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SENATE

COMMUNITY AFFAIRS LEGISLATION COMMITTEE

**Reference: Social Security and Other Legislation Amendment (Welfare Reform
and Reinstatement of Racial Discrimination Act) Bill 2009**

MONDAY, 15 FEBRUARY 2010

DARWIN

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SENATE COMMUNITY AFFAIRS

LEGISLATION COMMITTEE

Monday, 15 February 2010

Members: Senator Moore (*Chair*), Senator Siewert (*Deputy Chair*), Senators Adams, Boyce, Carol Brown and Furner

Substitute members: Senator Crossin to replace Senator Carol Brown for the committee's inquiry into the provisions of the Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009 and related bills

Participating members: Senators Abetz, Back, Barnett, Bernardi, Bilyk, Birmingham, Mark Bishop, Boswell, Brandis, Bob Brown, Carol Brown, Bushby, Cameron, Cash, Colbeck, Jacinta Collins, Coonan, Cormann, Crossin, Eggleston, Farrell, Feeney, Ferguson, Fielding, Fierravanti-Wells, Fifield, Fisher, Forshaw, Hanson-Young, Heffernan, Humphries, Hurley, Hutchins, Johnston, Joyce, Kroger, Ludlam, Ian Macdonald, Marshall, Mason, McEwen, McGauran, McLucas, Milne, Minchin, Nash, O'Brien, Parry, Payne, Polley, Pratt, Ronaldson, Ryan, Scullion, Sterle, Troeth, Trood, Williams, Wortley and Xenophon

Senators in attendance: Senators Adams, Boyce, Crossin, Furner, Moore and Diewert

Terms of reference for the inquiry:

To inquire into and report on:

Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009

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Committee met at 8.54 am

CHAIR (Senator Moore)—Welcome. The Senate Community Affairs Legislation Committee is recommencing its inquiry into the Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009, the Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (2009 Measures) Bill 2009 along with the Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Restoration of Racial Discrimination Act) Bill 2009.

On behalf of the committee, I acknowledge the traditional owners of the land on which we meet and pay our respect to all elders past and present.

[8.55 am]

DAVIES, Mr Ken, Chief Executive, Department of Housing, Local Government and Regional Services, Northern Territory Government

GARDINER-BARNES, Ms Clare, Acting Executive Director, NT Families and Children, Department of Health and Families, Northern Government

GREEN, Mr Alan, Executive, Department of Education and Training, Northern Territory Government

KENDRICK, Mr Robert, Acting Assistant Commissioner, Operations Services, Northern Territory Police

MORRIS, Miss Elizabeth, Deputy Chief Executive Officer, Policy Coordination, Department of Justice, Northern Territory Government

PHILLIPS, Mr Doug, Executive Director, Business Support, Department of Business and Employment, Northern Territory Government

CHAIR—I welcome the representatives of the Northern Territory government. As departmental officers, you will not be asked to give opinions on matters of policy. If the senators do ask, you will not be required to answer. It does not preclude questions asking for explanations of policy or factual questions about when and how policies were adopted. I know you have information on parliamentary privilege and if you have any other requests the secretariat, Mr Bannear or Ms McDonald, will be able to help you out. Ms Bleeser is our secretary.

We have your submission. Does anyone have an opening statement?

Mr Davies—Yes.

CHAIR—On behalf of everyone?

Mr Davies—Yes.

CHAIR—That is fine. Anybody else can jump and after that we will go to questions.

Mr Davies—Thank you for allowing us to appear today. I have brought my colleagues with me and they will assist through the discussions this morning. The Northern Territory government has made a submission to this Senate inquiry setting out, subject to operational and logistical finetuning, the proposed welfare reform and income management measures moved towards achieving established NT priorities of improving the social and economic conditions of its citizens. In recognition of the importance of the issue of welfare reform, senior executives from across the Northern Territory government appear with me today to ensure the committee has a full understanding of the impact of the proposed measures on Territorians. They have all introduced themselves, but we do have one other person, Alison McLay, who is the manager of nutrition and physical activity in the Department of Health and Families if any questions you may have around income management go to nutrition. The other members have all introduced themselves and will no doubt as well have prepared some information they may wish to either table or talk about with you through these proceedings.

We are currently witnessing an unprecedented level of cooperation between the Northern Territory government and the Commonwealth government, together with local government and non-government organisations to close the gap on Indigenous disadvantage. In addition to this cooperative work, the Northern Territory government has two strategic long-term frameworks to improve the social and economic inclusion and wellbeing of Territorians. I brought both of these documents with me. One is the Territory 2030 Strategic Plan and also the Working Future strategy, which has a real focus around 20 remote Territory growth towns and underpins our policy and our work in terms of our service delivery into remote areas of the Northern Territory.

CHAIR—Is that the 2009 document?

Mr Davies—This is a 2009 document.

CHAIR—I just want to clarify that. We had heard of that document. I just wanted to make sure we have the right one.

Mr Davies—It is. I was going to table both of those.

CHAIR—Thank you very much. We accept those with gratitude.

Mr Davies—Both the strategic policy documents, which set the high-level framework, and the 2030 plan target improving social and economic outcomes for all Territorians. The Northern Territory government supports the legislative amendments as proposed in their current form, subject to operational finetuning. The finetuning is being resolved at officer level and includes such issues as defining, undertaking responsible parenting and its application in an operational sense, ensuring the administrative burden on schools to report lateness and provide additional records is commensurate with the outcomes being achieved and not absorbing resources which are better directed towards learning. My colleague from the Department of Education and Training is available to speak further on these issues—

CHAIR—That is Mr Green?

Mr Davies—That is Mr Green. Sharing of information between Commonwealth and Northern Territory government agencies to achieve effective outcomes and possible amendments needed to the information act is another issues for us. The proposed reforms move towards the Northern Territory government's position that income management should be applied on the basis of behavioural triggers rather than on the place of residence and should permit voluntary opt-in arrangements. Whilst recognising that the legislation is to apply across the country eventually, the reality is that it has and will impact on Territorians first. Based on information from the Commonwealth government, there are currently 15,000 Territorians on income management. Taking into account people in the NTER prescribed communities who will no longer be subject to income management and people across the NT who will be subject to income management for the first time, this figure is estimated to increase by one-third to some 20,000 Territorians or nearly nine per cent of the total population.

The Territory government and its citizens must continue to be consulted on the legislation and its impact on the NT. Before the committee makes its final recommendations we respectfully invite you to consult again with the NT government to ensure that any proposed changes to the intent of the reforms impact positively and not with unintended consequences on the NT.

Turning now to the particular components of the reforms, firstly I will deal with the reinstatement of the Racial Discrimination Act. The Northern Territory government's consistent position has been that the suspension of the provisions of this legislation is contrary to the principles of good public policy. The NT government is therefore highly supportive of the reinstatement of the Racial Discrimination Act. The Northern Territory government supports alcohol management plans developed in close consultation with the community. Also supported, given its lack of effect, is the abolition of the blanket application of the alcohol register where people in urban and regional locations who have purchased more than \$150 worth of alcohol are required to have their identity recorded together with the place of consumption of the alcohol they have purchased.

In implementing the welfare reforms, unintended outcomes must be avoided. An emerging unintended outcome relates to small business owners who may be disadvantaged in comparison with larger national operators due to administrative guidelines and technology limitations of the BasicsCard. The Northern Territory government understands that the Commonwealth government is examining technology responses; however, to ensure the community is fully aware of the livelihood implications for small business in the Territory, my colleague from the Department of Business and Employment will speak to this issue.

A positive outcome of the NTER has been the improvement of community stores and the types of food they are providing. This is evidenced in the 20 August 2009 report on the evaluation of income management in the Northern Territory by the Australian Institute of Health and Welfare. At page 61, the report advises:

There was consistent evidence from all the research studies that more individual/family income was being spent on priority needs. The findings from studies involving store operators, clients, and stakeholders indicated that there had been changes in people's expenditure patterns since income management, and that people were buying more and better quality food. Over two-thirds of store operators reported an increase in sales of fruit and vegetables and healthy food. Three-quarters of the clients interviewed said they were spending more on food, with half buying more fruit and vegetables. There was evidence of improved access to food since income management and that food choices had improved with more fresh food and healthy food being purchased. These changes were also related to the licensing of stores in the prescribed communities.

The report entitled *Little children are sacred* was a precursor for the Northern Territory Emergency Response and continues to inform child protection policy developments. Whilst the NT government supports the welfare reforms as they relate to child protection, Ms Clare Gardiner-Barnes, from the Department of Health and Families, will outline some of the practical and legislative issues which will need to be addressed to ensure the reforms are effective.

In conclusion, the Northern Territory government considers that the proposed welfare reform measures move towards achieving established NT priorities of improving the social and economic conditions of its citizens and the Territory government welcomes further consultation with the committee to ensure the legislative package considered by the Commonwealth government will in fact achieve its aims and objectives where it is implemented first—that is, here in the Northern Territory. Thank you, Chair.

CHAIR—Thank you, Mr Davies. Just one point of clarification before we move to Senator Siewert: is the submission we received from the Northern Territory government the final one? We have draft written on one of the copies.

Mr Davies—The submission is one that we have sent to you at officer level. The final submission is being signed off and has to go through our cabinet processes. We wanted to make sure you had a copy. We do not expect that there will be any changes, but I will just put that caveat on it.

CHAIR—So for the time being it is available to the committee and it is still in draft form.

Mr Davies—Absolutely.

CHAIR—Okay. We just wanted to get that clear. We have until 11 o'clock, so we are going to start with Senator Siewert, then go to Senator Crossin and Senator Adams and go from there. They are the people who expressed interest immediately in questions. We do have a tendency, Mr Davies, for everyone to jump in on a line of question and, provided they are not talking over each other, that will continue.

Senator SIEWERT—Mr Davies, you suggested that Ms Gardner-Barnes had some information about the health and welfare aspects and also Mr Phillips. I am wondering whether we should hear their comments before we start.

CHAIR—Do the officers have prepared statements that they want to give?

Mr Davies—Yes.

CHAIR—Okay, that is fine. The officers who were mentioned in the opening statement were Mr Green, Mr Phillips and Ms Gardner-Barnes. Ms Morris and Mr Kendrick, do you have prepared statements you wish to give at this stage.

Mr Kendrick—Not at this stage.

CHAIR—Okay. We will start with Ms Gardner-Barnes and then we will go down the line.

Ms Gardiner-Barnes—The Department of Health and Families is currently working very cooperatively with the Commonwealth departments FaHCSIA and Centrelink to work through a number of operational issues should the legislation be passed in parliament. In particular, I just wanted to comment on some of those aspects. Firstly, we will work through a shared memorandum of understanding between those agencies to ensure that there is cooperation and agreed policy procedures at the outset. Options are currently being developed around the rollout for phased implementation. At this point in time there are some concerns at the Northern Territory government level that any implementation of reforms in this area needs to be accompanied by supports for families and children at the local level, particularly around the effectiveness of the child protection measure. In order to ensure that occurs, we would like to cooperate with the Commonwealth departments to work through options around a phased implementation process.

There are issues in relation to information sharing and data exchange, particularly around procedures for child neglect referrals that may come from Department of Health and Families, and also an agreed definition of what child neglect is. We are keen for and supportive of joint training opportunities that occur between Centrelink and the Department of Health and Families staff and we are in negotiations to develop processes for Department of Health and Families ongoing case management for income managed clients, including follow up with clients in relation to the impact of the financial counselling and money management services they may have received, processes of case review prior to income management referral expiring, and access to family and parent support programs. We would like to further explore processes for transition of clients to voluntary income management or one of the other compulsory categories so that that is done with a strong awareness and full information from the clients perspective.

We are aware that there are significant issues in relation to remote area coverage of financial counselling and money management services and in relation to the impact on others who are taking responsibility for growing up children, such as grandparents, that need to be worked through and closely considered. We believe that the effectiveness of the measure will be greatly determined by the extent of family and parent support services able to be offered to clients while they become income managed. There are current gaps in service

delivery across the NT that will need to be addressed to ensure the success of this measure. It is critical that, once a referral is made from a child protection staff member in the Department of Health and Families, income management, including issue of the BasicsCard, is introduced in an efficient manner and families are not left without ready access to regular payments.

They are some of the issues that we would like to work through collaboratively with FaHCSIA and Centrelink over the coming months. At this time we are having regular meetings to work through some of those operational issues.

Mr Green—The Northern Territory government supports the community affairs legislation. While acknowledging that there will be concerns from sections of the community in relation to the income management proposal, the perceived social and economic benefits, particularly to young children and families, is a key consideration. The actions proposed in this legislation will potentially have a significant impact on the Northern Territory public education system in relation to issues of provision, data exchange and community relationships. These issues are seen not as barriers to the legislation but rather as matters that require careful consideration if the proposed benefits are to be realised.

The proposed adoption of a behavioural rather than a location based approach to income management will bring increased scrutiny of student attendance. The Department of Education and Training welcomes this scrutiny. The department has continued to put significant resources and effort into encouraging families to value schooling and to enter into patterns of continued attendance. These efforts have been met with mixed results, and further effort and action are required and planned. Extra attendance officers are currently being located in regions closer to schools. These officers will work in concert with the efforts of school based staff and will work directly with communities and individual families where attendance is an issue.

It is clear that increased enrolment and attendance means more teachers, more resources and therefore increased costs in providing for education. The impact of income management will potentially mean the return to school of students who have previously been disconnected. These students will most likely need much more than the basic provision of teachers and resources. They are students who will be at the higher end of the per capita cost scale. They will require specialist programs and targeted intervention and support. This means higher staff-student ratios and increased staff numbers and housing. These needs will potentially be urgent, but provision will take time.

It is also clear that, with the changes to legislation as proposed, parents will be looking for confirmation of student attendance as one piece of evidence to support exemption from income management. The workload on school staff, if they are to be targeted with the provision of such information, will be significant and will detract from a focus on more critical issues, such as getting students into school and teaching those in attendance. Our recent experience from the SEAM trial tells us that this role needs to be removed from schools, where the focus should be on working with the community to encourage and support attendance. They should not be seen as being involved in decision making about income management; that role needs to sit with central and regional staff. For this occur in an accurate and timely manner, it will require significant improvements to data capture and processing systems. This will take time and new resources.

Again, the SEAM trial highlighted for us the importance of school staff working with the community to support attendance rather than being the arbiter of income related matters. Our experience tells us repeatedly that where principals and school staff have dramatically improved attendance it has been done on the back of significant effort underpinned by quality community relationships. Any role for school staff in decision making about such things as income management has significant potential to erode such relationships and undermine efforts to get children to school.

In summary, from the perspective of the Department of Education and Training, the proposed changes to legislation are supported, with the knowledge that it is in the implementation of these changes that they will be successful in the way intended or otherwise. We in education know and accept that we will play a role, but it is the particular shape and nature of this role that is critical. There will be a need for extra resources—financial, human and physical. Without a commitment to such provision, the significant possibilities for communities in terms of social and economic development and stability will not be realised.

Mr Phillips—The Department of Business and Employment from discussions with the Northern Territory business community at the commencement of income management can confirm that the business community is very supportive of this program in view of improving the health and welfare of disadvantaged Territorians. The business community—in particular, small businesses enterprises—were critical however that there was no BasicsCard from the inception and that this put them at a disadvantage compared to the national companies.

However, the BasicsCard introduction has now resolved these issues. There was a perception in the business community that the Australian government had not been proactive enough in alerting the business community to the changes. So we urge that in the extension of the program this be taken into account. The department of Business and Employment fully supports the extension of the income management to a wider audience.

Some of the impact on the Northern Territory businesses we have identified is that the extension of income management Territory wide will increase the frequency of the BasicsCard being presented to Northern Territory businesses. It is imperative that Centrelink, or the nominated Australian government agency, commences soon as possible an appropriate extensive information campaign to the Northern Territory business community. We would suggest, if this is sent to Centrelink, that it involve staff visiting the business community Territory wide, encouraging eligible businesses to become registered merchants. The current guidelines indicate that it is up to the businesses to communicate to Centrelink. We are urging that Centrelink become proactive so that when these changes come into effect on 1 July 2010 there are as many merchants registered as are required for the card.

The Centrelink visitation program could be developed based on the knowledge of how many BasicsCards are in a particular area. This is information that businesses will have no knowledge of. As a result of that, they will not know what the potential demand in a particular area is. As in the case of the launch of the income management program, there is a requirement for information seminars, display materials and signage identifying the businesses that accept the card.

There is some criticism of the current system for the BasicsCard in the business community. One of the first criticisms is the fact that at the checkout it is up to the knowledge and awareness of the shop assistants to determine what particular items can be purchased using that BasicsCard. We have had examples where music stores and flower stores who are not eligible for the BasicsCard have lost sales because someone has presented the BasicsCard in a variety store who happens to handle CDs and flowers and these get through the system because of a lack of knowledge by those at the checkout to determine what can be purchased using the card.

So we would suggest that as matter of urgency a system be developed linking to the cash register a bar-coding system that identifies non-complying products and blocks them being processed through the system. This would then take the human element and interpretation out of it, which we believe is a certain issue at the moment. The system would have to be easily and cost effectively interfaced with the cash register systems utilised by all businesses, both large and small, so as to reduce the impact on merchants.

The second criticism of the current BasicsCard processing is a difficulty of BasicsCard holders determining the amount of credit left on their card at any one time. Currently the system works as if it were a normal credit card and the card is not presented until after all the items go through the cash register. This often leads to the embarrassing situation for the cardholder where they have insufficient credit to make a payment for that particular purchase. This also creates a potential waste situation for the business in that some of the food cannot be reshelfed and there is an additional labour cost to restock the shelves. There needs to be some form of accessible scanner that the cardholders can use in privacy to determine the balance prior to getting in a queue at a checkout.

We probably also need to look at the guidelines for eligible merchants. At the moment they include that the main business is the sale of priority goods and services, that there is the ability to prevent the sale of excluded goods and services, and there has to be a turnover of more than 50 per cent of acceptable goods and services to be eligible. We think that is a bit high—especially if you introduce a system whereby the checkout bar coding eliminates certain product, you could revisit those thresholds; thus enabling more businesses to be eligible to be a BasicsCard holder. I also think we need to have a close look at the current exclusions of takeaway outlets, restaurants and cafes, because I believe that, as the card is rolled out, that will become an issue for business.

Senator SIEWERT—I am interested in your comments about this now being about behaviour change rather than applying to everyone in a certain community. With the income quarantining elements of this legislation, it still applies to everybody in certain categories. It is not as in Western Australia where, if child protection identifies that your children are neglected, you then get income quarantined. With this, if you are in category E you are in. Can you talk to me about why you are so strongly classing it as focusing on behaviour change if you are at the time classed as having sufficient parenting skills? As for Newstart, it has nothing to do with parenting skills if you are on Newstart and do not have children. Could you talk to me about that, please?

Mr Davies—Sure. Maybe that is an interpretation through the chair. The issue is that when it was first applied it was absolutely a blanket process. Now there is the opportunity for people to put their case around

school attendance. There are also options in this process for people to opt in. For instance, if you are on age pension, you will not be picked up in this new income management process.

Senator SIEWERT—Unless you are classed as vulnerable.

Mr Davies—That is correct. There are more options under this scheme than the straight blanket application of everybody who is out there receiving some sort of Centrelink payment being rolled up in the exercise. So, in the context of it being a behavioural payment, there are processes in here that allow for people to work with the service providers on the ground and Centrelink to put the case that they should not be participating in the system—that they have the right family support structure around them to enable them to not have their income quarantined. That is just the context for that statement. There is more flexibility in this arrangement.

Senator SIEWERT—Ms Gardiner-Barnes and Mr Green, you were talking about supports and education issues. I have to ask the question: shouldn't these supports have been supplied anyway? If these programs had been rolled out, maybe we would not have got to the situation that we are at at the present time, so my question is: why haven't these support services been available in the past? I appreciate that they may be ballpark figures, but could you tell us how much each of your agencies is now going to be putting in to providing these services—which other communities would expect to be provided to them as an essential service?

Ms Gardiner-Barnes—In relation to the funding element, I might have to take that question on notice.

Senator SIEWERT—Sorry; in terms of?

Ms Gardiner-Barnes—The response in relation to the costs or what our department is currently contributing or intends to contribute. At this point in time there is a review and an inquiry going on into the child protection system in the Northern Territory. There has been a public statement made by the Northern Territory government that it is through that inquiry that we will be investigating a range of service gaps and potential ways forward, in particular looking at the non-government sector and the role that they could be playing in preventing and early intervention across the Territory. That is one part of the child protection system that is extremely underdeveloped in the Territory that we have recognised that we need to invest in in the future.

It is through the public inquiry that is being undertaken at the moment that we will examine those issues in more detail, and recommendations will be presented to government. My department, the Department of Health and Families, will be making a formal submission to that inquiry about where we believe the investment needs to occur and the strengthening of the system that needs to occur, including in those rural and remote communities and, in particular, the family support services that need to be provided to those vulnerable families.

Senator SIEWERT—So the intervention has been running for 2½ years and we still do not have an idea about that?

Ms Gardiner-Barnes—There have been a number of additional support programs put in place through additional funding provided by the federal government and also the Territory government through Closing the Gap initiatives including mobile outreach teams and the trialling of family support services in those remote communities. But there is still a long way to go.

CHAIR—Can we get a list of what expenditure the Northern Territory government has put into the programs that we are talking about over the last two years?

Ms Gardiner-Barnes—Yes.

CHAIR—If we could get that listed and also what you know of what further expenditure is being promised in the federal process over the next period of time linked to these changes. I think that is the gist of it. If we can get that itemised, it would be very useful.

Senator SIEWERT—It is my understanding that at this stage the federal government have not said they are supplying extra funding for this new process. Is that a correct understanding?

Ms Gardiner-Barnes—There is additional funding for financial services and counselling services but not for family support.

Senator SIEWERT—That is what I mean. Could you tell me the time lines? This comes into effect on 1 July. I realise that for those who are already on income quarantine there is a process of transition, but it does commence on 1 July. It sounds like your process is not going to be in place by 1 July. Could you give us a time

line for when the review finishes? I cannot recall when the review is finishing, but there is also going to be a period of time, one presumes, after the review has finished before the NT government makes a commitment of resources and implements that. So there is obviously going to be a gap between when this process starts and when you can provide the services.

Ms Gardiner-Barnes—Yes. So in response to that the government is looking at interim measures that might fall into place prior to the inquiry being completed if that is absolutely necessary. We will be using the Northern Territory's regular budgetary processes to ensure that, when and if this legislation gets passed and is implemented from 1 July, we can do it in a planned way. I guess that is part of our request to have a phased, place based model rollout so that we can target our resources into those areas where it will be rolled out initially.

Senator SIEWERT—You have taken the question from Senator Moore about extra resources on notice, but when you provide the information could you tell us what those services are and what they have been providing?

Ms Gardiner-Barnes—Yes, of course.

Senator SIEWERT—What interim measures would you envisage that the NT government could provide? Have you gone into that level of detail yet?

Ms Gardiner-Barnes—At a conceptual level, the sorts of services that we would like to see provided in those communities are things like parent support programs that will assist those parents who are being income managed to provide the nutrition required by children. We are looking at, for example, nurses doing home visits again in the Northern Territory so that those early stages of child development are picked up through services that probably have not been made available as widely as they could have been in those very remote communities. We are looking at an increased capacity for the non-government sector to provide services in a way that is more family friendly. Often when you have a statutory organisation providing those services you are not able to create the same level of relationship with families that a non-government agency can do quite effectively as a support agency. So building that sector is a critical part.

Senator SIEWERT—Can I ask why you have not been providing those sorts of services in the past?

Ms Gardiner-Barnes—They have been building up over time, but there is still a long way to go to provide a service to the extent of the need that has now been identified.

Senator SIEWERT—Mr Davies, you have referred several times to the rollout of the program, and you refer to it in your submission. How are you seeing that that should operate? Are you focusing on the existing communities first, or do you see it as prioritising geographical areas first?

Mr Davies—The submission suggests that we certainly would be focusing on some remote regional areas, but the submission also suggests that we go to Palmerston and start to gear up from there. Scaling up is always a challenge, particularly when you start going to remote regions, in terms of service delivery. So, just as the original income management role was phased in—it was not a blanket application across the Territory from day one; it started in the southern region and worked through the southern region communities so that proper place based negotiations with individual families could take place. It is a big logistical exercise to go and rework it, and then to put in the support structures around it that have to be properly managed so that families can be supported and case managed is going to be a big logistical challenge given that we are talking about 20,000 people being in this particular program.

I just come back to the resources from the Northern Territory government. Following the *Little children are sacred* report, the Northern Territory government committed \$286 million towards a whole raft of initiatives to support children and families in remote regions. That will be part of the costing information Clare will provide.

The other thing I wanted to emphasise is that we are not operating in the context of a two- or three-year-ago scenario. Right now in the Northern Territory under the remote service delivery partnership we have a focus on 15 communities. Those 15 communities are picked up under the Working Future document in 20 Territory growth towns where we intend to create towns that support the communities around them. Those go from small communities through to outstations. It is a huge challenge for service delivery in that context, but we are going in with very focused effort around growing these 20 Territory towns as service delivery centres and hubs where we can put these services that Clare is talking about to service these very remote communities. That is a challenge, but we are trying to turn around 30 years of ad hoc program delivery—fixed-term programs that were funded for a year and then turned off. It is a big initiative that is going on. It is supported at the moment

by this massive investment in housing by both the Australian government, principally, and the Northern Territory government. So we want to see these 20 Territory growth towns become the service delivery hubs for the services that Clare is talking about.

Senator SIEWERT—Does that mean you are intending that the rollout should focus on those 20 towns?

Mr Davies—Each of those towns picks up a region and has a footprint of a number of smaller communities or outstations around them, so that may be one of the ways that we deal with this. We will have to work with FaHCSIA and Centrelink on the particular areas and about where we are going to start, but of course the intention is to have this applied right across the Territory in that context. So right upfront, in terms of learning the lessons we need to learn, we want to go where we will be able to experience success in the first instance and be able to direct resources as quickly as we can into supporting what is quite a substantial change, particularly in terms of case management of individual families.

Senator SIEWERT—So it is likely that the 20 towns will be the focus of the rollout.

CHAIR—I think Mr Davies has said that that is not agreed yet.

Mr Davies—No, but I would expect that that is what we would be advocating. Obviously a place like Palmerston is not one of the 20 Territory growth towns, but a place like Maningrida-Wadeye, which is the biggest Indigenous community in Australia, is certainly a place where we would be wanting to go. But in terms of time frame and which communities are actually identified for the first stage of the rollout, we have not done that work yet.

Senator SIEWERT—Where are those 20,000 that are identified and that will now be included located?

Mr Davies—In terms of the benefits that they are receiving and given that they are Centrelink recipients, they will be in regional areas—Alice Springs, Tennant Creek, Katherine—and they will be in the suburbs of Darwin.

Senator SIEWERT—You obviously have an idea of where the bulk of those people are.

Mr Davies—One of the areas where there will be a big group of people that we think will be picked up under this framework will be Palmerston so that is one of the areas that we are proposing we work with in terms of the first stage of the rollout.

Senator SIEWERT—Could I ask Mr Green for your remarks around the provision of additional teachers, principals engaging? Again, it seems to me that it is a fairly obvious process that needs to be undertaken I understand where you have got a significant increase in attendance and continue engagement with schools is where principals have been taking a very strong interactive process with the community. It seems to me it is not rocket science to work that out and, again, my question is: why hasn't it been happening in the past, and you do not necessarily need income management to achieve those outcomes?

Mr Green—No, that is right. The point I was trying to make in that brief statement was that enacting the legislation is a point-in-time exercise. Of course we are planning now for how we address issues of attendance and keeping kids in school in targeted schools; we are having some success in some areas and rethinking in others.

The point I was trying to make is that there will be a time lag and, if the numbers suggested here jump from 15,000 to 20,000 and the flow-on logic of people looking to provide evidence of attendance in schools and such things to be exempted from such measures, then we could potentially have an increase over a short period of time. There is a time lag between the planning and providing so that is the point I am trying to make. At the moment we are resourcing our schools on the basis of attendance and we are moving to an enrolment based provision. That is going to be a significant issue.

Senator SIEWERT—Could you just go through that a little bit: an enrolment—what did you say—based attendance?

Mr Green—At the moment we are in a transition phase from resourcing our schools on the basis of attendance to an enrolment base so that is some significant provisioning work that we are doing right now. That has enormous implications because what it means is, for example: you put more teachers in schools; you have to have houses there. So it is not just a matter of saying, 'Let's do it'; it actually takes a long time to plan and provide for that simple policy shift. That is the sort of thing I am talking about.

Senator ADAMS—Can I just continue on that? Just looking at the statistics from the ABS, surely as a territory you would be looking at the number of school-aged children that should be coming to school and be

funding on that basis. I find this very confusing. I am from Western Australia and I am fully aware of the way that they fund their students. I just cannot work this out. You have got a certain number of children of an age that they will be required to go to school, so surely you would be prepared somehow with your funding to accommodate all those children if they actually did attend school.

Mr Green—Senator, I am not in a position to comment on previous policy decisions but what I can say is that the work that is being done at the moment is to fund schools on an enrolment basis.

CHAIR—I know there are a lot of questions around education, so it is just going to flow between senators.

Senator SIEWERT—You talked earlier around putting attendance officers in each—sorry; I have made a series of notes and I am just checking: an increased number of attendance officers. Could you tell me about the attendance officers; what it is intended that they will be doing; have you done that in all regions yet; and what are the resource implications?

Mr Green—There are attendance officers in regions now as of just recently—this year.

Senator SIEWERT—How many and in which regions?

Mr Green—At this point in time we have one located in each of six regions. So the scope of their work is quite significant. The critical issue of attendance is driven fundamentally out of the work of the school. But the role of the attendance officer is seen as a significant support there and they will have a multiplicity of functions. They will certainly work with the school staff and make links where necessary between the community and the school. They will be a point of contact with families, particularly for those where their children are not coming to school. They will on occasions, if necessary, sit down with the families on behalf of the school and negotiate different attendance plans and strategies to get kids to school. At the end of the day, if necessary they will be the deliverers of correspondence which suggests that there will be a change in the approach where those children consistently are not coming to school. So their role is quite sweeping and it is going to be one that really requires them to work closely with local school communities, the teaching staff and the principal.

Senator SIEWERT—How many schools are we talking about overall and in each region?

Mr Green—I think—and this is a rough but reasonably accurate answer—there are about 150 schools in the territory and we have six regions. It is not an equal spread. For example, obviously the regional of Darwin has far more schools than the region that encompasses Alice Springs. So it varies. Where there are fewer schools there is usually more distance so it evens itself out in terms of workload and those sorts of things.

Senator SIEWERT—But if you are talking about one attendance officer per region then you are talking about a number of schools that they are dealing with. So resources are still thinly spread.

Mr Green—At this point in time. Again, though, to go back to the critical point: the fundamental work around getting kids to school needs to rest with the school.

Senator SIEWERT—So how are the schools being resourced individually to cope at an individual school level with school attendance with the intensity that is required?

Mr Green—My sense is that our schools, particularly those in the remote areas, are very well resourced. Despite the fact that we are in the process of changing the way we resource them, my experience is that they are exceptionally well resourced with quite a number of persons on the ground able to not only teach students but also develop those important relationships with the community and follow up on individual students in cases where they are not attending. The issue for us is one about changing the culture and the mindset around valuing school. Yes, there is also always a resource need and more resources will always be useful. But in our SEAM trial the schools that have been successful have been those that have actually built practices around strong community relationships.

