COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

COMMUNITY AFFAIRS LEGISLATION COMMITTEE

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

FRIDAY, 26 FEBRUARY 2010

CANBERRA

BY AUTHORITY OF THE SENATE

THIS TRANSCRIPT HAS BEEN PREPARED BY AN EXTERNAL PROVIDER

INTERNET

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

The internet address is:

http://www.aph.gov.au/hansard

To search the parliamentary database, go to:
http://parlinfo.aph.gov.au

SENATE COMMUNITY AFFAIRS

LEGISLATION COMMITTEE

Friday, 26 February 2010

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

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, Carol Brown, Coonan, Crossin, Moore and Siewert

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

WITNESSES

Committee met at 8.31 am

CHAMBERS, Ms Kasy, Executive Director, Anglicare Australia

SMYTH, Professor Paul Gerard, General Manager, Research and Policy Centre, Brotherhood of St Laurence

STOCKWELL, Ms Amy, Head, Government Relations, Brotherhood of St Laurence

CHAIR (Senator Moore)—The Senate Community Affairs Legislation Committee is inquiring into the range of bills that are looking at the reinstatement of the Racial Discrimination Act. On behalf of the committee, I acknowledge the traditional owners of the land on which we meet and pay respect to all elders past and present.

I welcome representatives of the Brotherhood of St Laurence and Anglicare. I am sure most of you have done this before. You have information on parliamentary privilege and the protection of witnesses. The secretariat is available to provide help if you need more. We have your submissions, thank you very much.

The committee members who are here are Senator Rachel Siewert and Senator Judith Adams from Perth. Other people will come in. I assure you that the *Hansard* record will be read by many people. Just because people have not been able to attend today's hearing does not mean that your evidence is in any way not being taken into account by the whole committee. Does anyone have an opening statement?

Prof. Smyth—It was foreshadowed in the *Age* this morning that we were going to make a dramatic announcement.

CHAIR—I am sorry, Professor, I have not seen it, so you still have a new audience.

Prof. Smyth—It was signalling a break in the welfare sector between the Brotherhood and the rest. I think there is some journalistic licence operating here.

CHAIR—Never, Professor! That would never occur.

Senator SIEWERT—We are all shocked and appalled.

CHAIR—I am sorry, Professor. It seems to be a light way to start.

Prof. Smyth—It does point to the fact that the Brotherhood is probably taking a novel position on this matter. We welcome the opportunity to be able to explain this in brief, although it is spelled out fully in the submission. We are particularly keen to submit and present our views on this matter because our interest goes beyond what might or might not have happened in the Northern Territory with the early experiment with the income management to Minister Macklin's consideration that the principles behind it are what are really important and may well lead to an across-the-board reform of the welfare system. The Brotherhood's interest is in these principles and the prospect of reform it might hold out for the wider community.

We very much support the principles informing this approach to income management insofar as we think it presents the opportunity to get a much better balance in our social policy system and in our community between rights and obligations, rights and duties, rights and responsibilities. We do not believe that we have had a good balance. I think that for over a decade now there has been a very hot contest between people who are attacking rights and think it is all about obligations—'We have to get people off welfare. Cut off the money supply. The whole problem is one of welfare dependency. We have to get government out of the game'—and people furiously defending the citizen's right to a civilised minimum standard of living. Naturally there were equal and opposite reactions.

What is new about the Brotherhood's position is that we actually think that both sides have a legitimate point. What we need is a new synthesis that brings together the correct insights both of these parties have brought to the issue. The way we have done it in the submission was by looking at the Australian way historically since the beginning of the white society. We canvassed the period of the Poor Law in the 19th century, which was all about obligations and individuals standing on their own feet, right through to the 1970s and the welfare state, which was all about rights and the whole question of obligations tended to be neglected. We think that, in terms of that historical evolution, where we are now is needing a re-emphasis on obligations but not to the detriment of rights. We think there is a middle way there that is the true Australian way we need to re-establish.

The second point is to do more specifically with income management. Here I think again we have a slightly different position from some in the sector, but perhaps not to my colleague from Anglicare, who is sitting alongside me. We think that a new approach to welfare is emerging under the social inclusion banner. We think

there is a legitimate new emphasis on how social policy can be used to influence people's behaviour. This is a very important point of difference with some of our colleagues. The recent view has been that people get their income support and that should be inviolable—the community has done its bit; it has provided the safety net to keep people from poverty. So the focus has been all about income.

With the social inclusion and exclusion analysis, we see the dynamics of people being in or out being much more complex than, 'Have they got enough money?' Indeed, if people are left in circumstances with only money and not the other services and economic opportunities that they need then you can indeed have a problem of welfare dependency.

With the inclusion approach, it is not enough to say that we have done our job when we have provided income support. We are talking about investing in people so that they can truly have the opportunities to participate. That means we are very interested to know if the investment has paid off—are we as a community getting value out of the taxpayers' investment? We think it is legitimate then to look at behaviours. We do not want it in some sort of authoritarian, paternalistic, fascist, communist state. We are not arguing for anything like that.

CHAIR—That could well be the media, Professor.

Prof. Smyth—We think it is possible to look at behaviours in ways which are unobtrusive, reasonable and simple to undertake which will provide a check on whether the investment is actually going somewhere. A good example would be, where a parent is being supported by the community to raise a child: does the child go to school? That would be a simple test. We would have no objection to something like that being part of the deal.

Finally, to wrap up my opening remarks: to make full sense and to take full measure of the opportunity open to the nation now, to get right the new balance of obligations and rights, is not just a matter of pushing obligation buttons; we have to be pushing the right buttons, in a whole new way. This is where we think the federal government's social inclusion agenda presents an historic opportunity to remake our welfare system on the scale that happened in the post Second World War period, at Federation and in other periods of historic opportunity. What that is all about is reviewing our whole social security and social services system and asking: are they appropriate to the risks and opportunities Australian citizens face today? We can do that when we answer the questions: what is the package for the parent? What is the package for the person entering retirement? What is the appropriate youth compact for the 21st century? This is the basis of the new deal, a new social contract. Within that contract is where we can work out the details of the rights and obligations of citizens and governments. We are very confident that this would have the full support of the Australian people, because we think it fits squarely with that idea of a fair go. People are willing to pay taxes, they are willing to invest in fellow Australians so that everybody gets their opportunity in life, but equally they want to know that services are being rendered in return.

CHAIR—Thank you, Professor. Ms Chambers?

Ms Chambers—I am representing Anglicare Australia. Anglicare Australia is a peak body of 43 Anglicare agencies across Australia. Together they support about one in 40 Australians, through the services of just over 32,500 staff and volunteers. The services operate in every state and region of Australia and at every stage of the life course.

Two major areas of service for our members are those assisting people in hardship—material aid, emergency relief, financial inclusion programs and the like; and children's services, from those supporting all families through to our being a major provider of out-of-home and foster care for children and young people—again, in every state and territory.

In addition to those services, Anglicare agencies and Anglicare Australia have a massive commitment to advocacy and to research that informs policy. I should say that Anglicare Australia's voice is that of Anglicare Australia—it is informed by our members and their service users—but it does not necessarily represent the views of any particular Anglicare agency. So, it is those services and that experience that make us think we have something to say in this space.

Firstly, I should say that we totally support the reinstatement of the Racial Discrimination Act; but, from there, I also want to say that we do not dispute the problem. Our services see families daily that are struggling to cope and to get through to the end of each day. But these families and households do not have a simple one-cure-fits-all, one-dimensional problem. It did not take them a day to get to that stage, and we do not believe there is a one-cure-fits-all, short-term solution to turn them around. To this end we do applaud the

government's recent investment in services, such as Communities for Children and the Safe and Sober Program, and the minister's commitment to trying to move material aid programs into greater depth and financial inclusion programs.

We also note and agree with the objectives of the bill. However, where we differ is that we do not feel that the activities prescribed in this bill alone will actually meet those objectives. We have with us a range of real case studies and information about programs that do actually make those changes.

I realise that this is not within the purview of this inquiry, but it would be disingenuous of me to not touch on the issue of adequacy. We believe we cannot have a discussion about the quality or quantity of food that children have access to without considering whether or not the level of many benefits is adequate. For example, for our Sydney member, 43 per cent of people presenting for emergency relief had children in their households. That is, 4,643 people presenting for help with food or utilities had children in their households. Some recent Telstra funded research found that, of people requiring help with meeting their Telstra bills, 34 per cent were on a disability support pension. So we would like to make some comment, even though we realise that this is not the place, about the adequacy of benefits for a healthy, decent life in the Australian context.

In short, we agree what the problem is. We like the objectives of the bills, but we do not think the activities of the bills will achieve those objectives. We think that in going down this track we will see a wasted opportunity. We think we will waste money, we think we will waste people's commitment and goodwill and we think we will run a risk of further deskilling and devaluing people who are on these benefits. The changes to the legislation in hand that we would like to look at in order to make it work better are to make it voluntary, to match it with a government obligation to provide a raft of individually tailored services and to ask that a strong evaluation program be put in place from the start so that we can really look at whether this works and really look at the evidence based practice which we share a desire to develop.

CHAIR—Do you wish to add anything at this stage, Ms Stockwell?

Ms Stockwell—Only that we would like to table a summary of Professor Smyth.

CHAIR—There is no objection to tabling it. Thank you very much. I suggest that, at this stage, we have 10 minutes of questions from each of the three senators and then see how we go.

Senator SIEWERT—Professor Smyth, do you support compulsory income quarantining on the scale this bill purports? This bill allows, after it is rolled out in the NT, for it to be rolled out across Australia. Is your position that you support income quarantining for all of those category E people, despite the fact that they might be perfectly adequate parents—their kids are going to school and they are ticking every box?

Prof. Smyth—This is probably something that the Brotherhood would not have a firm position on at this point. The way we have couched our proposals is to talk about this new compact as the way of reorganising services for people, so a lot of things would need to be in place before we would give unqualified approval. I think that is still an open question for us.

Senator SIEWERT—But you do acknowledge that that is allowable in this bill?

Prof. Smyth—Yes.

Senator SIEWERT—In terms of your comments around the support services, and that is one thing that is not clear from the bill, the government has announced for the Northern Territory, for example, that it will cost $350 million over four years. That is solely about the rollout of income quarantining. It does not articulate what extra services will be provided. In your experience, if this were to go ahead—and I think, as I said yesterday, everyone is pretty clear on what I think about income quarantining—what types of support services would be essential to get the types of outcomes that you are looking for?

Prof. Smyth—Our submission was very much at the level of the history and the principles. My readings of submissions from colleagues in other parts of the sector, including Anglicare, suggest that we have similar views. I would like to mention especially the Salvation Army submission, which I thought was spot on in this regard.

Kasy, in your presentation you might have talked about what the services are that will come as part of the package. Income management should never be seen as the great lever. It is just one tool that we think should be in the kit of services and programs available. I do not see that anyone has really got a handle at this stage on how the system would be designed in detail so that we could be confident that the appropriate services—the package, the deal, the compact—are there for an individual, a family or a community. I think that Anglicare,

Salvation Army and Brotherhood of St Laurence are certainly nominating that as a critical area of program design if these broad principles we have put are going to be satisfactorily implemented.

Senator SIEWERT—My problem as a legislator is that we are being asked to vote on a bill in March—that is what the government's intention is—but we do not know what the compact is. My understanding of the compact is that it is more about a relationship between government and non-government organisations; the compact is not about actual services or resources from government to be delivered on the ground; it is more a higher level agreement. I am not dishing the compact—I think it is a good move if it is done properly—but we are being asked to vote on this package where none of the things that you are talking about are in place. We have no idea what services are going to be provided. The government has made no announcements about that. It has merely made an announcement about $350 million which does the admin side of things. We have not had a community debate. I acknowledge your comments. My interpretation of what you are saying is that we need to look at how we are reframing delivery of welfare in this country.

Prof. Smyth—Yes.

Senator SIEWERT—That has not occurred. We are voting on a bill in three weeks time and that debate has not occurred. We have no idea what support services there will be. In fact, the information that we were given in the Northern Territory and from the WA government when we asked them was that they have not committed either to any additional services. How, as legislators, do we make those decisions when we have not had the debate yet and have no idea what services are available?

Prof. Smyth—That is a challenge for the legislators. I guess there are timescales of reform here. What we are talking is not going to happen next month or this year. It will take years to evolve the new way of doing welfare. But we are not discouraged. In 2006 Tony Nicholson put forward this very idea of a compact around youth, when he said that just income support for a lot of these young people is not enough. Some of them reported to us—in the colloquial language of Frankston—that they thought they were just going to bum around on welfare when they left school. So back in 2006 the Brotherhood of St Laurence advocated, with some controversy, for the idea of a compact—offer them a job, offer them education or training but do not leave people parked on income support. Years later we are moving towards a youth compact. It still needs a lot of work on it. From our perspective, we see principles of design emerging, but this is a long-term project to refashion the social security system in Australia. I sympathise with your challenges of having to make decisions in the here and now. We as NGOs do not have the solutions. Nobody has. People have only got bits and pieces of the solutions and we can only encourage you to put the best package together in the circumstances.

Ms Chambers—This is one of the issues that we see. I think I foreshadowed it in my opening statement. We think that this is probably an ideal opportunity to look at mutual obligation, so that in return for this income quarantining there is an obligation on the government, either through its own services or state government services or community sector services, to look, with each individual person, at what is going to make the difference.

We know about some of that raft of services. We run breakfast clubs and meal clubs. We work with parents on childhood nutrition, financial wellbeing, low-income loans and market-to-table type programs. We work with people who have had little nutrition education through their own schools. We run drug and alcohol programs, and programs going to issues around people's housing, such as tenancy support programs. That is the kind of raft of services.

But I would say there are two issues. One of those is case management, because we never know the specific circumstances. We have a story of an Indigenous family in Western Australia, for example, who were in debt for a number of reasons. It turned out one of the issues was that they were in debt to a funeral company for the provision of a grave for a young child who died. It was actually a culturally unsuitable grave. One of the issues our agency worked through with them was to work with a local provider of a certain type of stone, and see whether there could be some unhewn stones provided. That got them out of the cost and it was more culturally appropriate to their needs. You would never put that into raft of services; that is the case management issue. The other side of it is agency. We say it is really important that people are involved in their own way out, their own way up, if you like. So there are some common types of services that tend to help people, but there is also people's own agency in terms of determining and working through these issues. I do not know whether that answers your question, Senator, but we feel very strongly that this is an opportunity for truly mutual obligation.

Senator SIEWERT—Thank you.

CHAIR—Professor Smyth, did you have something to add there?

Prof. Smyth—It's gone!

CHAIR—I had the impression you were still going.

Senator SIEWERT—Sorry, I apologise if you were—I thought you had finished.

Prof. Smyth—No, I am glad Kasy made those points. It saved me the trouble.

Ms Stockwell—I think we can say that, like the deputy chair, we look forward to additional detail on the services that will be provided as an adjunct to this initiative.

Senator SIEWERT—In terms of the experience in the Northern Territory, have either of your organisations (a) had such experience or (b) looked at the evidence that is available on whether income quarantining has worked? What is your opinion on whether it has worked or not?

Prof. Smyth—The Northern Territory intervention is not an area where we have experience, services or research expertise.

Ms Chambers—Through our agency in the Northern Territory, Anglicare Northern Territory, we have had mixed experiences, I have to say. There were a lot of difficulties with the mechanics of the scheme. While those are particularly inconveniencing and distressing at the time, mechanics can be ironed out. But we have had mixed experiences in terms of families who have reported that it has done well for them and families who have reported that it has not—they have had difficulties getting to stores where they can spend their money; they are spending a lot of money in taxi vouchers et cetera. We know of situations in the Northern Territory, but also in other areas—Newcastle and Melbourne spring to mind—where there is a huge black market in food vouchers that are given out for people who have been breached. The going rate for a $100 food voucher in Newcastle at the moment is about $48, outside the general supermarket in one of the suburbs.

Senator SIEWERT—In exchange for cash?

Ms Chambers—Yes. I guess that is one of our points: if people do have entrenched, complex difficulties around drugs, alcohol or substance abuse, it is very hard to turn things around without other areas of support.

The other stuff that we would say about evidence—and it is not directly answering your question—is that at the start of an activity like this, if we are going to go down this track, let's set up some evaluation, some ability to draw evidence from this; because the evidence we have seen out of the Northern Territory intervention is weak. Everybody has said that; that is not being pejorative. The AIHW have said themselves that that is not the way they would really like to do it. I was re-reading last night, in preparation for this, the evaluation of the Communities for Children Program, for example, which is a very well produced piece of research. So, if we are going to go down this track, for heaven's sake let's set up some evaluation.

Prof. Smyth—Maybe I could just add something. While we have no comment on the Northern Territory experience, we have tried to ask, 'Are there principles there that would be relevant?' This is purely a view formed through my working at the Brotherhood of St Laurence and talking with colleagues. If you ask them, 'Do you think there are large numbers in mainstream Melbourne who would have major difficulties with income management as part of social inclusion?' I would say that they would say, quite flatly, 'No.'

In our report coming out shortly on 'making work pay', there are interviews with a lot of people on Newstart and parenting payment, about how they are managing in public housing estates. From reports I have read, those people manage their income far better than I would, so I do not think we should be building income management up into a great issue.

Senator SIEWERT—Sorry, I do not understand your comment at all. Are you saying that people would quite happily agree to 50 per cent of their income being managed?

Prof. Smyth—I am saying it may well be a big issue in some of the Northern Territory communities. But, because that is not something I can comment on, I am asking: is it a big issue in places like Melbourne, where the Brotherhood of St Laurence does have experience? It is not a big issue. It is a legitimate issue for some people—

Senator SIEWERT—I still do not understand what you are saying is a big issue. In other words, there will not be many people who go onto it?

Prof. Smyth—Yes.

Senator SIEWERT—But under this legislation anyone in category E is automatically on it, and you have to apply for an exemption to get off it. If you are a single mum sending your kids to school and you happen to be living in the area that is designated, you are quarantined. That is it. You can apply for an exemption to get off but you are automatically on, whether you are doing a good job or not. Would you have a problem with that? Do you think people would have a problem with that?

Prof. Smyth—This is all about how it is going to be implemented. In terms of the reality of people's experience of poverty, exclusion and what might be done to assist them, I am saying, as we have both been saying, that there are other services and that other things are far more important in moving people into the mainstream than income management. I do not think income management will prove to be a major issue in places like Melbourne.

Ms Chambers—To come back to your question, one of the issues that we talked about in our submission is that the objectives of the Northern Territory intervention are different to the objectives for this intervention, so we cannot really compare the two. One of the things that we are saying is that the evidence to move straight to this type of blanket, one-size-fits-all approach is really quite weak.

Senator CROSSIN—I found both your submissions quite concise and useful. Professor Smyth, on page 3 of your submission you say:

… since the early days of 'mutual obligation' the Brotherhood of St Laurence has been a strong critic of systems which impose counterproductive conditions on the unemployed …

Could you expand on what you mean by that?

Prof. Smyth—Yes. That goes back to a report called *Much obliged*, one of our better reports. This reflected more the experience of the mutual obligation, work-first approach in the earlier years of the Howard government. People were interviewed and researchers looked at what was going on. People were jumping through so many hoops and being hassled so much to get off welfare that the researchers found that all the hassling was not really worth the trouble. That is why we are dead against an approach which is all about getting people off welfare and tipping them somewhere else, unless the other services and things to empower them are in place.

Senator CROSSIN—Yesterday I had a discussion with and put some questions to the Welfare Rights Network. They highlighted section 60 of the Social Security (Administration) Act, which talks about people's rights to social security benefits. They went on to say that their interpretation of that is you have a right to receive that benefit in cash. I put it to them that I thought you had a right (a) to the benefit and (b) to an amount and the amount did not vary depending on your category of behaviour. But they went further and said they interpreted that as a right to have all of your entitlement in cash. Do either of you have a view about that?

Ms Chambers—I do not have a historical, political view, which I am semi-expecting Paul to pick up on. Our view—and we probably differ here to a lot of our colleagues in the so-called welfare sector—is that we agree that there is an issue. We agree that some of these families probably do need a bit of a circuit breaker, but we need to actually back that up with those other services. We need to really look after people in an individually tailored way with a broad raft of services. We considered that very issue when we thought our submission through and we decided that we would not use a rights approach to our submission and to our thinking about this. But we did think through that issue around food as a right or money as the right. We would have a sense that, because of the adequacy issue, it becomes somewhat academic as to whether it is food or money, because many, many people who are on benefits long term are actually coming to our agencies for in-kind support anyway, be that food vouchers, petrol vouchers or help with utilities.

Prof. Smyth—To look at a bit of the historical side, it is an old chestnut. A critical time was the Great Depression, and I think St Vincent de Paul have alerted us to the issue of groceries and food vouchers, which made people very angry—why couldn't they have had the cash? Certainly when the Second World War reforms came through people like William Beveridge—this is in my paper—said that we would prefer the cash. We know some of it might be wasted, but it is much less evil than just giving people vouchers and saying, 'You can have this grocery or that grocery,' and trying to control how they use the services.

I would refer to our famous project, the Family Centre Project of the 1970s, which was all about people's rights and giving them everything they needed to prove that it was not really issues of personality or behaviour that were the problem. We did that, but the caseworkers found they still had to manage behaviour and sometimes wondered whether we should just give them all the cash or control some of that giving. So, as Kasy

was saying, we certainly think it is an important part of the tool kit but it is not a central thing, as I was saying to Senator Siewert, in social service delivery.

Senator CROSSIN—Can I also ask you about the rollout of this to non-Indigenous people—for example, particularly those aged 17 to 25. Is it your view that there should be a mixture of 'opt in' and case management, or are you satisfied with the legislation, where all 17- to 25-year-olds who might be long-term unemployed after a period of time are income managed?

Ms Chambers—We would really strongly object to anything that is not voluntary and not supported with other services. We suspect, however, that a lot more people will volunteer than we might think. We did make a flippant comment in at least one media statement, which was to say that most of us have income management but we call it 'prudent money management' when we have our mortgage or our rent taken straight out of our pay. I think there are a lot of issues around language here we talk about 'welfare' and 'quarantining', as opposed to prudent money management.

We would actually be opposed to anything that is involuntary. We would be opposed to this legislation coming in and people having to work their way out of it rather than being able to opt in or perhaps, after falling in a few holes, ending up on it. We would not be averse to people who are clearly in difficulty and clearly experiencing some need for some more intense service provision coming onto income management. But we feel that you should inversely earn your way onto it and we are opposed to an involuntary system.

Prof. Smyth—I would not say the Brotherhood of St Laurence has a very fixed view on this aspect of how it is implemented, but I would say that certainly in a social inclusion framework it is all about engaging effectively with people, offering them aspirations and opportunities. In this case you are saying there is support for a strong voluntary element to the engagement. At the same time, I think you need to balance that. The evidence shows that there are categories of people who are going to be more prone. We talked about triggers and alarm bells going off. I think initially the engagement should be voluntary but I am not excluding the idea that for some people it might need to be obligatory.

Senator CROSSIN—Ms Chambers, in Anglicare's submission there does not appear to be evidence from the intervention that income management in and of itself is a solution to problems of dysfunction and welfare dependency. But do you put it to us this morning that income management is one tool for tackling dysfunction and welfare dependency?

Ms Chambers—We were looking at the evidence and saying that, because the intervention had different objectives to this particular bill and because there were other issues that happened at the same time as income management, it is really very difficult to actually look back and say, 'Income management has achieved X, Y and Z.' There were also the changes to community stores at the time. There were changes to policing and changes to houses. So there were those kinds of issues. We are saying that the evidence to shift from the Northern Territory intervention to this is very weak. We do not feel that the movement from one to the other is predicated on any form of evidence.

We also feel that the issues that the Northern Territory intervention was trying to offset do not necessarily happen in an average suburb around Australia. It was looking at communities that were quite discrete, that understand themselves as communities and where there are hugely strong kinship obligations. I do not believe we see those in Cannington or the suburbs of Sydney and Melbourne. We do not have that same understanding of a set of people as a community. So, whether or not the blanket approach worked in the Northern Territory—and we have a view about that—we do not feel there has been enough evidence or looking at the stuff that did go on to take it in this form to every other single community in Australia.

Senator SIEWERT—Ms Chambers, you mentioned Cannington, which is another one of the so-called trials. I think it is an example of what you said might be in the tool bag where the Department of Child Protection in a case of neglect—not abuse, because that is handled differently—can work with Centrelink to put people back on income management. You are active in Western Australia. Have your agencies had any experience with that particular trial?

Ms Chambers—Little experience. Our agency has not seen a great enough number of people going through it. In our submission we were looking around for evidence. We feel that the Cape York trials are probably the closest to what we would like to see in making income management one small tool and having a voluntary opt-in, or a number of things that you have do wrong, almost, to get you to that stage. Cannington was another trial. I talked with the ex-minister, Susan Ellery, over there recently. I do not know that that went

on long enough, brought in enough people or was able to bolster people enough for us to really be able to base a lot on it.

Senator SIEWERT—If I understood what you said earlier correctly—and, Professor, I would be interested in your comment, too, if you have looked at the Cape York trial and the Western Australian trial, which is now over virtually all of metropolitan Perth—when you talk about income management, those are the sorts of applications that you would see as part of the overall delivery of a package of services. I presume that is what you are talking about.

Ms Chambers—Yes. We think we have cheaper ways of achieving the outcome. We think there are cheaper ways in pure finance, in the cost of the public feeling good about people on welfare benefits and in the outcomes for people. Having said that, if income management is going to be enacted we feel that it needs to be wrapped around; we feel it needs to be voluntary. So areas like the Cannington trials, which are, as you say, now across Perth, are better, in our view, than the proposals that are being put through this bill.

Prof. Smyth—This is not based on any great research of my own, but I have followed it from afar and from the very beginning I was deeply impressed. With Cape York it was a redesign of how welfare should happen in communities, very much with principles we shared at the Brotherhood of St Laurence around the notion of investment and of building people's capabilities and capacities. Many of the submissions seem to highlight that it is emerging as a success story, and within that it is very interesting to note that the number of people being income managed is quite small in the scheme of things and other factors are proving more important in raising school attendance and so on. So there are big lessons there.

Ms Chambers—The other thing that we like about it is that it is not punitive. It is community based and it seems to be bringing around lasting change.

CHAIR—Ms Chambers, what do you mean by 'not punitive'?

Ms Chambers—I have read the evidence. I have talked to a couple of people who were involved in it, but that is the extent of it. People are not being forced into it. There is the support of the community as they are looking at whether they will have their income managed or not. There is a big opportunity to opt into it. Also, if people are finally pushed into it it is with some community support. As to how we would look at rolling that out to other places, we should never just roll out a program. We really do need to look at why it is working well in its community and what would make the same idea work well in other communities.

Senator SIEWERT—Professor, you commented earlier about one of the indicators. I do not want to misquote you and I cannot remember exactly the words you used. You were talking about behaviours and whether kids go to school. One of my concerns around that issue is there are a lot of reasons why kids do not go to school. It is not because parents do not want their kids to go to school. There are a number of barriers—overcrowding and all those issues. In the Northern Territory there are issues around alienation. Kids feel alienated from school when they cannot hear—all those sorts of issues. So it seems to me that whether your kids go to school or not is rather a crude indicator unless you are addressing and looking at all those other issues around why they are not going to school. What sort of indicators would you use and how would you implement that as an indicator when there are all sorts of other underlying issues and causes?

Prof. Smyth—I do not think I would be in a position to really talk about how it would work on the ground. I was just using that as an example of: when we invest in fellow citizens we look for a return—it is reciprocal. For example, if people are eligible for unemployment benefits we expect them to be looking for work, and there are tests around that. So I am not sure what the details would be. I think the going to school one is just a widely used example of a sort of behaviour people would look to, such that if that was not happening then that ought to trigger some kind of engagement with the person to find out what is really happening. I think we would be sharing the same view there—that we would be looking to a more complex sort of response to it than just, 'You're going to have a BasicsCard.'

Senator ADAMS—If the Racial Discrimination Act were to be reinstated, what difference do you think it would make on the ground? Either of you may answer that.

Ms Chambers—We certainly support the Racial Discrimination Act being reinstated. We feel that this is a positive part of this legislation. We certainly would not want to see it continue to be suspended. But we feel there are other ways to do it. It is probably not for us to design those, but we certainly feel there are other ways to get that particular outcome.

Senator ADAMS—This committee has travelled around in a number of very small, remote Indigenous communities and talked to people. Also, I am from Western Australia, so consequently I am fully aware of the

rollout there, in the city as well as in the Kimberley. So I really would like you to tell us exactly what you think the difference would be. You are working with people on the ground, or that is in your evidence. I would really like to have spelt out exactly what difference it is going to make.

Ms Chambers—I guess I am struggling with the question because we have not seen that rolling out income management in order to increase child outcomes is directly related to the Racial Discrimination Act.

Senator ADAMS—What about as far as the income quarantining goes? You are saying that you would rather it were all voluntary. How would that work? And how does it relate to the Racial Discrimination Act because now, with the legislation as it is, it is not just confined to Indigenous communities. We have had evidence from people saying that three-quarters, or 80 per cent perhaps, of the people affected will be Indigenous people, but this is something that has been trialled in Perth, is now being expanded and will probably be expanded further as well, as the trials go on.

I would really like to see how it would work as something that is voluntary. I mean, the whole reason for the Northern Territory intervention and the emergency response was to protect children and women, and to make sure that there was adequate finance for those communities, and people were able to be safe with their money. The BasicsCard has had a lot of criticism, but from the evidence that I have heard it has certainly done a lot of good. So I know it is a bit of a web, but a number of people have said, 'We've got to have the Racial Discrimination Act reinstated,' and 'It's not fair,' and 'It's disadvantaging us, and it's doing this and it's doing that,' and I just wondered—because you are hands on; you are the people on the ground; that is what your organisations do—if you could think of an answer for me.

