children and improve the living standards and conditions of Aboriginal Australians.

ACOSS, like other Australian organisations and Australians, is deeply concerned about the longstanding issues of child abuse of Aboriginal children in the Northern Territory and child abuse and exploitation of children across the country. We also refer you to the Combined Aboriginal Organisations' report entitled *A proposed emergency response and development plan to protect Aboriginal children in the Northern Territory: a preliminary response to the Australian government's proposals*, which outlines a series of proven and effective programs that can be implemented directly. We also refer the committee to the many reports and recommendations that have been made to government over the last 10 years which are detailed in full in the report.

In relation to changes to land tenure, other submissions have dealt with the issues relating to land tenure and we also see no evidence of any direct link between the compulsory acquisition of five-year leases over prescribed townships and the problems of child abuse in Aboriginal communities in the Northern Territory. In relation to the suspension of the Racial Discrimination Act, we do not see the underlying reason to act contrary to the Racial Discrimination Act and suspend its provision. To deny appeal rights to any Australians is staggering but to limit it to Aboriginal people in the Northern Territory is unacceptable.

In relation to the income management regime and new activity requirements, the bill implements an apparently simple solution to a complex set of problems, attaching new conditions to social security payments and taking over family budgets to combat child abuse, truancy, prolonged joblessness and social breakdown in remote communities. The causes of these problems are complex. An income management regime does not address the underlying factors which cause so much pain to children suffering from abuse.

We point the committee to the Halls Creek trial. Parents participated voluntarily in a scheme to improve school attendance, but it was thwarted by inadequate engagement with parents by the school, problems of bullying and teasing at school and resistance from children themselves. School attendance did not improve, despite considerable efforts from Centrelink and the local employment service providers. This has to be seen contrary to the great results that have been achieved through the Clontarf program. There is a risk that income management, or the threat of it, could exacerbate tensions between parents and children or between parents, instead of helping to resolve truancy problems.

In relation to school attendance, we ask the committee to consider specific concerns before the bill is enacted. Parents and foster carers can be penalised for events beyond their control—for example, where they have just taken custody of a child who has longstanding problems with school attendance, or where there are conflicts between parents who share the care of a child. Income management is imposed on both parents. As you would be aware, where parents are sharing custody, one parent could have custody of a child for over 70 per cent of the time and the other parent could have custody for around 14 per cent of the time. Under the legislation, the misdeeds of either one of those parents in relation to encouraging school attendance would mean that both of those parents' income payments would be affected.

There are privacy implications related to the legislation. For example, schools may be aware of which families receive income support. Another issue is the inaccuracy and timeliness of school enrolments and attendance records, which could be compounded by any attempt by Centrelink to replicate them on a national scale. Centrelink lacks the resources and expertise to assess the reasons for nonattendance at school and to work with parents and schools to resolve problems such as bullying or the quality of schooling. Another issue is the lack of clarity in the bill regarding the circumstances in which attendance will be considered unsatisfactory.

There will be a likely shift of resources, including school and community agency resources, away from effective measures that support parents in getting their children to school towards the administration of referrals to income management systems. There is a lack of requirement for a written warning to be given immediately before the imposition of income management. Finally, in relation to school attendance, it will be particularly difficult to administer these provisions fairly and in a timely manner in cases where families move frequently or parents have limited literacy skills.

In relation to child abuse and neglect, the specific concerns are that the bill does not appear to require state authorities or Centrelink to provide affected parents with reasons for notification to Centrelink for income management. The bill does not appear to limit the duration of income management or to require state authorities to justify extension beyond a fixed period. The effectiveness of voluntary programs to assist parents to deal with problems such as addictions and financial case management could be undermined by referrals to compulsory income management. Relationships between parents and child protection workers could be weakened by a notification to Centrelink to impose income management. Finally, in this area, there will be a likely shift of resources, including state protection authority resources, away from effective measures to protect children from abuse towards the administration of referrals to the income management system.

In relation to the operation of the income management regime, the specific concerns about proposals for income management are as follows. A major concern about the operation of the proposed scheme is that the normal appeal rights to the Social Security Appeals Tribunal and the Administrative Appeals Tribunal are denied to Indigenous people in the Northern Territory. These free, accessible and timely appeal mechanisms are essential for people on low incomes, especially those whose cash incomes are being reduced by income management.

There is too much discretion in the hands of the minister to determine the proportion of the various payments that can be withheld. A range of supplementary payments for specific purposes by people in vulnerable situations is included, such as bereavement payment, mobility allowance and carer allowance. Amounts withheld from payments are not kept in trust for the recipient and can be withheld for up to 12 months after the cessation of the income management. Income management can be conducted by private contractors rather than by Centrelink. This raises issues of accountability to parliament for the exercise of considerable discretion over the use of income support payments that will apply. Finally, in this area there are inadequate protections in the bill to ensure that recipients are assisted to meet essential expenditures, that they are consulted about expenditures and that they are kept informed about expenditures and account balances.

I turn now to unresolved questions. It is of great concern that this legislation is to be considered by the parliament when the key details of how the quarantining provisions will be initiated, determined and made operational are not established in the legislation. We therefore ask the committee to seek clarification on the following matters before voting on the legislation. Firstly, how will the income management be administered? For example, is the government considering a card or voucher model such as the US food stamp system, a compulsory version of the Centrepay system operated through Centrelink or the tendering out of financial management services to private or community organisations? Secondly, on what basis will those administering the scheme decide how income should be spent and what proportions of the

quarantined benefits should be accorded to housing, nutrition, clothing and education? What evidence base will be used to make these determinations? To what extent will the recipients be consulted?

Thirdly, what will be the process to ensure flexibility in quarantining arrangements to account for marked variations in the cost of living in different cities and regions, particularly with respect to housing? Fourthly, has the Australian government reached agreement in principle or in detail with any state government over the application of the income management in cases of child neglect or truancy? Is there agreement regarding the respective roles of Centrelink and school authorities in monitoring and enforcing attendance? Fifthly, what will be the reporting relationship between state government departments, principally child protection and education authorities, and the Australian government? What privacy provisions, if any, will apply? What changes to the state legislations will be required to facilitate information exchange across levels of government? Finally, we seek clarifications for the reasons that, unlike non-Indigenous persons, many Indigenous persons will have welfare payments quarantined and will not have the right of appeal to the Social Security Appeals Tribunal. What is the reason for denying appeal rights to Aboriginal Australians?

CHAIR—Mr Johnson, this was to be a short opening statement. We have your submission. Would you like to make a concluding comment and leave time for questions? I do appreciate your very extensive opening statement with its suggestions, but perhaps you could wrap up with a closing comment.

Mr Johnson—Sure. In turning to what works and what can be done immediately, the federal government could immediately deploy trained, experienced and culturally appropriate child protection and children and family support workers to address the immediate needs children experience and the impact of abuse and neglect, establish safe houses for children and women and for young people, and consult and negotiate with Aboriginal communities. During questioning we are happy to talk about the key elements of an effective response, what can be done in the next three to six months and what needs to be done to ensure that all this time, effort and resources ensure that we get the best outcome for children and ensure that children and families are protected.

CHAIR—Thank you very much.

Senator LUDWIG—I would like to spend a little time going through the range of questions that you seek clarification on. Perhaps we could reverse the role and I could ask the questions. Some of them go to how the matter would be administered. How do you think the matter should be administered, given the way the bill is framed? Do you have a view?

Mr Johnson—In relation to the income management regime?

Senator LUDWIG—I was going to go through each of those if time permitted. Alternatively you could take that on notice and provide a short reply if you wish. You have suggested the question, but I was curious as to what your organisation's view would be. Given the framework of the bill and what is likely to occur, what would you say is the best mechanism if we look forward to how it should be done?

Ms Woodruff—If I could answer from the perspective of being directly involved in programs that use the voluntary system, I think we can identify the elements that work. One of the elements that work is that it is a voluntary system. The second element that works is that it works in relation to case management and active support for the families, the couple or indeed sometimes the young person.

Whatever system we have, it has to empower people to take responsibility for their own finances, for their own lives, for their own children and for their own communities. I think it is extremely unlikely that you will get those outcomes if you impose from above, particularly if people are not consulted about how best that should be done. If we are to have a compulsory system then the absolutely crucial thing is that the casework, the support workers and the services that are required—and also the specialist services that people will need—assist people to learn how to do these things for themselves, rather than being dependent on a government making decisions for them. For example, if people are not spending their money on food because of drug and alcohol abuse—and I think this is an extremely questionable proposition, but let us say for the moment that that is the case—they will not stop, they will not learn how to do things differently, unless there are intensive and ongoing drug and alcohol rehabilitation services for them. And there is no mention of services such as those in the proposals that have been put forward.

Senator LUDWIG—That is helpful. In respect of the second one, which is a bit more difficult to answer from your perspective, can you provide at least a comment, given the nature of the bill and the way it will operate, on whether you share a view about how those schemes may be administered and how they

may apportion quarantined benefits to housing, nutrition, clothing and education? You do not have to answer if you find that objectionable.

Ms Woodruff—I think there is a fundamental principle here, and that is about the engagement and the involvement of the people whose money you are planning to administer. That goes back to what is successful in the voluntary scheme—a negotiation with support people and Centrelink staff through Centrepay to determine what money is allocated for what purposes. You will find, if you look into the operations of the voluntary scheme, that people make different decisions depending on where they live, what their life circumstances are, what it is that they have particular difficulty paying et cetera. That is the only way you will get the engagement of people in this process, and if the people are not engaged then we will be running a top-down service controlling their lives forever because there will be no opportunity for them to learn the skills to do this themselves. That is how it gets allocated, in consultation with the person involved.

Mr Johnson—There is another point to make. It is important for creating dependency, but when you look at people on very low incomes they ration what they spend. People make choices from one week to another week to ensure that they can pay a bill at the end of the month. When this is being done on a very finite one- to two-week period, how are people going to make normal savings just to get their essentials or to pay normal bills?

Senator LUDWIG—Thank you; that is helpful.

Senator BARTLETT—I know that the general notion of doing this sort of quarantining of payments to encourage better behaviour has been floated for a little while. I am interested to find out from you how much detail of how it is going to work is in the legislation and how much of it is still a big question mark. You have raised a lot of questions in your comments and submission already. It seems to me, on initial reading, that it is really just a shell which gives an enormous amount of power for quite extraordinary intervention in the very fine detail of people's individual lives. Within that shell, how many safeguards or what sort of framework do you see that at least gives us reasonable confidence that there will be some protections about how those processes will operate? Perhaps you can distinguish three levels: first, the Northern Territory; second, Cape York; and, third, the rest of the community. They are three distinct groups, and the Cape York one at least seems to have an assumption of a fair bit of engagement with the local community, but I do not know if that is in the legislation or just an assumption based on everything else we have heard.