Senator SIEWERT—I was going to go into the SEAM trial. Can you tell us some of the outcomes from the SEAM trial? I believe it has been going for about a year.

Mr Green—I can give you some statistics, and I will do that. The issue in reading the statistics is that I cannot be absolutely 100 per cent positive that the results are because of the SEAM trial because of course we have got some statistical gains and losses in schools that were not in the trial. I will pick out a couple of examples.

CHAIR—Can we get the document to which you are referring tabled? Keep going with your argument but if we for the sake of the committee could get the document tabled so that we can have a look at it then that would be very useful.

Mr Green—Just as a quick reference, Ntaria school in 2008 had an attendance rate of 62.9 per cent. In 2009 it was 73 per cent attendance so there was a significant increase. Attendance at Clyde Fenton Primary School Fenton private school in 2008 was 80.3 per cent and in 2009 it was 82.7 per cent. Of course that is average attendance. I have picked out those two examples because I know there has been significant work there led by the principals of those two schools.

CHAIR—Do you have a figure for Hermannsburg school in that list you are reading from?

Mr Green—That is Ntaria. So that is 62.9 per cent in 2008 to 73 per cent.

CHAIR—Members of the committee have visited that school and spoken with some of the people there about it. There are certain places that we have more personal knowledge of. Senator Crossin knows them all; we just know certain ones.

Mr Green—That is one of those schools that we are having a very close look at because there is a 10 per cent increase on the back of some interesting strategies but also fundamentally some really good work on building long-term relationships with the community.

CHAIR—Does your table have numbers as well as percentages?

Mr Green—Yes, I do have numbers as well as percentages.

Senator SIEWERT—That goes back to the point that you were talking about: it is the school's capacity to engage with their communities and the strategies that they are using to engage with the communities and make school relevant. I was interested in your comment about changing the culture and mindset about school. Surely it is also about making school relevant to the community and engaging students in a meaningful way.

Mr Green—Always.

Senator SIEWERT—The Hermannsburg example is one that the committee has actually been to and been in the classrooms. To me it seems to be exactly what you were saying—the principal's leadership and the school's ability to engage the students.

Mr Green—I absolutely agree.

Senator SIEWERT—Rather than using a punitive approach to try to get kids to school. You can get them to school but they may not necessarily engage, so what are the educational outcomes even if you are forcing them into school?

Mr Davies—The issue here is that, in relation to student attendance, as Alan was saying, the school has got a huge role to play and they are well resourced. They have Aboriginal and Torres Strait Islander education workers that engage with families. There are large numbers of Indigenous employees in our remote schools that actually come from the communities in which they live. In terms of the measure itself and the SEAM, whether you call it a punitive measure or not, it is part of a kit of support mechanisms that will be needed to assist families to get the attendance rates to improve. So housing is one element and good nutrition programs are another, along with quality services and a quality school. I would not want the committee to go away thinking that all of this was just the school's responsibility to do.

Engagement with the community is really, really important, but in terms of service delivery, one of the advantages of what is being proposed is the wrap around these families that will assist the support mechanisms to improve the attendance outcomes in schools and not just leave it as the sole responsibility of the school principal and the school staff. I think it is really important that we look at this holistically. We have got real challenges here, particularly in our remote schools. To get the right outcomes, students need to be attending nine days out of 10. That is what our data is showing us and that is what we are aiming for—to get a 90 per cent attendance rate. Even where there is improvement, we have still got a way to go, but it is about housing, health and the whole wrap around these families.

Senator FURNER—The committee was out at Yuendumu in 2008 and we were fortunate enough to be there at the opening of the new pool. The concept around that was 'no school, no pool'. I am wondering whether you have any feedback on how that program is still going?

Mr Davies—The 'no school, no pool' notion has been very effective. Once you start going into central Australia, for those of us who know the environment, and you get into winter, I am not sure that is the best and

most effective measure. Certainly, when it is warm and hot, it is quite effective. The challenge for the pools in the remote context going forward has been maintaining their serviceability. The rollout is one element of the pools but the capacity at the community level and through the shires to fund them and make sure that they are properly supervised is another. There has to be a trained lifesaver on duty and then there has to be an ongoing program of chlorination and so on. So there are fabulous outcomes in terms of attendance at the right time of the year. It is great for students' health, but recurrent expenditure is required to maintain those pools. If you go to shires they will say it is a real challenge for them in terms of the ongoing cost. We have not actually done the formal studies on cost effectiveness. There are good outcomes at the right time but ongoing challenges around maintaining their serviceability and having the right staff there to supervise the students or the children when they are in there.

Senator BOYCE—Are all the pools operational currently?

Mr Davies—I would need to take that on notice and get some advice.

Senator BOYCE—Perhaps you could tell us what the percentages are in terms of pools.

Mr Davies—Sure. I will definitely take that on notice and get that back to you.

Senator SIEWERT—Have you done a formal evaluation of the SEAM trials?

Mr Green—We have collected data from our end about changes in attendance patterns and about numbers of families that have been referred through to Centrelink. We have given feedback in an ongoing way through our committee connections to Centrelink around some process issues that we think exist. I understand there is an evaluation underway from the department's perspective. We have focused on making sure that we have kept tabs on the data of attendance and what is happening in each school in terms of the number of families that are referred.

Senator CROSSIN—How many is that, Mr Green?

Mr Green—Since January 2009, there have been 234 children identified by government schools as being at risk, 98 as identified as being in scope for the trial and 38 individual attendance plans created. Where there has been a continued pattern of nonattendance, we have developed interrelationships with the families around the writing of an attendance plan which has put into place some supports and strategies to make sure the students have got to school. We have worked with the families to make sure that everyone is meeting their part of the deal. From those, 17 families have been referred to Centrelink and, of those 17, two families have had payments suspended.

CHAIR—Is that on the same piece of paper, Mr Green?

Mr Green—That is on a different piece of paper with scribble all over it, but I am sure I can get a clean one.

CHAIR—Thank you very much.

Senator SIEWERT—On the evaluation process, I am keen to look at those comments that you made around the engagement in schooling. You said that you had similar results from non-SEAM schools. I am interested in comparisons. It sounds like you have not done that formally.

Mr Green—No, you are correct. We have not done that formally.

Senator SIEWERT—Do you understand that Centrelink, as part of their trial, their evaluation, will be looking at that level of detail?

Mr Green—I understand so.

CHAIR—And it would be your data, Mr Green?

Mr Green—Absolutely.

CHAIR—And you have that data?

Mr Green—Yes, we do.

CHAIR—One of the big issues for this group consistently has been data and the effectiveness of data and the ease of getting it. From your perspective, for the issues that Senator Siewert has raised about evaluation, the department maintains the effective data which is necessary to make that assessment.

Mr Green—I believe so.

Senator SIEWERT—But you have not done it; you are leaving it up to Centrelink. You have not interpreted that data. That is Centrelink's job, is it?

Mr Green—No, what I am saying is that we are certainly interpreting our own data—

CHAIR—For your own purposes.

Mr Green—For our own purposes in our efforts to get kids to go to school. The evaluation of the SEAM trial, as a mechanism to support that, is outside of our operations.

Senator SIEWERT—And we need to ask Centrelink for that data?

Mr Green—Yes.

Senator CROSSIN—Mr Green, 17 families have been brought to the attention of Centrelink and two families have had their payments suspended. At what point does the Department of Education and Training then interact with what you do, Ms Gardiner-Barnes? Surely we are not suspending payment from families without interaction with the Department of Health and Families. Where does that interaction start to happen?

Mr Green—Interaction with other government agencies around supporting families is a constant part of the work of schools, quite particularly around the attendance plans where there is some focus thinking and planning about what needs to be done to support this particular family to get to school. That is where some of those associations would formally exist. I can say quite confidently that our schools across the board would make contact with whatever support services they can to support families and kids to get to school. It is a constant association.

Senator CROSSIN—Your evidence to us earlier though was that this is quite a large impost on schools. I have had those discussions in some of these schools and I realise this. To what extent then is the Northern Territory government resourcing the SEAM trial? What energy, effort and people have you put into it over and above the normal school formula? Secondly, you have also suggested to us that perhaps Centrelink needs to take a larger role in this or perhaps the Commonwealth government needs to look at putting additional people on the ground to take some of the burden off the schools.

Mr Green—With respect, I am not sure I suggested that. Let me go back to the SEAM trial and connect it into this legislation. One of the issues we found in the SEAM trial was that it was very difficult for schools—principals in particular—to maintain a relationship with the community that was built on developing a positive association encouraging and supporting families to see school as a positive thing on the one hand but on the other hand being seen as the instrument by which their benefits were removed.

Senator CROSSIN—So that is one of the problems, you think, of—

Mr Green—We took some action in our role in supporting schools. We made a decision early in the trial to do that centrally. So we have been monitoring the attendance of those schools. We rely on schools to provide us with that data but we have been monitoring that centrally and, where that connection needs to be made, we have been making it from the central office point to Centrelink directly so that the principals in their face-to-face conversations with community members can actually quite honestly say that they are not the instrument of that action.

Senator CROSSIN—I think that is a good measure because in my discussions with some of those principals early in the trial they were grappling with being the supporter and the enforcer, essentially. So if that has occurred I think it is a good thing. I just want to go back again to the resources the Northern Territory government has put into capturing these children who do not go to school before plans come up. Secondly, again, even though you might be reporting centrally, do you think there is a greater need for more social workers at the Centrelink end or more personnel attached to Centrelink to assist?

Mr Green—The anecdotal information that has been passed on to me throughout the course of the SEAM trial is that there is a workload issue. That has certainly been reported to us from Centrelink in terms of their capacity to get out and actually engage with people to the point of almost disconnecting them from their benefits. That is problematic. The fact that we have two families out of 17 who have had their payments suspended suggests that there are also some question marks there about understanding the appropriate signs and triggers or what constitutes significant effort and appropriate attendance. I do not think that has yet been resolved. At the end of the day, that could absolutely be supported and improved by better resourcing. I would never suggest that more resources would not make a difference.

Senator CROSSIN—But what if the Northern Territory government puts additional Aboriginal education workers or support workers in these schools as well?

Mr Green—I have two quick comments. The location of attendance officers in regions this year is linked to the information that we have gleaned from this exercise. We are also in the process within our department of a regionalisation restructure. So we are in the process of putting a significant number of resources not just linked to but linked to schooling provision across the board out into regions. It will be much more closely linked to the work of people in classrooms in schools. For example, we are in the process of moving 30 per cent of our curriculum resource base from the central office position out into regions to work much more closely with schools. That is not directly linked to attendance on one level but on another it is because it is about how you teach in a classroom, how you develop relationships with kids and how you encourage them to attend. That is just one example of a number of resources that we are pushing out into regions at this point in time.

Senator CROSSIN—Mr Davies, I just want to clarify something for myself. On the first page of your submission to us you referred to a report of the NTER Review Board. Is that the report that Peter Yu headed up?

Mr Davies—Yes, the independent review of the NTER. That is correct.

Senator CROSSIN—It is not the review that the Northern Territory government have done, is it?

Mr Davies—No.

Senator CROSSIN—It is the Peter Yu report.

Mr Davies—Yes. But we jointly participated in that in terms of the interactions that took place all around the review process.

Senator CROSSIN—A lot of people keep referring to the evaluation that the Australian Institute of Health and Welfare did, but of course there is also the independent review headed up by Peter Yu—

Mr Davies—Peter Yu, that is correct.

Senator CROSSIN—and Marcia Ella Duncan, which I think people have forgotten about. Could I ask if the Northern Territory government participated in, observed or went to any of the many hundreds of consultations that FaHCSIA conducted last year in reviewing aspects of this program?

Mr Davies—I cannot give you the exact numbers of officers who attended. We worked very closely with FaHCSIA and with the head of the state FaHCSIA on the consultation process. Concurrently, we were conducting our own consultations around an outstations policy that we are developing as well in the Northern Territory. So we were very cognisant of where the consultations were going on. Where we had resources and officers in those communities, people certainly attended, but I do not have the raw numbers with me at the moment.

Senator CROSSIN—I suppose what I want to go to is whether or not the Northern Territory government have a view that the outcome of those consultations truly reflects what was said and is therefore reflected in this legislation.

Mr Davies—I think it would be fair to say that the outcomes of that evaluation work that was done were discussed with us. Certainly Elizabeth and I had a lot of consultation around the alcohol management regime. In discussions that came out those evaluations we also talked with Graham Kelly, who was the Assistant Commissioner of police, about those review outcomes. So our view really was that, in terms of that consultative process and the findings that came out of it, we were quite comfortable with the fact that there had been extensive consultations across the Territory. We were also comfortable with the broad outcomes that have led to where we are now, that process and where we have gotten to around these proposed changes. Again, we are supportive of that, given that we are of the view that it was well consulted.

Senator CROSSIN—Ms Gardner-Barnes, I do not know if you can answer this or whether Mr Davies can, but we know that Tony Abbott was in town over the weekend and was asked a question about this legislation. He referred to comments made by people at Yuendumu and Hermannsburg. We will get a chance, I am hoping, in the next couple of days to specifically ask those communities about that. But in relation to the view of the Northern Territory government, is it time to move the income management regime to the next level? Let's face it—this is the centrepiece of controversy here. Is it time to move it to the next level, to give some people independence but to capture others who need help? Or do we need to leave it in the restrictive form that it is currently in for a longer period of time? You would have direct impact in working with families on the ground, so I am wondering if your department has a view about whether we need to leave things as they are for another two or three years or whether we are ready to move to the next stage.

Ms Gardner-Barnes—From a child protection perspective we think it is time we moved on and looked at some broader policies. In addition to what has been put on the table already, there are links with, for example, the alcohol courts that we need to consider—outcomes that are affecting children and families. So there is a broader social policy perspective, I guess, that we need to examine if we are going to get to the heart of some of the issues really impacting on children and families at the local level and some of the barriers to children getting effective parenting, family support, food on the table et cetera and access to school every day. I guess, from a child protection perspective, the introduction of the child protection measure is a very positive way forward and will provide us with a direct link with some of those children facing neglect issues on a daily basis to ensure that they are picked up through that measure and there is a stronger focus in particular on that group of families.

Senator CROSSIN—So you are talking about non-Indigenous now as well as Indigenous; is that what you are saying?

Ms Gardner-Barnes—Correct.

Senator SIEWERT—Senator Crossin, can I ask about the alcohol courts, or will you follow that up?

Senator CROSSIN—I am assuming, in that, you are saying to us that there are people who go through the alcohol courts who are found guilty yet are not subject to income management, so this legislation will allow that to occur.

Mr Davies—Could I ask Elizabeth to have a go at answering that.

Miss Morris—We are undergoing a review of the alcohol court at the moment to see how we can set up the court to better assist people who have an alcohol problem which has led to criminal behaviour. Where the alcohol court operates in the Territory it operates for both Indigenous and non-Indigenous people. One of the things that could be a useful tool for the alcohol court in constructing some kind of sentence or order lies around income management. If somebody is an alcoholic and is unable therefore to properly manage their finances, part of the order of the court could be that they are on income management for the length of the order or for a certain period of time in order to assist them with that particular problem. At the moment that does not occur, but the Australian government have indicated that they are very willing to have discussions about how we might be able to link those two things so we pick up some of the most vulnerable people no matter what payment they are on and no matter where they live.

Senator CROSSIN—Mr Kendrick, in this legislation there are changes to the powers of the Australian Crime Commission in that they will now only be involved with very serious crime. I suppose this recognises the role of the Northern Territory Police and their significant presence now in some of these remote communities. I just wondered whether you wanted to provide a comment about that. We spend a lot of our time talking about income management, but there are a whole raft of other positive changes that have been happening in the last couple of years, of which policing is one.

Mr Kendrick—Certainly in the way they affect the roles and relationships of the Australian Crime Commission with us we are supportive of the proposed changes. The only issue, from an operational perspective, for police is that we have had successes with the legislation in its current format, particularly with our search powers with intoxicated persons in private premises or searches of vehicles. With the legislation coming in the way it is, we need to look at alternative means to address early intervention with persons who are intoxicated, particularly in the house, which can lead to domestic violence. There have been a lot of positives with the legislation in that respect.

Senator CROSSIN—Will this legislation restrict that?

Mr Kendrick—Section 18 of the Northern Territory national emergency response legislation is linked with our powers pursuant to the Police Administration Act, which gives us the right in prescribed areas to enter premises where we suspect there are intoxicated persons, which is really early intervention type legislation.

Senator CROSSIN—So if prescribed areas are no longer an element of this program, you are saying we would need to have a look at section 18?

Mr Kendrick—Certainly with section 18 and the full impact on it, and the reintroduction of the Racial Discrimination Act, it is something that is an issue for us. It is not a show-stopper per se, but it does give us the power in these prescribed areas—particularly in the remote communities and town camps—to intervene if we suspect that there are alcohol-drunk persons, et cetera

Senator CROSSIN—In the proposed legislation is there a view that perhaps section 18 will no longer be applicable?

Mr Kendrick—That is my understanding.

Senator CROSSIN—Okay. I have one question for Mr Phillips, and that is about the application of the BasicsCard across a range of businesses. We often talk about Toyworld in Alice Springs, essentially. I am on a mission to prove—Mr Green might want to back me up here, or he might want to pedal backwards on this—that toys are part of a child's development, so there is an educational reason why you might want to actually use your BasicsCard at Toyworld. I am wondering what work the Northern Territory government is doing with the federal government, and with the minister in particular, to try to extend the application of the BasicsCard to specific stores that might sell fishing gear or toys, for example, so that businesses are not missing out but kids are not missing out either.

Mr Phillips—It is one of the concerns the business department has, that there are businesses out there, that have legitimate products that should be able to be bought using this card, that cannot get involved in it. I suppose going back, the department of business was involved early when the income management system was introduced, and it was our department that actually alerted FaHCSIA and Centrelink to some of the issues of businesses. So we have had a long history of working with Centrelink and FaHCSIA. You mentioned earlier the interface between the Northern Territory government and Australian government agencies and the clients. We as the business department coordinated a lot of that interface in Katherine, Tennant Creek and Alice Springs. So we have a history of working with Centrelink and FaHCSIA. We are very keen as a business department to continue that and, in the case of identifying businesses that we believe are disadvantaged, we will continue, as we have in the past, to alert the Australian government of those businesses that we believe should be considered.

We mentioned earlier, in my submission, some of the restaurants and cafes. A lot of the food they sell is very high quality and nutritious food, and for them to be blatantly excluded puts them at a disadvantage.

Senator CROSSIN—So the question is: why shouldn't you be able to use your BasicsCard if you wanted to go and buy pizzas for the night, or something like that?

Mr Phillips—We have also said in our submission that we need to have a system in place where we get away from this turnover of businesses. It should be the product they sell. Even if only 15 or 20 per cent of their turnover is on the items we want people to use the card for, there should be a system in place at the checkout where the register takes that judgment away, or the system takes that judgment away from the individual. If toys are deemed appropriate they should be able to use that card to buy toys, which become educational. If there is food in cafes that qualify, they should be able to use the card. So get away from the actual turnover of the business but delve down further to see what products and services each business sells which the government determines should be able to be purchased using this BasicsCard.

CHAIR—We will continue with questions on the BasicsCard. Senator Siewert has a couple more questions on education and then we will go to justice. Senator Adams.

Senator ADAMS—Mr Phillips, you stated earlier that the BasicsCard was a problem for small business. Could you give the committee an idea of the process small businesses have to go through to apply to be eligible for the BasicsCard and how it is determined that they are appropriate businesses to have the BasicsCard?

Mr Phillips—At the moment, Centrelink's guidelines are based on turnover. You have to have 50 per cent or more of the eligible goods in your business to be approved by Centrelink. There are some discretions in the system where exceptions can be made, but normally a business that goes online to apply for BasicsCard merchant approval must have 50 per cent or more of the accepted goods and services. If it does not comply, it would be eliminated. Our argument is that we need to look at that to make sure we relate it back to the goods and services being provided, whether its turnover is 20 per cent, 10 per cent or five per cent of the business's activity.

Senator ADAMS—Is there a subsidy available for these smaller businesses to get themselves online with the software and the other things they need to operate?

Mr Phillips—The BasicsCard operates the same as a normal credit card. It uses the EFTPOS system and it requires a PIN. If someone has a facility in their business to take credit cards, they will take the BasicsCard. That was one of the requirements we put back to Centrelink when they were developing the BasicsCard, that

there should not be abnormal expenses for the businesses who become merchants for the BasicsCard. That was very well achieved. That is not the issue; the goods and services that you can buy with the card is the issue.

Senator ADAMS—What has happened in relation to using the BasicsCard in the Kimberley and in South Australia and the central area? Has anything been done there?

Mr Phillips—We are focused in the Northern Territory. Our department does not go outside our borders. We work with the businesses located in the Northern Territory. That is probably a question that should be addressed to Centrelink.

Senator ADAMS—Thank you.

Senator FURNER—In your opening comments, you made some comment with respect to some difficulty people have had checking their card balance. One report I saw said that 94.6 per cent of recipients indicated they knew how to check their balance. Could you elaborate a bit more as to why there was an issue with people being able to check their balance? I also understand that in July last year the government introduced the free call number so people could access their balance. I imagine there would have been a reasonable reduction in issues associated with checking their balance as a result of that as well.

Mr Phillips—Our comments come from what businesses have told us about what happens at the checkout. I have experienced this a number of times at Woolworths. You go to the checkout and the person in front using a BasicsCard and all of a sudden it is beyond the limit and—

Senator BOYCE—Mr Green is nodding for the benefit of Hansard.

CHAIR—That does not happen with any other form of credit card only the BasicsCard?

Mr Phillips—It happens with others.

CHAIR—Using a card of any kind, it is difficult to know. You are saying that it is more relevant with the BasicsCard.

Mr Phillips—That is correct.

Senator FURNER—How often would that occur?

Mr Phillips—To give you some background on how our business department works, I have 10 client managers who spend all their time visiting businesses Territory wide. It is an issue put up regularly during the visits to the business community.

Senator SIEWERT—I want to follow up on the issue about using the BasicsCard along the lines that you suggested: in cafes et cetera. The issue that has been raised with me is that you then have the staff of shops having to say, 'I'm sorry; you can buy this but you can't buy that.' In other words, they start policing the system. We have had some negative feedback about the fact that people do not want to put their staff in that position, and in fact staff do not necessarily want to be in that position. Have you talked about that issue with small businesses?

Mr Phillips—That is an issue—that staff are resistant to being the determiner of what is purchased and what is not. The other problem we have is that in the Northern Territory, like a lot of places, the turnover of staff in these checkout positions is quite high. You might educate your staff on what they can accept and what they cannot and then have a change of staff, or a staff member who has a different interpretation or a misunderstanding of what is required. Hence, what the business community is saying to us is that we need some form of electronic system that takes determining what the card can and cannot be used for out of the hands of the checkout employee. Tying that back to some bar coding has been suggested to us as probably the simplest way that can be done.

Senator SIEWERT—We are not going to solve the issues of the BasicsCard right now, but the issue with the bar coding is that you still have people bringing something up to the checkout and it going, 'Beep! No, you can't have that.' So I am not necessarily convinced that it is going to solve the issue of people getting to the checkout and having things that they are not allowed to purchase on the card.

Mr Phillips—But I suppose it takes the individual interpretation out of the equation.

Senator SIEWERT—Okay. I take your point.

CHAIR—Any more on the BasicsCard? We have a long history of having long discussions about the BasicsCard, Mr Phillips. We will go back to the couple of questions you have to finalise on education, Senator Siewert, and then we will go to justice.

Senator SIEWERT—I just want to follow up, Mr Green, on where we are up to with the education discussion. You were talking about the shift from attendance to enrolment, and I am wondering: (a) what is the time frame for that—you said that you have started that process—and (b) have you budgeted how much that is going to cost?

Mr Green—I will have to take the cost question on notice. Certainly our planning is happening right now. We have, with some of our remote schools, changed the staffing formula from this year and allocated more staffing resources to those schools.

Senator SIEWERT—Could you tell me, for those schools, what the teacher-student ratio is and whether you have an aim to achieve a certain staff-student ratio? When we were in South Australia in the APY Lands last year, their staff-student ratio was much better than the Northern Territory staff-student ratio. If you could comment on that it would be appreciated.

Mr Green—Are you referring to the teacher-student ratio?

Senator SIEWERT—Yes, the teacher-student ratio.

Mr Green—I will take those questions on notice, but a general response is that, within the current industrial agreements about the number of students related to each teacher—and I think it averages out at about 17 or 18; we will obviously work to those figures—the goal is to increase the number of teaching bodies in schools up to the enrolment figure rather than the attendance figure. Where we have an advantage, I think, over other jurisdictions here—and it is one that we are quite happy to keep, in a sense—is that we do have a number of support persons available in the classroom. So if we work on an adult-to-student ratio we are actually quite well provisioned. That is really important, particularly when you are in remote areas where you need people who actually speak the language, that have that relationship with the kids et cetera. That is a really valuable asset. But I can certainly provide those figures.

Senator SIEWERT—You said that you are starting to implement the changeover to the enrolment focus. When will that be completed?

Mr Green—Part of the answer is, ‘How long is a piece of string?’ Take, for example, a place like Elcho Island—Shepherdson College. We have put a number of extra teachers out there and could put another five or six out there, but we need the housing to put them in. So the answer to that question is: as housing and other resources allow. So it will be done incrementally and as quickly as possible.

Senator SIEWERT—So you are taking on notice to provide me with the amount that you have allocated to do that and the time frame.

Mr Green—Yes.

Senator SIEWERT—Could you do not only this financial year but also your budget forecasts for the next couple of years, please?

Mr Green—Yes.

Senator ADAMS—If every child in the Northern Territory that is of enrolment age came to school then would you be able to accommodate them? What would happen?

Mr Green—The answer to your question is yes, in one form or another.

Senator ADAMS—What does that mean: in one form or another? Just to give an example, one year when I was at Hermannsburg there were 25 children at school and the next year was a good year, when there was a change of principal, and the school was then trying to go to cope with accommodating the extra children. I really would just like to get an idea of overall as to if every child turned up to school whether you could accommodate them?

Mr Green—If you Hermannsburg as an example, the rapid increase in attendance and enrolment over the last year or two has certainly created some issues around the provision of classrooms. Of course that highlights the time lag between all of a sudden people turning up and having buildings there for them to go to. The flipside of that is that that is a good example of where the students have been catered for and at the same time the attendance figures have actually increased. So they are not only turning up but also staying there in increasing numbers. So my answer, of a broad brush ‘yes, we could’, does not deny the fact that we would obviously need to find more buildings, more houses for teachers and more teachers. It actually goes back to the fact that when a child walks through the school gate there will be provision for them in one form or another; absolutely. We will not be sending them away.

Senator ADAMS—Mr Davies, as far as your 20 communities and the hubs around them goes, and as far as the remote outstation areas are concerned where you have a one-teacher school with support from community people to keep that school going, does the Northern Territory have any plans to actually close those remote community schools and somehow get the children into the bigger hub schools?

Mr Davies—I will start in answer to that question, and then I might hand across to Alan to add in any further detail. The answer is no. What we doing though as part of the hub and spoke model and as part of the focus around the 20 territory growth town is examining the best way of delivering our services. So where there is a good road network and the capacity to transport children that is certainly one element that could be looked at. Where there are existing outstation schools we will be working with those communities to make sure that the service provision is adequate and at a standard that would deliver the kind of outcomes that everybody is expecting. There is no intention to close down outstation schools and withdraw resources; what it is about is looking at the best model in terms of the service provision for education in those particular communities and their hubs.

There is a huge focus that the education and training department is now putting in in terms of creating those hubs. That goes from a ‘birth to a job scenario’, in a nutshell. The focus is on a birth to a job guarantee and keeping children in school, and building a school structure that picks up child care, early childhood programs, primary school and middle school through to years 11 and 12, with training and employment and proper VET programs. So the effort in these particular locations is being ramped up substantially to really provide a purposeful education that leads to a job and economic outcomes. Of course if somebody is in paid employment then they are not going to be subject to any of the contingencies we are talking about today.

This is about creating viable, functional and normalised communities, where there is a proper town with services. These are communities where children have an address, there is a street name, a rubbish service is consistently provided, homes that are provided are fenced and the social housing that is provided is of a standard where people can expect that repairs will be made and appropriate services provided. Alan, do you want to add anything, from the education end, to the focus on those 20 territory growth towns?

Mr Green—There is not much that I can add. Certainly our planning and our thinking around those particular communities begin with the end in mind, which is building around a guarantee, as Mr Davies said. If families understand that their children go school for 90 per cent of the time, then one day they will achieve the basic minimum standard in literacy and numeracy as a foundation and there will be a guarantee of employment. Planning back from that means talking with communities and working through what it means to have your child in a pattern of attendance that is going to get them there for a minimum of four days out of every five and to continue that through a number of years of schooling. The issues of provision of services and where they will be provided become part of a community conversation and quite localised. So it is about planning for 12 years of schooling of a family student and working backwards. It is a situational answer.

Senator ADAMS—What plans have you got concerning the policies that are set out in the legislation to get more children to attend school and for a number of the families in the smaller, remote areas where there is only one teacher and one house or one area of accommodation for that person? Have you plans for putting in more temporary accommodation if another teacher is needed? How are you going to organise that? Just to give you an example: because of the problem of crime and domestic violence occurring in the bigger centres in Western Australia, a number of families are now moving back to the outstations and, consequently, the service provision there is not adequate to deal with the numbers that are going there. What contingency plan have you got for that?

Mr Green—Again, in a sense I am reiterating part of what was previously said: where there is the capacity, with good sealed roads either now or, if it is possible, in the future, then ideally we would bus students in to a location where we can provide the sorts of quality resources that we want in any educational institution. But, where that is not possible, the challenge for us is to put the best quality of service into those outstations. In the longer term, around the 20 growth towns, there is some logic in people seeing their coming into those centres of service and resource as an attractive option. But it is something that we are going to have to work through with communities over time.

Mr Davies—Senator, just to give you an example: the Utopia region has no large hub service community but it has a service delivery centre, with a police station and a school. At a place called Arlparra, on the Standover Highway, the department has built a big middle school. The students do their primary schooling in their smaller schools and then they are being bussed into

this central community centre for their middle schooling. There is a good road network in that area, and that is one way of managing the education service provision in order to get the best possible outcomes and focus on the resources.

Senator ADAMS—This question is moving into the child protection area: how does the Northern Territory see the roles of child protection workers and schools working together?

Ms Gardner-Barnes—The focus, particularly in the early years, with the establishment of the birth-to-jobs initiative through the department of education and training is an example of where we will start to work much more closely together. We are keen to use the current inquiry process to explore options for an integrated service delivery model at the local level. This includes not just education but the police, the NGO sector and the health services so that we can provide a more holistic response and multidisciplinary approach to children and families in their own community. We see education as playing a key role in that partnership.

Mr ADAMS—Practically, in a small community you have got a child protection officer and perhaps two police officers and the school, and that individual is identified. How are you actually going to move between each of those services to achieve an outcome to prevent the income management issue?