Ms Chambers—I guess our people on the ground, especially the clients we see, half of them probably do not know whether the Racial Discrimination Act is reinstated or not at the moment. They are living hand to mouth and day to day. The reason that we would like to see it voluntary is because there is evidence in everything that, where people have control, they are more likely to commit to the changes themselves. That is why we would like to encourage it to be voluntary. We would certainly like the capacity for case managers to then work with people to help them make it voluntary. We are not saying that we think that a number of people will walk into Centrelink tomorrow and say, 'Please do this with me.' We are thinking that some of that would happen in conversation with workers from various services, be they breakfast clubs or housing services or family support services.

The other issue that we have with something like a BasicsCard is that it would be one tool—it alone. Otherwise we cannot see a way back out of it. We cannot see how we move people from being on the BasicsCard to enabling them into work, into employment, into school and off that BasicsCard. That is the other reason why we would like to see it voluntary. Voluntary by nature does tend to mean that there is a group of services that fall behind that person. That is one of the issues we talked about earlier that we cannot see yet in the legislation. We cannot see that that is guaranteed and we cannot see what that is going to look like. Obviously it is easier to do that in Perth with a range of services than it is to do it within communities like Jigalong, where there are fewer services to bring. But I still think that there is the point that, if this is mutually obligated, we need to put services in behind it, otherwise we are going to have a raft of people on BasicsCards and we are going to have intergenerational BasicsCard dependence.

Senator ADAMS—I entirely agree with you, but at the moment, unfortunately, the services are not there. With a lot of these people, now that they have been able to handle the BasicsCard and understand what they are doing, we are seeing some really good results. You probably saw me reading the paper. I was not being rude. I cannot display it for *Hansard* but it is an article in yesterday's *Australian* about Hermannsburg. The committee has visited Hermannsburg and seen for ourselves just what a terrific success story that is. I am just so thrilled to finally see a good news story on the front page of the paper. I called the headmaster. Just look at the statistics. In 2008, there were 112 children at school, with 55 per cent attendance; in 2009, there were 203 children at school, with 80 per cent attendance, plus 60 high school students.

These are the sorts of things for which it is going to be a very slow progression through the BasicsCard and all the rest of it. Finally it probably will become voluntary, but I think we had to start somewhere with a benchmark and then be able to work through with that. With all the services that hopefully will come behind, these people will be given that opportunity. It is the same with the ones in the metropolitan areas. If they can get the services behind them, I am sure that eventually they will be able to work their way to actually be off their involuntary income management, and perhaps they may want to stay there as a voluntary person. I know in the Kimberley that a number of people were quarantined with the income management but there are a lot of others who have opted in because they have seen the success of those families being able to manage. They

have got the money, and the domestic violence issues have been reduced, and the alcohol. There are just so many different variations in what is going on.

Ms Chambers—I guess that would be some of our point. I have not been to Hermannsburg recently, but I was really delighted to read that. But, as well as the BasicsCard and income management, I am sure there are other things in there like the commitment of the principal and the other services, as you say, that have wrapped around and underpinned that. One of our concerns is that, in the legislation as it currently stands, we do not see how those underpinning services are going to appear or how we are going to make sure that someone who comes into the regime of income management immediately also comes into contact with services, be they government, be they community sector, be they whatever, that are going to support issues like drugs and alcohol, like housing, like nutrition information. That is one of our concerns—that we do not currently see that in the legislation.

Senator ADAMS—I guess that will probably come up in other areas with the programs that are being offered through FaHCSIA. I was going to ask you about the evaluation of any of the programs that have been rolled out with the Northern Territory Emergency Response, but in your statement you said that you had not been able to really evaluate anything in that respect.

Ms Chambers—We were not persuaded by the evaluation of the Northern Territory intervention as being strong enough to then base the rollout of this program on it, for a number of reasons—the fact that AIHW themselves said it was a very small sample, the fact that it did have different stated outcomes to what this has and the fact that there were lots of other things going on as well as income management, so the success could actually be seen to be based on other things. We also talked about the Cape York trials. I think you were out of the room when I mentioned the Communities for Children evaluation.

Senator ADAMS—I was going to ask you about that actually.

Ms Chambers—I was rereading it again last night in preparation for this. The programs themselves set themselves up to be evaluated. There was a commitment to evaluate it in an ongoing way. Again, as society goes, as sociology goes, it is very difficult to say what actually contributed to these outcomes of less harsh parenting. What did actually make the difference? The report itself does find that there are three reasons that did contribute to the success of Communities for Children. They are always going to be a little contaminated, a little complex because of everything else that is going on in human lives, but I guess that is one of the issues in evaluating human programs. We feel that that was a much stronger evaluation of a program that was very positive and did have some very positive outcomes than the quite short-term and small sample, none of which the AIHW deny. As I understand it in talking to them, it was never meant to be particularly rigorous or robust but it seems then to us to be a little bit weak to reference these changes upon.

CHAIR—I have only got one question and it is on notice. It is a proposition I am putting to the witnesses today about the agreed position that there is very little benchmark data in the whole social welfare field, despite the various attempts over many years to come up with appropriate processes of really seeing what happens. I am just putting forward a proposition that you may wish to come back with a comment on.

One of the commitments with this process is to have the evaluation process in the extension publicised before it really kicks off, so for the 12-month period of the extension of this legislation into the Northern Territory-wide community, which is the proposal, with a discussion that it may go wider after that—that is clearly on the table. But at least for the 12-month period it will be an evaluation of how these mechanisms operate. I am just wondering whether any of the organisations have any views about this being seen as a way to try and get some evaluation of the aspect of whether these measures are effective or not. It is certainly an ongoing issue in most of the submissions about the fact of the evidential base being very flawed, not just for this proposal but for all kinds of proposals in social welfare. I am not convinced we have a great deal of positive evidence based argument on anything around these areas. I would ask people to have a think about that, noting that this is but one proposal and there are a wide range of views about it. That is something I would like organisations like yours that have such experience in the field to give some thought to.

We have to wrap up now. As you can see, it is an extraordinarily tight day and there are many people that we really wish to hear from. Thank you for your evidence and your submissions and for your cooperation in appearing together. We are trying to do that today, and I think it will work with the professionalism of the groups appearing before us. Thank you very much.

[9.35 am]

BEVAN, Ms Karen, Director of Social Justice, UnitingCare Children, Young People and Families

CAMPTON, Mr Jonathan Adam, Research Officer, St Vincent de Paul Society National Council of Australia

ELDRIDGE, Major David, Territorial Social Program Director, Salvation Army Australia Southern Territory

FALZON, Dr John, Chief Executive Officer, St Vincent de Paul Society National Council of Australia

GALLET, Ms Wilma, Strategic Adviser, Salvation Army

HELYAR, Ms Susan, Acting National Director, UnitingCare Australia

CHAIR—Good morning everyone and thank you, as always, for being able to come and talk to us. We appreciate your long-term engagement and also the fact that you have agreed today to appear in a panel. It is actually, for what it is worth, my preferred way of operating to have people who are engaged being able to jump in and talk together. I do, however, want to assure each of you that it does not mean that we are undervaluing individual organisations. It is just that we have a lot of people to talk to and we know that you are able to work effectively in this way. I want to put that on the record at the start.

We welcome you all. I know all of you are experienced in this process. You have information on the protection of witnesses and parliamentary privilege and all of your organisations are most experienced. We have your submissions—thank you, as always. We will go to questions after any opening statement that any or all of you might wish to make.

Dr Falzon—The National Council of the St Vincent de Paul Society welcomes the opportunity to make a submission to the Senate community affairs committee regarding the inquiry into the social security and other legislation amendment bill. It was recently reported in an article by Eva Cox that 'many Indigenous people are legitimately angry that so few other people took on John Howard or Jenny Macklin when their programs targeted certain remote Aboriginal communities.' While the St Vincent de Paul Society was not silent on such issues, I do still wish to begin this presentation with an apology to Aboriginal Australians for our failure to make clear the kind of solidarity that was, and continues to be, called for in the face of ongoing colonisation and dispossession.

The society cannot congratulate, sadly, the government for the reinstatement of the RDA when it is done in such a cynical manner. It is not conducted in the spirit in which this government apologised to Aboriginal people on 13 February 2008:

> That today we honour the Indigenous peoples of this land, the oldest continuing cultures in human history. We reflect on their past mistreatment.

Instead, after supporting the implementation of the racist policy of compulsory income management, requiring the suspension of the RDA, the present government seeks to reinstate the RDA by means of extending compulsory income management. It will not only be based on race discrimination but also now on class discrimination. It will also be heavily gender based in its impact on families.

This does not pay respect to the first peoples of this land. Further to this, it is antifamily, disempowering for those who are struggling on the fringes of the labour market, degrading and, from the evidence we have seen, humiliating. I base these observations not on any ideological presupposition but on the stories that people have entrusted to us. This is what gives us the authority to say these things: our people on the ground shoulder to shoulder with those who are seen by this policy in terms of deficit rather than strength.

The government prides itself on an evidence based approach to social policy. There has however been in this instance a disgraceful use of research. The evidence for welfare quarantining was based on interviewing 76 people out of over 15,000 in over four locations out of 73. As the authors of the report on the evaluation of income management in the Northern Territory point out the research studies used in the income management evaluations would all sit towards the bottom of the evidence hierarchy. Evidence to date relates to remote Aboriginal communities, but apparently it is supposed to be able to work in other communities of disadvantage. As Professor Tony Vinson, one of Australia's leading experts on locational disadvantage, has pointed out charting the distribution of disadvantage throughout Australia was intended to concentrate positive inclusive forms of assistance for individuals and families caught in entrenched disadvantage not to increase their exposure to sanctions.

The bottom line for us is this: no amount of evidence good or bad can cover up bad policy based on immoral foundations. Professor Larissa Behrendt's critique of the government's evidence base includes the observation that income management has not reduced alcohol or drug consumption and it has not stopped humbug or the conversion of BasicsCard purchases into cash for grog. There is also no evidence that it has increased the consumption of fresh food among Aboriginal families, which is vital to fighting anaemia.

The people we assist are struggling on inadequate levels of Centrelink benefits. We are deeply disappointed that instead of addressing this problem the government has chosen to subject people to further measures of control. This does nothing for people's dignity nor does it address any of the problems some might be having in their lives. We continue to assert that rather than increased surveillance and control over people's lives we as a society through our government need to bite the bullet and ensure that people have an adequate income in the first place. It pains us that sole parents and people experiencing unemployment were systematically excluded from income increases at the last federal budget. Income management is returning social policy in Australia to the Depression era sustenance allowance referred to as the susso. The susso stripped people of dignity.

Members of the St Vincent de Paul Society were actively engaged in face-to-face encounters with these people who had been pushed to the margins. Then as now our members called for social policy approaches that were respectful and empowering rather than demeaning and degrading. Compulsory income management forces people to shop at a limited range of stores and the effect will likely be similar. Choice and dignity will be removed as individuals have to pay the stores prices for a limited range of goods. The lack of discretionary cash for larger purchases will further the loss of dignity.

The government says that it wishes to end welfare dependence. We have tried to explain to both sides of politics, the simple fact that social security payments are not the problem nor, however, are they the solution. It is not enough to stop at social security payments but to blame poverty on these payments is simply disingenuous. We are repeatedly told that the people 'on welfare' to use the rather degrading American term are basically dysfunctional, that they are either mad or bad and that the fault for their exclusion is fundamentally theirs and so like naughty children they must be made to change their behaviour or be punished. This is deeply offensive to anyone—Indigenous or non-Indigenous.

The government continues to repeat the claim that compulsory income management is working, despite the reports of humiliation and well-founded resentment experienced by people whose only crime is that they are Indigenous. Income management can be a useful tool—a very useful tool, in our experience—in some circumstances, specifically when it is voluntary and forms part of a context of support and appropriate service delivery. It is not true that the people who are doing it tough can have a better life as a result of being treated in a paternalistic way. World Health Organisation reports consistently make the link between good health outcomes and a sense of empowerment, a sense of being in control. Compulsory income management disempowers and it denigrates.

To suggest that exemptions will be available for some income support recipients if they can demonstrate responsible behaviour is an indication that the government is beginning with the assumption that income support recipients are guilty or dysfunctional until proven innocent or functional. In an effort to get around the Racial Discrimination Act it has decided, sadly, to go down the American path of, in Lawrence Mead's words, close supervision of the poor. The discrimination will not cease; it will merely be broadened. This, I have to report, is deeply insulting to the people we stand in solidarity with.

Ms Gallet—The Salvation Army welcomes this opportunity to give evidence to the Senate Community Affairs Legislation Committee to supplement our submission to the committee. The Salvation Army, like the other organisations represented here, works closely with people experiencing poverty and crisis in their lives. We have a great deal of experience in knowing which responses work well with particular groups of clients. The introductory part of our submission to the Senate community affairs committee focuses on the issues of Indigenous disadvantage, primarily to contextualise the issue and to acknowledge that what we are dealing with are complex problems that have developed over many years; therefore, we need multifaceted solutions to address the social issues that these bills seek to deal with.

We acknowledge that Indigenous women and children have for too long been living with violence, misery and abject poverty and that it is incumbent on us to provide support, but it is complex. We know that there has been a mixed reaction to the intervention and compulsory income management. Some people believe that it has helped their situation, their children are better nourished and there is less grog. But for others it has brought frustration, shame, confusion and embarrassment and has not addressed their poverty. Much of the

research literature stresses that, whether in an international development or a local community development context, programs that recognise the inherent worth and ability of individuals and communities and seek to develop that capacity have a much greater success rate in addressing intrinsic poverty than paternalistic programs that aim to manage people.

The government's own social inclusion policy has a focus on building human capacity, and these are the approaches that we support. The extension of compulsory income management to groups such as people who have been in receipt of youth allowance, Newstart allowance, special benefit or parenting payment for more than 52 weeks in the last 104 weeks—that is, long-term unemployed people and disengaged young people—places a firm emphasis on long-term unemployment and a work-first approach. Whilst the Salvation Army acknowledges the importance of having a job in addressing poverty, we also know that there are many long-term unemployed people who will require considerable support and access to a range of assistance, including foundation education, vocational education and job creation, to enable them to be competitive in the labour market.

Furthermore, in some communities where work is scarce we need to seriously focus on meaningful job creation endeavours to give people the scope to develop the work skills and opportunities they need. We have only just moved from an employment services model where it was said that the most disadvantaged were not getting the help they needed. We are hopeful that the new 'stream services' will focus on providing individualised assistance to those most in need. But the model has only been in operation a little more than seven months and we have not seen the evidence as yet. So we have real concerns about rolling out a model of income management which has a focus on long-term unemployed people, unless the necessary supports are in place.

Major Eldridge—There are four primary recommendations that we make, which are in the report, which I am sure you are all aware of. If I could just say that we called together some focus groups with our teams that work particularly in the Northern Territory, Alice Springs especially. One of the things that struck me over teleconferences and other visits and bringing the groups together was a sense of almost depression among the workers on the front line which was exacerbated not only by the introduction of income management but by the dysfunctionality of income management in some of those larger towns. We felt that almost immediately you need to introduce some capacity for local advisory participation in making some small-scale changes around issues like the cards because of the immediate needs of communities to in a sense lift their sense of empowerment, lift their capacity to shift even the existing system.

Broadly we support the ACOSS recommendations and we do recommend that, prior to any expansion of income management, a full and complete evaluation be undertaken by a credible research institute to determine the efficacy, benefits and outcomes of the existing scheme. We recommend that the expansion of income management should be done as a last resort following a full community audit that can determine the resources available in a given community and how these can be strengthened to support individuals, families and the community itself. We would also recommend that the Australian government withdraw the provisions of the bill which would enable income management to be compulsorily applied across designated geographic areas, payment types or categories of recipient, for example vulnerable welfare payment recipients. We do support those ACOSS recommendations.

Ms Helyar—Thank you for the opportunity to present our material to the inquiry and we look forward to your questions. As a context thing, I wanted to say that Uniting Care Australia represents the network of Uniting Care services that work in 1,300 places across Australia supporting around two million people each year. The material presented today draws particularly on the experience of the New South Wales Children, Young People and Families Service, who work with disadvantaged and vulnerable families, young people, Indigenous communities and people involved in the care and protection system. I would like to table material today that supports our submission but also say that Uniting Care Australia supports the overall analysis of the bill and the arguments against extension of involuntary code management as put by ACOSS and Uniting Care West presented earlier in the week. So we support those representations.

We want to put on record our view that there is neither robust nor sufficient evidence to support investment of $350 million in implementation of the measures proposed in this bill. Our view is that these funds would be better spent on services that have strong evidence that they address the root causes of disadvantage and vulnerability. These services, three of which we have given as examples in our submission, provide integrated support across the wide range of problems families face, are provided with enough time to see people through

the difficult early stages of making big changes in their lives and build skills that enable people to move out of welfare dependency.

Ms Bevan—I would like to put in context the figure that Susan has just quoted, $350 million. Last year our turnover at Uniting Care Children, Young People and Families in New South Wales was about $62 million. Using these funds, the majority of which come from government but some from our own funds, we employ 700 people. We provided services to more than 20,000 people last year and we actually achieve significant lasting change, in children's lives primarily. Our submission that we have already provided to the committee highlights the evidence of what just a few of those programs have achieved. We work every day with people who are profoundly disadvantaged and vulnerable, including children and families involved in the care and protection system, a group that the government has particularly identified as those that they are concerned about.

We are particularly concerned with the unintended consequences that this bill may have on those people. We have seen this before in the rollout of policy that is highly complex and does not actually take into account what will happen in its operation. I think we have seen some of that evidence come out from the Northern Territory. But I would like to talk about the unintended consequences, for people who are already struggling, of measures that are designed to reduce deprivation, as the objects of the bill say, but actually have the capacity to increase hardship and deprivation.

Involuntary income quarantining reduces people's ability to use their income in a flexible way, obviously. It reduces people's ability to do things like manage debt, which is an issue that I know others in this room will be familiar with. For example, the ability to deal with unexpected costs, such as travel fines or traffic infringement costs, may be significantly impacted by any quarantining of a significant part of people's benefit. As we have already seen, for example, the practical issues in the implementation of the BasicsCard have also identified that often policy has unintended consequences. So where we are trying to improve people's access to food, for example, we may actually increase their hardship through increasing travel costs so that they can access places where they can actually use the BasicsCard. Each of these kinds of examples leads to serious consequences for people whose income is insufficient in the first place but also extremely stretched. Most of the families we work with manage their money incredibly closely because it is not really enough. So any kind of imposition of strategies that will decrease their ability to manage their money will actually lead at times to catastrophic consequences, particularly for children who are dependent on adults.

I am particularly concerned also about young people in relation to this bill. I am not sure how much we have heard about vulnerable young people, but we work with many young people who are homeless, experiencing high levels of family conflict and leaving the out-of-home care system. What we know is that already they are subject to quite strict provisions in their access to any welfare payments and that often that can lead to other issues. For example, we have seen where young people cannot access benefits and they get into a spiral of then travelling on trains and accruing transport fines. They get into a situation where eventually their disadvantage becomes so great that they not only do not have any income but may end up incarcerated as a result of their lack of access to income which is strictly managed. So we can see there are often unintended consequences.

One of the other key unintended consequences is that involuntary income management is likely to act as a further barrier to engaging the most marginalised people in services that will actually make a difference in their life. What we have learned from evaluations of programs like Reconnect and Communities for Children is that one of the key factors in achieving change is that people can access a service without feeling stigmatised. I think income management is stigmatising. So we are likely to lose contact with those people we are most concerned about. We know that people like to be treated like everybody else and that, where they do not feel stigma and shame, they actually are able to take steps to change their own lives.

One of the unintended consequences around financial management, for example, might be that we are able to teach people through income management to use the BasicsCard—and that is quite a learning curve from what I have read and heard of from the Northern Territory—but that is not the same as building skills for financial management. Teaching people how to manage bureaucracy is not the same as engaging with people in financial literacy, engaging with people in building their own social skills in order to take control of their own lives and achieve change in their own families, which we know leads to people being able to find employment, actually move off government support and create the lives that they want for themselves and their children.

Senator SIEWERT—Have all of your organisations been working in the NT?

Ms Bevan—UnitingCare Australia has organisations that work in that part of the world but not UnitingCare New South Wales.

Senator SIEWERT—There is a lot of dispute over the outcomes of income management in the Northern Territory. We heard earlier from Anglicare that they do not think you can take the experiences from the NT and say that the results from that mean that we can roll this out across Australia. From your experience, do the results from the Northern Territory provide enough evidence to roll it out across Australia? Maybe each of the organisations can answer separately.

Major Eldridge—I do not think so. I need to preface this by saying that we are stronger in the large towns and we are not much present in the communities, except for occasional visits to particular communities when invited. So we are much stronger in talking about Alice Springs, in particular, and Darwin. We would accept that there are mixed reactions within the Indigenous community about the benefits. Some of the anger on the ground, in Alice Springs in particular, is about the dysfunctionality of the delivery system, around the card not being available, not working, not being able to get the places—there are a whole range of issues there.

The social security system in general, Centrelink, is a blunt instrument. It has been disempowered over 10 years in terms of its capacity to work with particular groups. Just last year we just conducted, in relationship with DEEWR, a fairly significant youth engagement day with a thousand disadvantaged young people talking specifically about four issues, one of which was their relationship with Centrelink. They talked in not too glowing terms about its incapacity to relate to the issues of young people. I think the same issues apply to any particular group. In the current structures of the service delivery tools that we have, I do not think we are in a position to be able to roll it out in a large way across the country.

The other concern that we would have is that, sitting within Centrelink, if you are talking in particular about larger towns, needs to be a capacity to work more closely with community groups to deliver a continuum of opportunities for people so that what we are dealing with is a way out rather than further barriers to hold people where they are. At the moment, we are a little sceptical around the capacity of the large systems to embrace such a big delivery across the country. That is not the reason we are suggesting it should be voluntary and much more limited than it is—there are all sorts of moral and ethical reasons we feel that tools like income management are not the best way to engage with people—but we would certainly think that you cannot roll it out broadly.

Dr Falzon—I would simply say that, with the experience and evidence that we have from the Northern Territory imposition of compulsory income management, not only can we not extrapolate from that whether it is worth while to roll out across the nation; there is not even evidence to suggest that it should be maintained within its current area.

Ms Helyar—The UnitingCare view is that, if the government is going to be investing money in supporting disadvantaged communities, including remote communities, it needs to be invested in a way that we know makes the most difference. The evidence from the Northern Territory does not demonstrate that.

Senator SIEWERT—I want to play devil's advocate for a minute.

CHAIR—It is a good group to do it with!

Senator SIEWERT—The government—

CHAIR—It is probably not appropriate to say that.

Senator SIEWERT—Maybe it is not appropriate, but I think it is fairly well known—as I have said a couple of times here already—what my opinion about income quarantining is. However, I am trying to look at this from all angles and I am still trying to keep an open mind, particularly in terms of: if this is going to happen, how do you make it better?' When we talk about the fact that this is going to be rolled out to all people in category E, the government's response is, 'Yes, but people can opt out.' Dr Falzon, I think you mentioned that before. The government is not using it as a support mechanism for those extreme cases of dysfunction where it may be argued that they may need it; people opt out. Everyone is bad until they prove that they are good. Is that a good way of dealing with these extreme issues of dysfunction that we are talking about, of helping people to make the changes that the government is trying to encourage with this? Sorry, my question is not clear. I got sidetracked a bit. The government will say it is easy for people to opt out—they just have to meet a set of criteria. In your opinion, is that an appropriate way to run a social security system?

Dr Falzon—No. Let us forget the angle of people who are experiencing marginalisation for a minute; let us just take a purely administrative and bureaucratic perspective. It is poor management of resources to impose

this on an entire section of the population in terms of category and then to say: 'We acknowledge that this is not necessary for some. Let them opt out.' That is poor management of government resources.

Secondly, the onus should not be on this inquiry to demonstrate why the blanket imposition of compulsory income management is not justified. The onus is on the government in the first place to demonstrate how on earth you can come up with the formula that an entire section of the population must be treated as if it is dysfunctional and unable to do what we assume in Australian society is the right and the responsibility of all citizens to do. I cannot for the life of me understand the logic of starting with this presupposition that, because either you are an Aboriginal person living in this area or because you are on a certain type of income support, it must be assumed that your dysfunctionality is such that you cannot properly manage the meagre income that you are left to expand from week to week.

Ms Bevan—I would agree that it is a blunt instrument. I think that the people who the bill suggests that they are actually trying to access will be the people who will opt out themselves in some way or another and maybe go underground. That is our experience. The people who perhaps would be caught up unintentionally; that is, the people who might be allowed to opt out if they do the right thing—whatever those standards are, by the way; and I am still a little unclear how we decide who meets the criteria of being a good enough money manager and who does not—the people who you would think would be opting out, I think will be the people who will be worst affected.

There is an assumption that it is easy to deal with the social security system, that it is easy to go in and take your paperwork and say, 'I meet your criteria because my kids go to school, I'm a good mother,' and maybe, 'child protection authorities give me a sign-off as an acceptable mother'—I do not know how you are going to get that. But there is an assumption that I can bring my paperwork and get dealt with very quickly, that it is going to be easy. I think our clients' experience, certainly when we talk to them, is that it is never easy. So I wonder how many of those people will opt out, know how to opt out or be actually brave enough to walk in and say, 'I should be allowed to opt out.'

I suppose that is a fairly tangled answer to maybe a fairly tangled question—that it is not actually going to be easy for people to opt out because, first of all, they have to believe that they are the right people to opt out. When they are told initially, 'We assume that all you guys on this benefit probably can't manage your own money,' I wonder how many of them will feel that they can say, 'I can demonstrate that I can.'

Mr Campton—One other practical difficulty is the issue of income sufficiency and trying to demonstrate financial management when one is statistically fighting against the odds. ABS data included in our submission indicates that the average weekly expenditure for a low-income, low-resource household is actually less than the average weekly income. When you statistically are being forced into a situation where you have to spend more funds just to live, it is going to be very hard, when this may be left up to the discretion of Centrelink officers to make this decision, for you to go in there and demonstrate that you are a fantastic financial manager. In fact, those households are; they are doing the impossible.

Ms Gallet—Some of the stories that we heard from our services in Alice Springs spoke of the confusion and the resignation of people. They did not understand why they were only getting half their Centrelink benefit but they just accepted that that is what they had to live on. We are talking about people whose third language is English, so even to communicate with Centrelink is just impossible. People just passively accepted the situation. They certainly would not have the capacity to know that there was the opportunity to opt out.

CHAIR—Do you mean that they did not know they had access to the BasicsCard?

Ms Gallet—Yes, they knew that they had access to a BasicsCard but they did not know where the other half of the money was going.

CHAIR—They did know that the BasicsCard could be used for some of the things. I had this terrible feeling that they were thinking they only had half their money and did not know they could use the other half.

Senator CROSSIN—Thank you for your submissions and your opening statements. I want to first of all touch on the evidence that a lot of people keep using which is the Australian Institute of Health and Welfare's analysis of the 76 people that were questioned. I want to set that aside for a minute and ask you if the groups you represent are aware of the four tier consultations that FaHCSIA undertook and your view about the outcomes of those consultations. Five hundred consultations with many hundreds of people, four tiers over seven months, is quite an extensive way of actually consulting with Indigenous people in the Northern Territory about a way forward. I have not seen for a very long time that level, degree and depth of consultation by government. Yet it is not held with any degree of recognition. They certainly spoke to many more people

than 76. I, my staff and Warren Snowdon's staff attended quite a number of these consultations and we have a view that the outcomes of this legislation pretty much accurately reflect those discussions. I wondered if you had a view about those.

Mr Campton—I had a brief look at those and I have read many of the comments that this inquiry has been given in Darwin and Alice about that consultation. I do not pretend to be involved in that consultation. I reside in Canberra but this legislation is actually much wider than that consultation and it could impact me living in Canberra and no-one has spoken to me. If I lived in a marginal area in New South Wales, Victoria, South Australia, Queensland, no-one has spoken to me about how this legislation could impact on me. A lot of it seems very focused on the racist Aboriginal element of its previous implementation and fails to look at any evidence for the wider rollout which is actually one of the main purposes of this piece of legislation.

CHAIR—Do either Uniting Care or the Salvation Army have any comments?

Ms Bevan—I would just note that that report also found that most participants expressed a strong preference that communities themselves should actively be involved in making decisions about income management, which gels really well with our experience that, when it comes to managing their income, most people want a say, and it is quite appropriate within the Northern Territory that that might be a community say. But, for example, in our services most people on Centrelink benefits use strategies like Centrepay to manage their income. The fact that they use voluntary financial management strategies, like my voluntary mortgage payment, does not necessarily say that they want compulsory income management. So I think that, while there are certainly some interesting points in that document, one of the key conclusions was that communities actually want to do income management themselves: they want to manage their incomes themselves, just like I know our families want to manage their incomes themselves. They want a say. They want to use the strategies and tools on offer, and they are happy to do that.

In our drug and alcohol programs, for example, almost all of our clients would use Centrepay to pay rent, utilities and other costs. They would choose that. But there is a critical difference. And I guess the other critical difference is that we did not compare, to see the difference between people for whom this was compulsory and people who might, if given the choice, have done it voluntarily. So I think there are probably a range of responses to that report.

CHAIR—Does the Salvation Army have any comment?

Major Eldridge—No.

