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SENATE

COMMUNITY AFFAIRS LEGISLATION COMMITTEE

Stronger Futures in the Northern Territory Bill 2012, Stronger Futures in the Northern Territory (Consequential and Transitional Provisions) Bill 2011

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SENATE

COMMUNITY AFFAIRS LEGISLATION COMMITTEE

Thursday, 1 March 2012

Senators in attendance: Senators Boyce, Crossin, McKenzie, Moore and Siewert

Terms of reference for the inquiry:

To inquire into and report on:

Stronger Futures in the Northern Territory Bill 2012, Stronger Futures in the Northern Territory (Consequential and Transitional Provisions) Bill 2011

WITNESSES

Committee met at 17:08

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

SZOKE, Dr Helen, Race Discrimination Commissioner, Australian Human Rights Commission

CHAIR (Senator Moore): The Senate Community Affairs Legislation Committee is inquiring into the Stronger Futures in the Northern Territory Bill 2011 and two related bills. Today is the sixth public hearing for the inquiry. These are public proceedings but the committee may agree to any request to have evidence heard in camera. I remind witnesses that, in giving evidence to the committee, they are protected by parliamentary privilege. I know that you understand the rules around that; if you need any information around that, the secretariat has got it.

Tonight we are joined by people from congress because they are the second witnesses. But it is important to know that we have had a representative from congress at all the public hearings of this inquiry. I think that is a really important precedent and it is one we hope to continue on anything to do with Aboriginal and Torres Strait Islander issues.

I welcome the Australian Human Rights Commission. We have your submission. Thank you very much. I now invite you to make an opening statement and then we will go to questions.

Mr Gooda: Thank you for the opportunity to appear before the committee as a representative of the Australian Human Rights Commission. The commission has provided a detailed submission with 33 recommendations relating to the bills and their implementation. We note that the bills, if passed, will result in measures being in place across prescribed communities in the Northern Territory for a further period of 10 years. This will bring the operation of these laws to a total of 15 years since their inception in 2007. A number of measures will also apply in different regions across the country, although it is most likely that they will predominantly impact on Aboriginal and Torres Strait Islander people in these areas as well. This is a lengthy period of time in which to apply such a comprehensive suite of measures that impose restrictions on individuals and communities. For this reason the commission has given considerable attention to whether the measures can be justified from a human rights basis and whether there are sufficient safeguards in place to protect people's rights over the next decade.

The commission welcomes the intent of the Australian government to address the critical situation facing Aboriginal peoples in the Northern Territory and supports the government's objective to improve the quality of life for Aboriginal peoples living into the Northern Territory. In order to achieve Aboriginal peoples' social, cultural and economic goals it is the commission's view that the proposed Stronger Futures legislation requires the ongoing engagement of the people affected by these measures to ensure they are able to address the challenges they face and own solutions. This requires their engagement at all stages of design, development, implementation, monitoring and review of policy, legislation and programs.

While the commission supports the intent of the Stronger Futures bills it is of the view that the measures contained within the bills are intrusive and limiting of individual freedoms and human rights. Where it is deemed appropriate to design interventions which infringe on individuals' human rights then that intervention must be the least restrictive on the rights of individuals whilst trying to meet the purpose of the intervention. As such, the commission's support for the passage of the Stronger Futures bills is contingent upon the adoption of the recommendations we outline in our submission.

Dr Szoke will talk specifically to some of the key human rights concerns about the bills in a moment. But I want to focus on two key matters of implementation: the cultural competency of governments and the governance and capacity of Aboriginal communities. Without both these things, these measures will not meet their objectives. At this stage, the commission has very serious concerns about both. The commission is concerned that neither the Northern Territory government nor the Australian government has the necessary cultural competency to effectively and appropriately implement the Stronger Futures measures. This is of concern as a number of measures in the bill will require consultation with Aboriginal communities prior to their implementation.

Much has been said about the inadequacy of the consultation process under the Northern Territory Emergency Response to date, including in the formulation of these bills. What concerns me particularly is that the consultation requirements into the future of these bills are in fact very weak. They indicate that consultation should occur prior to certain actions being taken and as part of the minister's decision making, but they do not invalidate actions that are undertaken without appropriate consultation. This has very real potential to result in a less than effective implementation of the proposed measures. For this reason I would like to highlight recommendation 4 of our submission as one of the most critical. That recommendation identifies an audit of

cultural competency as a necessary baseline exercise to be conducted. It specifically recommends that the Australian and Northern Territory governments implement the Stronger Futures measures in a culturally safe and competent manner.

Related to this is the capacity of communities. I am on record expressing concern that there has been a significant reduction in community capacity resulting from the Northern Territory Emergency Response and other actions that have occurred around the same time, such as the disbanding of community councils and their replacement with super shires. This is not a sustainable solution. Communities must be engaged in developing solutions and in their implementation. Simply applying measures to communities will not make them work in the longer term. Let me provide an example. There are opportunities provided in this bill for community tailored measures to be introduced in place of blanket provisions that will otherwise apply. Most notably, this relates to voluntary alcohol management plans. We have now had two years in which such voluntary plans could have been in place following the 2010 amendments to the legislation. However, to my knowledge no such measures are operating in place of the blanket provisions. In the submission the commission expresses concern that, so long as blanket bans continue to operate, there will be limited incentive for governments to engage fully with communities in developing and implementing alternative provisions. We face the real prospect that very few communities will end up with a more tailored and appropriate solutions being implemented because of this. Ultimately this goes to both the cultural competency of government to engage and the capacity of communities to take control of their own destiny.

Recommendation 3 is a critical one in this regard. In relation to alcohol management plans, so is recommendation 16, which goes to ensuring there is a much more proactive requirement on government to seek out community solutions—not if they happen to get around to it but as a necessity. We also note in our submission that provisions such as the ability for a community to enter into voluntary alcohol management plans are critical to the government's argument that what are otherwise restrictive measures can be characterised as special measures and be seen as consistent with the Racial Discrimination Act. It will be difficult to sustain such an argument the longer we go without such arrangements actually coming into effect. I will now hand over to Dr Szoke, the Race Discrimination Commissioner, to finalise our opening remarks.

Dr Szoke: Thank you for the opportunity to appear before the committee. To be consistent with human rights standards the commission submits that laws and policy should promote Aboriginal and Torres Strait Islander people's choice, participation and control. Aboriginal and Torres Strait Islander people should be actively involved in the making of policy and legislative decisions and actively engaged in the implementation and delivery of mechanisms that arise from the legislative change. Furthermore, policies and legislation should be non-discriminatory. Where disadvantage exists laws and policies should be targeted at alleviating that disadvantage and promoting substantive equality. Substantive equality allows different groups to be treated differently so that they can in the end enjoy their human rights equally. Access to financial and technical assistance for Aboriginal and Torres Strait Islander communities from government should also be available to facilitate the exercise and enjoyment of the rights contained in the UN Declaration on the Rights of Indigenous Peoples. Finally, laws and policies should reflect, promote and value the cultures of Aboriginal and Torres Strait Islander peoples.

Mick has outlined some of the key matters for ensuring this occurs in the practical implementation of the bills. Throughout our submission we have also identified where we have concerns about how human rights are affected by the proposed measures in the bills. We have identified a range of matters where we do not consider that procedural rights are sufficient or where there is not sufficient clarity in the bills. But allow me to focus on a further two matters in these opening remarks.

A persistent criticism has been made since the introduction of the original Northern Territory Emergency Response measures regarding the compliance of these measures with the Racial Discrimination Act. As part of the 2010 amendments these provisions that had suspended the operation of the RDA were repealed with effect from 31 December 2010. Those amendments also provided for the removal of those provisions that deemed the legislation, and actions done under it, to be special measures. In their place, the amendments inserted objects causes in relation to four parts of the Northern Territory Emergency Response legislation stating that the object of the part was 'to enable special measures to be taken for particular purposes'.

The commission welcomed these amendments. However, it was also noted that the provisions were not fully effective in reinstating the protections of the Racial Discrimination Act as the legislation also authorised the continuation of some measures that had a discriminatory and negative impact on Aboriginal and Torres Strait Islander peoples. Primary among those provisions that the commission considered incapable of being classified appropriately as special measures were the compulsory five-year leases. These expire in August this year. The

commission congratulates the government for not continuing this approach. It removes a major remaining hurdle to the measures being capable of complying with the RDA. However, as we have outlined in our submission there does remain the potential for other measures to be discriminatory in their impact inconsistent with the indirect discrimination provisions of the RDA.

The commission continues to urge the government to include a legislative provision in the bills that makes it unequivocal that all measures in the bills must be implemented in a non-discriminatory manner. This would greatly contribute to the acceptance and workability of the legislation, and this is perfectly so in light of the level of distrust that has existed throughout the life of the Northern Territory Emergency Response due to the initial suspension of the protections of the RDA. It would also provide a legislative translation of the clearly stated intention of the government that no measure would be racially discriminatory.

Recommendation 6 of our submission is the relevant one in this regard. It recommends that the Stronger Futures bill be amended to include 'notwithstanding clauses' that specify that, in the event of ambiguity, the provisions of the RDA are intended to prevail over the provisions of the Stronger Futures legislation and that the Stronger Futures legislation does not authorise conduct that is inconsistent with the provisions of the RDA.

Following on from this general issue one area of the bills which has the greatest potential to impact negatively on human rights is the SEAM provisions. The consequence of the SEAM provisions are very serious when applied to families living in poverty. Recommendations 11 to 14 identify a range of matters that we consider would improve these provisions and provide adequate safeguards for Aboriginal people in the implementation of the scheme.

The issue of school attendance is a serious one which requires significant improvement. Recommendations 11 and 12 urge that a holistic approach be taken to this issue as it is clear to the commission that SEAM is the type of measure that could only be appropriate as a matter of last resort. It is certainly not a substitute for the provision of adequate educational facilities and also supporting communities.

Recommendation 13 is critical if SEAM is to be implemented in a manner consistent with human rights. The commission is concerned that there is not sufficient involvement of Indigenous communities in the implementation of the SEAM process. It is feasible that SEAM measures could be implemented through processes that are driven at the community level and with the consent of Aboriginal and Torres Strait Islander peoples.

Modifications of the scheme to ensure that the community is fully engaged in its implementation would go a long way to addressing concerns about its appropriateness from a human rights perspective. Such engagement should be required in the legislation. It could take a number of forms, such as the Family Responsibility Commission style approach is in relation to welfare reforms in the Cape York region.

We do not indicate a preferred model and we consider that, should the SEAM program be extended, further consultation should be undertaken to explore community led options for its implementation, which will reflect the local priorities and also the challenges for the communities. The commission notes that the proposed amendments to require parents to enter into school attendance plans may also provide an opportunity for better engagement between schools, parents and communities to help identify and address obstacles to school attendance. Parents who are required to attend a school attendance conference may previously have had limited engagement, or no engagement, with the school system, so this interaction could present a potential power imbalance if not addressed. The school should consider options such as encouraging a support person from the community to be in attendance and also for interpreters to be provided where necessary or beneficial. chool attendance plans should be developed in full consultation with parents and the child. This means that platforms should be provided for the school and parents to identify the obstacles to school attendance and assist both the school and parents to be aware of their responsibilities under the proposed plan. And the plan should identify where the school and/or the department can address specific issues to encourage the child's attendance not just focus on the responsibilities of the parents.

The school should provide information in an accessible way including the consequences for failing to adhere to the plan. Aboriginal and Torres Strait Islander peoples must not be pressured into making decisions, and adequate time frames must be built into the process. This may mean multiple conferences are necessary for parents to make fully informed decisions. Recommendation 14 identifies a range of improvements to the SEAM measures that will improve procedural safeguards.

Senators, our submission flags where there is potential for human rights issues to arise over the coming years in the implementation of the Stronger Futures measures. As Mick has flagged, we see issues of cultural competency and community capacity as critical in how this will play out in the coming years. We think that the formal review

of legislation at seven years is too far away to address these critical issues. For that reason I conclude by also noting recommendation 5 of our submission which states:

> Given the potential of some measures to raise human rights concerns as they are developed, the Commission recommends that the Senate Community Affairs Legislation Committee conduct a follow up inquiry in three years' time into progress in improving Indigenous governance arrangements, cultural security, and progress in developing community led initiatives such as alcohol management plans.

Thank you, Madam Chair.

CHAIR: Thank you very much.

Senator SIEWERT: This is just what this committee needs—more work! Going to the issue of consultation which you raise here and which has come up repeatedly in hearings in the NT last week, apart from one person who appeared before us, everybody else had some pretty strong comments to make about the consultation process, and they were not complimentary. So in respect of the comment about ensuring that there is community involvement in the ongoing implementation of this legislation, my question goes back to the very beginning. How can you expect the community to engage now with these measures when they feel so isolated and ignored in the process that has gone on to date? How do we get over that?

Mr Gooda: I think that you have got to go back to 2007 and understand the history when Pat Anderson was the chair of the organisation. I was the CEO at the time so I had a fair bit of contact with Pat particularly, but with both Pat and Rex Wild during the review. They went out and built a lot of trust with communities. They met with women separately; they met with men separately; they met with kids and youth separately. They will tell you that they even met with perpetrators of family violence and sometimes sexual abuse. Everyone wanted to own the solution and the problem.

But specifically we have to be part of this. If you go back to the first recommendation of *Little children are sacred* report, it actually says that these measures should be implemented in consultation with the Aboriginal communities. I think that the actions in 2007 just broke that trust completely and that is the reason why you probably do not hear Pat Anderson talk too much about this, because she feels herself that she betrayed the trust of people. We all tell her that that is really not the case, that she had no control over what government did at that time. So the trust has been broken and somehow you have got to rebuild that trust.

The way to do it is that you have got to have people who are culturally competent, people who can go out there and work in communities, that can build relationships and then consult in a way that meets a human rights standard. In my two reports in 2010, I raised the issue of culturally competent people working in government. I made recommendations about people almost being accredited to work in our communities. In the *Native title report 2010* I outlined what we consider is a human rights approach to consultation. It is not a how-to kit, but it talks about things like adequate time frames, resourcing people to participate and actually talking to people about the consultation process before you lob up on their doorsteps: 'Should we do it this way? Should we do it that way?' So there is a fair bit of stuff we have put on record at the moment about that.

The *Social justice report 2011* talks about cultural competency and cultural security. I will give you an example, because people think this is really warm and fuzzy stuff and it does not really apply; we should just get out there and do the business. At a community in the Northern Territory, the government spent about $8 million building a new health centre, and then after about a year they worked out that the old men would not go in there. So this really ill part of the community just would not access this rooty-toot centre that has been built. No-one bothered to ask them and find out that these old men would not go in and sit in the same sitting room as young women. It was totally culturally inappropriate. It meant putting another door in and creating another waiting room, and then the men started to turn up. That has really serious impacts on communities, particularly when you think about these old men out there who, as I said, are probably one of the most ill parts of the community.

So we have to get people to come and work with us. We are sick of people coming up. At the beginning of the intervention, with the government business managers, the very kindest thing I can say is that we had mixed results when people went out there. Some of these people who went out there had had no contact with Aboriginal people or remote communities. You might as well put them on Mars. I am serious.

Senator SIEWERT: I have met some of them.

Mr Gooda: Some of them were just scared. I have told the story of how I went to the Warlpiri Triangle—the communities up there. To paint a picture, these people live in compounds with barbed wire around them, isolated from the community. This guy went up there and would not come out. The Warlpiri mob gave him a name which sort of related to an egg in Warlpiri language. When I asked him why they called him that, they said, 'Because we

know there's something living in there but we don't quite know what it is.' So, unless this trust is built with communities, we are not going to have the engagement that we need.

Senator SIEWERT: I absolutely understand what you have just said, but my question is: how can we expect people to engage with this process when they feel so alienated from it? They have come up with new measures here. People feel that they have no ownership and that their opinions were ignored. Why should we expect them to now suddenly engage with these particular measures? I absolutely understand what you are saying about the need to, but why should we expect people to when they totally reject the last consultation process? I understand everything you have said about the past as well, but I mean the most immediate one. Why would we expect people to want to engage with this?

Mr Gooda: I am on record as being fairly critical of the six-week period of consultation that went on before the bills were formulated. Leaving that to one side, this bill actually sets up at least six issues that have to have community consultation, and we are recommending probably another four around things like pornography, alcohol management plans and SEAM. We have to build the trust of communities somehow. Carmen Lawrence said it in a presentation she did for us in the cooperative research centre about three years ago: it would have been better if the people who designed the intervention had learned the theories of learned helplessness, where if people are told they are helpless and hopeless enough for long enough then they will eventually become like that. So I think we have to get culturally competent people able to go out and build relationships.

Dr Szoke: I would just add two other things that I think are very strong themes in our submission, and Mick has certainly commented on these as well. One is that there has to be a front-end investment made in helping to rebuild the local governance structures. That is a very strong theme within the context of the commission's submission, and again Mick, in his capacity as social justice commissioner, has been very strong about the unfortunate timing of the local government reforms and how that stripped communities of a voice. I think that is really critical. The second aspect is that, again, in Mick's reports what he has done is to talk about what is an appropriate consultation process. I think that we are still stuck. Even if you try to get the cultural competency stuff sorted out, we are still stuck on that notion that consultation is something you do to clear a measure. But in fact if it is going to be human rights compliance, then an investment has to be made in continuous engagement and working with communities who may have different views to start off with about how some of these really controversial and very interventionist measures are going to be implemented. The word that can be used and we have used in our submission is that it is about 'sustainability' of those processes and that engagement. A key component of that is the cultural competency aspect. It is an investment that has to be made. All of the international evidence suggests that the way that these reforms can be successful is if you engage the communities at all levels, and that is not something you can do in a fly-in fly-out way.

Senator SIEWERT: I am not disagreeing with what you are saying at all. I am very sceptical that people will want to engage on measures that they have had no say in in the first place. Government says they have; they say they have not. Given that background, how long do you think it would take to build up that trust now? If we were in a perfect world and all the resources were suddenly put into it, because you have to train people to get their competency to be able to do it in the first place are we talking 12 months?

Mr Gooda: Years. 12 months? If you did it right, you could actually build some really decent relationships in 12 months but that would be pushing it. It is like Helen said, at the same time you have to start building structures in these 68 communities where they were just yanked out back around 2007. For instance, alcohol management plans—who is going to sign off on them? There are no governance structures.

Senator SIEWERT: The minister.

Mr Gooda: What part of the community? These are some of the questions we have been putting to the department. How do you intend to go about developing alcohol management plans if there is no community structure to deal with it—wander the streets and talk to people you run into, or what?

Dr Szoke: The issue of consistent longevity of investment in those processes is what has been missing. As you quite rightly point out, we expect everyone to say, 'Okay, 2007 is over now, so we will get on with this brand new world,' but there are five, six, seven years of immediate trauma that still sits in the background. I would say even longer than that. For some communities that are more isolated or have been out of the loop in different ways, it is not going to be a one size fits all.

Mr Gooda: I would like to quote from the *Strategic review of Indigenous expenditure* that was FOI'd by Channel 7 last year. Why I like this is because no Aboriginal person was involved in this review. It was conducted by one of our central agencies and they said this about engagement:

Effective engagement with the people to be assisted should be an essential part of the design and operation of any Indigenous-specific program or element of a mainstream program. Engagement needs to go beyond mere consultation, providing Indigenous people with a genuine opportunity to influence both the design of the program and the ways in which services are delivered. Engagement should be an ongoing process, extending beyond the initial planning and implementation phase.

That is one of our central agencies saying that. I like to quote from that report because sometimes people look at people like Helen and I, or the congress, and say, 'It is just Aboriginal people talking about this.' The department of finance are talking about how you develop policy for basically anyone. Replace Indigenous people with farmers or people in the car industry and the same thing applies. We just do not think it is satisfactory that we just have these cursory consultation processes that go on which basically mean government telling us what they are going to do to us, rather than asking us to join with them and saying, 'Can be do this together?'.

Senator SIEWERT: That is a very important point. All that you have said is very important, but that brings it home doesn't it?

Mr Gooda: Yes.

Senator SIEWERT: I want to ask a question about something that came up repeatedly when we were in the Northern Territory, and that is the issue around taking into consideration cultural practices in bail and sentencing. We have got some amendments here around some of the issues around cultural objects and heritage. It came up repeatedly in the context of it being actually discriminatory—which is why I wanted to pursue it here—in terms of people other than Aboriginal people having their cultural practices taken into account. We were given some quite good examples of how that happens. What are your thoughts on that?

Dr Szoke: I will be quick and then perhaps you can elaborate, Mr Gooda. Basically we think that there should be a broadening of those considerations, except when it comes to the issue of assaults that occur on women and children, of course. We think that they are far too narrow in their application in their current form. We think that that is something that should be reviewed.

Mr Gooda: I agree that we have seen the unintended consequences of what has happened with the act in its current form, with the destruction of that sacred site to put a toilet down, and the prosecution could not proceed. But I understand that they have fixed that bit. Again, it is like in human rights: we have got to balance the right to culture and that stuff with being a signatory to the Convention on the Rights of the Child, a signatory to CEDAW. It is when those conflicting rights come up that we need to have a discussion to resolve it. I think we have come down on what we consider the appropriate way forward—restrict it to violence, child protection matters and violence against women and children.

Senator SIEWERT: Not one person that I heard last week would have advocated any different than that.

Dr Szoke: Apropos of your first question, if I can jump back to that momentarily, one of the comments that I made in my opening statement related to the issue of rebuilding of trust. Laws do not in and of themselves rebuild trust, but I just want, in the time we have before you, to re-emphasise the importance of our recommendation in relation to the notwithstanding clause being brought into the legislation, because I think that that adds a much stronger statement on behalf of government that in fact they do want to rebuild that trust, by reinstating all of the protections under the RDA. So I would like to emphasise that point.

Senator SIEWERT: I seem to recall that we moved some amendments last time this was amended to try and do that, so I totally get the point. It is a point that has not been made to us before during the hearings of this inquiry, so thank you. Your submission is very comprehensive, and the other issue that came up was the issue around permits and the fact that this legislation does not seek to return the permit system. As you would be aware, the government did previously try to return them, and the issue came up, with questions of: why aren't they trying again to return the permit system to how it was? Do you have any opinions on that?

Mr Gooda: Our opinion would be—and it goes to articles in the declaration about Aboriginal people's right to country—that we would want the same protections as any Australian would have about people coming onto their land. I think we would support some form of reintroduction of a permit system—probably not the same way it was before but some way of controlling people going onto communities. You would recall at the beginning of the intervention that, funnily enough, the police had a very robust view about supporting the permit system that was in place, about communities being able to control who comes onto their communities. We would align our thoughts with what is in the declaration around people's right to the land and control of land.

Senator SIEWERT: I want to go to your comments on income management. In recommendation 10—is that the right one?—you say it should go to Centrelink to make the determination. The Aboriginal Peak Organisations Northern Territory submission expresses concern that various agencies have different decision making processes and issues around appeals, even within states let alone across states, and recommended that the decision made by

an agency would have the same effect as a decision by the secretary of Centrelink. You are suggesting not doing that but going back to it being a referral, not a decision.

Mr Gooda: The referral becomes a decision and that is a problem with it.

Senator SIEWERT: I may have misinterpreted you.

Mr Gooda: We make a couple of comments. The first is that the legislation is too broad about the type of agency can become a referring agency.