Ms Gardiner-Barnes—One of the services that we have got in trial at the moment is the mobile family support service that plays an integral role in bringing service centres together on the remote community side and working directly with families. That service will have a key role in linking with education. There are also enhanced opportunities for information sharing at the local level that we need to explore.

Mr ADAMS—How many of those mobile services are there in the Territory?

Ms Gardiner-Barnes—I will take that on notice rather than give you the answer off the top of my head, if that is okay. I will include that in the detailed information I will provide to the inquiry on that broader question.

CHAIR—We will now move into the area of justice, which you have just moved into to an extent with that question about child protection. I intend starting with Senator Boyce and then moving through Senators Siewert, Crossin and Adams, and Senator Furner may pick up from there.

Senator BOYCE—I am not sure if I should be directing this to Mr Davies or Ms Morris—

CHAIR—Somebody will tell you.

Senator BOYCE—I am sure they will. In terms of the reinstatement of the RDA, what legal advice has the Northern Territory government sought around what the potential effects of that might be?

Ms Morris—I am not aware of any legal advice in particular in relation to the effects of the Commonwealth reinstatement.

Senator BOYCE—Have you looked at all at whether there are any legal implications to the changes that are proposed?

Ms Morris—No, not for the Territory. The legal implications, in my mind, would be for the Commonwealth in relation to their legislation and their particular program.

Senator BOYCE—Nevertheless, if there were to be legal implications and cases, it could affect the running of—

Ms Morris—The provision of various services that we will be required to support.

Senator BOYCE—Yes, in the Northern Territory.

Ms Morris—For example, the pornography program, which is one that is funded by FaHCSIA through the Department of Justice. But that is an education program about the Australian classification system. The effect of the legislation on whether or not pornography is restricted in a particular area is a different issue to the actual educating of people about what the different levels of classification are. Whether or not the pornography restrictions that are in place under the Commonwealth act may or may not be special measures under the Racial Discrimination Act does not affect the running of our particular program.

Senator BOYCE—I guess my question is slightly broader. Are there any areas at all where you think the special measures might be compromised or affected by the reinstatement of the RDA?

Ms Morris—We have not developed any specific legal advice around that.

Senator BOYCE—Okay. That was the main question I had in that area. The other area I wanted to ask about was that a number of the submissions we have received suggest that the cases or the outcomes of any

focus on sexual abuse and sexual violence against children has really only culminated in a few cases of teenagers fooling around, so to speak—17-year-olds and 14-year-olds. Could you talk a little bit about what the program has involved and what you have found?

Ms Morris—My jurisdiction would be the court outcomes. Those outcomes are reported through various processes throughout the year. It is difficult in relation to classifying various offences which occur around children. You have sexual assault and those offences are fairly easy to classifying but in relation to data being sought on abuse or neglect of children, those general terms are quite difficult then to pull out the exact data, what effect has this whole raft of legislation and programs had in relation to the matters which are processed through the court. The other issue is that there is obviously a lag in relation to charges and the finalisation of court proceedings. So it is difficult to link various projects and legislation with the final court outcome. The Northern Territory government itself is currently working on two major pieces of legislation which were suggested and recommended in the original ‘Little Children are Sacred’ report, which we hope will make that court process achieve better outcomes for victims of abuse and violence and that is in relation to reform of the committal system and the introduction of the uniform Evidence Act. That is two pieces of legislation we are working on at the moment which we anticipate will improve court outcomes for victims.

Senator BOYCE—Could you briefly tell us what those acts are designed to do?

Ms Morris—Currently in the Northern Territory we have a two-tiered court system. For serious offences which must be dealt with in the Supreme Court there is a committal process in the lower court, the Magistrates Court. That process is often what we call an ‘oral process’ where witnesses and the victim come to court and are examined and cross-examined in relation to their evidence. If the charges proceed, they then must also come again to court in the Supreme Court.

Senator BOYCE—And do it all over again.

=w,w5] To do it all again. For some witnesses, particularly Indigenous witnesses, who are talking about things which they may regard as shameful or private, to have to do that twice can be difficult. In fact, we have had cases reported where they just have not been able to be found in relation to the second set of proceedings. There are some current pieces of legislation which mean that statements can be used and we have closed court proceedings and evidence able to be given by video link in order to assist victims in that way. However, we are looking at the committal system in relation to allowing people to give evidence orally only if the magistrate agrees that that is appropriate. That will cut down the number of witnesses who are called in the preliminary hearing. The Evidence Act is legislation which is being adopted by many Australian states and territories in relation to rules around evidence and how evidence can be presented.

Senator BOYCE—Mr Davies, has the Northern Territory government, in any area, sought legal advice about the changes that these activists could cause?

Mr Davies—I need to take the question on notice. In terms of the Solicitor for the Northern Territory and the particular implications I would need to go back to our Department of the Chief Minister to seek that advice. I will definitely do that.

Senator BOYCE—If you could please and, if so, could you tell us what sort of advice and who you sought it from, and as much information as possible about what the advice told you?

Mr Davies—Sure, Senator.

CHAIR—Being aware of the limitations on the exchange of legal advice, Mr Davies.

Mr Davies—I understand that.

Senator BOYCE—Yes, that is why I was suggesting as much as possible.

Senator SIEWERT—Ms Morris, in answer to the question from Senator Boyce, you did not say how many people have been convicted of offences. Do you have that number?

Ms Morris—If we have an exact question, we could have an exact answer. What I cannot say is whether or not the convictions therefore are a result of everything that we have all been doing over the last four years or whether it is normal police procedure which has always been there.

Senator SIEWERT—There has been a substantial increase in the number of police in community. With the powers of the Crime Commission, I know there have been a number of investigations. Have they resulted in people actually being convicted?

Ms Morris—I do not know whether the Crime Commission investigations have directly resulted in people being convicted. My understanding is that much of the information that the Crime Commission had, which was passed to the police, the police were already aware of and was under investigation. My friend, the Acting Assistant Commissioner, might be able to assist more with that.

Mr Kendrick—Getting back to the statistics side, we do keep a lot of different statistics and provide reports to for the NTER, and we can source whatever the specific data is that you are after. With respect to the way that we do these investigations in remote communities, we have the child abuse task force, which is a combined Northern Territory and Australian Federal Police task force based in Darwin and Alice Springs. They work together in Central Australia and are particularly close with the ACC. The investigations are difficult and problematic for a lot of the reasons Ms Morris has detailed. A lot of these investigations tend to snowball—they do not start with much and then they just get massive—or they can go the other way, and we get a lot of information that really does not amount to anything.

Senator BOYCE—By ‘snowball’, do you mean involve more and more—

Mr Kendrick—Involve more and more people. Quite often it also goes the other way: we have lots and lots of snippets of information being transmitted on the bush telegraph but, when it comes down to cold, hard facts, there is not a lot there.

Senator SIEWERT—If you could provide us with the detail about how many people have been convicted as a result of these changes, that would be appreciated. To be quite honest, I would have thought that you would have had those, given that this inquiry is into this legislation and that the *Little children are sacred* report is the report that was used as the supposed catalyst for this legislation. I am keen to know whether it has resulted in an increased conviction rate or if the situation that has kicked this off in the first place has actually been reduced as a result of this legislation.

Ms Morris—So a conviction rate in relation to—

Senator SIEWERT—Sexual offences and child abuse.

Ms Morris—Sexual offences against children?

Senator SIEWERT—Yes.

Ms Morris—It is a criminal offence; child abuse per se is a fairly broad—

Senator SIEWERT—Sorry; sexual offences against children.

Senator BOYCE—Would it be possible in each case to get the ages of the victim and the perpetrator?

Ms Morris—So the ages of the victim and the offender?

Senator BOYCE—Yes, and any other information about the cases that failed. I do not know what it is that you could provide us there, but it would appear that the ability to bring to trial these cases is still somewhat problematic.

Ms Morris—Our conviction rate is data that we would have available. We would be able to provide data about cases where they pleaded guilty, were found guilty or were found not guilty and cases withdrawn at a later stage in the proceedings.

Senator BOYCE—Yes, please.

Senator SIEWERT—During the October estimates we were looking at the six-monthly report, so I think it would have been the July-August six-monthly report. My understanding is that the number of children reported for neglect had substantially increased. Is that trend continuing? What do you put it down to?

Ms Morris—Neglect would be a question—

Senator SIEWERT—Sorry; I do have some questions about incarceration which I will come back to.

Ms Gardiner-Barnes—The number of notifications in the financial years 2007-08 to 2008-09 increased by 69 per cent in one year. Part of the issue with the Northern Territory actually putting services on the ground is the continuing increase in the number of notifications coming in. The largest proportion of those are related to neglect cases. So that is a continuing trend. What is also happening, though, is that the number of investigations is staying relatively stable. So there is a huge gap between the information coming in through our intake line and our capacity to get enough information to warrant an investigation.

Senator SIEWERT—Sorry, I must be a bit slow here. The number of neglect cases is going up but the investigations are stable?

Ms Gardiner-Barnes—They are fairly stable, yes.

Senator BOYCE—Why is that?

CHAIR—The number of allegations is going up.

Ms Gardiner-Barnes—The notification numbers are increasing, and that could be related partly to mandatory reporting. When you look at the statistics there is a steep rise almost commencing at the same time as the Northern Territory Emergency Response was announced, or straight after that; so you could make some links. There are a whole lot of causal factors that could potentially be part of that trend but the fact remains that the number of investigations is generally remaining stable.

Senator SIEWERT—Why is the number of investigations remaining stable if the number of notifications is going up?

Ms Gardiner-Barnes—There is this widening gap. It may be that the calls that are coming in do not have enough information for us to move to an investigation, which is a key issue for us—if we do not get enough to actually warrant an investigation. It may be that the calls coming in are not a real child concern report, or someone is seeking information but the information provided to us and then transferred on to police is just not substantial enough for us to follow through.

Senator SIEWERT—You would not hand every case straight over to the police, though. When you say ‘investigation’, do you mean a police investigation as opposed to a departmental investigation?

Ms Gardiner-Barnes—Both. We actually work very closely with the police through the child abuse task force. It is a centralised intake process in the Northern Territory and that is based, as part of the child abuse task force, on police premises.

Senator BOYCE—What do you do when you do not have enough information?

Ms Gardiner-Barnes—We record it as an intake and it may be that further information comes through at a later date that will then escalate the case to a further investigation stage.

Senator BOYCE—You do not actively investigate for further information?

Ms Gardiner-Barnes—We will do some follow up checks. For example, we may get some information from other parties, such as Education, or we might see if there is information from Health to try and substantiate any facts we have. We might seek further information from police, like a police check, and then caseworkers make a determination.

Senator BOYCE—That would be basically desktop work.

Ms Gardiner-Barnes—Yes.

Senator SIEWERT—When we were looking at some amendments to the act previously we had reports of increased rates of incarceration as a result of what people term ‘relatively minor offences’. I am interested in the current statistics and whether that issue has been addressed.

Ms Morris—We do have increased rates of incarceration. It would be very difficult to break down those increased rates of incarceration into actual causes. The Territory government itself has introduced a raft of legislation over the last couple of years in relation to, for example, serious violent offences, having mandatory imprisonment and reducing the opportunities for people to apply for bail in relation to those kinds of offences. So there are a number of issues. But I can provide the current and previous incarceration rates for you. The difficulty, again, would be determining with accuracy where those people are coming from—so, whether or not they were incarcerated in Darwin or Yirrkala or wherever the offence occurred that they were incarcerated for. However, we are able to provide what kind of offences people are in custody for.

Senator SIEWERT—That would be appreciated.

Senator ADAMS—Do these bills have any impact on the tripartite agreement you have with Western Australia and South Australia? Can you see any issues there?

Mr Kendrick—No. With what is going on in those areas I do not see any issues at all. I see that as separate to these bills. Certainly nothing readily comes to mind.

Senator FURNER—On nutrition, I have read reports of substantial increases in good-quality food and so on. I would like some feedback in terms of the quantity, the quality and also the storage capacity, whether it be for frozen foods, fish or whatever the case might be.

CHAIR—Mr Davies, I think we are going to have to put that on notice in terms of the number of places that would have to provide input. There is a series of issues around the question. We will put that on notice.

Senator CROSSIN—Mr Kendrick, you might need to provide us an answer in writing to this. I have had my office email me section 18 of the current act. You are right. I suppose what I am after is how division 4 of the Police Administration Act works. Does that give you the powers to search and enter somebody's home?

Mr Kendrick—Division 4 of the Police Administration Act is, to put it in its simplest terms, our power to apprehend intoxicated persons in a public place. So, if we walk out the front door of here and there is a seriously intoxicated person that I have concerns about, I can apprehend that person without a criminal charge and incarcerate him for up to six hours to sober up. Then, after that six hours, he gets released without charge. The section in the NTER extends that power to prescribed areas as if it were a public place. So a private residence in a prescribed area can be treated in the same way as our division 4.

Senator BOYCE—But only for that purpose?

Mr Kendrick—If we believe there is an intoxicated person, yes. It is not a power to search. It is not a power to arrest. It is a power to apprehend for that person to sober up.

Senator CROSSIN—The significant change, though, in the legislation we have before us actually repeals that section in writing and now says the Commonwealth minister will, by legislative instrument, declare whether or not your Police Administration Act will apply to a prescribed area.

Senator SIEWERT—And that is subject to community consultation, isn't it?

Mr Kendrick—Yes.

Senator CROSSIN—Subject to community consultation. So it takes the automatic right out of the Northern Territory Police and puts it in the hands of a discretion by the federal minister subject to community consultation.

Mr Kendrick—And certainly that community consultation can be positive.

Senator CROSSIN—Is this a positive change? What is the view of the Northern Territory government about this change? Is this a change that is welcomed and supported or is there a belief that the wording in the current legislation should stay?

Mr Kendrick—Certainly I think the issue of community consultation is what is important in this. All the communities in the prescribed areas are vastly different, so I think bringing it back to the local level with community consultation is a positive.

Senator CROSSIN—So is the restriction the fact, then, that after the community consultation you have to wait for the federal minister to undertake the declaration? Should there be a change so that it is automatic once the community consultation has been undertaken?

Mr Kendrick—I would have to get advice in respect of that.

Senator CROSSIN—Perhaps if you could give us some further views. That would be appreciated.

Mr Kendrick—Yes.

CHAIR—Mr Davies, a number of questions have been put on notice. You will receive that information from the secretariat. Everyone had home work.

Mr Davies—Is there a time frame to return that?

CHAIR—A fortnight from now. We have to report in a fortnight, so we need it as quickly as you can do it. I just have a general question—and you may have to take this on notice as well—to do with media. I would imagine that each of the departments have media liaison and process. One of the things I consistently ask about is the level of media coverage of these issues. I note particularly today there is a very positive story in the local paper about one school. I just want to know whether there is a way of seeing about positive and negative media images in the whole process of the development of Aboriginal communities and meeting gaps and standards. I know that is a very general question, but I am just leaving it to your perspective, as the NT government, about the interaction with the local media and some of the stuff that comes out in terms of positive and negative messages.

Mr Davies—Can we take that on notice?

CHAIR—Absolutely. I know it is a very big question and I just think it is an element that has not been covered as well as it could be in this process. I would like to thank the representatives of the Northern

Territory government and also put on record the committee's acknowledgment that the government has been very quick to provide a submission and attendance at the hearings. That normally happens in the NT but does not happen in every state.

Mr Davies—Thanks. I have just had some email advice that the Chief Minister has signed off on our submission.

CHAIR—So it is no longer a draft, Mr Davies.

Mr Davies—No. We will make sure you get the formal signed copy.

CHAIR—Thank you.

Proceedings suspended from 11.00 am to 11.15 am

[11.13 am]

BRADSHAW, Ms Barbara, Chief Executive Officer, Law Society Northern Territory

McDERMOTT, Ms Barbie, Project Officer, Research and Policy, Law Society Northern Territory

PATULLO, Mr Vernon, Board Director, North Australian Aboriginal Justice Agency

PENGILLEY, Ms Annabel, Welfare Rights Solicitor, North Australian Aboriginal Justice Agency

ROE, Ms Hannah, Board Director, North Australian Aboriginal Justice Agency

SHARP, Mr Jared, Advocacy Manager, North Australian Aboriginal Justice Agency

WALKER, Ms Ruby, Board Member, North Australian Aboriginal Justice Agency, Katherine Region

COX, Ms Suzan QC, Director, Northern Territory Legal Aid Commission

CHAIR—We will resume the hearing. I do apologise to the witnesses that all the senators are not back. I welcome representatives of the North Australian Aboriginal Justice Agency, the Northern Territory Legal Aid Commission and the Law Society Northern Territory. I appreciate your cooperation in allowing us to have you appear before us today as a panel. As your submissions all had key similarities, we made the decision to put you together. It does not mean that any of your evidence is considered either less or more important than anyone else's. It just allows a better usage of time.

Information on parliamentary privilege and the protection of witnesses and evidence has been provided to you; and, if there is anything you need, the secretariat will be able to help you. We have your submissions. Thank you very much for your continuing interest. I know that each of your organisations has given considerable effort to a range of our hearings. I invite each of your organisations to make an opening statement if you choose to, and at the end of the process we will go to questions. It is very much a free-flow approach. There will not be single, direct questioning.

Mrs Bradshaw—The Law Society Northern Territory is a constituent body of the Law Council of Australia, and I understand you will be meeting with the council representatives later on. We also work very closely with both the Northern Territory Legal Aid Commission and the North Australian Aboriginal Justice Agency. In fact, lawyers in those organisations are members of the society.

The society is very pleased that the welfare reform bill reinstates the Racial Discrimination Act, but we are dismayed by the continuation of various intervention measures for which there is not good evidence of success. There is some doubt in many people's minds as to whether the measures will in fact comply with the Racial Discrimination Act if they continue, as they are likely to constitute indirect discrimination at the very least, if they have a disproportionate impact on Indigenous people. Other people might have views on that also. We are very pleased that there are plans for an increased opportunity for a review of decisions made about the application of each measures by government agents, but we are disappointed that, despite a commitment to resettling in their relationship with Indigenous people, and after a string of consultations, Aboriginal people in the Northern Territory do not have the full information about what is planned for the intervention and how it will affect their lives.

They have also not had opportunity or resources to explore alternative approaches to improving their lives. Community controlled programs and service delivery by Aboriginal organisations has been suffering in some cases from a lack of support and some positive local programs have fallen by the wayside since the intervention began.

CHAIR—Mrs Bradshaw, I am sorry to interrupt you. I neglected to ask whether anyone at the table had any objection to being filmed. I should remember to do that for each group of witnesses. It is my fault. I do apologise. Is there anyone who does have an objection to being filmed? Thank you very much.

Mrs Bradshaw—There has been some disempowerment of Aboriginal people in communities, and many feel they are not able to make choices and exercise appropriate control over their lives. We feel there should be more effort made towards empowering Aboriginal people if we are to close the gap and reduce Indigenous disadvantage. We really need an evidence-based approach.

There are issues about the consultation level, and we also feel there should be continuing funding of welfare rights legal services which are acceptable to everybody who may be affected by the changes. Those are probably our main points. We are pleased that the current government is taking steps to reinstitute antidiscrimination legislation, including the Racial Discrimination Act, with respect to the intervention

measures. We are pleased that the Australian government is working towards resettling the relationship between Indigenous people and government. Basically, we feel that there is a lot going on that is good but possibly not enough. We feel that more information has to be provided to Indigenous people and there needs to be better consultation all round.

CHAIR—Ms Cox, do you wish to add anything?

Ms Cox—Yes, if I may, and thank you for the opportunity. Can I say at the outset that we support the submissions made by NAAJA and the Law Society, and that we continue to work collaboratively with those organisations. *The little children are sacred* report provided the government with both the vision and the impetus for the dramatic range of measures introduced into Aboriginal communities in June 2007. Protecting children from harm and improving the lives and wellbeing of Aboriginal communities in the Northern Territory are obviously worthy goals. Without doubt, the federal government's Northern Territory Emergency Response intervention measures have impacted heavily on the everyday lives of Aboriginal people in the Northern Territory, and we have witnessed this.

The NTER review board's appeal to the Australian government to recognise as a matter of urgent national significance the continuing need to address the unacceptably high levels of disadvantage and social dislocation within Aboriginal communities in the Northern Territory was acknowledged by the Australian government. The appeal to address those needs by resetting the government's relationship with Aboriginal people based on genuine consultation, engagement and partnership was acknowledged.

The Northern Territory Legal Aid Commission believe that if the government is genuinely committed to improving conditions in remote Aboriginal communities then it needs to meaningfully engage with those communities in order to effect lasting improvements. The commission have commented in our submission to this committee on the widespread confusion caused by the rapid rate of change in law and policy in Aboriginal communities affected by the intervention measures. The commission have also commented unfavourably on the restricted time frames for engagement and consultation with Aboriginal people about their views on the impact of the intervention measures and how they have affected their lives, their health and their wellbeing. The commission have expressed disappointment at the suspension of antidiscrimination laws and serious concerns about the lack of a sound evidence base to sustain the proposed welfare reforms. We reiterate the fundamental need for a collaborative approach that utilises the rich knowledge and skills base of the Aboriginal society in which we live.

CHAIR—Ms McDermott?

Ms McDermott—Barbara Bradshaw made an opening statement for the Law Society. The only thing I would add to that is that the Law Society has been very involved in this process for some time. We have some concerns about the general process that has been taken. We understand that it is very important that the affected people have an opportunity to be heard, particularly when the outcomes of these processes will inevitably have a significant impact on their legal rights and obligations. We agree that the consultations that were held were very important, but we would be concerned if the intention of those consultations was that they would be used to support an argument that the intervention measures are special measures under the Racial Discrimination Act. We are concerned about this because Aboriginal people were not informed at the time of the consultations that they would be used in this way, and the people in communities did not have access to legal advice around those consultations. We raised these concerns with the minister and FaHCSIA at the time of the consultations. We think that consultation is very important. We are also very disappointed that there is not a lot of opportunity for Aboriginal people in remote communities in prescribed communities to understand what is in these bills and to make comments to this inquiry.

CHAIR—Ms Walker, you have a number of people from your organisation. Have you worked out who is going to speak and when?

Ms Walker—Yes, Vernon will introduce us.

CHAIR—Okay. Is there anyone apart from Mr Patullo with an opening statement?

Mr Patullo—Mr Sharp.

CHAIR—Okay. Mr Patullo.

Mr Patullo—As the deputy chair of NAAJA, we share the sentiments of the previous speakers about the consultations with the people in the bush. I represent east and north-east Arnhem Land. We are one of the largest Aboriginal organisations in the Top End in terms of justice. Hannah is from the Darwin office. Ruby is

from the Katherine office. I am from the Miwatj region of east Arnhem Land. We successfully amalgamated when we all had to come together. We have a pretty hard task.

Out in the bush we are finding that the consultation processes are very minimal. The people in the bush are very unaware of what is happening; it is just happening all around them. There are a couple of key points, some of our recommendations, that we would like to raise. We do have a welfare rights lawyer here and we also have our advocacy man. These people have come from all around the region and spoken with us all, and we have put together a rather lengthy submission, which I think we needed because we are one of the biggest organisations. I just wanted to make that clear.

There are many recommendations, but one of our most important ones is:

... that the Government immediately be required to produce credible and reliable qualitative and quantitative evidence by which it asserts the NTER measures ... are special measures for the purposes of the RDA.

We also recommend:

... after having produced this evidence, that the Government embark on good faith consultations with Aboriginal people—which has been lacking—

in the Northern Territory, prior to decisions having already been taken, where the Government openly communicates to people the full details of its proposals, and where it seeks a genuine dialogue to ascertain people's responses and to find meaningful and longterm solutions.

Before I hand over to Jared to speak, I will say that, with the remote parts of the Northern Territory, not so much the urbanised parts, in the *Little children are sacred* report they are always talking about customary law. They do not recognise it in this system, and we really need them to understand that type of customary law. If customary law was in place, many of these things would never have happened in these communities. That was customary law. That was our law. I think you really need to look at it, particularly in the Northern Territory. We could manage many of these issues that they imposed on us if our law was recognised.

Mr Sharp—Just to follow on with a couple of those key points: Ms Pengilley and I did a consultation with our board. We are an Aboriginal-controlled organisation. We travelled around the Territory to consult with our board, and the universal message that our board gave to us was that restoring the Racial Discrimination Act is vital. That is hopefully what comes through in our submission.

They did, however, qualify that, as Mr Patullo said, by saying that if the Racial Discrimination Act is to be restored it needs to be restored properly. In our submission we refer to the need for an evidence based approach. We have grave concerns about the characterisation of a lot of the special measures. We feel that the government has not provided the qualitative or quantitative evidence that would support that. In fact, we have grave concerns over the evidence that the government has raised, which alludes, in the most part, back to the future directions consultations. Having been present at a lot of those, we have concerns that usually it is characterised as a united voice that came through the consultation process. We have concerns that that was not in fact the case. We have concerns that people expressed a lot of contrary views—and in some cases those were the dominant views that were expressed—but the government has not referred to those at all.

So we have a lot of concerns about the way in which the government is proposing to restore the Racial Discrimination Act, but we entirely support it and our board has made it very clear that we are strong about the Racial Discrimination Act needing to be restored because of the damage that the suspension of it has caused Aboriginal people in the Northern Territory.

I suppose the evidence based approach that we say needs to be followed goes through our submission in that when we look at the particular measures, such as alcohol or pornography or the Australian Crime Commission, our overwhelming submission is that there is a dearth of evidence to support the ongoing utilisation of these measures. The government has not produced the evidence to suggest that the starting point needs to be this special form of treatment, this restriction on people's rights, that seems to flow from the NTER measures. We think that the Racial Discrimination Act should be restored in a nondiscriminatory way and that the laws as they existed prior to the intervention should be reinstated.

As Mr Patullo pointed out, we are very concerned about the glaring omission of customary law in the redesigned package. In our submission the NTER measures, particularly sections 90 and 91 of the NTER act, cause discriminatory treatment to Aboriginal people in the matters that they can have raised before courts, for sentencing or for bail purposes. We are very concerned that the government has not even addressed this in its

redesigned package. As Mr Patullo pointed out, our board is very strongly of the view that customary law pays a vital role in community justice. As reports such *Little Children are Sacred* have pointed out, the approach we think should be taken is actually developing the utilisation of customary law—rather than condemning it, we should have it working in partnership with the Northern Territory law.

CHAIR—Thank you, Mr Sharp. We will move to questions.

Senator SEWERT—I am addressing this question to anybody who wants to answer: in your opinion does this act restore the RDA? I am asking this in all seriousness.

CHAIR—What we might do with general questions is go with the way we called the witnesses: we will start with the Law Society, the Legal Aid Commission and then NAAJA. So, from the Law Society's perspective?

Ms Cox—Chair, may I suggest we go the other way? I think that NAAJA are the ones who mainly—

CHAIR—I am happy to do that, in the interests of time. If NAAJA, who are in committee at the moment, have a response.

Mr Sharp—As we have pointed out in our submission, we feel that it does not. We feel that, if the Racial Discrimination Act is to be restored, it needs to be done in a non-discriminatory way. To do otherwise there needs to be the evidence basis, and there simply is not. For example, human rights law is really clear about the criteria that need to be applied if a measure is a 'special measure'. The crucial one to start with is necessity: has the government demonstrated that there is a need for this measure, to justify this special treatment? Our submission is that, in the absence of credible evidence, which certainly has not been made publicly available if it exists, there simply is not the demonstrated necessity to support special measures. So, in our submission, Senator, we do not think that it has.

CHAIR—Mr Sharp, are you talking about any of the special measures, all of the special measures—

Mr Sharp—I should have stated that clearly. We refer to the special measures that NAAJA as an organisation has some level of expertise with. Those include the alcohol restrictions, the pornography restrictions and the law enforcement measures. Those are the three ones—

CHAIR—Those are the ones you mention in your submission. Does your statement, though, carry across all of them? Or for the purposes of your evidence are you just listing those three?

Mr Sharp—It carries across those three. Ms Pengilley can address the issue of income management, which is in a different category. But, certainly from our submission's point of view, it would be all three.

CHAIR—Thank you, Mr Sharp. Ms Pengilley, do you want to add to that at this stage.

Ms Pengilley—In relation to the welfare reform part of the package, the government have said they are not going to determine that those welfare reform measures are a special measure. They are saying that the design of that scheme is such that the measure will no longer be racially discriminatory. But we did some really rough maths, based on the limited data we had available to us, and we think that, based on the number of people on certain types of payments, just in prescribed communities we currently have almost 16,000 people income managed. The rough maths, which you can see in our submission, shows us that we are looking at about two-thirds of Aboriginal people in prescribed communities being income managed under the new scheme.

As well as that, the government are trialling this. It is an experiment that they are conducting in the Northern Territory. So, while it is rolled out to Darwin, Alice Springs and the major town centres and will capture some non-Indigenous people, the fact of the matter is that by and large this measure will capture Aboriginal Australians living in the Northern Territory. At the current time the measure is only going to apply in the Northern Territory, where it will affect mainly Aboriginal people, so it is hard to see how the measure as proposed is non-discriminatory when it will primarily impact on Aboriginal people. It may never get rolled out beyond the Territory; it may stay in the Territory. We do not know what the result of the evaluation is. That is another pointer towards the fact that, on its face, it looks discriminatory.

Senator BOYCE—Is that what you mean when you say 'indirectly discriminatory'?

Ms Pengilley—Yes, that is right, because while the government is saying, 'This measure is not targeted at Aboriginal people; it applies to both Indigenous and non-Indigenous Australians,' the effect on the ground is that it is mostly going to affect Aboriginal people in the Northern Territory. Unfortunately, we do not have access to the data which would allow us to understand how many non-Indigenous people in the Northern

Territory would be affected, but we can certainly see that, of the Indigenous people on Centrelink benefits in the Territory, a good two-thirds look like they will remain under the income management scheme.

CHAIR—Does anyone else from NAAJA have a comment? It crosses over the whole basis. No? What about Legal Aid?

Ms Cox—I do not think I really have anything to add to what has already been said or to what is in our submission. Our position is quite clear.

CHAIR—The Law Society?

Mrs Bradshaw—We do not have anything else to add on this.

Senator BOYCE—I want to follow up on the idea of the government's proposed restoration of the RDA. There was a query from NAAJA, for instance, that the NTER measures should not stay as special measures.

Mr Sharp—That is correct, yes.

Senator BOYCE—What do you think could be the outcome of these changes? You are saying that you agree with restoring the RDA but you are concerned that the means of restoring the RDA was not in compliance with human rights regulations, and you talk about further damaging the relationship with Aboriginal people. Could you just explain a bit more about what you mean by that?

Mr Patullo—What we are talking about is in good faith. We are all in Australia together. There is some good stuff happening with some of these measures that have been put in place and we want it back without any strings attached, basically. We feel that, if we had done it in good faith from day one with the government, I think we can still work on this together. But, like I said at the beginning, the consultation process has been poor—terrible. The people out on the ground, particularly where I live, out in north and south-east Arnhem Land—and, I know, Ruby's people all around the Katherine area—have no idea what is going on. I do not believe the government agencies that are responsible—primarily, most probably, Centrelink—really know how to deliver it out in the bush. The stories are very mixed.

Senator BOYCE—Would you think that, because of the restoration of the RDA but the maintenance of special measures, there is the likelihood of this legislation being challenged on the basis of a human rights violation?

Mr Patullo—Absolutely. It is our right. We are all Australians.