Mr Campton—I would just add one further comment, and that is just to reflect on the UN rapporteur's comments that were released two days ago about the importance of consultation and of where and when it occurs during the process. While the consultation has occurred now in the Northern Territory, and in some greater detail—and I take Senator Crossin's comments about that level, and the tiers—it was fairly much after the horse had bolted. It was at the wrong point of the process, particularly when it comes to issues like the leases—though that is not one of the ones we intend to speak on particularly today. That consultation process needs to occur much earlier. You are now in a place where you are looking at rolling it out to the rest of the country, yet the consultation has not gone before.

CHAIR—I think there are only five-year leases in New South Wales.

Mr Campton—Yes.

Senator CROSSIN—I have two other questions that I want to ask you, so I am going to put them in order of priority in case I run out of time. The first one is: if you had the opportunity to make amendments to this legislation, what would those amendments be?

Dr Falzon—The amendment that I would make to this legislation is that, rather than rolling out compulsory income management on any groups in society, the government would be offering voluntary access to income management assistance to people right across the Australian community, and offering it, as a tool, as part of a broad suite of support services, not in isolation.

I would make the following analogy. The rollout of compulsory income management, whether on the basis of Aboriginality or on the basis of class—which, in effect, it is if you are applying it to income support groups—is analogous to saying: (a) drug and alcohol counselling is a very useful tool in dealing with people who have problems with substance abuse—and I do not think any of us would dispute that; (b) drug and alcohol abuse is an existing problem in certain sections of the population—not restricted, let me add, to determinants such as being on income support or belonging to a particular race, which is a very important

caveat, but then jumping to (c) and saying, 'Because drug and alcohol counselling is such a helpful tool in those instances where people are in need of it, let us impose it compulsorily; let us make it that everyone who is on unemployment benefits or on a parenting payment should have to undergo compulsory drug and alcohol counselling, but when they get to session No. 1 or No. 2 and it emerges that they do not have a problem then of course they can opt out.'

CHAIR—Is that a proposal, Dr Falzon?

Senator SIEWERT—You had better be careful there or we will end up in the papers!

CHAIR—Sorry. Would Uniting Care or Salvos like to respond on that one?

Senator CROSSIN—If you want to make a comment, can I also ask you to consider this. Do you think there are times when compulsory income management should be a tool in legislation that can be used in situations?

Major Eldridge—My problem is where the tool gets administered. I can buy that income management is something that has been enhanced by the development of more financial counsellors and financial advisers across the emergency relief system; there need to be more. I can see that that has been enhanced. I can only see it being rolled out as a bureaucratic process rather than a transformational engagement. You have a very rigid income support delivery tool now in Centrelink. It is nowhere near as nuanced it was 10 or 15 years ago for particularly disadvantaged groups. Where I was very confident working with Social Security and Centrelink in the early days with homeless young people, I am not now because it is a bureaucratic process. In the past it was an engagement where the community sector, the Social Security agents and the person who needed some sort of transformational assistance could come together. Until we get back to something like that, anything that you introduce that is not voluntary will be subject, basically, to the incompetence of that bureaucratic process.

Ms Helyar—If we were to make a change it would be to get out compulsory income management, and in some circumstances income management is a tool that you want to use with people who do not accept it voluntarily. But we have that in a whole range of ways in people's lives already. There are power of attorney processes and there are guardianship processes, and there is a high level of evidence and scrutiny of that process being imposed in a person's life. I do not see why people who happen to be on income support should have a lower level of scrutiny for when that kind of measure needs to be taken in their lives.

Senator ADAMS—Thank you all for your submissions; they are very interesting. My first question to all of you is: if the Racial Discrimination Act were to be reinstated, what difference would it make on the ground? I am talking about it on the ground and probably looking more at the Northern Territory and the Kimberley, that area.

Major Eldridge—My observation is only a personal one from discussions with people. I am not qualified to go into the legal aspects; I am sure John or somebody else may be able to. Let me just say that it is an additional nail in the coffin of the disempowering of Indigenous people. The continual statements were: 'Why us? Why just us? Why is this just happening to us?' I think the reinstatement of the act—whilst one may take a view on a continuum of whether it is cynical or useful—does take away that aspect of, 'Only blackfellas can't look after their money,' which is a sense that I got from a lot of people.

Dr Falzon—I would simply say that for us as a nation to consider the suspension of such an important instrument as the Racial Discrimination Act as being somehow justifiable—shame on us as a nation if we can live with that. We obviously have, and now we are considering living with a cynical manoeuvre to get around the reinstatement of the Racial Discrimination Act. As David has just said, this is a perpetuation of a wedge between a constructed 'us' and a constructed 'them'. To give you a very practical example that we have witnessed—never mind a hypothetical—we are talking about, in existence but also proposing to extend, people walking around with a BasicsCard, which sets them apart from the rest of the population and says, writ loud and large: 'I am incapable of managing my own finances. Look at me.' The fact that we can countenance that as a nation that considers it a so-called egalitarian foundation and with a government that has committed itself to a social inclusion agenda, to act in such an exclusionary and divisive way beggars believe.

Ms Helyar—I think the difference it would make is that difference around restoring a fundamental respect—that everybody gets to be treated as a person in and of themselves, not treated as part of a group where their individual circumstances and capacities and needs are not acknowledged or respected.

The other issue is that one of the things we heard in the briefings that we have had from FaHCSIA around this bill is that part of the money will be used to enhance things like Centrelink services—and, in fact, even provide those kinds of services for the first time in remote communities. That is a disgrace. Those

communities are entitled to access the same services as everybody else, and if the government thinks that needs to happen through this process, that is a real problem. People need to have access to services and supports where they live, and not have to put up with restrictions on their civil liberties to achieve that.

Senator ADAMS—Dr Falzon, this is just a legal question regarding a challenge to the special clauses that are still within this legislation, rather than reinstating the Racial Discrimination Act completely. As you say, it has only been part done. Do you consider this legislation is open to challenge?

Dr Falzon—I am not legally qualified to make comment on that question. I am simply here to represent many of the people who are not only effectively pushed to the margins economically but, with legislation such as this, made to feel further marginalised and degraded. I am very happy to speak to that, but I certainly lack the legal qualifications myself. But my colleague is legally qualified.

Senator ADAMS—I am sorry, I didn't realise.

Mr Campton—It is such an area of speciality that I would not be able to make a proper response to that question. I understand you were gathering evidence yesterday from people far more educated than me. I think our organisation would welcome playing its part in any challenge but we would not express any view as to the likelihood of that or otherwise.

CHAIR—Has St Vincent de Paul been involved in a legal challenge of legislation before?

Mr Campton—No.

Senator ADAMS—Dr Falzon, you said that this legislation was heavily gender biased. Would you like to expand on that?

Dr Falzon—This was pointed out to me by people such as Eva Cox and Professor Larissa Behrendt. Their research showed that it would particularly affect sole parents, particularly women with young children. This in itself would in many ways compromise some of the great gains in the area of women's rights, particularly vis-a-vis the interface with the social security system. We have already seen, sadly, a watering down of some of those rights in the last federal budget where that pension status was separated from other pension groups. It has been pointed out to me that this is highly significant, particularly for women fleeing domestic violence. In some ways it becomes a heavy burden to think that they are going to be entering, or will already have had thrust upon them, a regime that is of its very nature highly paternalistic and controlling. I think you would understand what I am saying there.

Major Eldridge—It certainly does not open up doors to opportunity. If you are looking at the situation of single parents, particularly women in Australia, what is missing is the opportunity for foundation education catch-up and for participation in vocational education in a way that they can, as single parents, participate. Before I introduced anything punitive I would want to give them a chance first. I do not think we have given that sector of the community a real chance to get on the ladder of participation. Then we are going to introduce punitive measures.

I did hear talk, before, about baseline data and the collection of it across a whole range of programs. We all support that. It is hard enough getting decent baseline data in our own organisations but across the system it is even more difficult. I would want that transparency opened right out into major systems like Job Services Australia and others, because we have certain sections of the community who are highly accountable for anything they receive and other service systems not very accountable at all for delivering good outcomes with appropriate transparent measurements.

CHAIR—That is a really important point. We have run out of time. On that point could you provide some further information? Certainly, the proposal that the government has before us is one measure, and there is no understanding that it is the sole measure. So the information that you have talked about in your evidence—as well as the evidence of St Vincent de Paul and Uniting Care—makes us very much aware that there has to be a whole range of services that provide support. That key point that you just raised about accountability to the Job Services network is not in your submission, and I would like to get some more data.

Major Eldridge—It was something we really tossed up. We are asking people to be highly accountable but we are not asking systems to be as accountable.

CHAIR—And there has to be cross-accountability; there is no doubt about that. Thank you very much for your time, your submissions and your evidence. We are due to report early in March, as you know, and if something has been stimulated by this discussion and you need us to have it, please let us know. You heard the question that I put to the earlier witnesses about the proposal—that, should this legislation got through, there is

an expectation that there will be a full evaluation. It would be my hope that that would give us baseline data about any of these models that are being put forward. I would like some information, if you could provide it, about how that could be done and about whether that would provide some evidence in this far-too-heavily evidenced area of our whole community. Thank you very much.

I have been lobbied, successfully, for a 10-minute tea break. Despite my reluctance to provide that I have been defeated.

Proceedings suspended from 10.32 am to 10.43 am

[10.43 am]

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

MARTIN, Hon. Clare, Chief Executive Officer, Australian Council of Social Service

PHILLIPS, Ms Jacqueline, Policy Officer, Australian Council of Social Service

CHAIR—We welcome ACOSS, as always. Ms Martin, I think it is the first time you have come to see us in your new role.

Ms Martin—I am very proud to be here today, Senator.

CHAIR—Welcome also to Ms Phillips and Mr Davidson, who is a regular attendant. We have your detailed submission. Thank you very much. You understand the rules of evidence and privilege. Bill has got those if you need to have more information about it.

We have limited time. I intend to go through to about 20 to 12 with this particular section. If you have opening statements we are really keen to hear them, and then I will just divide up whatever time is left between the three senators and we will go from there. Ms Martin, would you like to start?

Ms Martin—Thank you to the committee for the opportunity to appear today and for this first opportunity for me to appear before the Community Affairs Committee. ACOSS, as you probably do know, is the peak representative body for the community and welfare sector nationally and the national voice for low income and disadvantaged Australians. As such we, along with our membership, have very serious concerns about the provisions in the government's bills being considered by the committee due to their potential impact on low income Australians.

The national compulsory income scheme which would be enabled by this legislation represents a top-down, one-size-fits-all bureaucratic solution to complex social problems facing individuals and communities. It is poorly targeted, it is expensive and it is demeaning of income support recipients. The proposed scheme is not supported by a sound evidence base. ACOSS has highlighted the limitations of the evidence relied on by the government in support of this scheme and many other organisations have expressed similar concerns. The scheme is not tailored to meet the needs or reflect the choices of local communities. It would not be responsive to local labour market conditions, food security issues or the array of other social issues facing communities. Further, it is not designed to align with or reinforce existing financial, budgeting and case management programs. For this reason expert financial counsellors, represented by the Australian Financial Counsellors and Credit Reform Association, have expressed their strong opposition to the measures on the basis that they will undermine existing financial counselling programs which are based on the principles of capacity building and empowerment. These are key tenets of social service delivery by the community sector in Australia.

Under the government scheme, long-term income support recipients receiving particular payments and living in declared disadvantaged areas will have 50 per cent of their payments quarantined. Their ability to shop at preferred outlets will be constrained and discretionary funds will be limited. ACOSS accepts that disadvantaged areas with large numbers of social security recipients often have social problems, including family violence, alcohol and substance dependency, poor budgeting and child neglect. However, the government's policy assumes that everyone on income support in an area has these problems and fails to recognise that these problems are not limited to income support recipients. As experienced community agencies know, it is usually a small minority of residents with these serious problems. The rest are simply trying to get on with their lives with the meagre resources they have.

The changes contained in this legislation would represent a significant shift in Australian income support policy and could potentially affect many income support recipients across the country. These changes have been proposed without a national consultation with the community and community organisations who provide services daily to those who will be affected or with payment recipients or with disadvantaged communities themselves. The primary goal of the income support system is to ensure all Australians have access to adequate income when they do not have a job. Any conditions which are attached to payments should be linked to efforts to secure financial independence, for example through employment. The use of the social security system to achieve wider behavioural change not tied to this objective is inappropriate and inefficient unless individuals or communities have sought this approach. This is because the social security system and Centrelink are poorly adapted to providing the kind of intensive case management that is required, which is

rightly provided by specialist local community organisations. Income management can be a useful tool for those services and communities, but it must be a tool in their hands, not an instrument applied by government.

Consultations conducted in the Northern Territory were a wasted opportunity to develop real solutions in partnership with Aboriginal communities. Despite the evidence that opinion about income management in communities is deeply divided and that there have been numerous problems with the administration of the scheme, Aboriginal people were not given the option of replacing the scheme with a trigger-based model or a voluntary system. Rather, community members were given very limited options for change. They could choose either to retain compulsory income management in its current form or opt for a system with limited exemptions. When the Northern Territory emergency response was announced, it was met with great distress, hurt and anger among Aboriginal people due to the failure of the government to consult with communities or work together with them to address the complex social problems they faced. The suspension of the Racial Discrimination Act compounded this offence.

At that time, ACOSS indicated its serious concerns about the lack of consultation with communities and with some of the key NTER measures, particularly income management. We condemned the suspension of the Racial Discrimination Act. Like many other organisations, we have strongly supported the reinstatement of the RDA by the current government. We insist that any income management policies must not be automatically applied on the basis of race. However, we also argued that compulsory income management should not automatically be applied on the basis of geographic area, type or duration of payment. We are concerned that the commitment to reinstate the RDA will not be fully delivered by this legislation due to the lack of a notwithstanding clause, an issue explained in some detail by the Australian Human Rights Commission, among others.

We are also concerned at the price the government requires low-income Australians, including Indigenous Australians, to pay in order to achieve a non-discriminatory regime. Aboriginal communities are faced with an impossible choice—get the RDA reinstated by accepting continued compulsory income management in communities and its extension across the country or continue to be subject to the racially discriminatory regime with no change to income management. The community sector is being asked to choose between addressing the discriminatory aspects of the NTER while rolling out an ineffective policy to other low-income Australians or continuing the discrimination. This is a choice we are not prepared to make.

ACOSS calls for the full reinstatement of the RDA and the withdrawal of the compulsory income management provisions of the legislation. While opposing compulsory income management, we do, however, support voluntary income management on an individual or community basis. We respect a community's right to determine that income management can play a valuable role in responding to the many challenges a community might face. However, we insist that measures must be genuinely community supported and that the individual appeal rights be preserved.

By contrast, the government's proposed compulsory scheme is expensive, top-down and highly bureaucratic. Based on the government's funding estimates, the scheme would cost $4,400 per person per year in its pilot stage. Put in perspective, that is nearly nine times the amount paid to employment service providers to help long-term job seekers, which is $500 annually, and it is over one-third of the Newstart allowance paid to a single adult, which is just under $12,000 a year. These funds should be directed to initiatives which are supported by evidence and for which there is a clear need—adequate payments, better employment assistance and training for long-term unemployed people, improved access to mental health and alcohol and drug services, and intensive case management and wrap-around services.

In opposing the compulsory income management scheme, we are joined by many of our member organisations in the community sector including the National Welfare Rights Network, the St Vincent de Paul Society, Uniting Care, the Salvation Army, Catholic Social Services Australia, Family Relationship Services Australia and Jobs Australia. We are also joined by a range of Indigenous and human rights organisations including the Aboriginal Medical Services Alliance of the Northern Territory, Australians for Native Title and Reconciliation, the Central Land Council, the Australian Human Rights Commission, Reconciliation Australia and Amnesty Australia. Many of these organisations support voluntary, community based or targeted models but oppose the blanket nature of these measures. We trust the committee will give serious consideration to the concerns outlined by these organisations who have extensive experience in working with Aboriginal and low-income communities across the country. We welcome any questions from the committee.

CHAIR—Ms Phillips, Mr Davidson, do you have anything to add at this stage.

Ms Phillips—No.

CHAIR—Before we start, Ms Martin, I want to assure you that this committee and the government are giving absolute attention to the evidence which comes before us. It is really important. Sometimes there is a view that, if we do not agree, we have not actually taken into account. In view of history in terms of involvement and consultation, it is important that you know that you evidence and your submissions are being taken very seriously.

Senator SIEWERT—You have made a serious of recommendations about taking out the income management bits of the bill. If the government does not accept that—say a whole lot of amendments put up by either the government or somebody else and they do not get up—the bills are presented and we are asked to vote on them as they are, should we support this or not?

Ms Martin—Is this going to the heart of the fact of the Racial Discrimination Act getting partially reinstated? It is very important and I think we have made very clear and other organisations have made very clear that the Racial Discrimination Act must be fully implemented and we are very concerned, like many others, that it is only a partial reinstatement. In terms of good government practice, if something like compulsory income management is part of this bill and you look at the expense of this, you look at the non-targeted not-evidence-based basis of this, I think it should be opposed.

Senator SIEWERT—Thank you. I wanted to get that up first so that I do not run out of time.

Ms Martin—But it is a conflict because we do want to see the Racial Discrimination Act back.

Senator SIEWERT—And certainly that is, I think, what many organisations are struggling with. But a lot of the evidence we received in the Northern Territory last week indicated very strongly that people did not think the RDA was being restored. The consultation process around the Northern Territory intervention and the FaHCSIA process that was undertaken, were you or your organisation involved in the tier 4 consultation process or any of them?

Ms Martin—ACOSS itself was not. NTCOSS was not involved?

Ms Phillips—I think NTCOSS may have attended but they would have given some evidence about that.

Senator SIEWERT—Yes, they did.

Ms Phillips—But not ACOSS itself.

Senator SIEWERT—I am going to go to a few areas which I have not explored with the other witnesses. We have had some evidence from financial counsellors—I cannot remember their acronym but the association—where they make some fairly strong comments. They also talk about savings because there is a savings element in this legislation and some incentives whether it is appropriate to encourage people to save on an extremely limited income. Do you have some comments on that particular area?

Ms Phillips—The recommendation we made in our proposal was to decouple the savings payment from compulsory income management and from income management at all. We did not oppose there being incentives to save but we recognise that the ability to do that is obviously severely constrained by the inadequacy of income support payments.

Senator SIEWERT—The concept is also, if I understand correctly, that savings can be part of demonstrating that they are a good money manager and the issue here—and I know you were here for at least part of the evidence from previous witnesses—that is, that people making comments about the fact that—no, sorry, I was just interpreting that. My interpretation of what they are saying is that just because you do not have savings does not mean that you are not a good money manager and, in fact, if you can survive on income support payments it would imply that you are a good money manager.

Ms Martin—I would absolutely agree with you. When you look at the budget of someone on, say, Newstart, which is $228 a week, or a single parent, you see that they are managing in a way that I could not even imagine managing. I use this example quite often: a fellow called Bill lives in a major suburban area. He gets $228 a week and he gets a bit of Commonwealth rent assistance. So he is on the grand sum of $275 a week. He, because of high private rentals, pays $220 a week for his accommodation. So he has, basically, $55 a week to do everything else in his life. He allocates only $20 to food—mostly he does baked beans and he goes to Aldi. I reckon Bill should get an award for that because that is so difficult. He is often finding that he is $10 behind each week, so he is down to the emergency relief centre to get some assistance with a bill like a power bill.

The same applies to a single parent. One case I know of is a student trying to get some part-time work, which has been difficult. She manages her money so carefully that she has maybe $6.50 left over in a week,

and she thinks she is going really well. All tribute to Australians who are in these different levels of income management, whether it be Newstart or youth allowance—I can give you some cases of people on youth allowance who struggle to get by—or single parents. I think they do fantastically well, but there is not much left at the end of a week.

Senator SIEWERT—I want to follow up on a question that I did not get time to ask as a follow-up question previously because we are trying to fit in a lot today. We were talking about the opt-out system—that is, you are in unless and until you prove that you are out. I was asking FaHCSIA about this. We went through a bit of toing and froing about when you get your notification. You can go down to your local Centrelink office and you may in fact be able to get out before you are in. The question that occurred to me when we were talking about this with the previous witnesses is: in your experience when you are working with your clients, how easy is it to deal with Centrelink in terms of the length of time? A number of people will now be required to do this much more intensive interaction. In your experience, what is that length of time and how easy is it for people to interact with Centrelink? I am not trying to have a go at Centrelink here—it is the sheer numbers of people and the complexity of the issues that people have to deal with.

Mr Davidson—To begin with, there is often a difficulty getting an appointment with Centrelink to make a claim. The volume of work before Centrelink is so great that that is often a problem. Secondly, the majority of people on income support are simply flummoxed by the rules and requirements. We have in Australia one of the most comprehensive activity regimes—for example, for people on Newstart allowance—in the OECD. The requirements are extremely rigorous and people are constantly tripped up by those requirements. There is also a good deal of fear of Centrelink. People are frightened when they see that envelope in the mail, and there are instances where people do not respond to that envelope and lose payments simply for that reason. That is not always the case, but large numbers of people are reluctant to assert their rights because (a) they do not comprehend the system and (b) they do not feel assertive in the face of the organisation that pays their income support.

As a general comment on the opt-out system, it is extremely cumbersome and costly for Centrelink and for the clients, and many of our agencies are devoting huge amounts of time—in the Territory, for example—in assisting people to deal with problems with BasicsCard and so on. It is simply a wasteful way to go about it.

Senator CROSSIN—It is good to have you here. Welcome. Yesterday I had an interaction with the welfare rights groups about section 60 of the Social Security (Administration) Act, people's right to have a social security income, and we took that a bit further. They interpret that as being also your right to get that income in cash. I wonder if you have a view about whether or not you believe the right stops at just getting the benefit and it is up to the government of the day to decide how you get the benefit or whether the right should extend to getting it all in cash.

Ms Martin—Just to initially respond to that, in dealing with government often there are substantial consultations. I can think of one recently where FaHCSIA decided to look at the emergency relief funding and how that was carried out, and called in people from organisations from the sector to have a discussion about that—and it was good; it was terrific. And we have had other discussions. What is implicit in your question is that this is actually a serious change to our social security system and the fundamentals. Yet while we had a good discussion with FaHCSIA, and therefore government, about changes to emergency relief, none of this discussion has happened with the broader Australian community on such a major move. Regardless of whether this is a good move or a bad move, none of this discussion has happened and I think that is what has shocked those who are appearing before the committee. While you can have consultations, and we have a compact being formed between the not-for-profit sector about partnerships, this one has come out of the blue.

Ms Phillips—Also in response to that question, we addressed this issue in our submission, albeit briefly, and said that generally there is an entitlement to receive payments in cash, and where payments are paid in a non-cash form that should only be done in exceptional circumstances. The way the current scheme is crafted would cover quite broad categories of recipients, certainly not all of whom are in exceptional circumstances—only a very small minority would be. I guess it is a disproportionate response and an infringement therefore of the right that goes beyond that principle.

Senator CROSSIN—If this is rolled out across the Northern Territory, should there be some amendment to the legislation that says it should not be rolled out further unless there is that consultation or unless there is further engagement with the wider community about the outcomes of the benefits of the changes in the Territory?

Ms Martin—In light of previous consultations that have been held with the government, there should be a discussion about these kinds of principles as a starting point. We have a scheme being rolled out that is incredibly expensive—as I indicated, $4,400 a head for 20,000 Territorians. That compares with the kinds of dollars that go in to help someone find a job. It is disproportionate. In terms of public policy this is an ineffective public policy. It is a very costly public policy. There is no sense of how much it would cost to roll it out across Australia to other disadvantaged areas. There are major changes being put in place that should be discussed first. I think that there could be a healthy discussion happening about payments and how we can be more effective. But, to me, this kind of blanket rollout is wasting precious taxpayers' dollars.

Senator CROSSIN—I am going to ask you a question based on your wonderful expertise of the Northern Territory and the lack of facilities there. My analysis of this is that if I am 17 to 25, I live in Palmerston, I am not Indigenous and for, whatever reason, 15 months have ticked by and I am on Newstart, I will be income managed. But it might just happen that I decide to spend six weeks in Melbourne and my options to enjoy myself will be extremely limited because I have a BasicsCard. I want your comments on the *Hansard* about movement of non-Indigenous people in and out of the Territory and the restrictions that this may have on their ability to go about their normal day-to-day lives.

Ms Martin—We have seen that already with the BasicsCard where Aboriginal Territorians go to South Australia or Queensland and cannot access their money. It is a cumbersome, bureaucratic system that, when you look at what people are saying about it, affects their lives. It is something that we should be embarrassed about. I have a transcript here from *Stateline* in the Northern Territory just a couple of weeks ago where they were talking to Aboriginal people in Katherine, and women, whom I know, were railing against the fact that if they want to buy a piece of furniture, they had to go to Centrelink and get a quote for it. They cannot even make that choice about their own lives. They have to trek around the streets getting quotes and take them, cap in hand, to Centrelink and say, 'Can I buy this piece of furniture?' and Centrelink will write out the cheque. What is this legislation doing to people's lives? It is not making them accountable or managing their finances better. It is really demeaning. You know Katherine as well as I do—trekking the streets on a hot day ain't much fun!

Senator CROSSIN—I am thinking though more of really trying to put the focus on non-Indigenous people for a while, because I think that in relation to this legislation we have had a lot of discussion and evidence about the impact, again, on Indigenous people. But if we are going to start to roll this out around the country, I have visions of a 22-year-old going down to Melbourne for six weeks with the opportunity for shopping, football, theatre—just the different experience in Melbourne—if you have got a BasicsCard, there is not a lot you are going to be able to do.

Ms Martin—That is the same whether you are black or white. As you know, for a community like the Territory, it would not make that much difference. If you have not got the money and have not got access to it, the impact is the same.

Mr Davidson—Going back to your earlier question about whether there is a tradition of paying in cash, and the reason why: many hundreds of thousands of people had exactly this experience during the Great Depression and social security legislation was introduced in response to those concerns so that people could control their own resources, their own lives. There is a wonderful quote in the Brotherhood of St Laurence's submission from the founder of British welfare state back in the 40s, which says:

A State in which every citizen received his income in kind ... would be a slave state…

So it is a reaction to those concerns. There are very good reasons to limit this kind of detailed control over people's lives to exceptional circumstances and to place that control in the hands of communities or agencies that know those individuals well and can offer case management and the whole suite of services.

That is not Centrelink. You cannot specify in a page of legislation, or five pages of the Social Security Guide, the rules for effective parenting. It is not an appropriate role for the income support system.

Senator CROSSIN—The implication of this legislation is that it can be rolled out nationally to 'disadvantaged communities', whatever that may mean. Therefore, what level of understanding do you think there is outside of the Northern Territory of people who will be impacted upon by this legislation if it is rolled out?

Ms Martin—I honestly think that other Australians do not have a clue about what it means. When you consider that the announcement was made about this legislation in December and it was made when there was a lot of other noise happening about other things—change of Liberal leadership et cetera—it got very little

attention, and it continues to get very little attention. So I would suspect that other Australians living in communities that do not yet know they are disadvantaged would not even be considering it.

Senator ADAMS—Thank you very much for your submission. Ms Martin, with your experience in the Northern Territory with the intervention and now with the emergency response, do you see that income management has made a difference to those communities? Can you see any positives? We have had a lot of negatives, but I wonder whether with your experience in that area, you see any positives with it.

Ms Martin—When you look at some of the research that has been done, and I would cite the Central Land Council research that was done a couple of years ago, there were members of some communities who liked the income management, who thought that it actually benefited their communities. There were others very strongly and equally opposed to it.

I think it goes to the heart of what we are talking about. If a community or an individual makes a choice to have a level of income management, that is their choice and we would thoroughly support it. In Alice Springs, for example, there is an Aboriginal services organisation called Tangentyere, and for many years now they have had a voluntary income management scheme in which you can allocate different sums to different bank accounts. That worked well, and they had thousands of Aboriginal Territorians sign up to that. We question a lot of the research that has been done and its solid evidence base, but I think that you would say that if an individual or a community chose to move into an income managed space, that that should be their choice. And for many, yes, it has worked.

Senator ADAMS—So can you see—once again with your experience and where you have been—a general improvement in the quarantine communities, just in general attitude, domestic violence and all the other issues that have been part of their communities before?

Ms Martin—Senator, that is a very broad question, and I have to say that in my new job I have not been back to communities. But I have talked to communities, certainly, and when you consider the dollars that were involved in the intervention and the kind of increase in public servants employed, for example—and I just cannot remember what that current cost is but it was hundreds of millions of dollars—if the intention of the intervention was to get better diet for children, which was a legitimate one, you could have done it much more effectively by subsidising food into community stores.

That is a major issue. You have got double-freight costs. In the big towns in the Territory and cities there is a freight cost on everything, but when you start taking it to communities you have got it doubled, as you should know. If you had had a program of subsidising fresh fruit and vegies and other things into community stores, and maybe even programs where you run nutrition classes and cooking classes in communities, you could have achieved an outcome of more fruit and vegies being eaten much more cheaply. It has been such a sledgehammer approach, such a costly approach, when a much more nimble and effective one would achieved a better outcome for far fewer dollars, I think.

Senator ADAMS—If the Racial Discrimination Act were to be reinstated completely—and this legislation does not do that, as you have already stated—what difference would it make on the ground in the communities? Once again, I am going back to your previous experience.

Ms Martin—You only have to talk to people about their experience of having the Racial Discrimination Act removed in terms of its effectiveness in the Territory, and look at the measures that were then put in place because of that, and some of the stories just break your heart. Aboriginal people were targeted for the quarantining and for the BasicsCard, and supermarkets in the Northern Territory think that they have to manage this and have a separate line if you hold a BasicsCard when you go to the checkout. That is such a humiliation on the ground. To have to trek around and ask Centrelink if you can buy things for your family when you have always managed your money well and you have not spent it on alcohol and you have not spent on gambling, is, again, an absolute humiliation. Aboriginal women, friends of mine, talk about the deep shame they feel. When I heard a story of a man I know well who could not check his BasicsCard. He was in a supermarket in the Territory—and I will not say where—and he had to put most of his goods back. He was a senior man and he had to shrink out of that supermarket humiliated. That is the effect it has had on the ground, and we should not be doing that to Australians.