Senator SIEWERT: I take on board what you have said there.

Mr Gooda: The review processes in Centrelink under the Social Security Act are well established and well known. We do not know what the review processes of these agencies will be. Say, if it is a child protection issue—and we have this happening in Cannington at the moment in Western Australia—

Senator SIEWERT: Yes, and it is about to extend to Peel.

Mr Gooda: you would want to have some way of testing so that the being referred can test whether what is being said about them is accurate. We have all the administrative law in this country that allows that. We are not so sure about state agencies. We are suggesting that there has to be some way of people challenging—

Senator SIEWERT: Yes, and I presumed that was the intent. Basically, you are saying it should always be left up to the Centrelink to make that decision—is that right?

Mr Gooda: We are more confident because we know the processes that operate in Centrelink.

Dr Szoke: It is the process about the added protections of reviewable decisions.

Senator SIEWERT: I totally get it, yes. I do not like income management—and that is on the record—but I get where you are coming from. I am just trying to find out what would be the best way of doing amendments if they are required.

Mr Gooda: That is only referring people for income management. Regarding the decision of someone outside Centrelink, such as whomever is nominated by the minister to issue compliance notices, as the legislation stands it says, 'Once a compliance notice is issued, a payment is not payable.' That is even more serious because you are taking the decision to stop a payment out of the hands of a Centrelink officer. We have recommended that the secretary may consider the issuing of non-compliance as one of the factors that they consider when suspending a payment, because you are basically taking the control from Centrelink and giving it to some other nominated person in the Northern Territory.

Senator BOYCE: Going back to the subject of consultation, FaHCSIA will tell us that they went through a careful selection process before they appointed the people who undertook the consultations around this legislation and appointed a consultant with experience in consulting with Aboriginal communities. From the evidence we saw on the ground, something went wrong. Would you like to talk me through what you see as the more serious problems? Is it the process that led them to appoint whomever they did appoint or is it the budget that they put around it and the time constraints et cetera?

Mr Gooda: The first thing is the time constraint—only six weeks to consult on a very serious change. This legislation will change the nature of what happens in the Northern Territory. With only six weeks to consult there was not even enough time to translate the paper, even the smallest paper, into languages. I understand there were times when interpreters were not even provided. The second thing is: I know the person who lead the consultation and I would have all the confidence in the world in him, but it was the people underneath. We sent staff up and I actually attended a consultation in Nullumbuy. Funnily enough, there were about three times as many bureaucrats than there were community members. The people underneath were not, I do not think, as 'qualified'—that is the word I would use—as the bloke who headed it up. I think there is still the problem, I still have concerns. I spent a whole lot of time in Central Australia this year doing a whole lot of stuff, mainly around community safety at beginning of the year consultation on the constitution towards the middle and then, at the end, went back a few times about this stuff. But I keep on getting the same message. I do not know whether people are just not listening or are not hearing what people are saying out there. I go back to my comments before about the quality of people who are out there. It is a whole range of things that impact on the quality of the consultation. Again, I point to our attachment in our submission about what we considered was a consultation process that is consistent with human rights. When we looked at how the consultation went before we commented on it, we did an assessment against those principles that we outlined.

Senator BOYCE: Is that covered in here, Mr Gooda?

Mr Gooda: Yes. FaHCSIA will say they had consultants that came along and did quality assurance. If you look at the figures of the number of meetings that those people attended, there is no way you could ever say it was

any sort of respectable sample. It was something like two or three percent of the consultations that this firm went and attended.

Senator BOYCE: The assurance auditor only went to two or three per cent of the consultations?

Mr Gooda: Those are their own figures, and those figures are in our submission. The other problem we have with that is that they only assessed it against what they said FaHCSIA would do. They did not assess it against best practice on consultation. So at the end—I do not want to be blasé about it—if the process was rubbish they assessed it and said, 'Well, what you got what rubbish.' That is what the contract for these consultants said. We will just assess and comment on what you said you were going to do.

CHAIR: Mr Gooda, you know that is going to be quoted. Just so you know: that one will be quoted.

Mr Gooda: That is okay, because I think it needs to be said, because the government uses that report to say, 'Our consultation was good, have a look at the figures.'

Senator BOYCE: The disconnect between what was being said on the ground in the NT and what that report said was perplexing, to say the least. I know it is not your job to fix these problems for the government, but given that the funding for current measures runs out in a few months time and therefore this legislation covers the new funding, what would you be recommending to happen in the interim, Mr Gooda or Dr Szoke?

Mr Gooda: As we understand, that is why we are stuck with some of these time frames, because the legislation expires in August this year. I understand the government wants to express the new part in the budget. We do not even have until August. That is why we are stuck with these time frames. We take a view that the follow-up legislation is necessarily. I am on record as saying, when the Prime Minister did her report last year to parliament, 'We might not reach this 'close the gap' target by 2030 because of the problem.' I actually was pleased with that in one sense, because finally we are getting a government to understand the magnitude of the problem. If you do not understand the magnitude of the problem, you are never going to reach a solution. So in one sense 15 years, when you look at that, is pretty short.

But there are certain measures there that you just cannot turn the tap on. One is funding. People ring me all the time and say, 'Why are you supporting the passage of the legislation?' I say, 'Talk to people who rely on the funding that came with this.' Medical services ring me all the time—and the legal services in the Northern Territory. So there is that part.

There are other parts like the bans on alcohol. Alcohol has not been available on these communities. I think, if you talked to people like the NPY women based in Central Australia, you would find that, if you turned on the taps immediately, it would be a disaster for those communities. That is why we are supportive of the ban continuing until the alcohol management plans are developed, but that is also why we put a time frame that the ban should only be there for three years, not 10 years. As we said in our introduction, in the two years—or not quite two years—since the amendments went through for the 2010 law, not one alcohol management plan has been developed.

Senator BOYCE: Or signed off, anyway.

Mr Gooda: Or signed off. So we support the ban but we do not think it should last for 10 years; it should be three years. That puts some pressure on government to get out there and start developing these alcohol management plans. If it goes according to plan, there would not be a gap in funding. Come July this year, if the bills go through, the money attached to it would also be available.

Dr Szoke: I want to just make the point, though, that the submission from the commission is basically saying that the Stronger Futures bills would be enhanced if the recommendations that we have proposed are taken on board, so that does have various implications as well. I also note that the purpose of this inquiry in fact is to seek opinions on how it can be improved, and if that means there have to be transitional provisions that are put in place to get the front end of the legislation right then I would think, again, that that goes to your issue, Senator Siewert, about trust and rebuilding and re-engaging with the community. I think there is a balance there.

CHAIR: Mr Gooda, there is a lot in the submission, but I just want to follow up the issues around cultural competence. You and I know that, as long as 20 years ago, there was supposed to be training for everyone who was working with Aboriginal communities. There was that expectation about anyone who was working, particularly in the Australian public sector, in Aboriginal communities. Where is the difference between that, which is allegedly there, and what you have expanded in your submission as 'cultural competency' for people who are working in community?

Mr Gooda: We do not have any evidence of training courses, but what was in place for years was that you had to have what we call identified criteria in positions: a knowledge and understanding of Aboriginal and Torres

Strait Islander cultures and the ability to communicate. My sense is that those criteria have been compromised recently. How else could we have ended up with some of the people we now have wandering around our communities? We have to go back to that.

I am actually suggesting in my *2010 social justice report* that there be accreditation. Let us get serious about this. Years ago, when Australia looked after the Solomons and New Guinea, people had to go to a college and take diploma type courses, which they had to pass before they could go and work in those communities. I do not think it is too much to ask that that sort of thing should happen now. We are working with the Public Service Commission on some of that stuff. We want to say to the Public Service Commission, or whoever the person is who controls all of this, that at the moment it is not mandatory that anyone dealing with Aboriginal and Torres Strait Islander people has to meet those two criteria; we think it should be, right across the Public Service. We keep on finding at that level that this is a way of making sure that people who go out there and are selected to work in our communities can actually do it.

CHAIR: So, in terms of your fourth recommendation, which I think is very strong, it would be your hope for any community in Australia that they would have this?

Mr Gooda: Absolutely.

CHAIR: You are actually pushing particularly for these changes to try and get it into there?

Mr Gooda: Absolutely, because the recommendation in 2010 came from the work we did in Fitzroy Crossing.

CHAIR: Thank you very much for your time and, as always, thank you to the commission for the detailed information you provide to us for the recommendations.

BROUN, Ms Jody, Co-Chair, National Congress of Australia's First Peoples

MALEZER, Mr Les, Co-Chair, National Congress of Australia's First Peoples

[18:00]

CHAIR: Welcome. I think this could well be the first time you have given evidence in your new capacity, so a particular welcome. Information on parliamentary privilege and the protection of witnesses is available, and I know you have it. We have your submission. Would either or both of you like to make an opening statement, then we will go to questions?

Ms Broun: Thank you. I will begin and then I will hand over to my co-chair. Firstly, we would like to acknowledge the traditional owners of the country that we are on today, where this hearing is taking place, and thank you for the invitation to speak.

The National Congress of Australia's First Peoples is a national independent body with a membership of more than 3,800 individuals and 136 organisations, who in themselves represent about 50,000 Aboriginal people across the country. Our aim is to provide a strong and unifying voice for first peoples. The National Congress of Australia's First Peoples is a new organisation, and Les and I are the first elected co-chairs.

Congress director Venessa Curnow attended the committee hearings in the Northern Territory as an observer last week and has provided us with a report from those hearings, but also I think she found the experience very edifying. For us, it really does affirm in our minds some of the points made in our submission. We thank the committee for accommodating her and also acknowledging her presence at the commencement of the hearings. As I said, it is her insights, along with those provided by other members of congress who attended during the course of the hearings, which have informed our statement to you today.

As lawmakers and elected representatives it is very important, particularly in this critical legislation, that you seek out and hear the voices of Aboriginal and Torres Strait Islander peoples, and I think that goes to the heart of rebuilding some of the trust as well as actually listening to those voices, so we appreciate the time you have taken to travel to the communities. However, we are disappointed that the legislation has already passed through the lower house and that members of the House of Representatives spoke on the legislation and supported the bill without the benefit of your report and recommendations.

The testimony provided to the committee in the Northern Territory last week has affirmed our original statement and those points particularly around ineffectual consultation and the impact on people and communities. By far, from what we have read from the transcripts, people spoke against the continuation of elements of the intervention and they also spoke a lot about disempowerment. Therefore I think it is important that we reiterate the main points from our written submission to the committee.

We noted in our submission that the bills were not subject to parliamentary scrutiny regarding their compatibility with human rights obligations. We called for a statement of compatibility in accordance with the Human Rights (Parliamentary Scrutiny) Act, which came into effect on 4 January this year. We expressed our doubts that the legislation meets the criteria of special measures, hence the legislation would be in breach of the Racial Discrimination Act and Australia's obligations to its international human rights treaties. We maintained that, given the nature of the consultation that occurred with affected communities, prior informed consent has not been obtained as required under the UN Declaration on the Rights of Indigenous People, an instrument that has been supported by the Australian government. We called for a greater investment in frontline services and programs provided by organisations that are controlled by Aboriginal communities and that provide jobs provisional people. We called for the government to provide practical and ongoing support to homelands and outstations. We emphasised that culture is essential to the lives and affairs of Aboriginal peoples and that this must be reflected in legislation and policy. We noted the detrimental impact these measures have on individual Aboriginal people, and that is why we have sought withdrawal of the bills until these issues have been addressed. After observing the evidence brought before the hearings last week, we reaffirm all of these points.

I want to speak a little about the legislation. By any objective standards, the punitive measures in the stronger futures bills and amendments to the Social Security Act cannot be shown to benefit the original people it is intended to assist. Testimony provided to the Northern Territory told of the emotional and psychological hurt the intervention measures have placed upon people in the Northern Territory. To subject people already experiencing disadvantage to further punitive measures is a violation of these human rights principles and we wish to reinforce this point to the committee.

The proposed 10-year sunset period of this legislation means that Aboriginal communities will be subject to 15 years under an intervention model of government, by which time the disempowerment that the committee observed in the Northern Territory will be fully entrenched. I will now pass to my co-chair.

Mr Malezer: As mentioned, this is the first opportunity that congress has had to meet with any parliamentary committee, and this committee in particular. For that reason, I would like to take just a few minutes to talk about some of the context in which congress is seeking to appear before the committee. When we referred to a withdrawal and re-tabling of the legislation, our concern was that this legislation was not being considered consistent with the human rights framework announced by the government—that is, prior to the last federal election on 21 April 2010, the Attorney-General launched Australia's human rights framework, reaffirming the commitment to Australia's human rights obligations.

The government has gone through the process of establishing a parliamentary joint committee on human rights to provide greater scrutiny of legislation for compliance with international human rights obligations. Each new bill introduced into parliament is to be accompanied by a statement of compatibility with those international human rights obligations. We were told that the changes 'will affect the way that new policies and legislation are developed'. The Stronger Futures in the Northern Territory Bill and two related bills have not been subjected to such scrutiny, and there is overwhelming reason to ensure that the government complies with this undertaking to the Australian people.

The government has given an undertaking to pursue recognition of the Aboriginal and Torres Strait Islander people as First Peoples in the Constitution of Australia. This undertaking relies upon preconditions, including that recognition in the Constitution will lead to a more unified and reconciled nation and that it will benefit and accord with the wishes of the Aboriginal and Torres Strait Islander people. The report that has now been received by government has recommended, inter alia, that the 'existing racially discriminatory provisions in the Constitution be removed and that there be a prohibition upon racially discriminatory laws'. Although the government has not formally responded to these recommendations by the expert panel, the committee should feel some commitment to take heed of the report and of these particular recommendations.

On the matter of special measures, unfortunately it is not well known or understood in Australia in political circles, legal circles, media or wider society that Australia has particular obligations in relation to the elimination of all forms of racial discrimination and the universal standards that have been in place since Australia signed the convention in 1967. The most misunderstood concept is that of special measures, often wrongly referred to as positive discrimination. Just a few years ago, the committee on the elimination of racial discrimination found justification in developing a general recommendation on the matter of special measures. The Australian Human Rights Commission has since provided excellent guidelines on special measures, which should form the basis for scrutiny of any laws or administrative actions which target Aboriginal and Torres Strait Islander peoples.

Congress considers it important to recognise that these laws—that is, the Northern Territory bills—have been developed to apply to the Aboriginal people and communities of the Northern Territory; therefore, they must be assessed as to whether they are special measures to overcome disadvantage or concrete measures to protect inherent rights. The committee should be certain on this matter. If the laws are special measures there are clear characteristics and obligations of special measures that should and in most instances must be met. The committee must be certain on these characteristics and obligations.

The committee will be aware that the intervention laws in the Northern Territory introduced in June 2007 have been subject to international scrutiny, including by important human rights mechanisms of the United Nations. The Stronger Futures laws seek to depart from the adverse reputation of the intervention laws but retain provisions in one form or another of the intervention. This clearly leads requirement that current bills be assessed against the reports of the human rights mechanisms. The mechanisms that have reported on the Northern Territory intervention include: the Human Rights Committee responsible for the covenant on social and political rights; the Committee on Economic, Social and Cultural Rights responsible for the covenant on economic, social and cultural rights; the Committee on the Elimination of Racial Discrimination responsible for the convention on the elimination of all forms of racial discrimination; the United Nations Special Rapporteur on the Rights of Indigenous Peoples; and the UN High Commissioner for Human Rights.

The UN human rights commission examined Australia's recent human rights record in January 2011. As a result, a number of recommendations were made and accepted by Australian in June 2011. Congress brings to the attention of this committee that the government has made the following commitments in response to the UPR process of the United Nations:

The Australian Government supports promotion of and respect for the principles in the Declaration. The Australian Government has committed funding in support of the establishment and early operation of the National Congress of Australia's First Peoples.

…

The Australian Government recognises the importance of engaging in good faith consultation with Indigenous peoples in relation to decisions that affect them. No legislative barriers to consultation have been identified.

The government is also developing a new National Human Rights Action Plan in consultation with state and territory governments, non-government organisations and Australian people. The recommendations from the Universal Periodic Review are now being incorporated in the new human rights national action plan, which is being developed through the Attorney General's Department.

Another response from the Australian government to the UPR recommendations is as follows:

The Australian Government supports promotion of and respect for the principles in the Declaration. The Australian Government has committed funding in support of the establishment and early operation of the National Congress of Australia's First Peoples.

I presume in that quotation that the congress is seen by the government as having a role in relation to the declaration and self-determination.

My co-chair has already referred to the role of the congress but, in particular, I wanted to point out that our objectives are clear in saying that congress is here to protect and advance the wellbeing and rights of Aboriginal and Torres Strait Islander peoples and communities and to provide a representative voice of and a conduit for communications with and between Aboriginal and Torres Strait Islander peoples.

Through the chair, I will point out there are five contextual recommendations. I have copies for members and I will very quickly give these to you. Congress recommends that the Senate Community Affairs Legislation Committee in preparing its report on the Stronger Futures in the Northern Territory bill and two related bills: (1) report on the compatibility of the new bills in accordance with the human rights obligations of Australia and consistent with the human rights framework which has been a commitment made by government; (2) affirm that the bills are intended as special measures within the meaning of the international convention and describe the characteristics of these bills that define them as special measures; (3) provide guiding commentary on the meaning and/or relevance of prior informed consent in the context of development of legislative measures that may affect Aboriginal and Torres Strait Islander people, including whether and in what way a duty to consult with Aboriginal and Torres Strait Islander peoples exists; (4) take of the commitment by the government to the UN Declaration on the Rights of Indigenous Peoples and the undertaking to the United Nations Human Rights Council to promote the right of self-determination of the Aboriginal and Torres Strait Islander peoples and, as appropriate, promote the achievement of self-governance and greater autonomy for the townships and homeland communities of Aboriginal and Torres Strait Islander peoples; and (5) acknowledge the existence and identity of the National Congress of Australia's First Peoples, the objectives of the organisation, with a purpose to promote constructive engagement between the parliament and the congress. I thank the chair for the opportunity to give that statement.

CHAIR: Thank you.

Senator SIEWERT: Thank you for the additional contextual recommendations on top of your quite comprehensive submission. I want to discuss the issue of compliance assessment. My understanding, from what you are saying, is that this bill should not proceed until the compliance assessment has been done. Is that correct?

Mr Malezer: That is correct.

Senator SIEWERT: You are probably aware that the committee tasked to do that assessment has not been established yet. They could do it if the bill was delayed, or would another process be satisfactory?

Mr Malezer: We are making it clear that, in 2010, the government made a commitment to their human rights obligations. Given the reports on human rights that have already been provided through various mechanisms, we believe that these bills, more than any others likely to come before the parliament, should be assessed.

Senator SIEWERT: So, depending on the outcome, I presume, that would be satisfactory. The assessment does not have to be via the committee that is as yet has not been established. The parliamentary committee has not been established yet, but the framework has been set up.

Ms Broun: The scrutiny can still be done outside of it.

Senator SIEWERT: Who do you think therefore should do it? Who would you recognise as having the competence to do it?

Mr Malezer: When we called for the bills to be withdrawn and retabled by the minister we had an understanding that the minister would, in that process, provide a certificate of compliance. The minister herself may be able to provide a certificate to the parliament. However, in appearing before this committee—remember that the House of Representatives has referred the bills to this committee—I believe this committee should have that competence.

CHAIR: The House of Representatives did not refer it to this committee.

Senator SIEWERT: No. It is the Senate that refers bills to Senate committees. You make a comment in your submission about diverting funds from the administration of Stronger Futures regulations to investment in front-line services and programs. What programs are you referring to? What bucket of money are you suggesting should be used? I get the point about front-line services and Vanessa would have heard the comments from a variety of witnesses in the Northern Territory about the need for more resources. Where are you suggesting the money comes from? I want to get an understanding of how you see this. Presumably, you think that money would lead to better outcomes if directed to something else.

Ms Broun: There are two points here. One is that the administration of the legislation is very expensive and you could get better and more sustainable outcomes by putting the same amount of funds into front-line service delivery. There is an urgent need for housing, for programs to encourage school attendance, for sporting and recreation programs, for alcohol and drug programs, for health services and for roads and infrastructure. There is any number of ways you could use those funds, by investing in the communities, and get the same outcomes. The other alternative is investing in governance at a local level in what communities see as important. How would they solve the issues, what are their community solutions and what do they want to happen in their community? The estimate that has been given is something like $200,000 per school for the implementation of SEAM.

CHAIR: Ms Broun, did you make that estimate or are you using ACOSS's figures?

Ms Broun: No. Those are ACOSS's figures.

CHAIR: It is on record that we have challenged those figures. We will be asking the department about those figures because they have not been quoted anywhere except in the testimony of one witness. I picked that up in your submission. I am also interested in your statement about reinvestment and the expense of administration. On what figures are you basing that?

Ms Broun: They are the figures with the legislation itself: over the four years there is an amount there to implement the legislation.

CHAIR: Yes. You have assessed that administration figure and found it too high?

Ms Broun: No, I think the figure itself could be better invested in frontline services.

CHAIR: We will be asking the department about that as well. I am interested in the basis on which you have got one paragraph there that says, 'This money is too much, it should be reinvested.' I am interested in whether you have assessed or interrogated that figure to find out where that goes and how it is done.

Ms Broun: No. I do not have access to that sort of information.

Senator SIEWERT: I want to go to the figure on the cost to implement SEAM. When we were in the Northern Territory we received quite a lot of information from the children's commissioner about the amount of support that children need at school. We were talking about the number of children that need special assistance. I am sure that Vanessa reported back to you that 60 per cent of children in prescribed communities had been assessed or were predicted to need special assistance at school. Have you looked at the proposals in that context of the level of support children need and whether they get that support? You have already made some comments on SEAM, but have you looked at SEAM through that lens of the level of assistance that is required?

Ms Broun: Yes. If you are successful in getting a number of these students to actually attend school, the level of support they will need to stay there and to achieve is significant, and I think there are real issues about the capacity and workforce to meet those needs. That is not to say it should not happen at all. If you want children to attend school they are going to have to be supported, ultimately, to do that. Having been a teacher in a school that did deal with Aboriginal students who were coming from education systems where they had significantly failed, I know that you have to do a lot of work one on one with students to get them not only up to scratch but feeling confident. There are a couple of points about that: it is around the workforce issues and it is around the school buildings. Are the facilities there to adequately cope with these students turning up at school?

The SEAM evaluation said some different things but it said that social worker contacts had more impact than the SEAM. On page 47 it said:

... tailored social worker support was considered to be the most critical factor in addressing issues underlying poor school attendance.

So if you want to get kids to school there are other ways of doing it. I think we need to be a bit more creative about how we get kids to school, but this is a huge resourcing issue. There is a resourcing issue in the legislation. I think there is a lot of burden on the school and the principal in making assessments and sitting down and doing the attendance plans and those sorts of things, so there is a huge resource there. Then there is a resource in supporting families and students. There is a resource in making sure that the school can comply as well. All up, that is a package that needs to be done. We are not suggesting there is not a lot of work to be done to get kids to school and to succeed at school, but the evidence does not show that the SEAM makes that much of a difference. In fact, the relapse after a compliance period and a restoration is significant.

Senator SIEWERT: The SEAM report also made a specific reference that, even where there has been an increase in attendance, it has been less successful for secondary schools and that different programs are attended.