Senator BOYCE—You would agree with that, Ms Cox?

Ms Cox—Yes, I would.

Senator BOYCE—And how do you think that might play out? I am just trying to get my head around what it means practically.

Mr Patullo—Maybe all of us in this room and everyone else who has been here before us need to really sit down and think about it, because this was rushed, like most stuff that happens in Aboriginal communities. I have been living in the gulf for 30 years. I was born and bred here, from a Darwin family. I have lived in the gulf quite a while. Like everything, it is a hidden message. It is a fly-by-night type of consultation process. I think it would be good if we all sat down and really looked at it and took into account some of the customary law stuff too and then all together worked something out. Then we could sit down in good faith, like we are always trying to do. As I said, there are some good points in this stuff from the other side, but I think we could probably nut them out a bit better in a much bigger process across the Territory, in particular.

Senator BOYCE—Could anyone perhaps just flesh out for me a little bit what aspects of this would be more open to legal challenge?

Ms Cox—If the RDA is reinstated, a lot of the laws remaining are discriminatory—for example, prohibitions on alcohol and other materials in particular areas. So we have those sorts of issues. Also, one of the real issues that we find concerning is the customary law aspect of matters in the criminal justice system.

Senator BOYCE—Is that something that could be challenged? I am just trying to understand how it would be.

Ms Cox—That is something that we need to address.

Senator CROSSIN—Ms Cox, can I just ask either you or NAAJA to clarify something for me. The proposed legislation reinstates the RDA to the extent that income management will no longer be a special

measure, but alcohol, pornography and five-year leases will still be incorporated in this legislation as special measures. On what basis, then, would a challenge be brought? What would be the reason for the challenge?

Ms Cox—I think I would have to take that on notice. It is very complicated in terms of the interactions between federal law and the state law.

Senator CROSSIN—If you read the submissions, a lot of them say they do not believe that this fully reinstates the RDA. They still believe that some aspects are challengeable, although I have not seen a challenge in the past two years. But no-one can clearly pinpoint for me, in the submissions I have read, what specifically would be challengeable if in fact this legislation clearly states that income management is not a special measure anymore but these other three aspects are and these are the reasons why.

Ms Cox—I think NAAJA does detail it.

Mr Sharp—From NAAJA's point of view, our key concern goes to the characterisation of NTER measures as special measures for those measures that we referred to earlier. If we were to look at those in specifics—for example, the pornography measure—I do not know the precise way in which it would be challenged. It is something that as an organisation we would need to take advice about. What we would be challenging is the designation of the measure as a special measure based on, for example, the fact that for a special measure to be a special measure there needs to be this demonstrated necessity. In our submission, that does not appear to be the case.

Similarly, it needs to be the case that the government can demonstrate that the measure is for the sole purpose and advancement of the targeted group. Again, in our submission we say that we do not feel that that has been the case. When looking at the key criteria, the standard of free, prior and informed consent is perhaps paramount, and we think that has not been demonstrated.

Senator CROSSIN—So why do you think nobody has taken a challenge since 2007, if that is the case?

Senator SIEWERT—Because they are exempt from the RDA.

Senator CROSSIN—That might be the case, but currently if this legislation goes through they might be exempt from the RDA but people could still have taken a challenge that they are not special measures in the definition of special measures. Someone could still have challenged that act. I do not understand why you now believe there is suddenly an avenue for challenge if in fact three of these measures will still be designed as special measures. Why do you think suddenly they are challengeable when they were not two years ago?

Mr Sharp—My understanding is that that avenue was not available because the NTER did suspend the operation of the Racial Discrimination Act, so it was not possible to challenge it, whereas now the government's proposed way of reinstating the Racial Discrimination Act by calling those particular measures special measures would mean that they have to, if you pardon the pun, get over a particular hurdle, and if they cannot then it does open the door to challenge.

Senator CROSSIN—Can I ask you if NAAJA attended or observed any of the hundreds of consultations in the three tiers that FaHCSIA conducted last year?

Mr Sharp—We certainly did. Ms Pengilly was personally present at numerous of those.

Senator CROSSIN—I want you to pinpoint for me exactly why you believe the outcomes of those consultations, which I, a number of my staff and a number of Warren Snowdon's staff also attended, why you have a view that the summary of the consultations and therefore this legislation does not accurately reflect what was said in those meetings?

Ms Pengilly—I think there are two questions there. I am reading into your question the question to what extent were the consultations such that they could be said to have provided free, prior and informed consent about these measures, which is one of the necessary things for something to be characterised as a special measure. In terms of those consultations, I will give you a couple of examples. I went to several consultations and I think all of the ones I went to there was not, for a start, an interpreter being used, which obviously made it difficult for everyone in the group to understand properly what was happening during the meeting. Also—

Senator CROSSIN—To help us go back to FaHCSIA, it might be interesting for you to tell us where those communities were. They are saying to us there were interpreters and my experience is there were interpreters.

Ms Pengilly—FaHCSIA acknowledged they had trouble having interpreters at all of the consultations.

CHAIR—Ms Pengilly, is it possible for you to indicate this. There is through your submission concern about the consultation. That has been raised in other submissions as well. But nowhere in your submission

does it list which consultations you actually attended. It would be very useful when we get to 'This is the statement, this is the response'. You do not have to do this now, you can take it on notice. Your submission is very detailed and goes into the real core of your concerns. The one element that is missing is when you talk about the consultations. Which ones where you are, which ones are you referring to?

Senator CROSSIN—I suppose what I am trying to pinpoint is that NAAJA may well have gone to some of the consultations but when FaHCSIA actually do a summary of all of the consultations and look at the majority of the views, I am finding it hard to pinpoint exactly what the majority of people wanted that is not reflected in this legislation.

Ms Pengilley—I cannot reflect what the majority said but I can give you this insight into the consultations I attended. I can give you a couple of examples. One is when people talked about the prohibited materials restrictions: what was meant by prohibited material? Was it fully or clearly explained to people? Many people did not have a correct understanding of what prohibited material was under the act or under the proposed law. So for a start I do not think you can say you have had an informed consultation when the people you are talking to are not properly understanding the term that is at the heart of the consultation.

Another example is the law enforcement powers. At the consultations I attended there is no description about what those law enforcement powers are, the ability under that power for people to be taken and questioned and not allowed to tell anybody they have been questioned and all that sort of thing. These are really incredibly serious powers made available just in Aboriginal communities. None of that was discussed with people in the consultations I saw. That measure was discussed purely in terms of, 'Do you think it's a good thing that if you talk to this commission about child abuse your details can be kept secret and private from everyone else?' and everyone said yes. That was the extent of the consultation around the law enforcement powers in the consultations I was at.

Moving on to income management, it was not characterised as a special measure. The issue was to what extent we really had a genuine consultation around the laws that we now have. The laws that we have now dramatically change the way Centrelink benefits would be delivered and the reasons for them. They are using the delivery of social security payments and the manner of the delivery as a tool to get people engaging in work and study. The consultations did not address that with people in communities at all. The consultations did not take a step back, as the government has done in formulating its legislation, and say to people: 'What's the role of the delivery of Centrelink benefits in communities? What are the good things about how social security is delivered? How can we use social security to effect positive change in communities? What are the faults? What are the positives? How can we use this to get positive outcomes in communities?' None of that was opened up to communities for discussion or for their ideas or their input. Simply what was put to people was, 'Would you like income management to stay exactly like it is or would you like to be able to opt out?' In summary, that is broadly how those consultations went.

Senator CROSSIN—At the consultations that you attended?

Ms Pengilley—That is right. I found from the number I went to that they were very similar, although that is partly because I went mostly in this region, so the same personnel were presenting them. Perhaps I can suggest that when you hear from CAALAS in Alice Springs, because they attended a number in that region, you can get some more information.

Senator CROSSIN—Your submission says:

We call on the Government to empower communities to drive solutions to alcohol misuse that are appropriate to the needs of individual communities.

Does the legislation not do that? In fact what it does now do is allow communities to reinstate their alcohol management plans. The legislation does exactly that, does it not?

Ms Roe—I guess our concern about those changes is that it is going to be quite onerous. The process that is outlined in the new proposed legislation involves writing to the minister, which is going to be quite a complex process for individuals in communities. We just have concerns about how an individual in a community that has an issue with alcohol is going to be able to put their voice and get a practical plan in place within their community.

Senator CROSSIN—My understanding is that it will be done in consultation with the Northern Territory government, that on the ground, through their Department of Justice, they will work with the communities to have those individual management plans, which of course then have to be approved by the Northern Territory Licensing Commission and would then flow on to the minister. I do not see a scenario where a community or

an individual would simply write to the minister. There is a negotiated and agreed process with the NT government. But at the end of the day it does allow individual communities to be empowered again to manage the way in which alcohol is used in their communities, does it not?

Mr Sharp—To an extent we would agree. What we would point out, and this came through our board consultations, is that we think the starting point should be non-discriminatory. We think the Liquor Act should be applied to all Territorians the same. That may mean that some communities, as they did prior to the intervention, want to ban alcohol from their communities. That was clearly the case in a lot of communities—alcohol was banned, and that was the decision that communities took. What came through very strongly from our consultations is that the communities themselves have the solutions that they know will work in their communities. If we start with a non-discriminatory approach rather than this blanket ban approach, then communities—if they are empowered to do so with proper resourcing, as Ms Roe said—will be in a position to develop the right approach to alcohol that fits their needs.

Senator CROSSIN—My last question is to any of you at the table. You would have seen Tony Abbott's comments over the weekend and newspaper reports that the coalition do not intend to support this piece of legislation mainly because, I think, they think it goes too far. You put to us that you do not think it goes far enough. We are in a situation in the Senate where of course the government does not have the numbers. Where do you see a way through this impasse? I put it to you that this legislation is probably better than we have got but not as good as you want it to be. But we need to actually negotiate this through a bottleneck in the federal parliament. Do you have some suggestions about where negotiations ought to commence or whether or not the income management as it is designed should be left as a special measure, which would appease the coalition?

Mr Sharp—That is the million-dollar question. I wish I had an answer to that question. I do not know if anyone else in the panel does. From our point of view, we can simply put our views across, and that is based on our consultations, on what our board says and what we, as an organisation, believe is the right approach. We are acutely aware of the situation in the Senate.

Senator CROSSIN—I suppose what I am seeking is your view about where you see a negotiated middle path, essentially.

Mr Patullo—We definitely want to support your government, but I do not know. I think the next government would be very hostile if it were to win. I am not sure if there is something we could suggest. Do you have some ideas to help us? Somehow we need to work on this together.

Senator BOYCE—You will have to give Mr Sharp and Mr Patullo some more money if they are going to solve this one for you, Senator.

Senator CROSSIN—I am just seeing if you have a view about where you think the middle road is, essentially, here in this debate about the benefits or otherwise of this legislation—that is all.

Ms Pengilly—It seems difficult if the opposition is, in my understanding, totally opposed to the whole raft of legislative measures. But perhaps if they are not opposed to the whole raft then a partial solution is going to be to put some of the legislation through. With the limited but positive measures there are in this legislation, it would be a terrible shame if there were no change at all to the status quo. In particular, the changes to the community stores licensing regime are very positive. It would certainly be a shame if they did not get mentioned.

Senator BOYCE—To clarify, the coalition have not said they will oppose the legislation holus-bolus, but they will if the government is not prepared to negotiate on the Northern Territory side of it. I just wanted to ask one last clarifying question in terms of this. In your view, is this new legislation more open to legal challenge on racial discrimination grounds than the current legislation?

Ms Pengilly—Surely it has to be, because if the Racial Discrimination Act is reinstated then it becomes open to challenge.

Senator BOYCE—And that is the concern of the coalition, that you introduce unintended consequences and uncertainties.

Senator SIEWERT—People get their rights back.

Senator BOYCE—They may not without numerous court cases, which is the understanding I have.

Senator SIEWERT—Can you tell us the positive bits out of this package that you think we should be keeping?

Mr Sharp—If we look measure by measure, I think the government's stated intention to reset the relationship is a really positive thing, because they have listened to that from the consultations, and that was a key message. I would certainly urge the coalition to consider, if they are looking at unintended consequences, to also look at what people said and how the damage that has been caused to people by suspending the Racial Discrimination Act has actually been counterproductive to the stated intentions of the intervention. They have actually caused further harm to people, and they have alienated people. So I would urge the coalition to separate those two issues.

In answer to your question, Senator Siewert, if we look at alcohol as one example, the government's proposals have a lot of common sense in them. As Senator Crossin pointed out, they give communities back some level of autonomy over the control of alcohol in their community, which is a really positive thing. Another positive thing is taking away the additional powers that police have in communities so that people's houses are no longer characterised as public land where police are able to enter, effectively with a far lesser hurdle than they would have in another person's house. So we think those changes are really positive, but we also think that it needs to be done in a non-discriminatory way. That is where we think the coalition needs to separate the two issues. If the Racial Discrimination Act is restored in a non-discriminatory way, we think that does follow the middle path of moving towards resetting the relationship and delivering solutions that are going to have impacts on the ground.

CHAIR—Does the Law Society have any comment on the question about things that should be maintained?

Ms Bradshaw—We would tend to agree with that approach.

Ms McDermott—We think it is really good to have more access to review and appeal mechanisms. We think cutting off access to reviews for administrative decisions was very bad. We are very pleased to see that being brought back in.

CHAIR—Does the Legal Aid Commission have a comment?

Ms Cox—The commission is very pleased that there are going to be positive changes if this gets through. There is no doubt about that. We just would like it to go further.

Senator SIEWERT—Can we go back to the alcohol plans. I understood from your previous comments that you still think that they are discriminatory and do not fit the requirements of a special measure. Amnesty put the same position to us the other day. How would you fix it? Would you have it not just in the prescribed communities but across the board so that any community could produce alcohol management plans?

Mr Patullo—I would like to say something on this one. I will give you a good example. This is a discriminately measure but it is discriminatory within the community itself. Can anyone tell me what a dry community is in the Northern Territory? I do not think anyone here can. People who have lived in remote areas—and I have lived in many of them—would know. What used to be called dry areas are mainly communities. In these communities there are teachers and doctors—I am not singling anyone out—and people who come into the community to work for whatever department and they are given permits to drink in their houses. That is in a dry community. That is discriminatory. The Aboriginal person living right next door sees these people being given special permits because they have decided to come in, for whatever reason, to work as a schoolteacher, a doctor or a nurse, or whatever the case may be. Good on them, they are doing good work out there, but it does not give them any more power to drink than the Aboriginal person next door. The Aboriginal person could be a counsellor, a yard man or whatever. I think that needs to be looked at. You cannot have a dry community where the person next door can drink. That is discriminatory. Maybe that is why a lot of the Aboriginal kids say, 'I'll go to that person's house next door and break in because they have got some alcohol in there. They are allowed to have it. Why can't I?'

Senator SIEWERT—I take your point. Under the existing proposals, if the community could develop its alcohol management plan, it could say, 'You can't do that anymore.' That is my understanding of something that you could do even under this legislation. Is that a correct understanding?

Mr Patullo—I think the communities could work with the government better in the way they are doing it. I think a lot of good things could come if we worked in good faith. They led the way on Groote Eylandt. They had their own alcohol management plan in place. Nhulunbuy had it before this intervention came in. But if you go across to the Tiwis, to Wadeye or to Oenpelli they have social clubs, so there are two extremes. I think they were managing. I think we can all get better if we look at the laws together and think how we can manage this—because I think we can. And the only people who will be able to manage it are the communities.

Senator SIEWERT—Would you support the expansion of the currently existing alcohol laws across the Northern Territory as well? Would that make it not a special measure anymore?

Mr Sharp—As we said in our submission, we think that there needs to be a clear approach in relation to alcohol and one that is realistic to where people are at. We think prohibition has never worked. It is just an unrealistic model and to impose that on the whole of the Northern Territory would be equally unrealistic. We think the way that things worked prior to the intervention, where all Territorians were governed by the NT Liquor Act, is the appropriate starting point. As Ms Roe pointed out, if alcohol management plans are to be a viable option under the government's plan, they need to be properly resourced because we have not seen anything to suggest how the government would provide support to communities to actually put forward their views. We have been told that Government Business Managers would help communities to do that but we have a lot of concerns because, as this committee would be aware, it is a mixed bag. Some GBMs would be of assistance and others simply do not have that relationship with community where they would be able to do that.

Senator SIEWERT—When you talk about resourcing, I presume that you are talking about it in terms of the development of the consultation process and the development of the plan.

Mr Sharp—Exactly.

Senator SIEWERT—There has been a lot of criticism generally over the last couple of years about the lack of support for rehabilitation, counselling et cetera. I presume you would support resourcing in that area as well?

Mr Patullo—Just from my point of view, I work for a federal government agency. Through our protocol we have to contact the GBMs. That is a job in itself. They are very scarce. They are light on the ground. I don't think they are in touch with the community. They are recruited from Mars, maybe, some of them. I don't know how they go about this process and I have worked in the federal government for over 20 years. With all this new stuff happening out there, particularly with GBMs, I don't think they are very effective. I will be quite honest here. They are very hard to find and I find them to be more of a hindrance when you are trying to get your story to the right people. But that is my opinion only. I cannot speak on behalf of NAAJA on that.

CHAIR—Ms Walker, are you going to speak from your personal experience in Katherine or from the whole of the board?

Ms Walker—With the rehab in Katherine, there is not a lot available. They do have a centre that has opened that is called Venndale, but what we are hearing around the town is that people are not very happy with it, and there are not enough programs and counsellors, I think, to support the Indigenous people that go there. So they are there for a while and then they come back out and there is no support for them, or continuing support. Also out in the communities there are very few safe houses. They do not have the safe houses for the people that need them. There is still a lot of domestic violence on the community. So there are still a lot of issues out there that need to be addressed, with the alcohol—even with the restrictions in the areas that they drink.

CHAIR—How long has Venndale been there?

Ms Walker—I think about three years now.

CHAIR—So it is a relatively new service.

Ms Walker—Yes.

Senator SIEWERT—And who funds that one?

Ms Walker—I am not too sure who is the funding body with Venndale. I know that the organisation that looks after it is Kalano Community Association. That is in town.

Senator SIEWERT—Okay. We might seek some information from them about their funding. Can we go back to income quarantining. The idea, in theory, is that this is not a special measure because it is being progressively rolled out across the Northern Territory. You have said here, and in your submission, that it could still be seen as conflicting with the Racial Discrimination Act because it could be disproportionately impacting on Aboriginal communities. I presume that is based on the fact that it will impact on the numbers of people on income support, the majority of whom are Aboriginal people, and therefore it is focused on a particular group. Is that the nub of the argument?

Ms Pengilley—That is how it looks so far.

Senator SIEWERT—Mr Sharp, did you want to say something?

Mr Sharp—I was just going to add that I think there is another issue in communities in relation to the exception process which has been set out in the redesign measures. It is all very well in a town or in a metropolitan area for a person to enrol in study or partial employment so that they can seek an exemption from income management, but, as our board could well tell you, in most communities those opportunities are not there. So it will, in our submission, have an indirectly discriminatory impact on Aboriginal people, who are not able to apply from exception because they cannot access the same services.

Ms Pengilley—We did a little case study about ‘Rita’, a purportedly disengaged youth, under the government’s new measures. She was working part-time and studying part-time and jobseeking as part of her mutual obligation under the existing compliance regime. This very busy young lady who is involved in her community on a number of levels would be income managed and not eligible for an exemption under the government’s new categories. So it just seems that it is a measure that is still very arbitrary and very wide-reaching in the people that it affects. And the avenues that are available for people to move off income management are quite limited in remote communities.

The other point that some of our other board members made was that there is a bit of an injustice in a system that is requiring people to study in order to come off income management, where there is not a real job at the end of that. It is just kind of going through the motions. What would be really wonderful is a lot more resources going into creating real employment opportunities. The presence of those real employment opportunities we think are what will really motivate people to move off Centrelink benefits. People have had the option over the last three years to move into a job to escape the confines of income management, but we are not aware that that has happened to any significant degree, and that is one of the reasons we question the efficacy of the proposed measures in meeting the government’s stated aims.

Senator SIEWERT—Under the legislation there is a disallowable instrument that describes what a disadvantaged community is. We asked for a list at the initial hearing we had on this, and they have now given us a list of disallowable instruments. It might be worth while your having a look at that list. One of the things on the list is when a disadvantaged community then becomes a designated income management area. Just say I am the minister and I declare a particular area a disadvantaged area. And just say, for example I select a community that is predominantly an Aboriginal community—and I will move outside the NT, because we know this legislation can be rolled out across Australia—and is designated as a disadvantaged area. I then take off my minister’s hat and I am living in the community. If I am an Aboriginal person living in that community and I think that that community has been selected because it is largely an Aboriginal community, am I able to challenge that under the RDA? In other words, under your line of argument that it is disproportionately focusing on Aboriginal communities—am I able to challenge that, in your opinion?

Ms Pengilley—In my opinion—which I do not think you should accord too much weight—it would seem to be, if you select an area that high numbers of a certain racial group, then you have to ask a question about whether you are targeting that group and if there is an indirectly discriminatory impact on that group. But I think that is a counsel advice type of question.

Senator SIEWERT—Yes, but you obviously have a lot to do with this legislation and I am interested in your opinion as to whether you think that is an issue that I as a citizen in that community would be able to challenge. Could I challenge that inside the Northern Territory?

Ms Pengilley—My opinion would be that you would have a good case, but it is not my particular area of law—human rights law.

Senator SIEWERT—All right. I will seek some further clarification.

Senator BOYCE—You have suggested that the definition of ‘vulnerable’ should actually go into the legislation rather than in an instrument. Could you explain why you have concerns about that?

Ms Pengilley—You are using one word which I think is open to all kinds of different interpretations. Through the use of that single word you are proposing to put an impost on a group of people and subject to them to income management. So it is important that it be clear on what basis a significant group of people will become subject to income management. That needs to be clear, upfront and part of the law and not hidden away.

Senator BOYCE—Do you think that the definition that went into the act should be sufficient to be used to identify someone who is vulnerable or simply underpin something that Centrelink would obviously develop in consultation with FaHCSIA and others—a tool?

Ms Pengilley—I think it needs to be fairly clear and fairly comprehensive, but it also needs to leave room and flexibility to allow for things that are unforeseen. So while it is important that it is in the legislation and everyone can understand who is going to be affected by the category, you need some breathing space as well.

Senator BOYCE—That was my concern about the legislation: that you might end up with a definition that is irrelevant in 10 years time but still just sitting there.

Ms Pengilley—But all you need is subsection that says ‘or any other reason’ or ‘as in the guidelines’.

Senator BOYCE—But they tend to take a little while to work way through the system—years sometimes.

Ms Pengilley—But you were talking about quite a fundamental right.

Senator BOYCE—Yes, and it is a huge area and very values based and everything else.

Ms Pengilley—Same with financial vulnerability, which is going to be the real sticking point for people with dependent children wanting to seek to be exempt from income management. If you recall, you can be exempt if you have dependent children if the school attendance is all right and there are no indicators of financial vulnerability in the past 12 months.

Senator SIEWERT—Name me anybody on income support who is not financially vulnerable.

Ms Pengilley—Precisely.

Senator BOYCE—Especially with dependent children.

Ms Pengilley—I guess also another concern is that it is the past 12 months and things might change for a person. Even if the past 12 months showed signs of whatever this vulnerability is, the person may have moved on since then. I think there are lots of questions around that.

Senator SIEWERT—It says you can come off with a demonstrated pattern of saving. If you are on income support, I would like to know how much you can save.

Ms Pengilley—Where does it say that?

Senator SIEWERT—Again, in one of the submissions I read, there is some information around being able to demonstrate—I think you can get the assistance with a demonstrated saving pattern.

Ms Pengilley—With respect, Senator, I think that is about the matched incentives savings scheme and not to do with getting an exemption.

Senator SIEWERT—Yes, you are right. But, again, the same point is there in terms of being able to demonstrate a saving pattern when you are on income support.

Ms Pengilley—Yes, indeed.

Senator SIEWERT—I would suggest that is quite difficult.

Ms Pengilley—If I may on the subject of income management just draw attention to the other thing we raised in our submission. We talked about the case study where a person is very active in their community work and study but would still be subject to income management under this new system. The other thing that I think is important to restate in front of the committee is the scenario of young people who just are not on Centrelink benefit. There are very large numbers of these people who are truly disengaged—not in receipt of any Centrelink benefit at all. So this new measure is not going to reach those really disadvantaged and vulnerable young people at all, and neither does the current earn or learn scheme.

Senator BOYCE—These are teenagers who are falling between the cracks?

Senator SIEWERT—People who have dropped out?

Ms Pengilley—Indeed, and they start at a very young age, from what we understand. They are young people from, say, 12 years old up to maybe 25 or 26.

Senator BOYCE—They have dropped out of school?

Ms Pengilley—In primary school, often, we understand. Yes.

CHAIR—But these people are not part of the system now.

Ms Pengilley—That is right.

CHAIR—This particular legislation is not addressing people who are not in the system. The concept is to get people into the system.

Ms Pengilley—That is the point, yes.

CHAIR—So are you suggesting that the legislation could bring people into the system?

Ms Pengilley—No, I am just pointing out that the proposed measure does not go anywhere towards addressing or assisting these people who are really, truly disengaged.

CHAIR—Surely the core point there is that they are not in the system, whether this legislation exists or not. That is a whole new area.

Ms Pengilley—If the aim of this measure is to address the problem of people being disengaged and unattached, not engaging in work or study, then unfortunately this proposed measure fails to—

CHAIR—To address it, and does not claim to.

Senator SIEWERT—We have had evidence in the past that suggests that these people have been dependent on their extended families, and those people are subject to income support. So it can impact that way. It is an additional cost that extended families are bearing.

Ms Pengilley—Indeed, yes.

Senator SIEWERT—Can I ask about the appeals. Ms McDermott, I think you brought up earlier the reinstatement of the appeals process as an example of where there has been an improvement in the legislation. I presume you were also talking about the amendment that was made during the year in terms of improving the appeals process.

Ms McDermott—Yes, all of those together. I was talking about them very generally.

Senator SIEWERT—I am interested in whether there has been an increase in the number of people who have been using that process since that amendment was introduced.

Ms McDermott—I do not know of an increase, but do the legal services at the table know of an increase? No, we do not know of an increase.

Senator SIEWERT—You have not assisted any clients?

Ms McDermott—No, but there are benefits to having an appeal. You get better decisions made if decisions are reviewable.

Senator SIEWERT—We received some evidence at estimates last week that there had been an increase in the numbers and I was wondering if any of your clients had been involved in those appeals and about the nature of those appeals.

Ms Pengilley—The difficulty is that, as you would be aware, the current legislative scheme does not really provide many bases for appeal. So I would put to you that that is the reason for the low numbers.

Senator SIEWERT—That is why I was asking, because in fact I had a bit of a run-in with some of the departmental officers about it. They were saying the change in the appeals process was good—

Ms Pengilley—Which it is.

Senator SIEWERT—in that to a limited extent it enables people to use it, because of course if you are in a prescribed area you still have limited appeal rights. I am correct in that understanding, aren't I?

Ms Pengilley—I believe so. The bases on which you might appeal are very limited, and I think that will be the same with the new measure, because the reasons for making someone subject to income management are quite arbitrary. It is that you have been on payment for 13 of the last 26 weeks or you have been on payment for 52 of the last 104 weeks. There is still not going to be a great deal to appeal there.

Ms McDermott—Can I just clarify that the society endorses NAAJA's position in on this in full. While we do say it is a good improvement, it needs to go a lot further. There should be wider access to review on wider grounds and it should be more accessible to more people. Any move towards increasing that we are supportive of.

Ms Pengilley—I will say one more thing. It was our understanding that the introduction of the new appeal rights was not really given a huge amount of publicity. It came in very quietly. In fact, I saw that some people who were running consultations were unaware that the appeal rights had been reinstated because they had come in so quietly and softly.

The other point I would make which is related to the issue of the appeal rights and the appeal system is that of income management. You would know that areas are declared for income management and then a new declaration is made to continue income management in that area. In some communities, though we do not

know to what extent, we understand that when people are continued on income management they are not being given written notices that they are being subject to income management for a further 12 months.

Senator SIEWERT—When it is rolled over?

Ms Pengilley—Yes. It ties in with this issue of appeal rights because, if people are not given a notice that they are being continued on income management for a further 12 months, they are, by the same token, not being given a notice of their appeal rights—not that they really have any.

Senator SIEWERT—I was going to say they cannot appeal that anyway.

Ms Pengilley—No.

Senator SIEWERT—I am not saying it is justified; I am just saying they cannot appeal it anyway, can they?

Ms Pengilley—Not really.

Senator SIEWERT—But they have a right to be notified that it is continuing.

Ms Pengilley—And they do have appeal rights, limited as they may be.

Senator SIEWERT—I would like to hear about your experience of implementing all of the measures—for example, income management and the feedback from clients about their relationship with Centrelink and whether they are having problems. To extent that they may not like it but it is operating smoothly, could give us some feedback on that?

Ms Pengilley—One thing that remains very clear is that people still do not properly understand how income management works. People have got used to it and are going along with it but still have very limited understanding of the actual structure of income management and the fact that there is an income management account, and that there is then a BasicsCard and so on. In spite of the good work that Centrelink is doing in the communities and their greatly improved level of service, there is still a huge amount of ignorance about how the system actually works. The other thing, and it is one of the things Ruby has talked about, is that the BasicsCard does not have a photo ID. That is one of the problems people are finding. I might let Ruby explain it. Ruby might like to talk about the problems with the card itself.

Ms Walker—Family members can get hold of the BasicsCard and quite easily get the PIN. They use it for buying food for themselves. I speak mostly on behalf of the elderly in the communities I am involved in.

Senator BOYCE—It is a different sort of humbugging.

Ms Walker—It is; before it was with cash. They would take the bank card and get the PIN, and still take their money. They are doing it with the BasicsCard and getting food. The elderly do not understand that they have to find out how much they have on their BasicsCard and go shopping with a limited amount. They are not aware of how far \$100 is going to go when they go shopping. Quite a number of my clients go over the amount and I have to go in with them to help. It is an embarrassment for them. You have to put food back because they do not have enough money on their BasicsCard. The card cannot be swiped to tell them how much they have, so they are always going over the BasicsCard limit. If family members are not taking the BasicsCard from them, they are demanding the food that has been bought with the BasicsCard. The elderly are still being abused through the system. The BasicsCard works to an extent in that it allows them to have food, but it also allows the extended family and family members to come in and demand it. Also, on the culture issue, they are not able to say no to family members, because it is about sharing and caring. But when you look at it—

Senator BOYCE—It is one-way sharing.

Ms Walker—Yes. They abuse the elderly.

CHAIR—These issues are significant and painful, but is there anything that government can do to respond to the issues you raise?

Ms Walker—I do not really know. It seems that the elderly are always being abused. How they overcome it—I do not have a solution. It is just that I have seen it over so many years, and it is still going on.

CHAIR—Under this proposed legislation—I am sorry to keep bringing it back, but all we can do is look at the proposed legislation—people who have reached pension age will be able to not be income managed. They can choose to continue to be income managed but they can make a choice not to—

Senator SIEWERT—They can be declared vulnerable.

CHAIR—on the basis of personal or family process. I struggle with the point that you are raising. It has often been used as a reason to say that this system is better. It is not foolproof, as you have pointed out, but I am not sure what we can do about it.