Senator ADAMS—So you cannot see any positives at all? Is that what you are saying: there is no positive work on the ground?

Ms Martin—Removing the Racial Discrimination Act did not have a positive effect on the ground at all, no.

Senator ADAMS—Now with have this legislation there are special clauses within it that reinstate the Racial Discrimination Act to a point but there are certain elements that will not be reinstated. Can you see that as open to a legal challenge?

Ms Martin—I will get our lawyer to answer that—

Ms Phillips—We are a peak body for the community sector, not a legal organisation. I think the commission is on after us and is very much across these issues and you can talk to them. But we understand that the reinstatement of the RDA is only partial, that there is no 'notwithstanding' clause, which means that some of the existing legislation, for example relating to the five-year leases, will remain unchanged. We are also aware that although the government is nominating a number of these measures as special measures in the legislation, they may not in fact meet the requirements of a special measure in so far as there is informed and prior consent through a proper consultation process. There are questions about the adequacy of the government consultation process to meet that standard. So there are a whole lot of questions about the legislation and what impact it would have on existing legislation as well and the legal status of those provisions that are probably best directed to the commission and other legal experts.

Senator ADAMS—Well, we have a problem. How do we fix it?

Ms Martin—I would suggest a simple one: start again.

Senator ADAMS—Start again?

Ms Martin—Yes, start again.

Senator ADAMS—Right, so we start again. Just give us three or four areas that we can start again and move on.

Ms Martin—For such a major change to the fundamentals of the social security system in Australia, which is well embedded in the way we operate, government needs to go back and talk to the Australian community about the concerns they have. Certainly the community will say, 'We have vulnerable individuals; we have individuals who are not doing the right thing who are on income support,' and look at better ways to support them. This kind of blanket approach—and I am coming from a position where I ran a government—to spend these kinds of dollars, unfocused and untargeted, seems to me to be something the Auditor-General should be yelling about. Start again.

Mr Davidson—If I could add a couple of things there. Firstly, the partial reinstatement of the RDA is not effective immediately in any event, so there is a time lag built into the legislation. That is clearly an issue that needs to be readdressed—how to properly reinstate the RDA. Secondly, how to design a system of income management. We would suggest a voluntary system that is of use to individuals and communities. And to answer that question, government really needs to talk to communities and talk to our sector as well.

CHAIR—Thank you very much for your evidence. I just want to leave a question on notice, and I do deliberately mean for you to take it away. It is the question I am asking all witnesses today. Firstly, considering this particular proposal of government includes an evaluation process, and that is core to two points—in view of how it should work and how evaluation should happen—it seems to be a vexed issue all of the time and we would like to get your views on that. Secondly, an evaluation process of a change for use of the targeted tool in some areas, the consideration of what is going to happen under it in the NT for the next 12 months of being a chance to get some basic data. It is my view, and it is one I have discussed with your organisation in the past, the lack of any evidence for anything in this area continues to be an issue. It permeates all kinds of submissions in this case, but not in this case alone. So some consideration of whether there should be the introduction of this change, that it be used effectively to see how it works and how that could be done. I would really appreciate some comment on. That would be useful.

Ms Martin—Thank you.

CHAIR—Thank you very much for your time, as always. If there is anything that has been stimulated by these questions that you think needs to be added, could we get it because we are due to report on 9 March.

Ms Martin—We look forward to returning.

[11.24 am]

DICK, Mr Darren, Acting Director, Policy and Programs, Australian Human Rights Commission

FOUGERE, Ms Christine, Deputy Director, Legal Services, Australian Human Rights Commission

GOODA, Mr Mick, Aboriginal and Torres Strait Islander Social Justice Commissioner, Australian Human Rights Commission

INNES, Mr Graeme, Disability Discrimination Commissioner and Race Discrimination Commissioner, Australian Human Rights Commission

CHAIR—Welcome, Mr Gooda. It is a pleasure to have you here and for our committee to be able to congratulate you on your appointment. It is good news, so well done.

Mr Gooda—I was just recalling some of the times we spent together nearly 20 years ago now.

CHAIR—Yes, and I have to admit that was in departmental business. I will put that on record. I welcome the other representatives from the Human Rights Commission. I know many of you are very experienced at this process. We have your submission—thank you very much. The time we have for this particular session is until around midday, so please share with us any opening statements you have, because they raise the issues that you really want to focus on, and then whatever remaining time we have I will divide between the three senators as equitably as I can. Who is going to kick off?

Mr Gooda—I will. Thank you for the opportunity for the commission to provide further evidence relating to our submission to this inquiry. As the Aboriginal and Torres Strait Islander Social Justice Commissioner and Race Discrimination Commissioner, we have the respective responsibilities to review the impact of laws and policies on Indigenous people, monitor the enjoyment and exercise of human rights for Indigenous Australians and ensure that all Australians are treated equally under the Racial Discrimination Act 1975, or RDA.

The commission has welcomed the government's intention to reinstate the RDA and to redesign the NTER measures so that they are consistent with the RDA. Our submission identifies aspects of the bills that we consider achieve this purpose, as well as those that still have a discriminatory effect or that may not be compliant with Australia's human rights obligations. A summary of the measures that we commend is at paragraph 7 of the submission.

Overall, the government bills make some positive improvements to the current measures and, if implemented, will improve the situation for Indigenous people in prescribed communities in the Northern Territory. However, it is the commission's view that the bills do not fully address entirely the breaches of human rights that currently exist and will not ensure full consistency with the RDA. Our submission identifies specific amendments necessary to ensure that the NTER measures that are put in place will be non-discriminatory and fully respect human rights.

As you know, I am new to the position of social justice commissioner. My predecessor has provided valuable guidance on how to improve the intervention to ensure it is effective. I agree with the analysis that Mr Calma provided in his *Social justice report 2007*, and I particularly agree with Tom's assessment that the measures in place are not conducive to creating sustainable change in Aboriginal communities. Sustainable outcomes will only occur through working in true partnerships with communities, supporting their initiatives and with ownership of both the problem and the solutions lying in the community. We still have a way to go to achieve this through the Northern Territory intervention. I will remark on some of the individual measures after Graeme has spoken about the RDA implications of the bill.

Mr Innes—As the Race Discrimination Commissioner, I would like to highlight three aspects of our submission that refer specifically to the RDA. First, the government's bills lift the suspension of the RDA in relation to the NTER legislation and actions done under it. However, the bills still leave in place a number of discriminatory elements of the NTER regime. These are not reversed by the bills. For example, under the government's bills the five-year leases will continue to be excluded from the protections afforded by the RDA. Retaining and protecting potentially discriminatory aspects of the NTER from challenge appears contrary to the intention of reinstating the RDA. We note that this is another example of a situation where the RDA has been displaced by other federal laws and again that that displacement is in relation to Indigenous peoples.

The commission has provided recommended actions to address this. The most significant is to include a 'notwithstanding' clause in the bills to ensure that the RDA is effectively applied to all measures under the intervention legislation and also to remove item 4 of schedule 1 of the government welfare reform bill.

Secondly, the commission notes that a continued suspension of the RDA for any period of time is unacceptable. While we understand the pragmatic basis for a delay in reinstating the act we do not believe that the circumstances warrant such a delay. Our primary reason for this is that if the government is confident that the measures as redesigned by the bill will be non-discriminatory when they come into force then there is no need for any delay. The possibility of legal action occurring prior to redesign measures being implemented is, in our view, not an appropriate basis for continued suspension of rights. It amounts to an abundance of caution taken at the expense of the rights of Indigenous peoples.

The commission also sees that the staggered reinstatement of the RDA proposed in the government's bills will create confusion among communities as to whether or not their rights are protected and what remedies are available to them. At a practical level, what I mean by this is as follows: if passed, new income management provisions will progressively replace the existing provisions as well as be applied to new categories of people. The RDA is not suspended in relation to these measures. Those who continue to be subject to the existing income management regime will not be protected until after 31 December 2010 or until they are transitioned onto the new regime sometime between July and December this year. The result is complex and arbitrary arrangements for who has their rights protected and who does not. It will undermine confidence in the government and undermine the commitment that it has expressed for equality for all.

We have already seen a significant erosion of confidence from Aboriginal communities in the Northern Territory about the protection of their rights. The suspension of the RDA and the Northern Territory Anti-Discrimination Act has meant that very few complaints have been received about any violation of rights, not just those violations that occur under the intervention. The commission believes it to be a very serious problem when laws designed to protect the most vulnerable are damaged in such a way. It is a problem with long-term implications and it will require concerted effort from government to rebuild faith among Indigenous communities. The continuation of suspension of these acts will add further to this damage in the meantime. As a result, the commission recommends that the government bills be amended to reinstate the RDA and state-territory antidiscrimination legislation for all NTER measures no later than 1 July 2010.

Thirdly, let me say something about classifying measures as 'special measures'. There is no such thing in international law as an exemption to racial discrimination. Special measures are very different to this and have a beneficial, not a detrimental, purpose. The redesigned measures under the government's bills will not meet the requirements of a special measure where the government's redesign consultations do not meet the standards of consultation and consent of the affected group; there is insufficient current and credible evidence which shows that the measure will be effective; there are alternative means of achieving the objective that are not as restrictive of affected persons' human rights; and there are inadequate mechanisms for monitoring and evaluating the measure to ensure it is working effectively and that its objective has been met. The commission's submission notes some limitations of the redesign consultation processes undertaken by the government. Specifically, we note that the consultations were not designed or intended to seek consent for measures that the government seeks to classify as 'special measures' Where a special measure such as the alcohol restrictions operate to limit certain rights of part or all of an affected group, the issue of consent becomes a paramount concern. In the commission's view, such measures will not be 'special measures' where they are implemented without the consent of the group to whom they apply.

Mr Gooda—To conclude, let me highlight some of the impacts of the individual measures under the government bills on Aboriginal and Torres Strait Islander peoples. First, the redesigned income management measures are an improvement because they change the income management measures from a blanket approach based on race to measures that are more generally applicable and based on social disadvantage.

The commission supports the components of the proposed income management scheme that are compliant with the RDA and human rights standards. These include: voluntary income management; the matched savings incentives; exemption provisions; processes for review of decisions; and the continuation of the last resort approach for targeted risk areas in relation to child protection, school enrolment, school attendance and Queensland's Family Responsibilities Commission.

In contrast, the commission is concerned that the broad reach and automatic application of the 'disengaged youth' and 'long-term welfare payment recipient' categories could result in a disproportionate number of Aboriginal people being unnecessarily income managed. This risk stems from the limited access to education, training and employment for Aboriginal people, in particular in remote communities in the Northern Territory, and the consequent high proportion of Aboriginal people accessing welfare payments for extended periods.

The commission has recommended that the categories of 'disadvantaged youth' and 'long-term welfare payment recipients' be reformulated so that inclusion is dependent on individual case assessment and that it is applied for for a defined period of time and any continuation is subject to regular review.

The commission notes that income management in the NT is costing approximately $100 million per year, or roughly $5,000 per participant. We see it as essential that this includes an individual assessment of needs. If it does not, from my experience and from Graeme's in the disability sector, it is very hard to see how it will contribute to meaningful change over a longer term cycle. What we are proposing should not be beyond the capacity of government and it should be fundamental to how all welfare services are delivered. The commission notes, from the experience of other income management schemes, that the success of an income management scheme comes from such individual support, including through linking you into additional support programs in the form of financial literacy and budgeting skills development for welfare recipients, safe houses for women and men, and alcohol and substance abuse programs.

The commission supports the participation of Indigenous people in developing, implementing and monitoring alcohol management plans and ensuring all alcohol management processes are consistent with the RDA. However, the commission would like to see all alcohol restrictions supplemented by investment in infrastructure in the health and mental health sectors, including culturally appropriate detoxification facilities and investment in culturally appropriate community education programs delivered by Indigenous staff.

In relation to the five-year leases, the commission notes with concern that so long as compulsory five-year leases remain in place and are only applied to Indigenous communities these provisions are racially discriminatory. The commission supports the intention of government to enter into voluntary lease arrangements with traditional owners. Accordingly, the commission recommends the government bills be amended to remove the capacity to compulsorily acquire any further five-year leases under part 4 of the NTER Act and commit to obtaining the free, prior and informed consent of traditional owners to enter into voluntary lease arrangements for existing compulsory lease arrangements.

The commission also views the business management areas powers in the legislation to be disproportionate and unnecessary. There are other avenues already in existence for addressing service delivery and governance issues, and the fact that the powers have not yet been used is further evidence that they are not necessary. The commission has recommended that government bills be amended to remove the business management areas powers.

Finally, the submission draws attention to the limited monitoring and evaluation measures in place to ensure that reliable evidence is available as to the effectiveness of existing and redesigned NTER measures. The commission encourages the establishment of stronger data collection measures to develop a proper, evidence based approach for determining whether the NTER measures are effective and should be continued or expanded in the future.

Subject to the above recommendations for amendment, the commission supports the government's bills. Thank you for the opportunity to appear before the committee.

CHAIR—Thank you, Mr Gooda. Do either Mr Dick or Ms Fougere have any comment at this stage?

Mr Dick—No.

Ms Fougere—No.

CHAIR—We have until about five past 12, so I will start by giving 10 minutes to each senator and see how we go.

Senator SIEWERT—Can I go to the issue the issue that you raised about income quarantining. I want to be very clear around what you do and do not support. You talked about individual case assessment. Do you support the elements of the bill that effectively rollout compulsory income quarantining across the NT and then, after two years, potentially across the rest of Australia?

Mr Innes—I might start and then let Mick or Darren comment. We think that income management is a policy issue for government, and its application is a policy issue for government. What we have tried to do is focus our comments on whether or not it would have a discriminatory effect. I suppose in the sense that the discriminatory impact of income management is either lessened or removed, then we would support that approach. But we have not tried to express a broader view in terms of the policy issue of income management.

Senator SIEWERT—You and I think Mr Gooda mentioned the potential for a disproportionate impact on Aboriginal people both in the NT and outside the NT. It has been put to us this morning by a number of

welfare organisations, and in particular Dr Falzon, that it was discriminatory on a geographical basis but also to a whole class of people. You can have more than one type of discrimination.

Mr Innes—The discrimination that is covered by the law in Australia would certainly deal with Aboriginal people, if the RDA is reinstated. To that extent, if there is an indirect discrimination argument—and I can see the way that could be argued—then that argument could be run, depending on how the income management approach is implemented. In terms of geographic discrimination or discrimination on other bases, they certainly may constitute discrimination, but they would not constitute, under our current law, unlawful discrimination. That would be the distinction that I would draw between those two groups or classes of people, if you like.

Senator SIEWERT—Mr Gooda, can I ask you about your comments—also in your submission, obviously, you cover it—on the 'notwithstanding' clause, as we have had a lot of discussion around this issue, and why that is important?

Mr Gooda—As it stands in Australia, any subsequent legislation has precedence over the previous legislation. At the moment the 'notwithstanding' clause, if there is any conflict between the measures being implemented under this legislation and the Racial Discrimination Act the current legislation will apply—takes precedence. We would like something absolutely explicit in the legislation that says: in the event that there is any conflict the provisions of the Racial Discrimination Act will apply.

Mr Innes—Can I just add to that. If you take the position that we are looking at disempowered group of people in any event and they are further disempowered by the removal of the application of the Racial Discrimination Act, we have to then think about the importance of the situation being made absolutely clear. It has been put that the current draft bill does allow for the RDA to take precedence when it is reapplied, but there are arguments about that. What we are putting is that if a notwithstanding clause is included then it, if you like, increases the certainty that the RDA will apply. That does two things: firstly, it decreases the likelihood of challenges; and, secondly, it more empowers the community that is being dealt with and reduces the need for them to have to press challenges.

Senator SIEWERT—It has been put to us that without addressing that issue it cannot be claimed that the RDA has been fully reinstated. I take it from your submission that you do not believe that this legislation is actually fully reinstating the RDA. Is that a correct understanding?

Mr Innes—That is correct.

Mr Gooda—That is correct.

Senator SIEWERT—At what tier of the consultation process were you involved with, if at all?

Mr Dick—None of them, formally. The *Social justice report 2007* made a series of recommendations, and there has been some discussion with the department. Certainly, Tom, the Social Justice Commissioner had had discussions with the minister's office about that, but we were not formally involved in the consultations.

Senator SIEWERT—Was that a deliberate decision?

Mr Dick—The tiers were very much aimed at different categories of people within the Northern Territory, so we simply did not fit within that.

Senator SIEWERT—You were not invited to participate?

Mr Dick—No.

Senator SIEWERT—Have you had feedback from community members about what they felt about the consultation process?

Mr Dick—No. We have seen the reporting on it and the different reports that have been prepared by the government and in the report *Will they be heard?* and so on.

Senator SIEWERT—You have not had any specific involvement?

Mr Dick—No. I think we took the view when Tom was commissioner that the consultations were underway and the commission was not going to do a consultation about the consultations, that we would wait to see the outcomes of that.

Senator SIEWERT—I am passionate about wanting to restore the RDA to the Northern Territory and, to my mind, this is being compromised by the welfare 'reform' associated with this—in other words, the rollout of compulsory income quarantining and the capacity to stretch it across Australia. I am struggling to deal with

those two concepts. I have very deep concerns about the rollout. How do you suggest we deal with that? How have you dealt with it? How have you processed that in terms of weighing up the restoration of the RDA with, to my mind, being compromised by us now having to also agree to that and agree to the rollout of very significant welfare reform that has not had widespread community consultation that I think would be described as discriminatory? How do we handle that?

Mr Dick—Maybe I can talk historically, from when Tom was the commissioner. We did a lot of detailed work around the intervention in the *Social justice report 2007*. We used the broad human rights framework as the framework in which we analysed the intervention and that included fairly detailed analysis of the right to social security and what it entails. In that report, we said that some form of income management or quarantining of itself is not discriminatory or does not breach the human rights standard about which there is clear language in the international arena—for example, benefits intended to benefit women and children and the mechanisms to ensure that the money reaches them. At a human rights level, it is not something that you simply cannot do; if you do it, you are not complying. It then comes down to, of course, how you do it and who you apply it to. A lot of the international discussion and the general comment of the Committee on Economic, Social and Cultural Rights are about doing so in a way that retains people's dignity and is not humiliating or degrading and these sorts of things.

Clearly, in the Northern Territory situation, the application of the measures, essentially just to Indigenous peoples in a racially discriminatory way, without the protection of the RDA, without merits review, for example, meant that it clearly did not qualify in any way as compliant with that. The analysis from here has been that if you take those elements of discrimination, you reinstate the application of the RDA et cetera. Then it becomes, in many ways, a different human rights issue, which is about whether it complies with the right to social security generally. It may be that in this instance the human rights standard that is protected internationally is more of a minimum standard and that we find that the Australian welfare system sits at a higher level in the way that it operates now. In many ways, the human rights standard does not help you other than where you clearly and blatantly breach it through discriminatory action or lack of review and those sorts of issues. So the way that it would come in now is in terms of an indirect discrimination impact and whether it is indirectly discriminatory.

Many of the submissions, we know, talk about the fact that it is likely to capture a higher proportion of Indigenous people and so be disproportionate. But the rest of the tests for indirect discrimination are also about reasonableness, and that comes down to issues around effectiveness, the evidence base and those sorts of issues.

Mr Gooda—It has certainly been a struggle for me. I came into the job and found this submission sitting on the desk when I arrived. I have taken some time to consider it. The reinstatement of the RDA would give people a level of protection that they do not have—they could challenge matters that breached the Racial Discrimination Act. But I also had a fair experience in the social security department before Centrelink, and considering how people would have their appeal rights and rights of review reinstated started to shift my balance towards thinking, 'What are the small steps we can take here? What are the steps that are more basic?' And I have come to the point of view that the human rights aspects, the reinstatement of the Racial Discrimination Act, would be more important.

I do not know how you can separate them out, because it becomes compliant with the RDA with the income management being rolled out to the wider community. I think that is one of the key planks of the legislation. I would struggle with that myself, I think, if that was undone; I could hardly see the purpose. If you separated them out and one got through and one did not get through, it would be hard to see how it could be compliant. So I have struggled with it but I am coming down on the side of the rights. I have consulted with people, particularly in the medical services area, and they were very strong in their advice to me. 'We want our rights back; that's what we want straight away. We want our rights back now, and we want to be treated the same as everyone else in Australia.'

Senator CROSSIN—Good morning, Mr Gooda. Welcome. It is a pleasure to have you here as the new Social Justice Commissioner. And good morning to you, Mr Innes; it is always a pleasure to have you appear before our committees. How many crucial amendments do you think need to be made to these bills? You have got here, 'Subject to the above recommendations for amendments,' but how many would need to be made?

Mr Dick—There are 14 in the recommendations.

Senator CROSSIN—There are 14 in the main body of your submission?

Mr Innes—Yes.

Ms Fougere—It is at paragraph 10.

Senator CROSSIN—So let me put it to you this way: if this committee picks up those recommendations but the government does not, should the legislation still be supported?

Mr Innes—We are supporting the bill subject to the changes which we have recommended—or subject to those changes being made.

Senator CROSSIN—If the bill is not changed—let us say it proceeds to the third reading unamended—will it still be worth supporting?

Mr Innes—I guess it is hard to get into hypotheticals. We will have to assess at that point our position as to whether we recommend support for that bill. But at the moment what we are saying is that we recommend it, subject to those changes that we have proposed. I suppose it is likely that, from a discussion such as this, some changes might be made to the bill, some of which we might have suggested and some of which other people might have suggested, and it is a bit hard to assess what the bill will then look like. That is why we—I am being hesitant, sorry.

Senator CROSSIN—I understand. In your submission, is there a summary of the recommendations you are suggesting?

Mr Dick—In paragraph 10.

Mr Innes—Paragraph 8 starts with a list of concerns and then paragraph 10 has the recommendations.

Senator CROSSIN—So it has actually got recommendations that the government bills should be amended to include the following.

Mr Innes—Yes.

Senator CROSSIN—I want to ask you about the benefits of having a clause similar to 'notwithstanding anything in this bill, the RDA should prevail over all.' If that is inserted into the bill, what benefit does it provide? If it is not there, does it make any difference?

Mr Innes—What it provides is greater clarity and certainty as to which legislation which will prevail. Our submission, further in, sets out the reasons that we are concerned that, if that clause is not included in the bill, there is a lack of certainty as to the RDA prevailing over the NTER legislation, because of the usual principles of statutory interpretation. There was a less substantial, or less strong, clause inserted in the Native Title Act, and there have been problems around that, in some of the cases that have been heard, as to which legislation prevails. What we are trying to do for everyone—for government and for those people who are affected—is to provide the greatest level of certainty. We think that is the most effective way to reinstate the RDA, because it will mean that people will not be as likely to be pushed into the need to challenge the application of the legislation, and government will not be put to the problem of having to deal with such challenges.

Senator CROSSIN—That is good. I asked the welfare rights people yesterday about their interpretation of section 60 of the social security act, which is a right to have a social security benefit. They indicated to me that they also interpret that to mean you have a right to have that benefit paid in cash. Do you have a view about that, as opposed to a government policy that says you can have half of it in cash and half of it quarantined?

Mr Dick—There is some comment in the general comment of the Committee on Economic, Social, and Cultural Rights that talks about people from different racial groups et cetera receiving the same level of benefits as other people. I do not think it talks about the form of how the benefit is delivered; the different level of benefit that is provided is where the human rights issue tends to lock in.

Senator CROSSIN—This bill will maintain the alcohol, pornography and five-year leases as a special measure. I really want to concentrate on the five-year leases. I take it from your submission that you are saying there is no need to have any of those as a special measure, in particular the five-year leases.

Mr Innes—We are saying that the five-year leases cannot be a special measure. They just do not qualify because the RDA has a specific provision which excludes dealings with land from being a special measure.

Mr Dick—Section 10(3).

Senator CROSSIN—In relation to pornography, then, I am trying to grapple with why we would not make those provisions apply not only across the territory but nationally.

Mr Gooda—That would be a government policy issue.

Mr Innes—That would be a government policy issue.

Mr Gooda—It is a question I ask myself sometimes, but it is a government policy issue.

Senator ADAMS—On the five-year leases, I was going to ask the same question that Senator Crossin asked. You are saying here that five-year leases are not a special measure. Could you just explain that a little bit more? I am not a lawyer and I am finding this quite complex.

Mr Innes—Section 10(3) of the RDA provides that special measures cannot apply to land. We cannot see any way that the five-year leases can be a special measure. To background that a little bit, because this may assist on that question and on the broader question, the way the scheme of the RDA works is that, before you even come to assessing whether something is a special measure, you have to determine whether or not discrimination has occurred unlawfully—in other words, whether the act has been breached. There are two types of discrimination: indirect and direct discrimination. That is the first part of the test that you have to apply before you even start assessing whether or not something is a special measure. Then you come to the special measure process. The way that that works is outlined in our submission, and I can come to that. Specifically, land and application to land is excluded by section 10(3) of the RDA in relation to Indigenous people.

Senator ADAMS—With these special measures within the bill—you may have heard me ask the question before—are they subject to challenge?

Mr Innes—If the RDA is reinstated and someone wishes to then challenge a provision of the Northern Territory intervention, they lodge a complaint under the RDA, unless it is a challenge under section 10 of the RDA in which case it goes straight to court proceedings. What I was going to outline, and this applies anyway, is that the process then is that the person has to demonstrate that discrimination has occurred—that the provision is discriminatory or that action of a government officer in terms of applying the legislation is discriminatory. Once they have demonstrated that, then the respondent, in this case the government, has to demonstrate that there is an exception to the RDA because the particular provision is a special measure. That is how the challenge process would work. Then the court has to look at what constitutes a special measure in terms of whether it will make an exception to the legislation.

Senator ADAMS—As far as this legislation goes, it does not reinstate it completely, so regarding those special clauses within the RDA—not reinstated as far as it should perhaps be—how does the challenge go then?

Mr Innes—Under the current legislation, once the RDA is reinstated, and that takes effect on 31 December under the current draft bill, then the person can lodge a complaint and then the process that I described takes place—or takes court action.

Ms Fougere—That is certainly the case in relation to challenges to the act or practices of government ministers or, for example, the Centrelink officers who were taking action under that legislation. If it came to a challenge to the actual legislation itself and the legislative provisions, that can only be dealt with under section 10 of the Racial Discrimination Act. Section 10(1) talks about laws of the Commonwealth or of the state. That is really where the work is done if you are challenging a piece of legislation. The suspension of the Racial Discrimination Act is lifted on 31 December. After that date a challenge may be made to the legislation. What would have to happen is that the amended legislation, the emergency response legislation, would have to be read, if it could be, so as to avoid operating in a discriminatory matter. So section 10 requires that, as far as possible, it be read so that is not discriminating in a racially discriminatory way. If that is simply not possible, if the provisions of the emergency response legislation as amended cannot be read in that way then those parts of that act that are inconsistent will prevail over the Racial Discrimination Act. That is where the problem lies. We say—and we set this out in our submission—that is where the problem lies. The inclusion of a notwithstanding clause and another provision in relation to the Acts Interpretation Act would remedy that problem.

Mr Innes—So that it would be clearer.

Ms Fougere—I should say that we have tried to set that out in approximately paragraphs 30 to 36 of our submission.

Senator ADAMS—I know—I have been reading it. I was just trying to get some clarification because, as you can imagine, none of us are expert in this area.

Mr Innes—Sure.

Ms Fougere—It took us a while to work through that as well.

Senator ADAMS—Good! I am glad it did. I have an overall, general question. If the Racial Discrimination Act were to be reinstated completely without the special measures clauses that are there at the moment, what difference would it make? This is getting right to the grassroots. What difference would this make on the ground to those communities and the people who are affected?

Mr Innes—Commissioner Gooda should probably answer that question, but can I just explain something before he does, which is that the special measures provisions are in the RDA. So, if the RDA is reinstated, that special measures test that I attempted to describe and that I think Christine described a bit more clearly would then take effect. At the moment it does not take effect because the RDA has been suspended. Your question implied that they would be removed, whereas in fact they would come back in as part of the RDA. But I am sorry—you should answer, Mr Gooda.

Mr Gooda—I would go back to my consultations. I do not think you can measure only impacts on the ground; I think you have to look at how Aboriginal people feel about being treated equally in this country. At the moment, they are not. I get a bit concerned about the special rapporteur's reports there on the table saying these practices are discriminatory. If we look at the history of the Racial Discrimination Act in this country, the only three times it has been diluted it has been around Aboriginal issues, and I think that is some concern for Australia and some concern for Aboriginal people on the ground. For the emotional wellbeing of people and for them to know that they are part of this country and are treated equally, it is absolutely crucial that these measures be reinstated. I think we have to take some note of not only the Racial Discrimination Act but our human rights application across the country, and also look at our past record in this country. I will reiterate that the only three times there has been a dilution of the Racial Discrimination Act in Australia it has been around Aboriginal issues.

Mr Innes—The other thing I would add is that one of the purposes, I am sure, of the intervention was to try to support and empower communities, and you do not empower communities by taking away their rights, which of course is a disempowering thing to do. On the ground, restoring the Racial Discrimination Act, provided that the measures of the intervention are not discriminatory, will not impact on that broad policy intent, but the restoration of the RDA and putting Aboriginal people back in an equal place with non-Aboriginal Australians will have a very empowering impact.