Ms Broun: Yes.

Senator SIEWERT: When we were in the NT last week we did hear issues raised about the number of older boys, having been through law and coming back to school, and the resources not being at school for them. We also heard that the literacy and numeracy standards of some of the young people have actually gone backwards. I know the congress has only been around for a short time, but have you looked at specifically what could be done differently for secondary schools? The SEAM report itself says that is not that successful for secondary schools.

Ms Broun: No, but I would point you to some of the really creative suggestions from the communities themselves that came out of the consultations that were done for Stronger Futures. Communities were very creative about some of the things. I would also point you to some of the points and findings that Gonski had, identifying a number of strategies that improve outcomes for disadvantaged students, which is entirely consistent with what you are hearing from communities and what we would say to you as well. I pulled out some salient facts, which were: schools to better meet needs in curriculum and engagement of parents and elders, and I think that would work in a high school setting as well as with primary schools; obviously quality teaching and interesting and positive experience—one of the points actually in the SEAM evaluation was that the SEAM goes against school being a positive experience, and it is principals saying that; that there has to be local and regional high schools—that students do not need to go away; that there has to be paths to employment; that there have to be some incentives; bilingual education is an important factor—and we have made a point about that in our submission as well.

Senator SIEWERT: Yes, that is one of the recommendations.

Ms Broun: And while there was some support for income management or a SEAM type approach, it was regarded as very much a last resort. I think the communities have a really good grip on some of the ways you can get success around getting kids to school. Our point is that it is not a one size fits all and it does need to have a community based approach. They have got to come up with solutions and be supported in those solutions. The engagement with the community and then making the decisions about what those solutions are is critical to that success.

Senator SIEWERT: Thank you.

Senator BOYCE: We are getting towards the end of this inquiry and it is good to be still getting new ideas being put forward, one of which is that you are suggesting that there should be consultation for areas outside the Northern Territory in regard to what is referred to as 'the related bill', which is of course around the SEAM program and income management nationally. What prompted you to include this in your submission? Have these issues been raised with congress?

Ms Broun: My understanding is that the bills actually allow for expansion into other parts, and that that can be done without consultations. So this goes beyond the Northern Territory—and income management being trialled in the number of other sites as well.

Senator BOYCE: Have there been any complaints that you are aware of about the fact that there was not consultation outside the Northern Territory?

Ms Broun: No, there has not, but people are concerned with this right across Australia and I do not think there has been enough information getting out of the community that this is not just about the Northern Territory. Some people are aware that there will be trial sites of income management, for instance, in other locations, but I think it is a limited understanding.

Senator BOYCE: And Queensland.

Ms Broun: Yes, and the SEAM sites as well. It is really good practice to let people know that this is broader. Its title suggests that it is really confined to the Northern Territory, but in fact that is not the case.

Senator BOYCE: What would you suggest needs to happen? I think you are perfectly right. The knowledge in the Northern Territory of what was going on was pretty limited, from what people are telling us, anyway. What do you suggest needs to happen in this area?

Ms Broun: We have suggested in the submission that you do have to have consultation built in. I think I would go to some of the points made by the Human Rights Commission, because I think they go to that point as well around building in the consultation processes. But in terms of the consultation itself—and I was listening to the Human Rights Commission's evidence—the evidence that you received last week around the inadequacies of the consultation process is, I think, fairly overwhelming. It is consistent, I suppose, with what our members have been telling us all along. You asked what was wrong with the process, the budget and the time constraints, and I think it was all of the above, as well as issues around language barriers and the way the information was disseminated. Again, if you look at the SEAM evaluation, that showed that even people being referred through that process did not know that they could even be referred through that process until they were face to face with the principal, basically. The information and how it is provided to communities is really critical.

Mr Malezer: I will provide a brief comment in that we have not received complaints as such and we cannot handle complaints, in any event—

Senator BOYCE: I meant: has the issue been raised with you?

Mr Malezer: Yes, it has. Comments have been made to me and to some of the other members on the board in relation to income management as it is occurring in North Queensland and that we should be looking at the situation up there. The way in which congress operates is: no, we cannot take on issues in that way; we can only in this sense respond to the development of this bill, but we point out that we are aware that people in other communities and other locations are saying that they have issues which need to be looked at in that context.

Senator BOYCE: Perhaps you could provide on notice some more detail about the sorts of issues that have been raised and who has raised them, if possible. I realise the broad concern is lack of consultation, but if you could give us any more information on notice around that, that would be good. Thank you.

Something I was not aware of until yesterday, when it was raised with me by Amnesty International, was the collection of services funds from homes by Centrelink, where money is deducted automatically every fortnight for services rather than for rent. I did not realise this was on a per-head basis and that in fact people could be paying up to $700 a fortnight for services, so there is almost a suggestion there that it suits authorities to have a lot of people in a house, despite the effect of that, and the fact that there is no transparency about how those 'services'—and again I am using quote marks—come back into those communities. You have mentioned this under the 'Housing' section of your submission, at No. 76. Do you have any thoughts about how that should happen and who should do it? Is it the Northern Territory government or the shires? Who?

Ms Broun: As you say, we refer to it in our submission. I think the main point is not so much around a deduction for services—that might be quite appropriate—but the fact that if people are not receiving the services that is an issue. It is also the transparency around that.

Senator BOYCE: Yes, that is what I was suggesting.

Ms Broun: That would probably go to some of our concerns around community governance and control and decision making as well, because they would have more ideas on those services and making decisions about those services. I think the other point there is a deduction for services that do not exist. It is around the transparency of that. But you are right in that if there is an overcrowded household it does mean there is a lot more going into the services market. But where those funds are being directed is the real point: how they are being used, how they are being acquitted and accounted for back to the community? I think they are the important things. Whether it is Northern Territory Housing, and I think some of the points that have been raised to me particularly when I was in the Northern Territory was that people are still feeling they are not getting great service from Northern Territory Housing, particularly around maintenance and things like that. So I am not sure that would be a solution either. But in terms of administering those funds I think it is much better and more localised, and I think this goes back to our point about local level solutions and decision-making.

Senator BOYCE: We did take evidence in the Northern Territory of people being breached for nonpayment of rent and when they complained that they had been paying the rent Northern Territory Housing asked them to produce evidence because they could not find their own records, so to speak, on the topic. It was a bit scary.

Ms Broun: And I think maintenance is the other issue, the timeliness of any maintenance matters being dealt with.

Senator BOYCE: And when you got 14 people in a house you are going to need a lot more maintenance.

Ms Broun: That is right. I think that goes to the other point that, while obviously there has been a huge investment in housing and other infrastructure and services, it is still not meeting the need or the emerging need within those communities. It might be that there have been 100 houses built and there may well be a need for another hundred. Otherwise the investment in those first hundred is not wasted but it will not last as long as it should because people are still overcrowded. That point gets raised in every location you go to.

Senator McKENZIE: Thank you for your evidence. In number 5 of your contextual recommendations you talk about acknowledging the existence and identity of the national congress with a purpose to promote constructive engagement between the parliament and the congress. Could you expand on that a little bit, how you see that working and why you do not believe there is already constructive engagement between the parliament and the congress?

Mr Malezer: The recommendation is not to make a criticism of what is or is not happening. We are only seven or eight months old as an elected board and we are negotiating with government about engagement protocols and so on. However, we have a consciousness in the congress that our relationship should be with the parliament, and in that sense parliamentary committees are fairly important to us. In that sense we try not to be too concerned about partisan politics and issues of the government of the day and so on but rather the long-term interests of the rights of Aboriginal and Torres Strait Islander peoples in the context of the rights that should be observed through our process. So we are putting a proposal to this committee that it be able to comment on the congress and its identity or structure. We mentioned very briefly that our objectives are clear in the sense that we are here to promote and pursue the rights of Aboriginal and Torres Strait Islander peoples and to bring Aboriginal and Torres Strait Islander peoples together in a unified voice on the issues.

A lot of our own community think that we are appointed to be an advisory committee to government and that creates a different perception or different role, whereas what we are is an organisation speaking for Aboriginal and Torres Strait Islander rights, trying to engage the parliament consistent with the concept of self-determination which the Australian government has said it is supporting, including supporting congress's role in that regard. It has not as yet got definition. We hope that will occur as we do the engagement protocol with the government but also, as has already been experienced with this committee, having Vanessa Curnow travel with the committee and participate in discussions with the communities about their interests in legislation is a very important part of that. I particularly want to refer in my answer to articles 18 to 23 of the declaration on the rights of Indigenous peoples, all of which relate to the processes that we are experiencing at the moment; that is, the way in which Indigenous peoples are able to be effectively engaged in matters which affect them and their futures.

Senator BOYCE: So who are you negotiating with around this relationship?

Mr Malezer: We are developing the text of an engagement protocol and that text is to be discussed with the government, in particular Minister Macklin, but we also have discussions going on between our office and people in the departments led by the Department of Families, Housing, Community Services and Indigenous Affairs. Also, we are engaging as well with other departments across government that have a role in relation to Indigenous affairs. Ultimately, we hope that when an engagement protocol is agreed it will, in fact, be signed by the leaders of the major parties in the parliament.

Senator BOYCE: Sorry, I was smiling at the idea of an IIS. Like a regulatory impact statement, you have an Indigenous impact statement in legislation. Thank you, Mr Malezer.

CHAIR: I have a question in terms of the programs that in here. Has the congress had a full briefing from the department or the minister about things like SEAM? Have you had a full briefing from DEEWR about how it works?

Ms Broun: Yes, we did have a briefing by FaHCSIA on the legislation, on the bills.

CHAIR: Did that include the details of the SEAM process?

Ms Broun: Yes.

CHAIR: I am interested in your submission given that even your statement said you should see SEAM as the last resort. And it is clearly the understanding that I have of SEAM that it is the last resort.

Ms Broun: Yes, that is right. That is the way it is intended. My point is that if you have legislation without it and all of the other supports and workforce that need to occur that means you might be going to that last resort much more often than you need to, because you do need it and, as it is showing, you need the social workers and the additional teachers and you need the other resources and the other facilities—all of those things.

CHAIR: Have you actually had a briefing from the NT government?

Ms Broun: No.

CHAIR: Maybe with Vanessa's report then, and the evidence we had on Friday from the NT government talked about the processes that they had in their systems. I think it is just important to look at the whole process. Thank you very much.

COX, Ms Eva Maria, Adjunct Professorial Fellow, Jumbiunna Indigenous House of Learning

Evidence was taken via teleconference—
[16:43]

CHAIR: Welcome. Ms Cox, you know all about parliamentary privilege and the protection of witnesses.

Ms Cox: I do.

CHAIR: We have your submission. Would you like to make an opening statement?

Ms Cox: Yes, I would. First of all, I would like to signal the fact that Jumbunna has prepared another report, which will be released on 8 March, which is looking particularly at the process of the consultation and how far it complies with a whole lot of legal issues. I want to just mention the fact that that will be available on the Jumbunna website and to make clear that that actually reinforces some of the material that I sent up as part of our earlier submission. Their view is that the Stronger Futures consultation process did not comply with Australia's obligations to meaningfully consult with Aboriginal and Torres Strait Islander people. Among other failings, the process was deficient because it did not involve the affected Aboriginal people in the design or implementation of the process; it relied on materials that were dense, complex and not translated into Aboriginal languages; it was conducted in very general terms without reference to specific proposals or potential initiatives, despite the fact that the proposed legislative measures must have been in draft, were decidedly partisan and did not acknowledge previous criticisms of the intervention measures or acknowledge sufficient community led initiatives to address community aspirations; covered so many themes and asked so many questions that in-depth discussion was not possible; did not provide any mechanisms for reaching agreement; did not include a clear process for feedback to communities to verify records of meetings; and gave insufficient time for considered appraisal of the complex community legislative measures, especially in remote Aboriginal communities. That is one of the conclusions of the report.

I would like to add to that one of the major criticisms, which I have made to some degree in my submission but I do want to reiterate, which is that it is no use going out and consulting with people—like you are running around and consulting with us now—unless the consultation process actually seriously takes into account the material that comes up and changes things. One of the most concerning aspects of the Stronger Futures legislation is that, to all intents and purposes, whatever was drafted before the consultations was what was finally in the bills, and there is no evidence that the process of consultation did anything more than act as a ticking box to say, 'We've done it,' rather than seriously testing out ideas and looking at whether or not the particular measures and so on were acceptable to the communities. That is the basis for a lot of criticism that I made in the submission I made, and within that particular report, which, as I say, will be available on the Jumbunna website from next week.

There is also some earlier work I did looking at the CIRCA criticisms of the report. What I find very interesting, both as a researcher and a reader of these things, is how much of the critique that I have made and other people have made also appears in many of the government's own reports which are very dubious about the quality of some of the processes that are going on. I suppose my concern at this particular stage, particularly since I actually made a submission on not dissimilar lines to the last inquiry, was that this government—with the majority, possibly, of the committee—will put in a report saying, 'Put this through without any changes,' when it is very obvious from a lot of the material that I have looked at and that other people have looked at that there is no serious consent from Aboriginal communities. There are various views about what they like or they do not like. According to the sort of critique we have now produced, there was very little opportunity for serious dissent from what was being proposed in Stronger Futures. So I have some very serious concerns that, if the legislation goes through, it will be rather like the income management stuff in the first one, about which your report actually said, 'There's not enough evidence to warrant an assumption that this program will work,' and the government has not only gone ahead with the program but is actually extending it to places like Bankstown, Shepparton and Logan. This does worry me, as somebody who is concerned about good policy process.

CHAIR: Thank you very much. We will go to questions.

Senator SIEWERT: I am looking at your submission and I would like to go to the issues around the SEAM program, if that is okay.

Ms Cox: Yes, sure.

Senator SIEWERT: I am looking at table 2.2, 'Parents by tier response'.

Ms Cox: That is a compilation straight out of that strange report from O'Brien-whatever they are called.

Senator SIEWERT: Yes.

Ms Cox: I criticise the report on the basis that it was not a very credible report, because you cannot actually report on that sort of data. But given the fact that they did report on it, even their own reporting does not really support the government's idea that people approved of it.

Senator SIEWERT: I must admit, I have trouble with the fact that this was used for that purpose. I have also been questioning whether you can do that sort of analysis on that data.

Ms Cox: No.

Senator SIEWERT: Is that a credible way of doing that analysis?

Ms Cox: I have taught research methods for probably about 20 years in varying guises. You cannot have a system where you have got a whole lot of people recording things, probably in a fairly haphazard manner, particularly under what might be called a 'tier one'—which are many hundreds of things—where you have got a GBM or somebody who is writing some notes while having a bit of a chat to somebody and then you suddenly collect all of those notes, plus the notes from the tier two things, which also seem to be fairly chaotic and done in varying ways. And you hand them to somebody and you say, 'Analysis this.' They did not put it through an ethics committee. You yourself asked, or somebody asked, a question on that. It was never cleared through an ethics committee.

I think it is actually unethical as a researcher to use data which was collected in a way which was unprofessional in terms of research professionalism, and put it through SPSS. It is totally bizarre. I would fail any of students who came up with something and did it that way. It does not have any credibility in terms of the level of consistency about the way that the data was collected. It was collected by people who had a vested interest, in some cases. I am not saying they did this deliberately, but it is known that people who are not professional researchers will tend to record those things that agree with their views. It is quite likely that they did not record a lot of stuff that did not agree with their views and they still managed to record some stuff that did not. It is rather a muddle about that. I think any credibility that was put on this thing, which I think cost them $75,000, would be totally misplaced. I do not think you would find anybody, whatever their politics, who was a researcher saying that this was good research or legitimate data. In fact, the report itself says, 'Do not trust it.'

Senator SIEWERT: Thank you.

Senator BOYCE: What is SPSS, Ms Cox?

Ms Cox: Statistical package for the social sciences, which is the program that they used. What they did is, they took some notes and they went through it in a way that, for instance, if I was running a focus group or doing some open-ended questionaries, you go through and you code up. You read through the notes and you look for repeating words, repeating phrases or repeating ideas and you count them and you put them into a table. Then you cross-tabulate it against other things. The program you use for that is called a statistical package for the social sciences.

Senator BOYCE: Thank you.

Senator SIEWERT: Thank you for that. You actually covered subsequent questions I was going to ask to be covered in your answers.

Ms Cox: Sorry about that.

Senator SIEWERT: Thank you. In terms of the actual SEAM process itself—so moving beyond the analysis of people's response to the consultation process—have you done much analysis of the actual SEAM process itself?

Ms Cox: I have had a look at the various evaluations. I think there are two lots out. There was 2009 and a bit of 2010, and then more recently a bit more of 2010 and a bit of 2011. There are different ways that they have done them in Queensland and in the Northern Territory. Even those evaluations, when you read them through carefully, say things like: 'A large number of the people that actually are part of the program still do not understand it.' Towards the end of it, people did actually understand it was useful if they enrolled their children at school, and then they got a tick. But in terms of actually showing any sort of serious improvements in say, literacy, numeracy or even attendance, to the best of my goodwill—I am a professional researcher; I am not trying to pretend that I do not have particular political views—I would not jeopardise my professional reputation by being silly enough to make claims that are unclaimable. The researchers themselves say, 'It is far too early and we really do not have the data to know whether or not it is actually working.' It is the same with income management, where there is actually no evidence—I have gone through the more recent studies—to show that income management has actually improved the safety or the status of things. I know the NPY women feel it has, but in terms of any sort of statistical evidence it is not there. It is the same thing with the SEAM program. We have two

major programs where an enormous amount of money goes into the administration, the organisation and the payment of public servants to run them, yet whenever you read through the stuff—and I have read through some of the transcripts—they are saying things like: 'We want to improve our schools; we don't want to punish the parents. If we improve the schools, the kids will come and the parents will come'—particularly if they have transport but that is another issue.

There is a very strong push right through the various transcripts and bits and pieces that were available and some of the submissions I read which basically said, 'Give us the money so we can work on improving the schooling,' looking at things like bilingual teaching and other issues and making sure the cultural stuff is all right and making sure that the tenure of teachers is long enough—and I gather tenure is an average of nine months right throughout the Northern Territory. Rather than pressuring parents for not sending their children to school, the evidence certainly from people like Chris Sarra and so on is that if the school is good enough, the kids will tend to come.

Senator SIEWERT: We have heard a lot about the SEAM program and now they are saying the suspension of income support payments will be a last resort. We heard evidence from congress that to do it properly a lot of resources would be needed, and if the resources are not there you will come to the last resort sooner. We have heard a lot about the need to engage parents with the schools and develop a positive relationship between parents and schools. If the ultimate sanction is cancelling someone's income support payment, as a researcher what do you think that will do to the relationship with the parent?

Ms Cox: It is a problem that runs right through the stuff. It is the income management stuff generally and the SEAM stuff in particular which assume the fault is always with the person. The stuff that was picked up within, say, the Equal Rights Alliance survey in the Northern Territory and other things was that people felt ashamed, embarrassed and uncomfortable about the way that they were being judged. Even if they were trying to do the right thing, they felt that. If you say to somebody, 'Yes we'll have a school conference, yes we'll bring in the social worker, yes we'll do this, yes we'll do that' there is nothing in any of that which says, 'We're going to find out what's wrong with the school.' It is all about the assumption that there is something wrong with the family and with the attitudes of the family or with the way they are dealing with the issues that they need to deal with.

There is a lot evidence on this. In my survey I quoted radical organisations like the Productivity Commission—obviously a ratbag left-wing think tank!—and various other groups like the Australian Institute of Health and Welfare. These really conservative organisations are very meticulous about methodologies and are saying that you have to work bottom up, build trust, be culturally appropriate and have shared control. The trouble with SEAM is it has none of those things in evidence. It is all about social control from outside, which just adds to people's feelings of inadequacy. If you look at work by the WHO on the social causation of ill-health and the stuff by Michael Marmot on inequalities and so on, having a sense of autonomy and some sense of control over your life is the best predictor you have of both good health and good social behaviours. It is same with the Wilkinson and Pickett work looking at that.

The more that you use a compulsion, even if it is a last resort compulsion, to try and pressure people with the knowledge that that last resort thing is hanging over them, the less they are likely to feel autonomous, the less they are likely to feel adult, the less they are likely to feel respected and the more likely they are to stuff up. This is one of the things that somehow or other the government is not recognising in a lot of the things it is doing here. It is working on the basis that you have to run a paternalistic program which, in a sense, infantilises people. The evidence, from a lot of the stuff I have read, is that if you treat people like kids they tend to behave like kids. One of the things that is really important within the Northern Territory—and it is all through the Productivity Commission reports on closing the gap, and it is all in the closing the gap clearing house summary sheets—is that you have got to change the way you do things. That is why I am really concerned that, in this area and in the main consultation-type stuff, people have been left with left with less trust and less of a sense that the government is listening to what the locals say. People were saying they wanted more local control, more involvement in the schools and they wanted to revive some of the local stuff that has been lost because of the shires—and I know that is not part of Stronger Futures; that is the Northern Territory government, but people do confuse the two because they have happened side by side. In the stuff I have read, and I have read some of the submissions, together with the stuff I have been looking at, there is a very solid sense of a breakdown of trust. I think that having this hanging over you, if you cannot get your kid to school, that you are going to end up losing this thing and you are going to be judged even if your kid happens to be very difficult to get to school. I have known nice middle-class parents trying to get their kids to school—particularly the 13, 14 and 15-year-olds—who have completely failed, and it is not the parents' fault. There is something happening with the kids. Yet, if you give them the right schooling and the right support, it works. And yet SEAM does not seem to have taken that on. It just assumes that

the schools are good, the schools are desirable and the problem is with the children and the parents. I think that that analysis is very narrow and quite destructive.

Senator CROSSIN: I want to go to some of the perceptions in this submission. I am not sure if you are aware of my background, but I taught for five years in a remote Indigenous community in the Northern Territory, in a bilingual program. So I have actually been in one of those remote Indigenous schools for five years in a bilingual program. I have had days where I have had 26 children come to school on a Monday-Tuesday and I might have had four come on Wednesday. I have my own views about bilingual education. A lot of people say that if a school is a bilingual school, that might be one of the reasons why kids come. I do not necessarily concur with that.

Ms Cox: I did not say that, and I have read enough of the stuff there and have had conversations with people who started a lot of the bilingual education stuff. I am not saying that bilingual education is a solution to everything.

Senator CROSSIN: Perhaps I can just finish my introductory remarks and ask you a question. I concur also with some of the findings from Chris Sarra. But if you actually take the criticism of SEAM and you look at the O'BrienRich report, for example, and even the table that has been replicated on page 11, I also do not believe that out of 471 people only 50 of them think that they need more support to understand what school is about. I am constantly being confronted by parents who say to me, 'Why do my kids have to go to school 200 days a year? What happens every day in school?' I suppose I have always had a view that we educate Indigenous people about rubbish on the ground and health outcomes. What I am leading to is if you have a look at the testimony that the Northern Territory government provided last Friday and the fact that this SEAM model is vastly different to the trial where some of these concepts about involving parents and educating parents about what school is about are now going to be picked up, and you looked at the evidence from Gary Barnes last Friday, would that give you a different perception about how there is a different emphasis in what is now going to be projected as the SEAM program?