Senator BOYCE—I suppose it is better in the sense that the family are pinching food, not cash, to buy grog and whatever.

CHAIR—It still comes back to elder abuse.

Ms Walker—Yes, it is the elder abuse.

Ms Roe—On that point—and I am not just focusing on elders—maybe more resources need to be put into financial literacy or into people having access to financial counsellors. I think that is a really big gap in remote and regional communities in the NT, where people have quite complex money issues and debts and need that assistance. Centrelink coming out for that once-a-month visit to their remote community are not going to pick up on these issues. My understanding from the comments of elders in communities is that they do not understand what is happening with their money. They do not understand income management. There is no empowerment. They are not learning budgeting skills. For instance, there is the comment made by an old man at Ngukurr. I said to him: ‘How’s your income management going?’ And his comment was: ‘I don’t know. I just check my account. Sometimes there’s money, sometimes there isn’t.’ An important point in this legislation is the need to look at other resources to make sure that people understand what is occurring.

CHAIR—Has that situation changed: the gentleman who said ‘Sometimes there’s money, sometimes there’s not’? Five years ago—

Ms Roe—He said this post income management.

CHAIR—That is what I mean: sometimes there is, sometimes there is not. Under a payment system of five years ago, would he have been any more aware of his money? I know that is a matter of opinion, but the argument is there: what we have is a limited system providing income support. At the moment in the Northern Territory, there has been process of income management and a lot of it comes back to people genuinely understanding their rights—and that is the issue permeating your work. This is an avenue to point that out. But I am not sure whether the situation is worse than it was five years ago.

Ms Roe—I take your point. It may or it may not be—I am not quite sure—but I guess this is a perfect opportunity for people who are being income managed, and we need to look at whether they understand their money.

Senator BOYCE—Presumably, the end result is that they do the income managing, so they need financial literacy.

Ms Roe—Yes.

CHAIR—And that is put in your submission as well. There is a large chunk about it in there.

Ms Roe—That is what has been missing to date in the NTER income management regime.

Senator SIEWERT—The government was supposed to be and are to a limited extent resourcing financial counsellors and financial management advisers.

Ms Roe—There has been increased funding for FaHCSIA to provide money management services. Some of those models have financial counsellors employed; some do not. I think they are still in the process of rolling out those models and implementing them. Three years on—

Senator SIEWERT—We are still not there. I am asking for feedback on the extent to which they have been supplied—and the point is that it has not been enough. Is that it?

Ms Roe—Yes. Also, I should say that, over this period, there has been a severe shortage of financial counsellors. At one stage, there was access to only one place for financial counselling—that was in Darwin. For a period of time, Katherine did not have a financial counsellor. Remote and regional places are not getting serviced at all.

Senator BOYCE—Was that through lack of people applying for the positions or lack of funding?

Ms Roe—There was funding—but I think it was a bit of both. The skill shortage is probably the big issue.

Mrs Bradshaw—I am on the board of the Traditional Credit Union in a voluntary capacity. The credit union services the needs of remote and regional people in a limited number of communities in the Northern

Territory. We have a financial literacy program through some funding from the ANZ Bank, and we are looking to extend that program.

Senator BOYCE—Can you tell us about the size of your program?

Mrs Bradshaw—We currently have one person and we are looking to get a couple of other people on board. The employee we have has been doing a bit of work mainly in Wadeye and Milingimbi. It is essentially a pilot program.

Senator BOYCE—Is that training to look after your own money?

Mrs Bradshaw—Yes. It is financial literacy

Senator BOYCE—Is it one-on-one?

Mrs Bradshaw—It is generally working with various people in the communities. We can provide you with more advice on what the credit union is doing, if you like.

Senator BOYCE—I would love to have a look at that. thank you.

Mrs Bradshaw—Okay. I will get that organised today.

Senator SIEWERT—Can I go back to a couple of the other special measures. I want to talk about the prohibited materials you mentioned before. The changes to the alcohol—to the extent that they go—you support those because they are positive? In terms of the prohibited materials, what would be your recommended approach? Because that is another area obviously of special measures.

Mr Sharp—I think NAAJA's approach would be the non-discriminatory approach; so the law would apply to all Territorians the same. We have grave concerns over the government's assertion that there is evidence to support the continuation of this measure in communities, because they have not produced any evidence to suggest that it has any link to what they were seeking to address—namely, child abuse and violence in communities. We have not seen any increase whatsoever in people getting prosecuted for possession of pornography in communities. Our board members have given us feedback making the valid points that people simply do not have credit cards in communities. They do not have access to the internet at home in communities. So their means of accessing pornography are already far beneath what the rest of the community's are. So, although the government starts with this premise of, 'We will continue the bans in communities but we will give communities the opportunity to make application for those bans to be lifted', our biggest concern is that communities just will not do that. And that is because of the stigma. The stigma this measure has caused has been enormous in communities. There are these signs. It has had an effect on Aboriginal men. There is a subconscious link in people's perception—it labels people as paedophiles or child abusers. So it has had this very deleterious effect in communities, and people are not going to bring an application to be permitted to view pornography. It is just not what people are going to do.

Senator SIEWERT—The other issue that your organisation, I think, raised with us last time we were here was the issue of people accessing materials in Darwin, for example. I presume, if you were saying it applied to everybody, that would apply across the whole of the Northern Territory, whatever the rules happen to be?

Mr Sharp—That is right. And Mr Patullo like can talk about the Nhulunbuy region and about where the problems actually lie with pornography. It is not in communities.

Mr Patullo—I have worked in two mining towns in the Northern Territory—BHP, GEMCO—and also with the Nhulunbuy township. We have these big signs about pornography, saying when you are in a proscribed area—that is fine. But you can drive off the proscribed area, particularly in Nhulunbuy and, as soon as you are in what I call the twilight zone, which is the mining lease, everything is open. Whatever you want to do—there is alcohol, anything you want, any vice you want. You can go into a shop and hire whatever you want—adult material. So Aboriginal people do travel into these communities to do their shopping. Their main centres like Yirrkala, Ski Beach, Gapuwiyak, wherever, they will travel up into Nhulunbuy because they go to Woolworths. So they do come and have a big shop every now and then. And it does not matter if they come from homelands either. At the end of the day they can get all this stuff without any problem.

So, I do not know how this works, but the point I want to make is—I coach football and play sports and everything like that and, you find out a lot in that area, when you are growing up in the bush. I have never, ever seen in an Aboriginal community a blue movie. I have never had a group come up to me and say, 'Do you want to come here and watch this.' You can go into a mining camp and, yes, you will find all of that. Whatever you want to find, it is there. People will say, 'Come up and see this.'

The other point I said when we were talking in the consultations is that most of this literature, particularly pornographic material, is on the internet. It is on a medium like that. Aboriginal people do not have a computer in their houses, let alone have a good telephone connection to make the computer work, so I think this pornography thing is absolutely beat up. There is no evidence to say there is an historical link in us men to whatever people are thinking we are—and I don't know what they think we are. But I think this pornographic thing has got no substance at all. I don't even think it is on the radar in the communities. But it is on the agendas of these committees. But at the end of the day I think you can order whatever you want from the ACT or Darwin and you cannot stop that trade.

We also had a talk about what is pornography. Is it sexually explicit material or is it someone jumping on a phone? Young kids can get on a mobile with Telstra and they can pull up whatever they want. But you hardly ever see that in a community. As you get into an urbanised area you might see a lot of that. So we really need to determine this. Quite honestly, I want to know what the government is looking for out in the communities and why they brought this stuff in. Because I don't think it is out there and it has portrayed our men as molesters or whatever, or they are using it as a scapegoat. The only thing I can think about as to how this has come about was the Maningrida case where they decided to brand us all, particularly the men, and they based it on a couple of, maybe, videos or something like that. I am not saying they are not there but, again, I have worked in communities where non-Indigenous people are there, contractors or whatever, doing good things such as building houses or whatever, and they have their vices. They do not get searched. Whatever they want to watch or if they want to read a magazine, they can. You can turn on SBS and you will find worse stuff than an R-rated movie or something.

CHAIR—This has been pointed out to us, Mr Patullo—though not by SBS.

Mr Patullo—I think it is a big beat up and I don't know which way to go about that one. I don't think it's a big problem like people are making out, personally, but it has painted us with a stigma.

Senator BOYCE—I understood one of the concerns was overcrowded housing—that children could be seeing pornographic material which affects their values and ideas about what is normal behaviour when that would not happen elsewhere. The idea was that there is no opportunity for people to do it privately.

Mr Patullo—It might have happened in an isolated instance, maybe one house or so on, but they would have had to go to Darwin to get that material. You cannot go down into the Gapuwiyak supermarket and go to the video shop because they do not have video shops in communities. So it has to be mailed or someone goes into Darwin or down to Canberra, but I don't think they go to Canberra. It's just a bit too far and a bit too cold.

Senator BOYCE—We agree!

Mr Patullo—But at the end of the day I don't think it's a real big issue. It is something we have maybe all got to look at and find out what it is. I was talking to Annabel and she said, 'Well, there's a young fellow who had a bill—

Ms Pengilley—What was that, sorry?

Mr Patullo—You reckoned it was something about a person who had a bill on a telephone.

Ms Pengilley—Yes.

Mr Patullo—I don't know if I can tell you, and we can't say names or anything, but he racked up a big bill. Now I asked the question, what is porn? Someone talking to someone on a phone—what is that classified as? You know what I'm saying here, I guess.

CHAIR—I do understand, Mr Patullo. I am sorry, though, that we have run out of time. There could well be more things you wish to tell us. We have all your original submissions. If there are things that have come out of this hearing that you think you would like to add information on as a result of the discussion, please do so. If there were questions on notice, the secretariat will be in contact with you on specific issues if they want more advice from you. We do appreciate the time you have given us both in your submissions and your attendance. No doubt this discussion will continue.

Proceedings suspended from 12.44 pm to 1.30 pm

ELDRIDGE, Ms Ilana, Chief Executive Officer, Larrakia Nation Aboriginal Corporation

CHAIR—Welcome, Ms Eldridge. Information on parliamentary privilege and the protection of witnesses is available from the secretariat. I am sure you have done this before and I think we have talked before so you know how it works. You are welcome to make an opening statement, and then we will get into questions.

Ms Eldridge—Sure. I heard an alarming statistic today which I would like to share with you. It was a speech by Glenn Ferguson, the President of the Law Council of Australia, at a launch on a policy statement on Indigenous Australians and the legal profession. He stated that the incarceration rate of Aboriginal people in Australia is five times higher than that in South Africa during the apartheid era and that high rates of Aboriginal deaths while in custody in prison correlated directly with the disproportionate rate at which Aboriginal and Torres Strait Islander people are arrested and imprisoned. Further, he said that the Productivity Commission has recently confirmed that rather than improving, this situation has in fact worsened over the last 20 years. I am sure you already know that Aboriginal people fall behind the broader Australian community under virtually every socioeconomic indicator and I do not see any improvement at all since the onset of the Northern Territory Emergency Response.

I want to first express approval for the government's intention to reinstate the Racial Discrimination Act, if that is indeed what it is. If, and I hope this is not the case, the legislation concerning the NTER will override the Racial Discrimination Act, for any reason at all, then we would not support that.

To get to the key points from the perspective of the Larrakia Nation, we provide a large number of services to homeless Aboriginal people from throughout the Northern Territory. We consider them to be internally displaced peoples and there has been a dramatic increase in the number of internally displaced peoples on the streets of Darwin since July 2007. July 1 this year will see income management beginning to be rolled out across the land, starting here in the Northern Territory. It is pretty hard not to feel like a bit of a guinea pig living here. We wonder often why controversial new measures are trialled first in the Northern Territory and we speculate about whether or not it is because we have only three federal members. Is it because we are a territory without the rights of a state and we do not really factor in in the making or breaking of governments of whichever persuasion? I also wonder if the NT is really among the most disadvantaged areas in Australia for non-Aboriginal Territorians, given that most Aboriginal people in the Northern Territory are already income managed.

In any case, it is pleasing to see that age pensioners and those on disability support will no longer be income managed. However, the government really needs to go much, much further. For a start, given the median life expectancy age of Aboriginal people, which is between 47 and 48 years of age, particularly for men, Aboriginal people should be able to access the age pension at a much younger age. If we can repeal antidiscrimination legislation, I do not see why we cannot put in place new legislation which positively discriminates. You could means test it, you could link it to comprehensive health assessments or whatever you like, but the reality is that people do not live to an age, generally, where they are eligible for the age pension.

In research done by the Larrakia nation last year titled *An investigation into the influx of Indigenous 'visitors' to Darwin's Long Grass from remote NT communities—phase 2*, we demonstrated that the emergency response policy became a structural driver of Aboriginal homelessness and internal displacement. Our study findings suggest that there has been a sustained growth in primary Aboriginal homelessness in Darwin since July 2007 to the present day and that this population has been found to be a prematurely aged one. The most common reason that people gave for leaving their home communities was to escape family problems, problems that generally included violence. Further, of the participants surveyed, 70 per cent of them were over 40 years of age. In line with national trends where increasing percentages of the homeless population are aged, these people are clearly prematurely aged when compared with their non-Aboriginal counterparts. The majority of these people, who are also medium- to long-term clients now of the Larrakia nation's homeless programs, have chronic diseases such as diabetes, heart conditions, renal failure and most commonly trauma and trauma related illness.

In Australia there is no clear department or policy area that has responsibility for the aged homeless. The strict eligibility criteria employed by many health and welfare agencies deny many prematurely aged older homeless people access to their services. This is a population who are very likely to need life-long care. They are no longer in the remote communities; they are here on the streets of Darwin. These people should not be income managed at all. While they are not yet 60 and therefore not eligible for the age pension, most of them no longer have dependants—as you would know, Aboriginal women and parents are likely to have children at

a relatively young age—and as the people in the communities with the most disposable income, they are targets for violence, which was reported to us through our research, violence largely perpetrated against them by younger Aboriginal people seeking money for alcohol or more commonly marijuana. This was most definitely the case in communities where an increased police presence occurred as a result of the emergency response.

Many of these people are likely to have never had a job in the Western sense of the word, so they are in the government policy statement listed as those who will continue to be compulsorily income managed, but they are the next generation of elders with significant and very important cultural knowledge. If income managing them leads, as our research finds, into internal displacement and homelessness, which is a state where their health and life quality will rapidly deteriorate, then clearly this policy is not having any kind of beneficial effect; in fact, it is disastrous. Removing income management by itself will not stop this violence, but reinstating individual choice and freedom of expenditure of their rightful entitlements will enable people to make more favourable choices. Reinstating a sense of pride and self-empowerment as well hope is perhaps the critical factor.

I will just read out a particular piece of our research, which was a survey of new arrivals to homelessness in Darwin since the emergency response where their perceptions of the intervention were recorded. The vast majority of respondents thought that the whole reason for the emergency response was income management. They believed that was the dominant reason why the emergency response occurred. The finding comes as no surprise to us as key policy reforms related specifically to the income management of Aboriginal welfare recipients. However, the next most common understanding of the emergency response was that participants did not know the purpose of the reforms and/or did not know anything about it.

The identification of this knowledge gap gives credence to the criticisms which dominated public debate at the time concerning the way in which the reforms were communicated and delivered to Aboriginal communities. We observed in the study that the failure to use interpreters and the inability of government representatives to adequately respond to questions in communities cultivated fear, frustration and uncertainty—additional stress which in part has resulted in a greater number of people coming to Darwin and the other major centres.

CHAIR—This is since the consultations around this legislation took place?

Ms Eldridge—This study was completed during 2009. I can provide this research for you. As you can see here, the largest number of respondents said ‘income management’, the second largest number said ‘no knowledge at all’, about 12 out of 150 respondents said ‘checking of children’ and about the same number said ‘police and army’.

CHAIR—What was the question to which those responses were given?

Ms Eldridge—The question was, in effect: why do you think there is an emergency response and what do you understand about it?

CHAIR—And those are the responses, as you have just outlined. That makes it clearer.

Ms Eldridge—And the smallest number of all was about an alcohol and illicit substances ban. We basically found that Aboriginal people were just rolling with the policy punches. They had barely any understanding at all of what it was all about.

The incidence of trauma in this population needs to be considered. As part of this study, we administered the Australian Aboriginal version of the Harvard Trauma Questionnaire. If a key plank to justifying broader income management is about reducing alcohol consumption then the incidence of post-traumatic stress disorder must be considered. Our research which administered this Harvard Trauma Questionnaire found that more than 80 per cent of newly displaced people—remember, more than 70 per cent of whom were over the age of 40—had exhibited most or all of the symptoms of post-traumatic stress disorder in the week prior to the survey. Most reported an average of 12 traumatic events in their lifetime—that is, 12 separate occasions during which they thought that they or someone they loved would be killed.

These people drink just to get through the day, to feel good about themselves. In the absence of any treatment options available, as well as the absence of trauma treatment in existing alcohol rehabilitation programs, to further restrict their only pleasure in life—their only response is to self-medicate utilising alcohol—no matter how you or I may frown upon excessive use of alcohol, seems to me unduly cruel and inhumane without a serious attempt to put in place programs and treatment options for what is very clearly an endemic illness within the Northern Territory Aboriginal community. We think this is the case not just for

remote community dwellers; we think that the incidence of trauma is perhaps not as high but very, very high anyway in the urban populations too.

The burden of proof as to whether or not income management should be imposed needs to be put back onto the government. There need to be accepted and acceptable triggers and the communities should have a defining say on whether or not an individual requires income management. So rather than going through a difficult review process through Centrelink—which is likely to end in no success—because you do not have dependent children or you are managing quite well to get your children to school and fed, it needs to be approached from entirely the opposite angle, in our view.

The say about whether or not income management is appropriate for individuals should, wherever possible, be decided by elders and respected community members who are involved in representative community based organisations. Such triggers really need to be very carefully considered in close consultation with community members—all of them. Let's try to get it right this time—the understanding of income management and all of its implications embedded with the proper use of interpreters and trusted community advocates and with genuine consultation, because that lack of genuine consultation has been the overriding hallmark of this emergency response and how it has been imposed upon the Aboriginal population of the Northern Territory.

I received this policy statement today, which did not give me much time to consider it in its entirety. Looking through the building blocks, Closing the Gap's first building block is governance and leadership. Correct me if I am wrong, but I cannot find anywhere grant funds available from either the federal or the Northern Territory government for governance, nor is there operational funding for organisations. So with the exception of community government councils and civil society or service based organisations, those other organisations which are not community government councils survive on small percentages of program funding. This means there are no funds for human resource managers, no funds for bookkeepers, no funds for admin staff—essentially all the staff that enable a community organisation and its funded programs to function properly. There needs to be a major rethink on how funds are rolled out to the communities.

I just tear my hair out because I am consistently seeing it being done wrong, over and over and over again. What I have seen is leaderships programs such as BLAC, Building Leadership in Aboriginal Communities, where the program will take the most gifted community members into a full-time training role, thereby removing them from their active participation in community organisations at a time at which arguably they are needed the most. It is akin to the African brain drain that we have all heard about.

In a roundabout way what I am getting to is that, rather than overcoming welfare dependency, the sum total of all the measures seems to me to be actually entrenching welfare dependency in many and varied ways. We take an approach of doing no more damage, but I do not see a similar approach being undertaken by the federal government pertaining to the Aboriginal communities of the Northern Territory. For example, we saw an extraordinary article in the local newspaper last week where the head of the Northern Land Council was congratulating SIHIP for the completion of the first house in Wadeye. That house was 130 square metres and it cost a reported total of around \$450,000 to build. That is roughly \$3,500 per square metre. Here in Darwin, the same sized house would cost a maximum of \$300,000. I just cannot believe that the transport and additional construction costs, because of the location of Wadeye, would actually come to a sum total of \$150,000. It is outrageous. You are talking about half a million dollars per house when each house should, at maximum, cost \$300,000. So, given that factor of 50 per cent, an additional number of dwellings could be built with the current level of funding. There is a subject for another Senate inquiry.

Senator BOYCE—Are those Darwin figures for house building only, not land too?

Ms Eldridge—Just the house. It is just gobsmackingly inefficient. And I just wonder how many Indigenous jobs were created in the building of this house; how many small enterprises were begun in Wadeye as a result of the SIHIP effort. That is why I believe that what we are actually achieving is further entrenching welfare into Aboriginal communities. Rather than utilising a major intervention which could be providing positive outcomes, we are punching well below our weight.

I am also curious about the role of royalties. I think that issue needs to be considered in the light of income management too. To use a simple example, here in Darwin the Larrakia community, which is mostly an urbanised Aboriginal community, have actually got no say over any of their assets or funds that were received during a period when they were in a position to negotiate for compensation through the native title process. All of their assets are held in 100 per cent ownership by the Northern Land Council and small amounts are given to Larrakia people effectively on a whim, it seems like.

Senator BOYCE—What are their assets, Ms Eldridge?

Ms Eldridge—The assets are an amount of land, some royalty money from the building of the Wickham Point gas plant, and some funds which are from the compulsory acquisition of land to enable the construction of the Alice Springs to Darwin railway. So the land council owns 100 per cent of those assets through two shares and established the Larrakia Development Corporation, which now creates joint venture businesses, but it is very clear that not a single genuine Larrakia business has been created. While they claim to have employed more than 70 Aboriginal people in various operations throughout the Territory, we can find only about five who are actually Larrakia. The Larrakia community has no say about who is on the board.

Senator BOYCE—Are we talking hundreds of thousands of dollars?

Ms Eldridge—We are talking millions of dollars.

CHAIR—Ms Eldridge, while I do understand the sensitivity of the issue, that is certainly something that this legislation is not dealing with. It is a huge issue, and our committee—

Ms Eldridge—I guess the point is that large amounts of land and enterprise are controlled by the Northern Land Council—and I guess the Central Land Council in Central Australia and other land councils. Another small issue, which is not that small, is the rise and rise of Indigenous homelessness in Darwin. Coming from remote areas where the land council is the dominant body, some responsibility needs to be taken.

CHAIR—Indeed. But that is for a much wider debate.

Ms Eldridge—Indeed, but I guess the issue of royalties is a factor.

CHAIR—It is all part of the income process.

Ms Eldridge—A major part of the emergency response is about encouraging home ownership. Here in Darwin there are Larrakia people who have lived in public housing accommodation and have successfully paid rent for 50 years and more. As soon as the person on the lease dies, which of course is a fairly frequent occurrence, then that family entirely loses the house and the house is put into the mix, generally. We have a situation here in Darwin at the Larrakia Nation where young Larrakia women are resigning from their jobs or forgoing an increment rise on their pay because the cost of rent in public housing will price them out of the market, or they are threatened with losing their public housing dwelling. So these women are genuinely being discouraged from returning to the workforce after their children are old enough, and they are facing homelessness themselves. It just seems to be entirely counterproductive. Maybe in your suite of welfare reforms that could use some attention too, because if ever there was a community capable of achieving home ownership, it would probably be the Larrakia and those other communities in the larger regional centres where there is better access to jobs, training and a whole suite of other services and programs.

I guess the key point for us is: continuing to impose income management, in particular on that age group between 40 and 50, does no good at all. In fact, it creates more harm than good. There need to be triggers which trigger income management rather than it being applied in a blanket approach across the board—if, indeed, there is to be income management at all.

CHAIR—Before I pass over to the other senators I have one question on your argument—and we have heard you speak about this before. What is the link between income management and the harm in terms of the client group you are talking about—what is the stimulant between income management and the degeneration of their condition? I still have not grasped that. You talk about the surveys and the number of homeless people coming into Darwin, and we acknowledge that—that is clear—but I am still not clear specifically why that is income management driven.

Ms Eldridge—I will just dream up a scenario. A couple have been together forever, their children are grown up and are living separately—probably in the same community—and the couple are not caring for their grandchildren. Incidentally, I do accept that there are cases where income management has been useful for grandparents caring for dependent children as well as for some parents. Half of the couple's income is on their BasicsCard, which they can spend at the shop, and they can spend the other half of their income on whatever. They do not have a lot of dependent children so they can easily survive, if not have money left over, on their BasicsCard in terms of food bought at the shop and whatever else. Most people on income management do not have cars, so they do not have to spend on petrol, and they do not have to spend on education away or anything like that. So they have, relatively speaking, a large amount of cash—it is not a very large amount, but they do have cash. Because they do not have dependent children—there are only the two of them—and they both have cash, the couple are targeted by the youth. They are easy targets.

CHAIR—They are targeted for the cash component?

Ms Eldridge—They are targeted for the cash component. I would have thought that other agencies would have shared with you the way that the BasicsCard has been used.

CHAIR—Yes, we heard about that this morning from someone from Katherine.

Senator BOYCE—What has changed there, Ms Eldridge? They had the cash beforehand anyway; why are they more targetable now, so to speak?

Ms Eldridge—I think it is a combination of factors. Part of it is the increased stress as a result of the emergency response. There is an increased police presence; you have a lot of police in some communities. I have witnessed—Wadeye was pretty interesting—federal police, who would normally be doing cocaine and heroin activities in Melbourne or Sydney, chasing cars up and down the street doing minor traffic infringements because there simply was nothing else to do. We have had many complaints from people about police just coming in without warrants and searching through their houses and bags.

Senator BOYCE—But the idea of more police causing more stealing of cash et cetera and more violence is counterintuitive.

CHAIR—I am just not getting the link. I understand the general issues about the concern about police being effective and all those things. But the specific—

Ms Eldridge—Okay. One of the other things which lead to this is that the younger people would normally have been able to go to their parents and bully their parents into giving them cash, but their parents have much less cash available now because it is being spent on the younger children at the store. So they are looking for another target.

CHAIR—So the violence is being spread more. As a result of each individual having less to be taken more people are being targeted. Is that the idea?

Ms Eldridge—The violence is becoming increasingly targeted against people in this particular age group with no dependants.

Senator BOYCE—The more vulnerable?

Ms Eldridge—Yes, the more vulnerable. It is elder violence, really—elder abuse.

Senator SIEWERT—Is this based on the community in the Long Grass?

Ms Eldridge—There was strict eligibility about who was surveyed in this research. It was people who had come to Darwin since the onset of the emergency response—they had to have arrived in Darwin within a three-month period of the research being done. So they were very recent arrivals.

Senator BOYCE—Is that report on the public record?

Ms Eldridge—Yes. I can make it available for you.

Senator BOYCE—Thank you.

Senator SIEWERT—Could we explore that a little bit further? The people that are being subjected to this increased violence are people that have moved to Darwin, to the Long Grass, within three months of the survey, so they are people coming from various communities—

Ms Eldridge—All over.

Senator SIEWERT—All over. So the reason they are moving is this targeting?

Ms Eldridge—Yes.

Senator BOYCE—They have moved out of their community because of increased violence in it.

Ms Eldridge—Yes, that is what they all reported. That was the most dominant reason for them coming to Darwin; the increased violence.

Senator SIEWERT—Then they are suffering from homelessness and other issues in Darwin?

Ms Eldridge—Yes. They were very frustrated to have to negotiate the same or an increased level of violence and danger through living in Darwin's long grass.

Senator SIEWERT—These are people that are currently subject to income management?

Ms Eldridge—Yes.

Senator SIEWERT—And they would still be subject to income management because, with the changes under this process, they would still be considered so; they are not pensioners.

Ms Eldridge—No.

Senator SIEWERT—They would not even be classed as vulnerable. They would be in category E.

Ms Eldridge—Yes.

Senator BOYCE—You mentioned earlier something that I was going to ask a question on. You described the NTER as a driver of homelessness and then you talked about people saying they had come to the long grass to get away from family violence in their communities. Is that why you see the NTER as a driver of homelessness or are there are reasons?

Ms Eldridge—Homelessness is higher in the Northern Territory than anywhere else in the country anyway.

Senator BOYCE—Yes, but it is more about why is the NTER a driver of homelessness.

Ms Eldridge—Our research showed a 20 per cent increase in the numbers of people reporting as homeless since the emergency response. There was a very marked influx after the emergency response was first announced and then there have been waves. Our research suggests that it has become a driver of increased homelessness in the Northern Territory.

Senator BOYCE—This is because, with less cash sloshing around in the community, vulnerable people are being targeted for their cash.

Ms Eldridge—Alcohol and access to alcohol is certain one of the reasons people are coming to Darwin. If they cannot access alcohol in their remote community or in a nearby regional centre, then they are going to come to Darwin where it is impossible to stop people accessing alcohol.

Senator BOYCE—Was that one of the main reasons? What percentage of people use access to alcohol?

Ms Eldridge—The overriding reason people gave was violence. That was absolutely the biggest and most common reason. As part of the study we also looked at alcohol use and conceptions of abstinence. The overwhelming majority of study participants drank alcohol during their stay in the long grass. In response to the question, ‘Do you want to stop drinking,’ 86 per cent of participants indicated that they did. Their preference was to stop drinking at home, or outstation or in the bush—71 per cent had that preference—rather than receive support or attend an agency in Darwin. The remaining 14 per cent did not wish to stop drinking at all either because it was part of their lifestyle or because they did not see that they had a problem. Further, the majority of those people saw stopping drinking as rest and respite for drinking. They wanted to stop drinking for a couple of months, get healthy and fat and then go back to drinking. That was their perception of stopping drinking. I guess that is why we did the trauma research to see how big an impact the incidence of trauma made. Was trauma prevalent and endemic as we suspected and if so what impact did that have on drinking patterns? I think it is profound.

Senator SIEWERT—Could you go through the figures again on the number of people who were suffering from trauma? You said that a number had had over 12 traumatic events. What proportion of people were identified as suffering from post traumatic stress?

Ms Eldridge—Eighty-two per cent.

Senator SIEWERT—So 82 per cent of the people in the group that had arrived within three months of the survey being undertaken had had at least one traumatic experience.

Ms Eldridge—No. There was no-one who had had only one traumatic event. The average number of traumatic events amongst that 82 per cent was 12.

Senator SIEWERT—Okay. Thank you.

CHAIR—Then you had a figure about loss of immediate family.

Ms Eldridge—Just that trauma was defined as ‘in fear of your life’ or ‘in fear of the life of someone you love or someone close to you’.

Senator SIEWERT—Thank you. Senator Boyce talked about the drivers for this. The violence generated by income management was a driver. The alcohol restrictions were a driver. Were they the two main drivers?

Ms Eldridge—Yes. The third could be loosely described as increased stress, but whether that is a separate category is open to speculation.

Senator SIEWERT—There was a big influx after the NTER first came. At the time people said it was a response to the intervention and that people wanted to get out of community before the prescribed areas were put in place et cetera—not realising they would be caught anyway. If they were designated in the community as of 23 June, they were in that community whether or not they were there afterwards. It sounds as if there have been a continuing number of people moving out of community over the last 2½ years.

Ms Eldridge—Yes. It is not something that can be explained by the increase in population because we have included all the statistics of the service delivery from our other programs and that some other agencies collect as a matter of course. Return to country, our photographic ID program and our night patrol service all have shown a steady increase in client uptake, more than could be explained by knowledge and understanding of the service. It is very clear. Homelessness in Darwin has always been high but there were always big seasonal variations. The seasonal variations are not so big; we just have a steady rise.

Senator SIEWERT—Thank you. Under the new changes, there will be (a) changes to the alcohol provisions and (b) income management will be much wider—it can be rolled out across the NT, though they have not worked out how they are going to roll it out. Do you think that will make a difference to the number of people moving into town or will it be another impact on the people already living in the long grass? How do you see it impacting on the community?