Mr McCallum—There is an assumption within the assumption there that there is some evidence based efficacy factor involved in quarantining people's income in this way, and I do not think you can point to anything that suggests that there is. When there are volunteer schemes in that regard, there is an engagement process that has some longitudinal or long-term indicators that say that people may then engage willingly and look at different ways of disbursing what is a very meagre income in the first place. But we tend to be jumping, in this particular situation, to a sense that this has some particular evidence suggesting that it will work to achieve the outcome.

Child abuse and neglect, which is seen to be the primary driver of all this, does not exist in isolation. Child abuse and neglect is not a point in time or an isolated incident; it has a whole range of contributing factors which go to the heart of housing, to education, to early childhood, to parenting education, to alcohol and drug treatment programs and to a whole range of other things. If we pick a point in time, all we are doing is maybe making people compliant with a regime, but they are not learning coping mechanisms or the ability to look into the future with some self-determination.

In my talks about this with child protection experts, I asked people like Professor Dorothy Scott, who is regarded as an expert in this field, 'What would be the one thing you would tell the Senate committee?' and she said, 'Look at the sacred children report and implement the 97 recommendations.' The first one is about consultation with local communities. That is where it starts and that is where we have to start with this, but we are jumping to end points here for which we do not have any evidence base to say that they will be successful. They may even marginalise and debilitate people even further.

Senator BARTLETT—I think some of you would have experience dealing with people who have regular engagement with our fairly large Centrelink system. Can you give us an idea of the level of bureaucracy that would be likely to be involved in properly implementing these—the numbers of extra hoops and the numbers of different ways people are going to have to engage with the whole welfare system, which is already not always as user friendly as it could be?

Mr Davidson—The legislation is very complex with regard to which benefits and which circumstances might trigger financial income management. In the area of school attendance, for example, it is not clear from the legislation that the state authorities or schools would notify Centrelink or trigger that event. It seems the bill leaves open the possibility that Centrelink would step in, obtain the records and administer the thing pretty much on its own. That option is there in the legislation, and that is one of the reasons we ask: are the state governments on board in relation to this? Centrelink, of course, has no expertise in the area of school truancy and no capacity, really, to influence what happens in schools. That in itself is problematic. Centrelink would presumably, in the event that the states do not cooperate, need to establish its own enrolment list for students and regularly check it and then interview parents to establish whether children are absent without good reason.

So the potential usage of resources is very large there, and then when financial management or income management does apply, because people are on low incomes—for example, a sole parent with two children on $450 a week, typically—and pretty much all of their income is being spent on essentials, the juggling act of doling out payments for bills, food vouchers or whatever I would have thought would be a fortnightly or weekly exercise. Again, it is very labour intensive, and inevitably essentials will be missed in that process because the income is low and people's circumstances change so rapidly. So I would say it could, depending on the role that the states choose to play in this, be very resource intensive indeed, including in remote areas, where the availability of professional resources on the ground is very thin anyway.

Senator BARTLETT—You might need some extra resources for all the welfare rights centres to deal with that.

Senator SIEWERT—The department told us this morning that it would cost $88 million in the first year. I assume that is for the NT, because the rest of it will not be rolled out until later. Does it sound like they have got that right?

Mr Johnson—I guess one of our points about getting it right is that it is about ensuring that the support and services are on the ground. What is really going to make a big difference to ensuring children are protected is safe homes. We have to have the supports and services—child protection workers and family centres—that families can go to as an initial port of call. They can then go to more referrals to specific services that are needed. Another issue, which seemed to be lacking this morning, is about ensuring that adequate safe and affordable housing is available. That is partly about protecting children and partly about realising the rights of children under the Convention on the Rights of the Child. That is an area that desperately needs to be addressed, and that kind of money is not there. We need to look at the emergency measures we can take right now to ensure that children are safe. We need to look at the things we need to be doing right now to ensure that, in the long term, children in Indigenous communities in the Northern Territory survive, develop and thrive. We are not seeing that comprehensive approach to deal with the lack of education and health in the longer term. That is where we are going to make a real difference in ensuring that children are protected.

Senator SIEWERT—I understand that you have some personal expertise in this area and that you have done some work internationally on these issues. From your experience, has emergency intervention of this type and level worked anywhere else? What approach do you suggest we should take?

Mr Johnson—I would also like my colleagues to refer to what is happening in Australia. In an emergency setting, the first thing a UN agency would do, under the direction of OCHA, is to ensure proper consultation on the ground. That is done within the first 24 to 48 hours and it is quite extensive. They then sit down with the communities to find out what supports and services they need. They set up safe houses and ensure that there are safe places for children to play. The international community ensures that there is safe and proper housing, water and access to medical services. The international community is able to do things quite quickly in a refugee camp, and that is based on consultation and asking the population themselves what they need. The biggest lesson learnt from all interventions internationally is that they always fail when they do not involve and empower the local communities to take part in the interventions that are taking place. If you look across the world at the operations that have been successful in resource-poor communities, the fundamental thing that crosses through all those interventions has been the giving of ownership, empowerment and control to the people themselves to ensure children are protected and families and communities are safe.

Senator SIEWERT—I want to change tack a bit. I put a question on notice in the Senate yesterday about the updated numbers of people—in particular, Aboriginal people—who have been breached under

Welfare to Work. In the quarter that we have figures for last year, the number had gone up in, for example, Western Australia by 133 per cent. Do you or any of the people your colleagues have been working with have any anecdotal evidence that more Aboriginal people are being breached?

Mr Johnson—We know that is the case, and it is of great concern. We will take that on notice. We refer the committee to the Welfare Rights Centre submission as well as the Catholic social services submission in relation to today's hearing. Given the rapid change for people coming from the CDEP into an activity requirement system, what numbers are we going to see? Is there an explanation of what is going to happen in relation to shifting people so quickly from the CDEP to a Newstart approach, in which people have to understand complex rules very quickly in remote areas and often in a second language?

Senator SIEWERT—That would be appreciated.

Mr Davidson—I want to make a quick point. People are likely to be required to provide medical certificates, in the event of illness, for failure to attend, for example, a Job Network interview, but they are going to have difficulty finding a doctor quickly in many of these committees. So there are those kinds of practical difficulties.

CHAIR—We thank ACOSS for your evidence and for the submission that you prepared. It is appreciated.

[2.15 pm]

WEBB, Mr Peter, Secretary-General, Law Council of Australia

PARMETER, Mr Nick, Policy Lawyer, Law Council of Australia

WEBB, Ms Raelene, QC, Member, Advisory Committee on Indigenous Legal Issues, Law Council of Australia

Evidence from Mr Parmeter and Ms Webb was taken via teleconference—

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

Mr Webb—I can let you know that the two people who will shortly be on the line are Mr Nick Parmeter, who is a contract policy lawyer with the Law Council and who is in Vanuatu at the moment, and Ms Raelene Webb—no relation—who is a QC practising at the Northern Territory Bar and who has long experience in Aboriginal land rights law, native title law and constitutional law.

CHAIR—Mr Webb, I now invite you to make a short opening statement, after which we will ask some questions.

Mr Webb—We provided the committee with a submission late last night. I am sure that you have a lot of reading material there. The concerns expressed by many other groups and witnesses about the radically truncated parliamentary process for these bills are shared by the Law Council, particularly as the council believes that many aspects of the bills seriously discriminate against Aboriginal communities in the Northern Territory.

We have distilled our submission into four key points, which I will quickly run through: (1) the provisions regarding changes to the permit system, which we suggest should be excised from the legislation and considered outside the context of any emergency response; (2) the provisions concerning compulsory acquisition of Aboriginal land are discriminatory, unnecessary and should be excised from the legislation—individual Aboriginal communities should be consulted and asked to assist and participate before compulsory acquisition could be contemplated; (3) the provisions banning consideration of the cultural background of an offender in bail and sentencing matters are discriminatory, dangerous and should be removed from the bill; and (4) the provisions for just terms compensation place significant restrictions on any obligation of the Commonwealth to compensate Aboriginal people on just terms—those restrictions are discriminatory and cannot be justified in this emergency response.

CHAIR—Do we have Ms Webb or Mr Parmeter on line?

Ms Webb—Yes, I am on line now.

CHAIR—Welcome, Ms Webb. Mr Parmeter is not yet on line. Ms Webb, do you want to make an opening comment, or are you happy for us to start with questions?

Ms Webb—I am happy if we go straight to questions.

Senator TROOD—Mr Webb, in relation to the permit system—I note your observation about it being discriminatory—we have had evidence this morning about those communities where there is not a permit system in place and those where a permit system is indeed in place. Does the Law Council have any information about the way in which the communities where the system is not in place are either more functional systems or have a greater degree of economic activity? In other words, there seem to be communities that work perfectly well without a permit system, where it seems to be no part of the general management of the community and does not seem to be necessary for the good management of the community. Do you have any observations on that?

Mr Webb—I do not personally have any knowledge of this. In the time available, we have not canvassed that sort of issue within our relevant committee. I understand there was some evidence about that this morning, and I have been given a very abbreviated outline of what some of that evidence might have been. I could only speculate—which would not be useful—about why it is suggested that some non-permit communities on the Sturt Highway, I think it is, according to the testimony of the mayors of Katherine and Alice Springs, are doing economically well. My unhelpful speculation about that would be that perhaps their location on the Sturt Highway may be a natural economic advantage to them, whether they were permit based or non-permit based. But I do not really have any particular insights into that. Perhaps I could defer to Raelene, who lives in Darwin and may have some more grassroots experience she could bring to your attention.

Senator TROOD—I was going to ask, Ms Webb, whether you had a perspective on this matter.

Ms Webb—Yes. I cannot really give a personal comment on whether communities with and without permit systems operate on a different economic level. With respect to the more remote communities, they, of course, are, as Mr Webb said, away from the mainstream travel. They are on Aboriginal land. The difference between communities that operate with permit systems and those that operate without is that the communities on Aboriginal land are on freehold land. One of the underlying elements of freehold is that the owner of the freehold can exclude, at common law, whoever goes onto it. So the permit system is in fact something that allows people to go onto Aboriginal land where they otherwise would not be able to do so. So that is one concept to recall. Where you have a community operating without a permit system, that is because of the structure of the community and the nature—

The teleconference was interrupted—

CHAIR—Mr Parmeter, welcome to the committee hearing. We are well underway. We are just having some questions. Please proceed, Senator Trood.

Senator TROOD—Ms Webb, could you complete your response please.

Ms Webb—I was just explaining the difference in the communities that operate without a permit system. That is related very much to the nature of the land on which they are situated. So they are not located on Aboriginal land, where there is, at common law, under the grant of fee simple, a right to exclude people. The permit system in fact allows people onto the land, and that is the basis of it.

Mr Parmeter—Could I add to what Ms Webb has put on the record. I have been watching some of the evidence which has been put before the committee today and, in relation to the permits, the fundamental submission that the Law Council is making and has made in the past is that the changes need to be considered outside the context of this emergency response—that is, we do not consider the permit system or the issues that the minister or the government are trying to address by changing the permit system to be things which need to be addressed in the context of this response. There needs to be a broader public debate about whether or not these changes are going to work and whether or not Indigenous people actually want the changes as they currently are being suggested.