Ms Cox: Obviously I have not read the stuff that you heard last Friday. I do not pretend that I am an expert in Aboriginal education and I am sure you know a lot more about it than I do. I am not saying that bilingual education is the answer to everything because I know it is not. I know a lot of the schools that had bilingual education were not doing necessarily much better than the other ones. But I do know that, for a lot of the people, the removal of the bilingual education was seen as an undermining of some local employment, particularly of some of the Aboriginal staff within the schools, and it caused quite a lot of ructions and tensions. It is another factor in the tensions.

Senator CROSSIN: I do not want to spend my night talking about bilingual education.

Ms Cox: I was only naming it as one of the things that was named by people that they wanted to talk about and it was not talked about.

Senator CROSSIN: Bilingual education works when a child attends 200 days a year. I have had people attend 200 days a year, people like Yananymul Mununggurr, who is now CEO of Laynhapuy, and even Timmy Burrwanga, who is on the national consultative committee for the Indigenous recognition in the Constitution. They are both past students of mine who attended every day. So bilingual education is successful. Any education is successful if you attend 200 days a year. But the evidence last Friday from the Northern Territory government was that, I think, they have had 78 children under their Every Child, Every Day policy working in conjunction with the Commonwealth who were at risk of having their Centrelink payments affected or fined and, because of the intensive support in the new program, at least 56 of those are now attending regularly. Is that not a good thing?

Ms Cox: I am not denying it will work for some people. As I said, I am not an education expert; I am a researcher. I suppose what I am trying to say is that you have to balance off in all of these programs something about the way they are put together and the content of them. I agree with you that obviously there is a serious need to try and make sure that children attend school. What does concern me is the fact that this program along with other programs seems to primarily make the assumption that the problem is with the parents, not with the schools yet other people would say there are serious problems with the staffing, with the support, with the attitudes of teachers, in trying to fill the positions and with lots of other things that are happening in Northern Territory schools. I am not trying to say that those 56 kids are not better off because of SEAM. They may well be. But that is 56 kids and you are introducing a major shift in a whole lot of areas which might mean, for all we know, that there are another 40 or 50 kids and families who feel even more alienated and we do not know that. That is all I am trying to say. I am trying to say it worries me because we did not have a serious evaluation of what it was doing overall. We might have a certain number of children that come through but—going back to my

head as a researcher—just because you can point to some successes for a program does not necessarily mean the program is working because the failures might outweigh the successes and that is something we do not know yet.

Senator CROSSIN: I understand where you are coming from. I have taught in good and bad schools and have taught alongside good and bad teachers. I point to Gunbalanya, and again I raise this as an example as I did last week: the Christmas concert that I saw them videotape—and I am going to say this to them again, they have to put it on YouTube—was one of the best performances I have ever seen, probably better than some of the inner city primary schools in Melbourne that I have taught at, quite frankly. Having said that, there are also communities where the parents are absolutely committed to getting their kids to school every day—and they get it—but there are also parents who take no responsibility and really do not understand the importance of going to school every day. I worry, because we seem to be polarised and taking positions here, rather than saying, 'Well, here is SEAM.' I read this legislation as saying to the Northern Territory government, quite frankly: 'Get your act together and get on board with us in your Every Child, Every Day policy,' and, at the same time, the Commonwealth provide support and social workers through Centrelink.' I do not hear or see in any of the discussion—not at all last week—and in most of the submissions I am reading, any other alternative solution and I do not see anyone putting to us a position that there has to be a compromise between the bureaucracy and what is happening in the home.

Ms Cox: I think the problem I have got with what you are saying is that I agree that you are doing this, but it is like income management. You bring in a very large hammer, when there is actually still a lot of other things that could be done which are not about enforcing and social control. I am not denying that there are some parents that do keep their kids away from school, but I have done some work with Aboriginal parents here in Glebe, where I happen to live with inner city parents. We sent out Aboriginal people to talk to the other Aboriginal mothers to find out why they were not sending their children to playgroups. They started talking about 'the look'. What is 'the look'? The look is the assumption that there is a deficit amongst them because they are Aboriginal parents—if they are Aboriginal parents they obviously do not read to their children, they do not what their children need and all of those things. They are so turned off by these attitudes that they are actually avoiding putting their children into early childhood services.

All I am saying is that I think that these are complex issues, and I think part of the problem with the Commonwealth is that they are looking for authoritarian, top-down solutions which may cause as much damage as they cause good—and then we will have to turn around and give another set of apologies about things that have gone wrong. I think the authoritarian aspects have been put up far too early before other things have actually even been given a chance. What worries me, if you look at the stuff that I have been looking at from the submissions and things like that, is the number of people who say we need extra services, extra supports and things like that—not Centrelink social workers; we need stuff within the communities.

Senator CROSSIN: Ms Cox, have you had a look back at what was a Commonwealth program called ASPA? It was canned by the previous federal government. Schools were encouraged to set up an ASPA committee, which was an Aboriginal student support and parent participation program. Each school was given probably around $300 or $400 per student per school. The effect of that was essentially that this parental committee—parents, essentially—had total ownership over that bucket of money and could decide how that money was spent.

Last week, Peter Jones, an educationalist from the Northern Territory who is now working with the United Church, raised that program as one of the more successful programs he had seen in operation. It certainly fits into goal No. 1 of the National Aboriginal Education Committee, which is to increase the participation of parents in schools.

Ms Cox: Then maybe you should be trying that rather than SEAM.

Senator CROSSIN: I am wondering if your research has taken you to look at those kinds of programs and whether some of those should be reinstigated again.

Ms Cox: I am not Chris Sarra and I am not an expert on Aboriginal education. In fact, education is not my area. As I say, my area is looking at research results. All I can say is that certainly from other stuff I have looked at in the policy area, I think that there is a hell of a lot of more you can do with carrots and sticks—and they have got vitamins in them as well.

What worries me is that you are moving in with SEAM far too soon, before there has actually been a building up of the levels of confidence and trust within the Aboriginal communities, before working within the schools to increase the sort of good will towards them and before trying to get communal pressure on the parents who are not sending their children to school—rather than the external pressures. That is the evidence from all sorts of policy research around the world: that getting the communal pressure on families that do not care and on the kids

is much more likely to work. We just evaluated a program in New South Wales called Tackling Violence, which was a football thing—an antiviolence program. What came through very clearly was that footballers said that what they really liked about the program was that none of the people telling them about violence were coppers, health workers or even their own Aboriginal organisations; they were being told it by their peers, and they listened. I think that this is something that we do not have enough of an understanding about. I think the Commonwealth has to be very wary about where it spends a lot of money on bureaucratic top-down programs, because, as I say, even the Productivity Commission says that they do not work. Yes, $300 or $400 per child for bringing Aboriginal parents into school would probably be a lot cheaper than SEAM and work a lot better.

Senator CROSSIN: Finally, can I ask you one question. In this new model that is envisaged in this legislation, you do not think it puts more pressure on the Northern Territory Department of Education and Training?

Ms Cox: No. I admit I have not looked at it in fine detail.

Senator CROSSIN: I have not actually worked with any teacher in the Northern Territory who would want to see any child or any family go down the path of having their Centrelink payments changed. I would have thought the school and the bureaucrats would do whatever they possibly can to avoid that. I am wondering if you do not see this as a means of putting pressure on the Northern Territory government department of education to improve what they are doing.

Ms Cox: Sorry; I have been a bureaucrat, and I do not really think that the Commonwealth doing something like that is suddenly going to turn all of the teachers and the people in the Northern Territory bureaucracy into defenders of the people at the local community level. I think that that really is pulling a very long bow. I think that, if you want to do things about improving the things at the community level, you work with the community; you do not hope that, because you are being nasty to the community, they will be rescued by the Northern Territory bureaucrats.

Senator BOYCE: Ms Cox, you spoke earlier about the report that you are preparing in relation to the consultation process.

Ms Cox: The organisation is; I am just a very small part of it.

Senator BOYCE: Sorry. We took evidence earlier tonight around the quality assurance aspects of that. Does your report cover that aspect? I beg your pardon: does your organisation's report cover that?

Ms Cox: The stuff that we looked at—and I do not know what you are referring to in the quality assurance stuff—is that there is a section in that report which I wrote which was a careful examination of the CIRCA evaluation. CIRCA were hired by the federal government to do the quality response on that. There are a whole lot of sections that I have in this report where CIRCA themselves say that there are serious problems in the way that the things were run. First of all, they had no access to anybody in tier 1, so they had no idea how it was going. They are actually quite scathing in a couple of places about what was happening. I am trying to look for one of the quotes on that:

The broad objectives of the consultation … appear to have been met—

so they are saying that the government met its objectives—

in that the facilitators clearly articulated the Government's rationale and aims in relation to the consultation, and … provided participants with adequate information and opportunities to provide feedback.

It said:

… the … Tier 2 consultations … were undertaken in accordance with the consultation and communication strategy and were open, fair and accountable.

It says, basically, that the government did what the government said it was going to do. It does not necessarily mean that that accountability went even further than that. They themselves are somewhat critical at various points within the things. In terms of the data collected at the meetings, the CIRCA review notes that, while a range of people spoke at most consultations, feedback was focused on ' a small number of speakers (generally six to seven people)'. For example, in one initially large meeting, only three people provided comments. This hardly mattered given how little information was actually recorded:

In most cases the reports provided a list of each point raised in the meeting for each priority area.

Not all the reports, that is, even recorded a list of the points raised. This is CIRCA's own comments; this is their own consultants pointing out the flaws in the way the reporting was done.

CIRCA reports a standard template was used: consultation type, estimate number who attended, interpreters et cetera. It says the template has a section for each one but they did not necessarily fill it in. I do not know who you

were talking to about the quality assurance but certainly their own quality assurance finds flaws with it. They are saying they did what they said they were going to do, but that does not necessarily mean that what they said they were going to do is actually all right. They say:

The role of the GBM was often significant in the conduct of the meetings and in encouraging people to attend the meetings. In many cases the GBMs contributed significantly to the effectiveness of the consultations.

Think about it: if you are running a consultation on government programs and the government business manager is one of the main people pushing you to turn up at the consultation and pushing you through the things there, you are usually far too polite to say you do not like what the government business manager is doing to your community. We know that that is actually quite a difficult task.

It points to one of the main flaws if you are looking at quality in this, and that is that if you are serious about doing any such consultation, one of the really basic things is to have people who are independent at least chairing the consultations. But there was nobody there that was independent. There were the people from the communities and there was CIRCA, making some of the comments that I have read out, and there were people from the bureaucracy. If you are serious about wanting people to say what they feel, they need to feel that they are talking to somebody who is not necessarily part of the government that they have got to continue to deal with. I think that that is a fairly serious comment on the quality control.

Senator BOYCE: Okay. In point 36 of your submission you talk about there not being any public access to the written reports from the monitors for those consultation sessions. Have you tried to get access to them and been refused, or what makes you say there is no public access?

Ms Cox: Some of the people were promised that they would get a report back. I went to a meeting recently at the Human Rights Commission and one group there actually did have access to a report that they had been given by FaHCSIA staff. Don't ask me who they were, I cannot remember; they just talked about it in the group. When a lot of us said, 'You've got a FaHCSIA record of that, can you circulate it to us?'—these were a whole range of people, including from the congress and various other quite legitimate groups—they apparently asked FaHCSIA whether if they could were allowed to circulate it and FaHCSIA said no.

Senator BOYCE: No reasons?

Ms Cox: No reasons were given. Other people who asked for feedback apparently did not get it.

Senator BOYCE: We will have the opportunity to follow that up later this evening.

Ms Cox: I think that is important. They have obviously got it because they gave it this O'Brien whatever they are called to do this strange bit of analysis on. It is a bit odd that they do not actually release this in public so at least we could work out how legitimate the analysis was and how limited, or not limited, some of the recording was.

Senator BOYCE: Thank you.

CHAIR: Thank you, Ms Cox, as always, for your evidence and for your submission. We will talk soon.

Ms Cox: Okay. Thank you. I just hope that the committee does take seriously its role as a review committee because I think you have got a serious can of worms if you let this one go through to the keeper.

CHAIR: Thank you.

Proceedings suspended from 19:24 to 19:54

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

DANDIE, Ms Sandra, Director, Evaluation, Department of Education, Employment and Workplace Relations

DAVIES, Mr Matt, Acting Group Manager, Engagement and Wellbeing, Department of Education, Employment and Workplace Relations

DILLON, Mr Michael, Deputy Secretary, Department of Families, Housing and Community Services and Indigenous Affairs

DONALDSON, Ms Wenda, Branch Manager, Smarter Schools Partnerships, Department of Education, Employment and Workplace Relations

EDWARDS, Ms Caroline, Branch Manager, Indigenous Policy, Department of Families, Housing and Community Services and Indigenous Affairs

HEFREN-WEBB, Ms Elizabeth, Branch Manager, Welfare Payments Reform Branch, Department of Families, Housing and Community Services and Indigenous Affairs

HENDERSON, Ms Margaret-Ann, Senior Adviser, Department of Families, Housing and Community Services and Indigenous Affairs

INVERARITY, Ms Tara, Director, Criminal Law Reform Section, Criminal Law and Law Enforcement Branch, Attorney-General's Department

JAMES, Mr Matthew, Branch Manager, Performance Evaluation Branch, Department of Families, Housing and Community Services and Indigenous Affairs

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STACEY, Mr Brian, Group Manager, Stronger Futures in the Northern Territory, Department of Families, Housing and Community Services and Indigenous Affairs, Department of Families, Housing and Community Services and Indigenous Affairs

CHAIR: Welcome. I remind witnesses that the Senate has resolved that an officer of a department of the Commonwealth or of a state shall not be asked to give opinions on matters of policy and shall be given a reasonable opportunity to refer questions asked of the officer to a superior officer or to a minister. This resolution prohibits only questions asking for opinions on matters of policy and does not preclude questions asking for explanations of policies or factual questions about when and how policies were accepted. You have information on parliamentary privilege and the protection of witnesses. Would you like to make an opening statement?

Mr Dillon: Before I begin I should say that we have a large number of officials here and I hope we can answer your questions. It might be helpful if, I in a sense, direct the traffic. That might assist us in ensuring we get the right people to the table at the right time. It would help us if, as we go topic by topic, we can identify that in advance.

Firstly, I would like to acknowledge the traditional owners on whose land we meet this evening. The department's submission to the committee explains that the Stronger Futures legislation is directed to helping to close the gap in Indigenous disadvantage in the areas where that gap is the greatest. The legislation is only one part of the Stronger Futures strategy. The government is giving consideration to a wider suite of accompanying measures. Those measures and the legislation will create a comprehensive plan to support Indigenous Territorians in remote areas to live strong independent lives where communities, families and children are safe and healthy.

This legislation sets a new course for the longer term. However, many submissions to this committee tend to look backwards, to criticise aspects of the original NTER while ignoring the changes made since then.

I wish to focus my opening remarks in three key areas. First, the Stronger Futures consultations. Second, the significant issues raised around the Stronger Futures measures, in particular the alleged discrimination in proposed measures, the school enrolment and attendance measure, tackling alcohol abuse, and land reform. Third, implementation of the Stronger Futures package.

First of all I will discuss the Stronger Futures consultations. The government has heard from many people that the way the NTER was introduced without consultation caused ongoing anger, fear and distrust amongst Indigenous people and communities. The Stronger Futures legislation, by contrast, has been developed after extensive consultations in an open and transparent manner. Since late 2007, the government has supported three successive comprehensive consultations with Indigenous people in remote Northern Territory communities. It would be misguided to judge the government's record only on the consultations completed from June to August last year. It is also not true to claim that these consultations were the start of the process. Each of these consultations has involved an unprecedented number of communities and individuals participating in meetings to have their say and to influence the policy proposals. Taken together, they provide an extraordinarily strong basis for the government's Stronger Futures legislation. We note that the National Congress of Australia's First Peoples and the Australian Human Rights Commission have acknowledged the government's efforts to 'better engage and consult with Aboriginal people'.

In relation to the most recent consultations, a rigorous quality assurance process was also undertaken to ensure that the consultations were fair and open. This is outlined in the consultation report, which was published, the quality assurance report by the Cultural and Indigenous Research Centre of Australia, CIRCA, and the quantitative analysis by the O'Brien Rich Research Group. All three reports have been published and made available to the committee.

The Northern Territory government has also been consulted. Regular discussions occurred with Territory government officials in designing the legislation and making sure it was consistent with its laws and priorities and also complements them. In its submission and in statements by the Chief Minister and senior officials to the committee last Friday the Territory government broadly supported the legislation, in particular the way in which the legislation was developed in a collaborative manner.

I will move now to a response to criticisms of the consultation process, including the published reports. There has been comment that the Stronger Futures consultation report cannot be relied upon because it is selective in its coverage or lacks independence. The department rejects this criticism. The consultations involved around 100 communities, whole-of-community meeting reports were agreed by community representative, and the process was audited by two independent consultants. Some submissions to the Senate committee say that the consultation report did not record comments about the proposed legislation. This is also incorrect. The legislation was informed by the consultations, which preceded development of the bills.

Other submissions criticised the consultation report as failing to refer to comments made in the consultations about matters such as bilingual education and the shire council amalgamations. I direct the committee to page 29 of the consultation report, which addresses what people said about bilingual education, while page 73 reports on comments regarding the shires. The department does not suggest that the consultations it led were perfect or that there was no room for improvement, such as with recruiting and using interpreters. Diverse views were certainly expressed in the consultations and this is a strong indication of the level of comfort that Indigenous people felt with the consultation process, feeling free to have their say. Moreover, they demonstrate that Aboriginal people do not hold one single view about, or provide the same answers to, the complex and challenging issues that confront them that were explored in the consultations. There is no simple consensus and no single consensus and government must make public policy judgments about how best to respond to the range of views that exist, taking account of all the evidence available including the NTER evaluation and views expressed in the consultations.

Finally, some commentators wrongly assert that there is no connection between the consultations and the stronger futures legislative proposals. The department's submission shows the clear line of sight between the Closing the Gap evidence, the consultation feedback, the NTER evaluation findings and the legislative proposals.

The second issue is the key concerns regarding the legislative measures. I now wish to comment on various concerns raised in submissions about the legislative measures, in particular whether some measures are discriminatory, will work as intended and actually benefit Aboriginal people and how measures will be implemented. In the time available this cannot be comprehensive. I will therefore focus on the major areas. The first is the Racial Discrimination Act. The legislation involves no suspension of the Racial Discrimination Act. The RDA applies to all of the measures in each of the three bills. They were all developed after careful

consideration of Australia's domestic and international obligations. This includes special measures to address Indigenous disadvantage. Several submissions suggest that the Stronger Futures in the Northern Territory Bill should include an express clause to ensure the RDA applies to measures in the bill. This is not necessary, because the application of the RDA is clear on the face of the bill. There is no ambiguity. The government's intention that the RDA applies is also clearly stated in the explanatory memorandum to the bills and in the Stronger Futures policy statement issued in November 2011.

Moving to School Enrolment and Attendance Through Welfare Reform Measure, known as SEAM, school attendance in remote Territory communities is generally extremely poor and needs to improve significantly. Low levels of school attendance are not issues confined to Indigenous communities and SEAM does not only apply to Indigenous people. With regard to the School Enrolment and Attendance Through Welfare Reform Measure in the Social Security Legislation Amendment Bill 2011, it is important to focus on the following. The aim is that children go to school every day to get a decent education so that they have the same opportunities as every child in Australia. If children are attending school regularly no parent or child need be concerned about being subject to SEAM, wherever they live. Over the years many strategies have been tried to improve education and, in particular, attendance. The factors contributing to school attendance are complex and therefore a mix of measures is required. Our submission provides details on how SEAM is to work, mindful that SEAM's current operation is being improved in iterative measures. It is a strong but balanced measure, because poor school attendance is such an entrenched problem in the communities where it is to be applied and because low educational outcomes have lifelong consequences for individuals. Closing the gap in educational outcomes requires that children are at school every day. The measure is supported by the Northern Territory government, recognising that it will complement its own every child, every day policy and operate in the context of a range of other measures encouraging improved levels of school attendance. In other words, SEAM is not the only lever being used in this area.

There have been a range of comments about SEAM that it is punitive and that there is a lack of evidence that it works. I would like to respond to those. First, SEAM is a strong measure, but it is not the only measure. SEAM is another strategy to complement others aimed at improving school attendance. It is not seen as a panacea. The new SEAM model provides positive support to parents and families. It builds on the Territory government's attendance conference process. That process gets families and schools together to try and resolve the barriers to attendance before a suspension of income support occurs. Social work and other support services will be provided to assist the family throughout the SEAM process. Where required, however, the new SEAM enables a tougher approach to be applied. Suspension of income support is the lever at the end of the process for the small number of parents who refuse to engage and in so doing, deprive their children of the opportunities that schooling provides, the opportunities for a life with much greater potential.

Evidence that SEAM works: an early 2009 evaluation report relating to SEAM's operation in the Northern Territory was released in mid-December 2011. A subsequent 2010 evaluation report has also been released and a copy has been provided to the committee. The 2010 report showed that SEAM is having a positive effect on both enrolment and attendance. From 2009 to 2010, students who were involved in the SEAM trial improved their attendance rates more than other children attending the same schools. We understand that this improvement was mostly a result of a decrease in unauthorised absences, those directly targeted by SEAM. Social worker contact provided by Centrelink was also shown to be vital in helping to improve the absence rates of referred students during the compliance period. This is particularly the case for students with higher absence rates, where assistance was provided to address attendance issues, helping to limit a relapse in absence rates.

These evaluations also outlined a number of areas in which SEAM could be improved. The government has acted on these recommendations. Accordingly, the new model of SEAM proposes as part of the Stronger Futures package has key differences from the existing SEAM model. For example, upfront social work support for all families under SEAM will ensure that parents facing multiple complex barriers thwarting their attempts to get children to school are supported with tailored case management.

Tackling alcohol abuse: I turn now to the issue of tackling alcohol abuse where a number of submissions support the government's proposed measures. The Stronger Futures bill contains measures that will strengthen alcohol control in the Territory. Alcohol management plans will need to be directed to reducing alcohol related harm, must meet minimum standards and will require ministerial approval. This is more robust legislation than in the past. Significantly, these provisions will support local communities developing alcohol management plans that help them control alcohol and provide a platform for communities to move beyond the restrictions.

The Australian Human Rights Commission has commended the Stronger Futures legislation for its requirement for respectful signage and community consultation before the minister determines a new alcohol protected area, along with several other proposals. In another submission, the Aboriginal Peak Organisations Northern Territory

have also welcomed the requirement that 'alcohol protected area' signs be respectful, provisions for the development of alcohol management plans and the provision for the minister to request an assessment of licensed premises. In the committee's hearings in Alice Springs, Dr John Boffa, representing the People's Alcohol Action Coalition, indicated 'strong support' for the provision for the minister to request an assessment of licensed premises. The Australian National Preventative Health Agency is undertaking preliminary work to develop the public interest case for a minimum price for alcohol for consideration by all states and territories. Several submissions suggest that the existing NTER provisions that enable police to enter and search people's housing are continuing. This is incorrect. Those provisions will end when the new legislation comes into effect. Our understanding is that they have not been used in the past few years.

