

Senate Legal and Constitutional Affairs Committee 2007
OFFICIAL Index of Question taken on Notice

QON #	SENATOR	TOPIC	QUESTION		
1	Ludwig	Legal	Can the legal advice be provided and/or the general information obtained from the AGS and or the AGD in respect of the intervention and or the drafting of the bills, particularly in respect of the operation of the RDA		
2	Ludwig	Compensation	Just in terms of compensation provisions can you provide an explanation of how it will work in practice?		
3	Ludwig	Compensation	Will any of the current provisions of services by government be taken into account in determining the outcomes of just terms compensation?		
4	Ludwig	appropriation	In relation to the \$35million in administered items for the housing and land reform measure: <ul style="list-style-type: none"> • How much of this is earmarked for rent payable for the section 31 leases? • How much of this is earmarked for as a compensation contingency should a court determine that just terms compensation is payable to the traditional owners? 		
5	Ludwig	Advertising & communication costs	Is there any money in any portfolio for any advertising or communications campaign? If so, how much and under which portfolio?		
6	Ludwig	staffing	What are the required staffing levels & basic role of: <ul style="list-style-type: none"> • Permanent/temporary staff • Those located in NT/other locations • Seconded's/ how much is being refunded 		
7	Ludwig	staffing	What is the total staffing cost broken down by department?		
8	Ludwig	staffing	What occurs of 30/06/2008 in respect of contracts for employment?		
9	Ludwig	staffing	Where will the funding come from after 30/06/2008? Is there an estimate? If so please provide.		
10	Ludwig	staffing	How many police and ACC staff will be located in the NT and where will they be accommodated?		

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QON #	SENATOR	TOPIC	QUESTION		
11	Ludwig	staffing	How many extra police are now on the ground? Where are they located?		
12	Ludwig	staffing	Have all the extra police arrived from the AFP and other States? If not, what is the timeframe for their arrival?		
13	Ludwig	staffing	In addition, what is the expected number of doctors, specialist health professionals and specifically what are the: <ul style="list-style-type: none"> • Types • Where will they be located temporarily/permanently • How long will they stay • Costs of any of the measures designed to continue past 30/06/2008 and how will that be dealt with 	Transferred to DHA	
14	Ludwig	Health checks	How many children have had health checks? What has been found and what are the provisions for follow-up health services?	Transferred to DHA	
15	Ludwig	Health checks	\$83 million has been appropriated for improving child and family health, \$72.7 million is administered appropriations, \$10 million is departmental: <ul style="list-style-type: none"> • Is this funding just for the children's health checks? • How much is for the initial health check ups? How much for follow-up health services? • When is it expected that the initial health checks will be completed? • Follow up services: will extra money be for primary health care? Or specialist follow-up services? Or both? (and what is the approximate breakdown)? <p>i) How will the primary health services be delivered - through AMSs/ACCHOs or other?</p>	Transferred to DHA	

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QON #	SENATOR	TOPIC	QUESTION		
16	Ludwig	Health checks	How many children have been checked? How many are expecting to receive a health check in total? When will this be completed?	Transferred to DHA	
17	Ludwig	Health checks	What sort of things have these checks revealed? So far as you can say considering the privacy implications? Can you provide the data by location if possible?	Transferred to DHA	
18	Ludwig	Health checks	For those children who have been checked and matters that require attention been identified, what happens now? What is the process for providing follow-up medical services, surgeries, medication, etc?	Transferred to DHA	
19	Ludwig	Health checks	Particularly in respect of dental issues as well? How do you intend to address these matters and can you provide details of the matters?	Transferred to DHA	
20	Ludwig	Dept Human Services	<p>\$8 million is provided to the Department of Human Services, in addition to the money for Centrelink's increased activities.</p> <ul style="list-style-type: none"> • What is the Department of Human Services administered expenditure? • Is this related to the payment system for income management such a stored value card or voucher system? 	Transferred to DHS	
21	Ludwig	Child abuse	How many notifications of suspected abuse or neglect have been referred to Child Protection? How many matters relating to abuse have been made to police?		
22	Ludwig	Child abuse	How many cases are currently being investigated? Have any charges been laid? If so, how many and what is the nature of the charges that have been laid.		
23	Ludwig	Township leases	<p>Which agency or authority of the Commonwealth government will hold the 5 year township leases?</p> <ul style="list-style-type: none"> • Will the executive director of the office of township leasing hold the leases? What will be its role in the intervention? 		