Senator LUDWIG—I will come back to that in the moment. Another matter is the way the legislation will affect appeal rights under the Social Security Appeals Tribunal and the Administrative Appeals Tribunal. Have you had an opportunity to look at that section and, if you have, do you have a view about it?

Mr Webb—I might ask Mr Parmeter to comment on that. I think he is the only person who has actually got to the end of the 500 pages!

Senator LUDWIG—Congratulations! It is not easy.

Mr Parmeter—I am afraid I will have to contradict Peter on that; I have not actually managed to get to the end of the 500 pages. The issues relating to the social security legislation are of concern to the Law Council. Given more time to consider them, I think we would have some extensive comments to make, but I would not like to at this stage engage in any speculation about the provisions without allowing our Indigenous legal issues committee the opportunity to consider the changes and what their impact will be.

Senator LUDWIG—The committee is reporting on Monday. If you do have a view, it certainly would be welcome in the next day, but if you do not think you can get a response I do understand that. Everyone is faced with that same tight, if not impossible, time line. I guess the broader question is about how the interaction of just terms operates with the Territory, particularly how the five-year leases will ensure that the compensation in the way the legislation provides will be provided. Some of the submitters today also referred to, and questions were asked about, whether the provision of these services may be taken into account in determining compensation. Does the Law Council have a view about how that would operate? In your submission you refer to the interaction between section 122 and just terms, and there are two High Court cases that go to that very point. The other, broader matter—I guess, the policy issue—is not only how that will operate but the way the Commonwealth may broadly take into account the provision of this amount of money to the Northern Territory as a provision of services, or maybe to offset any just terms compensation.

Ms Webb—If I may, I will answer at least some of that. As to whether the provision of services may be part of just terms compensation, I think that is a very debatable issue. It is not something that I am aware of having been considered, but there are many cases regarding what just terms compensation is. I think the

more fundamental difficulty with the compensation provisions is that there is not at all any surety that they are going to apply to these compulsory leases and indeed to changes to the permit system. Changes to the permit system in themselves could fall within the acquisition of property because that is taking away a fundamental part of the ownership of land. The concern about the application of the compensation provisions is that nowhere in the bill or in the legislation does it say 'compensation will be paid' or does it provide a mechanism for compensation. What is said and what is reinforced in the second reading speech is that compensation will be paid for required contributions. The difficulty with that is that there is a High Court authority from 1967 which says that just terms compensation under the Constitution does not apply to section 122 territories, which the Northern Territory is.

In a later case, the High Court qualified that to some extent by saying: 'If it can be supported or if it is supported under another head of power, then compensation is paid and section 51 does apply,' because what the head of power relied on there was the external affairs power. The difficulty is that, if you look to the second reading speech, the Commonwealth is relying on the Territory's power. If it is the Territory's power that supports these parts of the legislation and no other head of power is referable—which, arguably, is the case—then compensation would not be required under the Constitution and the legislation would not require payment of compensation. That, to me, is the most fundamental difficulty. If compensation is payable, in my view, the legislation should clearly state that.

Senator LUDWIG—Yes. I see that point. It really goes to a question of whether the legislation sets out that reasonable compensation will be paid. I guess that is the point when you look at section 60, subsection (2). If you understand that, on one outcome, if section 122 of the Constitution as a wide plenary power is accepted, it may not mean that just terms under section 51 applies. Therefore, what you are left with is compensation being paid not on just terms—because that would be excluded—but on reasonable terms.

Ms Webb—With respect, I think that section is a bit ambiguous—

Senator LUDWIG—I am not arguing that.

Ms Webb—To pay compensation under the Constitution, then reasonable compensation will be paid. I think one is dependent on the other in the way it is worded at the moment. That is a very big concern.

Senator LUDWIG—I see: you think that it could be conditional. That is certainly one way of examining it as well. We will have an opportunity of putting a question on notice to the department to clarify that. There could be at least three distinct possibilities: first, obviously section 51 does not apply; if it does not apply, then you are left with reasonable compensation being determined by the government and you are left with no basis; or, as you have said, it could be taken to be a little bit ambiguous.

Ms Webb—Part of the concern is that, in the second reading speech, it is repeated twice that compensation will be required under the Constitution. It is there with no reference to reasonable compensation. It seems to be limited to: if it is required to be paid under the Constitution. It is a very serious concern.

Senator LUDWIG—If you go to section 134 in the EM, it then goes on to say:

Therefore, where an acquisition of property that occurs as a result of the operation of the terms of this bill is excluded from the requirement under subsection 50(2) of the *Northern Territory (Self Government) Act 1978* ... subclause 134(2) nevertheless requires the payment of a reasonable amount of compensation.

I am not sure whether that impacts on your earlier interpretation of section 60(2).

Ms Webb—It is interpretation of the words of the legislation that the court will look to, although the explanatory memorandum is just that. The words of the legislation are, I think, clearly deficient at this point.

Senator LUDWIG—That is helpful.

CHAIR—Could I just interrupt. FaCSIA are monitoring the evidence today. I advise the people who are monitoring the evidence that clarity on that particular matter may be of assistance. If they would like to advise us of their response to that query about compensation on just terms later today, that would be appreciated.

Senator BARTLETT—I am interested in your view on the pornography measures in the bill, leaving aside whether or not you think they are appropriate from a child welfare point of view. The restrictions, as I understand them, amongst others, will prevent material that is able to be lawfully downloaded on a computer anywhere else in the country from being downloaded on any computer that happens to be in a designated Aboriginal community in the Territory. I am informed that, whilst the publicly funded

computers will be checked for this, private ones will not be checked, but it would still be technically illegal. I wonder whether that is valid in a legal sense. It strikes me as quite unusual to have something on your computer that is legal in one part of the country and not in another part of the country.

Mr Webb—We have not looked very closely at this, I must say, but as far as nationally consistent public policy is concerned it is unusual to have a law, particularly a criminal law, applying in a regional sense rather than a national sense in relation to those sorts of matters. Clearly, also from what I understand, the ban—if we can call it that—will itself be time-limited in some sense and may expire in five years time or at the conclusion of the leasehold arrangements that might be imposed. It is quite difficult to work out in a public policy sense why that should be the case. It is either worthy of the legislature's continuing attention or not at all. It is very difficult to work that out. Again, my recollection is that the offence provisions seem particularly strong. Some of the penalty provisions are very high and, it would seem, probably out of kilter with what one would normally take to be the sorts of penalties that should apply for offences of that kind. I do not know whether my colleagues have anything to add.

Ms Webb—I would just like to add to the question on pornography. It is my understanding that in terms of the Northern Territory report, it was not so much about pornography on computers—in fact, I think that did not even raise a mention. The real concern in the communities was pornography being broadcast on a couple of television channels—or what was viewed as pornography or seen to be pornography in the minds of those in the community—and the availability of DVDs. The measures that go to the downloading of pornography off the internet onto a computer certainly were not mentioned or even raised, as I understand it, in the course of the inquiry.

Senator SIEWERT—Could you comment on the breadth of the powers given to the minister, including those that appear to allow the minister to amend legislation passed by the parliament, through regulation?

Ms Webb—Might I say that I am probably quite speechless on this. I find it quite extraordinary. There is indeed a view that there is a difficulty with that in terms of the institutions of government, as we understand them, under the Westminster system, where a minister can amend legislation, in essence. I would have to give some more thought to that. I am happy to do so, but certainly there is a serious concern with that. The normal approach to legislation or amendment to legislation is that it is subject to the scrutiny of parliament and not just at the decision of the minister.

Senator SIEWERT—If you could provide more information, that would be much appreciated. We have a very short time frame so I appreciate that that is going to put you under a lot of pressure.

Ms Webb—Yes, certainly, I will do what I can.

Senator SIEWERT—I am looking at the amendments to the Australian Crime Commission Act. As I understand it, these give the Crime Commission the same powers to investigate violence in Indigenous communities as there are for investigating organised crime, which would therefore entail covert operations and compelling people to give evidence. Do you have an opinion on these? Are these appropriate levels of powers for investigating Indigenous violence?

Ms Webb—From my point of view, no. One of the things that struck me about the inquiry that was conducted was that communities were very open and very willing to expose the issue and to look at what needed to be done. I think the heavy-handedness of this kind of approach will have the reverse effect. Where people would have been more prepared to be open and willing to address and to try to resolve these issues, it will in fact cause a resistance that may not have been there before. If we had questions of these types being asked in any community the wall of silence would be there. I think these are issues that need to be dealt with very sensitively and very carefully. I think that a heavy-handed Crime Commission approach would have a negative impact rather than a positive one. That is my personal view.

Senator SIEWERT—Thank you.

Mr Parmeter—I might add to that that last year the Law Council did write to the Australian Crime Commission and to the minister for justice advising of its concerns about proposals to extend Australian Crime Commission powers to investigating sexual crimes and violent crimes in Aboriginal communities. The chief concerns that we raised were that the powers that the Australian Crime Commission has are not very well adapted to that kind of an investigation. We understand that the Australian Crime Commission largely deals—and quite effectively deals—with investigations against organised crime in urban areas and those sorts of much more organised and much more sophisticated kinds of criminal networks. We are talking about crimes in small communities where there has not been any indication or proof that there are

any kinds of crime rings occurring. There is a real sense that these powers may be used or misused to intimidate to the detriment of the communities that they are supposed to be helping.

Senator STEPHENS—Mr Webb, I want to go to an issue in your submission. I refer to the points you are making in paragraphs 74 to 77 around community service entities and the obligations that are described under sections 67 and 68. Is it your interpretation that, as you suggest under paragraph 77 of your submission, if a CSE—defined quite broadly in this legislation—owns, controls or possesses an asset defined to be movable personal property the minister may give a direction for the transfer of that asset to the Commonwealth or a specified person? To what extent would you see that applying?

Mr Webb—Do you mean the incidence of it or the sorts of examples where the minister might want to exercise that power?

Senator STEPHENS—Yes.

Mr Parmeter—I will ask if either of my colleagues has a view on that.

Ms Webb—I am not able to say the extent to which that might apply under this legislation. I might indicate that already some Aboriginal associations, in relation to other aspects—some of them commercial and some of them for the provision of services—have had a variety of funding from both the Commonwealth and the Northern Territory governments. There is a concern that the act will be there without any differentiation between those that had been obtained through commercial enterprise and those that had been obtained through funding, and that those will be transferred. That is very much a matter of concern. Here we may well have organisations or associations who have been successful, worked hard and acquired assets and may well lose them under this type of legislation.

Senator STEPHENS—In relation to the winding back of the CDEP program, would it be fair to say that the assets that have been built up by communities through the CDEP program would be the kinds of assets that would be affected under this clause?