I would now like to turn to the land reform measures in the bill. These give effect to the government's commitment to voluntary lease arrangements on Indigenous land and provide a platform for secure tenure, enabling economic development and ultimately creating the preconditions for home ownership opportunities for Indigenous people. First, the five-year leases. The government recognises that the compulsory nature of the acquisition of five-year leases in the original NTER was counterproductive. They will not extend beyond their original expiry date of 17 August 2012. Fair rent will continue to be paid for the period leases remain in force while we are transitioning to voluntary leasing arrangements.

The proposed new land reform measures also enable the Commonwealth to modify Northern Territory legislation relating to over 100 community living areas and 45 town camps to facilitate voluntary long-term leasing, including for the granting of individual rights or interests and the promotion of economic development. Are these powers too broad? The regulation-making powers under this proposed measure need to be broad in scope because the precise form of home ownership and economic development models is a matter for consultation between the town camp landholders, residents and the Territory and Commonwealth governments, and because of the complex nature of the relevant Territory legislation.

Requirement for consultation. The Stronger Futures bill provides that the Commonwealth minister must consult with the Territory government and the relevant landholder before making any regulations in relation to a town camp. A regulation that changes an existing town camp lease will only be made after consultation with relevant stakeholders. The bill provides that the Commonwealth minister must consult with the owner of the community living area land on request, the land council in whose area the community living area is located, and the Territory government. Other relevant parties, including, for example, the Northern Territory Cattlemen's Association, would also be consulted.

The Stronger Futures legislation includes an additional function for land councils to represent community living areas upon request. Regular administrative funding from the Aboriginals Benefit Account and cost recovery from proponents will apply. It is intended that draft regulations will be published for comment. A process for formal consultations will be organised with community living area titleholders and residents with support and advice from land councils and other organisations that represent the landowners. In finalising the regulations the government will demonstrate that it has taken into account the views of the landowners in a particular.

The third general area is implementation of Stronger Futures. Legislative measures are one aspect of the reform process, but the critical dimension is their successful implementation. There is a growing consensus about how governments need to be conducting their activities into the future. Just as the design for the Stronger Futures broke with the past, so too will implementation of the package be very different.

First, the government recognises that bringing about sustained reforms and genuine development opportunities for remote Indigenous people in the Territory requires a long-term commitment of effort. This is why the legislation is for 10 years, with evaluation and review points during that time. Second, we know that an effective long-term strategy must be underpinned by well-planned implementation that is understood by all involved and aligned and coordinated across levels of government. Third, achieving change for the better is necessarily a joint responsibility—governments, NGOs and the private sector all have key roles to play—but the ownership and active participation of Indigenous Territorians themselves is essential if provision of better services and income support approaches are to translate into the take-up of new opportunities and behavioural changes most conducive to improved Indigenous well-being.

The government is therefore committed to systematic engagement with Indigenous people around the implementation of the Stronger Futures measures. Many Aboriginal people who participated in the extensive consultations said they wanted to move on, be more self-reliant and take pride in their culture. The feedback and consultation process occurring in communities will continue. There will be a variety of mechanisms providing opportunities for community input to the implementation of both legislated and other measures. By way of

example, the Stronger Futures legislation makes provision for strong local involvement in developing alcohol management plans and a range of legislative instruments to give effect to decisions and actions under the bills. As a general approach, draft instruments will be published and comment invited before they are finalised. Consultations will also be arranged with key stakeholders. Consultations are required on any use of the powers to make regulations for town camps and community living areas. An independent review of the Northern Territory and Commonwealth laws relating to alcohol will occur after two years to ensure they are on track. And an independent review of the measures in the Stronger Futures in the Northern Territory Bill 2012 will occur seven years after commencement. This review will involve extensive consultations and engagement by those affected, including other stakeholders. These examples demonstrate the government's different way of doing business with Indigenous Territorians and stakeholders going forward.

In conclusion, this legislation reflects and takes account of extensive and intensive consultations across the breadth of the Northern Territory—unprecedented consultations. It addresses key elements crucial to building stronger futures for women, children and communities across the Northern Territory. It is designed to be entirely consistent with the Racial Discrimination Act. It incorporates a long-term commitment by government and it is based on deep respect for the rights of Indigenous citizens to live lives free from violence, to obtain a good education and to live lives of similar duration and quality as other Australians. The department looks forward to addressing any questions.

CHAIR: Thank you, and I believe your speech will be tabled. We will start with issues around consultation.

Senator SIEWERT: Mr Dillon, with all due respect, listening to your comments about consultation, one would have thought the consultation that we heard about last week in the Northern Territory was carried out in a completely different territory. Every witness except one said how bad the consultation process was. They did not feel listened to and they were not given sufficient time. You have probably seen some of the vision from Maningrida. To say that people absolutely reject that the consultation process was carried out properly would probably not be too strong. So I actually do not know where to go from here because you do not seem to acknowledge that the consultation process left something to be desired. To me it just leaves great, big gaps over other things when you say you are committed to engagement if you do not actually get that people in the NT do not feel like they have been properly consulted. I presume you have had feedback from the NT about what happened last week.

Mr Dillon: Yes.

Senator SIEWERT: So you will acknowledge that all we got was very strong negative feedback about the process, particularly from Maningrida, for example.

Senator BOYCE: And Hermannsburg, where they did not think they had had any.

Senator SIEWERT: And Hermannsburg, that is right, where they did not actually think they had any.

Mr Dillon: All I can do is repeat the evidence I have just given in the opening statement and point you to the extensive work that was undertaken across the Territory involving over 100 meetings in communities and very extensive tier-1 consultations in advance of those community meetings and after them, including in Nataria and in Maningrida.

Senator SIEWERT: Whose decision was it to immediately go to separate men and women's meetings in Maningrida?

Mr Dillon: I might ask Mr Stacey if he knows the answer.

Mr Stacey: To the best of my knowledge, that was a decision taken at the start of the meeting by the participants. It was asked by the facilitator, a very senior and very experienced officer in the department, whether or not people wanted to break off into separate discussions. As far as I know, that was agreed. I should say that that was the process that I believe was followed throughout the NT. So we did not impose that on people.

Senator SIEWERT: I asked both the men and women if they were consulted about splitting the meeting and they said no. I ask again: whose decision was it when the community just last week said they were not consulted, they did not want to be split into men and women and they made that point really strongly, I understand, during the consultation. So who made that decision?

Mr Dillon: One, we have already answered the question, but, two, I just make the observation that there are probably over 1,000 in Maningrida. It is entirely possible that the people that you spoke to were not involved or were at the back of the room or did not understand what went on at the first meeting.

Senator SIEWERT: I understand that the people we spoke to during the hearings were senior people in the community and they were there.

Senator BOYCE: We have evidence from one where she stood next to Jenny Macklin during part of it.

Senator SIEWERT: Mr Dillon, is there any record of the Maningrida consultation? When people took a record of the consultation, was that kind of discussion—

Mr Dillon: What I could do is take on notice from the senior person there what the process was, if you are so inclined to get that answer. I suspect that the records taken of the meeting would not go to the process followed but would go to the substance of the discussions taken. I think the best course of action for me would be to talk to the senior officer involved and get his perspective on how that decision was taken.

Senator CROSSIN: Is that the GBM?

Mr Dillon: No, this was a senior—

CHAIR: We could have brought our *Hansards* with us, but the *Hansard* from last week is now available and this particular discussion that both senators are referring to will be clearly recorded there. It was not by one person, it was a group of the elders at that community. They were talking about consultation. They said, 'From the very start we do not know why we were separated. We even thought that perhaps we could have groups separately and then come together.' That was something they thought could be an option. But that did not happen and that is still a source of disappointment to them later.

Mr Dillon: I can give the committee an assurance that the person who undertook the consultations and led the consultations across the Territory is a very experienced officer. There is no doubt about his cultural competence and he would have done everything possible to gauge the temperature or the views of the people present and to structure the meeting in the way that they would have wished. I am absolutely confident that that would have been his approach. It is very common, I think, in Aboriginal affairs for communities to themselves wish to split and discuss things on a gender basis. I do not know the circumstances at Maningrida and I am happy to try and find out.

Senator SIEWERT: I think perhaps the best thing to do would be for you to look at the *Hansard* and respond. What we heard last week was very different from what you have just said—polar opposites, in fact. Instead of pursuing it, I think the best thing is if you could look at it and take it on record and get back to us.

Mr Dillon: I am happy to do that, Senator.

Senator SIEWERT: One of the other many criticisms—

CHAIR: Are you still in consultation?

Senator SIEWERT: Yes. We could be on that all night but we should probably set a time limit on it. One of the other points that was raised was that in some cases, and to be fair it was not clear how many, the boxes of the discussion paper were being handed out on the day or just beforehand. In other words, the criticism is that they did not get the discussion paper with any time to look at it and then respond in a meaningful manner. Do you have records of when communities would have got the discussion paper, it is that criticism that they got them on the day valid?

Mr Dillon: I suspect that we do not have comprehensive records. As I say, we generally do not record process issues. I do acknowledge that it is entirely possible that materials would have been distributed on the day. That will be generally normal practice in any consultation in any field. Quite often, the process would have been to take the meeting through what was in the discussion paper, verbally or orally. Many people in the Aboriginal world are not highly literate; quite often it is an oral culture and this would then have been left as a backup perhaps. I do know that we put effort into having our GBMs prepare for the major community meetings, and that would have been an informal process. As I said, yes, people may have felt they got the material too late, but all I can say is I think that is a pretty standard practice in any consultation.

Senator SIEWERT: You have a different standard practice to what I understand about consultation. You took a question on notice from me earlier about whether there were any materials produced in language. One of your answers was:

> … research indicates that if people are literate in their own languages they are likely to be literate in English.

Could you take on notice the research behind that statement please?

Mr Dillon: Was that question 197?

Senator SIEWERT: I do not know what number it was. I apologise.

Mr Dillon: I am happy to take it on notice.

Senator SIEWERT: Did you do any discussion papers in more easily understandable English or provide any materials or an overhead or something?

Mr Dillon: Yes.

Senator SIEWERT: Could you provide us with a copy of that?

Mr Dillon: Yes.

Senator SIEWERT: Thank you. My understanding is that you had people at the meeting who were part of the audit of the consultation process?

Mr Dillon: Not in every meeting.

Senator SIEWERT: That is what I am getting to. How many meetings were they at?

Mr Dillon: My understanding is that it was 10 meetings.

Senator SIEWERT: 10 meetings of the 100?

Mr Dillon: Yes.

Senator SIEWERT: Thank you.

CHAIR: Mr Dillon, we had evidence earlier from the Australian Human Rights Commission, and I am sure you or your officers have read their submission. They have a particular recommendation, point 63, a dot point process for what they consider an effective consultation process. All of us have looked at it, and it seems to us that it seems like a good process for consultation. In your opening statement you made it clear that you have now done a series of consultations on Aboriginal issues—particularly in the Northern Territory but generally in the community. Does the department have a similar document that you use? With the wealth of knowledge you have achieved over the years, do you have a document describing a process for what you consider to be an effective consultation process? It seems to me that this Human Rights Commission one does seem to pick up some of the key issues around which people could plan for future consultations.

Mr Dillon: I do not think we have a template or a protocol we would use in every case, particularly in the Indigenous space, because the reality is that there is huge diversity in Indigenous Australia and obviously there is quite a diverse set of circumstances when you are consulting, so a single template is probably not appropriate. I am looking at paragraph 63 or the Human Rights Commission submission. The point I would make in response to it is: it seems to be—one word might be tendentious, or leading to a certain end. In my mind, and I think in the department's mind, we would make a clear distinction between several things: consultation, which is essentially about information sharing; engagement, which might be about building relationships and working through issues over a period of time; and negotiation, where there is a specific object in mind and where, in a commercial or quasi commercial way, you are seeking to reach agreement, party to party. So again, it is horses for courses I think. I am sure that each of the points made here by the Human Rights Commission have merit in particular circumstances but I do not think we can apply a template or just take this off the shelf and say, 'We are going to do this in every situation.'

Mr Dillon: I am advised that we do have some materials on engagement and the engagement framework that we do apply—they are principles.

Senator BOYCE: Could we have a copy of that please?

Mr Dillon: Yes. It is a public document. I am happy to give you a copy.

Senator BOYCE: Thank you.

Senator CROSSIN: How many consultations has the minister herself attended and how many has Mr Snowdon attended?

Mr Dillon: I will just have to find it. My understanding is that it was eight. The minister for health also attended some, but not as many.

Senator SIEWERT: Can I ask a supplementary question. How many of those eight that the minister attended did the audit people attend?

Mr Dillon: I would have to take that on notice.

Senator SIEWERT: Thank you.

Senator CROSSIN: If you had read their report you would know that the audit people attended most of their consultations in Darwin and Alice Springs.

Senator SIEWERT: But I wanted to know how many of the eight—

Senator BOYCE: How many of the eight were in the alleged 10 per cent?

Senator SIEWERT: Yes.

Senator CROSSIN: The consultations that occurred last year were not the first time the department had engaged with Indigenous communities in the Territory about what would happen at the expiration of the NTER legislation. What I am trying to get at is the consultations that have occurred since 2008. But dialogue would have been occurring over 2008, 2009 and 2010—it was not as if suddenly someone produced a discussion paper in June last year and said: 'We have a year left. What is happening?' Can you give us an idea of what occurred over what has essentially been four years?

Mr Dillon: Yes, but it is possible my answer may need to be supplemented by my colleagues,. In 2008 the government established a committee led by Peter Yu to examine the existing legislation and its operation. As part of that review report, extensive consultations were undertaken right across the Northern Territory guided not by the government but by the committee themselves. We assisted them, but they were driving that. In 2009 the government undertook a very comprehensive consultation process aimed at leading into the revision of the legislation to in particular bring it into compliance with the Racial Discrimination Act. The reason we needed to consult then was that it was not just a legislative process, but we had to ensure that each of the measures that were being undertaken as part of the emergency response were themselves compliant with the Racial Discrimination Act.

Senator SIEWERT: At any point during that process did you say this was about extension after the NTER finished?

Mr Dillon: I do not know the answer to that. I suspect not. We were basically talking about the existing legislation but implicit in that was: where do we want to take this? Certainly one of the messages that came back to us quite strongly in 2009 was that people did not want the legislation to disapply the Racial Discrimination Act or to deem measures to be special measures. As a result of those consultations the government took action and amended the legislation to bring it into conformity with the Racial Discrimination Act. And then we have had this most recent series of consultations. I suppose what I would say to you is that in my view what this has meant is that there has been a gradual accretion or accumulation of understanding about what is involved in the legislation and how the emergency response operates. I think it is also fair to say that there has been right through that period a small but highly focused group of stakeholders, if you like, who have been quite critical of what the government has done. I think that goes back to the way the legislation was originally introduced and implemented. As a result we have been confronting, I think, quite serious criticisms all along the way, but the government's intention from the start has been to improve the legislation, bring it into conformity with the Racial Discrimination Act and make the whole suite of measures under the emergency response as effective as we can.

Senator CROSSIN: I have two other questions about this. If we go back through the last 15 years, would the department have any data on what other major policy change that has affected the Northern Territory in this way has occurred where any other minister has gone to at least eight consultations? You might need to take that on notice, because you might not know for the last 15 years.

Mr Dillon: The only other consultation in my memory—and I might have a colleague come up behind me and correct me or add to this—was in 1986, when Minister Hand spent 40 days and nights travelling around the country consulting on the ATSIC legislation. He did not stop. He started in Canberra and he went to Sydney, Brisbane, Townsville, Cairns and around the country and personally undertook those consultations. At that time, that was the most extensive consultation ever undertaken in Indigenous Australia. Since then there has been nothing like it until the last four years.

Senator CROSSIN: The last thing I wanted to ask you kind of goes to the whole of the legislation; I know we are going to go bit by bit, but what I wanted to do at the very beginning was ask you this. We talk a lot about what is in this legislation, and there are four main sections, but what I have heard from my constituents continually is that they did not like the five-year compulsory leases. That is not in this legislation, is it?

Mr Dillon: One of the points I should make is that this set of bills abolishes the 2007 legislation.

Senator CROSSIN: Yes, but I suppose—

Mr Dillon: Then—as you say; you are absolutely correct—it does not require any compulsory acquisition of any land whatsoever.

Senator CROSSIN: That is right. It does not specify government business managers, does it?

Mr Dillon: No.

Senator CROSSIN: What I am asking you to provide for me is what is not in this legislation. I know we have repealed 2007, but I do not hear people saying, 'Compulsory leases are not there; that's a good thing.' Everyone is concentrating on what is there, and I think there is not any focus at all on what was there in 2007 and what, as a

government, we are not taking forward beyond 1 July. We have changed it. We have listened to people's concerns, and therefore it is not in the legislation.

Mr Dillon: Absolutely. For example, the original legislation had requirements for quite overwhelming or quite robust signs, and there was a lot of push-back from communities. That requirement has gone, but there are now provisions generally in the NTER for much more respectful signage, and we are actively working with communities and engaging with them about signage in their communities. Secondly, there are a range of other, more minor provisions that are no longer there. Perhaps I should just take it on notice and give you a list of the most significant ones.

Senator CROSSIN: Yes, that would be useful.

Mr Dillon: I will not commit to giving you every one, because I will get caught up in technicalities.

CHAIR: This is on consultation; I just want to remind you. Mr Dillon, was there any document or piece of information that was given out during the consultations that did a comparison? One of the core issues that we found was that people had absolute confusion about what they were talking about: was it the intervention or Stronger Futures? Was there a document that had intervention measures? Maybe you would even have to have a 2010 change column and then the proposed Stronger Futures. Was there something that showed that?

Mr Dillon: I might ask my colleague Mr Stacey to provide an answer.

Mr Stacey: There was a document called *What's New, What's Different?* As far as I know it is already published on a web page but I am happy to provide it. I do not think it is in the form of a table quite the way you put it but it certainly explains what is new in the Stronger Futures legislation, what is different and what is not there.

CHAIR: It just seems to me that that may be a useful—

Senator SIEWERT: But the legislation was not available then.

CHAIR: No, but I am talking about now. We are talking with people now. When we were talking about the Stronger Futures legislation, we were talking at cross purposes through most of the meetings—I think 'frustrating' was a generous adjective to use. It may well have been a clarity element to pick up some of the points Senator Crossin made that there was something which said, 'There you go. That is what was; this is what is proposed.'

Mr Dillon: We will provide it. It came after the legislation was provided with but I suppose the point I would make is that there is huge confusion in many people's minds about just what the 'intervention' included. Reference was made earlier this evening to the fact that the shires are quite often seen as part of the intervention or bilingual education. As a consequence it is not surprising when the committee goes out that people are confused. They were not consulted about the shires. They were not consulted about bilingual education. What's new, what's different? Of course they are going to tell you, 'We weren't consulted about the intervention.'

Senator CROSSIN: Can I say that Mallarndirri McCarthy put to us last Friday that the NTER legislation was introduced and implemented in 24 hours. The discussion about the shires and its implementation took four years. So there was a vast difference between the way in which the shires concept was produced in the Northern Territory—and it still has some problems.

Mr Dillon: There was consultation and there would have been consultation with individual community councils but the comment I was making is that there was no comprehensive communitywide consultation process like the one we have undertaken three times, in relation to that.

It was to the point I was making was that there was no comprehensive communitywide consultation process like the one we have undertaken three times in relation to that.

Senator BOYCE: Would it be normal in consultations to talk about what is not involved in the topic of conversation?

Mr Dillon: I think the approach we took was an open-ended one. We basically invited people to say to us what was on their mind. We were not trying to push a particular position in any respect and it was an open-ended process.

Senator BOYCE: Are the changes in the signage in the legislation as a direct result of the consultations?

Ms Edwards: The provisions in relation to signage were developed in the legislation after the consultations having very great regard to what was said during the consultations but also having regard to what had been said over a much longer period. You would be aware that there were changes to these provisions previously. The movement away from the original signage legislation and approach has been gradual and ongoing. Certainly what

is in the current legislation the committee is considering was those provisions were informed by what we were told in the consultation and in lots of other—

Senator BOYCE: Okay, and particularly in regard to the changes in the signage.

Ms Edwards: What is in the signage now and the legislation was developed after the consultations have having regard to what was said.

CHAIR: What exactly is in the legislation, Ms Edwards? I am quite keen to get an answer on this because we asked the question in estimates on signage and I am interested to hear what is the current situation in Stronger Futures on signage?

Ms Edwards: Certainly, Senator.

Mr Stacey: The Stronger Futures bill does make a change to the provision that goes to signage. In particular, the Licensing Commission, which does have authority over what is normally known as the highway signs in the Northern Territory, is required to consult with a view to the signage being respectful.

Senator BOYCE: Who are they required to consult with?

Mr Stacey: They are required to consult with communities, land councils, other representative organisations and other stakeholders. The provision is intended to be a broad one.

Senator BOYCE: The report produced by O'Brien Rich Research Group says that the unit of analysis for each separate consultation was the written report of the consultation. Could you make those reports available to the committee.

Mr Dillon: I think there have been previous requests along these lines. The problem has been that commitments were made to communities that we would maintain confidentiality.

Senator BOYCE: Confidentiality of what?

Mr Dillon: Some of these consultations were quite small and people would be able to be identified, so there is an issue about people feeling able and free to express views in that process.

Senator BOYCE: So is it the confidentiality of names or what?

Mr Stacey: Perhaps I could add to what Mr Dillon is saying. He is absolutely right. This is an issue that came up when we went to the so called redesign of the NTR consultations in 2009. The position of the department and the government was that in the case of the Stronger Futures the consultation report would be the public document on the public record. We think it is very detailed and presents the complexity of all the issues and concerns that people raised. You are right: we did reports on the whole-of-community meetings. Each time after those reports were drafted by officers of the department they were shown to the representatives of the community at the meeting to clear.

Senator SIEWERT: Who selected those representatives at the meeting?

Mr Stacey: As far as I know, the officer concerned went to one, two or more participants who were at the meetings themselves—

Senator BOYCE: Was this to verify they were true and accurate records?

Mr Stacey: That is exactly right, with a view to making sure the reports were accurate.

Senator BOYCE: So did even the choice of those people became something of an issue?

Mr Stacey: The other important point in all of this is that these consultations did end up being broad ranging. The discussion paper was a starting point, as Mr Dillon explained. Ultimately, these discussions go beyond what might be in the discussion paper. To that extent, the concern we have about releasing all of it is that, ultimately, people say quite a few things in the course of those discussions. They might go to concerns they have about the service providers or concerns they might have about government agencies. We asked our staff to try and record as accurately as possible what was said. Our concern is that if we release that sort of report that there will be misunderstandings or conflicts. So far at least the position has been that we would want to consider very carefully any request to release reports.

Senator BOYCE: You said undertakings had been given to the community to keep them confidential. Who gave those undertakings and in what form?

Mr Dillon: As part of the consultations, I expect the people who initiated the consultations—

Senator BOYCE: Was it verbal?

Mr Dillon: —would have said to the community—

Senator BOYCE: You expect or does your contract say they will do that?

Mr Dillon: I doubt it is in the contract. What I am saying is that, as part of the consultation process, I expect that a discussion would have been had about what would be recorded and how it would be used.,

The expectation that we gave to communities, by and large, was that we were not proposing to publish verbatim, or even in summary form, the comments they gave us but that we would amalgamate it into a broader report and report more generally.

Senator BOYCE: Is that somewhat different from saying, 'We are going to keep what you have said to us confidential'?