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QON #	SENATOR	TOPIC	QUESTION		
24	Ludwig	Township leases	What specific liabilities will the Commonwealth be exposed to by becoming a lessor, and in some cases, a landlord over other parties in the townships? <ul style="list-style-type: none"> • Have those liabilities been provided for in the appropriations? 		
25	Ludwig	implementation	Has each dept prepared a timeline of work and/or actions for the provisions of: <ul style="list-style-type: none"> • Health services • Housing • Infrastructure • Education funds • Provision of police • Employment services. 		
26	Ludwig	implementation	Is there an implementation document from each agency or dept about what will be done and how it will be coordinated?		
27	Ludwig	Surveys	How many communities have been surveyed? How many more to go? When will this be completed? Will the outcomes be published?		
28	Ludwig	Intervention	Do you have any benchmarks for the Intervention's success? If so what are they and what are the timeframes for achieving them?		
29	Ludwig	Intervention	Have you considered whether a weekly or monthly report on outcomes will be produced and made public? Do you intend to have any independent assessment of the program?		
30	Ludwig	Gilbert & Tobin Submission	As a matter of policy, why should traditional owners have to climb over numerous additional legal obstacles to obtain compensation, proving that a constitutional 'acquisition of property' has occurred, when other property holders in Australia enjoy an upfront statutory right to compensation when their property rights are taken away?		

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QON #	SENATOR	TOPIC	QUESTION		
31	Ludwig	Gilbert & Tobin Submission	Why is the payment of rent for a section 31 lease left to the Minister's discretion, as to whether he/she requests a valuation from the Valuer-General (see s 62)?		
32	Ludwig	Gilbert & Tobin Submission	Are these two obstructionist aspects of the compensation regime consistent with the Government's stated objective that Aboriginal people should derive greater economic benefit from their land rights than has been the case to date?		
33	Ludwig	Gilbert & Tobin Submission	Are improvements on Land Rights Act (ALRA) land that are funded by the Commonwealth, such as buildings or infrastructure, assets owned by the traditional landowners? If not, what is the rationale for s61(c) of the Bill?		
34	Ludwig	Gilbert & Tobin Submission	Should s57 of the Bill be read as an indication that there is a close relationship between the forced 5 year lease provision (s31) and the creation of a headlease-sublease arrangement in townships?		
35	Ludwig	Gilbert & Tobin Submission	Why should the Commonwealth be able to sublease ALRA land to someone else without the consent of traditional owners (s52(7)) when the Land Rights Act has always insisted that such consent is necessary and appropriate (ALRA s19A(8))?		
36	Ludwig	Gilbert & Tobin Submission	Why does the Bill prohibit Parliament from examining Commonwealth public works on affected Aboriginal land through the Parliamentary Standing Committee on Public Works, during the 5 year window?		
37	Ludwig	Gilbert & Tobin Submission	What is the Commonwealth's view on whether the just terms guarantee in the Constitution applies in the Northern Territory, since the High Court's decision in <i>Newcrest v Commonwealth</i> ?		
38	Ludwig	Gilbert & Tobin Submission	In the Commonwealth's view, is the fairness of the process for recovering compensation from the Commonwealth for a constitutional 'acquisition of property' relevant to whether 'just terms' are provided?		