Ms Webb—Yes, I think that is certainly the case. It may be that those assets have been partially funded by CDEP funds or Commonwealth funds and partially funded by commercial enterprises or commercial activity, but they will be caught up with it.

Senator STEPHENS—The obvious thing would be perhaps vehicles or buildings but, in terms of the application of this, can you give us a clue as to how far this kind of clause would drill down into the assets? Is there a legal definition of a substantial asset or a value?

Ms Webb—I think the asset is defined, but I have not looked closely at this part of it. It is 'movable personal property', which seems to be an anomaly in itself, but that can certainly go far beyond vehicles, buildings and the like.

CHAIR—I will conclude with one question if I could, Mr Webb. Your submission says that the exclusion of the operation of the Racial Discrimination Act is entirely unacceptable and you cite the Convention on the Elimination of All Forms of Racial Discrimination. But the department have advised us today that they have an opposite view. They say that these special measures are based on that very same convention, which allows concrete measures to ensure the adequate development and protection of individuals. They specifically noted that the special measures actually provide benefits for Indigenous Australians in the Northern Territory, and that assists them in coming to that view. How would you respond to their advice?

Mr Webb—It would be interesting to see any written advice they had. That would be useful.

CHAIR—I am not sure if you were listening to their testimony this morning.

Mr Webb—No, I was not, I am sorry.

Ms Webb—May I add something? I was not listening to the department's submission. However, I think what lies in this is a distinction between direct equality and substantive equality. As I understand it, the submission that would say that this is a special measure relies on a concept of direct equality. However, the special measures as interpreted under the international legislation relies on substantive equality, and that is the basis of the Law Council's submission.

CHAIR—Thank you. Mr Webb, do you have a wrap-up comment.

Mr Webb—May I add a quick footnote to the answer given to Senator Siewert on the ACC just to point out that what we think is an anomaly was encountered when we were looking at the ACC amendments in the act. The bill proposes to extend the maximum term of ACC examiners from five years to 10 years. This

is in itself not a particularly important provision, but it is tacked onto this bill as though it represents part of the package directed at preventing child sexual abuse in the Northern Territory. It seems to have nothing at all to do with that. I just make the point that that sort of anomaly may well be in this package of bills in other places as well. It just illustrates the difficulties people have coming to grips with what is a very comprehensive package of laws.

CHAIR—Thank you very much and thank you to the Law Council and in particular to Ms Webb and Mr Parmeter, who are a long way away. Thank you for being with us today.

[2.56 pm]

GORDON, Dr Sue, Chairperson, Northern Territory Emergency Taskforce

CHALMERS, Major General David Hugh, Operational Commander, Northern Territory Emergency Taskforce

CHAIR—I invite you to make a short opening statement, after which we will allow for some questions.

Dr Gordon—Because General Chalmers's statement is a little shorter than mine, I am going to use a little bit of his allocated time.

CHAIR—That is no problem.

Dr Gordon—Thank you for having me here again this afternoon. As a magistrate of 18 years standing in the Perth Children's Court of WA, I deal with crime and child protection on a daily basis and I am appalled that, in this current climate, child protection is not given the prominence that I would expect. Children are the most vulnerable people in our community and I am appalled every day at what I read and hear is happening to these special people. I came to this task force with this background. I have not allowed myself to become caught up with other issues but have maintained my focus totally on child protection.

I would now like to bring to the attention of senators the fact that Australia ratified the United Nations Convention on the Rights of the Child, which came into force on 16 January 1991, but we are still not treating children as a priority for protection across Australia. Part 1, Article 1, deals with the notion of what a child is. Article 2.1 says:

> States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

Article 3.1 states:

> In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

Both the Prime Minister and the minister, in relation to these interventions, said that all action at the national level is designed to ensure the protection of Aboriginal children from harm. Article 3.2 states:

> States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

The legislation currently before the parliament addresses this. Article 6.1 states:

> States Parties recognize that every child has the inherent right to life.

Article 6.2 states:

> States Parties shall ensure to the maximum extent possible the survival and development of the child.

The legislation currently before the parliament addresses this—in particular, for improving child and family health. Article 19.1 states:

> States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

The permit system as it stands has not had this effect. Most abusers are known to the victims. The permit system as it stands has protected the offenders. The legislation before parliament addresses this. Article 19.2 goes on to state:

> Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

The National Indigenous Violence and Child Abuse Intelligence Task Force, set up in October 2006 and based in Alice Springs, is addressing this, and the legislation currently before the parliament also addresses this. The measures related to pornographic DVDs, videos and government funded computers, which I

raised with you this morning and which was brought to the attention of the government by the National Indigenous Council, also address this.

Article 24 refers to recognising the right of the child to the enjoyment of the highest attainable standards of health and to facilities for the treatment of illnesses et cetera. It also states that states parties shall pursue full implementation of this right and, in particular, shall take appropriate measures to: diminish infant and child mortality; provide necessary medical assistance; combat disease; ensure appropriate pre-natal and post-natal health and care; and—more importantly—ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health, including hygiene, environmental sanitation and the prevention of accidents. The legislation currently before the parliament addresses this. Article 24 goes on to state:

States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

Abuse by a minority—and, I repeat, a minority—of men in relation to customary law as it relates to promised marriages is being addressed as well, as part of promoting law and order, which includes protective bail conditions. Article 27.1 states:

States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

The employment and welfare reform addresses this point. The minister also links the five-year township leases to this. Article 28 states:

States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity—

and goes on to address various things. Enhancing education as part of the legislative measures is aimed at addressing this article. I was appalled when I went to a school in the Territory and I found out that, while it looks good on paper that Aboriginal students are attaining year 12 level, when I asked the principal what that meant in reality, she said, 'Year 8 or year 9.' That is not fair to Aboriginal people. Article 33 states:

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and—

CHAIR—Sorry, Dr Gordon. Just a moment. Senator Ludwig?

Senator LUDWIG—I am happy for this to be tabled. I appreciate that you—

Dr Gordon—I have nearly finished, Senator, if that is okay.

Senator LUDWIG—You can still table it.

Dr Gordon—I will. It continues:

... psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking substances.

This is currently being addressed by the drug desk in Alice Springs and the National Indigenous Violence and Child Abuse Intelligence Task Force. The permit system as it stands has not had this effect. Rather, it has protected the offenders.

I will not go through articles 34 and 36, but these are only some of the articles of the United Nations Convention on the Rights of the Child that relate to the Northern Territory emergency response. I appreciate very much Aboriginal people's concerns regarding permits and the acquisition of townships for five years but believe that the protection of children, men and women in the communities who suffer violence and abuse on a daily basis has been completely lost in this debate. I plan, as a chairperson of the task force and as a mother and a grandmother, to remain totally focused on the best interests of children in our Aboriginal communities, and I will continue to work with the communities in the Northern Territory and with the Commonwealth government to protect children.

Major Gen. Chalmers—As the commander of the Northern Territory Emergency Response Taskforce operation centre in Alice Springs, my role is to ensure the coordinated and rapid deployment of the Australian government's response to the crisis situation documented in the *Little children are sacred* report.

The emergency response aims to protect children and stabilise communities in the crisis area, and although rapid action is required I am also conscious of the need to synchronise activity in a measured way to work with communities and make best use of logistic resources. In broad terms, this is a three-phase

operation. The first phase has been called stabilisation and indicatively will last a year. During this phase we will increase policing levels to improve law and order, gather information via survey teams and child health check activity and establish government business managers, or GBMs, in most communities to oversee and improve the delivery of government services. During phase two, the normalisation phase, we will introduce the longer term measures necessary to improve health standards, education outcomes, employment and welfare management. Again, indicatively this phase will last from years two to five. Finally, in the exit phase we will hand over responsibility for ongoing coordination and management to the relevant Commonwealth and territory government agencies.

What has happened so far? This is week seven of the response, and a great deal of work on the ground has been achieved in a very short time. As of last week all 73 communities had been visited by either an advanced communication team or a survey team. Eighteen additional police have been placed in seven communities, another 11 communities have been identified as policing priorities, and we are working closely with the Northern Territory Police to have an additional police presence in place in these communities by mid-September. This will represent a 100 per cent increase in policing of remote communities achieved in less than three months. Four GBMs are in place and have begun to manage the delivery of government services in nine communities, and another two are undertaking induction training. Health assessment teams have deployed to a total of 17 communities thus far, and some 650 child health checks have been performed. Work for the Dole activities have started in Amoonguna, Mutitjulu and Titjikala with the support of a community broker in each community to coordinate activity. So far there are six community brokers in place supporting 10 communities. Over the next few months we will continue the expansion of police presence, finish the surveys and child health checks and roll out the teams assisting communities with changes to welfare provisions and employment opportunities.

Senator CROSSIN—Thank you to both of you. I am not sure who will be best placed to answer this question. 'Gather information by survey teams': what sort of information?

Major Gen. Chalmers —The survey teams have a checklist and essentially they are gathering information on infrastructure, on the number of people in the communities, on the number of people who go to school, on the services that are available to the communities—a range of information like: is rubbish collected, is there a clinic and how often does a dentist attend the communities?

Senator CROSSIN—Can you provide the committee with a copy of that checklist?

Major Gen. Chalmers—Absolutely.

Senator CROSSIN—Thank you. Where is this information going, and who is collating it?

Major Gen. Chalmers—The information is collated in FaCSIA National Office.

Senator CROSSIN—To what extent? Will they be able to tell us after a year that all of the 70 communities have a school or 68 have a school?

Major Gen. Chalmers—Certainly. The aim is to gather a baseline of services that are available to communities—the situation in communities. The information that is coming in from the survey teams is being analysed now, and that will help us shape the response in each community. Every community is different in some way, shape or form, and so the responses will need to have a different focus in each community.

Senator CROSSIN—Surely some of that information exists?

Major Gen. Chalmers—Indeed it does, Senator. My aim is not to duplicate existing information, but there are gaps in information that we are currently filling.

Senator CROSSIN—So are you just identifying the gaps or doing a total sweep of information?

Major Gen. Chalmers—The survey teams do a total sweep. In other words, they have a checklist which they work through with the community to gather information. I might also add that the survey teams have two functions, one of which is to gather information, but the second one is to inform communities of the intervention. The survey teams will brief communities on the range of measures that are involved in the government intervention.

Senator CROSSIN—We heard this morning that this is not an exercise for communities to put down a wish list. Why is it then that some representatives of FaCSIA are asking communities: 'What is it that you want?'

Major Gen. Chalmers—Senator, I would say, firstly, that I do not know what you heard this morning, so I cannot respond to that. Where the survey teams are asking communities what they need, they are gathering perceptions from communities as well as facts from communities.

Senator CROSSIN—So when communities say, 'We need a bus; we'd like shadecloth over the basketball court; we'd like a swimming pool,' where is that information going?

Major Gen. Chalmers—That information goes to both FaCSIA's national office and to the operations centre. Some of those requirements can be met as what we call 'tasks of opportunity'. So there are opportunities to meet some immediate needs of communities. Other 'wish list' items, if you term them that way, are collated at the national office.