CHAIR—Thank you for your contribution. This is probably an opportunity for our committee to put on record our appreciation of Dr Tom Calma's work as well, as a person who regularly came to our committee to talk about these issues. So in welcoming Mr Gooda we also acknowledge Dr Tom Calma. Thank you very much.

[12.09 pm]

ALTMAN, Professor Jon Charles, Private capacity

VIVIAN, Ms Alison, Senior Researcher, Jumbunna Indigenous House of Learning (Research Unit), University of Technology, Sydney

CHAIR—Welcome. Thank you for your attendance. We have submissions; we do appreciate that. If you have opening statements please share them with us, because they will contain issues you want to focus on. I calve up the remaining time which, I believe, is until 12.45, between the senators so that everyone gets a chance. Have you tossed a coin to see who will go first?

Prof. Altman—Thank you, Senators, for the opportunity to meet with you again. I realise that time is short in that this inquiry, like so many others these days, is being unduly rushed, despite the complexity of the issues at hand. I will focus primarily on the issue of income quarantining, although I am happy to take other questions. I emphasise that I opposed these measures in August 2007, which were before the Senate Standing Committee on Legal and Constitutional Affairs, and I still do. Most of my concerns expressed then have come to fruition, although I have been very wrong in my suggestion that, whichever government came into power in late 2007, would walk away from these expensive, paternalistic and racially based measures. In fact, neither the Rudd government nor the opposition want to walk away from income management.

Shadow minister Kevin Andrews made it quite clear this week that the opposition will oppose the bill because it provides more discretion. It is not blanket enough. This opposition has maintained the Rudd government will be in a real pickle, stuck with laws that, according to UN Special Rapporteur James Anaya, as well as other domestic experts, are discriminatory and contravene international human rights standards. How has such a situation come about? It seems to me that, on the one hand, there has been an all-too-ready willingness by the Australian state to sheet home responsibility for Indigenous community dysfunction to the behaviour of individuals, conveniently overlooking structural issues while simultaneously making unprecedented commitments, mainly targeted at 29 remote communities assessed to be in special need. There is too much focus, in my view, on controlling maladapted Aboriginal subjects, yet there is still not sufficient focus on the structural causes of disadvantage.

On the other hand—and this was made very clear in Kevin Andrews's speech—there is a heavy reliance on highly contested anthropological notions in a book by Peter Sutton entitled *The Politics of Suffering*, such as demand sharing and humbugging, but these are poorly understood by politicians and bureaucrats. Part of the problem now is not just Aboriginal agency but Aboriginal tradition that needs to be extinguished without any understanding of the positives, as well as the negatives, of such social institutions. In truth, policy and supporting laws should be made on the basis of cogent argument and empirical evidence. Neither are evident in this case. On the cogent argument side there has never been any explanation provided why 50 per cent of income should be quarantined and why these measures should be applied to all, administrative ease aside. The lack of cogency makes proposed amendments vulnerable to spurious questions such as, 'Why now should income management laws exclude some groups like the aged or the infirm?' and 'Are they not most vulnerable to the horrors of so-called humbugging?'

On the empirical evidence, governments that are committed to evidence based policy making seem to have passed laws and then searched for justifying evidence. Unfortunately and sadly, no empirical evidence with any integrity has emerged to unequivocally support income management measures. That collected by the Australian Institute of Health and Welfare has been highly qualified and equivocal. That collected by the Australian government or its agents has been in-house, unreviewed and, frankly, a little amateurish. At best, it has been deeply conflicted by moral hazard. Agents of the state are asked by state employees or their paid consultants whether state measures are effective.

Worryingly, the evidence might change over time. For example, there is forthcoming research from the Menzies School of Health Research, currently under peer review, that outcomes from income management might, at best, be ineffective and, and at worst, perverse. If this is true what will the government and opposition do? Admit error, compensate those whose incomes were wrongly quarantined? The Australian state cannot make policy and then seek evidence to trumpet its purported success. This is not evidence based policy making but ideologically driven policy making.

In my submission, I make three recommendations. Firstly, when making policy, even in highly emotive difficult circumstances governments should do some proper research first and not do the research ex post-facto

when, politically, far too much is at stake. Secondly, the government of the day could make the bold decision to administratively unprescribe communities and provide opt-in income management options. I am sure that, for many, a BasicsCard provides a handy form of debit card in a situation where banking options might be very limited.

Thirdly, governments should focus on the hard structural issues where there is evidence that effort does generate socioeconomic benefit, such as the delivery of housing and infrastructure or better health services. It is too easy for the state to target vulnerable individuals.

In conclusion, I try to broaden the somewhat circular debate we seem to be stuck with beyond Australian insularity. I note, firstly, that there is no compelling evidence from elsewhere in the world that income management actually works to discipline the expenditure behaviour of the welfare-dependent in a manner that alters social norms and makes a difference. There are suggestions that this is occurring on Cape York, but with a high degree of community involvement and an absence of blanket measures. Secondly, it is important to examine the underlying philosophy behind income management, initially intended to reduce child abuse, now intended to normalise or mainstream the social norms of remote-living Aboriginal welfare recipients. This aim is clearly spelt out, as a set of principles, in the COAG National Indigenous Reform Agreement. Finally, put yourself in the circumstances of someone who, for example, has been retrenched and, overnight, moves from being categorised as being responsible to being categorised as irresponsible and in need of income management. Rigorously applying the principle of horizontal equity, the like treatment of like citizens that is at the heart of our social democratic welfare system, would have precluded us from getting it to where it is right now. Thank you.

Ms Vivian—I would also like to thank the committee for the opportunity to elaborate on our submission. On a day when we are discussing legislation that has such profound implications for Indigenous peoples in Australia, I think it is important to recognise that we stand on Aboriginal land. I would like to pay my respects to the elders and respected persons, past, present and future. I would also like to pay my respects to the Aboriginal people of the Northern Territory because, at the end of the day, all this discussion is about them.

CHAIR—This committee begins its deliberation with that acknowledgement.

Ms Vivian—I realise that. In summary, our submission makes five main points. Firstly, the intervention does not comply with Australia's human rights obligations. I particularly note the comments of the special rapporteur on the situation of human rights and fundamental freedoms of Indigenous peoples in his report, which was released on Wednesday, and the kinds of things he points to—indignity, stigmatisation and Aboriginal people being held responsible for their own fate. I also note that he asks essentially for a complete overhaul of the intervention within a human rights framework. Secondly, as I know the committee has heard, we are concerned that the proposed amendments do not cure its defects and, in particular, we are concerned that the income quarantining scheme will continue to be racial discriminatory. We are also concerned about the uncertainty that surrounds whether or not the so-called reinstatement of the Racial Discrimination Act will actually allow effective challenge.

Thirdly, on our analysis—and I note that the special rapporteur criticised the existing measures as not being capable of being categorised as special measures—we are concerned that the proposed amendments, the minimal amendments, will still fail to fulfil the criteria for special measures. I will say a bit more about that in a moment.

Fourthly, in our review of the design consultation process—I am not sure whether the committee has heard about a review that we undertook at the end of last year—we produced a report called *Will They Be Heard?* In our review we considered that the process was so flawed that it cannot be safely relied upon. Fifthly—and this, I think is a very important point—it picks up on something that Professor Altman has written a great deal about and that CAEPR has really focused on; that is, that the intervention is counter to both Australian and international evidence of what produces the kind of economic, social and cultural prosperity that the intervention is apparently designed to develop.

I just want to briefly touch on two of those issues, being special measures and the redesign consultation process. Special measures are forms of favourable and preferable treatment. I know the committee will have heard that. There is some question about whether or not negative measures can ever be special measures. There is provision for limitation of some rights, but the question is whether that is actually following a different path to 'special measures'. The aim of special measures, of course, is to achieve substantive, rather than formal, equality. So, while differential treatment is allowed, I think there is a real query about whether negative differential treatment could ever be a special measure. In fact, in his report, the special rapporteur

said that it would be extraordinary if differential treatment that limits the rights of the affected group could be special measures.

We consider that an analysis of whether or not the amended measures could be special measures fails at the first hurdle. That is because the fundamental precondition of special measures is that they are designed and implemented with the prior consultation of the affected communities. As I said, our concern arising from our review of the consultation process is that the process was so flawed that it really could not be the basis for special measures. We also consider that it fails against the remaining criteria. Special measures are goal directed, they are tailored to meet specific needs, and they are monitored in an ongoing way against specific measurable criteria. They are not broad policy statements. Also, they secure some kind of defined advancement. That, I guess, goes back to them being goal directed. I note that the High Court has said that we need to be cautious that advancement is not necessarily what the people proposing the measure would consider to be beneficial. Finally, they need to be fair and proportionate against a legitimate aim, which means that you need to balance potential harm with potential benefit in order to make that decision about proportionality.

The second brief issue I want to mention is the inadequacies of the consultation process. States have an obligation to consult with the Indigenous peoples, and that is enshrined in a number of international conventions, in particular the Convention on the Elimination of All Forms of Racial Discrimination and the Declaration on the Rights of Indigenous Peoples. In our view, the minimum standard is that informed consent is required in relation to decisions that particularly impact on Indigenous peoples. We say that the process that was taken last year fails to have provided informed consent. In summary, there was a lack of independence; no Aboriginal input, which is best practice; and no qualified interpreters in some cases. But, substantively—and I think these are the major flaws—it was actually a consultation process about proposals that had already been made and designed. It was not an open process engendering questions about design. There was inadequate explanation and description of some measures—the CIRCA evaluation talks about people not have any knowledge of measures, and they certainly did not understand them—and a failure to explain very important legal concepts like the special measures. I make the point—and it comes out of every report on the consultation process—that when you consider that the reinstatement of the Racial Discrimination Act was the pivotal issue raised in every meeting, considering that the reinstatement of the Racial Discrimination Act pivots on measures being declared to be special measures, the consultation process, therefore, was absolutely vital so that people understood that the reinstatement of the Racial Discrimination Act was subject to the special measure condition and that they understood what special measures were.

In conclusion, the recommendations that we have made are that the intervention be redesigned to comply with all human rights obligations, that the RDA be reinstated without qualification, taking note of the uncertainty about its operation, and that there be a commitment to an evidence based policy. The Special Rapporteur summed it up nicely on Wednesday. He said the government should:

> … fully purge the NTER of its racially discriminatory character and conform it to relevant international standards, through a process genuinely driven by the voices of the affected indigenous people.

I could not say it better myself.

Senator SIEWERT—When we were in the Northern Territory, AMSANT made very strong representations around the link between the suspension of the RDA and people's health and the need to address—if you restore the RDA, it is a key to dealing with community health. We have heard much evidence that the RDA is not being fully restored by this legislation. If it is not being fully restored, is partial restoration—I am trying to understand the link. Do we get halfway there in addressing poor health outcomes and disempowerment of communities by partially restoring the RDA?

Prof. Altman—I am no health expert, but I do not think you would get that sort of clear statistical correlation. One of the real issues that we have—and I think AMSANT are hinting at it—is that much of our focus with health indicators are about physical health; there is an inadequate focus on psychosocial health and there is inadequate focus on the link between people's physical health status and their psychosocial health. From my experience of the Northern Territory, I think that the suspension of the RDA takes people back to a time that many of them still remember when they were subjects of a draconian colonial state and it was not a happy time, despite the history wars and some of the current rewriting of history that looks at that time as somehow being halcyon. My view would be that you just have to reinstate the RDA. It is not half measures or quarter measures or 75 per cent measures.

Ms Vivian—The review board made the point that the reinstatement of the RDA was not an academic exercise, and that has certainly been our experience. It is really an issue about second-class citizenship. People

are not lining up to say, 'I want to litigate and go to the Federal Court.' It is about their perception of citizenship and equality in this country. I was in Alice Springs two weeks ago and very powerful statements were being made: 'Enough is enough; reinstate the RDA.' The next question though that we did not get to was: does that mean then that if it is not going to be complete reinstatement, that you would oppose it? Certainly the strong impression that I formed at the series of meetings that we went to was that that was the undercurrent, but I have to say that it was not something specifically asked.

Senator SIEWERT—I want to go to your comments around the role of empowerment and good governance. Professor Altman, you have been doing the work on good governance and, Ms Vivian, you have made comments around taking a more positive approach. Can you outline what your findings are in the work that you have been doing on the role of good governance as part of empowerment?

Prof. Altman—There is plenty of international evidence from rigorous research in the United States and Canada, and now from the Indigenous Community Governance Project and other research in Australia, that robustly governed, self-governed Aboriginal organisations generate the best social outcomes for their community members and clients. Nobody will deny that the so-called self-determination era has had problems, but I do not think that those problems can be sheeted home to too much community governance or too much capacity building or institutional strengthening. Those problems might be sheeted home to issues like inadequate support, lack of equitable needs based support to communities. But there is considerable evidence that a form of participatory bottom-up development will always deliver the best results, and that is not just in relation to Indigenous people but in relation to people who suffer from poverty in the Third World and in other contexts. So it is a bit paradoxical that the approaches that the Australian government takes in delivering aid in Third World contexts is fundamentally different to what we are doing in underdeveloped parts of the Australian continent.

Ms Vivian—I would only add that the Harvard Project on American Indian Economic Development and the Native Nations Institute, its sister institute, says that literally nothing else has ever worked. There has been a major issue in Australia in separating those important factors that are required. On the one hand we might talk about governance and decision-making, or we might talk about capacity building of particular institutions or service delivery organisations, or we might talk about the necessity for cultural legitimacy, and I know that the Indigenous Community Governance Project have done a lot of work on that, but on the other hand what we are not doing is saying that these factors need to be treated as an integrated whole.

Senator CROSSIN—I want to ask you about special measures that will be retained in this legislation if it is passed, with a particular interest in your comment about the five-year leases.

Prof. Altman—I just think that the five-year leases are a bad mistake. They trample on the private property rights of traditional owners. I was linked to the Wurridjal challenge in the High Court, which did not get very far, but nevertheless I am concerned that the five-year leases will be retained—I think they say till August 2012, although my recollection is that those measures became effective in February 2008, so I would have thought it would be until February 2013 that those measures would be retained. I just see them as being disconnected to anything happening on the ground in relation to the provision of housing and infrastructure, and that is something that we could have a whole other inquiry about. I think results have been disappointingly slow and extraordinarily expensive. Clearly the cost per household will go down over time, but at the moment it is running into millions of dollars in terms of public expenditure. But I have never understood the connection between the compulsory acquisition of what constitutes private land, at least in terms of Aboriginal land trusts, and the protection of children or the improvement of people's lives. I have never understood that connection.

Senator CROSSIN—When we put it to FaHCSIA, they say that the compulsory acquisition was necessary to do things such as put the compounds, the demountables, in the communities for government business managers to live in, and you know as well as I do, Mr Altman, that when we go to those communities now they probably take up about as much as three or four house blocks, a hectare at that. So is there a way in which this legislation could be amended to remove the five-year leases but still enable the Commonwealth to acquire that section of land that GBMs are on? Is another alternative to remove the five-year leases and seek to acquire that parcel of land under the land rights act? But that would take an enormous amount of time, I would think.

Prof. Altman—I do not think so. I think that there is a very easy solution here. I think that the Commonwealth could negotiate very quickly with the land councils for section 19 leases over those compounds. I think that it could be negotiated, like you have seen in relation to, for instance, Blue Mud Bay

and the issue of permits across the whole Northern Territory coastline. The land councils can be pragmatic, and I think you could negotiate a lease very quickly for those small blocks.

I think it is paradoxical that, historically in the Northern Territory, neither the Northern Territory government nor the Commonwealth actually negotiated and paid for leases in Aboriginal townships as a general rule between 1978, when most Aboriginal land trusts were formed, and 2007. So to raise that as an issue in relation to the intervention seems to me to be a little bit hypocritical, given that police stations, schools and government housing have all been constructed without negotiation with traditional owners, without formal agreement and without lease payments. The only organisations that have tended to pay lease payments to traditional owners have actually been Aboriginal organisations on Aboriginal land.

Ms Vivian—I think there is also some confusion. As I said, I think that the aspect of benefit would certainly be up to challenge in relation to five-year leases. But there is also some question about the challenge if the RDA is reinstated in relation to special measures. For example, the five-year leases were actually created under the NTER, and we have heard that, the NTER being more recent, it will prevail over the RDA so there will not actually be the possibility of challenging the five-year leases themselves. I think the object is to improve the delivery of services in Indigenous communities and promote economic and social development, but I have no understanding of what that actually means. So they may be special measures in name but I do not really understand what specific objectives there are.

Senator CROSSIN—Okay.

Senator ADAMS—I would like to take you back to the Northern Territory emergency response redesign consultations. I did not write down how many you had been to; how many were there?

Ms Vivian—I did not attend any. Some of the tier 2 meetings with a group called Concerned Australians were filmed, and we reviewed the FaHCSIA notes from the tier 3 regional meetings. We only then were able to review three of the tier 2 meetings and the five regional meetings, but I hasten to add that that is because they were all we were able to access. I noticed that CIRCA made the point that the commitment that was being made to people that they would actually get the reports of the meetings and that they would be able to sign off on them was evidence of very good practice, but in fact we found that people found it just about impossible to get access to those notes.

Prof. Altman—I almost accidentally participated in consultations in Maningrida on 31 July last year.

CHAIR—That was pretty scary. You almost got there accidentally!

Prof. Altman—I was there to do field work and I had no intention of attending the consultation, but I was invited by an Aboriginal organisation there to participate, as was my partner. I have not actually written my experience up. When the meeting broke up into men's and women's groups, I attended the men's part of the consultation. My partner, Melinda Hinkson, is an anthropologist and she attended the women's meeting. I was frankly quite shocked at the way these meetings were conducted. I think that there was an attempt, in quasi-legal parlance, to verbal local people in terms of the expected outcome from the consultation. I know the community quite well and they certainly did make the effort to get a local Indigenous person to interpret, but the Maningrida community actually has 10 languages and the interpreter spoke one of them, or at least translated into one language. I guess I was also rather concerned by the facilitating role that the government business manager seemed to play in using a relationship that had been built with the community to illicit responses that seemed to accord with the direction that the facilitators wanted to take the meeting. I have to give due credit to the facilitators. I think they tried to do a very good job, but their script was totally predetermined.

Ms Vivian—CIRCA's criticisms of the process absolutely accord with ours. I think that when you actually have a look at the objectives of the process, they were about informing people about the government's intentions and getting feedback on benefits. You can read in the CIRCA report the actual script that the facilitators followed. I could not agree more that, when you read the transcripts that are in the back of our report, that is certainly the direction that people were being led in.

Prof. Altman—I should add that these are very complex issues and it is very hard to deal with them in the maximum of a day with a barbecue lunch thrown in.

Ms Vivian—Yes. For example, the Crime Commission's coercive powers were described as giving people the opportunity for confidentiality and being able to give evidence in secret, whereas in fact they are coercive powers that force people to attend hearings and create an offence if they even tell people that they have

received a notice. The difference between asking, 'What do you think about these powers that are protecting your confidentiality?' and the reality that you can be dragged before the examiner is quite stark.

Mr ADAMS—As far as the invitation goes, you said you just happened to conveniently be in the community—conveniently for us because we have got someone who has been to one of these meetings. How widely were the invitations sent out? Do you know the process that was used?

Prof. Altman—Yes. The GBM and local Aboriginal liaison officers were required to pass on the invitations. There were certainly notices around the township and the Aboriginal organisations themselves tried to encourage people to participate. Again, I did not do an absolutely accurate count but I would say that, from a regional population of about 3,000 people there was a maximum of 100 to 120 people at the consultation, with people coming and going and the start delayed because there was something like 30 or 40 people. Frankly, I think there was a level of scepticism within the Aboriginal population about whether these consultations were really about hearing people's voices.

Again, I do not want to make a comment, because Aboriginal forms of dialogue or Aboriginal citizens meetings vary a lot from ours, but clearly certain voices dominated, at both the men's and the women's meetings. There was not universal condemnation of NTER measures—I think that needs to be said—but certainly there was also a desire for some issues not to be talked about. Again, because Wurridjal was from Maningrida, the meeting asked that the issue of compulsory acquisition not be discussed.

Senator ADAMS—Why was that?

Prof. Altman—I just think that there was a knowledge that Wurridjal had failed in the High Court and a certain sensitivity to how traditional owners might feel about that.

Senator SIEWERT—I just want to clarify whether it was a tier 2 consultation that you went to.

Prof. Altman—It was the one that was with the community, yes—the large, open one.

Senator SIEWERT—Yes, that is tier 2. Thank you.

Prof. Altman—The way I got involved was that I was in discussion with the Bawinanga Aboriginal Corporation's executive when, I think, they were briefed about the forthcoming meeting beforehand, and then they invited me to go to the meeting with them. I should also say that there were other non-Indigenous members of the community at the consultation. It was very open.

Ms Vivian—I just want to add that is not the number of meetings or the number of people who were consulted that is the basis of any criticism; it is the substantive failures of the process in itself that have been problematic.

Senator ADAMS—I was just reading all your comments, and that was really what I was trying to get at—the process and just how it actually went through.

Ms Vivian—In fact, when you consider that the process conducted more than 500 meetings, it could have been incredibly powerful and transformative, and it just was not.

Prof. Altman—One of the things that really surprised me at the meeting, I must say—again, focusing more on the men's perspective when the group split—was their vehement opposition to the racially discriminatory nature of intervention measures. The language that people used—some of them are not hugely familiar with English—I found extremely sophisticated. That, for them, was the No. 1 issue. They were not denying that there were problems in the community, but they were vehemently opposed to being treated in a racially discriminatory manner.

Senator ADAMS—You have probably heard me ask this question before: if the Racial Discrimination Act were to be reinstated completely, without these special clauses or measures within the bill, how do you think that would work on the ground? Can you give me an idea, having been into your community? If the whole thing were to be reinstated back to where it was before the intervention, what would be the reaction from the community?

Prof. Altman—In my view, people would find it morally very uplifting. They would view it as a victory for the relatively powerless over the very powerful Australian state—which, we have to remember, is a very rare occurrence for Indigenous Australians. You have memorable occasions like the 1967 referendum, the Mabo High Court judgment and the Prime Minister's apology in 2008. I think this would fit into that level of moral victory. But, in a practical sense, I have always been of the view that the government might be surprised how many people opt in if they are left with the opportunity to have a BasicsCard—which is fundamentally a debit

card—onto which they could put zero to 100 per cent of their welfare income. I think that, if the scheme were made voluntary and individuals had the choice to use a system that has now been put in place at great public expense, they might utilise it.

I also should say that, associated with having the BasicsCard, we now have licensed stores. That has been an unintended consequence of putting in the machinery of income quarantining. Nevertheless, in many places, licensed stores are welcome because they provide people with a level of service that they previously did not have—although, in some other places, where they have two or three stores that have operated well and there has been a bit of local competition, the licensing of stores has been totally unnecessary.

Ms Vivian—I would only add that I think that something that has come out of much of the research, and from the review board's report, is that the intervention—and I suppose the removal of the Racial Discrimination Act in particular—has resulted in a great deal of hostility towards the government and there is a very strong feeling of abandonment. The kinds of words that are used are 'suspicion', 'humiliation', 'anger', 'distrust', ' hostility' and those kings of things. So reinstatement of the Racial Discrimination Act in total would be a minimum requirement, I think, for that resetting of the relationship that is supposed to be directing these amendments.

Prof. Altman—Then, as I think ACOSS suggested, we might think of what sort of intervention regime—bearing in mind that intervention per se is not a bad thing where you have got deep social problems. We saw a massive intervention in Australia with the global financial crisis, that most of us approved of. But we have just got to design an intervention that will actually generate positive outcomes and will not put the Australian state at loggerheads with some of its black citizens.

CHAIR—Thank you very much, Professor Altman and Ms Vivian. We appreciate your evidence, as always. If there is something that this discussion has stimulated that you want to add, please be in contact. We are due to report on 9 March.

Ms Vivian—Thank you.

Prof. Altman—Thank you very much. Good luck with your reporting deadlines.

Senator CROSSIN—It's not the deadline we're worried about; I think the content is going to give us more grief!

Proceedings suspended from 12.52 pm to 1.31 pm

CROWE, Ms Charmaine, Policy Coordinator, Combined Pensioners and Superannuants Association of New South Wales Inc.

CHAIR—Welcome. Thank you very much for your submission and for your attendance today. I know the timeframe has been very tight and I assure you that every senator will have access to all your comments on *Hansard*.

Ms Crowe—I understand.

CHAIR—People will be coming in and out, but that does not reflect on the respect we have for your evidence. You have information on parliamentary privilege and the protection of witnesses. I invite you to make an opening statement and then we will go to questions. At the end of your opening statement, the remainder of the available time will be given to the senators who are here—I will divide it up between them.

Ms Crowe—I thank the committee for its invitation to participate in today's inquiry. The Combined Pensioners and Superannuants Association represents pensioners of all ages, superannuants and low-income retirees. Our advocacy and policy work concerns all income support recipients. We are obviously concerned about the income management component of this bill and its impact on the target groups, being sole parents, the long-term unemployed and youth allowance recipients who are outside of education or training. We are also concerned about the indirect impact on a relatively small number of age and disability support pensioners.

CPSA supports the reinstatement of the Racial Discrimination Act. In our view, this reinstatement should not be conditional upon compulsory income management a) remaining in the current affected communities and b) being rolled out on a national basis.

CPSA fundamentally opposes the assumption that certain income support recipients are unable to manage their finances responsibly, which is an assumption that compulsory income management makes. CPSA does not consider compulsory income management an appropriate tool to address social disadvantage. There are myriad factors that influence an individual's ability to engage in productive social activities, such as adequate employment opportunities, education, secure and affordable housing, health, transport and, last but not least, adequate income. Access to employment is something that is out of reach for many. We have a serious concern about long-term unemployed people, especially older people who are beneath age pension age. We fear this group will be affected disproportionately because of the difficulty they have finding work, evidenced by their average period of time spent unemployed, being about 69 weeks for those aged over 54. We believe that this may be extended once the age pension age is lifted beyond 65.

CPSA is also concerned about the implications for age and disability support pensioners, who are classified as vulnerable welfare payment recipients, as well as those with payment nominee arrangements, as they also may be subject to income management simply because their payment nominee is. CPSA is concerned that income management will be used as a principal tool to address the issue of financial abuse of older people or people with a disability. Income management of a victim's income will not necessarily stop this type of abuse, as it would still be possible for the perpetrator to take advantage of discretionary funds, household goods or any personal savings accrued that do not come under income management. I acknowledge that it is not the intent of the legislation to solve the financial or elder abuse issues; however, our concern is that the legislation may water down responsibility of governments to deal with the underlying causes of this type of abuse and also appropriately deal with the issue when it is identified.

Finally, the use of the BasicsCard has serious implications with regard to a person's dignity. The BasicsCard shows that the individual using it is in receipt of an income support payment and has therefore potentially not yet been able to prove to Centrelink that they can handle their finances responsibly. We believe that this leads to shame and humiliation and that it also breaches an individual's right to privacy. CPSA opposes this measure, too, on the basis that it removes the possibility of using cash for payment, which for many is the only trusted form of payment. It also of course adds another layer of complexity and inconvenience with regard to the disbursement of funds.

CPSA is supportive of volunteer income management. Given the lack of evidence supporting blanket income management as well as the considerable cost of its administration, we see a voluntary system as the only way that this legislation could be put into practice without violating the rights and the dignity of the people on whom it will be imposed.

Senator SIEWERT—One of the issues that has come up a couple of times is around the ability of people on pensions to manage their money. It has been put to us that, rather than being poor money managers, people

on income support and pensions are in effect very good money managers because they have to manage with a limited amount of money. Has that been your experience with your members?

Ms Crowe—Certainly with our constituency, yes. Simply by virtue of their income being incredibly low, they really have to try very hard to make every dollar count as much as possible. We find that people have amazing ways of ensuring that that takes place. People will put aside money to ensure that they can pay quality bills on time, for instance. People will seek out savings anywhere that they can save—for instance, from the supermarket to petrol—and go to extraordinary lengths to do so. In our experience, we would say that people who are in receipt of pension allowance payments are very good managers of their payments because they really have to be.

Senator SIEWERT—The other issue that has been put to us is that income quarantining a portion of people's income support affects their ability to manage debt. Do you have any comments on the issue?

Ms Crowe—Is this with regard to income managed funds and perhaps not be able to pay off debt?

Senator SIEWERT—To pay off debt, but also the comment was made that if 50 per cent of the funds are not managed people sometimes allow one bill to run up while they pay another. There was an example from Western Australia where, as you are aware, they have income quarantining—not blanket income quarantining but targeted. It may look as if they are not managing their money but, as you previously said, it is quite difficult on a small income. But income management says, for example: 'You will pay your rent out of your 50 per cent. You will pay this.' In other words, as you said, they cannot weigh up which bills are the priority bills.

Ms Crowe—I think that compulsory income management would have an impact on those groups of people, for instance, people paying off utility bills. I can give one example of someone who is effectively constantly in debt with the utility providers, an electricity provider and their local council. They have high bills because of their needs at home; they need to use air conditioning on a constant basis. Because he is constantly in debt, this person manages it by paying off the most demanding debt first and working like that. So this person will select between the two. I think that the nature of the income management will certainly, at the very least, impact on people's ability to do that sort of thing, if not inhibit it to a large degree.

Senator SIEWERT—In terms of your constituents or your members, have you had much involvement in the Northern Territory with the current income quarantining process?

Ms Crowe—No, we have not. The Combined Pensioners and Superannuants Association is a New South Wales based organisation.

Senator SIEWERT—In terms of the work you have done looking into this, do you think the evidence base is sufficient to justify the government going down this line in reform to the way they deliver income support?