Mr Dillon: My apologies. I have obviously misstated. I just ask you to take on board my subsequent explanation. One of the reasons we put in place a quality assurance process was exactly for this reason; that it was important to understand, for us internally as much as anything, that the information we were getting was reasonably accurate and could be relied upon. It is actually quite a complex process. The minute you go to verbatim reports or transcripts—we do not have the resources of the parliament or the Senate; we do not have Hansard—it opens up all sorts of issues. In our view, the consultation is not the end; it is a means to getting views to inform policy. That is what we are on about.

Senator BOYCE: We have had serious criticisms, including from the Human Rights Commission and congress tonight, of the quality assurance used. In fact, it has been put to us that only two to three per cent of the meetings were covered by the quality assurance. So you can understand that we are somewhat concerned. I fail to see why, with some redaction, these written reports could not be made available to us, and I think it is in the public interest that they are.

CHAIR: Mr Dillon, you will have to take that on notice. In terms of the process, you are getting the true feeling of the committee about the evidence we received about their concerns about the process. I am not sure we can go any further; the department has put its position. I fail to see how you could say as a group that you feel confident that the people knew what was going on. After the kinds of feedback we have had, I just fail to see that. You have given us the process you used. You said no process is perfect. I think you put that in your statement.

Senator BOYCE: Can I ask one more question?

CHAIR: We have to move beyond consultation, Senator.

Senator SIEWERT: Can I put a question on notice?

CHAIR: Yes. Any more questions on consultation will have to go on notice. What are your questions, Senator Boyce?

Senator BOYCE: I would like to ask Mr Dillon about a comment he made in his opening statement about the Human Rights Commission supporting their consultation process. Is that what you said, Mr Dillon?

Mr Dillon: Some element of it, I think. Yes, there was reference to that.

Mr Stacey: I think the comment was that the Human Rights Commission and other important stakeholders have said to us that they have welcomed the effort by the government to engage better with Indigenous people—and obviously having regard to what occurred originally with respect to NTER.

Senator BOYCE: Would you say that their submission to this inquiry suggests that they were happy with the consultation process?

Mr Dillon: No.

Senator BOYCE: It was described by Mr Gooda tonight as 'a rubbish consultation'. On notice, could you tell me why the period of six weeks was chosen? What is the research behind picking six weeks for doing it? I am happy to put that on notice, but I would like a fairly full answer to that question.

Senator SIEWERT: Mr Dillon, I heard what you said about the nonavailability of the reports. Could you supply us with some examples—I am hesitant to say that because you would get to choose the examples—in camera, so they would not be published, so we can get an understanding of what was said?

Mr Dillon: I cannot commit to that, but I will certainly ask the minister to consider it and we will see what we can do.

Senator SIEWERT: Thank you.

Mr Dillon: In relation to Mr Gooda's comments, Mr Gooda was invited to all of the consultations. He attended one. His evidence tonight indicated that people had told him about the consultations—in other words, it was hearsay. We have done a robust process and we have done a quality assurance process. The department stands by its consultation process. It is unprecedented and you cannot find another process anywhere in public policy that goes to this level of detail.

Senator BOYCE: I would just repeat Mr Dillon that what we heard last week in Alice Springs, Darwin, Maningrida and Hermannsburg was not hearsay. It was people telling us that they did not have a clue or felt inadequately consulted. Thank you.

CHAIR: Are there questions on income management?

Senator SIEWERT: I am not going to bother traversing all the issues that we have traversed in the past. I do want to go to the provisions of the bills. One of the key areas, besides the fact I am not going to traverse again the fact that I hate it, is the comment that has been made very strongly to us about other agencies using their processes for making decisions. I am sure you have read the submissions so you know what I am talking about—that is, the different appeals processes that potentially will happen around Australia. Have you thought about that and what is your response? We have had several different types of suggestions about how to fix it. What is your response to that?

Ms Hefren-Webb: We have obviously seen those submissions and it is a issue that has been raised with us previously. Obviously, we currently take referrals from a number of child protection bodies to income management—the NT child protection system and in WA—and each of those has their own types of review and appeals processes.

Senator SIEWERT: Does Centrelink make those decisions?

Ms Hefren-Webb: No. Centrelink has to act on the referral in the case of the child protection officer, so this extends that.

Senator SIEWERT: Okay, I understand. I would have thought the child protection measures would be clearer in terms of how that referral occurs. For the areas we are now looking at it is unclear where it is going to be applied first in the Northern Territory. I understand the relationship with the alcohol measures but the potential is there for other vulnerability indicators, and that is where it is less clear cut. We have already traversed the housing issue in past estimates. That is one of the examples. That process is not even clear about how you are going to work that. So then it is really unclear about what the appeal process is, if actually they are referring.

Ms Hefren-Webb: I guess the appeals process really derives from who the decision maker is. In the case of the child protection officer, who makes the decision about a family to refer the parents to income management based on their best professional assessment of that family, the question is on what basis would Centrelink undertake any merit review of that decision, not being the case manager of that family? The issue of appeals and review goes to who has the information and what level of information has been taken into account. As you would understand, with child protection cases there is often years of case records going back that are fed into that decision. The types of bodies on which the minister may reach an agreement with state governments to also have a similar arrangement would be the types of bodies where you would imagine they are working intensively with clients. The Alcohol and Other Drugs Tribunal is proposed to work very closely with people and refer them to a range of services as part of a case management plan. They will have their own internal review and appeals and so the question of—

Senator SIEWERT: What guarantee have we got that the agencies will?

Ms Hefren-Webb: That is the kind of information that will inform the minister in making her decisions about which agency should be referred.

Senator SIEWERT: You can understand, then, why people are really very nervous about this. You fixed up the previous legislation to put a higher level of assurance for appeals and now you are bringing in these measures, and with all due respect you have just used terms like 'you imagine' and 'that will be up to the minister'. That is putting an awful lot of control with the minister but also a lot of trust that these agencies will have appeal mechanisms. As far as I understand the legislation, there is no guarantee that these agencies will have those appeal mechanisms.

Ms Hefren-Web: There is no specification of the type of appeal mechanism they would have. It would be very unusual for any kind of statutory or state authority to not have processes for internal review of its decision making.

Senator SIEWERT: On powers they have never had. These powers are for powers they have never had before, so how can you be confident that there will be appeal measures in there when this has never happened before?

Ms Hefren-Web: As I said, that will be the type of issue that will be taken into account by the minister when deciding what types of bodies would be appropriate in discussion with a state or territory government.

Senator SIEWERT: You cannot guarantee therefore that there will be appeal mechanisms, can you?

Ms Hefren-Web: I cannot guarantee there will be specific appeal mechanisms set out.

CHAIR: And there is nothing in the legislation to ensure that happens?

Ms Hefren-Web: No.

Senator SIEWERT: On the issue around the use of the unwritten law, several submissions raised the issue of what is the basis on which decisions would be made, whether or not they are repealable, that there would be potential for them to be unwritten law for those particular agencies.

Ms Hefren-Web: I will have to defer to my legal colleagues. I am unfamiliar with the term 'unwritten law'.

Senator BOYCE: Do you mean custom, not customary but what everyone has always done—habit?

Senator SIEWERT: The states and territories.

Ms Hefren-Web: They may be relying on their inherent executive powers as opposed to—

Senator SIEWERT: Yes. The organisations refer to it as 'written and unwritten law'—yes, that.

Ms Hefren-Web: This is true currently of the child protection legislation. It also says a decision made by an officer of a state or territory child protection authority under either a written law or an executive power.

Senator SIEWERT: Correct.

Ms Hefren-Web: And that is the same, that has been paralleled—

Senator SIEWERT: It has been carried through to all the other potential triggers that could be used to trigger these particular provisions in a state or territory.

Ms Hefren-Web: The law is written in the same way—that is right.

Senator SIEWERT: Talking about the CLAs, I am sure you would be aware of the criticisms and our understanding is the principles of the provisions have broad support. That is fair to say. I am sure you have seen the criticisms but they come down essentially to whether the NT government should be fixing this or the Commonwealth should be fixing it. The feedback we had is that the organisations feel it would be better to give the NT a little bit more time to fix it and the NT government certainly thought they should be given a bit more time to fix it because they said there is goodwill there. Can you just walk us through a little bit about why you have gone down this path and then we will get into the detail about some of the specific concerns they want addressed?

Mr Dillon: The easy and quick point to make is first of all that we work cooperatively with the Northern Territory on a range of fronts including in respect of land and CLAs. This provision provides a mechanism for us to advance this through our legislation. It is also possible for the Northern Territory to legislate themselves to broaden the range of activities that can happen on CLAs or town camps. It is quite common in the Northern Territory, particularly under the land rights act, for the Commonwealth to legislate and there is a complex interplay with NT land legislation—we acknowledge that. But at the end of the day it is about achieving a result and governments working together, and that is what this is intended to do. It gives us the capacity to work with the Northern Territory government to achieve those results.

Senator SIEWERT: I understand the genuine basis on which you are trying to fix a problem. We understand there is a problem. What I would like to understand is how long you have been trying to work with the NT government to get them to fix this—in other words, so they do it and the Commonwealth does not have to use its powers?

Mr Dillon: These issues have been around for a long time—going back decades—so it is not a matter of how long we have been working with them. I suppose there is an attitude reflected in the legislation which is: 'Let's get on and fix issues that need to be fixed. Let's get on and make things better for Aboriginal people in the Territory.' That is really what is reflected in this provision.

Senator SIEWERT: I am trying to understand what makes you think the NT government cannot do that. They point they were making is that this takes a lot of negotiation and discussion. Please do not take this as me defending the NT government; I am putting to you what they put to us.

Senator CROSSIN: That is a bit unkind!

Senator SIEWERT: Not defending the NT government?

They are working hard. They have been in consultation processes. This is complex. You have heard the arguments. What makes you think that you can do it quicker than they can with the complexity? That is what I am trying to get my head around.

Mr Dillon: I am not confident that we can do it quicker than them. If they can do it quicker than us, tick—good on them. We support them.

Senator SIEWERT: So you get the legislation in place. Do I take it from that that, if they are doing it as well, you will not use your powers?

Mr Dillon: This provision is not detracting one iota from the Northern Territory's capacity to legislate to broaden opportunities in community living areas and tenant camps. That is right. However, public policy is a complex space, and in Indigenous affairs things tend to hit the wall very often. There are other issues that come to the fore. There are other stakeholders involved. Delays are common. Sometimes people actually like the Commonwealth to step in and take the initiative.

Senator SIEWERT: As I said, in principle my strong sense is that this is supported by both the CLC and NLC, but you will be aware from the written submissions that they have some concerns. I think they are still considering how they think they should best be addressed.

Mr Dillon: I think there have been discussions since those submissions were written. My understanding is that they are more comfortable than they were.

Senator SIEWERT: Without amendments? Last week they were still saying there needs to be amendments. I know a week is a long time in this place.

Mr Dillon: If they have said that to you, I think the record should stand. I am not going to try to verbal them. But this is not the most contentious part of the bill. If we are down to arguing about who should do something that is going to benefit Aboriginal people, that is terrific.

Senator SIEWERT: It goes a bit beyond that. What they are saying is that they think there needs to be some amendments. I am trying to understand whether you are prepared to make them. This is the one measure on which there seems to be unanimity that it is okay with some amendments, so I am trying to get to what further discussions you have had to try to address the issues that the two major groups—

Mr Dillon: I might ask Sally Moyle to answer.

Ms Moyle: We have had conversations with both the NLC and the CLC since their submissions were made. The conversations we have had, particularly around the assurances in the consultation process for any regulations that might be passed, have satisfied them that there is a process in place. I would not go so far as to say that they would withdraw their suggestions around amendments as such, but we have talked to them about a consultation process, and they are satisfied with where we are heading with that.

I might also say that one of the main concerns around community living areas in particular has been in relation to the operation of community living area associations. That is an area which we can actively deal with through the Aboriginal Land Rights Act. That is suggested in the bill.

Senator SIEWERT: There seems to be a little bit of difference of opinion on whether one area was deliberate or not. That is the issue of expense to the land councils. Can we clarify that issue?

Mr Dillon: In my opening statement the form of words is meant to clarify that the normal funding processes apply.

Senator SIEWERT: I misinterpreted what you were trying to say. Could you tell me again what you mean?

Mr Dillon: The land councils will be able either to use their own funding that is provided to them via section 64(1) of the ABA or, where it is appropriate, to charge a third party for the work. That is the normal approach. I should also add that in my opening statement a number of commitments were quite deliberately made and directed to the land councils about how we would deal with some of the regulations and notices under these provisions.

Senator SIEWERT: Thank you.

Senator CROSSIN: Is the amendment to the act that is outlined in the NLC and CLC's submission 'at no additional cost' or whatever those three or four words are—I do not have it in front of me. Is that amendment now needed?

Ms Moyle: It was intended to make clear that the work the land councils would be able to do under the Aboriginal Land Rights Act would not be at the expense of the CLA association, which is unfunded. It was intended to make clear—

Senator CROSSIN: It does not do that, though, does it?

Ms Moyle: Our advice is that it does. It enables the land council to perform its functions in the usual way and to be funded in the usual way, and that is, as Mr Dillon said, through the ABA or by some cost recovery from lease proponents but not from the CLA association.

Senator CROSSIN: Perhaps as a committee we might need to go back to the land councils and ask them if that is their interpretation of it, because that certainly not the impression I got last week.

Ms Moyle: I understand that is the position of the NLC and the CLC—

Senator CROSSIN: Now but not last week?

Ms Moyle: They understand what we are saying but still would like to see the amendment from our last conversations.

Senator CROSSIN: Yes. I do not think it is clear. What you have said is quite a different interpretation from what we saw. Separate from that, though, are they actually funded to represent the organisations on CLAs under the current funding they get and under the ABA?

Ms Moyle: No, they are not.

Senator CROSSIN: So why would they do that work if they are not funded to do it? How would they fund themselves to do it?

Ms Moyle: They absorb that cost at present. To the extend that they are doing work for CLA associations, it is absorbed by the land councils.

Senator CROSSIN: They do not like it, though, do they?

Ms Moyle: I am sure they would rather be funded for the work they do.

Senator SIEWERT: My understanding is that it absorbs quite a bit of time because it is quite particular when you are talking about associations.

Senator CROSSIN: If we are now going to be proactive about putting this in federal legislation, should a case not be put that they would now get funding to represent those organisations at CLAs rather than trying to absorb it within their existing budgets?

Ms Moyle: That is certainly what the amendment is intended to do. It is intended to suggest that land councils can be funded, in the usual course through section 64 of the ALRA, from the ABA or to seek cost recovery from lease proponents.

Senator CROSSIN: Okay.

Senator SIEWERT: Did you have discussions with the NT government before you did the land reform amendments?

Mr Dillon: The answer is yes.

Senator SIEWERT: Thank you.

We had a discussion with the NT government about how the alcohol measures work with their alcohol measures. It got to the point where it hurt my brain trying to understand how it interacts. They have taken on notice how to explain that. One of the issues that has been raised continually with us is the level of the fines and imprisonment that go with less than 1,350. I am sure you have had the same examples raised with you. You can get caught with a relatively small amount of alcohol and might end up in prison. I know there are other provisions that can apply, but the point that many people made is that very often in the NT the infringement provisions are used. I understand you are trying to harmonise with the NT provisions. When you were developing these, did you have any discussions about how you could deal with that? It seems a pretty harsh penalty. I understand what you are trying to achieve.

Ms Edwards: The first point to make is that penalties for supply of an amount of alcohol under 1,350 mils was an offence with strong penalties prior to the NTER. When the new provisions came in and that was displaced, it was something that caused some concern. Some magistrates and so on had seen people many times with relatively small amounts of alcohol coming before the courts and no longer had the option of the stronger penalty. So that was one of the key factors directing the government. We needed to make sure we gave a full range of options and, as has been in the public statements of the minister, were really tough on grog running.

The second point to make is that the penalty of so much of a fine or up to six months in prison is, of course, a maximum penalty for supply of, say, an amount of alcohol up to 1,350. The key thing to remember about 1,350 is that that equates to three cartons of full-strength beer or 6.25 flagons of wine. I think it is 4.something bottles of gin. So we are not talking about totally insubstantial amounts of alcohol here.

Senator SIEWERT: Yes, but it is also less than, so you could be talking about small amounts of alcohol.

Ms Edwards: You could be talking about someone committing the offence of supply of less than 1,350. That would be an offence which would be punishable by a penalty of up to the fine or amount of imprisonment. You would expect the court, as it would normally, to look at the range of penalty and the severity of the offence and apply a penalty within that range. So, for a first offence or one for a very small amount of alcohol, you would normally expect the court to apply at the lower end of that range. The provisions return to the courts who are looking at these offenders the full range of penalties. For supplying of over 1,350 there are more stringent penalties to recognise. It provides a range that in the ordinary discretion judicial officers apply. We have handed over to them to apply the penalty that fits the offence.

Senator SIEWERT: When you say 'used to apply', those previous laws did not apply to the proscribed areas, did they?

Ms Edwards: Before the NTER commenced the penalties applied in general restricted areas under the Northern Territory legislation. They were not coexistent with what are now the proscribed areas or what were expected to be the alcohol protected areas.

Senator SIEWERT: So what were the restricted areas that those rules applied to?

Ms Edwards: I would not be able to answer the question of what Northern Territory rules applied. We know that a lot of communities were general restricted areas, but I could not provide you the detail. There were large amounts of communities prior.

Senator SIEWERT: These now apply extensively and are now harmonising with what they used to be. What I would like to understand is where they applied, how extensive they were and who had control over the decision making for where they applied. In the past it was communities that made the decision of whether or not they were dry. That is what I would like to understand.

Ms Edwards: The decisions are made under the NT Liquor Act. We would be able to seek the information from them, but I cannot provide it to you today.

Senator SIEWERT: If you could take it on notice.

Ms Edwards: So you want to know the general restricted areas that were in force immediately before the NTER came into effect?

Senator SIEWERT: Yes—where the rules that we are now harmonising with used to apply, what the decision-making process was in terms of how those rules were made to apply to a particular area and whether communities had control over that decision making.

Ms Edwards: It will be a question of how the Liquor Act applied and how the decisions were made. I am sure my lawyer colleagues can refer you to the right provisions. We might take it from immediately before the NTER commenced, because obviously that will have changed over time.

Senator SIEWERT: That would be appreciated. Thank you.

One of the questions that came up a lot was the issue of the development of the alcohol management plans, in particular who develops them. It is good that the community develops them. Getting community input is good. We heard some examples where they are just about to set theirs off through the process to get the tick. But who develops them in the community? What is the triggering mechanism under this process?

Ms Edwards: Under what is proposed?

Senator SIEWERT: Yes.

Ms Edwards: It is deliberately designed to be a flexible process to meet local needs. We would have an arrangement whereby it is often a committee. You would have heard that under the current arrangements a committee is formed in the community and works with officials. Currently of the Northern Territory government, though the federal government and FaHCSIA are involved as well. They have a consultative process for a long as it takes to develop the various strategies they want to include in their alcohol management plan. We anticipate a similar process. The details of exactly how it would be administered are to be determined. The government, when it announced this legislation, also announced a commitment of funding to assist in the work of facilitating communities developing plans.

Senator SIEWERT: We know Mount Nancy has got resources to develop theirs. So resources are good to help. But who does the facilitation? Say you have a larger community with two groups who want to do one. How does that process work?

Ms Edwards: It will depend on the community, how they want to run it and what resources they have. There will be some places where there is a well-established governance arrangement which they will be able to ring up and tell, 'Hey, come and see us.' Then officials will come along and talk to them, and they will drive it in that way. There will be other places that need a lot more assistance in order to set up those sorts of arrangements, and would be open to helping them with those as well. So it would really depend on what is required in the particular community to get them to a position to be able to make those sorts of decisions.

Senator SIEWERT: Thank you. One of the other criticisms that we got quite strongly last week was about the level of sign-off that is needed—the number of layers that you have to go through to get your plan ticked off. It ticked off the communities when they were thinking it was going to be quite a complicated process?

Ms Edwards: That it will be?

Senator SIEWERT: Yes.

Ms Edwards: The process that you need to go through to get one ticked off under the new arrangements is set out clearly in the bill. You need to apply to the minister, and she has to have regard to certain things, including the way it was developed and so on, to make a decision. We do not see that as being particularly onerous for people. The other thing to mention, of course, is that even at the moment getting it signed off at the end has not precluded lots of good things happening along the way. We are aware that there are lots of alcohol management plans where certain programs are already in place even if they have not got to what you call sign-off. We hope that we will be implementing things quickly in some places as they are developed and will address harm in the way the communities lead.

Senator SIEWERT: You may not think it is a complicated process, but the communities do. That is the feedback that we got.

Ms Edwards: I agree. One of the important things that we will have to do is make sure communities are supported to be able to follow whatever process is required.

CHAIR: The communities actually said they wanted help. In fact, in one of the *Hansards* we have people who said they want people come help them do that. So that was useful. The other thing they were concerned about is delays. My understanding is a number of communities have completed their own plans at this stage and have not got them back yet. So they have put them into the system. The evidence we had is that there are a number of communities who have established their own alcohol plans since the 2010 changes and that they have been forwarded and not come back.

Ms Edwards: That is—

CHAIR: Through the system.

Ms Edwards: through the Northern Territory government system.

CHAIR: They did not know. They said it was with someone. These people are extremely angry that they have tried to do the right thing and have not got anything back. That is layering the levels of distrust. Is that a fair call, Senator Siewert?

Senator SIEWERT: Yes, it is. Do you expect them to go to the NT government as well?

Ms Edwards: We think it will be clearer under the new process that it needs to come to the Commonwealth minister, although we will work collaboratively with the Northern Territory minister.

Senator SIEWERT: As I understand it, chair, that is where they were being held up.

Ms Edwards: There is no provision in this legislation that requires the NT minister to sign them off, but we will need to work in collaboration with them. A lot of the services and so on that will need to be incorporated into a plan will need Northern Territory government support, so we are planning to have a very streamlined coordinating process with them.

Senator SIEWERT: Thank you. Mr Dillon, you referred to the price mechanism and the preventative health authority process. When do you expect that to be finished?

Mr Dillon: I cannot answer that question. I think it is a matter for the health portfolio. But Caroline Edwards does have the answer.

Ms Edwards: This is the National Preventative Health Task Force that we are talking about?

Senator SIEWERT: It is the task force that is doing it? I thought it was the agency.

Ms Edwards: There are two things going on. The National Preventative Health Task Force is looking at the minimum price mechanisms, and the new Australian National Preventive Health Agency will develop the public interest case for a minimum price. They are expected to provide initial advice to their minister in 2012—this year.

Senator SIEWERT: When is the task force finishing their work? I am a bit confused. I thought I understood what was happening, but then I got confused. Sorry.

Ms Edwards: I clearly am too. There is some other work we are doing, which is why I am confused. It is now the agency doing the work. It is going to provide initial advice to the Minister for Health and Ageing in 2012.

Senator SIEWERT: So it is the one bit of work. It is not two.

Ms Edwards: Yes.

Senator SIEWERT: Okay. I got confused.

You will be aware that it was very strongly put to us by a number of witnesses—obviously the health witnesses and the PAC—that they wanted a minimum price mechanism and the Commonwealth to legislate to do it in the NT. Did you give any consideration to that particular mechanism? Have you had feedback? I realise there are certain questions I am not allowed to ask, so just answer that however you can within the rules.