Senator CROSSIN—So do 'tasks of opportunity' have a budget allocation?

Major Gen. Chalmers—There are a range of budget sources that can be drawn on to conduct those tasks. So when a task is identified then it is a matter of seeing whether there is an existing program, for example, that could be used to fund that task. In the first instance, that is what my people do.

Senator CROSSIN—When you say 'your people', are you talking about public servants in your unit?

Major Gen. Chalmers—The operations centre which I have is a small unit of about 30 people who are helping me to coordinate and synchronise the various programs and efforts from across the agencies.

Senator CROSSIN—So if people are asking for something and you believe you might be able to deliver that immediately, you go to existing programs. If it is not covered within existing programs, do you have a budget allocation you can draw down from?

Major Gen. Chalmers—Essentially, I will go back to the national office to look for a program or a budget allocation. But, yes, there will be budget allocations that I can draw down on.

Senator CROSSIN—Do you know what that is?

Major Gen. Chalmers—No, I do not. I do not have those figures in front of me right now, Senator.

Senator CROSSIN—Can you take that on notice for us, please?

Major Gen. Chalmers—Yes, I can.

Senator CROSSIN—What I am wanting to know is: do you have an operating budget of $30 million or $30,000 so that if you cannot find an existing program you are then charged with the responsibility or you have the power to then say, 'Well, that can't be funded from existing programs, so I will make a decision and we will fund it out of the money I have been given'?

Major Gen. Chalmers—The simple answer to your question is yes. But let me say that that has not been my focus so far. In other words, I have not worried too much about budget issues. What I have worried about is getting the survey teams out as quickly as possible to gather the information we need to shape the response. In that process, people have identified issues which communities would like rectified. I have given direction to my people that we will fix anything to do with safety or health, and we will do that straightaway or we will ensure that the organisation which is responsible for fixing it—which may be a Territory government agency or a Commonwealth government agency—is advised of the problem so that they can fix it. Beyond that, there are programs which we can draw on to get some 'quick wins' in communities, if you want to phrase it that way. But if you are asking me whether I have a budget that will build swimming pools in communities, well, no, I do not have that.

Senator CROSSIN—Dr Gordon, you made a comment that the permit system already currently protects the offenders. Today the NLC and the CLC gave us evidence that, of course, Indigenous people do not need a permit to go onto each other's land. Are the majority of offenders in relation to child abuse in the Northern Territory Indigenous?

Dr Gordon—I do not have any evidence that they are all Indigenous. I understand from the intelligence task force that there are non-Indigenous offenders. Based on my own experience in Western Australia, there are also non-Indigenous offenders. If there are Indigenous offenders and they have access, as you have just pointed out, to other community lands, the permit system is not protecting the children from people wandering through. So, by leaving the permit system in place, those things will still happen, but by opening up areas, yes, other people can come into the community.

Senator CROSSIN—What I really wanted to know from you is: do you know the number of Indigenous versus non-Indigenous offenders in the Northern Territory?

Dr Gordon—No, that would be police information and the intelligence task force information.

Senator CROSSIN—The evidence we have had today, and what we know to be true about the permit system, is that Indigenous people do not need a permit.

Dr Gordon—Yes, I know that.

Senator CROSSIN—And we have had overwhelming evidence, particularly from the police, to suggest that removing the permit system will in fact increase the number of potential non-Indigenous offenders in these communities. Have you looked at the submission from the Australian Federal Police or taken note of public comments from Vince Kelly from the police association in the Northern Territory when you make these comments?

Dr Gordon—No, I have not looked at the Australian Federal Police submission—or do you mean the Territory police submission?

Senator CROSSIN—Both of those organisations suggest to us that abolishing the permit system will potentially increase the number of non-Indigenous offenders in those communities.

Dr Gordon—Firstly, the permit system is not being abolished right across the Territory. In relation to officer Kelly, who is the union rep for the Territory, I have only heard snatches of what he said on the radio, so I really cannot comment on snatches of conversation. I have not seen either the Territory or the Federal Police—and that is not something that I would see.

Senator CROSSIN—This is the submission to this inquiry?

Dr Gordon—No, I have not. It is not something that I would normally see.

Senator CROSSIN—Do you have any benchmarks for the intervention's success—any KPIs or any indication of where you want to be in three or six months time?

Dr Gordon—Personally, I would like every Aboriginal child in every Aboriginal community to be safe tomorrow. That is my benchmark. But, realistically, that is not going to happen until we have more police in communities and Aboriginal people feel safe enough to go and report abuse, safe enough to go to court with the abuse and safe enough to make a stand against the perpetrators, who may well be family members.

Senator CROSSIN—I asked whether you had any KPIs for the intervention.

Dr Gordon—The answer is no.

Major-General Chalmers—The operations centre has metrics, but I would say that we are developing those metrics. At the moment they mainly deal with the progress of the rollout of the various interventions. What I intend to develop is then metrics that tell us whether those various measures are successfully changing the communities. But I do not have that second set of metrics developed yet. I would agree with you that they are required.

Senator CROSSIN—What I am trying to get a handle on is this: do you anticipate having done the gathering of the information by survey teams across those 70 communities by 30 November? By 31 March?

Dr Gordon—By 21 August I will have completed the surveys. There will be a subsequent period of analysis of that information.

Senator CROSSIN—And have you given yourselves six months or 12 months to conduct the health checks on all of the children in the communities?

Major-General Chalmers—I have not given myself any time. I am doing the health checks as quickly as we can, given that only a certain number of teams, with a maximum of 12 teams, can be generated at any one time. Those teams are for three weeks each. Each community has a different number of children who need checking. So there are a number of variables there. And we will be working through the wet season. I cannot give you the exact date as to when the health check process will finish, but that will be in the December/January time frame as an estimate at the moment. I will say that, at the moment, 88 per cent of children in those communities where we have completed health checks are coming forward, which is encouraging, but it also means we need to have the teams in place for long enough to capture most children.

Senator CROSSIN—I have two other quick related questions. What are you doing about the communities where you might have been in and completed the health checks but not all the children were there? How are you finding those children and completing those checks?

Major Gen. Chalmers—Again, it goes back to the point that you made very well earlier that this is not about putting stand-alone capacity into communities but about adding to the existing capacity. Communities already have health clinics and are conducting checks, albeit the child health checks that are done at the moment are not done on most children and are a much more abbreviated check. Nonetheless, in communities there is already the ability to do checks, and so those children who are missed could be picked up through the extant capability. But, really, the Department of Health and Ageing will take the child health check information as trend information to help inform their more sustained commitment to improving health in the Northern Territory.

Senator CROSSIN—What about those who have been checked and who may now need follow-up? Is that happening, who is doing it and how quickly is that follow-up happening?

Major Gen. Chalmers—I am not a medical expert, but those children whom the doctors have found need specific referral have been referred.

Senator CROSSIN—To where? To NT Health?

Major Gen. Chalmers—Yes.

Dr Gordon—I point out that some of those may well be dental follow-ups; they could be other. It is not specifically looking at sexual abuse.

Senator CROSSIN—I understand that. What I am hearing is that the children you are referring are actually the same children that NT Health already have on their list of children who need follow-up. So there is some duplication there.

Major Gen. Chalmers—Then I do not understand the premise of your question. If a child needs medical attention then the child should get medical attention.

Senator CROSSIN—I am trying to ascertain whether the Commonwealth, out of this $580 million, is going to put some additional resources into helping the Northern Territory health department undertake and complete those follow-ups.

Major Gen. Chalmers—The $580 million represents the first year of the Commonwealth government's commitment to the intervention. As I said, the first year—phase 1: stabilisation—will inform the longer term commitment to building or adding to the capacity to address child health problems in the Territory. Simply, the answer is yes.

Senator ADAMS—Dr Gordon, you mentioned in your preliminary comments just how you would like children to be safe tomorrow. I certainly agree with you, as does the government. We have been criticised quite strongly for trying to push this legislation through, and I would like a comment from you about how delaying the introduction of the proposed measures would reduce the incidence of violence and abuse.

Dr Gordon—Every day that there is a delay means that another child is at risk one way or another. That could be health-wise or it could be abuse or something like that. Aboriginal people—Aboriginal women—have been saying since 1979, in a formal setting, that we need to do something about family violence and abuse. I have been on bodies appointed by four separate Labor governments to look at abuse and welfare issues, including the Labor government in Western Australia in 1983 and the federal government in 1988. I was on the National Committee on Violence following the Hoddle and Queen Street massacres, 20 years ago now. We looked at violence there. We did not have enough time to look at all the abuse issues for Aboriginal communities, but we looked at violence across the community. In 1990 I was appointed to the first board of ATSIC. We started to look at abuse and violence back then, and in 2002 in the inquiry in Western Australia. I do not know why we need to delay any further. I have pointed out to you, to the best of my ability and under the premise that I work, which is in the protection of children, that we are a signatory to the United Nations Convention on the Rights of the Child and we really have to start putting children first.

CHAIR—Dr Gordon, in your opening statement you made reference to the UN Convention on the Rights of the Child. We have had evidence from the Law Council of their view that the legislation is a breach of the International Convention on the Elimination of All Forms of Racial Discrimination. I assume, based on your earlier comments, that you have a different view and think that the rights of the

child should be prominent and a priority. Can you provide your opinion as a lawyer and a person who is experienced in looking after children's health?

Dr Gordon—I should point out that, while I am a magistrate and I have a law degree, I have not practised as a lawyer. But I do understand what the Law Council is saying. I have read it in the paper and I have heard some of their comments. I was not involved in the drafting of the legislation. I understand that there were over 20 lawyers, from all disciplines of law, who were involved in that. I expect those lawyers would have addressed all those issues. I understand, from speaking to the department, that the very issues that the Law Council raises were addressed. As for the mention of perhaps an anomaly referring to the Australian Crime Commission: the Australian Crime Commission, as you are well aware, are involved in the national Indigenous child abuse task force in Alice Springs, along with the Australian Federal Police and the South Australian and Northern Territory police. They are the people who have been doing all those investigations into abuse since October last year. So I am presuming—although I should not presume; I know that—that those measures are there to extend that work.

CHAIR—I have a question regarding consultation. A number of witnesses have indicated there has been a lack of consultation. I am wondering if you could respond to those comments or allegations that have been made. Secondly, what are your plans for educating and informing the community of your task force efforts during this stabilisation process and then in the normalisation and longer term processes? Can you outline your plans?

Dr Gordon—I appreciate people's concerns as to lack of consultation. But, as I have said on the radio in the Northern Territory in community service announcements and media timeslots—I have pointed this out about three times a week—very clearly this was an emergency. If you have an emergency like a tsunami or a cyclone, you do not have time to consult people in the initial phases. I have tried to address that with people. But what I have been doing since is this. I have gone out with Major General Chalmers and some of the team members. Both he and I have addressed various Aboriginal groups. We addressed the Central Land Council members at their combined meeting. I have been to several communities. The most recent visit was to Melville Island, on Wednesday of this week. I had separate meetings with women. The survey team was also there, so I was able to include some of the survey women in my talks with those women.