Ms Eldridge—The new roll out is mostly going to be for non-Aboriginal people. The planned changes for the Aboriginal community are only about aged and disabled pensioners, along with some incentives to join a training scheme or save money or do this and that. I would not expect major changes at all because the changes are not major. They are a major change for the non-Aboriginal community, but they are not a particularly major change now for the Aboriginal community. As an aside, most of the training and employment programs which are devised for Aboriginal people come from the perspective that they buy into Western capitalist culture, and I did not know that they do. There are so many examples of new programs where the uptake is way below the expected rate. It remains to be seen. None of us could have anticipated the creative use of the BasicsCard and the way the black market economy sprung up around the whole thing. I do not live in poverty; I do not have to be that creative just to get by. I cannot speculate. We are constantly surprised by how innovative people have to be when new policy is imposed.

CHAIR—Thank you, Ms Eldridge. Could we get a copy of your report? I think we have had it at a previous inquiry but I think it would be very useful for this committee to get a copy of the one that looked at all the stats from which you quoted.

Ms Eldridge—Sure.

CHAIR—If there is anything that you wish to add, if you go away and think about it and think, ‘I should have said that,’ please be in contact with the secretariat. We appreciate your time, as always.

Ms Eldridge—No worries. Thank you.

[2.10 pm]

MACKINOLTY, Mr George John Blair (Chips), Manager, Policy and Strategy, Aboriginal Medical Services Alliance Northern Territory

McLAUGHLIN, Ms Joy, Manager, Indigenous Programs, Fred Hollows Foundation

PATERSON, Mr John Frederick, Chief Executive Officer, Aboriginal Medical Services Alliance Northern Territory

CHAIR—The next witnesses are from the Aboriginal Medical Services Alliance NT and the Fred Hollows Foundation. I think you are all experienced in this process. You have information on parliamentary privilege and the protection of witnesses, or we can provide that for you through the secretariat. We have copies of your submission and I think we have just had copies of your opening statements handed to us as well. Would you like to make some opening statements? They do not have to be directly what you have given to us because we take what you have given to us as supplementary submissions. But perhaps you would like to make some opening statements and then we will go to questions from the senators. Mr Paterson, are you going to make an opening statement?

Mr Paterson—Yes.

CHAIR—Please do.

Mr Paterson—Thank you, Madam Chair. First of all, I would like to acknowledge the traditional owners of this country, the Larakia people, for allowing us to meet here and give evidence. Madam Chair and fellow senators on the committee, you have our written submission. I would like to address you with some opening remarks, after which we are happy to take some questions. I am joined in this session of the inquiry by AMSANT's policy officer Chips Mackinolty and we agreed for Ms Joy McLaughlin from the Fred Hollows to also participate with us during this timeslot. Before I begin, the final editing of our submission resulted in errors in the referencing of some of the paragraph numbers in the text of the submission, which I would like to correct for the committee.

CHAIR—Sure.

Mr Paterson—Paragraph 34 should refer in its last line to 'conditions outlined in 30 and 33 above', not 32 and 34. Paragraph 57 should read, 'as outlined in 50 above', not 49. I will make sure a corrected PDF version is forwarded to the committee to replace the existing one.

CHAIR—And that will be the one that will appear on the record, Mr Paterson.

Mr Paterson—Yes, thank you. The Northern Territory emergency response, commonly known as the intervention, has had a major impact on the lives of some 40,000 Aboriginal Territorians over the last 30-odd months. From a position of absolutely no consultation or cooperation at all over the intervention, AMSANT and its members have played an increasing role in aspects of the intervention that have to do with the delivery of comprehensive primary health care. In the first instance, that involved a major recasting of the child health checks after the disastrous original suggestion by the former Indigenous affairs minister about compulsory forensic testing of all children in prescribed areas. A number of our members subsequently undertook the child health checks on behalf of the intervention.

As the NTER developed, AMSANT was at the forefront of negotiating and developing what became the Expanding Health Services Delivery Initiative, commonly known as EHSDI, which has substantially increased the levels of resourcing into comprehensive primary health care in the Northern Territory, as well as significant reforms in service delivery as we move along the pathways to community control policy, which has been signed off by the Commonwealth and Territory governments along with AMSANT. The initial investment by the Commonwealth through EHSDI will bring per capita allocation of comprehensive primary health care to around \$2,500 per annum.

Involvement in the intervention is essentially continuing as we work with independent evaluators who are looking at issues such as the child health check regime of the intervention. This evaluation is designed to look at the evidence, if any, as to the outcomes in health from the intervention. So while AMSANT has had and continues to have strong criticisms of and objections to the intervention, it can be truly said that we have been at the frontline in trying to get positive benefits for Aboriginal people in the Northern Territory. We have not been sitting back as armchair critics with little of practical value to offer. We have been working to achieve far better health outcomes for our people. That has been the business of AMSANT throughout its 15-year

history—a long time before programs such as Closing the Gap were ever thought of. In doing this, we have based our work on evidence based principles around the delivery of comprehensive primary health care. In my view, the health aspects of the intervention in which we have been involved are the only parts of the intervention that have been strongly evidence based. Many other aspects of the intervention have been based on little if any evidence as to their efficacy.

Our submission sets out in detail those elements of the intervention that we believe have been less than effective, ineffective or misguided. However, I would like to draw the committee's attention to the essential core message of AMSANT's position on the intervention, and that is that the Racial Discrimination Act should be immediately restored for the 40,000 Aboriginal Territorians who, unique among all other Australians, have had their rights under the RDA withdrawn. Uniquely among all Territorians, they have had their rights under the Northern Territory Equal Opportunity Act removed. Uniquely among all other recipients of social welfare, they have had their rights to appeal against administrative decisions removed.

I would remind senators that even people in jail have access to rights under the RDA. People living under the intervention acts do not have those rights. Indeed, a person serving jail time for child abuse—the supposed reason for the intervention—has access to the rights under the RDA and the Equal Opportunity Act. This is clearly perverse. With the greatest respect, I ask you to compare your own expectations in life with those of Aboriginal Territorians living under these acts.

Last week, the Prime Minister delivered his report card on Closing the Gap. I had the privilege of being in the House of Representatives on that day. In it, he pointed to the differences in life expectancy between Indigenous and non-Indigenous Australians, with an average 11.5 years difference life expectancy between Aboriginal males and non-Aboriginal males and an average 9.7 years difference for Indigenous females. But those national figures hide regional differences, such as those in the Northern Territory. So I ask male members of the Australian Senate to consider the fact that you are likely on average to outlive your Territorian Indigenous brothers by 17.5 years. I ask female members of the Australian Senate to consider the fact that you are likely on average to outlive your Territorian Indigenous sisters by 13.2 years. Indeed, you will outlive Aboriginal men in the Territory by a shade under 21 years.

For those of our country men and women living in prescribed communities, they have the added burden of living under the intervention acts and having substantially reduced legal and civil rights than all of their Aboriginal brother and sisters in non-prescribed communities and indeed than all other Australians, including those in jail. I point out that as each day passes Aboriginal children are being born into prescribed communities as innocent as any baby is and are starting their lives without the protection of the RDA. If the intervention bills that this Senate inquiry is investigating are not passed, many more Aboriginal kids will grow up in an environment in which they enjoy fewer rights than their counterparts. We are not just talking about people living in remote and regional areas. The nearest prescribed community is just five kilometres. If you live within the boundaries of Bagot, a prescribed community, you do not have the same rights as Aboriginal people living five metres from you in the suburb of Ludmilla. This is also clearly perverse.

I make these points to your committee not from some idle, bleeding heart perspective; I make the points on the basis of evidence, and there is clear evidence from around the world that inequality breeds ill health. Ever since the famous Whitehall studies, it is becoming more and more apparent that a very large source of ill health is down to social determinant. For example, put simply: people in positions of power—those higher up the hierarchy—have better health outcomes on average than those lower on the social scale. The main message of Whitehall was that there is a gradient of mortality for all causes of two to three times as you went down the hierarchy after allowing for all known risk factors such as blood pressure, cholesterol, obesity, smoking et cetera.

The World Health Organization has recognised that social determinants have an overwhelming impact on health. In other words, the extreme inequality between those living on prescribed communities with reduced legal and civil rights compared to other Australians can only lead in one direction: further poor health outcomes and a far longer road to closing the gap. Far from assisting good health outcomes, the removal of the RDA will lead to health problems. Surely, this cannot be the outcome envisaged by the intervention—yet this is the precise effect of the withdrawal of civil and legal right—and why AMSANT is calling for the immediate restoration of the RDA and other protections such as the equal opportunity act.

I will quote our chairperson, Stephanie Bell, from a media release she issued last week when she called on all political parties to vote to restore the RDA. She said:

“The reform legislation is not perfect, but the evidence on the links between health and human rights is clear,” she said.

“Failure to restore the Racial Discrimination Act means double jeopardy for Aboriginal people in the Northern Territory: it will mean our rights under the RDA will be held to ransom indefinitely.

“It is a stark choice for our political leaders.

“Support the human rights of Aboriginal Territorians through the restoration of the RDA now.

“Then engage with differences we might have with other elements of the legislation down the track.

“It’s that or live with the knowledge that Aboriginal people in the Territory will continue to be deprived of those rights indefinitely.

“What we are saying is pass this bill, allow Aboriginal Territorians to be treated equitably.”

saying is: pass this bill. Allow Aboriginal Territorians to be treated equitably.

Senators, even as it stands now, the limited RDA restoration will not occur until the end of this year, which makes it 3½ years for people living under the acts. If the recasting of the act is not carried out by the parliament this year that time line will extend indefinitely with all of the poor health outcomes that will go with it. Thank you.

Ms McLaughlin—We have a very brief statement. I would also like to acknowledge the Larrakia people as the traditional owners of this country. The Fred Hollows Foundation works closely with partner organisations, including AMSANT, to support community capacity and community developed initiatives to address the social determinants of health and eye health for Aboriginal people. We also seek to advocate and influence government policy and health systems to improve outcomes for Indigenous Australians. The foundation is a member of the Close the Gap campaign, and we support the human rights based approach to health championed through that campaign.

I would like to restate for the record that we are really aware that there is a range of opinions among Aboriginal people in the Northern Territory on the NTER and we do not presume to speak at all for Aboriginal people; we merely comment on areas that we have some knowledge of or where we are aware of feedback from our Indigenous partners in the communities we work with.

We are concerned at a broad level that the proposed changes to the NTER which would be implemented through this legislation are unlikely to address some of the fundamental concerns of the NTER. We are concerned that at a broad level no evidence has really been advanced as to the overall impact of either the existing NTER measures or the proposed changes to those measures. There are various consultation reports, data reports and some evaluation of aspects of the NTER but no overarching evaluation of impact.

In this context, I would like to refer the committee to the submission that the Australian Indigenous Doctors Association, AIDA, made to the NTER review in 2008 where they talked about the preliminary findings of a health impact assessment that they have been undertaking. Unfortunately, they have not quite published the findings of that report yet, so the final findings are not available but the submission that they gave to the NTER review gave some quite comprehensive coverage of the preliminary findings. I have got a copy of that with me if the committee would find it helpful for me to table that.

Essentially, in that submission they contended that the NTER had had a considerably negative effect on the health, social and emotional well-being of communities, individuals and families. However, having said that, our most fundamental concern is the same concern as AMSANT’s, which is that the Racial Discrimination Act needs to be reinstated. On the timeline suggested in the legislation, as John pointed out, Aboriginal people will have been without protection of the RDA for 3½ years. It is not a valid foundation on which to implement programs which purport to address disadvantage. One of our key partners, the chief executive of the Jawoyn Association, based down in Katherine, who was not able to join us today, unfortunately, provided the following comment for the committee in relation to the RDA, so this is the comment of the Jawoyn Association. He said:

No-one but a racist could believe that the continued suspension of basic human rights is a sustainable foundation on which to rebuild the lives of the most disadvantaged group in the country. Not only is it the wrong approach, it is also immoral and un-Australian.

That is all I have, thank you.

CHAIR—Thank you, Ms McLaughlin.

Senator SIEWERT—In terms of any additional information around the health impacts of the NTER, are you relying on the Australian Indigenous Doctors Association’s findings or have you done some additional work on the negative impacts? I take from what you are saying that there are negative health impacts from the

intervention measures. Have you done further work beyond what the Indigenous Doctors Association have done or is that the study you are relying on for your information? Do you have additional work beyond that?

Mr Paterson—Our board will obviously discuss further studies and research they want to undertake in the sector the intervention has had its impact on. I think a couple of our member services have undertaken their own local regional research. For example, Sunrise Health Service uncovered the—

Senator SIEWERT—The anaemia?

Mr Paterson—Yes, the anaemia stuff. They identified that as one particular issue which they said could have impacted from the intervention measures. They are the sorts of small samples we get from member services.

Mr Mackinolty—Also, the Commonwealth funding a major evaluation of the NTER and the original child health checks.

Senator SIEWERT—This is the longitudinal study?

Mr Mackinolty—Yes.

Senator SIEWERT—But in terms of the issue around the inequities and power relationships—

Mr Mackinolty—That material is pretty standard.

Senator SIEWERT—That is what I am asking. I have read quite a bit of the international literature myself, so I am wondering whether you have done any work specifically around the interventions around that work as well?

Mr Mackinolty—Other than AIDA, who have been looking at that, no we have not.

Senator SIEWERT—Sorry?

Mr Mackinolty—Other than the Australian Indigenous Doctors Association, there has been no specific research, as far as I am aware.

Senator SIEWERT—Thank you. I was just interested to find out whether you had done any. I get your message very clearly about wanting to support the reinstatement of the RDA. I am also interested to find out whether you have looked out some of the submissions on the website in terms of issues querying whether this legislation reinstates the RDA. NAAJA were here this morning and they have some concerns also around the fact that this does not fully restore the RDA. I am wondering whether you have looked at those submissions and have a response.

Mr Mackinolty—We actually raised that in our written submission in any case—that it is not a full restoration of the RDA. As a health organisation, we have been concentrating on the health outcomes and so on rather than on the legal stuff.

Senator SIEWERT—I understand you are coming from a health perspective and, as I said, I have a great deal of sympathy for the argument that unequal power can have significant health impacts. And as I said, I have read the international literature. So do you think that, if it is not fully restored, the way the legislation is currently drafted will make a significant difference in terms of the health outcomes you are looking for when there is an argument that it is not fully restoring the RDA? Many of the measures we are talking about—alcohol, prohibition on prohibited materials—are still being classed as special measures. So they are still there and there is an argument that, in fact, they do not meet the requirements of special measures, which I will go into in a minute. The fact is that many of the things which are inherent in the intervention are still going to stay.

Mr Mackinolty—The basic guts of it is that our board's position is that it is imperfect legislation, but the level to which the RDA and various other changes will be restored will have positive impacts on health. We do not pretend—in fact, we raised criticisms of the legislation in our submission but the key position from board members was that the RDA and the proposals to restore it as they are being put forward is critical to the health of people in the Northern Territory on prescribed communities.

Ms McLaughlin—I am not a legal expert so I would not want to comment too much on the technicalities of what parts are being restored, but I would say that the overwhelming message from the partner organisations and communities we deal with regularly is that people are keenly awaiting restoration of the RDA and that they certainly feel it would make a difference. Similarly to AMSANT, we have raised a number of concerns in our submission about some aspects of the changes, but the restoration of the RDA is our foremost concern.

CHAIR—Mr Paterson and Ms McLaughlin, both your submissions go through a number of major concerns, most of which are shared in lots of the submissions we have, but the view of your board, based on their work in the community, is that the importance of having the RDA restored has such a significant impact on people. It would be useful if you could tell us why. What has been the impact on the people you work with of having this legislation change? It is mentioned in your submission but it has not come out so much in terms of why something which seems to be almost a legal argument about whether legislation applies or not, from your perspective, is so important to your board and the people you serve—to have that legislation affected.

Mr Mackinolty—I have a couple of small examples from communities of people not having the protection of the Equal Opportunity Act up here in terms of workplace relations and not being able to pursue cases under the Equal Opportunity Act and potentially also the Racial Discrimination Act, just in the workplace. That does not apply to anyone else in the Northern Territory. So ordinary industrial relations rights have been jeopardised by this. I have had a mate of mine working in Maningrida in tears about it because he ran into this brick wall which, if he lived in Darwin, he would not run into.

CHAIR—Because of the way the process is, I thought it was useful to have something personal like that on the record.

Senator BOYCE—I want to tease out one aspect that you talked about here: an intervention that was designed, at the very least, to improve physical health has, in your view, caused such psychological illness that any potential benefits have been completely outweighed. It seems something of a conundrum that we have set up a situation whereby it is almost a physical versus psychological debate.

Mr Mackinolty—The balance is going to be different for different people. Health is not just about delivering pills.

Senator BOYCE—I realise that and that is why I am asking the question.

Mr Mackinolty—All of our services run comprehensive primary healthcare services in which wellbeing programs and so on are as critical as a vaccination or ‘take an aspirin and go home and have a good lie down’ sort of thing. It is anything that affects those wellbeing programs and anything that affects people through increased binge drinking and so on—for example, people coming into town for drinking. Any of those sorts of mental health things that are jeopardised by one’s general wellbeing and by feeling good about the world and so on are going to be impacted. I doubt that there is some kind of beautiful continuum where you can measure the impact of the removal of the RDA in the same way that you can measure blood pressure. It is always difficult in those sorts of areas of mental health.

Senator BOYCE—The argument would be put, for instance, that to try and assess someone on the wellbeing index while they are being belted up every night by a drunken partner and are not having enough to eat because the partner is spending all the money on booze is a bit of an academic argument.

Mr Mackinolty—I am not with you.

Senator BOYCE—To assess someone’s wellbeing overall in a psychological sense when they are actually in physical danger or are being physically harmed as well as being economically abused seems to be somewhat beside the point. That is one of the arguments being put about what would be seen as a short-term benefit from the intervention.

Mr Mackinolty—Interventions can be carried out on those issues and are carried out by our member services, with or without the RDA. There are ways of running programs that do not depend on the removal of the Racial Discrimination Act protections. In my view, and I think it is the view of AMSANT—John can confirm this—that the suspension of the RDA has nothing to do with health outcomes. There is nothing in that suspension that has assisted people’s health.

Senator BOYCE—That is what I was asking you to try and explain.

Mr Mackinolty—I got there in the end.

Senator FURNER—Mr Peterson, you indicated in your submission and it was also mentioned in the House of Representatives last week when the Prime Minister delivered the report on Closing the Gap that there are demonstrations of substantial improvements in—and this is what I particularly want to focus on—nutrition. I would like to hear from you about your experience of the way in which nutrition has been improved in some communities.

Mr Paterson—I personally do not have statistics or data to confirm what I am about to say. Suffice to say, I have seen a slight improvement in the nutritional products on the shelves of a number of community stores

that I visit on a regular basis. I think it has come about by years of advocacy work by our sector and by others to ensure that stores carry a good range of products that are nutritious for the families in those communities. AMSANT continues to have concerns about the level of nutrition and about the eating habits of Aboriginal communities throughout the Northern Territory.

We are hoping to get and engage all key stakeholders there, including Outback Stores, other food chains, the Australian and Territory governments and producers far and wide that could have an impact or influence on the supply of food products to Aboriginal stores and communities. We hope that they attend that to hear firsthand from our Aboriginal members and community and health professionals. We want to hear solutions and ideas that they feel could address some of the health needs of Aboriginal people living in most communities throughout the Northern Territory. It is an important issue.

Regarding the Prime Minister and his annual report card, I said that AMSANT welcomed the report. AMSANT welcomed the accountability of services and programs being implemented in Aboriginal communities throughout the Northern Territory. We welcome the data, although I gave the example in my presentation that data around the life expectancy of Indigenous men, particularly for here in the Northern Territory, is a bit skewed because it is taken from a national averaged collection. We do have statistics and confirmation that the life expectancy gap is still 17 years. We will work with governments to hopefully close that gap.

If we are going to make an impact and ensure effective delivery of government services in Aboriginal communities, governments have to get behind and support the Indigenous leadership. This is why we have been so successful with the delivery of primary health care in the Northern Territory. The design, development, implementation, monitoring and review of primary health care in the Northern Territory is governed predominantly by a group of Aboriginal people who work in the sector and who have committed themselves and their demonstrated leadership to that service delivery component. I can only speak for health.

As we have seen and heard, the intervention originally set out to undertake compulsorily sexual checks of kids in the Northern Territory. But it was the Aboriginal leadership within AMSANT opposed that direction and encouraged to reconsider that. We already had a child health check program, which was developed by the sector in the Northern Territory. We asked why we were imposing something that was compulsory when we already had this voluntary child health check that we could build upon and massage to ensure that we hopefully got the same result. We achieved that very effectively. I firmly believe that you have to engage communities, and that came about because that was done. It was unfortunate and disappointing that in the implementation of the intervention that a whole chapter in the *Little children are sacred* report on this was completely ignored.

Senator SIEWERT—The No. 1 recommendation.

Mr Paterson—It was right up there in their recommendations. They ignored the whole chapter on how to engage with communities. They totally ignored it. There was a real failure by government. We are starting to turn that around, purely because we have been out there advocating for it and demonstrating that if you engage genuinely with the interests of the community at heart and ensure that you engage the Aboriginal leadership in those communities you will go a long way to achieving the desired outcome. The longer that governments continue to sideline the Aboriginal leadership, the longer these things are going to take.

There is a process to go through to make sure that you are speaking to the right people and all that sort of stuff. It is about talking to people at the community level to ensure that you are speaking to the right people and have the right leadership groups engaged. My point is about engaging constructively and meaningfully with the community leaders.

Senator FURNER—On the subject of engagement, were you involved with the consultations of the government in respect of the proposed bills?

Mr Paterson—Yes, I think there were some direct approaches by our members.

Senator FURNER—And what was your experience of those engagements?

Senator SIEWERT—Can I just clarify. Are you talking about the consultation approach on future directions or specific direct consultations on the drafting of the bills?

Senator FURNER—The drafting of the bills.

Mr Paterson—The only consultation and input we have had was the Oxfam. Oxfam just released their Shadow report. You will see there is a chapter in there from AMSANT on our experience.

Senator BOYCE—Your submission talks about the problem of ICC and government GBNs being at consultations. Where did that information come from then if it is not through direct involvement?

Mr Mackinolty—AMSANT is a peak organisation and does not deliver services on the ground.

Senator BOYCE—But it is through your member organisations.

Mr Mackinolty—A number of our member organisations did attend and reported back through a general meeting late last year on the consultation meetings have happened in their communities or their regions.

Senator BOYCE—What you have said here is that it is not conducive to achieving unbiased outcomes. Have you had any further information about things that happened that demonstrate this?

Mr Mackinolty—We can chase about through our members and get that to you, if it would be helpful to the committee.

Senator BOYCE—Thank you.

Mr Mackinolty—If I could just add to Senator Furner on the fresh foodstuffs and the stores, so far the intervention has concentrated on governance arrangements for the stores. There has been nothing yet—this is what the fresh food summit is designed around in May—about linking the primary health care service to the stores. We would be proposing that one of the conditions of licensing stores, if that is the way things are heading, and it would seem that is the way it is heading, is that they have to work in closely with their local clinic and their regional health service. There is also a proposal that there be an independent monitoring of stores in terms of making sure they are delivering nutritious foods. There is a story going around from one of the stores about being really happy about the number of chicken wings they are selling and so on, and chicken wings are the worst part of a chook when it comes to nutrition. They do not even accept chicken wings at the crocodile farm because it is bad for the crocs. Just because you are getting food in that is fresh does not mean that it is healthy and nutritious. We would be looking for a much greater links between what stores do and what the primary health care service does.

Senator ADAMS—Just from what you have said about the primary health program with your organisation, it has obviously been very successful and I would say it would continue to be successful. If this legislation does not go ahead, what changes will there be to the health program you have been running successfully under the intervention?

Mr Paterson—We will obviously continue. Let me add something on the investment from the Australian government for the child health check and the expansion and enhancement of the comprehensive primary health care services in the Northern Territory. That, I might add, is accessible to the Northern Territory government as well as to the Aboriginal community control sector, which AMSANT is the peak body for. I think it has been welcomed by all health partners in the Northern Territory. We have the Northern Territory Aboriginal Forum where any new financial investment coming into the Northern Territory is tabled at this forum and we have the Northern Territory, Australian government and AMSANT officials sitting around a table. It is an opportunity there to, first of all, be informed of the new health investment dollars that are coming into the Northern Territory. It gives us an opportunity for the governments and the community control sector, AMSANT, to have a discussion about it and to agree on points where we can progress and work in partnership and in collaboration to ensure that those dollars are hitting the right spot and we get value for money from the dollars that are going to be invested.

We will continue to use the forum for that particular purpose. During meetings with various politicians in Canberra last week we asked that a couple of other programs which we see as identical and which could fit into the primary health care framework and model, particularly those being funded by other government departments, and FaHCSIA is one of them—they used to fund mental health programs and the personal helpers and mentors programs which we see, from AMSANT's perspective to be two critical programs which can neatly dovetail and link in with the primary health care service model as well. So we asked Minister Macklin whether she would consider informing the Northern Territory Aboriginal Health Forum of any new initiatives and programs which are being auspiced and funded by the Australian government for the Aboriginal health leadership to have an opportunity to see how best we can link that in with our existing programs, rather than establishing another new entity or duplicating services, or contracting out to service providers who have no idea about primary health care service delivery in the Northern Territory.

We have a framework in the Northern Territory which is working effectively, as I have said previously. We have our finger on the pulse in all areas right across the Territory, given that the Territory government is sitting with us at the table sharing that information and working collectively in partnership to see how best we can

implement that. Hopefully we will continue to monitor its implementation to see whether we are hitting the mark, measuring it with good data collection tools and ensuring that an evaluation is undertaken to see how effective those programs are.

Senator ADAMS—From what you have said in your answer, this legislation is not really going to make any difference to primary health care delivery.

Mr Paterson—I guess we cop it when we are having consultations or we are out in communities meeting with our members or constituents or any community member who may want to stop by and have a yarn to us to express their personal opinion. For example, when I was in Canberra last week, I got an email from an Aboriginal health worker from one of our member services saying, ‘John Paterson, we saw this big media article in the *Northern Territory News* during the week about reinstating the Racial Discrimination Act. Is that going to be the case? Can you confirm what AMSANT is doing on our behalf?’ So we are getting feedback, comments and approaches from Aboriginal people right across the Territory.

As Chips has mentioned, it is demoralising. Let me give you my own personal example of this. I was in Canberra for a health meeting when Prime Minister Howard announced the intervention. One of the bosses of OATSIH called me up and said, ‘Patto, what do you reckon? How are we going to address this? What does it mean for the Northern Territory? Can you fellas respond to this? If so, now?’ I said, ‘Gee whiz, it’s just been announced about an hour ago. I’d need more than an hour to consider our response and how we’re going to tackle this stuff.’ From that, I jumped on the plane that night and sat thinking and my personal response and reaction to this was that it is totally disempowering. I felt that all the ability I had as an Aboriginal person and some of the decisions I was in a position to make had almost been ripped away from me. That is how I felt.

Senator ADAMS—But over those intervening years and your involvement you have obviously made a difference. What I am trying to get from you is, with this legislation, as proposed, what difference to primary health care delivery on the ground is it going to make?

Mr Mackinolty—With this legislation as proposed?

Senator ADAMS—If it is not passed, what is the difference? I am talking about primary health care service delivery on the ground, to communities. It is going to make a difference?

Mr Mackinolty—Anything that will deleteriously affect the health and wellbeing of clients of any of our services is going to make it harder for those services. That means the damage that is caused to people by inequality will affect those people’s wellbeing, it will affect those people’s health and it will make it harder for our services to achieve good outcomes for those people.

Senator ADAMS—Your report says that things have improved. You have done a terrific lot as an organisation with your very close liaison with communities. Health services have obviously increased and you have been part of doing that. All I want to know is: if the legislation does not go through, why would there be any difference now? You are going to continue to make improvements as long as you are funded to do it or your member bodies are funded to deliver those services on the ground.

Mr Mackinolty—Obviously, our member services are incredibly dedicated; they are really fantastic and hardworking people. They will continue to do their work and put in 110 per cent. But, if their clients are affected by continuing inequalities, that will affect how well they can do their job. If you reduce inequalities and if you increase people’s knowledge and power and all the other social determinants, that will have far greater impacts on people’s health and wellbeing.

Senator CROSSIN—Mr Paterson, are there groups or individuals in your member organisations who have made representation or who have actually supported income management, or are there different sections in the communities out there who have supported income management?

Mr Paterson—Senator, the majority feedback and comments that we have received is that people would like to see income management become voluntary rather than mandatory. At the moment, it is mandatory for all the residents in those prescribed areas. As a result of a discussion amongst the AMSANT membership, their position is that they support voluntary income management to those families. If someone is going through varying sorts of situations that require them to be income managed or if they want to remain in the income management system, then that is their choice. AMSANT members have a problem when it is blanketted, when it is mandatory right across the board, particularly when there are long-time Territorians who have good employment records, who have worked in government, who have managed their own financial affairs for years and, at the stroke of a pen, whose income is being managed by a government agency. I think that is unfair to members. That is why they are saying: ‘All right. Let’s have a system where it is voluntary income

management. Families and individuals can approach the relevant authorities and say, "I would like to get onto that scheme." I understand that, in Western Australia, it is very effective. It is a voluntary arrangement in Western Australia. In Cape York it is a bit of a mixed model.

Senator SIEWERT—It is community driven.

Mr Paterson—Yes. That is right. Our position is that, if children are not attending school, we support that family being assisted with income management. So, rather than using it as a big stick, I think we have to start looking at a strategy as a means of being a carrot that encourages people. We need to ensure that we have the appropriate support programs for those parents who are finding themselves in this sort of situation and not just go in there and whack people over the head and impose these draconian measures on them. I thought we were all supposed to be Australians and treat each other equally and have respect for each other. It is about going in and sitting down with those affected families that have got problems and saying, 'We understand that you are having problems here in sending the kids to school'—or whatever problems they are experiencing—and ensuring that we provide the appropriate support and programs for them and working through that.

Senator CROSSIN—So is there a view that the four categories of people who will now be income managed is still too restrictive?

Mr Paterson—We haven't gone through those individually, so it is premature.

Senator CROSSIN—Because pensioners, for example, will be exempted. They can opt in to being income managed—

Mr Paterson—Yes, I think we should give them the opportunity. If grandparents are being humbugged by grandkids or anybody else, and if they feel that is a secure way to protect their personal financial situation, then let us support them.

Senator CROSSIN—Can I also ask you about the alcohol management plans. This legislation will allow communities to go back to establishing their own alcohol management plans. Does AMSANT have any research or evidence to show that where communities have been able to do that in the past it has been an effective way of controlling or monitoring the alcohol consumption in those communities?

Mr Mackinolty—Yes. The current Alice Springs Alcohol Management Plan has reduced the levels of violence in that community substantially and has also led to a really big drop in the level of pure alcohol consumed in Alice Springs. There have been similar outcomes in Groot Island and in the Yirrkala area. The reason why dry communities often failed before was the lack of support in terms of policing and resourcing in those dry communities. I am not wildly enthusiastic about having lots of extra police but the presence of extra police and police stations is, by and large, supported by people out bush for that very reason—that there can be some realistic policing of dry areas.