Mr Dillon: My understanding is that a decision was made that this process would be the mechanism to take this forward. Therefore, I do not think we gave this matter the sort of consideration that we would normally give to a legislative proposal.

Senator SIEWERT: Could the Commonwealth legislate to do that?

Mr Dillon: My understanding is that there are a range of legal issues that would come to bear, so that is an open question.

Senator SIEWERT: Thank you.

CHAIR: There is a lot of discussions amongst the witnesses we had about a floor price for alcohol, which is a policy direction. In the discussions that were held in the various communities was the floor price argument put up?

Mr Dillon: I might ask Mr Stacey if he knows the answer. Or Ms Henderson knows the answer.

Ms Henderson: There were a few comments about a floor price in the consultations, but most of them went to people not really understanding what a floor price was about and what supply issues were with alcohol. So there were a few comments, but they were very few.

Senator SIEWERT: NPY Women's Council raised very strong concerns around drugs and highlighted that there is more ganja coming into communities. They said, 'What are they doing about drugs as well?' I realise they are illegal substances, but it does raise the question. A lot of people are saying it is all very well to have alcohol controls, but there is a lot of substitution of alcohol with other drugs. Obviously you have heard that as well. Are there other specific mechanisms that you have thought about or been working on also to address that issue? We know it is illegal, but it is going into communities. We got that all over. We got that in Alice—obviously from the NPY Women's Council. We also got it up north.

Ms Edwards: One important initiative to refer to is the Substance Abuse Intelligence Desk and the dog operation units, which are funded at least partly under the NTER and operating in the tri-state region but also throughout the territory. They are not dealt with in this legislative packet, but obviously the future of those is something being considered by the government in the broader stronger futures context.

Senator SIEWERT: Do I interpret that to mean 'Watch the budget to see an announcement on the continuation of that process'? Would that be a correct interpretation, or have I just verballed you?

Ms Edwards: The future of it is being considered by the government.

Senator SIEWERT: Okay. What would happen if that did not continue? As I said, we have heard this a number of times before It is not the first time we have heard it. In fact, I have also heard it in northern WA as well. If that funding does not continue, do you have contingency provisions in place?

Mr Dillon: I think it is fair to say that the government, too, is extremely concerned about illegal drug use in Aboriginal communities.

Senator SIEWERT: And?

Senator CROSSIN: The Northern Territory Police are doing a great job.

CHAIR: We have pictures to show how good they're doing.

Senator SIEWERT: They also work with the task force. What happens if this funding stops?

Mr Dillon: You are asking a hypothetical; but, if the funding stops, the activities that it funds stop.

Senator SIEWERT: Right.

Senator CROSSIN: It is 1.2 million square kilometres. There are lots of roads, lots of tracks and lots of means of getting in and out of all of those communities. I think the police showed us quite substantially last Friday that they are trying to do the best they can. They have police presence at Maningrida and dogs where they can at most airports. So I am not sure it is somehow directly related to this legislation, but the commissioner showed us last week that they are trying to do whatever they can with such a vast area of land in this country.

Senator SIEWERT: While people express support for the changes that are in the bills, they expressed strong concern that the provisions did not extend to bail. In fact, they put the view very strongly that the customary law processes will continue to be discriminatory because they apply to Aboriginal people. I wonder if you have had advice around the point that they are discriminatory because it is Aboriginal people's customary law that cannot be taken into account?

Ms Chidgey: On your first point about it not applying to bail, the changes that we are making apply to both the sentencing and the bail provisions. I was not sure whether there was some misunderstanding about whether the changes that we were making to the provisions covered both. In terms of the issue of discrimination, the provisions are framed in general terms to apply to any cultural practices, not just Aboriginal or Indigenous cultural practices, so our view is that they are not discriminatory.

Senator CROSSIN: Supreme Court Justice Riley, if I look back at the transcripts of the celebrations of the Supreme Court of the Northern Territory last year—I am happy to provide you with a transcript; I just found it tonight myself—makes some very strong statements in the centenary ceremonial sitting on 30 May last year on page 15 of this transcript. He has some grave concerns about the impact of the fact that the courts can no longer take into account the custom and practice in relation to bail and sentencing, and he makes some very strong comments on page 15 about the impact that it has on Indigenous people. We had some very good evidence last week, particularly from CAALAS in Central Australia and Jonathan Hunyor from Naaja about the consequences it may have, even when it goes to minor offences like speeding or not wearing a seatbelt. You are probably not aware of Magistrate Riley's comments, but it would be really useful if you could have a look at those and provide us with a reason. It is pretty unusual, I think, for magistrates to be saying, 'Please have another look at section 91.' Why do you believe that could not be seriously re-examined?

Ms Chidgey: We have seen Chief Justice Riley's comments. I have them in front of me. Our view would be different. He made a comment about Aboriginal offenders not having the same rights as offenders from other sections of the community. We would maintain that that is not correct.

Senator CROSSIN: Why do you think it is not correct?

Ms Chidgey: Because the provisions apply to not being able to take into account any cultural practice to mitigate the seriousness of the conduct of an offender, and that would apply to cultural practices regardless of whether they were Indigenous or from other cultures.

Senator CROSSIN: But the view of the magistrate in the Northern Territory, when I speak to them—and do not by any means take this as a submission from them or them trying to influence what happens in the legislation—they are clearly of a view that this constrains them. For example, if I were putting my kids in the back of the car and happened to do 80 kilometres instead of 60 and it was midday on Christmas Day I could say to the courts, 'Yeah, I was speeding, but it was Christmas Day, and, gosh, it's just that day of the year.' They go, 'Well, we understand that, so we might give you X instead of Y.' But if I were Indigenous and I went, 'Well, it's a really important ceremony and I was rushing to get there, and I understand I was speeding, but you've got to understand I needed to get there for this ceremony,' my understanding is that they have to go, 'Well, we can't take that into consideration. You need to get this penalty.' We had a lot of evidence last week that, clearly, the courts are actually treating people differently when it comes to customary and sentencing provisions because of section 91.

Ms Chidgey: Our view would be that those two different situations would not necessarily be treated any differently. It would be a matter for the court to consider whether it was a cultural practice that was being put forward—speeding for a ceremony and speeding because it was Christmas Day—and to have regard to the provisions accordingly.

Senator CROSSIN: But they are interpreting section 91 as that they cannot do that, that they are forbidden to do that. That is how they are interpreting section 91.

Ms Chidgey: They are forbidden to consider cultural practice as a factor that would mitigate the seriousness of the offence, but there are other factors that they can consider such as the nature and circumstance of the offence, and there has been at least one case where, for example, they did not consider it in terms of cultural practice to mitigate the seriousness but did consider the fact that the families involved were supportive of the

actions. So there are some lines to be drawn, but there is some ability, still, to take factors into account in other ways.

Senator CROSSIN: I just have to say that the whole time I have been in the Senate, and I have a lot of dialogue with legal people in the Northern Territory because of my chairing of the Legal and Constitutional Senate Committee, I have not had such strong representation, basically, about a section of an act, which makes me want to believe that they may well be right. Is this just a matter of policy difference, or is this a difference of opinion of the application of the law?

Ms Chidgey: We are aware of the judicial criticism. When justices have criticised it I think they have understood how it is meant to be applied. It is certainly the case that it constrains their discretion, and it is intended to do so.

Senator CROSSIN: Why is it intended to do so?

Ms Chidgey: Because it prevents their using cultural practice and considering it as a fact that would mitigate the seriousness of an offence. So, insofar as it prevents that aspect of judicial consideration and bail and sentencing, it takes that factor out.

Senator CROSSIN: But this goes back to one particular court case that happened a number of years ago, doesn't it? That is the basis for it, isn't it? It is one particular court case where the judge actually did take into account the cultural practices and somebody somewhere had a view that that was over and above what that judge should have done.

Ms Chidgey: The amendments are based on the 2006 COAG decision. I am not aware of the range of court cases that might have influenced that original COAG decision.

Senator CROSSIN: Would you take it on notice to find out for us, please.

Ms Chidgey: We can see whether there is further information about that.

Senator CROSSIN: My understanding is that it related to one matter to do with the relationship that a traditional man had with a girl under the age of 16.

Ms Chidgey: We can take that on notice.

Senator SIEWERT: There is one point that has been raised, and we it discussed last week. The strong point put to us by Aboriginal communities is that maintaining culture and maintaining the authority of culture is really important, for elders in particular. It has been put to us in the past that now that the courts are saying, 'You can't pay attention to customary laws,' young people are saying: 'What role has culture and customary law? The courts don't pay any attention to it so it is meaningless.' It has been put to us that, therefore, while not being solely responsible, culture is breaking down in communities as part of that process. Have you heard those comments and have you taken them into consideration?

Ms Chidgey: We have seen comments along those lines in at least one of the submissions provided to the committee. Our response is that these amendments are very narrow in effect. They are not saying anything about cultural practice or customary law in general or about preventing the operation of cultural practice. They are very narrowly preventing the consideration of cultural practice and mitigating the seriousness of the conduct of an offender in bail and sentencing decisions.

Senator SIEWERT: I understand what you are saying. But in communities they are saying: 'White man's law says that culture isn't to be taken into consideration. Regardless of what we are saying it means, another interpretation is being put on it.'

Ms Chidgey: I think the only thing I could add is that, underpinning bail and sentencing issues, there are criminal offences that have obviously been committed, so to that extent the amendments are intended to reinforce that certain behaviour is criminal regardless of whether there might be some background motivational factors that involve cultural practice, and that applies to any culture.

Senator SIEWERT: When we were in Darwin the other day, it was suggested we should have a look at a paper—Senator Crossin you might remember?

CHAIR: That is the one that Trish was referring to.

Senator SIEWERT: No, there was another one.

Senator CROSSIN: I was talking about Justice Riley's speech last year.

Senator SIEWERT: Yes. But there was a paper from America about how pervasive the predominant culture is, to the point where we do not even realise that we are making cultural decisions for the predominant culture. I will have to check to find out the name. Have you come across that theory, and could you have a look at the paper

and give us some thoughts? The proposition that was being put is that we do not even know when we are making cultural decisions because we live it.

Ms Chidgey: Yes. I think I have seen comments in some of the material that was provided to the committee. Obviously this relies on judicial officials distinguishing cultural practices, whichever culture those practices arise from. Senator Crossin mentioned the issue about speeding on Christmas. We would expect judicial officers to be identifying any cultural practices and treating them in the same way under these provisions.

Senator SIEWERT: The point as I understood it is that because it is so ingrained it is not even as clear as the speeding example. It is: because we live the predominant culture we do not realise that in fact we are making cultural decisions.

Ms Chidgey: I am not sure that I can add anything further other than that if factors are put to judicial officers as mitigating factors and they understand those factors to be based on cultural factors, these amendments would require them not to consider that in mitigating the seriousness of an offence.

Senator SIEWERT: It is called the majoritarian privilege of not noticing oneself; it is a US academic paper.

Ms Chidgey: I suppose the only other thing I would draw out is that in balancing decisions the defence would be putting factors forward as factors to be taken into consideration as mitigating factors. Those factors will be specifically drawn to the court's attention and the court will be required to identify whether or not those factors are cultural practices.

Senator SIEWERT: Thank you. If you could have a look at that, it would be useful.

Ms Chidgey: We will do that.

CHAIR: Ms Chidgey, in the discussions around this bill, did the department receive any approaches or concern raised by the legal profession about this particular clause?

Ms Inverarity: I think the Law Council has had an ongoing interest in these provisions for many years, and we have been having discussion with them throughout the last few years, so they had maintained an interest.

CHAIR: The NT bar?

Ms Inverarity: No, I believe only the Law Council.

Ms Chidgey: We had done a review in 2009 and received submissions as part of that.

CHAIR: And they raised the same issues?

Ms Inverarity: We had submissions at that stage from the Northern Territory Attorney-General, the Commonwealth Director of Public Prosecutions, the Law Council of Australia, the Law Society Northern Territory, and a joint submission from Aboriginal and Torres Strait Islander Legal Services in New South Wales, Victoria, Queensland, WA, South Australia, the ACT and the Northern Territory.

CHAIR: Can you tell us quickly whether those submissions were in favour of retaining this clause or removing it?

Ms Inverarity: I think it is fair to say they were not in favour of retaining the provisions. This was prior to the context of these amendments—except for the Commonwealth Director of Public Prosecutions, who did not express a view on whether they should be retained or not.

Senator CROSSIN: And those submissions were to—

Ms Inverarity: To a review that was undertaken by the Attorney-General's Department.

Senator CROSSIN: Was the outcome of that review public?

Ms Inverarity: I believe a copy of the report was made available to the Senate Standing Committee on Legal and Constitutional Affairs, but it has not been published.

Senator CROSSIN: Through estimates?

Ms Inverarity: We would have to check whether it was published.

Ms Chidgey: I think it might have been made available on the committee's website when we provided that.

Senator CROSSIN: During an estimates process?

Ms Chidgey: Yes. I think it may have been in response to an estimates question, but we can follow up on that.

Senator CROSSIN: A question on notice.

Ms Chidgey: Yes, I think that is right.

Senator CROSSIN: Can I then request that perhaps you forward it to this committee for this hearing?

Ms Chidgey: We are happy to do that.

Senator SIEWERT: One of the issues that comes up in the submissions is: you get to the last resort. Who would be covered under the provisions of having their income support suspended? It has been put to us that the provisions are broad enough so that anybody who has care, so grannies and other people that have a certain percentage of care could get cut. Could you clarify for us who would be affected once you get to that last resort?

Ms Donaldson: I will pass that to Mr Kominek who has the criteria for that.

Mr Kominek: The SEAM program is focused on trying to improve school enrolment and attendance. As we know, it has been in place since 2009. When it was first developed, it was based on the category H payments that are made by DHS, and there is a list of those particular payments. For the way that SEAM is currently operating there are a number of criteria that have to be fulfilled before someone is determined to be in scope. They have to be, first of all, living in a SEAM trial site. They have to have at least 14 per cent care or more of a school aged child and be a recipient of a category H payment. For the attendance component, they have to fulfil all of those eligibility criteria plus the child has to be attending a SEAM identified school.

Senator SIEWERT: I understand that. In the New World order, will it still apply if you have got 14 per cent care? Is there potential that you will cut off multiple people?

Mr Kominek: It is only the principal carer for the child, and that can change over time.

Senator SIEWERT: So where does the 14 per cent come in? Why use the 14 per cent level? If I am confused I know other people are too because they have raised it repeatedly.

Mr Kominek: I believe that is based on the current policy that Centrelink operates on, and that particular rule applies to some of their other benefits as well, I understand. That was the initial policy intent that someone has to have at least 14 per cent care of a school aged child.

Senator SIEWERT: I am not meaning to be obtuse, but this is a significant issue. Is it intended that you could have multiple people getting suspended because they have 14 per cent care or more of the same child? There are a lot of 14 per cents in 100 per cent.

Mr Kominek: Thank you for the clarification. It will only apply to one particular carer and that is the principal carer as identified by Centrelink.

Senator SIEWERT: Why is that 14 per cent in there?

Ms Donaldson: Just to clarify: it could actually be multiple people, so it is not the principal carer.

Senator SIEWERT: So one child is not going to school, so granny who has them on the weekends could get cut off because they have got 14 per cent care.

Ms Donaldson: That is our understanding of the interpretation of the policy, yes.

Senator SIEWERT: This is smart, isn't it? I am sorry but don't you think that is going to stop people caring for these kids if they think, because they have got them on the weekend or 14 per cent care, they will get their income support cut.

Ms Donaldson: Primarily, the driver is to try and connect the carers with the schools to talk collectively around how they can come up with an attendance plan to support the child's return to school.

Senator SIEWERT: I understand all that. Can you please tell me how is it going to help the grannies who have got them on the weekend or during the school holidays—that is a bit over 14 per cent of the care—get those kids to school by cutting off their income support?

Ms Donaldson: The cutting off of the income support, as you have rightly identified, is only the last resort. The intention is to bring together the people that have care of the child to be able to talk about how there can be collective responsibility towards the return of the child to attend school. I would anticipate that it would be about those key people being part of the conversation with the school and the social worker to identify how barriers could be overcome to return their child to school.

Senator SIEWERT: Wouldn't it be easier for me to say I am not going to have the 14 per cent of care if it means I am going to get my income support cut off? What you are going to do is undermine caring provision for these kids. Have you thought of that?

Ms Donaldson: I think it is on the provision that they have the category H payment as well. It is only for those who have the category H payment.

Senator SIEWERT: Remind me of the extent of the category H, please. I have not got the categories in front of me. I know some of them.

Ms Donaldson: The other point to made is that the income support is only suspended to begin with if the parent or carer is not actually showing attempts and efforts to work with the school. Therefore, if they are not engaging with the school then that is when the notice would be issued. Would you like me to list out all the category H payments or would you like me to provide it as a record?

Senator SIEWERT: Just give me the main ones.

Ms Donaldson: The social security benefit of widow allowance, youth allowance, Austudy payment, social security pension, age pension, disability support pension, wife pension—

Senator SIEWERT: In other words, all the broad categories of income support that exist in Aboriginal communities—is that right?

CHAIR: It would be hard to find one that is not there.

Senator SIEWERT: Yes.

Senator CROSSIN: How many days is 14 per cent in a month?

Senator SIEWERT: It is about two—

Senator McKENZIE: 3.5 days.

Senator SIEWERT: Yes, not in a month?

Senator McKENZIE: 30 days, 10 per cent, three days.

Senator CROSSIN: So if you have got a child for 3½ days—

Senator SIEWERT: If you have them on a weekend care—

Senator CROSSIN: How was the 14 per cent was determined? Why 14 per cent? Why not 32 per cent or 44 per cent?

Ms Donaldson: I believe, as Mr Kominek has identified, that it is a standard that was identified by DHS that is applied to other situations as well.

Senator CROSSIN: DHS being?

Ms Donaldson: Sorry, Centrelink—Department of Human Services.

Senator CROSSIN: What other situations?

Ms Donaldson: I would have to take that on notice, I am not familiar.

Senator SIEWERT: If I recall correctly, this is also associated with provisions for child support.

CHAIR: Shared parenting and child support. It is most unusual that the policy department does not know the policy. Where do we go from here? We have worked out the 14 per cent and we have been told it does not affect caring.

Senator SIEWERT: I understand there has been some commitment to social workers in general. My understanding from the limited questions I did ask on this issue at estimates is that there has not been a decision made on funding support across the board for this measure—is that correct?

Ms Donaldson: There has been a commitment for the expansion of SEAM within the Northern Territory.

Senator SIEWERT: Yes, how much?

Ms Donaldson: That was $85.1 million.

Senator SIEWERT: Could you clarify how much of that is available for social workers for intensive case management?

Ms Donaldson: We only have a split by agency, not down to the actual provision of services. We have the proportion that would be allocated to the Department of Human Services as opposed to DEEWR for the measure.

Senator SIEWERT: If you could provide that on notice. Obviously all the money that is available to Centrelink is not going to be just for social workers. I am interested in finding out how many social workers will be provided. Have you got that?

Mr Kominek: I do have an indication from DHS according to their preliminary planning for the expansion of SEAM in the Northern Territory. As you will read from the submission, it will be a phased rollout. Basically, Centrelink will be increasing the number of social workers as required. However, what DHS has previously advised in this regard is that they require at least 10 remote servicing teams for the expansion of SEAM, comprising at least of one Indigenous service officer, an educational liaison officer and a social worker in each one of those remote servicing teams.

Senator SIEWERT: So 10 teams will be put in place. When will the locations be determined?

Mr Kominek: The locations have been identified in the submission. They are at all the remote service delivery sites, at Alice Springs and Tennant Creek and the remainder of Katherine that is not currently covered by SEAM.

Mr Dillon: Plus Alyangula and Nhulunbuy

Senator SIEWERT: Thank you. What is the predicted client base for each of those teams?

Mr Kominek: I do not have that detail; however, we are looking at about 12,000 clients in total to be serviced by this staffing team.

CHAIR: Will these teams be peculiar to SEAM, or will they be able to do other work in the community?

Mr Kominek: I understand that they are also providing other support services.

CHAIR: Yes. In terms of having the use of this expanded resource into all these areas where social workers have never been allocated before, the expectation is that they will not just be doing SEAM?

Mr Kominek: That is the advice that has been provided.

Senator SIEWERT: And they will be in each of the RSD towns?

Mr Kominek: They will be visiting the RSD towns.

Senator SIEWERT: So they will be focused on the RSD towns?

Mr Kominek: I do not have that level of detail, but my understanding is that we will have these teams. I am not sure how they will be allocated across the Northern Territory, and that is for DHS to decide. But, as far as the total resources are concerned, we will have what we consider to be a large number of support staff available.

Senator SIEWERT: I must have misinterpreted what you said earlier. I thought you had said that you had determined where they are going to be. What I just understood you to say is that you have not.

Mr Kominek: My apologies, Senator. I thought you were wondering about the locations that are now going to be covered under the expanded model of SEAM.

Senator SIEWERT: No. I meant where those teams will actually provide the services. Are they just focused on the RSD towns? If I understood you correctly, you have just said that you do not know yet.

Mr Kominek: That is correct.

Mr Dillon: My understanding of the evidence that has been given is that SEAM is being expanded to the RSD sites and Alyangula and Nhulunbuy, plus Alice Springs, Tennant Creek and the remainder of Katherine. That is where SEAM is being allocated.

Senator SIEWERT: So they are going to the RSD sites?

Mr Dillon: There will now be 10 teams servicing all of those sites.

Senator SIEWERT: Is there any proposal to expand the measure outside the RSD towns?

Mr Dillon: Yes, it is outside the towns because it is in Alice Springs, Tennant Creek and the rest of Katherine, and Alyangula and Nhulunbuy.

Senator SIEWERT: Beyond those. How will you help the homelands, for example?

Mr Dillon: I think the answer is that SEAM will not operate in those smaller communities at this point.

Senator SIEWERT: So my question is: how are you going to help raise attendance in those areas? It has been raised with us that school attendance in some areas is directly associated with people being in community and on homelands. That is constantly raised as a reason for poor attendance.

Mr Dillon: There are a couple of points to make. The first is that this measure supports the Northern Territory's education policy. The second is that it will not only impact on the direct recipients of SEAM; it is about creating a new social norm for school attendance. In remote communities there is a lot of mobility and people talk to each other so, once we embed the notion that school attendance is not optional in these key places, one would hope that understanding would start to spread. That is part of the answer to this.

Mr Davies: If you would like, I could also assist you with a whole range of complementary measures that the department is implementing that go towards raising the expectation around attendance, as Mr Dillon said. It is not just this. Would you like me to give you an overview now?

Senator SIEWERT: Yes.

Mr Davies: As you are probably aware, under the National Education Agreement all governments have signed up to commitments to measures and reporting which include on enrolment and attendance. The government has

provided significant extra funding through a number of measures to assist the NT government and the non-government sectors put a real focus on trying to lift performance in schools to support kids to attend regularly and to create that expectation. You will no doubt be familiar the Smarter Schools National Partnerships and in particular the low-socioeconomic communities partnership is reaching a very large proportion of Aboriginal and Torres Strait Islander kids across Australia and in the Northern Territory as well.