Aboriginal women are asking me specifically to explain the definition of child abuse. I am finding that they do not fully understand that child abuse is not just sexual assault or rape, depending on the legislation you are working with, and that child abuse encompasses neglect, emotional abuse, physical abuse and, of course, sexual abuse. I give a warts and all explanation to people. I explain about things that I have been dealing with in the children's court for 18 years. I explain to women exactly what was the case of a doctor who has had to perform 24 separate operations on the genitals of a two-year-old child who has been viciously raped. I explain those things.

Next Friday a member of parliament, Alison Anderson, is taking me out to her community of Papunya. I have had a couple of meetings with Alison, who is very supportive of this intervention. She is going to take me to a few more communities. In the following week—on 21, 22 and 23 August—the NPY Women's Council are taking me out camping to four or five communities over three days, to have special women's meetings to explain about child abuse. I worked with the NPY Women's Council five years ago, during the inquiry I chaired in WA. I am speaking to individuals. I am speaking to groups who now ask me to speak to them. I keep Major General Chalmers updated on all of my comings and goings so that he can fit me into his travels.

CHAIR—Did I hear you say that you are developing a plan to provide further information and education on the task force's effort and what is going on? Do you have one or is it being developed? Will it be rolled out? I ask that because that is an issue and a concern, and we would like to know your response to that.

Dr Gordon—The task force itself—not the operational command on the ground, which General Chalmers is concerned with, but the people who make up the task force, and me, as chairperson—is trying to meet fortnightly by phone hook-up and once a month face-to-face. We give advice straight to government from that. General Chalmers has an input through his situation report. Between him and what we are doing on the ground we give advice to government on the way that we think we should go forward. We have been very strong that this has to be a whole-of-government approach and it has to stay rigid and everything has to be coordinated through General Chalmers. We are staying firmly with the line that we need to make it firm to government that that is the way they have to go. Peter Shergold, head of the

secretaries group and Secretary of the Department of the Prime Minister and Cabinet, has supported us in that. We have found that, by us insisting that everything go through General Chalmers on the ground, things are working better.

Major Gen. Chalmers—I might add quickly that, yes, there is a communications strategy being developed at the strategic level, and that is in the process of being implemented. At the operational level, of course, the consultations occur through the survey teams, through the advanced communication teams that we ran and through the visits that Sue and I do.

CHAIR—Thank you very much. Can I thank both of you for your evidence today. It is appreciated.

[3.31 pm]

ALTMAN, Professor Jon Charles, Director, Centre for Aboriginal Economic Policy Research, Australian National University

CHAIR—Thank you for being here, Professor Altman.

Prof. Altman—I am here as the Director of the Centre for Aboriginal Economic Policy Research, but I do want to emphasise that the views that I express are mine alone and not those of any of my colleagues or staff. I should also say that I am also appearing as an adviser to Oxfam Australia, for whom I prepared the submitted report on reforms to land tenure and permanent arrangements.

CHAIR—I now invite you to make a short opening statement, after which we will have questions.

Prof. Altman—Thank you very much. What we have before us is a hastily conceived and enormously complex but intertwined set of laws that will establish a fundamentally new and unprecedented policy framework for addressing undeniable social problems experienced by many of the 40,000 Indigenous people in prescribed communities in the Northern Territory. As someone who has worked in the area of Indigenous policy, mainly in the Northern Territory, over the past 30 years, I am deeply concerned that this hastily conceived emergency response may prove unworkable because of lack of Commonwealth capacity to deliver. Some unnecessary and racially discriminatory measures will generate legal challenge, transaction costs and delays. Worst of all, some measures will result in perverse policy outcomes that will exacerbate community dysfunction and related problems of child abuse rather than ameliorating them. New policy, with the best intentions, will invariably generate some unintended negative consequences, but in the situation before us it is especially worrying that some of these can be predicted prior to their implementation.

Clearly, in the limited time available, I cannot outline all my concerns, so I will highlight just a few. In the Oxfam report it is argued that land rights reform and the partial removal of the permit system are both unnecessary measures that are unrelated to child abuse. I would just note now that the issue of compulsory acquisition of leases and the construction of assets on people's land that they will not own at lease expiry will leave a planning and real estate contestation nightmare. Disputation over just terms compensation should be avoided by appointing independent arbiters of negotiated fair compensation rather than allowing the take it or leave it, adversarial approach currently proposed.

The welfare law reforms are especially worrying. I would draw the committee's attention to recent research by Professor David Ribar, an American economist currently visiting the Australian National University, who notes that the United States of America's measures to control the spending of welfare payments have had a high cost and limited benefits. In particular, he highlights the issues of fixed establishment costs and diseconomies of small scale in the proposed Australian measures. In the USA, such measures are applied to 26.7 million people. In Australia we are talking initially of 30,000 to 40,000 Indigenous people in 73 dispersed communities. These welfare reforms are also non-discretionary for Indigenous people, and hence discriminatory when compared to the general population. It is assumed that all Indigenous parents who are welfare recipients are feckless spenders whose incomes must be quarantined and controlled. At the very least, on grounds of equity with the broader community, we must amend the proposed laws here. We should assume that all Indigenous parents are good parents and allow welfare authorities the discretion to quarantine payments only if the opposite proves to be the case, as with other Australians from 1 July next year.

Many perverse outcomes are likely, most driven by the belated proposed abolition of the CDEP scheme that targets the most productive areas of communities. This one measure will turn 7,500 employed workers into trainees and Work for the Dole participants. Only an optimistically estimated 2,000 will eventually gain mainstream employment in home communities. The abolition of CDEP will place many community enterprises, including community stores and currently viable businesses, in immediate financial jeopardy. It will see the collapse of outstation resource agencies and the possible influx of up to 10,000 residents of 560 outstations into already overcrowded townships. CDEP abolition will see enhanced passivity that many argue is at the heart of dysfunction. This measure must be urgently reconsidered.

Nearly $600 million has been committed to the NT emergency intervention this year—a financial commitment of an appropriate scale. But how much of this is committed to bricks and mortar and to practical, as distinct to process, measures that will see the immediate building of houses, schools, medical facilities, youth centres and aged accommodation in communities where the latest, 2006, census data

shows that there are between 12 and 14 persons per house on average? It is likely that an influx of outsiders to undertake a host of identified tasks will not only undermine local employment opportunity, but will also place additional strain on already strained housing and infrastructure. The suite of measures that we are considering seem to be an extreme overreaction to what is an undeniable and deeply embedded problem in Northern Territory Indigenous communities, as well as elsewhere in Indigenous and non-Indigenous Australia.

Too much of what is being proposed is based on a blind faith that it will work, but no mechanism has been proposed to independently assess if these interventions will succeed. Recent Commonwealth experience from the COAG trial sites at Wadeye in the Northern Territory suggests that such monitoring is crucially important. One cannot help feeling that at a different point in the electoral cycle a far more measured approach would be taken. Despite the current rhetoric of bipartisanship, I suspect that whoever forms the next federal government will look to walk away from this massive planned intervention, and the legacy will be another failed and costly experiment in Indigenous policy.

There is another way possible: empower and work with communities, support what is working and build on it, address the deep backlogs that are a result of past policy and not Indigenous failure, and learn from international experience where there has been much more success than in Australia. Elsewhere I have suggested that sustained outcomes will require an investment of between $4 billion and $5 billion over five years and the building of an economic base at remote communities. But such multiyear financial commitments and philosophies of sustainability and community enterprise, ownership and governance, as distinct from external control of communities, are all unfortunately absent from what is being proposed.

Senator CROSSIN—We have not concentrated very much today on organisations that will be affected by the abolition of CDEP. We have not been able to take any evidence from what are known as CDEP organisations, even though they have put submissions in. Have you had a chance to look at clause 68 of the national emergency response bill? It talks about directions relating to assets. Do you have a view about whether or not this would entitle the minister to seize the assets of CDEP organisations and what that might mean?

Prof. Altman—I think the intention of the clause is that the minister will have the power to seize the assets of any CDEP organisation that has received Commonwealth funding. But I suspect that CDEP organisations, particularly some of the bigger, more powerful ones, may legally challenge that. Many of these organisations have built up significant assets over many years based not only on their operating surpluses and profits but also some of them currently have built up assets with commercial loans. That is something that has not of course been considered in the context of that clause. If the Commonwealth does want to seize assets—and I know in particular of one asset in one community, which is a community store—they may also find that they are picking up a fairly significant loan from a commercial source. There are many CDEP organisations that have built up significant asset bases which have been partially funded by the Commonwealth and, in my view, as those communities are off and running highly successful commercial and service providing enterprises they should be allowed to maintain those assets. But that obviously would have to go hand in glove with also maintaining CDEP, because there is no point, for instance, in having a community store if you do not have resources to employ staff to work in the store.

Senator CROSSIN—We note that there are about 7,000 people in the Territory on CDEP and about 2½ thousand real jobs—if you do not think that CDEP is a real job, and that is probably not an argument for today. Have you had a look at what you think might happen or what the consequences will be for the other 4½ thousand Indigenous people?

Prof. Altman—I have done some work on the maths and I should say that it is hard to get information from DEWR on the exact number of CDEP participants in the Northern Territory. Certainly the latest official source at hand is 7½ thousand. I should also say that the number of so-called ‘proper jobs’ that are deemed to be available are mainly based on a survey that was done by the Local Government Association of the Northern Territory in August last year that identified 1,600 jobs held by non-Indigenous people in the 73 prescribed communities—although LGANT did not visit all those communities.

I think that you can say a number of things here. The first thing I would say is that the day you abolish CDEP you are probably pushing the unemployment rate for Indigenous people in the Northern Territory from 15 per cent to over 50 per cent. CDEP workers are employed and they will go onto Work for the Dole or into STEP programs and, hence, move out of employment either into training or into Work for the Dole, which is classified as being unemployed.

I think that the figure of 1,600 to 2,000 that may eventually get proper work will take years to achieve. I think that it is quite disingenuous to suggest that overnight 1,600 to 2,000 people will move into proper jobs. I have made the point in other material I have written that I am very happy to make available that the day you do that you are turning these 73 communities into all-Indigenous communities and that seems to me to be very counter to some of the other measures which are about opening up these communities both to non-Indigenous Australia but also to the free market.

Senator SIEWERT—I know you have done some work, because I have read it in the past, on the link between so-called 'private ownership' of houses, economic development and private ownership of land which shows that that is a misnomer. Is my understanding of that work correct?