Ms Crowe—No, I do not. I think that the evidence base is flawed in many ways. First and foremost, there was a lack of evidence before income management came into place, the compulsory income management element of it, and I am sure that the committee has heard this sort of thing before. Furthermore, there seems to be a lack of qualitative evidence to suggest that compulsory income management has been of benefit to the communities that it has concerned. Finally, it seems to us that evidence supporting the rollout of income management has been primarily focused on some limited benefits. Yes, there have been some parts of affected communities that have benefited from it, or certain individuals who have benefited from it, but I do not think that it can be said that the entire community, firstly, sees income management as a good thing and, secondly, have really seen any benefit from this measure. So we do have serious issues with the evidence that is supporting this measure, as is evidenced in our submission.

Senator SIEWERT—In terms of voluntary income management—and you touched on that earlier—you do not have an issue with providing a mechanism for voluntary income management, do you, if someone wants to take it up on a voluntary basis?

Ms Crowe—No, we do not, or indeed with an extension of the Centrepay service. There are a lot of services that do not offer Centrepay and we think that, even if that were to be extended, in many areas voluntary income management may not be possible because the stores do not accept it. But for those in the individuals I referred to before who see income management as a good thing, we do not see why they cannot have access to a voluntary system and, if it is of benefit to them, then they can still take advantage of it without the requirement for income management to be rolled out on a compulsory basis.

Senator ADAMS—I have a question about the reinstatement of the Racial Discrimination Act. As you are aware, it is not completely reinstated under this legislation. Have you got any comments about that?

Ms Crowe—I guess our submission did not focus on the reinstatement of the Racial Discrimination Act; it has focused on the income management part of it. I do not have a legal background but I will say that CPSA would like to see the full reinstatement of the Racial Discrimination Act to ensure that people's rights are upheld.

Senator ADAMS—As far as the income management, have you had any positive feedback that income management has worked especially with the Northern Territory communities?

Ms Crowe—We have not been in touch with the Northern Territory communities affected by this because we are a New South Wales based organisation. What I will say, having just read some of the research into the intervention, is that some older people, in particular, felt that harassment for money had reduced under the measures, because their income was managed. My response to that would be that I can understand how some people would experience a benefit in that respect but, from our point of view, the issue of elder abuse is quite a complex issue. Nine times out of 10 it is not simply an issue of people's finances being abused; there are other elements involved. It might be psychological abuse—a whole range of things. Our concern is that using the harassment-for-money argument as a reason why compulsory income management should be rolled out does not stand up for us. Our other concern is that it may well water down responsibility of governments, not just the federal government but state governments as well, to ensure that there are proper avenues in place for people who may be experiencing elder abuse or financial abuse to take advantage of.

Senator ADAMS—I am from Western Australia. I was going to ask you about the trials over there but I guess that, seeing you are New South Wales based, you probably do not really know about the issues. I was thinking about pensioners—someone with a disability or a pensioner who has a child at school who is not doing the right thing, or the child is being neglected. Have you had any evidence from or correspondence with anyone in Western Australia that is under those trials? There are a number of suburbs in Perth now that have been rolled out to encompass the situation with regard to truanting and having their income managed from there.

Ms Crowe—No, we have not had any correspondence with people who have been directly impacted by the trial or who know someone who is. I will say, though, that it seems to me that there is a case management approach being taken with this trial and that has been relatively successful. It is also quite targeted. With regard to sole parent pensioners and aged or disability pensioners who are looking after children, where there are issues of truancy, for instance, it is not always necessarily the parents' actions which result in that. The child may be playing truant without the parents necessarily being directly responsible. So we would want to see some sort of case management approach that addresses a number of issues and not just see someone's limited income managed in order to deal with those issues. They are quite complex.

Senator SIEWERT—Have you had a look in the legislation at the proposals that deal with vulnerable people? As the name suggests, that is specifically designed to cover vulnerable people but in particular I would suggest it covers pensioners who are now not covered through these measures, if they are accepted through these measures. Have you had a look at that issue?

Ms Crowe—We have. In our view, it is somewhat light on detail as well. The issue of vulnerable welfare payment recipients may well prevent certain people from approaching Centrelink to seek help because of their concern that their income will be subject to income management if the social worker deems them to be in severe financial crisis, for instance. That would be our primary concern. These people need to have complete trust in the social workers at Centrelink for them to even approach them in the first place, and we fear that this measure may remove some of that trust. We find that many of our constituents do not trust Centrelink at the best of times, so we have a fear that this measure may exaggerate that.

Senator SIEWERT—I think it was the Welfare Rights Network submission—do not quote me, because I have read so many submissions that, I must admit, I forget who said what—that talks about that issue and raises concerns when people approach Centrelink. For example, in the Northern Territory there are a lot of people who already have a pension and they are worried about telling Centrelink personal information. That is what you are getting at, isn't it—

Ms Crowe—Yes.

Senator SIEWERT—that they are worried that if they tell personal information they then might be classed as vulnerable and they do not want to have their income quarantined?

Ms Crowe—Absolutely. We would share that concern. Whether or not they will actually be classified as a vulnerable welfare recipient, even if that fear is still in place, it may prevent them from seeking help. That would be of major concern to us, because often these people do need it.

Senator SIEWERT—It is not just about seeking help from Centrelink. Whether it would happen or not, if they went to another service for help—another support agency—and said, 'I'm being harassed,' or there is abuse happening, if they sought that sort of help they may be worried that that would get back to Centrelink. Is that what you mean?

Ms Crowe—Yes, they would. Indeed, in some instances that actually takes place—if someone has fallen behind in their repayments for something like a funeral, for instance. We have encountered people who have had a debt collection notice filed against them and the provider in question has contacted Centrelink. I can imagine that there would be a number of instances where that may well happen.

Senator SIEWERT—The other issue that has been put to me is that anybody on income support could be classed as vulnerable because they seem to be living near the poverty line and that could be defined as vulnerable. Do you have a comment on that?

Ms Crowe—Yes, absolutely. If you are dependent on income support as your main source of income, it is very low. Obviously there are variations between the way that people can manage those finances. It depends on a multitude of things—whether they own their own home, whether they are renting in the private market or whether they have a severe disability which is quite costly. If someone is renting in the private market and also has a disability which costs quite a lot, I could imagine that in many instances they would find themselves in a state of financial crisis and that may, in turn, result in them ending up on compulsory income management, because they were deemed to be a vulnerable welfare recipient. I am not saying that this would happen across the board, because at the end of the day it is a social worker's decision and it also depends on whether the individual is referred to a social worker. I could certainly see that there would be instances where age and disability support pensioners in particular would be subject to the measures.

Senator SIEWERT—In terms of your experience with Centrelink regarding resources—if this rolls out, for a start in the Northern Territory and then in other areas around Australia—what would you say is Centrelink's capacity to address the additional caseload they will need to deal with?

Ms Crowe—First and foremost, they will have to grossly increase the number of staff that they have. Already people find it difficult to get through to Centrelink by phone, for instance. So I would imagine that a measure of this magnitude is going to exaggerate that problem quite substantially and demand a huge boost to their resources. I note that, where payment cannot be made with the use of a BasicsCard, it is possible to contact Centrelink to arrange payment to be made either electronically or by cheque from the person's income managed funds. I would imagine that is going to create a huge amount of work where people cannot use their BasicsCard for whatever reason. This is going to require a significant boost to Centrelink's resources just to handle the workload.

Senator SIEWERT—In New South Wales, what do you think the community's understanding or awareness is of these particular bills and what is proposed in terms of welfare reform?

Ms Crowe—I will talk with regard to age and disability support pensioners, who our main constituents. I think there are a large number of them who are simply not aware of what is going on. That is understandable, because the measure does not directly affect them. As far as allowees and parenting payment recipients are concerned, it is hard to say. I think the other element to this is that it is unknown which areas are actually going to be subject to this sort of reform. I would imagine, if I were a welfare recipient who could potentially be subject to this reform, I might not even be aware that my area would be classed as disadvantaged—indeed we do not know which areas are going to be classified as disadvantaged. The whole state may be classified as disadvantaged, because the legislation allows for that. There are a lot of unknowns with this legislation. If it were to be rolled out, it would not surprise me in the least if people were throwing their hands up in the air with regard to it because they simply were not expecting it.

CHAIR—As there are no further questions, Ms Crowe, we thank you very much for your contribution and for your ongoing interest. Your organisation significantly gives evidence to our committee, so we do value it.

Ms Crowe—Thank you.

[1.59 pm]

CHIDGEY, Ms Sarah, Assistant Secretary, Criminal Law and Law Enforcement Branch, Attorney-General's Department

DANIELS, Ms Helen, Assistant Secretary, Attorney- General's Department

FIELD, Mr Anthony, Group Manager, Legal and Compliance Group, Department of Families, Housing, Community Services and Indigenous Affairs

HALBERT, Ms Cath, Group Manager, Office of Indigenous Policy Coordination, Department of Families, Housing, Community Services and Indigenous Affairs

HEFEREN, Mr Rob, Deputy Secretary, Department of Families, Housing, Community Services and Indigenous Affairs

LITCHFIELD, Mr John, Branch Manager, Land Reform, Department of Families, Housing, Community Services and Indigenous Affairs

MATTHEWS, Mr Gavin, Branch Manager, Welfare Payments Reform, Department of Families, Housing, Community Services and Indigenous Affairs

SANDISON, Mr Barry, Acting Deputy Secretary, Department of Families, Housing, Community Services and Indigenous Affairs

SMITH, Dr Bruce, Branch Manager, Department of Families, Housing, Community Services and Indigenous Affairs

STEHR, Ms Elizabeth, Branch Manager, Money Management, Department of Families, Housing, Community Services and Indigenous Affairs

CHAIR—Welcome. You have information on parliamentary privilege, and I know you are experienced at this process. I have to put on record that, as departmental officers, you will not be asked to give opinions on matters of policy, though this does not preclude questions asking for explanations of policy or factual questions about when and how policies were adopted. Mr Heferen, I believe that you will be leading and that you have an opening statement. We have already talked amongst ourselves about the fact that it will be longer than we usually have, but we think it is important because the evidence you have is a result of looking at the *Hansards* and the evidence that the committee has had. Is that accurate, Mr Heferen?

Mr Heferen—That is correct.

CHAIR—Could we get your opening statement tabled as well?

Mr Heferen—Certainly. I am sure we either have or will have a copy to table.

CHAIR—Thank you.

Mr Heferen—Thank you, Chair, and thank you, Senators. The Department of Families, Housing, Community Services and Indigenous Affairs, FaHCSIA, has been monitoring the issues raised in the hearings and those outlined in the 90 or so submissions that have been provided to the committee. A range of issues have been discussed by witnesses before this committee and in their submissions. In a number of cases, there are inaccuracies and misunderstandings. Given the far-reaching reforms to be delivered through this legislation, we believe it is important that these be addressed. I therefore seek—and hopefully I have obtained—the committee's indulgence to make a longer statement than would usually be expected.

Submissions have been made by individuals as well as groups, both Indigenous and mainstream. Submissions have been made by many of the organisations that participated in the NTER redesign consultations undertaken by the government in 2009. The submissions reflect the vigour and openness in the debate of this legislation. In this statement I want to address a few of the key issues that have been raised in a number of submissions and hearings and provide some context in relation to the government's stated position on these. In particular, I will cover issues related to policy rationale and evidence for the new scheme of income management and the effect of repealing the provisions which suspend the Racial Discrimination Act. I will also address comments on the consultation process. Those will be the three key areas I wish to make comment on.

In relation to the new income management scheme, the government's position is outlined in the *Policy statement: landmark reform to the welfare system, reinstatement of the Racial Discrimination Act and*

strengthening of the Northern Territory emergency response. The statement presents a new income management scheme aimed at protecting children and families and helping disengaged individuals. The reforms to income management will assist in delivering a welfare system based on the principles of engagement, participation and responsibility. These reforms are proposed against the background of a policy shift that has been occurring over several decades where closer linkages are being made between eligibility for and delivery of payments and social support arrangements to achieve greater economic and social independence and security for particular groups. This has involved increased use of incentives, conditionality and targeting.

The welfare reforms proposed by the government in this legislation are another step in establishing an active support system tailored to the needs of particular groups who are vulnerable or at risk such as young people, children and those who are disengaged. The government has stated that its intention is to continue this progressive reform of the welfare and family payments system so as to foster and support community and individual responsibility and to tackle the destructive intergenerational cycle of passive welfare. For example, these changes are consistent with a range of existing initiatives and policies and law, such as the 'learn or earn' requirements; the requirement to immunise children in order to access childcare benefit; the government's school enrolment and attendance measure; and state and territory legal requirements for parents to ensure their children are enrolled in and attend school.

In the policy statement which I referred to above, the government has also stated its responsibility to ensure that income support payments are used by recipients in beneficial ways—particularly by vulnerable and at risk citizens. The government believes that the first call on welfare payments should be life essentials and the interests of children. Benefits can be achieved for individuals through income management, including putting food on the table, stabilising housing, ensuring key bills are paid, helping minimise harassment and helping people save money. The government also acknowledges the criticisms that people made in the consultations, particularly around the delivery of the income management arrangements, and is working to improve these.

Income management lays the foundations for pathways to economic and social participation through helping to stabilise household budgeting that assist people to meet the basic needs of life. The new income management scheme proposes to target categories of people who will particularly benefit from the help that income management provides. The new scheme includes incentives for people to engage in work, study and responsible parenting which are widely recognised as key determinants of improved life outcomes. The government has also stated that, in forming its position, it has listened directly to the people affected by income management in deciding that income management can provide a positive beneficial tool to assist people.

We will table copies of the key policy documents and supporting material the government has referred to in outlining its policy. I will now address each of the categories of people to be subject to income management set out in the legislation. The categories are designed to reach people the government considers are most in need of support and assistance, and extend no further than necessary. The government considers income management a beneficial tool to assist individuals move up and out of welfare dependence.

I would first like to refer to disengaged youth. People aged 15 to 24 who have been in receipt of specified payments for more than three of the last six months may be subject to income management under the disengaged youth measure. There is an increasing focus by the government to link income support payments with education, work and socially responsible behaviour. This will assist people to achieve better life outcomes and avoid becoming entrenched in welfare dependency. The Australian government together with state and territory governments through the Council of Australian Governments, or COAG, have agreed to implement a compact with young Australians to ensure that all young people under 25 have the education or training they need to improve their qualifications and ensure they are skilled for a more productive and rewarding life. The compact with young Australians gives young people a very clear message by putting education and training front and centre. Under the compact with young Australians framework, young people under 24, depending on their age, must undertake full-time education or employment to receive youth allowance. This also applies with the parents of the young person who receive family tax benefit part A. This bill is part of a long-standing series of reforms to income support to assist young people. For these reasons, youth have been included in this measure.

I would like to turn to parents. The government believes that parenting payments are intended to support the individual to provide proper care for children. Evidence suggests that without access to education children

have their life chances severely constrained. There are also strong links with disengagement from schools and other forms of social exclusion. The government has indicated that it sees change in this legislation as consistent with the direction of other policies. For example, family tax benefit part A helps low-income families meet the costs of raising children. The government recently introduced changes so that young people aged 16 to 20 years must participate in full-time study to attain year 12 or an equivalent qualification for their families to receive that payment—that is, it is conditional. Similarly, conditions are attached to payments such as maternity immunisation allowance and childcare benefit. Existing state and territory laws stipulate that children of compulsory school age must be enrolled and attending school. Parents will be able to request an exemption from income management if they are able to demonstrate responsibility—for example, by their children attending school regularly.

For the long-term unemployed, people aged 25 and above on specified welfare payments such as Newstart allowance and parenting payment for more than one year in the last two years will be subject to income management unless they meet the exemption criteria. The government has indicated that it wants to address the poor outcomes for people and children growing up in these circumstances, particularly for school attendance and educational and work attainment. The government does not consider income management to be a punitive tool. Rather, it believes it provides the foundations for pathways to economic and social participation by assisting people to ensure the priorities of life are met. Long-term unemployed people on specified welfare payments are therefore being brought under the new income management measure.

I now turn to vulnerable income support recipients. People may be assessed by Centrelink social workers as requiring income management due to vulnerability to financial crisis, domestic violence or economic abuse. It is not intended that a person will be income managed under the vulnerable measure simply by virtue of meeting one or more criterion. Rather, a Centrelink social worker will consider a set of decision making principles, including whether income management is the most appropriate mechanism to apply to support the person. The vulnerable measure is not intended to replace other supports but complement them. Income management is a part of a suite of tools, including the new weekly payments option and Centrepay. The measure provides Centrelink social workers with an additional tool when working with individuals who are vulnerable or at risk. For these reasons, vulnerable people are included in the measure.

I will now turn to child protection. People may also be referred for income management by child protection authorities. The child protection measure is an early intervention tool. Over 200 people are currently on child protection income management in Western Australia. Child protection is one of the triggers to income management eligibility in Cape York welfare reform trials. Children stand to benefit from this measure.

I will note some of the evidence. The government has outlined the sources of evidence it has used in developing its policy position, in particular the following documents, which we will table with the secretariat today: the NTER Redesign Consultation Report from November 2009; the NTER Taskforce *Final report to government* of June 2008; the Government Business Manager Survey from July 2008; the Central Land Council submission to the NTER review, submission No. 37 of July 2008; the Elliott Community submission to the NTER review of 2008; the final stores post-licensing review report of 66 stores of June 2009; community feedback on the Northern Territory emergency response prepared by the Cultural and Indigenous Research Centre Australia, CIRCA, September 2008; and the Australian Institute of Health and Welfare, AIHW, evaluation of income management in the NT of August 2009.

In its final report to government in June 2008, the NTER task force noted that women in many communities supported income management because it ensured money was available for food and other necessities for children, reduced harassment for money, or humbugging, and provided a basis for developing household budgeting skills. In July 2008, a survey of government business managers, GBMs, reported that harassment for money—humbugging—had decreased in 39 per cent of communities. It also reported a reduction in the amount of gambling taking place in communities and the amounts wagered in individual games. In the stores post-licensing review report from June 2009, over two-thirds of store operators identified an increase in the amount of healthy food purchased, including fresh fruit and vegetables, dairy products and meat. Operators also noted a marked change in household money management patterns, with whole families, including men, becoming more involved and cooperating to meet household needs.

In its July 2008 submission to the NTER Review Board, the Central Land Council reported an increased household expenditure on food and children, including an increase in men's contribution to family shopping expenses, reductions in gambling and drinking and improved quality of stock in community stores. According to the community feedback survey undertaken by CIRCA, respondents reported several positive outcomes,

including increased purchases of food and other essential items; increased savings; reduction of alcohol consumption and gambling; increased ease of paying bills; and reduction in family tension. The AIHW evaluation reports evidence from client interviews and stakeholder focus groups that there were improvements in the wellbeing of children due to increased consumption of healthier food, and improved community wellbeing due to less alcohol abuse, less gambling and less humbugging. The above findings are similar to the views expressed by many people in the NTER redesign consultations about the benefits they were seeing from NTER measures.

I would like to turn to other key issues raised in relation to income management. A number of other comments have been made in relation to the administration of income management. Will people have access to appropriate support services? The new scheme of income management will be supported with a significant expansion of the financial counselling and money management services in the NT. Money management services provide practical and essential support to help people build longer-term capability to manage their money better and increase financial resilience. They are delivered in remote locations with high Indigenous populations. Services are voluntary, confidential, free, and open to the broader community. People with complex financial issues or those in financial stress or crisis will be connected to financial counsellors and/or emergency relief services, as well as to other support services. In addition, people will continue to have access to existing services offered, such as Job Services Australia and a range of Commonwealth and NT government funded community services.

Some other criticisms have been outlined, and we have some material in relation to that. I might leave that for tabling. I would however like to note one criticism, and that is that appeals rights will be limited. Under the new scheme of income management, full review and appeal rights will be available to all people subject to income management. Like other social security decisions, people will be able to appeal when a decision has been made and they do not think the decision maker has got it right or properly applied the rules in accordance with the legislation.

I also note that there has been some criticism that too much detail is left to delegated legislation. The government considers these legislative instruments to be the most appropriate mechanism for defining those parts of the legislation as they will provide future flexibility, should this be necessary. Of course, these instruments are all disallowable, which provides parliament and, in particular, the Senate, with the opportunity to scrutinise and, if appropriate, disallow.

A number of common service delivery issues have been raised which I would like to respond to now. Turning firstly to the BasicsCard balance inquiries and the need for more merchants, there are a number of things in place to improve ways for people to check their BasicsCard balance. For example, a free call number, allowing people to access their BasicsCard balance, and hot link phones in most community stores are two recent innovations to improve service delivery. Facilities are available in Centrelink offices for customers to check their BasicsCard balance at no cost to the customer. The Department of Human Services is also currently considering other strategies to enable customers to check their balance more easily. As stated in our previous evidence to the committee, we recognise that a key issue in implementing the new measure will be increasing the number of merchants and reviewing the current scope of types of merchants who approve the BasicsCard.

I mention here the need to improve communication. As part of the implementation of the new scheme, Centrelink and FaHCSIA will develop detailed urban and remote communication strategies for the new scheme of income management, tailored to different audiences, including customers, merchants, intermediaries and staff. Work is currently underway on a range of products, including letters to affected customers, radio advertisements, posters, outreach kits for community organisations, presentations and community information sessions, DVD and CD presentations and written and audio fact sheets. Newly affected customers, including culturally and linguistically diverse customers, have been considered and will be included in the development of communication strategies and products. Key information will be translated into a variety of Indigenous and non-Indigenous languages. Whilst we are focused here on welfare reforms, the government believes that the full package of measures in the bills will benefit Aboriginal people by strengthening the NTER measures.

I will turn now to the reinstatement of the Racial Discrimination Act, in particular dealing with the 'notwithstanding' clause. A number of submissions have suggested that the bill will not restore the operation of the RDA and that an express clause is necessary to ensure that the RDA applies to the NTER. An express provision stating that the RDA applies in relation to the NTER is not necessary or, we think, desirable. It is not

necessary, because the reinstatement of the RDA is clear. The bill repeals all of the provisions that exclude the operation of the RDA in relation to the NTER. The effect of the repeal is that the RDA will apply to the NTER, but the repeal is not retrospective. There is no need for an express provision which states that the RDA 'applies' to the NTER because the repeal achieves that intention.

Schedule 1 of the bill removes all of the provisions that exclude the operation of the RDA and also all of the provisions which state that the measures are 'special measures'. The effect of this is that, following the repeal, the RDA will apply to the NTER, and people will have their rights to bring appropriate proceedings. A complaint in relation to the administration of the NTER can be made in the usual way to the Australian Human Rights Commission and, then, to a court, or if there are disputes about the operation of the legislation itself these can be raised in proceedings in a court. Of course, whether there has been a breach of the RDA in a particular case will still need to be determined by the commission or the court.

The intention of the bill is clear from its face, and this is supported by the numerous statements of the minister and the government. The second reading speech states that the provisions that modify the operation of the RDA, and the provisions that deem the legislation and acts to be special measures, are to be repealed. Pages 5 to 10 of the explanatory memorandum contain a number of statements about the effect of the repeal, including a clear statement that the RDA will no longer be excluded. Page 8 of the Future Directions Discussion Paper of May 2009 also makes clear the government's intention to remove the provisions that exclude the operation of the RDA. The policy statement issued on 25 November 2009, when the bill was introduced, states that all the laws that suspend the operation of the RDA will be repealed from 31 December 2010. Even the title of the bill itself makes it clear that the bill deals with the 'reinstatement of the Racial Discrimination Act'.

While some other laws do contain express statements that the RDA applies to those laws, the inclusion of such a provision in this bill is not necessary, because of the text of the bill, the history and the supporting documents. It is not desirable to include a provision stating that the RDA applies in relation to the NTER, because it is not good practice to include in legislation provisions that are not necessary, and such a provision is not necessary here for the reasons I have outlined above. Inserting such a provision could lead to the argument that similar provisions must be included in all acts made since the RDA in 1975, which has wide-ranging implications. In the circumstance of this bill, such a provision is not necessary to provide clarity and its interpretation could provide an additional matter for dispute.

If I can now turn to the third of the key issues that I mentioned at the start—that of consultations. The consultations followed from the government's acceptance of the overarching recommendations of the NTER Review Board, including that it would reset its relationship with Indigenous people based on genuine consultation, engagement and partnership and that it would reinstate the RDA in relation to the NTER. From the outset, the minister made it clear that the consultations would be open and fair and the government would listen to what people had to say. In the foreword to the discussion paper, the minister said:

We are prepared to really listen to people's views.

We will be consulting throughout the NT and want to hear the views of those affected by these measures.

The consultation report sets out in considerable detail the arrangements for the consultations. It presents the diversity of views expressed in the consultations. The policy statement shows the consultations informed policy development.

A number of remarks about the consultations were made in the submissions and transcripts, including that the consultations were not open or fair, were not clear, did not reach everyone and that there were insufficient numbers of interpreters. We reject these assertions. I will provide the following comments to address these assertions and correct what we believe to be inaccuracies. In terms of open and fair consultations, the discussion paper at page 3 clearly indicates the initial proposals were a starting point for discussion. The discussion paper went on to say that:

The Government is open to ideas and proposals. It will listen to ideas put forward in consultations.

This openness to seeking people's views is reflected in the questions asked in the discussion paper. The questions asked people what they thought about the problems as well as benefits, how key measures could be improved, what difference it would make if the measure was changed, whether the change was better than the existing arrangements, whether there were other ways of achieving the same aim and whether people would benefit from a continuation of the measure. Openness and fairness is shown in the different types of

consultation meetings and workshops offered, the coverage across more than 73 communities, the variety of people invited to the consultations and the diversity of people who participated in the consultations.

The openness and fairness of the consultations is shown in the steps the government took to be inclusive. Page 17 of the consultation report refers to the opportunities for vulnerable, shy and hard-to-reach people to convey their views in a way that was comfortable, safe and flexible for them. The open door tier 1 meetings with local government business managers, or GBMs, enabled anyone in the community to come and talk with a GBM about their concerns and views. There were over 400 such discussions. This shows that many people took up this opportunity.

CIRCA monitored the consultations. CIRCA commented on the importance of the tier 1 consultations for people who might not ordinarily speak up because of their social position and rules about who can speak. It is also important to note that the community level consultations, tiers 1 and 2, involved community people conveying their views directly to government officials, not through intermediaries. CIRCA also commented at page 8 of their report that in all meetings observed by CIRCA the vast majority of those attending were Indigenous people directly affected by the NTER.

As I said earlier, the discussion paper was only a starting point. The consultation report provided a synthesis of views expressed in the consultations, identifying common themes and the diversity of views. The consultation report recorded criticisms as well as positive comments. Indeed, many of the submissions quote the consultation report to support their arguments opposing the redesign measures. Amnesty International representatives have told the committee that the consultation report 'captured the gist of what people were saying'. Page 3 of the policy statement says:

> The consultations were conducted in the spirit of genuine consultation and engagement with Indigenous people. The Government has listened to what people had to say and carefully weighed up the feedback given to it during the consultations and the other evidence in reaching its position.

After considering the views expressed in the consultation, the government changed several proposals, including income management, amending the police powers relating to alcohol laws, the pornography measure and the business management area powers. This is documented in the policy statement.

Some views have been expressed that the consultations were not independent because they were conducted by public servants. We believe it is the role of the Public Service to assist the government with the administration and development of policy. Public consultation is integral to this role and public consultation is conducted by officials in many fields of endeavour.

I will turn to the comprehensiveness. Some submissions cast doubt on the comprehensiveness of the consultation. The committee has already been informed that these consultations are possibly the most comprehensive consultations conducted with Aboriginal people in the Northern Territory. I draw the committee's attention to page 3 of the policy statement, which provides a brief description of the consultations:

> The consultations involved people across the 73 communities affected by the NTER as well as several other Northern Territory Indigenous communities and town camps. There were over 500 consultation meetings in communities, attended by several thousand people, as well as workshops with regional leaders and stakeholder organisations. The majority of workshop participants were Indigenous people who either nominated as individuals or were selected by their community or organisation to speak on the community's or the organisation's behalf.

Community leaders and service provider representatives were encouraged to attend the tier 3 and 4 workshops. Members of the Northern Territory government's Indigenous Affairs Advisory Council also participated in the consultations.

I turn to the adequate notice of consultations Some submissions say that inadequate notice was given for the whole-of-community or the tier 2 consultations, and that this reduced attendance and undermined confidence in the consultation outcomes. This is also referred to in the *Will They Be Heard* report written by former Chief Justice of the Family Court, the Hon. Alastair Nicholson, Professor Larissa Behrendt, Ms Alison Vivian, Ms Nicole Watson and Ms Michele Harris, under the auspices of the Jumbunna Indigenous House of Learning. This report has become known as the Nicholson report.

Government business managers worked closely with communities to schedule tier 2 meetings to suit community preferences. Government business managers and Indigenous engagement officers worked actively in communities to raise awareness of the issues prior to tier 2 meetings, including with posters, letterbox drops and word-of mouth-advertising. A copy of the poster can be provided to the committee. In some instances

where funerals or other cultural business prevented people from attending meetings, additional tier 2 meetings were arranged.

We looked into one of the examples given in the Nicholson report about inadequate notice. Contrary to the information in the Nicholson report, we have been advised that in relation to a tier 2 meeting held at Bagot on 28 July 2009, that on 13 July 2009 notices about the meeting were delivered to each house in the community except for a house where sorry business was under way. A notice for this house was delivered on 17 July. The notices were delivered to each household by the Indigenous engagement officer and the Government business manager. The Indigenous engagement officer posted the notices at the community store, council office and health clinic before the meeting. The schedule of consultations was also available from the department's website. The consultations were advertised on radio in English and in thirteen Indigenous languages.