Then there is a whole range initiatives—and I will just quickly rattle them off and if you want I can give you further details on how they are targeting to assist with attendance. There are specific ones that are aiming at Aboriginal and Torres Strait Islander students in particular. The Aboriginal and Torres Strait Islander Education Action Plan includes several measures to promote expectations around regular school attendance but also, critically, effective engagement by schools of Aboriginal kids, their parents and carers. There are things like the national attendance awareness strategy, the Tri-Border Attendance Strategy with the lands in WA and SA, and in the south of NT.

There are also actions like the Dare to Lead program, which is targeting principals and school teachers to raise there aspirations and expectations as to how they work with family and how they expect kids to attend. There is the What Works project, which are around demonstrating good practice, providing case studies and materials to teachers and principals, and the Sporting Chance Program that you are no doubt familiar with—the Clontarf Academy and those sorts of things. It is right to see SEAM in the context of a whole range of initiatives which target different aspects of the attendance problem.

CHAIR: Mr Davis, I am looking through the combined department report and I cannot find that.

Mr Davies : These are complementary, outside of the specific focus—

CHAIR: Yes, but in terms of things that support education and support the SEAM program, can we get that from you in a format rather than just reading it off the *Hansard*?

Mr Davies : Yes, of course.

CHAIR: Before I said that I checked in case I had missed it in the submission and I had not.

Senator SIEWERT: Also, could you provide a quick rundown on how you access them and how much funding is available for the NT?

Mr Davies : Yes.

Senator McKENZIE: And the number of kids in them.

Senator SIEWERT: Yes.

Mr Davies : Some of those we will be able to identify specifically, others target the school. We can give you a clearer picture than I have just read.

Senator SIEWERT: That would be great. The other issue that came up really strongly when we were in the NT was examples of some older kids coming back to school—boys in particular, but there were examples of girls—and there were not sufficient resources for them in terms of both physical resources and education programs. I am wondering if you have recently undertaken an audit of what is available in the NT in terms of school resources for both primary school and specifically secondary schools.

Mr Davies : I would have to take that on notice. I do not think a specific audit that I am aware has been conducted.

Senator SIEWERT: Are you confident that if all these kids start attending school—in similar circumstances to Wadeye where they turned up and there was not enough resources in the classrooms—there will be the resources available, particularly the secondary resources?

Mr Davies : It is fair to say that the Australia government position is that there is adequate funding provided to the Territory government through the National Education Agreement to support enrolled students. As you are aware, those funding regimes have a cyclical arrangement in terms of how enrolments are determined from the previous year census et cetera.

Senator SIEWERT: Yes, I have had that.

Mr Davies: It is a complex picture. There is always a risk that at a particular location with a particular movement of some families, with a particular set of circumstances, the school faces some immediate challenges when lots of kids rock up. That is a reality. In some senses it would be highly desirable if schools were facing a challenge of loads of kids that had not been turning up. I know that Wadeye recently experienced 30 or 40 kids coming and I understand it was able to cope this time. It is an issue. The government has provided additional

resources. We believe that education systems are flexible enough in the way they manage their resources to be able to respond to those needs.

Senator SIEWERT: But there has not been an audit?

Mr Davies: I am not familiar with a specific audit, no.

Senator SIEWERT: If you could take it on notice to let me know if there has been, that would be appreciated.

Ms Donaldson: Could I add that the expansion of SEAM within the Northern Territory is to support and complement the work the Northern Territory government are doing in relation to their Every Child, Every Day initiative, which is their own attempt to try and engage every child every day, obviously, and increase attendance. So the Northern Territory government themselves are looking at and, I would expect, addressing and trying to identify ways in which they can manage similar challenges that would come from Every Child, Every Day.

Senator SIEWERT: You have taken on notice how the $85 million is being split up, haven't you?

Ms Donaldson: We will attempt to identify how it can be attributed as far as we can within the work that DHS has done.

CHAIR: The figure quoted in some of the submissions is over $20,000 a school.

Ms Donaldson: In our joint submission?

CHAIR: No, in other submissions. I am very keen to get a view about how accurate that is. That has been widely quoted in some of the submissions.

Ms Donaldson: Can we take that on notice?

CHAIR: Absolutely.

Senator SIEWERT: Is the $85 million the total amount that is being spent on SEAM and its associated programs?

Mr Kominek: The $85.1 million is for the next 11 years. It is purely for the SEAM program. As Ms Donaldson advised, it is for a range of services that will be offered through mainly DHS and through a small amount for the department.

Senator SIEWERT: There are no other funding allocations that will be made to SEAM?

Ms Donaldson: There is an additional amount for the NT that will be provided to support the implementation.

Senator SIEWERT: Can we clarify this. The SEAM money is just for the NT?

Mr Kominek: The $85 million is purely the Australian government contribution towards the SEAM program. It does not include any funds that may be given to the Northern Territory government to support the program.

Senator SIEWERT: So there may be more from the federal government to the NT government as their contribution to this—is that what you are saying?

Ms Donaldson: Yes.

Senator SIEWERT: How much is that?

Ms Donaldson: We are not in a position at this point to say. It is to be negotiated.

CHAIR: So what role does the NT government have in SEAM? We heard from them in detail about their Every Child, Every Day and how that was going to work in with SEAM. What is the expectation of the NT government in SEAM?

Ms Donaldson: From our perspective it is about SEAM supporting the NT government's Every Child Every Day. It is about how SEAM is then a lever that they can use to further enhance their outcomes.

CHAIR: You are also talking about a budget allocation to the NT for their role in SEAM. Up until now I had been quite clear—which is always worrying!—that we had our federal government program, the SEAM program, which was going to be implemented in NT schools and that the NT government had their own programs, all with the common goal of boosting education and keeping people there. The NT government outlined in graphic detail on Friday what they were doing and how it was working, but at no stage did they say that they had a role in SEAM. If we are talking about a budget allocation to the NT government there would be an expectation that they had a specific role not in overall education but in the SEAM program, and that is what I am trying to find out.

Ms Donaldson: I would have to take that on notice.

CHAIR: I am happy to put that on notice. I just want you to be clear about what I am asking.

Ms Donaldson: Yes.

Mr Dillon: I expect that there will be a role, for example, for principals, who would have to provide data to not just the NT system but now to the new system.

CHAIR: In the trial they are doing that. My understanding is that no money is going to the NT for the trial. Am I wrong?

Mr Kominek: No, that is quite correct. Under the current trial arrangements no money is being given to the Northern Territory government.

CHAIR: We have had details about what the principals do. I am happy for you to take it on notice. Because there have been allegations made in some of the submissions about the cost of SEAM it would be useful for us to be quite clear on what the cost of SEAM. If we can get some answers to that question on notice, that would be good.

Senator CROSSIN: Following up on that, it would be useful to know what the $85 million that we are providing is going to pay for. On top of that, you are currently negotiating an agreement with the NT government that has money attached. Will that go towards things like additional AIEWs or home liaison officers or buses for schools? Do you have any idea what is being talked about in regards to that agreement.

Ms Donaldson: We would like to that on notice in order to provide more detail. The negotiations are around how to support the NT so that it is able to achieve the outcomes that they are setting out to achieve, which is every child going to school every day, and how SEAM can complement and support that. We will take it on notice and provide more detail.

Senator CROSSIN: I guess I am interested in what they are going to pay for and what we are going to pay for.

Ms Donaldson: We will take that on notice and provide more detail.

Senator CROSSIN: Is this totally separate from the 200 additional teachers that we are funding in the Northern Territory?

Ms Donaldson: That is separate.

Senator CROSSIN: And are those 200 now funded and filled?

Mr Davies: There are 196 in place. They are on track to deliver the full 200 as per the agreement.

Senator CROSSIN: Thank you.

Senator SIEWERT: You have taken a question from me about the audit on notice. There have been some claims made about the rate of turnover of teachers in the NT. I know that this is an NT issue, but you are surely taking it into account, seeing that you are running this SEAM process. Do you understand what the retention rate of teachers is? If you do not know, you can take it on notice.

Mr Davies: I understand it. The reason I am balking at answering is I do not know whether the numbers are for just the NT or for across remote Australia. The figure I have is about eight months. That is the average. I understand that that has recently improved, but I do not know what to.

Senator SIEWERT: We were told nine months.

Mr Davies: That is a 12 per cent improvement. They face incredible challenges.

Senator SIEWERT: Is the figure of eight months or nine months that you were quoting is for remote areas or is it an overall average? If it is an average, that means that it is worse.

Mr Davies: I will confirm this on notice, but I am fairly confident that it is the remote average and I believe that it has improved.

Mr James: There are some estimates of teacher turnover in the NTR evaluation report. I have not managed to find the exact pages yet, but there are some estimates there and there are signs of some improvement. There are some estimates of different measures of teacher turnover in that evaluation report. Those measures relate specifically to the NTR schools.

Senator SIEWERT: To the same—

Mr James: No, they apply to all the schools in—

Senator SIEWERT: In the prescribed communities.

Mr James: All of the schools for the 73 communities.

Senator SIEWERT: Thank you. One of the issues that was brought up pretty powerfully by Dr Barr when we were in Darwin was the need for special assistance for kids if prescribed communities. He said that 48 per cent are in need of special assistance at schools across the NT. It goes up to 60 per cent in prescribed communities.

Have you taken that into account? What are you doing in terms of providing extra assistance to deal with those quite intense needs?

CHAIR: It might be useful to have an idea of the kinds of assistance being provided.

Senator SIEWERT: We were told that in primary schools there is one teacher for every 22 students. If you have a classroom of 22 and 60 per cent of those kids have special needs, that is pretty big odds against them getting enough attention.

Mr Davies: Under the National Education Agreement, the Australian government's funding for government schools has, since that agreement came into place, provided the previously separate and specific funding for special needs students such as students with disabilities. There are no targeted or separate specific funds made available for government schools. The state education authorities now receive the total amount and they are responsible for establishing their own formula for distribution of resources, including those required to respond to the special needs of students. They have the flexibility to adjust to the different patterns of need that are evident in remote, regional or urban schools.

Senator SIEWERT: A teacher-student ratio of one to 22 does not seem to me an accommodation of special needs. These students need special assistance, but I do not know if they are classed as having special needs.

Senator CROSSIN: I am happy to hear here. I came out of the system. The one to 22 ratio is part of the enterprise agreement between the NT government and the education union. It is how schools are funded. In a school of 100 students, you might be entitled to five teachers. The number of students determines how many teachers that you get. Then each school decides what they are going to do with their teachers. I have been in some schools where the assistant teacher and the principal have taught and in that case the ratio was down to 16 from 22. I have been in schools where that number has gone up to 30 so that they can have a full-time sports teacher. The one teacher for 22 students ratio does not mean that every class has 22 kids in it. Every school does something different with the teacher allocation that they have. It is just a staffing formula.

Senator SIEWERT: The point that I thought Mr Davies was making was that there is extra support given where there are special needs and children with disabilities—there are additional resources made available. Is that correct?

Mr Davies: Under the National Education Agreement, the Australian government's contribution is provided to the Northern Territory education authority for them to decide how they allocate to meet the particular patterns of need in their schools. They determine those formulae. I am not familiar with the degree of autonomy that the individual school has to then adjust. That is different in each state and I cannot remember the position in the Northern Territory. They get the resources from the Australian government, add them to their own and then determine how they are allocated to meet the particular patterns of need in their schools.

Senator SIEWERT: Okay.

Mr Davies: The one to 22 ratio may be an average across a cohort of schools.

Senator SIEWERT: I understand the point that the two of you are making. Could you take on notice the degree special needs are taken into account when the allocation is made to the NT. In other words, does it take into account the figure of 48 per cent needing special support raised by Dr Barr?

Mr Davies: I can take that on notice, yes.

Senator SIEWERT: That would be appreciated.

Senator McKENZIE: I had a question around the 14 per cent care. I want to know if we know how many children have more than two carers. We are carving up care contracts, and that is what I want to know.

Ms Donaldson: We will have to take that on notice.

Senator McKENZIE: I want to know how many kids have a 14 per cent or higher carer.

Ms Donaldson: We will see what we can do about finding that information.

Senator CROSSIN: On any one day or any one week or what?

Senator McKENZIE: No. A child's care allocation is 100 per cent. It will be carved up between x number of people. They will have that information. It is not on a daily basis.

Ms Donaldson: We would have to consult with DHS as to what information is available.

Mr Davies: I will get my colleagues to confirm this but, under the arrangements that we were talking about before, if a carer is not require through their agreement arrangements with the school then they are not at risk of being brought into the compliance arrangements.

Senator McKENZIE: Thanks for the clarification.

Mr Davies: I will ask my colleagues to clarify that for you on notice. But I understand that that is the way that that works.

Senator McKENZIE: So if the grandmother—

Mr Davies: If the grandmother is not part of the agreement and has to do something in the school arrangement then they are not at risk.

Senator SIEWERT: If they are providing 14 per cent of care.

Mr Davies: Correct. That is what I would like to clarify for you.

Senator McKENZIE: If you could take that on notice, that would be great.

Senator SIEWERT: Can we extend that a tiny bit? Are you saying that, despite the fact that certain people may have a degree of care, they may not all be signed up to the attendance plan?

Mr Davies: I understand that to be the case.

Ms Donaldson: The parent who has been identified signs up to the care plan and they then have an obligation to make reasonable efforts to abide by that care plan.

Senator SIEWERT: So if somebody has only 50 per cent of the care responsibility, the school will not make the other carers sign up?

Ms Donaldson: I would have to take on notice how they make a determination as to who has to sign up. But in relation to who engages and works with the school to create an attendance plan, it is that parent who needs to demonstrate that they are making reasonable attempts to re-engage their child with the school.

Senator McKENZIE: Could you give us, also on notice, a gender breakdown of parents in terms of who is doing the signing.

Ms Donaldson: We would need to liaise with DHS about what is available.

CHAIR: We have seen confusion and lack of understanding and lack of knowledge through our consultations. Every single witness who talked to us said, 'They take our money as soon as our kids don't go to school.' Not one witness said, 'It is the last resort'—not one. In terms of the information basis and how people are being prepared for and made aware of this, this seems to be the issue around which there is the most need. I do not know what information has been provided or how. We did not get to speak to the school involved in the trial. But this issue is paramount.

Ms Donaldson: Subject to the passage of the legislation, upon the expansion to the other trial sites there will be extensive consultation with the communities. That is good feedback for us to take onboard as to how we can make sure that we can address that.

CHAIR: We were in one of the communities that is a trial site and the people who gave evidence said, 'They take your money away when your kids don't go to school.' That is an important piece of information. Perhaps it would be useful for you to read the evidence from Ntaria and the people who came from there. We will now go to food security.

Senator SIEWERT: You will be pleased to know that I only have a few clarification questions. Will there be some community consultation before a decision is made about whether or not a store requires a licence?

Ms Edwards: I understand the question. Going back one step, the first thing that will happen is that the minister will make a legislative instrument to exclude some areas entirely from the store licensing arrangement. At this stage, we are expecting that to apply to major centres such as Darwin, Alice Springs and so on. Yes, we are proposing to have a consultation process about the content of those instruments.

Senator SIEWERT: About which areas will be excluded?

Ms Edwards: About which areas will be excluded entirely. The next stage is that in the areas that are left stores that are currently licensed will be transitioned; they will continue to be licensed. In relation to stores that have not previously been licensed but are within the areas over which the scheme applies the secretary will make a decision as to whether a particular community needs to be licensed. In making that decision, the secretary will have to take into account: the object of the legislation—the food security objectives; any assessment that might have been done of that store and the circumstances and views of people being serviced by that store to the extent that those circumstances and views relate to the determination—in other words, what the people in the community who are buying food from the store think; and also any other matter that the secretary considers relevant. So in relation to that particular store, yes, the secretary will have to consult with and have regard to the views of people in the area and also to what state the store is in and so on. There will be a consultation process in relation to what

areas are excluded entirely and then there will be targeted information gathering on what people think about specific stores that have not previously been licensed.

Senator SIEWERT: There was some general feedback around the harsh penalties. Can you give us a short rundown on how you came to determine what the penalties would be?

Ms Edwards: The overall aim is to make sure that there is a much broader suite of action that can be taken in relation to stores that may be non-complying or struggling to comply. Under the current arrangements you can license a store or not license a store. It is a very blunt instrument. If a store is not providing the level of service that it should be, withdrawing the licence may just cause a food security problem for the people who live there. Under the new arrangements there are a range of things that can be done. Yes, you can revoke the licence, but the secretary can also require that a store has to be registered under the C(ATSI) Act and therefore come within the confines of that range of governance assistance and so on. There can also be an arrangement for fines to be levied on the store that is failing to comply, an arrangement for an enforceable undertaking so you can make the store have to do something, or an injunction to stop the store from doing something. There may be one more that I have forgotten. But the general point is that we are allowing a much broader range of repercussions to happen for the store.

At the same time, in addition to that range of penalties, there is also a greater scope to make sure that we assist stores people to come up to scratch. So for stores that are really trying to do the best they can but need some assistance, one of the first things that will happen is some real help for them in order to try and improve their practices and so on. Then if they continue to not be providing the sort of service that is needed for the Aboriginal community they are providing food, groceries and drinks to, there is a range of different things that can happen.

Senator SIEWERT: In that last process, is it expected that there will be some consultation with the community to see what the community think about whether they are getting that service or not, or will there just be a determination made?

Ms Edwards: When the secretary decides, first, whether the store should be licensed, there is talking to people. Then the secretary decides whether or not this store gets a licence and the conditions, and those will depend again on the circumstances, so there would be involvement with the community all along the way. Then when working with the actual store, which often is owned by the community, we would expect that also to be done having regard to the whole of the circumstances, depending on the circumstances. Yes, we see this is as making sure that stores are really providing the service that is needed by the Aboriginal community that is relying upon it for foods, drinks and groceries at every stage.

Senator SIEWERT: Thank you.

CHAIR: Ms Edwards, when you get a chance could you have a look at the evidence given by the Maningrida Corporation, which gave evidence particularly on this issue when we visited that community. They had significant concerns about their business future with these changes. Rather than me putting all those to you now, would you review the *Hansard* to get their particular concerns. They seemed to me to be a successful store. I always go and check the stores out when I visit a community, and this was a very good quality store. They gave commercial reasons for their concerns.

Senator SIEWERT: They talked about the increase in audit costs.

CHAIR: Yes.

Ms Edwards: I will take it on notice, but I would note that if it is a store at Maningrida we would expect it already to be subject to the current licensing arrangements and expect it to be licensed. But we will go away and check. If there is a need to go and tell people more about what is going on, then we will make sure we do.

CHAIR: They have felt they are going to have significant increased costs from this arrangement.

Ms Edwards: We will have a look at that and make sure we come back to the committee.

Senator SIEWERT: As you know, there is two stores there.

CHAIR: Both said the same thing.

Senator SIEWERT: Yes, both said the same thing. They thought that under this new process, despite the fact that they are licensed and they are good stores, there would be increased compliance costs for them, even though they seem to be operating really well.

Ms Edwards: It is obviously a concern to us if they think that and we will have to take that on board. But I would also mention that the new arrangements, as well as having the range of things we can do with stores, are also designed so that those stores that are doing a good job will have a reduced burden. The ones that have a good history will have less visits, less compliance. So we should be able, if it as you say, to allay those concerns.

Senator SIEWERT: Thank you.

CHAIR: I have a couple of general questions now if no-one else has any under a particular topic. There are two things. One was the considerable angst raised by some people about the 10 years. That was augmented by some people who thought 10 years was good. The concern was that the review would be too long. The 10-year commitment to funding and programs was good, because it gave a chance for things to settle, but I think the evidence we received was universal that people did not want the review to go to eight years. Can I get some idea from the department of why the first review was at eight years?

Senator SIEWERT: I think it was seven.

Mr Dillon: I think the rationale was to put it at a point where (1) it is not rushed and (2) it leads into what happens next, because the legislation does sunset at 10 years. So there is going to be a need to have a look at how things have gone and decide what is happening next, in 10 years time. So we felt, I think, that that was an appropriate time to place a comprehensive evaluation.

CHAIR: The other thing is to do with the Human Rights Commission's submission. They were talking about the issue of cultural competency. They go into detail in their recommendation 5 about an expectation that they believe should be in place for anybody who is working in the area of Aboriginal and Islander affairs. What is the department's view of having that as a standard practice?

Mr Dillon: In terms of the broad direction, we would agree with the Human Rights Commission. Obviously we endeavour to maximise the cultural competence of our staff, particularly those that are operating on the ground, and a large number of our initiatives had been directed at that. We have just released the department's fourth or fifth, I think, reconciliation action plan. As part of that, all our staff are going to undergo a cultural appreciation program over the next couple of years. In particular, I point to the fact that we have engaged Indigenous engagement officers on the ground in these communities, because we understand that it is important that the interface with communities be on a basis of trust and understanding. So, yes, in principle we agree with that broad direction. Mr Gooda talked about ASOPA and the old two-year degrees for patrol officers. There is probably merit in that, but there is cost and turnover. There are just exigencies, I suppose.

CHAIR: The recommendation does not go that far. Recommendation 4 in their submission talks about mandatory use and development of targeted education. The question about ASOPA and PNG was an example of what happened in the past. I am quite fond of the recommendation, but I do not think I would be keen on a two-year training course for everyone before they start—though it does have some attraction.

I know you covered the human rights aspects in your opening statement, but I would be keen to have some more comment, which you may need to give on notice because you may need some contact with the Attorney-General's office about how this legislation works with the human rights area. You know that congress gave us contextual recommendations which relate to the soon-to-be formed joint standing committee on human rights, which is not yet in place, talking about compatibility of the new bills with the human rights obligations of Australia.

Mr Dillon: The simple answer is that these bills were introduced before that legislation came into effect.

CHAIR: Absolutely, but I would like to have some idea of the human rights aspect. You did touch on it with the Racial Discrimination Act. I think that is a core aspect. I read your submission. I would just like to have a little bit more reinforcement for my mind about the legal position, which we did get in the previous legislation—exactly what happened. That would be useful. They are my general questions.

I would also like to know how many FaHCSIA staff are currently employed in the Northern Territory. You can take that on notice as well. I would be surprised if you could tell me straightaway.

Senator CROSSIN: Not all of them go out to communities all the time; they do lots of other things.

CHAIR: I am happy to take that on notice as well.

Mr Dillon: It is somewhere between 250 and 280, I think. But we will take it on notice and get you a precise figure.

Senator CROSSIN: Does that include GBMs?

Mr Dillon: Yes.

Senator SIEWERT: I want to go back to the sequencing of events. There was the discussion paper on Stronger Futures. You had the consultation process. It got written up. At what stage did you then start drafting the legislation? Was it after all the consultation processes finished?

Mr Dillon: That is correct.

Senator SIEWERT: Thank you.

CHAIR: Thank you very much, Mr Dillon and to all your officers. I was determined that we would finish before the 11.00 o'clock Senate estimates mark and we have done so. I apologise that we have given you quite a few questions on notice. As you understand with the reporting date, we would need them as quickly as possible. We are having one more public hearing in this inquiry and that will be next Tuesday. The major focus of the hearing, whilst there will be evidence from the larger welfare groups, is on the general issues of Stronger Futures, I think their focus will be on the expansions of the social security into other trial areas. That would be the expectation. On that basis, we will adjourn for this evening and reconvene here on Tuesday at 8:30.

Committee adjourned at 22:41