Prof. Altman—Your understanding of that work is correct insofar as what will be offered in Indigenous communities either under section 19 or section 19A—99-year leases—or now under compulsory leasehold will not be anything like private ownership of housing. It will be a second- or third-tier form of individual subleasing of housing. So it is certainly nothing along the lines of what you and I might envisage as being freehold. I would like to emphasise that in the Northern Territory you do have freehold title in places like Darwin and Alice Springs, unlike in the ACT, where a 99-year lease is the equivalent of freehold. So you do understand me correctly. But, having said that, it is very unclear at the moment what will happen with compulsory five-year leases because the indications are that all the assets on those leases and any new assets will be owned by the Commonwealth, not by the people who live in those houses. I think what is being delivered is actually more like public housing than private housing.

Senator SIEWERT—Is there any experience from overseas where this has been shown to work for indigenous communities overseas—where communal title has essentially been taken away and they have gone to leasehold or private ownership? Are there examples overseas where this has worked to provide economic benefits?

Prof. Altman—There are certainly examples internationally where one has moved from—I am not comfortable with the term 'communal title'; I think we might be better to talk about group ownership.

Senator SIEWERT—Okay.

Prof. Altman—I think there are certainly cases where you can move from group ownership to private ownership of houses or businesses and have success. But, equally, there are cases where it has not made an impact. I do not think there is any conclusive evidence from international research that individual titling is the key to a success, either in home ownership or in economic development. I think that a crucial issue is competitive advantage, but there are other issues as well, like access to capital, people being job ready, and people having opportunity. I think we have already heard today—certainly in some of the comments that Marion Scrymgour made—that there has been some enormous success in the Northern Territory through community enterprise, through the arts industry, where you have community based organisations that are owned and run by artists which are publicly funded but nevertheless provide enormous employment, economic and income-earning opportunities to literally thousands of artists. Many of those artists, coincidentally, also receive some income support, often from the CDEP scheme. But what will happen in terms of their arts practice when you take those artists off CDEP and put them on Work for the Dole is a really good question.

Senator PAYNE—On your observations on the CDEP changes: I am confused. I think there is some value in trying to create an environment where there are real jobs, where people are adequately trained for those jobs and so on. That is certainly the background as I understand it and that is the minister's intention—the government's intention—in that regard. I do not get the feeling from you, though.

Prof. Altman—I should make it quite clear that, as CDEP has been operating, CDEP organisations have had to have key performance indicator targets to exit participants into real work—what is called 'real work' or 'proper jobs'. And many Indigenous CDEP participant communities have in fact done that; that is a condition of their funding. The question, I think, is: how many people can you exit into proper work in a remote Indigenous community? I would say that the remoter and smaller the community, the less the prospects of getting full-time jobs.

The other thing I would say is that the statistical evidence we have from the National Aboriginal and Torres Strait Islander Social Survey 2002 shows that one in five CDEP workers work more than 35 hours per week. So CDEP organisations have actually been extremely successful in turning 15 hours subsidy from the state into full-time work and full-time income for one in five of their participants.

Senator PAYNE—I understand that. I suppose I am still trying to appreciate the direction you are coming from vis-a-vis the acknowledged, I think, ambitious basis of some aspects of these reforms and these initiatives, which it seems to me endeavour to open up communities to provide greater opportunities as well as matching at the same time the changes around this aspect of the policy in particular.

Prof. Altman—I think there is no problem having a diversity of ways of getting employment. There is obviously no real problem with stretching goals if they are realistic. But I do think I need to draw your attention to the fact that there are a number of Commonwealth programs, like the Indigenous Protected Areas program, that are CDEP dependent. The department of environment has declared Indigenous protected areas in the Northern Territory that cannot be run and managed without CDEP labour. While there is a new Working on Country program, that will only have 100 positions Australia wide in 2007-08. So many of those IPA and other Caring for Country projects that are funded under the Natural Heritage Trust funding regime will in fact fold if CDEP participation is cut off after 1 October this year.

Senator PAYNE—Why is it out of the question that programs such as that would be able to review the way they operate and adjust to the situation accordingly?

Prof. Altman—I do not think there is any problem there, but I do not think you have the budget allocation in 2007-08 to fund proper employment in IPAs and other programs that have historically been funded by CDEP. In some of the work I have done in costing what I have termed the normalisation phase, I have provided some estimates of what it would cost to convert 8,000 CDEP positions into proper jobs, and it is quite a significant investment that is needed. But there is nothing in the $587 million allocated this financial year that will switch CDEP positions to proper jobs.

Senator PAYNE—I understand that. I have read and heard of some of the material that you have been working on in that regard. This morning there was some discussion with departmental representatives about those funding issues. I hope they can assist us with some answers to questions on notice that make that a little clearer for us. Thanks, Professor.

Senator BARTLETT—On that issue, you have given us a copy of a piece you did towards the end of June, not long after the announcement, estimating the likely cost to be around $4 billion, at a time when we were still in the tens of millions from the government side of things. Have you had a chance, a month or so down the track, to firm that up anymore in light of any further clear information? Now we have a figure of $500-plus million for this financial year—we did have some questioning on that this morning. I have not looked at the PBS myself, but it sounds like a lot of that money is not going to the sorts of things that you costed, such as housing et cetera. I was wondering whether there is any update of the costs that you think would be required.

Prof. Altman—The only updating of that $4 billion over five years has been provided by the Northern Territory government, which has a higher estimate of the cost of meeting housing and infrastructure shortfalls. A different figure was published by the *Australian Financial Review*. It suggested that the figure should be $5 billion. But I am careful, in my costing of $4 billion, to emphasise that that does not include the cost of the stabilisation intervention that we are seeing at the moment. What I was looking for was for some semblance of economic quality to be developed in the four areas of health, housing, education and employment over a five-year time frame. Most of my estimates were based on official government sources—the one exception being the Oxfam-AMA costing on health shortfalls.

But I have to say also—and I am quite happy to say it here—that I wrote to Senator Minchin on two occasions, because he was highly critical of my costings, and asked him to perhaps tell me where I had gone wrong. I think he had suggested that I was in error and that I was double-counting. I have not had a response yet. All he said was that he would stick to the Prime Minister's figure of tens of millions of dollars and not my figure of $4 billion to $5 billion over five years.

Senator BARTLETT—The other question I want to ask, given the time constraints, is to do with the permit system. You said in the documentation that was published earlier this week for Oxfam that there is no evidence that child abuse is any higher in communities where the permit system exists, as opposed to outside. That was also clearly stated by the department this morning. I suppose I am turning that question around. One of the things we have not had an opportunity to really establish is how much detail there is about the incidence of child abuse in general. We know it is there as a problem, but, in terms of quantifying it, I want to know whether there is any evidence to say anything, really. What do we know, one way or the other? There may not be any evidence to show that it is worse or better in areas without permits, but we actually do not know enough about how much there is anywhere to make any sort of comment on it. Are you able to throw any extra light on that scenario?

Prof. Altman—I will make one comment on that, because it has amazed me how little reference there has been in this debate to a publication entitled *Child protection Australia 2005-06*, by the Australian Institute of Health and Welfare. That was published earlier this year. I think there has been some media coverage of it. In terms of reported substantiations, sex abuse et cetera, the Northern Territory rates lower than a number of other states. Also—and I hinted at this in my presentation—this is not an issue that is limited to Indigenous Australians. I will make the point that where you see the highest rates for Indigenous Australians per thousand children, in terms of substantiations, is in places like Victoria and the Australian Capital Territory. They are obviously jurisdictions where there is no permit system.

CHAIR—Professor, thank you for your evidence today.

[3.58 pm]

CLEARY, The Hon. John, Private capacity

Evidence was taken via teleconference—

CHAIR—Welcome. Do you have any information to add about the capacity in which you appear?

Mr Cleary—I am a former Tasmanian government minister of a number of years, having had responsibilities including health, community welfare and Aboriginal affairs. I left the Tasmanian parliament in 1998 to pursue other challenges. Between 2002 and 2005 I completed a three-year contract as Chief Executive Officer of the Tiwi Islands Local Government. The Tiwi Islands was one of the first regional authorities established by the NT government.

As a result of my experience living and working in a remote community for three years, I wrote two papers, which were released by the Centre for Independent Studies. The title of the first, released in 2005, was *Lessons from the Tiwi Islands*: *the need for radical improvement in remote Aboriginal communities*, which called for radical change back then. The second, released in November 2006, was titled *Indigenous governance at the crossroads: the way forward*. Both papers contain many recommendations that I am pleased to say have now been taken up by the government—some of which are contained in this package of legislation that we are talking about today.

When I heard the announcement by the government of the emergency provisions I was delighted. The government's action has placed Indigenous disadvantage and child abuse as national priorities, which I believe is long overdue. When I listened to the various submissions today I have found it interesting that people have made comments such as 'once in a lifetime opportunity'. We have heard a number of parties give reasons why parts of the legislation should be delayed or changed. It concerns me that many would be happier—it would appear—if nothing happened. There is a need to firstly recognise that there is a huge problem. I think the debate and the public discussion that has taken place over the last 12 months or so has firmly established that we have a huge problem in this country.

In this country we have communities of Indigenous people living in remote communities in Third World conditions or worse. I have lived in those communities and I have heard the cries of the women and the screams of the children, yet some would argue—and many have today—the issue of human rights. I think we need to focus on the rights of these women and children in these communities. How long do we delay what we need to do? I have heard a number of people today call for further delays. So I ask the question: where are the real Indigenous leaders? Unfortunately I have heard in recent weeks a number of so-called Indigenous leaders being very critical of what is being proposed. How many reports do we have to have? I heard Dr Gordon a few moments ago refer to a number of reports. The reality is that we have had lots of reports—we have had report after report after report. We have a number of generations that I believe are lost. In most communities we have got total dysfunction. This has been acknowledged by many speakers today and I believe it is an issue that needs to be treated as a matter of urgency.

There is a lack of leadership. My experience is that many of the leaders in many of the communities are in many cases the cause of the problem. We have alcohol and drug abuse, we have got poor numeracy and literacy levels, and education in many communities is almost non-existent. My opinion is that there really are no simple solutions. If we wait until we are all convinced that everything is right, we will still be talking in another 12 months. Many have raised the need for consultation. I make the point that consultation has been going on for years. My experience on the Tiwi Islands was that every dry season we ended up with a great number of people visiting to talk and to canvass various issues. This has been going on for many years now.

The intervention announced by the government will, I believe, need to be properly resourced. Improvements and changes will take generations, but I believe that this legislation is the beginning of a journey that I am sure we would all agree will deal with many of the issues in Indigenous communities. I could go on and speak at length on a number of issues but I would be more than happy to talk about issues such as permits, CDEP and community stores. Perhaps what I need to do now is stop to answer your questions.

Senator PAYNE—I missed the beginning of your remarks but I understand that your experience most recently has been in the Tiwi Islands.

Mr Cleary—Correct.

Senator PAYNE—Can you give the committee an impression about things like child protection and workers and the levels of policing in the Tiwi Islands.