I will turn to comments about clarity. There have been some comments that the information provided to people in communities was not clear and could not be understood. Considerable effort was taken in the drafting of the discussion paper to ensure that it was written in plain English as far as possible, and that measures were clearly explained. GBMs and Indigenous engagement officers were available and willing to explain the consultations to anyone who asked. Further, the tier 1 and tier 2 consultation meetings in communities were occasions to ask about the purpose of the consultation and the measures if people did not understand them.

Our experience in other consultation and communications activities has been that among the majority of Indigenous people being consulted the preferred method of communication is oral rather than written. People are not necessarily any more literate in using the written form of Indigenous languages than they are in English. Given the large number of Indigenous languages spoken, it would have been logistically very difficult and expensive to translate longer documents. It was felt that it would be more effective to use interpreters to the maximum extent possible.

I will turn to interpreters. Some criticisms of the availability of interpreters have been made in submissions and the Nicholson report. It is important to point out that not all Indigenous communities need the assistance of interpreters. Indigenous coordination centre managers, GBMs and Indigenous engagement officers who work closely with communities advised on the need for interpreters based on their judgement of need and knowledge, and experience of working with these communities. It was decided in the early planning of the consultation process in the Northern Territory that, where needed, interpreters would be engaged to assist with the whole-of-community or the tier 2 consultations.

The department worked closely with the Northern Territory Aboriginal Interpreter Service to ensure that interpreters were available in as many places that needed them as possible. To our knowledge, this was the first time that interpreters were factored in as an integral part of a consultation process on such a significant scale. Interpreters were present at almost two thirds of the tier 2 consultations.

The Nicholson report identifies three communities where it has been said that interpreters were not present when their presence would have been helpful. We have examined each of the three case studies in the Nicholson report. We have been advised that in one of these communities the GBM took advice from the community council. The majority of the community's leaders sit on this council. The GBM advised that the engagement of interpreters was offered and that the council said no interpreter was required.

In the other two instances interpreters were booked and attended the tier 2 consultation meetings but their services were not used as originally planned. We understand that in one case the interpreter assisted in interpreting the women's session while a community leader interpreted the men's session and the initial whole-of-community meeting. In the third case the interpreter did arrive, held a discussion with a community leader and subsequently informed the ICC manager that the community leader would be interpreting at the meeting. There was a range of factors that led to interpreters not been able to be booked or attend consultation meetings. These included other more urgent work, such as assisting a seriously ill person, transport problems, illness and relationships with community members.

Governments acknowledge that more needs to be done to build the capacity of interpreting services and the capacity of departments, agencies and officials to better use these services. In the 2009-10 budget the government allocated $8 million over three years to further develop and strengthen interpreter services in the Northern Territory. There will be a joint Commonwealth-state investment of $39.6 million over five years to expand the use of interpreters under the remote service delivery national partnership.

I turn to the role of CIRCA. Several criticisms have been made of arrangements for CIRCA to observe a number of the consultations. These criticisms include possible lack of independence of CIRCA and that, because the monitoring was only in relation to tiers 2 and 3, it was not comprehensive. In response to comments about independence, while CIRCA has been contracted on other tasks for the department, the relationship is transparent. CIRCA was selected to observe a number of the consultations because officials had over time found that it worked well in remote Indigenous communities and understood the cultural and research protocols involved. The consultations were concerned with resetting the relationship and we needed to be confident that the role undertaken by CIRCA was conducted by an organisation that understood and was able to work in this frame.

CIRCA's report contains criticisms, praise and sound advice on improvements for the future. CIRCA and its staff conducted their work with utmost professionalism, independence and impartiality through the consultation process. In relation to criticisms about CIRCA's role, it was not appropriate or practical to observe the tier 1 consultations. As mentioned before, these were meetings of individuals, families and groups with the GBMs in each community. They were designed to be opportunities for people who might not be comfortable talking in larger groups. The presence of a third party may well have discouraged participation. Many tier 1 meetings were open-door and unscheduled, making it difficult to organise a third party to be present. The tier 4 consultations involved senior community leaders and advocates. Observing this tier was unnecessary given the public advocacy experience and assertiveness of many of the participants in the workshops.

I thank the committee for allowing the time to make this statement. I conclude there.

CHAIR—Mr Heferen, I hesitate to ask whether the other officers have similar opening statements!

Mr Sandison—No.

CHAIR—Senator Siewert has just received some fairly shocking news, so we will ask the senator to start and then we will go issue by issue. Senators Adams and Crossin, if you have questions on the same issue, I expect you to jump in. I think that will be easier than going into set blocks.

Senator SIEWERT—Could we start with the RDA.

CHAIR—The legal issues around the RDA?

Senator SIEWERT—Yes. Until we see your advice, with all due respect, it is hard for me to say, 'I believe FaHCSIA now,' because, overwhelmingly, all the legal advice that we have received says that (a) you need the notwithstanding clause and (b) the RDA is not fully restored through these measures. We have seen the Law Council's advice, we have seen the Human Rights Commission's advice and we have seen the NLC's advice, but we have not seen your advice. I cannot sit here and compare your advice with other people's advice. I have to say that the Law Council last night was particularly compelling. When do we get to see your advice?

Mr Field—The answer to that question is the same as we gave in estimates and, I think, previously when we met. The government's position in relation to legal advice is that we tell you that we have received legal advice, and we have confirmed that, particularly in relation to income management. It is a question for the minister as to whether that advice is to be provided. That question, as I understand it, has been asked of the minister. Regarding the question behind it, which I think is about the need for the express application clause, would you like me to address that and our view?

Senator SIEWERT—Yes.

Mr Field—As we said in the introduction, we do not think it is necessary or desirable—so it goes beyond just not being necessary. We have been following the arguments, but we have not had the benefit of seeing the legal advice that it sounds like you have had the benefit of considering. We just do not think it is necessary. The bill itself has in its title 'Reinstatement of Racial Discrimination Act'. The explanatory memorandum, the second reading speech and a number of the other documents make it quite clear what it is doing. It is true that the reinstatement of the RDA is not retrospective, and so it is not as simple a proposition as the RDA suspension, the RDA exemptions never having been there. They were there; legally, they will remain having been there. But, if the bill is passed, from 31 December this year the RDA exemptions—all of them, in all of their text—will be removed. So maybe it is one view that somehow the RDA is not being reinstated. But, on the face of the legislation, it seems pretty clear that the bill does all that it needs to do to remove the provisions which currently suspend the operation of the Racial Discrimination Act.

Senator SIEWERT—Perhaps it would help us if you were to look at the Human Rights Commission's submission, the Law Council's submission and the transcript of their evidence and respond to the points that

they make, because just asserting that the bill does it, and that the second reading speech makes it clear, does not mean that it does it. It means that the government thinks it does.

Senator CROSSIN—And says it does.

Senator SIEWERT—And says it does—yes; sorry. Just because the government says it does, does not mean that it actually does, and certainly the Law Council and the Human Rights Commission have put a number of points about it not doing it. So maybe you could go through and, in writing, address the specific points that are raised in those submissions.

Mr Field—We have looked at, I think, most of those submissions, and we have tried to keep up with the conversation that has been running, on the TV, to make sure we fully appreciate the points that they are raising. And, from what we have read and heard, we still cannot take the debate a lot further, because their view seems to be that it is necessary because somehow there is an inconsistency between the Racial Discrimination Act and how it might operate in relation to the NTER legislation, actions of administration under the NTER and the legislation itself.

Senator CROSSIN—So, Mr Field, the department has a view that adding the 'notwithstanding' clause actually provides no benefit to the legislation—is that the position?

Mr Field—We think it is very clear on the face of the legislation that the RDA is being reinstated. It is not retrospective, but it is being reinstated from 31 December and adding the clause is just not necessary to make that clear.

Senator CROSSIN—Well, that is the issue, isn't it? Is it not the fact that, if you insert the notwithstanding clause, it is likely that the legislation would be then subject to any retrospective action? That is what the Human Rights Commission put to us this morning—that, in the absence of a specific clause asserting that the RDA will now prevail over the NTER legislation, it will not be a true reinstatement because the latter legislation, the original NTER provisions, where they were inconsistent with the RDA, would prevail over the RDA. There are two issues here. One is the insertion of the notwithstanding clause—and if you think it does not add any benefit to the legislation, why not put it in anyway? And the second one is: if you put it in, is there a problem because people could then take retrospective action?

Mr Field—The answer to the first question, 'Why not put it in anyway?' is: in our view, it is undesirable to put it in because you do not put things in legislation that are not necessary, and in this circumstance it is not necessary. There are other acts which have them and we understand that; we have one in our portfolio's legislation. In other circumstances, we may well put one in. But here it is not necessary; here it leads to a possible argument that we then, with every piece of legislation, need to put it in to make it clear that the RDA applies, and that has implications. And, however we draft it, I would expect it, if we have litigation, to become another topic for conversation. So it does not achieve anything; in fact it probably goes backwards for us.

Senator CROSSIN—What about the retrospective action?

Mr Field—The retrospectivity issue is dealt with separately in the provision in the bill that deals with the application of section 8 of the Acts Interpretation Act. That provision is inserted to make it very clear that the RDA is not being reinstated with retrospective effect. If the bill is passed, the law will be that, as it was in place as an RDA exemption, it remains there in the past, but from 31 December going forward people will have their rights under the RDA and can bring complaints and court action in the usual way through the Human Rights Commission or through the courts.

Mr Heferen—Senator Siewert, you made a request of us earlier. I cannot recall precisely what it was, but it will be clear on the *Hansard*. We will take that on notice, see what we can provide and inform the committee.

Senator CROSSIN—Item 4 of schedule1 in the government's main welfare reform bill, as you said, specifically states that section 8 of the Acts Interpretation Act applies to the repeal of sections regarding the RDA in the existing legislation. Some submissions have argued that this might mean that the RDA will not apply in certain measures in the NTNER. What is your response to that? The submissions would be right—is that correct?

Mr Field—They might be. It will depend on the nature of their argument—and, again, I have tried to follow most of the submissions and most of the conversation. There appear to have been two sorts of arguments. One goes to questions about the effect of the repeal, and I will come back to that; but there also seem to have been a number of arguments which confuse the retrospective nature of the repeal with questions around the desire for people to be able to challenge things under the RDA which have already occurred. This

bill will not allow that, which takes me back to the first point: it is not retrospective. The reference to section 8 just brings forward the usual position—section 8 of the Acts Interpretation Act—and applies unless there is a contrary intention. This bill just makes it very clear that there is no contrary intention in relation to the repeal of the suspension provisions. Things done before 31 December this year will remain subject to the exemption from the Racial Discrimination Act.

Senator SIEWERT—One of the issues that people have been raising around whether they can appeal or not has emerged mainly in oral evidence. It is about being able to appeal under the changes to the issues around special measures. That has been the focus, as I understand it, of most people's comments in the oral evidence we have received—can one take action to challenge the special measures? I just want to clarify that and I have some questions, but I do not want to cut across Senator Crossin.

CHAIR—We are finished on the RDA. Senator Siewert can lead off on special measures.

Senator SIEWERT—There are a number of submissions, as you would be aware, and we did talk about this before and raised issues around whether the measures described in this bill are special measures, excluding income quarantining. I know you said last time that the bill says they are special measures and so they are special measures, but, as I understand it, just because you say there are special measures does not mean there are special measures.

Mr Field—With the repeal of the provisions which currently state that actions taken under the NTER, if I can use that loose language, are basically deemed to be special measures, those provisions are being repealed. So the new bill contains no provision to that effect that deems them to be special measures. In the new legislation we are not saying that they are special measures by force of the act. What is being said in the supporting documents is that the government has redesigned them to be more special measures and that is what they are and that from the repeal of the RDA exemptions, which included provisions that deemed them to be special measures, people will have their rights under the Racial Discrimination Act to bring complaints and court action if they think that they are not.

Senator SIEWERT—I appreciate what you are saying, but my recollection from our previous discussion was that in the supporting documents the government had said they believe these are special measures.

Mr Field—Yes.

Senator SIEWERT—So your belief is that people will be able to challenge them?

Mr Field—From 31 December, should the legislation pass, the RDA will be reinstated and people will have the usual rights to bring appropriate action through the commission and through the courts, subject to the normal position with those actions—for example, the court would have to have jurisdiction and the person would have to have standing. So it would be the usual circumstance.

Senator SIEWERT—I do want to look at a specific bit of the transcript from last night and ask you a question, but I have got to find it. So perhaps Senator Crossin can ask her questions around the five-year leases while I look for this bit.

CHAIR—Senator Adams has questions on five-year leases as well. There has been a large amount of discussion on the five-year lease issue.

Senator CROSSIN—I want to ask for the department's opinion about why the acquisition of the land and five-year leases needs to continue based on two observations. Firstly, where we are moving to put in public housing or upgrade public infrastructure, that is being done by converting those leases to long-term leases through the land councils. Secondly, where that work is not being done, we have government business managers, demountables and a compound of Commonwealth officers. Why is it not possible then to remove the five-year leases and just retain that area of land under a lease that we could negotiate with the land councils through section 19? All of those areas are only about a hectare, if that, so why are we not looking at removing the five-year leases totally from the legislation or in a transitional way and moving to having section 19 leases over the area of land that we currently occupy?

Mr Litchfield—In relation to your overarching question of why five-year leases are needed, before dealing with the two subsequent questions: basically they provide the government with security of tenure over the communities and prompt access for the delivery of services. The leases have facilitated a number of benefits to residents of communities subject to the leases, including the improvement of conditions through the Community Clean-Up program, the installation of safe houses and, as you referred to, government business manager accommodation. The five-year leases very importantly continue to provide the foundation for reform

of property and tenancy management arrangements and housing refurbishments under the Strategic Indigenous Housing and Infrastructure Program, or SIHIP, which are intended to lead to improved living conditions. I make the point that Aboriginal land owners of the five-year lease communities will receive rent in recognition of the government's use of the land.

Senator CROSSIN—Has that started yet?

Mr Litchfield—Those rent payments have commenced for the two five-year leases in the Tiwi Islands region. I think there is recognition in the submission and evidence from the Northern Land Council before the committee that traditional owners should receive payment for the use of their land as a community. The history of the last three decades is that generally traditional owners have not received any payment or in fact any recognition of the use of their land as communities. That is an important point to make. I stress that under the five-year leases the underlying title remains Aboriginal land and all existing interests are preserved. What the measures in the bill do is clarify the purposes and administration of the five-year leases.

Going to your specific questions, firstly you asked about public housing security of tenure and the long-term leases. The government's response to the NTER Review Board recommendations was that it is negotiating long-term leases in a transitional arrangement to replace the five-year leases. As I said in our opening statement several weeks ago, we have had considerable success in negotiating long-term leasing arrangements. Of the 16 communities targeted for major capital works under the SIHIP scheme we have 14 long-term leases either in place or agreed. Those negotiations of further long-term leases are a priority over the coming years.

In relation to your second specific question about why those lease negotiations for public housing are not underway and why doesn't the government negotiate section 19 leases for, for example, GBM accommodation or other government infrastructure, certainly that is one of the suite of options that we are talking about to land councils. There is a range of voluntary leasing options available, where traditional owners consent to the use of their land, including whole-of-township leases and long-term section 19 leases. We have discussions with the land councils over template leases for government infrastructure such as GBM accommodation. The issue is: why aren't we commencing them now? I guess government, together with land councils, has prioritised its work for the coming year. There is a question of resources amongst both land councils and government as to how many leasing negotiations can be done at one time. In answer to your question, the government is committed to voluntary, long-term leasing arrangements over communities, including over government infrastructure.

Senator CROSSIN—Are you putting to us that the provision of the five-year leases in this legislation, which will take us to the end of 2012-13, is still part of a transitional move to long-term leases, and you effectively need that little bit more time in the next two years or so to get that work done?

Mr Litchfield—I think that is a broadly accurate summation. One of the new provisions in the bill before the committee is a new section 37A. That obliges the Commonwealth, at the request of relevant landowners, to negotiate voluntary leases in good faith. That builds on the voluntary leasing discussions we have been having over the last number of years and that we are planning to have. It puts the onus on relevant landowners, if they wish, to come to the government and say, 'We want to negotiate a further lease,' and the government must negotiate in good faith for those arrangements.

Senator CROSSIN—My last question about this is: what do you say to the response that the Human Rights Commission put to us this morning that it cannot be a special measure, because special measures specifically cannot apply to land?

Mr Field—We understand that a number of submissions have put it that broadly. That is a proposition with which we just do not agree. We understand that section 10(3) of the Racial Discrimination Act deals with property, but we do not agree with the bold proposition that you cannot have a special measure that deals with land.

Senator CROSSIN—So that will need to be tested, then, if someone wanted to test it?

Mr Field—Indeed, and once the Racial Discrimination Act exemptions are removed people will be able to do that—I should just add, subject to the things I was talking about before about it being an appropriate action in the courts and through the normal processes.

CHAIR—Anyone else on special measures?

Senator CROSSIN—I wouldn't mind asking about the special measure on pornography. Why can't that be just rolled out across the Territory or across the country? Why does it just have to apply to Indigenous people on communities?

Mr Field—The government has made a decision that it will be rolled out in the Northern Territory as a special measure.

Senator CROSSIN—So it is a policy decision rather than practical limitations?

Mr Field—I will leave it to my colleague from the Attorney-General's Department.

Senator CROSSIN—Probably not politically popular. I think I could get Senator Barnett to agree with me on that.

CHAIR—Ms Daniels, did you hear Senator Crossin's question?

Senator CROSSIN—I will repeat it: why can we not just roll out the pornography requirements across the board? Do we still need to keep them in place just for Indigenous people on prescribed communities?

Ms Daniels—I think the most accurate answer is that that was a policy decision in this particular area.

CHAIR—Could I ask a general question about the questions we had on the special measures? You may have heard it this morning, and it was in some of the other evidence as well. There is a view that the form of consultation did not meet the requirements for special measures consultation, for a number of reasons but specifically because that issue of being a special measure into the future was not covered in the consultations to that extent, and also because these things have been imposed upon the community for the last 2½ years. So you have not had the consultation before they start. You are actually talking about something that is already in place just to be continued. I am just checking to see whether that is a fair—

Ms Daniels—Yes.

CHAIR—And that is how it was presented to us. It was not just the general consultation, which you have addressed, Mr Heferen; it is specifically about special measures under the RDA. We have had clauses from the act itself quoted in our submissions. But on the issue of special measure there is a higher threshold of consultation required before it can be imposed. In terms of that question, how does FaHCSIA on behalf of the government respond to the form of consultation that was held?

Mr Field—If I may answer in two parts, the first part being the consultations and then come back to the RDA and the special measures part of it. The purpose of the consultations was made clear from the face of the discussion paper and the other documents that preceded the consultation. At the time of accepting the three overarching recommendations of the review board, the government also made a commitment to reinstate the Racial Discrimination Act. Without going into the detail of that, the first part of the answer is that the consultations were conducted openly, with transparency and in good faith for the purposes set out in the discussion paper.

Returning to the question about special measures, the position is that some people—and there are a number, including people from different realms, including Professor Anaya and others—have a view about what is required for consultation to be sufficient to be a basis, or an element of, or to found a special measure. The government's position is clear from its actions. The RDA suspension is going to be removed. There are a number of measures there designed to be special measures. People will have their opportunity to bring complaints and to take matters to court if they think that is not the case.

Senator SIEWERT—The question is: was the government's purpose in undertaking the consultation to get prior, fully-informed consent to these special measures?

Mr Field—The answer is no. The reason for that is because the purpose of the consultations is set out in the discussion paper and the other documents. Those purposes related to resetting the relationship continuing the Northern Territory Emergency Response and reinstating the Racial Discrimination Act, which are the three overarching recommendations of the review board that were accepted. That was the purpose that the consultations were entered into for, and that is the way that they were conducted in an open and transparent way.

Senator SIEWERT—Okay. So the government is not attempting to claim that there has been a full, prior informed consent process undertaken before putting in place or saying these measures are special measures?

Mr Field—The discussion paper that formed the basis for the consultations does not use the expression 'consent' or 'prior informed consent' and the government's position in relation to the measures in the bill is

that they are designed to be special measures, the RDA will be restored, and people will have the opportunity should they choose to challenge.

CHAIR—Are there any other questions on the RDA and the special measures? Senator Siewert, do you want to give an indication to the officers what your next area of questioning is going to be on?

Senator SIEWERT—You gave a range of answers to our last set of questions and I have formed some questions around those. A lot of them are around income quarantining and financial support and the various draft legislative instruments.

CHAIR—That is what we will come back to and there are a number of specific questions for Centrelink as well.

Proceedings suspended from 3.00 pm to 3.13 pm

Senator CROSSIN—Dr Smith, I want to get on *Hansard* for our purposes, and for the purposes of the general public, that this bill will then ensure that if you are a citizen of the Northern Territory, Indigenous or non-Indigenous, the 100-point identification at a bottle shop or an outlet will be removed. Is that correct?

Dr Smith—Yes, that is correct.

Senator CROSSIN—How many of the existing records have been collected—or looked at, noted or touched—by Centrelink throughout the Territory?

Dr Smith—I do not think it is actually Centrelink that collects them—

Senator CROSSIN—Sorry, not Centrelink; FaHCSIA.

Dr Smith—but I do not have that information. Could I take that on notice?

Senator CROSSIN—Yes, okay. If you are going to take hours gathering it, don't worry. I just thought you might be able say that half-a-dozen have been referred to you or, 'We check them all monthly,' or, 'We check them constantly.' There is no system at this stage?

Dr Smith—No, I do not have that information. That is an operational issue.

Senator CROSSIN—What would be the plan once this legislation went through? Would you be writing to bottle shops or other outlets and saying, 'Send all of the records you have to date into FaHCSIA' or, 'Shred what you've been keeping all these years'?

Dr Smith—I would need to take that on notice as well. I think we would have to get legal advice about the status of those records and how we handle them.

Senator CROSSIN—Thank you. I would appreciate that.

CHAIR—I think we have finished on alcohol, Dr Smith, for the time, but did you have something to add?

Dr Smith—I have just been informed that we would expect the provision to keep the information for five years still to hold. That is a provision in the existing legislation.

CHAIR—Is that an Archives rule, to keep it for five years?

Dr Smith—It is a provision in the legislation. I am not quite sure exactly where it gets its particular authority from.

Senator CROSSIN—So you would expect bottle shop owners to keep that information, or will FaHCSIA somehow gather it up and for the remaining period and hold it in Darwin, Alice Springs or somewhere?

Dr Smith—The bottle shop owners can hold the records themselves or they can refer them to the NT Licensing Commission.

Senator CROSSIN—The alcohol and liquor commission, you mean?

Dr Smith—Yes.

CHAIR—I think now we will move to income management. I am sure there will be questions on this from all three senators. We will start with Senator Siewert.

Senator SIEWERT—Can we start on stores and income management. When we were in Darwin, Outback Stores tabled a letter from the Menzies School, which I am sure you have now seen. Do you know the letter I am talking about?

Mr Sandison—Yes.

Senator SIEWERT—As far as I am aware—at least as of yesterday—the study has not been released; there is still just the letter. My interpretation of the letter is that, overall, income management has not made a significant difference to sales of fresh fruit and vegies.

Mr Matthews—There is probably not a lot we can actually say about the claims. We do not have the study. In the same way as you, we have not seen the study and have not been involved in the study, so there really is not too much we can say. The letter is about as much as we have actually seen, so we do not know the basis of it. We do not know what they have looked at. We certainly have not had an opportunity to analyse it, provide input to it or review it. I do not really think there is much we can add, because we simply do not know enough about it to comment on it, apart from that, obviously, it relates to about 10 of the ALPA stores in the Territory, which are only a small subset of the stores, as we understand it. That is about as much as we could possibly add.

Senator SIEWERT—The other thing that came up at our Darwin hearings with Outback Stores was that they said they were not able to give us any quantitative information about their sales compared to sales before they took over the stores because they did not have the data. They were not really making much comment on whether or not sales had increased because they said they had only been there for about 18 months.

Ms Halbert—My understanding is that that is true: they do not have their own data from prior to their own management of stores, so they are not able to make that comparison.

Senator SIEWERT—So we are stuck with the qualitative work that has been done to date?

Ms Halbert—At this stage, yes; but obviously over time there will be quantitative data available from their sales.

Senator SIEWERT—Okay. Thank you. I am sorry if I am jumping around. I have questions arising from your answers to my previous questions, which I think largely relate to income management. Can I go to the issue of the disallowable instruments list. Thank you very much for providing that; it has been very useful. Where it says, 'These instruments have not been developed yet', have they been any further developed since you tabled this?

Mr Sandison—There is work ongoing all the time in providing advice to the minister. But, basically, at this stage this was the information that we had that, after discussion, we could provide to the committee.

Senator SIEWERT—Thank you. I have a specific question around exemptions. I am not going to re-trawl the ground that we covered last time. I appreciate that we have had several discussions about that. But, with respect to the process that will apply to an exempt person, the process that is used at the moment is quite a hefty one. For the benefit of Hansard, I am holding up the Social Security (Administration) (Exempt Northern Territory Person) Determination 2010. I am not going to name the person who is contained in this particular one, but this is a copy of one that was done for a particular person. Is this the sort of mechanism that will be used for each person who could be exempt in the future?

Mr Matthews—The question probably has two parts. The piece of paper you have in your hand is the thing that gives legal effect in that instrument. I might need to check with the legal people on this one.

Mr Sandison—I think we will have a quick discussion, but at this stage the processes for the broader engagement of an exemption system like this are still under development. We realise that that one is a fairly significant process to go through on a person-by-person basis. We will check that and get back to you. If I can I will do that this afternoon; if not, we will take it on notice.

Mr Matthews—Speaking from a layman's perspective—which I will need to check, and will be happy to confirm—that particular exemption under the old scheme does require that it is a ministerial exemption, and it is by instrument. Therefore, if it was one person, that would be an individual instrument by one person; if it was a range of people, it could be done in the one instrument. My understanding of the new legislation is that the exemptions around school attendance and those types of things would not require a separate legislative instrument to be set for each person to be exempt; it would be a decision of the delegate of the secretary.

Senator SIEWERT—My understanding from this list, which may be because I am not reading the list properly, with respect to where it says 'Parental exemptions: children under school age' is that it refers to 'the decisions made by the minister'.

Mr Sandison—But it is under delegated authority. They are the decisions of the minister under the Social Security Act and they can be delegated to the secretary then delegated down to other people.

Senator SIEWERT—You just said this was a ministerial decision as well. What is the difference between a ministerial decision for the current Northern Territory process and a ministerial decision that could be made under this new process?

Mr Sandison—Assuming we are dealing with the one that I think we are dealing with—the one you are holding up—

Senator SIEWERT—This is the exemption for the Northern Territory.

Mr Sandison—Yes, the exemption under the current system.

CHAIR—Can you take the name out and then give it to the department to have a look at? It just seems silly that we are talking about a document that is here.

Senator SIEWERT—Okay.

Mr Matthews—I have a little bit of advice from our legal people. It is a bit of a technical area. It might be one where, depending on how we go, and whether you get enough information, we could take on notice.

Senator SIEWERT—I am not trying to be a smartie here. The reason I ask is that we have been through an extended discussion about exemptions and how easy it is for a person to get out of it. That seems like a highly complicated process. So, if I am going to believe the argument that it is going to be an easy process to be exempt, potentially—because we had a discussion last time about somebody maybe being off before they are even on. That seems to me to be a complicated process. It has been said to me that it is not nice process, that people going through it have felt humiliated by the sorts of questions they had to answer. Is this going to be the same process, because it seems to me that that is quite an extended process? That is why I want to know. I am not being pedantic.

Mr Matthews—I think the simple answer is that the intention is no, that it would not be similar to that. In general, the new legislation has been framed so that essentially the minister can delegate the authority. Essentially, the minister sets a class—the exemption is through a category or class—and that is what gets set out in the instrument. Then it is up to the secretary or the delegate to see whether the person fits that definition. Then it really comes down to the mechanics of the implementation, how you go through the motions. A lot of that is actually about the way you implement the process. You set the process for the person to apply, and it is the delegate who is the decision maker. So the new process will be very different from the process that I think you are referring to for that particular individual.

Mr Sandison—Senator, I think the easy answer is that the delegation was provided by the minister to a single position in FaHCSIA; in other conditions, delegations can be provided to the secretary of the department and then delegated further to a range of FaHCSIA officers or other Commonwealth officers. With some of the issues that take place now, there are decisions made by Centrelink officers across the Northern Territory under delegated responsibility that would not be dissimilar in how they start, but the decision here was it would go only to a single position, to the deputy secretary of FaHCSIA. It also maintained a more rigorous process in terms of the formal instrument that had to be used when there was a decision, because it was individual by individual. As Mr Matthews said, we would expect a more open process, an easier process, to be used for these sorts of exemptions.

Senator SIEWERT—It will still be person by person, though?

Mr Matthews—A person would still need to apply and go through a process, but it really comes down to the way the process is set and where the person can access the exemption and the rules that are set up to do that.

Mr Sandison—Our intention would be, within the legal requirements, to have a more streamlined process than the one that currently sits in the system.

Senator SIEWERT—Thank you.

CHAIR—Mr Matthews, I have a question about that. I know it is early in the system, but is it expected that the process will be at the local level or in some way centralised?

Mr Matthews—That is something that has not been decided as yet.

Senator SIEWERT—If it is possible, could you take it on notice to provide a bit more detail about how you envisage this process will work.

Mr Sandison—We will take it on notice—and, if we can give you what is expected rather than any decision that has been made, we will.

Senator SIEWERT—Okay. Thank you.

CHAIR—It will be a Centrelink delegation?

Mr Matthews—Similarly, that has not been decided.

Senator SIEWERT—So you haven't got down to that level of decision making yet?

Mr Sandison—We have not got down to that level of decision.