One of the problems that has happened under the intervention is that a lot of the dry areas have been massively expanded in geographic size such that people cannot drink outside the dry area but still close by their community so they can walk back in, and some of them are eight to 10 kilometres away which, the morning after, is a fairly decent hike. But some of them have now been moved to 20 or 30 kilometres from communities and so on which has actually got quite dangerous for people. It has always been AMSANT's principle that the only successful alcohol management plans are ones that are driven by locals, and which locals properly resourced.

Senator SIEWERT—That is certainly our experience so far in WA.

Senator CROSSIN—So in that respect this aspect of the bill will also be supported by ANSANT then—because it changes that.

Mr Mackinolty—The proof will be in the pudding when we see whether those management plans are resourced, because they don't just drop out of the sky.

Senator SIEWERT—Can I just follow up on that. It is unclear at the moment what resources will be available for those alcohol management plans. It is an issue that came up this morning. So the message is—

Mr Mackinolty—The proof will be in the pudding.

Senator SIEWERT—Yes. I don't want to put words in your mouth, but do you support the changes to the alcohol management planning providing there is resourcing for it? Would that be a correct interpretation of what you are saying?

Mr Mackinolty—That would be a correct interpretation. We have always backed community driven alcohol management plans.

Senator SIEWERT—Just before you came to give evidence, we heard from Ms Eldridge from Larrakia Nation. She spoke about a survey that the Larrakia have undertaken about people in Long Grass and what is driving them there. The group surveyed had recently moved up to Darwin, and they said the overwhelming reason they had come into Darwin was because of violence in their households in the community. Various reasons were given for that, but one of them was that it was because of income management, a lack of resources and escalating violence. Have you had experience of escalation in violence in homes generally as a result of the intervention? Or have your members reported it?

Mr Paterson—I have not heard it. If issues are really pressing and increasing then we definitely hear about it at our meetings. To date—

Senator SIEWERT—Sorry, I think I misheard you. Did you say things are becoming more pressing?

Mr Paterson—If there are pressing issues in communities, we certainly hear about it.

CHAIR—And you have not heard that?

Mr Paterson—No, I have not heard it. Alcohol is obviously a topical discussion at our meetings. We are obviously looking at ways and means of addressing that and putting ideas and suggestions to government to address that.

Senator SIEWERT—Alcohol was the second reason and they also said generally increased stress—which is why I asked you to clarify, because I misinterpreted what you were saying—about the whole situation was driving people out of their communities. Have you heard about that?

Mr Mackinolty—I have not got any research data to support that one way or another.

Senator SIEWERT—She is going to make her report available to us and it will then be available on the website if you want to have a look at it.

CHAIR—Thank you very much for your evidence. If there is anything that you think we should have heard when you go away and think about it, please contact the secretary. We value your contribution.

Proceedings suspended from 3.06 pm to 3.27 pm

FERGUSON, Ms Megan, Nutritionist, Development and Policy, Outback Stores

BRETAG, Mr Warren, Business Development Manager, Outback Stores

CHAIR—I welcome witnesses from Outback Stores. Information on parliamentary privilege and the protection of witnesses and evidence has been provided to you, and you can get more information from the secretariat. I invite you to make an opening statement and then we will go to questions. I am not sure if you were here for the previous witnesses, who made some comments about stores.

Mr Bretag—No, I was not.

CHAIR—We will not verbal them, but we will try to get you to respond to that as well.

Mr Bretag—I am currently on leave without pay from FaCHSIA. I was the licensing manager of stores licensing during the initial rollout phase in the NT so I am familiar with all of the stores in the Northern Territory, having visited the 73 and having visited all of the Outback Stores stores. As an overview for Outback Stores we focus on providing availability, affordability, quality and nutritious food from sustainable stores. A thriving community store is an essential community service in remote communities, ensuring people have access to the most basic of human rights: affordable, quality and nutritious food.

The vision of Outback Stores is to be the retail provider of choice for remote community stores, to have a positive impact on the health of Indigenous people and to have a positive effect on the local economy. It gives me personally a great sense of pride in the company that we are achieving these objectives. I have lived 17 years on remote communities so I am very much aware of the issues faced by Indigenous people in remote regions. Of all the staff in our organisation, I am probably best positioned to act as a first-hand witness to the positive changes brought about by store licensing and income management and the positive regimes of organisations like ALPA and Outback Stores.

We now run 28 remote community stores. We have created an incredible turnaround in terms of weekly turnover. I will use five community stores as an example. We have increased turnover by 137 per cent in community 1, by 170 per cent in community 2, by 74 per cent in community 3, by 61 per cent in community 4, by 156 per cent in community 5 and by 122 per cent in community 6. The evidence of substantial improvements in weekly sales leads to a number of conclusions. First of all, more food is being sold and consumed along with general merchandise per capita in remote communities. More cash is going to the bank and there is a reduction of the cycle of misery that affects most community stores. There is less drift of money and people to regional centres and so increased contact with families and social inclusion. All of this has a substantial impact on social inclusion. Houses are furnished with whitegoods, children have bedding, food is in their bellies and parents feel more like providers.

I was in Alice Springs last week and watched a very drunk man accosting a young woman for cash. She reached into her purse and brandished a BasicsCard, claiming, 'This is all I've got'. The green card was like a crucifix to a vampire. He left without anger or reproaching the woman, mumbling about 'bloody income management'. The point is that in communities, when I stand in queues with Indigenous ladies in our stores, the general feedback is that more food is getting to households in those communities. So I am very proud to work for Outback Stores.

CHAIR—Ms Ferguson, do you have anything to add? I know that Senator Furner has been asking a line of questioning about nutrition so he will follow that up with you. The fact that you are employed as a nutritionist is important in its own right. So do you have anything to add?

Ms Ferguson—I specifically have some comments to make about income management and dietary quality of food. I suppose one of the issues for us is that because Outback Stores is a new company—we started in 2006 and most of our growth was in 2007 and 2008—we do not ourselves have a lot of good evidence to talk about the nutritional quality of food sold through stores, primarily because we do not have data prior to income management. We are well aware of the reports that the Australian Institute of Health and Welfare have released in relation to income management and dietary quality as being part of that. We are fully aware that that is qualitative information. Those are the sorts of stories that Warren has just described here.

One thing that I did want to raise with the committee was actually a letter from the Menzies School of Health Research, which I believe you all have a copy of; and I would like to table that. The Menzies School of Health Research is based here in Darwin. ALPA, the Arnhem Land Progress Aboriginal Corporation, is another company working in remote Indigenous communities and providing food in communities. They have

been working for over 30 years so they have a wealth of data and they can provide some evidence in relation to this. Interestingly enough though that data at the moment is ready for publication in a major journal so they actually cannot specifically release the findings but they have been happy to put in writing today what they have put in this letter. I might just make a few points there with you. The data that they looked at was over 10 remote NT communities—18 months prior and 18 months post income management. So that is a substantial period of time. There were increases in total store sales but that was roughly in line with inflation so it was expected to have that level of increase.

The study has actually looked at the confounding factors that were happening at that same period of time and isolated those. They certainly found that there has been no effect on fruit and vegetable sales—both volume and dollar sales. Originally there was a reduction in soft drink sales but that seems to have returned to normal after the next six months. They think that was around using the budgeting tool in their stores. You may well have heard of the FOODcard. That was a tool which actually reduces the number of lines people can buy on income management, whereas that is not the case anyway else. So in our stores you can buy Coke on income management but you cannot in Arnhem Land Progress Aboriginal Corporation stores because of the FOODcard system that was already in place. Their findings are that there has been no beneficial effect on reducing tobacco or increasing the nutritional quality of food in stores. So that is the quantitative evidence that I am aware of that exists in this area. I just thought that should be tabled with you.

Senator BOYCE—Was that Outback Stores?

Ms Ferguson—No, Arnhem Land Progress Association. They are remote community stores, but the company is Arnhem Land Progress Association—ALPA.

Senator SIEWERT—Just those stores?

Ms Ferguson—Just those stores. It is because they have been in operation for a long period of time and because they have good data systems that they could actually retrieve that data and analyse it.

Senator SIEWERT—Whereas, as you are explaining, you cannot do that because you have only been in operation since 2006.

Ms Ferguson—Exactly. We have essentially been in operation since income management has—roughly the same time. We do not have pre-data, so we cannot make an assessment of the impact. The thing that I would like to add to that, though, is about community stores licensing and nutrition and health promotion. Certainly the policy of community stores licensing has had a really positive impact on a number of issues for remote community stores, and one of these is definitely nutrition and health promotion. The community stores licensing program had developed a set of standards. These were based on industry standards at the time, and they have continued to be developed. As the program develops the standards it seeks technical expertise from groups like Outback Stores, Arnhem Land Progress Association, the government and other areas working there to continue to develop those standards. These are standards that have never existed in remote community stores before, so that is a fantastic outcome.

The other thing I have seen happen is that the community stores licensing team and that program open up the partnership for store owners and store managers to work together with nutritionists; in the past that relationship has been, at times, a troublesome one. So the fact that that has opened up that relationship has been a very positive outcome of the community stores licensing program. That is probably all I need to say at the moment, but I am happy to answer questions.

CHAIR—The previous witnesses from AMSANT had some issues, which are on record. It might be easier if, when we get the *Hansard*, we provide that for you to consider. Whilst they were positive about the fact that there were more fruit and vegetables around, they also felt that the profit motive would continue to be the major driver of stores. They particularly said that they had heard discussion that sales of chicken wings are on the increase and that that was an example of something that, as the gentleman who gave the evidence pointed out, may have no nutritional merit but is a big seller. His comments were more that the driving factor for stores will be and must be, to an extent, profit. The other things come in, but it comes down to what people want to buy. So, in terms of the way Outback Stores operate, how do you actually balance the demand—and we have had a proven record for years of things people want to buy—against trying to change behaviours and link better into nutrition?

Mr Bretag—First, Outback Stores is not driven by profit. But, historically, the remote community stores have never built components in for repair and maintenance of infrastructure and buildings, so they have

effectively staggered along. People are having to become accustomed to the fact that the Outback Stores model does build in that component.

CHAIR—The business model?

Mr Bretag—Yes. Doing that brings a change from the community's perspective. We are attempting to reframe committees to understand what that means at quarterly money stories. So, when we present our financials to the community, we present a safety component—a level of money that we have to reach in order to feel secure about that community store, and that means the replacement of infrastructure. Prior to that, many remote communities simply looked at the net profit being the disbursement. From the community's perspective, that money was to be disbursed for things like sorry business, funerals and footy carnivals, whereas Outback Stores has to build that safety component in first before they can actually offer a disbursement. Now, when I present to remote communities I say to them that there will not be any disbursement for the first year, because we have to get that store in order. That means that we have to have three quarterly money stories presented to the committee and then get to a fourth where we can say, 'This is the level of safety money needed in your store.' It varies from store to store, depending on the size of the store. We are often going in blind. We are often going into stores with a lot of historical debt. Reframing the committee to act with good governance is a difficult proposition for Outback Stores. We have to work with communities long term, with the vision that in five years we will have enough money to replace infrastructure and move it forward on that business model.

Senator BOYCE—But we are talking about surplus rather than profit?

Mr Bretag—Yes.

CHAIR—I might have to put this on notice. The last time we met with community stores was in another committee, of which most of us are members anyway, and there was great discussion about one particular store in one small regional community. Can you remember that? I am looking at my co-members of that committee. It really dominated the discussions of the community stores that afternoon.

Ms Ferguson—Was it an Outback Store?

CHAIR—An Outback Store.

Mr Bretag—Jilkminggan.

CHAIR—I think it was. It was very remote and there were differing pieces of evidence on the table before us during the afternoon about what had happened with the store—whether it had been closed down and all that kind of stuff. Has that situation been fixed?

Mr Bretag—There are a number of stores in that situation but using Jilkminggan as an example—

CHAIR—Yes, I am sure that was the one.

Mr Bretag—Jilkminggan had a history of TO rent, so the traditional owners were given rent. That rent was given to them in the form of book-up. So effectively they are getting full retail rent. The owner of the store at the time was obviously purchasing at cost price, marking it up and then giving it as book-up, and then claiming no cash disbursements to the TOs because that pays back your book-up. At our quarterly Money Stories, obviously we are trying reframe that committee to understand that, if you wish to have TO rent, you wish to add a tax to your children's food. If it is one our primary objectives to get quality food at a reasonable price in Indigenous communities, we cannot have those additional taxes.

We understand that in big sustainable stories—Galiwin'ku, for instance—there is a substantial amount of TO rent negotiated with NLC. We are working in a very difficult area of Aboriginal Australia with our cluster of stores being predominantly beneath Arnhem Land, running into Central Australia, into the Pit lands and then out into the Kimberleys. These stores are borderline sustainable because of the population numbers that they have, so they cannot afford to add the extra rent to the TOs. Very fortunately, CLC are aware of that and have never made those demands.

CHAIR—And the store about which we are speaking is still operating?

Mr Bretag—It sure is.

Senator BOYCE—I just had a couple of clarifying questions. You mentioned 28 stores, I think it was. Could we have the most up-to-date list you can give us of the stores and their locations?

Mr Bretag—Off the top of my head now?

Senator BOYCE—No, on notice please.

Mr Bretag—Certainly.

Senator BOYCE—The other thing is that you mentioned profit increases of 126 per cent and whatever.

Mr Bretag—Turnover increases.

Senator BOYCE—Sorry, from when to when? What are we talking about there?

Mr Bretag—They were our initial stores, and I can provide you with that data. It is basically the first few stores that we took over. They have not listed names to those communities as examples but one was certainly the Imanpa community, which had a turnover of \$4,000 and we took that over.

Senator BOYCE—So that is when you took it over?

Ms Ferguson—That was in 2006 and this was for the Senate inquiry.

Mr Bretag—It is available—

Ms Ferguson—Last year was 2009, so we are talking probably two years for that community; between one and two years, I would say.

Senator BOYCE—The sheet you have given us from the Menzies School of Health Research appears to suggest that income management has not achieved anything in the Arnhem Land Progress Aboriginal Corporation areas in terms of improved sales of healthy food. Is that what you are saying this says?

Ms Ferguson—Yes.

Senator BOYCE—What does Outback Stores say about that and what evidence can you give us of what has been achieved by Outback Stores? Is your experience the same as this?

Ms Ferguson—All I can do is restate that we do not have data prior to income management because we were not in business for that period of time. We were not operating in those stores prior to that time so I cannot say what was happening in those stores. All I can point to is a group that has been working in this area for a long period time that we work very closely with, and understand that this is the work they have done and I have been in consultation with them through this process. From our perspective we actually cannot comment because we do not have the data, purely because—

Senator BOYCE—And you would have no sense of whether this would be the case for your stores?

Ms Ferguson—I think the point is that we were not operating in those stores prior to income management, so I do not know what was happening in those stores prior to that. We certainly know that in all the stores we have gone to we have increased the volume of fruit and vegetables that have gone through them, but that is often because there were poor retail practices there before we came in. That is not necessarily the result of income management; it is the result of us putting a retail model into place.

Mr Bretag—In our reporting back to communities quarterly we have a graph that indicates increases and decreases in fruit and veg sales. We have targets that we try to set and report back to the community. It has changed a little bit recently—

Ms Ferguson—I was going to add, when you were questioning Warren about the balance of income and health, that one of the things we do is to provide information to the store owners and encourage them to share it with the community. At the moment the focus is on fruit and vegetables and tobacco sales so that people can start to understand that themselves and start to help drive the demand and the change. There are key areas that we would focus on—sugar and sugar drinks particularly. We do not have large takeaways but we certainly have pie warmers, so we are looking at alternatives that people could put in there and giving them information about the number of pies and the number of alternatives—for example, ‘If we made fresh, healthy sandwiches, this is what you could be doing.’ We try to give that information as much as possible to store owners so that they can embrace and drive that change themselves as well.

Senator BOYCE—Would you be able to provide that information—those sorts of percentages—on notice to the committee?

Ms Ferguson—An example of those?

Senator BOYCE—Two or three examples perhaps—unidentified, if you think that is necessary.

Ms Ferguson—Yes.

Senator CROSSIN—I have a couple of questions to ask you in relation to your pie warmers. You might want to go and have a look at the Finke community. Many, many years ago—this is just by the by—a young couple took over the takeaway store there, discarded all fried foods and sold a quarter of a chicken and salad every day. In the end they could not keep up with the 200 plates a day that were in demand. There is absolute evidence out there, I think, that that works if you make the effort.

Ms Ferguson—I agree with you.

Senator CROSSIN—I think it is useful for the record to know that.

Senator SIEWERT—I was just thinking about whether the chicken had wings or not.

Senator CROSSIN—I guess it depended on what quarter of the chicken you got. But it did actually have beetroot, pineapple and lettuce with it. They started it as an experiment and made 10 a day and in the end were making 200 a day—and got burnt out as a result, essentially.

Ms Ferguson—I certainly agree with you.

Senator ADAMS—We had the same evidence at Balga.

Senator CROSSIN—I want to talk to you about store licensing. Are all of the Outback Stores licensed?

Mr Bretag—We have a corporate licence, so, yes, they all comply with the licensing standards set down in the NTER.

Senator CROSSIN—So can I have your views about whether or not there should be penalties if the licence is breached.

Mr Bretag—Which hat am I wearing, Senator—FaHCSIA or Outback Stores?

CHAIR—I think your Outback Stores one this time.

Senator CROSSIN—What happens when the licence is breached, and should there be penalties? I will go to operators in a minute. Let's just talk about stores being licensed and what happens if the licence is breached.

Mr Bretag—The changes to licensing will make the owner the licence holder, versus the managers, who are Outback Stores. Presently, Outback Stores hold the licences for those stores. Should we be penalised, that penalty would be passed on to the community. It depends on the intent of the breach. We first off make sure that we comply with all the licensing standards: price tags on food, good governance around banking, police checking our managers—all of the necessary requirements. It would be very difficult to say there was an intentional breach by management, but if there were an intentional breach by management then we would dismiss the person first off, as an internal issue. If Licensing pick up issues they phone Outback Stores and say, 'Listen, we found out of date stock at this store.' It may be a matter that there are operational difficulties with running some of our smaller stores—they have ordered in food that has gone out of date—but it is certainly not intentional.

Again, because we are working in the more difficult area, Central Australia, and when we take over a store it is the first time that they have actually had good governance implemented, I do not feel that initial breaches should be penalised. But I do think perhaps 'three strikes and you're out' might be a fair enough call. There are many independent store managers who are doing their best, but mistakes are made in stores all over the country. Today you could walk into Woolworths and find an out of date product.

There would be a couple I would say off the top of my head in Central Australia that need to be breached. But once they are breached we have a food security issue and there is no way of satisfying that food security. Stores advise us and continue to work with the store manager to try to mend the problems.

Senator CROSSIN—So none of your stores at this point in time would be breaching any of the—

Mr Bretag—I think you could walk into five of our 28 stores and find out-of-date stock. Our area managers scan for that all the time. I think you could walk into five of our stores and find ticketing not necessarily on every product. Every time that has been shown. It is because we might have Aboriginal kids pulling the ticketing off. It is a difficult environment to work in and to comply in—the Northern Territory.

Senator CROSSIN—So should operators be licensed as well as stores?

Mr Bretag—I have a personal view about that but I do not know what Outback Stores' stance is on that, so I cannot answer that question.

Senator CROSSIN—You do not know if your board wants to consider that? Have a think about it. You could maybe take it on notice and see if your board has thought about the character of the operators and whether or not they should be licensed as opposed to the stores.

Mr Bretag—We have that difficulty with things like ammunition licensing and tobacco licensing already because you license the operator or the manager and you find that there is a high turnover. So you are constantly putting the licence back in another person's name and changing it. It is a neverending circle.

Senator CROSSIN—Some of the stores in the Northern Territory are actually incorporated under the Associations Act for the Northern Territory. Do you have a view about whether they should transfer—

Mr Bretag—To ORIC?

Senator CROSSIN—to the Corporations (Aboriginal and Torres Strait Islander) Act?

Mr Bretag—No, Outback Stores has no view about that.

Senator CROSSIN—What are most of your stores incorporated under?

Mr Bretag—The majority of them are under ORIC.

Senator CROSSIN—Are they?

Mr Bretag—Yes.

Senator CROSSIN—But there would be some still under the NT Associations Act?

Mr Bretag—That is right.

Senator CROSSIN—Your board does not have a view about trying to move all of them over to ORIC?

Mr Bretag—No, because we contract managers. We just go in and whatever the owners have incorporated under is their business. We do not interfere with that.

Senator CROSSIN—So the board would not have a view about encouraging them to be incorporated under ORIC as opposed to the NT Associations Act?

Mr Bretag—We had discussions this morning. If we are just looking after retail and we are just retailers of groceries then all of the other governance issues from the incorporated side are the owners' business. So who they choose as auditors and who they choose to be incorporated under is their choice. Outback Stores would prefer to remain neutral in terms of advising stores about any of that.

Senator CROSSIN—Does Outback Stores have a policy in relation to Aboriginal businesses? Do you have a matter of preference in actually picking up Aboriginal businesses as your contractors, even though they may be more expensive? Is there such a proactive policy?

Mr Bretag—Yes, there is a proactive policy. Examples are whereby Jilkmिंगgan has a market garden we are more than happy to source local produce from an Aboriginal enterprise. Hope Vale is another case where they have a market garden and sell directly. Providing the quality and quantity is reliable, as a retail store has to be, we support Indigenous businesses.

Senator CROSSIN—Like produce. But what about, say, Indigenous trucking companies or distributors? Is there a preference right through your chain to be proactive about supporting Indigenous businesses?

Mr Bretag—To encourage Indigenous enterprise around stores is a positive policy. We encourage that.

Senator CROSSIN—I have one more question. I am wondering if you have had a chance to look at the House of Representatives' inquiry into community stores and whether there is any comment you might want to make about those recommendations that might assist this inquiry vis-a-vis income management and changes to your requirements under this legislation.

Mr Bretag—Can I take that on notice and provide you with an answer?

Senator CROSSIN—Yes, sure. That would be great. Thank you.

Senator SIEWERT—I just want to go back to the issue of the Menzies health letter and your comments, Ms Ferguson, about not having enough data. I realise I am being unfair in terms of asking you about a group of stores that are not your stores, but I notice that your stores have indicated an increase in sales of fresh fruit and vegetables. Is it possible that this group of stores were already selling a significant amount of fresh produce but the stores that you have taken over perhaps were not selling as much produce, so in taking over you have increased the quality of the produce?

Ms Ferguson—That is absolutely true. The point I was making was that when we are looking at income management and the effect on dietary quality, we can only look at models like this that have been running for a while. When it comes to our stores, certainly I have seen an increase in the supply and sale of fruit and vegetables since we have been there, but that is about implementing retail practice. That is not a result of income management. I cannot say whether income management has influenced that or not in our stores, but I can certainly say that by putting the produce there—

Senator SIEWERT—People will buy it.

Ms Ferguson—Yes.

Senator SIEWERT—You cannot buy it if it ain't there.

Ms Ferguson—That is exactly right.

Senator SIEWERT—What would you put the quantum of the increase in fresh food sales at?

Ms Ferguson—It is quite a dynamic scene, obviously, but we have certainly seen a significant percentage increase. I can provide quantitative data for you.

Senator SIEWERT—That would be useful, thank you. Senator Moore was referring to the issue around the chicken wings earlier, but the other comment that AMSAT made was about trying to work with stores in terms of better quality food supply, working with child health and those sorts of things. Have you already been in dialogue with some of the health services around those issues?

Ms Ferguson—Certainly. One of the examples is a major project that we are about to finalise now with the WYN health board in Central Australia—that is Willowra, Yuendumu and Nyirripi communities. We have stores in each of those communities and they are Warlpiri communities close together. The WYN health board had been approaching us and we have been approaching them about how we could work together to share information and to try to drive changes in communities that way. We have just completed a project which included a literature review around what we can do around reducing sugar consumption. We also did some expert interviews with people working in the area—retail and nutrition experts—and then we had three months of community consultation where we employed a nutrition adviser from Yuendumu to work with the nutritionist and to spend quite a bit of time talking to community people about what would actually drive change in this area—and also in fruit and vegetables. That is an example of one of the sorts of partnerships that we have on the ground.

We also have memorandums of understanding with the Department of Health and Families and the nutrition program there. We have close working relationships with the environmental health program, we have a memorandum of understanding of how we will work with the Red Cross and implement that. I think we are working in five communities together. Sunrise Health Service is another group that we are working closely with. We certainly understand that it is our job to get the supply right and do what we can to maximise healthy food and the promotion of healthy food within the store, but we need to work with partners who are working in the community to try to drive that change. We are not doing it on our own.

Senator SIEWERT—In terms of the discussion you were having with Senator Crossin about fast food and the provision of healthy fast food, you talked about the pie warmer thing. Are you planning to move into the provision of more healthy fast food?

Ms Ferguson—Let me explain the difference in our scenarios. We have a few stores where we have a takeaway. In that takeaway there is a policy there at least 50 per cent of the lines are healthy choices. That is a remarkable change from what had been there previously. We have policies around the use of deep-fryers; if there is a deep-fryer it has to be turned off at least two days a week. In a lot of our communities, staff are turning it off more often than that. We have just managed to secure funding to put combi steam ovens into two of our communities which have large takeaway sales. That means that the deep-fryer has been removed and they can only cook with combi steam methods. That is one scenario. That is our takeaways. We do definitely strive to produce healthy lines there and I agree with Senator Crossin that those lines—fresh sandwiches and hot meals—do sell very well out there and people want them.

The other alternative we have is in those situations where we do not comply with the Food Act for the production of takeaway food because of the state of the stores and the capacity of the stores. There have historically been pie warmers and microwaves in a lot of stores out bush, so one of the big things on my agenda is to try to find some lines that we can put in those pie warmers which provide an alternative. We really try to make fresh sandwiches where we can, but obviously we need to do that within the guidelines of the

Food Act. Not all stores comply with the Food Act to sell prepared food on-site, so we have worked with a Sydney manufacturer on some lines that we are going to be putting in the pie warmers next to the pies. We also have a policy that a reduced-fat, reduced-sodium pie is always there and that is our standard meat pie range. So we are making headway in that area. It is a really hard area, though, because if that is what has been there before and that is the only hot alternative that people have had, it is quite difficult—

Senator SIEWERT—to change.

Ms Ferguson—and the options are not out there. We have had to develop these lines with a manufacturer in Sydney.

Senator FURNER—I have just a couple of questions on the BasicsCard. We have heard evidence and we have seen submissions about people coming in and facing embarrassment as a result of not knowing the amount on their card. Have you got any evidence on that?

Ms Ferguson—I can make just one really quick comment and then hand over to Warren. We certainly have something out of the community consultation I talked about in the WYN health area. I can provide the line out of one of our reports where store workers who are on the cash register, once the funds are exceeded, know that people then go and put things back. In fact, what they are putting back is fruit and vegetables. So that process happens—people are putting food back and that has been reported through this community consultation. You probably have some particular examples that you can remember, Warren.

Mr Bretag—I have an example from very early on in the intervention process. Katherine ICC is opposite Woolworths and literally 10 to 15 trolleys get left when the balance has not been worked out. People will walk away because they are that ashamed. We ended up speaking to the local manager, who identified an older woman who could help on the help desk in Woolworths by simply glancing at the balance of the then FOODcard, the Woolworths card, and telling people, ‘No, that is about \$100,’ or, ‘No, that is about \$200.’ People not knowing the balance of their funds when they arrive at the cash register is a very normal thing in remote communities. There is less shame there, in a remote community, than in a major regional centre that has a Woolworths or Coles.

It is very much part of people’s financial literacy, but, more importantly, as a non-Indigenous person it does not matter that I am \$10 or \$15 out in what I have estimated my budget will be for purchasing household goods because I have the money there in my account. When you are on a welfare payment, it comes down to the very last dollar. Knowing the exact value of the goods in your trolley when you arrive at a cash register is difficult if you do not have mental arithmetic. While I know government are really pushing financial literacy, they are not giving Indigenous people the tools and the skills to get to the cash register and know exactly what they have.

Visual scanning is certainly an improvement. I saw it at Papunya and I thought, ‘That is clever.’ The person does not simply pick up the phone and say to Centrelink, ‘\$396.86’. I have to know where the decimal point is. I do not have a calculator to enter that into. I am walking around with a mental idea of what that money is. I do get a visual when I swipe it on the visual kiosks. Right at the moment, I think, FaHCSIA are attempting to get those visual kiosks throughout all the stores so that you can go, swipe the card, get the balance and then go shopping. Certainly the FOODcard assists with that in Arnhem Land Progress Aboriginal Corporation stores, but right at the moment in Outback Stores stores we do not have that in place yet.

Senator ADAMS—If this legislation is not passed, what difference will that make? Will it make any difference to Outback Stores?

Mr Bretag—Do you mean the Racial Discrimination Act in particular?

Senator ADAMS—Just the overall legislation as you see it.

Mr Bretag—I have not read the legislation from head to toe, so I cannot make a comment on that. But I would like to take that on notice and return to you.

Senator ADAMS—I would be really interested in your opinion of the licensing of the stores.

Ms Ferguson—Do you mean particularly licensing owners instead of managers?

Senator ADAMS—That is right—as specified by the legislation that we are dealing with today.

Mr Bretag—Basically it is licensing the owners of the store.

Senator ADAMS—That is correct.

Mr Bretag—As a general answer to that, there are stores where the owners will have the skills to comply, without any worries, and there will be other stores where they will not be able to comply. Again, that is going to be very difficult where we work in Central Australia. When I answered the last question, I said that we were under pressure from ORIC to comply; but it is not really our job, is it? We are just retail contract managers to the owners. They are the ones who have to get the audit done. We can provide that financial information to the auditor of their choice to comply but we cannot necessarily do all of the work around their governance as owners of the store. I think just by being there—the very nature of what Outback Stores is—there is an expectation that we do do all of that work, and that is not our primary role. We obviously want to assist the owners of the store to do whatever they request us to do.

Senator ADAMS—Do you see a problem with it?

Mr Bretag—I personally see a problem but I will take that on notice and get an answer from our board. Our board meeting is on the 25th and that is one of the issues that they will be discussing.

Senator ADAMS—Thank you very much.

Senator BOYCE—You may wish to take this on notice: what would be the effect on Outback Stores if income management were to be stopped?

Mr Bretag—I believe it would have the same impact as it would on any remote community store. At the moment, you have a vessel that is licensed by FaHCSIA and that funds are forced into, providing they meet certain requirements. In my opinion, this is very much why we have such an increase in turnover. While you are predominantly focused on healthy food, there are other environmental health issues—for instance, what we are selling in white goods and what we are selling in bedding, and why that has improved. This is anecdotal, but Sunrise Health Services said, ‘I looked through the community the other day and houses that didn’t have beds, didn’t have doonas, didn’t have pillows, didn’t have a fridge and didn’t have a washing machine now have them.’ That is where we are seeing the turnover. It is not just about healthy and nutritious food. We are seeing an increase in turnover because funds are being forced into the vessel. People are buying more out of that store, and that is why the turnover has increased. It is not necessarily associated with an increase in fruit and vegetables but it is certainly an increase in turnover.