Mr Cleary—I think that, of all the communities, Tiwi is fairly well catered for in relation to police—we had three full-time police officers and two ACPOs on the island. I was not directly involved in the help service but we talked to health workers on many occasions. We were told stories in relation to it and, while I was there, there were a number of instances where workers or intervention workers and support workers were brought to the islands to deal with specific incidents.

The reality is that many of the problems in the Tiwis, as in many other communities, are hidden. People are too frightened and too ashamed to talk about it. There are cultural issues and family issues. There is a fair amount of intimidation that happens as well. So it is very difficult for people to be brave enough to actually report incidents. I heard somebody earlier talk about the number of reports that occur. I would say that the actual events of child abuse are far higher than the reported cases because of the difficulty and the great reluctance that people have in Indigenous communities to report matters.

Senator PAYNE—That is certainly some of the impressions that I have received and we have received today. We have had differing evidence during the day on the question of the permit arrangements, some evidence strongly in favour of the changes proposed and some equally strongly against. I think you said you would be prepared to make some comments in relation to that.

Mr Cleary—I believe most strongly that the permit system needs to be removed. I ask the question: why do we need a permit system? What are we hiding? I believe the communities need to be open. We do have laws of trespass to prevent people from going onto private property. This particular piece of legislation only allows public access into public and township areas.

I could give you a number of instances where permits were refused for no valid reason. In fact, I had an incident myself only three weeks ago whilst I was on the Tiwi Islands. I arrived on the island to be greeted by the local policeman to tell me that the land council had called the day before and that my permit had been cancelled. I was quite angry about that, but fortunately I was there at the invitation of a number of people on the island, and a permit was hastily arranged by one of the family members.

What was interesting that day was that the permits are not checked. I spoke to the operator of the ferry service to the island. He told me that, in the whole operation of his ferry service, he has never seen anybody check a permit. I have heard questions today such as: can we compare communities with a permit to those without a permit? Probably the best example that could be given would be Daly River. If you talk to people in the Territory, I think the Daly River community is seen as probably one of the better communities across the Territory, and Daly River does not have a permit system.

We have got to stop hiding things. We have to bring things out in the open. The argument that people are using that it would stop land councils refusing permits to child molesters, drug traffickers and all the rest is a load of rubbish. People know now who is bringing drugs into communities, yet it is still happening. Why haven't their permits been revoked? It is interesting that most people on communities do know, particularly local Indigenous people. The grapevine works really well. They know what is going on.

Senator PAYNE—Thank you very much.

CHAIR—Thank you, Mr Cleary. I have looked at your publications at the Centre for Independent Studies. They are most interesting and thoughtful. You said that, as a result of your past experience, you support particular aspects of the package that you referred to. I notice in your analysis in the CIS report you said:

Education strategies need to ensure that school attendance is tied to child welfare ...

You have referred to the permit system. Would you like to flesh out for us the particular aspects of the package that you do strongly support and the reasons why?

Mr Cleary—One thing I have not really touched on too much today—and this is covered in part in the legislation—is that I hope the government in implementing the strategy will look very closely at the issue of governance. I believe that poor governance is really at the heart of a lot of dysfunction in communities. I hate to say it but there is a lot of corruption and self-interest in communities. Poor governance helps protect this. The topics of both my papers dwell on the complexity of all the layers of bureaucracy and the layers of government.

We are dealing in many cases with communities of only a few thousand people, yet we are putting in place very complex administrative structures, structures that duplicate others. Before the abolition of

ATSIC, we had ATSIC, land councils, local government, Territory government and Commonwealth government departments. These are all very confusing. To me, governance needs to be sorted out, and I think the Territory government, by heading down the track of regional shires, is heading in the right direction. But there is a need to make sure that you have got an effective form of governance to drive many of the things that need to happen. If this does not happen, then things keep falling over, as has been the history for many years now.

CHAIR—As there are no further questions, Mr Cleary, we thank you very much for taking the time to be with us today. Thank you for your evidence and your experience. It is well appreciated and well noted.

Mr Cleary—It has been a pleasure and I hope what I have had to say today has been useful.

CHAIR—It certainly has.

[4.12 pm]

GIBBONS, Mr Wayne, Associate Secretary, Department of Families, Community Services and Indigenous Affairs

HARMER, Dr Jeff, Secretary, Department of Families, Community Services and Indigenous Affairs

SANDISON, Mr Barry, Group Manager, Working Age Policy Group, Department of Employment and Workplace Relations

CHAIR—Welcome back. Thank you very much for your patience and for listening in during the day. Your service to the committee is most appreciated. If you could, Dr Harmer, please pass the thanks of the committee back to the representatives of the various departments.

Dr Harmer—Thank you very much. I will do that.

CHAIR—Could you now respond in whatever way you can to the questions that were put to you during the course of the day.

Dr Harmer—In total it looks like we have got about 100 questions now. I have got people working on them. We are planning to have them available by 10 o'clock. As we normally do, we will need to clear them through the minister. That will happen over the weekend. Given that there are so many and that there are a number of staff working on them, I am not planning to do anything with the answers now. I will give them to the committee at 10 o'clock on Monday.

CHAIR—Is there anything you can advise the committee now that may assist us before 10 o'clock on Monday?

Dr Harmer—A lot of the questions do require more time to answer. For example, even the staffing question, which was relatively simple for us, was about all of the staffing—how many are going to be in the Northern Territory, how many elsewhere et cetera—and, when you consider the number of departments involved, it is actually quite a complex coordination exercise.

CHAIR—Did any of your legal team look at the issue of compensation on just terms and the issues raised by the Law Council of Australia?

Mr Gibbons—We are still having a look at that submission, but I repeat what I said this morning: the bill provides for compensation on just terms in accordance with the provisions of the Constitution. That will involve a process that will involve negotiating with the relevant land councils on behalf of the relevant lands trust and anyone else who has a claim, with a view to reaching an agreement. If there is no agreement then the matter will proceed to court for adjudication in the court.

CHAIR—One of the representatives of the Law Council—I think it was Ms Webb QC—indicated that, in her view, because it was section 122 of the Constitution regarding a territory then the just terms provisions under the Constitution for compensation did not apply. I may have misinterpreted that but I thought that was her view, so I was wondering if you have given that point any consideration.

Mr Gibbons—My advice is that because it involves an acquisition of property and there is a constitutional provision covering the acquisition of property, through legislation we cannot exclude that.

CHAIR—Thank you.

Dr Harmer—Chair, I am advised that the Law Council's submission is not yet available on the web. We have tried to access it and have not yet been able to. If the committee has it to make it available we would be interested to see it.

CHAIR—We certainly have it and we will provide to you. Senator Payne has a follow-up question on that matter.

Senator PAYNE—One of the problems we have been trying to grapple with on this matter today is some confusion in the terminology used between the bill, the minister's language in the second reading and some interpretations around that. In the process of addressing the concerns that have been raised, I think if we can get some clarity in that it would help enormously.

Mr Gibbons—I will take that on further notice.

Senator PAYNE—I did not expect an answer immediately.

Mr Gibbons—I would just say the minister's comments about paying just compensation have been translated into draft legislation, and that is the issue that we should focus on. That provides for just compensation in the terms provided for in the Constitution.

Senator PAYNE—Yes, but compensation on 'just terms' and 'just compensation' are not necessarily the same thing, and I think that is where the problem arises. That is merely the point I was trying to make to assist in where the department was looking at the issue.

CHAIR—I apologise if I missed that little bit—I was talking to the secretary—but did you refer to section 60(2), which was specifically referred to? Senator Ludwig put that point.

Senator PAYNE—That is where we go from 'just terms' to 'just compensation' to 'reasonable amount of compensation', and it does become a little confusing.

Mr Gibbons—We will come back with a written answer. I would just say that the bottom line here is that the constitutional provision that provides for compensation will prevail. The legislation, I am advised, is drafted to ensure that there is a process to follow through with that. That legislation cannot take away the right that is provided in the Constitution.

CHAIR—Another matter I specifically raised this morning that I wondered whether you had an answer to was the ACOSS submission with regard to the definition of a 'satisfactory' school attendance. Was there a definition that you can provide to the committee?

Mr Sandison—Basically, the intent is to follow state legislation and look at their definitions of explained and unexplained absences. From there, there would be discretion for Centrelink officers to look at reasonable excuses for individuals. It is following state rules and state legislation.

CHAIR—Can we assume that means the Northern Territory rules and legislation in this regard?

Mr Sandison—The government decision was to have consultations with states, so I cannot guarantee that, but the discussions would be around what is in the existing rules run by each of the jurisdictions.

CHAIR—Thank you. If you wish to clarify that any further we would welcome any clarity.

Mr Sandison—Certainly.

CHAIR—Are there any last-minute questions for the department?

Senator SIEWERT—I would like a clarification because I may have something confused about the income management provisions. It applies to income support and FTB, as I understand it. Is that correct?

Dr Harmer—Yes. I will just ask Mr Hazlehurst to clarify that.

Mr Hazlehurst—Yes, that is correct. The income that will be managed will be income support payments and family assistance payments.

Senator ADAMS—I have a question that comes from evidence by ACOSS this morning on ATSIC and their programs. It was actually about a decision by ATSIC to not continue with their women's programs—they had been running a number of women's programs—and the comment was made that if they had not made this decision and had continued the programs maybe we would not have the problems we have today. I am wondering if the department was aware that ATSIC made that decision.

Dr Harmer—Senator, I am not sure which of the particular programs that ATSIC previously ran she was referring to. I did not hear the ACOSS evidence.

Senator PAYNE—It was not ACOSS.

Senator ADAMS—Wasn't it?

Senator PAYNE—It was the Combined Aboriginal Organisations of the NT.

Senator ADAMS—Right; I thought it was ACOSS.

Senator PAYNE—It was Ms Havnew talking about which programs had been continued and which had not been.

Dr Harmer—Nothing that I have heard about the background to the sexual abuse of and violence against children in the Northern Territory would indicate that this is a failing because of what any of the Commonwealth departments have funded or not funded.

Senator ADAMS—It was that ATSIC had their funding reduced so they decided they had to take programs out. It was they who were doing it. I just wondered if the department was aware that there were programs that were associated with women and children and domestic violence and aware of the comment

she made about things if those programs had continued. It was actually ATSIC's decision. It was not a decision of the department. I was just asking if you perhaps knew what they were.

Dr Harmer—That is the first time I have heard of that. I do not think anyone else at the table has. I do not think we have heard that explanation before.

CHAIR—Thank you very much for your advice, Dr Harmer. If there is any opportunity for an interim response, that would be good; otherwise we look forward to the responses in due course by 10 o'clock on Monday morning.

Dr Harmer—Thank you very much, Chair.

CHAIR—May I take this opportunity, on behalf of the committee, to specifically thank all witnesses who have given evidence to the committee today. We appreciate that. We know the constraints that they were under to deliver the evidence and to prepare for the hearing, and we want to say thank you. I now declare this meeting of the Senate Standing Committee on Legal and Constitutional Affairs closed.

Committee adjourned at 4.22 pm