Senator SIEWERT—Decision. Sorry, I meant decision—

Mr Sandison—The working through on the advice and so on has—

Senator SIEWERT—as to whether it would go back to FaHCSIA or whether it would be a Centrelink delegation.

Mr Matthews—There is a lot of work going on about it, but there is no final guidance that has been settled by government at this stage. But obviously there is lot of work to develop that.

Senator SIEWERT—It would happen via Centrelink. If it has got to go back to another department, it is going to be a longer process.

Mr Matthews—Yes. We understand the issue, and that is one of the things that will need to be worked through—how that process is set to get the right balance.

CHAIR—And, within that process, are there time lines?

Mr Matthews—Yes.

Senator SIEWERT—In answer to my question WR11, where I asked about the detail on additional services that will be available in the Northern Territory, you detailed the financial services that would be available—and I thank you for the answer—and at the end of it you said: 'To further build practical money management skills and make it easier for people to access services, money management workers will also deliver practical on-the-spot money management information to support shoppers in Outback Stores and ALPA stores.' Is it envisaged that that information will be in a leaflet or do you envisage having people on the spot at some stage? How will those financial services be delivered?

Ms Stehr—We would envisage that that would involve people on the spot. The final details of that are being worked out with the stores and with the money management services that are in the locations. It would involve the money management workers who are actually working with the people in the locations where the stores are.

Senator SIEWERT—So you would run workshops or something like that, because you are not going to be there for the whole time that people are there—or is the idea that you would have them there at the beginning of the process or for a period of time?

Ms Stehr—The idea is that they will work out something that is sensible, and it might be different in different locations. There might be some peak shopping times in a particular place, so the workers would try and target to be there at those peak times. Alternatively, they might make it known to local people when they are available, when they are able to be at the stores, to see if people can come to see them then.

Senator SIEWERT—So it would be like a workshop.

CHAIR—This scheme would not preclude individual servicing, though, would it?

Ms Stehr—No, this is in addition to the individual support that will still be provided by those services.

CHAIR—People could still have a personal on-the-spot appointment? That would be somewhere in the modelling at some stage?

Ms Stehr—Yes.

Senator SIEWERT—I am not sure who to ask the next question to. It relates to financial issues and some comments that were made in the financial—

Ms Stehr—AFCCRA? The Australian financial counsellors association?

Senator SIEWERT—Yes, I have a couple of questions about their comments around the savings incentive. I am not sure who to ask.

Mr Sandison—If you ask, we will see how we go.

Senator SIEWERT—They made comments questioning the appropriateness of encouraging people who are on very low incomes to save in the first place and asking whether it would not be better if those people were spending money on fruit and vegetables, because that is supposed to be the idea. Secondly, there is a practical issue—and maybe it is because I just do not get it—about when you match their savings. It is a once-off payment—that is correct, isn't it? In answer to my question, you said you are still determining when and how that will occur. Have you determined that yet? If someone has 80 bucks in their account, do you match that?

Mr Sandison—I think we would talk that through. We did have a range of consultations with other interested organisations to try and give some clarity, to the extent we can, on some of the different issues. In those discussions around the matched savings, there was some confusion about, I think, the 13-week time period. People thought that was a set time by which you had to have tried to get to the $500, but the aim is that we are still working out how you set a process where they can prove that they have had a stable savings history. But it is up to $500. That can take as long as a person likes. If somebody collected or saved $80 then I think probably we would hope, with Centrelink, that there would be a discussion with them saying that, if they could wait longer and save more and keep that routine of savings going, it would be more valuable for them to get up to $500. We also had some questions about whether it was realistic in terms of savings, going to whether they should be spending it on other things. A number of welfare groups actually raised the issue about how they already run matched savings programs themselves. They have found it quite a strength of working with people who are on income support to build a pattern of savings, and indeed those families have been able to make some savings and develop. So the idea of matched savings programs does exist elsewhere, but the final detail of what you do to prove that history of savings is what we are still working through.

Mr Matthews—The other thing to note is that it is a voluntary scheme; it is not something where we force people to save or force them to save $X in X period. It is their choice.

Senator SIEWERT—Will that add to their—I will not say points. If they can demonstrate a pattern of savings, is that not one of the issues that help people demonstrate that they can manage their money?

Mr Matthews—I guess, on the exemption criteria generally, it probably will not help somebody demonstrate, for example, that they have got their child to school, but there is the instrument around financial vulnerability in there. Potentially it could form one of the factors that are considered in that, but, as with the other elements, it has not been finally decided around that detail.

Mr Sandison—I think we appoint factors for consideration rather than specific criteria when it comes to vulnerability. Rather than saying, 'Here are a set of criteria,' whether that was one or not, it is actually about a range of things that would be taken into consideration by a delegate.

Senator SIEWERT—For vulnerability?

Mr Sandison—For financial vulnerability and other elements of vulnerability.

Senator SIEWERT—Okay, thank you. Are you or are you not developing the criteria that will then be used to assess whether (a) someone is exempt or (b) someone is classed as vulnerable? I understood that you were working on that.

Mr Sandison—Yes. It would be with the description that is in one of the instruments.

Senator SIEWERT—Yes, that is right. So it is either in the criteria or it is not. Presumably, when the social worker is doing the assessment, they will go through and look at the criteria and see if you match those criteria.

Mr Matthews—Yes and no. The legislative instrument will set out criteria for the delegate to consider. Usually they are framed—and, again, it has not been framed, but it is quite common for things to be framed—such that these are the criteria that you need to have consideration of, which provides some sort of flexibility in the decision making. It gives some guidance for the decision maker to look at certain elements and then make a decision. Sometimes they can be listed as exact criteria that must be met to do it. It can be done either way or as a mix of those. At the moment, the exact mix of that has not been decided. That is what will need to be set out and worked through the legislative instrument.

CHAIR—And they are very rarely a checklist.

Mr Matthews—Sorry?

CHAIR—It is very rarely a checklist; it is guidelines—

Mr Matthews—It is generally guidelines, yes.

Mr Sandison—Where we get caught is the balance between giving some certainty—and I think we talked about consistency of decision making—and still allowing discretion. If you have a list only that specifies criteria you have removed the discretion.

Mr Heferen—I did say in the opening comments that the Centrelink social worker will consider a set of decision-making principles, including whether income management is the most appropriate mechanism to apply to support the person. I think the intention is pretty clear that it is not just, 'Tick particular criteria and then automatically something will occur'; it is more a set of things to inform the decision making but to try and balance, as Mr Sandison puts it, the trade-off between certainty and flexibility to cater for particular circumstances.

Senator SIEWERT—Thank you.

CHAIR—Senator Adams has a couple of questions on income management.

Senator ADAMS—Just on child protection, on page 6 of your opening statement you said:

Over 200 people are currently on child protection income management in Western Australia.

I am just wondering what the make-up of that is as far as Indigenous people are concerned. We have had a lot of criticism, of course, that this is completely with the trials—that they are discriminatory. I am just wondering what the break-up is of Indigenous people or others.

Mr Heferen—The proportion of those 200 people who are Indigenous? I will have to defer to one of my colleagues.

Mr Matthews—I may or may not have that. That may well be in my other estimates folder from a couple of weeks ago. I am not sure that I have got that on me.

Mr Heferen—We can take it on notice.

Senator ADAMS—I am just interested because that has been one of the biggest criticisms about the trials being rolled out—that it is still a discrimination.

Mr Matthews—We certainly do have the information. I am not sure; I will check as we go through to see whether I do have it, but if not we will certainly be able to provide it.

Senator ADAMS—I have another quick question on the Australian Institute of Health and Welfare evaluation of income management. There has been a lot of criticism regarding that. Of 15,125 income managed people on 31 March last year, 76 were interviewed, which is 0.5 per cent of the group, and in only four locations. Would you be able to explain why, firstly, it was only done in four locations—were those the instructions from the department for that particular review—and why so few people were interviewed?

Mr Heferen—You are talking about the AIHW evaluation?

Senator ADAMS—That is correct. I was given evidence that there were only 76 interviewed, which out of a group of 15,125—that was taken on 31 March last year—is only 0.5 per cent of that particular group. And there were only four locations; why wasn't it expanded further?

Mr Heferen—I might seek some assistance from Mr Matthews

Mr Matthews—It was probably in the time we had, the resources and the process of doing it. I will just wind back a couple of points and say that there has been a lot of criticism. The one that comes up is that we have only dealt with 76 people out of 15,000. I think, as Mr Heferen read out in the opening statement, the government has stated on a number of occasions that that is not the only thing that it considered in framing its position. It has only been one of the reports and one of the reasons for it.

Senator ADAMS—I am fully aware of that. I just wanted to know what your instruction was as far as this report.

Mr Matthews—We did not specify it. Basically, like most evaluations, you cannot interview all 15,000 people. It sometimes comes down to practicalities of time and resources about what you can and cannot do. Within that what we could achieve in the time was to go through a smaller number of communities and sample them, which we did.

Senator ADAMS—What locations were they?

Mr Matthews—There were four communities, which were Ali Curung, Hermannsburg, Nguiu and Galilwin'ku.

Mr Sandison—In general terms there were a suite of different information gathering exercises that were used. We gave some discretion—I would have to check on whether it was specified—in terms of getting the mix of things. We realise that in interviewing people there would be a sample of a number of people and it would need to be in more than one community to give us a range of different communities. The decision was then made across the mix of the whole evaluation work and other information sources to go with that number as the contribution to the overall evidence gathering.

Mr Matthews—One of the realities of doing evaluation work is that you put field workers out to go and talk to people, but you have to get people to talk to you as well. Sometimes it can be a function about whether people will make themselves available to do a one-on-one interview. As Mr Sandison said, it was only one of the ways. For example, we held focus groups through a range of things both in the community and with stakeholder groups. I think that we talked to about 160 or 170 people through the focus groups process, through meetings held in the community with community leaders, NGOs, Centrelink workers and other staff in the community.

Senator ADAMS—Just looking at those statistics it is not a really very good evaluation so I wanted to know what the process was and what you had asked the institute to do. That was the reason for the question.

Senator SIEWERT—Can I just ask a follow-up question to all the questions I was asking during estimates? You took a lot of questions of notice in relation to the AIHW process, if you remember. I am wondering if it is possible that we could have those answers before we report on 9 March. I realise it was through estimates but it does relate specifically to this issue.

Mr Sandison—We will get back to you very quickly.

Senator ADAMS—On the child protection I am wondering if there is any further finance for extra child protection officers? How are they being paid? Are they a state responsibility or is there funding from the federal government for it as you roll it out more?

Mr Matthews—Are you talking the child protection and referral and that category in the legislation?

Senator ADAMS—Yes.

Mr Matthews—It relies on a decision that is referred in through the Territory child protection department workers, so the resourcing for that is with the Northern Territory government.

CHAIR—I have a general question which came up in evidence yesterday and again today, which is about the whole basis on which income management can be introduced with the Social Security Act. A view has been put forward that post the Depression the view was that social security payments would be made in cash and that any attempt to restrict social security payments of any kind does not fulfil the requirements of the Social Security Act. I would just like to have that on record, and a response.

Mr Heferen—You said post the Depression—

CHAIR—Yes, the 1930s Depression when people had food stamps and vouchers. The statement that has been made on record by a number of submitters is that after that period Australia made a decision at the national level that we would not have that kind of process in our social welfare payments on the basis that providing cash was a better method of providing social welfare. Section 60 of the Social Security Act has given people the view that the payments should be in cash. It is already in their bank accounts, which I would have thought—

Mr Heferen—So cash would equate to—

Mr Sandison—In the pocket—

CHAIR—Yes, and I would like a response for the record.

Mr Field—The cash issue we might need to take on notice, but dealing with section 60 of the Social Security Act the issue there is really about protection of social security payments. It talks about a social security payment being 'absolutely inalienable, whether by way of, or in consequence of, sale, assignment, charge, execution, bankruptcy or otherwise', so it is to go to the person.

Subsection 60(2) says that this section has effect subject to part 3B of this Social Security Act, which are the income management provisions. So the inalienable nature of social security payments introduced by section 60(1) is qualified directly in relation to income management payments by subsection 60(2).

CHAIR—Of the Social Security Act—

Mr Field—Yes.

CHAIR—which was introduced—when?

Mr Field—When the income management provisions were introduced.

CHAIR—That is what I thought. So the original legislation that came through with the NTER introduced that subclause?

Mr Field—Indeed.

CHAIR—And then that subclause was the basis on which we are extending it?

Mr Field—Yes.

CHAIR—And which would now be subject to the RDA and could be up to challenge?

Mr Field—When the exemptions are removed any of the actions in relation to NTER could otherwise be challenged or would be able to be challenged.

Senator SIEWERT—I would like to go to the Western Australian trial. We have been through that before and we had evidence, which I am sure you have heard, from the Western Australian government. They talked about the interim assessment—and I know that I have asked for this before but I am going to try again. As I understand it, you have not even released it to the WA government—

Mr Matthews—I am not sure. I will have to check whether it has been released. I know that the department has been involved in the evaluation process. Whether it has formally gone to the Western Australian government I am not sure, I would have to check.

Senator SIEWERT—That is my understanding from the evidence on Monday. So my question is: if that is correct, why haven't you even released it to the WA government?

Mr Matthews—I would have to check to see whether it has been. It may well be a simple matter of process for the Western Australian government about whether they have provided up to their minister or not. Whether they have or they have not may be something that we cannot really comment on. It was probably stated at previous estimates that the interim evaluation is not really an evaluation in its own right; it is really part of what will be the final evaluation. So all the other in elements of the evaluation will feed into the overall final evaluation or the next stage of the evaluation—

Mr Heferen—Are you talking about whether the evaluation has been provided to a department of state in Western Australia or to a minister in the Western Australian government?

Senator SIEWERT—Both.

Mr Sandison—If it has been, it would primarily be to the department and they would brief their own minister. We will take it on notice.

Senator SIEWERT—I must admit that that was my assumption.

Mr Sandison—The interim report—its status and whether it has been provided to the department that we deal with in Western Australia.

Senator SIEWERT—Thank you. I will ask again: is it possible for you to table those results so that I get that on record—again.

Mr Sandison—We can take that on notice.

Senator SIEWERT—Thank you. In the event that we cannot get the results, could you provide us with the guidelines? I understand that there were focus groups and surveys and interviews were undertaken. You told us that before and I think you said that in your answers here.

Mr Matthews—Yes.

Senator SIEWERT—Is it possible to be provided with the questions that were asked?

Mr Sandison—We can treat that as a separate question. Yes, we will take that on notice.

Senator SIEWERT—And the guidelines that were given to people when they were undertaking the focus group work as well?

Mr Sandison—We will take that on notice as well.

Senator SIEWERT—Thank you. That would be appreciated.

CHAIR—Senator Crossin, did you have some questions on income management issues?

Senator CROSSIN—I want to ask about a suggestion that CAYLUS put to us in Alice Springs regarding people who may be travelling outside the declared relevant areas. I want to concentrate not so much on Indigenous people who might be moving around the Territory—although this should apply to Indigenous and non-Indigenous, of course—but mainly non-Indigenous people, particularly if you are living in Darwin and you are 17 to 25 and you are on income management. Has the department given some thought to either amending the act or even amending the Social Security Act to allow for the situation where, if you are travelling, say, outside the Northern Territory, you would be able to have your income management suspended for the duration of the travel?

I know you are probably going to say that we will be trying to roll the BasicsCard out all around the country, but I do not think that fully comprehends the appreciation that one of the main reasons that you actually leave the Territory and go interstate is that there is much more life experience out there in terms of shopping, in particular. This might be a good plug. If Bernie Brookes is watching, this could be my big plug to get Myers to Darwin. But let us face the reality: if you want to go to Melbourne or Sydney, you will go to Myers or you will go to a surf shop or you will go somewhere that is unique and different that you cannot get in a regional town like Darwin. Yes, I understand that you will tell me that you are going to roll out the BasicsCard—and I want to be there the day Myers or David Jones accepts the BasicsCard—but, while we are rolling this out, I am wondering whether the government has given some thought to having an exemption so that you can actually stop your income management for a period of time while you make that interstate travel.

Mr Sandison—The first thing is that we will not give an answer about the BasicsCard and where it is around the country because I think that is on the record from previous meetings.

Mr Matthews—The short answer is that there is nothing that I have seen where the government has considered doing that. I guess the general position on travel until now for income management has been that the first call on welfare payments are the priority items set out in the legislation—rent and food and those types of things. That is the 50 per cent. People have access to 50 per cent—their discretionary money. That will remain. As I think we have also discussed at previous estimates, if the person has the priority items in the legislation covered and they have them covered for the foreseeable future, and Centrelink—

Mr Sandison—Senator, I know you have to leave. I do not think there has been a specific consideration. We will take on notice and check.

Senator CROSSIN—Thanks, Mr Matthews. I appreciate the answer. I want to highlight that I think that saying that we are going to roll out the BasicsCard will not cover for quite a number of years a 21-year-old who might happen to travel to Torquay and want to buy something in the local surf shop there. If you are not considering it, we might need to think about putting it in our report.

Mr Matthews—It is certainly something that we can feed through to the minister as well.

Senator CROSSIN—I think that was the only area I wanted to ask about.

CHAIR—There has been considerable evidence of negative experiences with income management and the BasicsCard in the Northern Territory. Some of it is definitely historical and goes back to the way it was implemented. Evidence today from the Salvation Army referred to a recent survey they conducted which talked about current issues from their perspective. There was a range of questions about Katherine. We put on notice a range of questions from Amnesty International from the last hearing, and we do not have the response as yet from Centrelink. The major thing that has come up consistently in evidence and in submissions has been a concern about a further rollout of a system which people genuinely believe has not worked. There are philosophical issues about income management but there are also very basic and practical issues about it not working in certain places, that people are shamed by it and that where people wish to buy a large item they have to get quotes and take them back to Centrelink. That is what we have heard. It would be useful to get something back from the department on that.

Senator SIEWERT—That was from ACOSS.

CHAIR—Yes, and the one in Katherine about shame was from the Salvation Army.

Mr Sandison—We will look to ACOSS and Salvation Army statements around the BasicsCard and provide responses.

CHAIR—It is a threshold issue in terms of people's views about the extension of income management. We have had regular updates through the Senate estimates process on the BasicsCard since the NTER was introduced. We have heard statements about the improvements and the great response to various things that

have happened. We would be interested if someone could look at the veracity of the comments that were put on record today. The people who gave evidence today said they were recent occurrences.

Mr Sandison—We will follow both of those up.

CHAIR—If the people from Centrelink are still here we would like to have responses to our questions on notice from last week from Amnesty International before we report. Those issues were quite specific and about particular locations and times. Today was the day we needed those answers provided and, as of four o'clock, we have not got them—and according to the secretary that is correct.

Mr Sandison—We will follow those up.

Senator SIEWERT—You answered my question about the breakdown of the $350 million and what the different departments will get. Is it possible to find out what the funding is for—for example, what the Centrelink will be spending $85 million on in the next financial year, what DEEWR, DHS and FaHCSIA are spending the money on?

Mr Sandison—To the extent that we can, yes, we will break that up further.

Senator SIEWERT—So we can get an understanding of what that substantial investment is doing.

Mr Sandison—Yes, a description of each of those items rather than just a statement of the dollar value.

Senator SIEWERT—Yes, that would be much appreciated.

CHAIR—Also in terms of that breakdown, most of the key agencies have questioned the cost and that figure, the $4,000-odd per individual. I know your response to Senator Siewert's question will look at the rollout figures from the budget estimates. A significant amount of money is going to infrastructure and staffing admin costs for departments going forward. I have a particular question about the Centrelink component of that.

Mr Sandison—Is it okay if we answer it to the extent we can in that description of the line items?

CHAIR—Yes. It was raised by UnitingCare today. They felt it was inappropriate and that Centrelink services should be there anyway. Using this as a tool to provide services that should already be available is a threshold question. I see the rationale for some of these changes as a way to enforce greater engagement between agencies and those people in receipt of payment; that this is a way of making sure there is interaction and more communication. I am particularly interested to know what the program plan is for Centrelink, which is a delivery agency, in terms of the greater involvement and personal process under the proposal before us. In that $4,400, will there be some form of expectation that people will not be isolated and that they will have greater hands-on support from the agencies?

Mr Sandison—We will certainly take that on notice and answer to the extent that we can.

CHAIR—Thank you.

Senator SIEWERT—I cannot remember whether I asked this question during our last hearing or whether I asked during estimates. I am after a breakdown of the figures. You might remember that I was asking about a breakdown of the figures that are in category E, both in the NT and across Australia.

Mr Matthews—I think that was provided to the committee yesterday. It took a while to get the numbers. As far as I understand it, the answer to that question on notice should be with the committee.

Senator SIEWERT—If it is in I have not seen it. I finished here very late last night and I must admit that I did not look at every single one of my emails. It has been emailed out, so I take that back. An issue was raised about vulnerability. Welfare Rights raised it and I asked the Combined Pensioners and Superannuants Association about it. It relates to people being scared to get help on certain issues because they think they will be reported as being potentially vulnerable. They will not go and seek help because they think they will be income quarantined. Have you looked at that issue?

Mr Sandison—We are looking at that issue, which has also been raised in the discussions we have had with the various welfare groups. It will be an issue on which we will provide advice to government.

Senator SIEWERT—So you have only relatively recently looked at it; is that right?

Mr Sandison—I think we have been aware of it for some time, and it was part of our broader advice and the considerations of government. But because it has been raised again through a number of channels, including through the committee and also through our separate discussions over the last week or so, we will raise it and have further discussion on it.

Mr Heferen—Senator Siewert, Dr Smith has a correction to some information that we provided before. Perhaps we could do it at this time to correct the record.

Dr Smith—I would like to correct an earlier answer. I said that there was a five-year record-keeping period for takeaway alcohol sales of $100. I have now confirmed that it is in fact a three-year period for keeping those records. We will still take on notice Senator Crossin's question about the transitional arrangements.

Senator SIEWERT—Thank you. As we have swapped back to alcohol, I would like to ask a question. I was reluctant to jump in earlier because I knew Senator Crossin was under a time line. The question relates to the minister being able to make plans without necessarily undertaking consultation. Why is that element in there?

Dr Smith—It is a standard element of Commonwealth legislation. The provisions in the legislation make quite clear the minister's obligation to undertake consultation, to find out harm and so on, but there is a standard rider which basically says, 'notwithstanding that,' failure to actually comply with those things does not invalidate the acts. It is put in place to avoid situations where there could be some kind of technicality which would stop the minister's actions proceeding. I think the legislation makes clear that that is the intention and the obligation.

Senator SIEWERT—Mr Field, have you sought legal advice on whether that would undermine it being a special measure? I appreciate that, notwithstanding my concern about this legislation, there are elements that are moving in the right direction, and alcohol management is clearly one of them, but it is still a special measure. One of the requirements of meeting the special measure is community consultation; if the minister can act without consultation, would that threaten its status as a special measure?

Mr Field—I can confirm that the government has sought and received advice in relation to the alcohol regime and its compliance under the Racial Discrimination Act. Beyond that, in relation to the particular detail and whether one element of that advice would deal with that matter, I am not sure. That starts to go to the content of the advice and is not a matter I should disclose, if indeed it has been sought in that particular way.

Senator SIEWERT—I will try and phrase this carefully because I know I am not going to get it—I have asked before. Rather than saying what the advice is, have you sought advice on that particular element?

Mr Field—Again, I think that would go to the content of the advice. Certainly the government has sought and obtained advice in relation to the alcohol regime and its compliance with the Race Discrimination Act.

Senator SIEWERT—Thank you. I will give up.

CHAIR—Mr Field, one of the questions about the RDA was the rationale for the time lag on the removal of the RDA and why that is timed for the end of the year, yet the other changes are from July. In the government opening statement that was not addressed and that has been raised by a number of people, whether there are difficulties in transition for other changes being rolled out earlier and then the RDA provisions being reintroduced at the end of the year and the reason for doing it that way.

Mr Field—In effect, why there is a transition period.

CHAIR—Yes, and what would be the impact of that? Has that been considered and are there plans to work with that?

Mr Field—Indeed, yes. To clarify the circumstances and what the legislation does, in relation to income management, the new scheme operates without an RDA exemption from its commencement on 1 July. For the existing income management scheme there is that six-month transition until the end of 31 December when the RDA exemptions are lifted but the existing income management scheme goes six months beyond that and finally ends on 1 July 2011. For the other measures which are intended and designed to be special measures there is a transition period as for the existing income management scheme of six months so that the new measures can be put in place and it is an effective transition before the RDA suspension is lifted.

CHAIR—It has been raised by some witnesses that in an already confusing system there is genuine concern about whether people understand their current entitlements, that having this further complexity is going to create even more problems with people understanding the system and having an effective relationship with Centrelink. The added complexity has been considered in the department's propositions?

Mr Field—The government considered the need for a transition period, took legal advice and other advice and that is the decision they made in relation to each of the—

CHAIR—And the official reason for the need for a transition period?

Mr Field—To ensure an effective transition from the existing legislation to the new schemes so that the new schemes can be rolled out.

CHAIR—The reason for a transition period is to make sure there is a transition.

Mr Field—The reason there is a need to continue the exemption from the Racial Discrimination Act provisions, so that people cannot take action under the RDA for six months, is to ensure that effective transition from the existing schemes to the new scheme.

Senator SIEWERT—If I am a pensioner in a prescribed community and I am being income quarantined now, when do I get off?

CHAIR—Next July.

Senator SIEWERT—July 2011—that is right, is it not?

Mr Matthews—Sorry, I missed the question.

Senator SIEWERT—If I am a pensioner in a prescribed area now and I am currently income quarantined, I do not get off until 1 July 2011, do I?

Mr Matthews—No, you basically could be taken off the scheme once the new scheme applies in your area. The way the transition period works is that the old scheme stays in place—it cannot last until the end of 2011 when the new scheme then rolls out. It is an implementation question. As part of the implementation you shift people from the old scheme to the new. The practical intent of the transition provisions is to say that you cannot come off the old scheme until the new scheme applies in your area. Once the new scheme does apply in your area, then that pensioner could come off the old scheme.

Senator SIEWERT—So the minister is going to be deciding which areas are disadvantaged.

Mr Sandison—And that is yet to be determined; that is what we are working our way through.

Senator SIEWERT—I understand that. So, as that is rolled out as of the end of December, depending on where you start, you could come off in January; you could come off in July.

Mr Matthews—No. The government's position is that if the legislation is passed it is intending to commence the new scheme this year broadly with the aim of having it rolled out by the end of this year through the Territory. That would mean that, in whatever way it wants to do it geographically across the Territory, it is likely to be staged in bits on the way through. The intention would be to have that rolled out by the end of the year, and part of that process would be sequencing people from the old scheme to the new scheme.

Senator SIEWERT—Could you say that last bit again?

Mr Matthews—Part of that would be sequencing people from the old scheme to the new scheme.

Senator SIEWERT—So, in other words, by the end of the year if I am a pensioner, I will be off.

Mr Sandison—It cannot be a guarantee but it would be expected that the implementation would have taken place over the six months rolling through.

Mr Matthews—So one of the practical things we need to do with the rollout is try and engage with all of the people that are currently on to see whether they fit the new scheme or exit off the old scheme. Part of that is an implementation process.

Mr Sandison—So the need for a transition is for smooth implementation, not for a smooth transition—it was a comment you made before, Chair.

CHAIR—It is on Hansard.

Mr Sandison—That is what worried me.

CHAIR—Do you have any other questions in any other areas? We are just trying to see whether the questions that have come up that have been highlighted have all been put to the departments.

Senator SIEWERT—I think I have. A lot of the other questions are policy questions, and I know well enough not to engage in that as much as I would like to.

Senator ADAMS—So would I.

CHAIR—That is it.

Senator SIEWERT—Other than: because I have not seen the numbers and how they are broken down, I may get back to you with a question on notice asking for a further breakdown.

Mr Sandison—Certainly.

CHAIR—The only question is a more general one about consultation with agencies in the area, so not specifically in the Northern Territory but in the area of social welfare generally: can you let us know—not necessarily today—what information sessions and consultation have been done with the larger welfare agencies that provide advice at different times to government; the timing of those and who attended?

Mr Sandison—We will give a full outline.

CHAIR—That would be really useful.

Mr Sandison—We have used videoconferencing in direct meetings over the last few weeks.

Mr Heferen—Is that just in relation to income management or in relation to anything—to do with the bill?

CHAIR—Both. Anything to do with this particular process. It has been raised again today that there has been very positive interaction between agencies and the departments on a range of social welfare issues. There is a statement that that has not occurred in this area, and I would like to know what interaction has been had with the major agencies such as ACOSS, the welfare rights and those people on this issue.

Mr Heferen—Sure. I will take that on notice and provide the committee with the advice.

Senator SIEWERT—It is in the development of the legislation as well, not just since.

Mr Sandison—Sorry: this is now going back to—

CHAIR—I had not specified development, but if Senator Siewert wishes to extend my question—

Senator SIEWERT—Has there been any consultation with any of the peak welfare sector or community sector organisations around these sorts of concepts in the run-up to the development of legislation?

Mr Sandison—We will take that as two separate questions: one of the current engagement that has been happening; and the other prior to the legislation going in.

CHAIR—I think it is a clause and subclause, Mr Field, in terms of the issues of consultation. I think that is the end to the public aspect of the hearing. There are a number of issues on notice, and I acknowledge the tight timeframe and the cooperation we have had from the departments but this is the situation we are in. I want to thank all the officers, Mr Heferen, from all the departments for being with us today and providing the information. You will get a list of questions from the secretariat as quickly as possible, though I do know that people have been taking notes through the hearing. On that basis, thank you. We stand adjourned from the Community Affairs Legislation Committee, and the references committee meets again on Monday here at 9.00 o'clock.

Committee adjourned at 4.15 pm