If you stop income management, then of course you will allow that money to free-float to people who are not as compliant with the licensing requirements. That is not to run down the BasicsCard licences, but it is to say that we hear lots of anecdotal evidence from Indigenous people, particularly in my job, where they say, ‘Look, the station store will sell us tobacco by changing the product line on the scanner.’ They might be scanning a battery but it is coming in as tobacco. There are simple ways that you can reroute it to make it look like you have sold a genuine article. That will never happen in an Outback Stores store. We are a safer vessel for income management. Once income management is removed, you are effectively saying that captured funds can go elsewhere, and I believe it will go elsewhere. I believe that it will probably return to regional centres in one state or form, or to other stores.

CHAIR—Thank you very much. The secretariat will be in contact with you to clarify the questions that we have put on notice.

[4.09 pm]

BUSH-BLENASI, Mr Samuel, Deputy Chairman, Northern Land Council

HILL, Mr Kim, Chief Executive Officer, Northern Land Council

LEVY, Mr Ron, Principal Legal Officer, Northern Land Council

WUNUNGMURRA, Mr Wali, Chairman, Northern Land Council

CHAIR—Welcome. Thank you for your time and your submission. At least some of you, if not all of you, are experienced at this process. Information on parliamentary privilege and the protection of witnesses has been provided, but we can get more from the secretariat if you require it. We have your submission. Thank you very much. We have not read it, but would any or all of you like to make opening comments? We will then get into questions. We are in your hands as to who is going to make an opening statement.

Mr Wunungmurra—I would first of all like to welcome Madam Chair and the committee and thank you for this opportunity to meet with you today. I have with me CEO Kim Hill; Principal Legal Officer, Ron Levy; and Samuel, my deputy chair. People want to see the Racial Discrimination Act reinstated as soon as possible. Suspending the Racial Discrimination Act hurts Aboriginal people under the Northern Territory Emergency Response. Their rights were not as strong as others in this country because it was only Aboriginal people in the Northern Territory who have had their rights, under the Racial Discrimination Act, taken away.

It is important for this country as a whole that the rights of Aboriginal people in the Northern Territory be restored as soon as possible. They should never have been taken away in the first place. There were many things done wrongly with the intervention, but this was the biggest wrong and it needs to be corrected. The Northern Land Council calls on the government to put the Racial Discrimination Act back in place, and I would like the CEO and the principal legal officer to make further comments on that.

CHAIR—Thank you, Mr Chair. Mr Hill and Mr Levy, how are you going to divide it up?

Mr Hill—I will, no doubt, talk. Sorry, I am chewing on a lolly at the moment because I have the flu.

CHAIR—That's okay!

Mr Hill—As the chairman has stated, the NLC calls on all political parties and all parliamentarians to support and implement this objective by this government. To that end, the government has proposed legislation that restores the Racial Discrimination Act with effect from 2010 but, as presently drafted, it leaves open the real prospect that there are many intervention laws, nevertheless, that repeal the RDA. I will ask Mr Levy to concentrate more on the technical, legal aspect of the legislation. With that, I will ask Mr Levy to make those comments.

CHAIR—Thank you, Mr Hill. Mr Levy, you are going to explain the legal texts you have given us in your submissions? I have had a quick peek.

Mr Levy—I apologise for the lateness of the submission, but it is a very simple submission. This submission deals only with Aboriginal land aspects of the intervention laws, so it is only really concerned with the five-year leases. In 2007 the NLC likewise made a limited submission to another Senate committee—

CHAIR—Is that the Senate Committee on Legal and Constitutional Affairs?

Mr Levy—Yes. The NLC expressed concern that the legislation would breach the United Nations convention in relation to eliminating racial discrimination. In fact, because the NLC was so concerned, it wrote to the Prime Minister on 28 June 2007 and said that the way to go forward here is by means of consultation and that the NLC stands ready to hold urgent consultations. We expressed the view that, if properly informed, it may well be that traditional owners in communities would happily negotiate five-year leases by consent. The reason the NLC and I—as a lawyer—were fairly confident that would happen is that governments run the communities but no lease has been in place for 30 years. The NT government has been running communities without any lease arrangement. Traditional owners have often said, 'Well, why do we negotiate a lease for a nearby gas plant and receive compensation for that, but we don't receive anything in relation to communities?' Under the proposed intervention laws there were compulsory leases but there was also compensation. It would have been a straightforward exercise to go to communities and say, 'Look, the governments would like to formalise existing arrangements whereby they run communities but there is no lease in place. We can put a lease in place and there is going to be just terms compensation, which will be determined by the Valuer General.' We thought it would be a straightforward exercise to achieve that. We

knew there were other aspects of the intervention laws which were complex and where people had different views; for example, income-quarantining, people still have different views about that. Nonetheless there should be consultations, and we would be very concerned if there were not, that there would be grounds for international complaint or High Court litigation.

Unfortunately the former Minister for Indigenous Affairs, Mr Mal Brough, on 3 August 2007 rejected that submission; he said that it was all far too urgent. We did not understand how it could be urgent because the leases did not come into force until February 2008; anyway there would have been no difficulty urgently negotiating arrangements in the remaining part of the year. Mr Brough determined that he did not want to take that course and what has happened is that there was High Court litigation by some understandably aggrieved traditional owners from Maningrida. That litigation was unsuccessful because the Racial Discrimination Act had been repealed. The extra thing that happened was that, on 18 December 2008, the NLC, in the context of that litigation, obtained a written opinion from Mr Sturt Glacken Senior Counsel of the Melbourne bar and a copy of that opinion is attached to the NLC submission. I am not asking you to read it, but on page 3 of the NLC submission Mr Glacken's conclusion stated:

In my opinion, the circumstances are such that it is not possible to be positively satisfied that Part 4 of the NER Act—that is the five-year lease provisions—

bears the character of a special measure in the sense that term is used in article 1(4) of the Convention.

I do not want to go down the track of accusing former governments and former ministers that they were, in some active way, being discriminatory; the point is that there is a breach. All governments and all political parties should be concerned where there is a breach because it sets Australia up for complaint to the United Nations. There is a complaint before the United Nations committee at the moment and Mr Glacken's opinion, if accepted by the committee, means that complaint will be upheld. We think that would be detrimental.

Finally, as a pragmatic exercise, when there is a consultative mechanism about controversial laws, governments usually make some changes about the controversial laws to try and remove controversy as much as they can. Afterwards, when a lawyer like me goes and consults with clients—with Aboriginal people and with Aboriginal communities—it is always so much easier if there was consultation beforehand. When there was no consultation beforehand, a sensible word like 'lease', which just means an agreement with the owners, becomes a dirty word. If you mention the word 'lease' now when you are consulting Aboriginal communities, a lot of people get their back up. For the last 30 years everyone understood it as a perfectly normal word. That is the outcome of it; it polarises things which should not be polarised.

Finally, in addition to Australia's international obligations, the view of some other submitters and the NLC is that it is not enough simply to restore the Racial Discrimination Act. There needs to be a positive provision which states that the Racial Discrimination Act applies if there is any inconsistency with the current laws. If that is not there, then there could be implied repeal of the Racial Discrimination Act. We say there should be a positive provision preventing that happening. Mr Glacken picks that up in his opinion which support the provisions that say that the Commonwealth should only use its powers for a beneficial purpose in relation to the five-year lease. I think they have probably been doing that anyway, but it should be in the legislation, and also we support the provision which says that if they want to negotiate another five-year lease, this time by consent in three years time when they finish, then they should be able to do so and support the provision expressly stating that.

CHAIR—Mr Levy, that is a historical discussion about the previous round. For the legislation that is in front of us now, do you have opinion on how that is worded and the impact on the process you have described?

Mr Levy—In relation to the provision which reinstates the Racial Discrimination Act with effect from some time this year, that is fine but it does not deal with the problem that there nonetheless could be implied repeal of the Racial Discrimination Act by this amended law. The Racial Discrimination Act is a general act and has general provisions about racial discrimination. If there is a later specific act dealing with specific things and there happens to be inadvertent inconsistency then the later act prevails. We say that to avoid doubt there should be a provision which expressly states that the former act, the Racial Discrimination Act, prevails.

CHAIR—Prior to 2007.

Mr Levy—We appreciate the government is reinstating the Racial Discrimination Act with effect for the future. In relation to 'with effect for the future' it should not be possible that laws from the enactment of these amendments are repealed. We are not talking about the last couple of years; there will be compensation provisions to deal with that.

CHAIR—Thank you, Mr Levy.

Senator CROSSIN—I have a very technical question I want ask about this matter. In the course of the last week or so you will have noticed that there is an argument within the coalition, of course, that if you now lift the RDA so that, for example, the income management will apply across the board and will not be subject to the RDA restrictions, but the alcohol management plans, the five-year leases and the pornography sections will be considered special measures under the RDA. The commentary in the last week has been that if, in fact, you do that—reaffirmed today with earlier witnesses—you now leave this legislation open to legal challenge. The legal challenge would be that the alcohol, the pornography and the five-year leases are not special measures. It would be legally tested. I think your advice from your QC, Mr Glacken, would actually attest to that.

Mr Levy—No, because as I understand it the government's proposal is not to backdate the application of the Racial Discrimination Act.

Senator CROSSIN—That is right. But, even if it applied from 1 July and because that measure will not change, is he not then suggesting that it will still be conceived to be a special measure? Someone will challenge whether or not it is a special measure would they not?

Mr Levy—That is not our advice. These leases were granted pursuant to the 2007 legislation.

CHAIR—I think Senator Crossin is meaning the other three measures.

Senator CROSSIN—I am talking about any other leases in the future.

Mr Levy—I cannot comment in relation to the other measures. I am happy to take that on notice and seek advice.

CHAIR—It would be useful, Mr Levy, from your legal perspective to respond to that.

Mr Levy—I would be happy to get advice from Mr Glacken about the other measures. We have tried to stick only to Aboriginal land, because it is too big and complex.

Senator ADAMS—Perhaps the government could tell us what their legal advice on the topic was, too.

Senator CROSSIN—That is the argument, I think. Perhaps the previous government might have tabled their legal advice.

Senator SIEWERT—They did not need to because they exempted it all anyway!

Senator CROSSIN—That is the argument essentially. Even though people welcomed the RDA being lifted, the coalition still will not support it because they argue it will open this legislation up to legal challenge. What constitutes a 'special measure'? Do the alcohol and the pornography and the five-year leases constitute a special measure now under the new changed NTER legislation?

Mr Levy—In fairness to governments, I have never experienced a Senate committee where governments of either political persuasion tabled their legal advice, although it would be useful if that were to occur.

Senator SIEWERT—That does not mean it is right, though.

Mr Levy—It would be very useful.

Senator BOYCE—It would be very useful. Oppositions always require it.

Mr Levy—The former government and the current government obviously received high-level legal advice about whether their legislation would be a special measure and would breach the act. The position of the government—and it was of the previous government too—is that it does not. If it does not and the Racial Discrimination Act is restored then there is a risk that there will be litigation, but a confident government would not be concerned about that. They would succeed and that would confirm their position. The whole point about discrimination is that people throughout Australia—black or white—are entitled to go to court and test things if they want to. I would not have thought there were going to be many cases dealing with this issue. If there are any at all, there will be one.

Senator CROSSIN—So you think the legislation needs amending in two areas to expressly provide that the current laws are not intended to override the RDA?

Mr Levy—Yes, for the future—that is, in relation to this amendment and its future effect.

Senator CROSSIN—That would go in a preamble or in the objectives?

Mr Levy—No. There would be an express subclause to that effect.

Senator CROSSIN—Is it the same with inserting in section 37A your suggestion as per your last sentence, that people could extend the current leases by consent?

Mr Levy—That is the effect of the provision. We are just supporting the provision. We think it is a good provision. You do not need to amend it. It is fine like it is.

Senator CROSSIN—Otherwise, you are satisfied at this point in time that this legislation does in fact reinstate the RDA and it is a move forward in relation to the measures that it covers under the act?

Mr Levy—Yes.

Senator CROSSIN—Thanks.

Senator SIEWERT—Can we pick up on that issue there? Does your answer ‘yes’ mean you think it is okay that income quarantining, for example, is maintained and rolled out?

Mr Levy—I am not expressing any view about the other matters—

Senator SIEWERT—I wanted to make that clear. With you just saying ‘yes’, it could be implied that you were happy with the rest of the legislation. But you are not saying that at all, are you? You are just not commenting on the rest of the legislation.

Mr Levy—I am not commenting about the other legislation; I am simply saying that the Racial Discrimination Act should apply in relation to the Aboriginal land part. I am sure the NLC’s position is that it should apply regarding any legislation and supports it applying. In relation to whether income quarantining is good or bad, I am happy to leave that to other people here. That is not for me to comment on.

Senator SIEWERT—Thank you. I wanted to make sure that that was clear. Can I go back to this issue of special measures and whether the special measures qualify as special measures and whether that is challengeable. Is it not a right under the Racial Discrimination Act to be able to take action? If a person affected thinks that something is discriminatory, isn’t it a right under the RDA to take legal action?

Mr Levy—Yes; correct.

Senator SIEWERT—What would be restored under this legislation is the right to take action if somebody does not think the special measure is a special measure.

Mr Levy—That is right.

Senator SIEWERT—I just wanted to be clear that this was about restoring people’s rights to take action.

Mr Levy—I can say as a lawyer—and I know my CEO will say the same thing—that no-one likes being the subject of litigation that is spurious. Of course it is a big concern for government if there is a huge amount of litigation in some particular area, but I do not think that is going to happen here. This is a case where there will be either no litigation or one or two cases.

Senator BOYCE—What sorts of cases, Mr Levy?

Mr Levy—Aggrieved people seek legal advice.

Senator BOYCE—Are you talking about individuals?

Mr Levy—Aggrieved individuals or institutions or bodies seek legal advice. The legal system works because, despite what might seem to the public, 99 per cent of the time all the lawyers involved give the same advice. They say: ‘This is a very weak case. Do you really want me to run it?’ Usually they ask, ‘Who’s going to pay for it?’

Senator BOYCE—That is one reason why I used the idea of an individual.

Mr Levy—That is right, yes.

Senator BOYCE—You would obviously need an organisation to be prepared to run your case as a test case.

Mr Levy—You would, but of course the litigation which challenged the intervention laws, the Wurridjal case, was done pro bono by private lawyers. It was not funded by the NLC. All I am saying is there could be some litigation, but that is the case in relation to all aspects of Australian society. As Senator Siewert was saying, it is part of the freedoms of all individuals, black and white. It should not be a concern, if the government is confident. The question of racial discrimination and special measures regarding complex issues of social policy—social policy, not law—is something courts will be very cautious in dealing with. If

governments have high-level advice and they are confident in it, then they should be prepared to be confident in it.

Senator BOYCE—My question changes the topic a bit but it is still around litigation. At paragraph 4.20 of your submission there is some discussion about how the previous intervention legislation could not be characterised as a special measure in the absence of any consultation and community consent leading up to its enactment. Given that we have had evidence today from witnesses criticising the consultation that has been done about this new legislation as not being genuine consultation et cetera, how would you think this would apply? Would that still apply? Could the quality of the consultation affect whether the special measures are seen as special measures?

Mr Levy—A court would look at that only in a very exceptional case. A court would not be interested in assessing the quality of consultations that occurred, provided that they did occur in some unreasonable sort of sense. It would only be if—

Senator BOYCE—That, I think, is probably the question—whether it was genuine consultation. That is the conflict we have.

Mr Levy—I am not expressing any view on the consultation.

Senator BOYCE—No, obviously not.

Mr Levy—I do not know anything about it, but if consultation is required, as it is under the convention, and governments genuinely engage in it, record it and can produce evidence of it then a court would be very unlikely to interfere with that.

Senator SIEWERT—I want to go back to this issue around this legislation being clear that it does not override the RDA. To be absolutely clear, you are saying we should put an amendment in to ensure that this legislation does not override the RDA. NAAJA's submission and some of the others suggest that, unless that happens, it will be unclear whether the RDA has been restored or reinstated because there is a question about which act would override. Because the NTER legislation was a later act, it could be assumed to take precedence over the RDA.

Mr Levy—It is a real possibility. Courts will endeavour to interpret all legislation consistent with the Racial Discrimination Act and consistent with the UN convention. Even though the RDA currently does not apply to the intervention laws, the High Court interpreted it in a manner consistent with the convention. Courts will do that, but if that just cannot be done and there is inconsistency in the wording then the later act overrules the earlier act, and the earlier act is the Racial Discrimination Act.

Senator SIEWERT—Mr Hill, Mr Levy referred my question back. Your submission focuses solely on issues around land and leases. Do you have any comments on the broader legislation?

Mr Hill—Firstly, the reason why we are focused on land is the general perception and lessons learnt from past government institutes, one being ATSIC. Again, we are still in negotiations on SIHIP and the possibility of township leases for traditional owners. So we wanted to concentrate on our objectives as a statutory body.

Senator SIEWERT—I was not implying that this is not a question—

Mr Hill—No, I just wanted to make that point. Can I also acknowledge the chairman, his council and members of the chairman's executive who are sitting behind us. Since the introduction of the Northern Territory emergency response legislation, it probably takes up half of my full council meetings, executive council meetings and regional council meetings. It more or less affects the day-to-day living and lifestyle of these executive members and their members, who they represent in their regions.

I will probably refer that question to the chairman. He lives on an outstation. Members of his family are income managed, and the deputy chairman and his family members are all income managed. They are the real deal. I live in Darwin—so does Mr Levy and many of my other staff. With regard to the broader NLC perspective about income management, the chairman would be more than willing to state his opinion about income management.

CHAIR—Mr Chair, are you wishing to express an opinion on the general issue of income management?

Mr Wunungmurra—What was the question again? Sorry, I cannot hear you.

CHAIR—We are just qualifying whether you are prepared to make any comment about the issue of income management.

Mr Wunungmurra—Not really but there has been a lot of sadness about income management. Aboriginal people were very disappointed and still are. There are Aboriginal people still out there complaining about it, so what I have been telling them is to be patient and we will try and work things out.

CHAIR—Mr Deputy Chair, are there any comments you would like to make on income management?

Mr Bush-Blenasi—I have a lot to say but I will just keep it to myself and let the CEO talk. Otherwise, if I make a comment, it is going to fall on deaf ears. Going back to the Racial Discrimination Act, our people—Aboriginal people—were treated badly by the CLP government and the Labor Party too. We are the first Australians in this country and we are citizens of Australia. Australian citizenship was given to us by the federal government a long time ago; I was not even born then. Our rights—we have no rights at the present moment. That is why most of our people are really screaming about the Racial Discrimination Act as we have stated. To me, I am just an illegal immigrant living in Australia—in the Northern Territory—and I probably speak for other people behind me. I am just like the boat people that live on Ashmore Reef. That is how we are at this present moment. I am speaking from the heart, and it is hurting me a bit that our government never even came and faced us and sat down and talked to us like we are talking to you, the Senate committee. We are human too, you know. Treat us with a bit of respect.

CHAIR—So Mr Deputy Chair, considering that is the feeling of what you are expressing has occurred, where do we go next?

Mr Bush-Blenasi—I do not know. It is in the Senate's court. The Senate is the last one to say yes or no. Then it goes to the lower house.

CHAIR—So there is nothing in particular you are really wanting? Your committee and the land council has made clear comment about the land aspects, but was there anything else that you wanted us to take into account? We cannot guarantee that we will be able to make everything happen but we can guarantee you that we are not deaf.

Mr Bush-Blenasi—We can sit here all day, Madam Chair, and talk about the Racial Discrimination Act. We have got a lot of issues, but I do not want to continue. I will refer back to our CEO.

CHAIR—Mr Hill, is there anything you want to provide to us—not necessarily today because you came with your submission and you talked to your board about the issues of land. Is there anything that you would like to take on notice in terms of the experience of the people that you represent that you would like to put forward about the legislation?

Mr Hill—Whilst the land council is a statutory responsibility, we have got 83 members. Five of those members are ladies from various regions where there is not equal representation of ladies on those regional councils and in those regions. The general view is that, again, people find it very frustrating. A lot of the council members live on outstations. They do not have access to facilities to use their basic cards. A lot of them do not like to go into major communities because of the humbug, the transportation.

The cost associated with going into communities is enormous. Some people are paying up to \$200 just to go one way in these so-called 'bush taxis'. We have raised that with the council of corporation about regulating some of not just the Planning Act but other pieces of legislation. It needs to more or less go into the Territory regions and enforce the compliance aspect with, for example, taxi drivers. We experience, no doubt, the hardship many of our members face in getting access to shops and BasicsCard facilities. Council members still raise the issues of being segregated in places such as Katherine, where there is a line for blacks and lines for whites.

Senator BOYCE—Whereabouts is that? In shops?

Mr Hill—Yes, Katherine; in the main shopping centre.

Mr Bush-Blenasi—I come from Katherine, so does one of my neighbours sitting behind me.

Mr Hill—Over the last 12 months no doubt Woolworths and others have tried to improve services to Aboriginal people, particularly with BasicsCards, because people do not actually carry around with them a book saying they have got \$300 or \$30 left on their BasicsCard. We hear reports of people trading BasicsCards for alcohol and other measures. The big issue with the intervention is the permits issue. That affects income management because people want cash. We are dealing with some illegal activities out there in land trust areas that we administer and we are finding some of those dealings difficult. It all comes down to people not having cash. People want to see cash rather than using BasicsCards. And, as the deputy chairman said, we can go on and on—again, getting council members down and putting things in writing. You can be there for days on end.

When you have 83 members, that is 83 days trying just to get statements from those members about what is happening out there in their regions.

So, yes, it is very trying for TOs. With income management we hear that people are bit frightened to come off CDEP because of the time period to receive any benefits. We know that it is difficult for some people who want to see the programs out there. Alliance contractors are trying to employ people but people are just frightened to go off what benefits they receive now. Rather than having \$240 a week when they can get \$900 a week, people are just frightened because if they go off whatever entitlements they have now there is no guarantee that they will get those entitlements when they go back on. If the employment is only there for six months, where will they go? Do they have to go to Darwin or Palmerston to get back on to the whole system again, or would they be worse off if they go back on the system? They are the challenges we are all facing.

For me, as an administrator trying to employ local people in Maningrida or Wadeye, again it is difficult. I can offer the same benefits as my employees in Darwin and other regional centres, but trying to get somebody is the problem. Never mind excuses of literacy and numeracy, which are poor out there; just trying to invest in a community member to become an employee of NLC is hard work. With income management: again, it is like Mr Levy mentioned—it is the issue of leases. Before all this it was pretty straightforward what a lease was. To talk about income management to Aboriginal people today is depressing. It takes away their integrity. It takes away their authority, particularly of the men, when you talk about not just intervention but income management. Most men are finding it difficult. There are no support structures out there for men—or even for the women. We would sooner call a spade a spade.

We were at Wadeye last week. We put out a press release about the two SIHIP houses out there. I know people in the governments were not happy about it, but we saw it. We also saw a childcare centre being developed, and looks perfect for the kids at Wadeye; but we also saw the negative aspects at Wadeye. The TO is a little bit frustrated because every contractor who comes into the community brings a boat—and we know that, when they bring a boat, they want to go fishing. Not many of them know about the Blue Mud Bay decision. Most Territorians think they can go into any Aboriginal land because of the intervention. People think that it is open slather. We have local shires stealing gravel off Aboriginal land and trying to flog it to the Territory government. That is why I come back, madam Chair, to the fact that we wanted to do our presentation based on the land—

Senator BOYCE—On the one focus.

Mr Hill—so we did not confuse people. Secondly, yes, income management is a big issue for us. But that is not our core business. My core business is the safety and the physical and mental wellbeing of traditional owners. At the moment they are not healthy, they are not literate, and they are finding it very, very difficult. There has been some commentary and some political parties that have been saying you take the hardline approach, you have taken the spirit of it away. Well, you took the spirit away of blackfellas away with no consultations whatsoever.

These people—and I say ‘these people’—are Indigenous peoples and we are not going to go away. The thing about us is that we will always sing for this country, dance on this country and sweat on this country. We will die on this country. The biggest challenge is for you as parliamentarians, to see and provide a future, not just for Territorians Aboriginal people but for Australian Aboriginal people, because government is wanting to roll this out across the nation. We say, ‘good luck’, because I know that you will get the business councils on your backs, ACOSS will be on your backs, various state and other jurisdictions and social committees will be on your back, and the list will roll out. The experiment is over as far as we are concerned. It is about sitting down and talking to us and engaging the traditional owners and the people in the regions, because they are the ones who have been impacted on—not you, not me, but my executive members, my four council members. They are the people who are feeling the hardship.

Senator CROSSIN—I have just a couple of questions. Did the Northern Land Council attend any of the consultations that FaHCSIA had last year? There were three tiers of consultation. Were you involved in any of those consultations—the community stage or regional stage—even if it was to present the view about the five-year leases?

Mr Hill—We get asked to participate on many, many government initiatives and consultation processes. No doubt council members would have participated in those community consultations, but as representatives of their communities or cultural leaders. Again I have an obligation when my council is doing NLC business, I have a statutory responsibility under the remuneration, to actually pay my council members. I would have been broke if I sent them to every one of those consultations. But the point is that we understand government

processes, and there is a time for us as a council and the council would rather speak as a council than as individuals.

Senator CROSSIN—But in that consultation, as I understand it, the third tier had specific designated people from regions invited to provide a view. The NLC was not contacted even at the third tier stage?

Mr Hill—Again, we said to FaHCSIA: ‘We will advise our members. If they attend, they attend. But, if you want them to attend, you pay them to attend.’ It was not coming out of NLC. And again it comes back down to a lot of the people in our communities are income managed. Therefore, trying to get them 300 kilometres or 20 kilometres—for example, from Barunga to Katherine in the taxi—

Mr Bush-Blenasi—That’s 250 kilometres.

Mr Hill—And that is one way.

Senator CROSSIN—Okay, but there were consultations at Barunga, so I just wondered if you had people there.

Mr Hill—We were notified of those consultations. However, having the NLC go to each one of them—and members—was a logistical nightmare.

Senator CROSSIN—Can I ask finally—Mr Levy might be able to help us with this—about the future act regime again under the native title legislation. As I understand it, the NTER act currently suspends the future act regime. I am wondering whether or not you believe that this legislation actually lifts that suspension and, if it does not, whether it ought to.

Mr Levy—It is always bemusing that, despite the fact that the Native Title Act 1993 expressly says that anything in relation to Aboriginal land is not a future act, later Commonwealth laws included provisions saying, ‘By the way, it is not a future act.’ Those provisions were put in the current legislation in 2007 out of pure caution. It is not a future act anyway. That has always been the case since 1993. It was put there out of caution, presumably by the draftsman or more likely on the instructions of another person. I do not think there is an issue there. The future act regime does not and never has applied to Aboriginal land.

Senator CROSSIN—All right, but should it be removed now? Should we tidy up the process and should this committee recommend that that provision be removed now?

Mr Levy—Yes, because it is obsolete. It was always obsolete. There will be no risk whatsoever in removing that provision.

Senator CROSSIN—Thank you.

Mr ADAMS—Thank you for your evidence. If this legislation were not to pass, what ramifications would it have for you?

Mr Levy—Do you mean from a legal perspective?

Mr ADAMS—We can start with the legal and then go to the community perspective.

Mr Levy—As I mentioned before, from a practical perspective it is much easier conducting consultations when points of contention are removed so you can focus on the real issue. As my CEO has indicated, we have many consultations coming involving leasing, especially in Aboriginal communities, whether that be consensually extending five-year leases or whether it be township leases or the current batch of housing leases. Unfortunately the word lease, which used to be a straightforward term understood by Aboriginal communities as simply meaning an agreement and a document that gets signed, has now taken on a life of its own. Restoring the Racial Discrimination Act would make it much easier in future consultations. That is the first point.

The second point is that, on the basis of our advice from Mr Glacken, we believe that the complaint to the UN committee, at least insofar as it concerns the five-year leases, will be upheld. We do not think that is a good thing. It will just inflame people in communities and when we conduct consultations we like people not to be inflamed. We would like to see the parliament find a practical way to reinstate the Racial Discrimination Act with effect for the future. It would be great for it to have effect for the past 200 years but some things are not realistic, so we are talking about the future. Insofar as the five-year leases are concerned, for the last two years there is going to be rent paid as determined by the Valuer-General that can deal with that issue.

Mr ADAMS—Perhaps Mr Hill might be able to answer from a community perspective.

Mr Hill—Sorry, Senator, I was just talking to my chairman about your question. No doubt there will be disappointment in the communities if the Racial Discrimination Act is not reinstated; however, many Aboriginal people, particularly Aboriginal leaders, will say: ‘That is government. We will still be here. We are not going anywhere. We will deal with the next Prime Minister and we will deal with the next minister for Aboriginal affairs like we have done in the past.’ The executive council members and the chairman had a briefing—we have currently got an executive meeting at the moment and we have just got a briefing from Mr Les Melzer about the UN forums. The executives may consider using some of those instruments of the UN in pursuing their rights. But that is something for them to consider. Yes, we will no doubt be disappointed if the amendments do not reinstate the Racial Discrimination Act.

Senator BOYCE—I did not quite understand what you were saying there, Mr Hill. Are you saying that you have been talking about the potential for taking cases to the UN about the new legislation or the old legislation? Are you talking about one case or more cases?

Mr Hill—No doubt the communities will be disappointed. However, Aboriginal people and many of our leaders have seen prime ministers, ministers for Aboriginal affairs and chief ministers come and go. We will always be here. No doubt this executive council will want to pursue their rights as Indigenous peoples and will want to be more aware about the United Nations and the instruments that they can use and lobby with. They prefer options, no doubt, to speak to governments directly and engage in open dialogues about what is best for us. We believe that we are the best people to resolve our own problems, but we have never been given real—great policies—resources to actually deal with some of our social problems that we have in our communities. Yes, communities will be disappointed.

Senator CROSSIN—They will hopefully not be disappointed in this Prime Minister because we are actually as a government seeking to get the RDA reinstated. Perhaps they may be disappointment in the actions of the coalition or other partners.

Mr Hill—Some of my executive members would probably like to see a bit more from this government. That is something, Senator Crossin, you might want to discuss with them out of session.

Senator CROSSIN—We acknowledge that, but the issue I put this morning to NAAJA and to the Aboriginal Legal Aid Commission was that, given the constraints of the Senate at this point in time—we are looking at not even getting this legislation through—we are trying to negotiate a middle path here whereby we can pursue what we want to do in this legislation but we also face the reality of trying to get it through the federal parliament.

Senator BOYCE—Mr Levy, you mentioned Mr Glacken’s advice and I got the impression that you were anticipating a result fairly soon from the UN?

Mr Levy—No. I do not know when the result will be. I just know, as everybody knows, that a Sydney solicitor, on behalf of some aggrieved Aboriginal persons in Alice Springs, lodged a complaint. That would have been about a range of things. I am not sure whether it dealt with the Aboriginal land issue. I have no idea where that is up to.

Senator BOYCE—Sorry, I got the impression that you were anticipating—

Mr Levy—We just want to stop it happening. Can I just say that there is no intention to label anyone in relation to a complex area of social policy as in some way intentionally discriminatory but, if it has happened, then it is the responsibility of all political parties to fix it. The former government from the Prime Minister downwards was very proud of having focused on Aboriginal affairs with the wish of creating beneficial outcomes. If it is necessary to fix the legislation—and it is not the first legislation that has required fixing—it ought to be fixed on this issue.

Committee adjourned at 4.58 pm