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QON #	SENATOR	TOPIC	QUESTION		
39	Ludwig	Permit system	Can you make the submissions and final report of the review of the permit system available to the committee? Who made the decision that the report would remain unavailable to the public and when was that decision made?		
40	Ludwig	Permit system	I note that your evidence suggested the submissions are private. Can you advise how this was communicated to submitters and advise the committee accordingly? Whether in light of that can you now seek from submitters their permission to make the submissions public? And where that permission is given make them available?		
41	Ludwig	Permit system	How much was spent on the consultation?		
42	Ludwig	Aboriginal Land Rights Act – 1976 Section 71	Under the new section 31 leases, will traditional owners continue to have the same bundle of rights of access to their land as guaranteed under section 71 of the Aboriginal Land Rights Act for traditional purposes? If not, which will be effected? and if so how will they be explained to the traditional owners?		
43	Ludwig	Aboriginal Land Rights Act – 1976 Section 71	Is a right to access for traditional usages curtailed by 71(2) which denies entry which would interfere with a lease held by a non-Aboriginal entity (such as the Commonwealth)?		
44	Ludwig	Aboriginal Land Rights Act – 1976 Section 71	What right of access does the Bill guarantee?		

QON #	SENATOR	TOPIC	QUESTION		
45	Bartlett	Child Sex Abuse	Can details be provided of the estimated number of child sexual abuse incidents in the Northern Territory, including the estimated		

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QON #	SENATOR	TOPIC	QUESTION	
			number of child sexual abuse incidents in the Aboriginal communities that are to be covered by the measures in the legislation?	
46	Bartlett	Child Sex Abuse	Is there any data to indicate whether this is increasing or decreasing?	
47	Bartlett	Child Sex Abuse	Can the government confirm that it sees a connection between accessing pornography via publicly funded computers and the perpetration of sexual or other abuse of children? If so, why are the controls only being applied to Aboriginal communities? Is there any prospect of similar controls being put in place in the rest of the Australian community?	
48	Bartlett	Child Sex Abuse	Can the government provide some documented evidence demonstrating the link between use (or misuse) of pornography and sexual abuse of children? If so, is there evidence that this causal link only applies in Aboriginal communities. If not, why are similar measures not being proposed for the rest of the Australian community?	
49	Bartlett	Aust Crime Commission National Violence	What form of consultation has the government conducted with the Australian Crime Commission National Violence and Abuse Intelligence Task Force in: <ul style="list-style-type: none"> • putting together the legislation • implementing the intervention 	
50	Bartlett	CDEP	Statements have been made that a number of the CDEP positions that are being scrapped will be converted into "real jobs". How many of these "real jobs" are proposed to be created - what percentage is this of the total number of CDEP positions being scrapped?	Transferred to DEWR

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QON #	SENATOR	TOPIC	QUESTION	
51	Bartlett	CDEP	Why do the welfare quarantining measures in Aboriginal communities in the NT apply to everyone, regardless of their behaviours, when this approach is not applied to anywhere else in the rest of the country, including for the Cape York trials?	
52	Siewert	Welfare to Work	How many Aboriginal people on income support payments have been given an 8 week no-payment penalty (breached) since the introduction of Welfare to Work in July 2006? How does this compare with the previous final year?	Transferred to DEWR
53	Siewert		Will Centrelink staff be located in all affected communities?	Transferred to DHS
54	Siewert	Permit System	Does the permit system (as amended) continue on land subject to a 5 year lease?	
55	Siewert	Intervention	Is the government taking money from indigenous services in other parts of the country to fund the NT intervention? If so how much and from where?	
56	Siewert	Indigenous funding	Have any indigenous services had funding reduced in this financial year? If so which ones?	
57	Siewert	Administration of vouchers and store cards	How will the government administer vouchers and store cards – will particular retail companies get contracts from this?	
58	Siewert	Income management	Will people who move out of designated areas continue to be subjected to the income management regime?	
59	Siewert		How much additional funding is being committed to income support for people in the NT coming off CDEP?	Transferred to DEWR

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QON #	SENATOR	TOPIC	QUESTION	
60	Bartlett	Quarantining welfare payments	Has the Australian government reached agreement with any state governments, in principle or in detail, regarding the application of measures that link to the proposed quarantining of welfare payments for truancy or child neglect/abuse?	
61	Ludwig	ACOSS	In the ACOSS submission can you provide answers to the questions raised in the dot points under the unresolved questions (six questions at p.13 of ACOSS submission).	
62	Ludwig	Newcrest	What is the Commonwealth's view of the Newcrest precedent? Is the Toohey dissent to be preferred?	
63	Ludwig	Legislation	What was the rationale for displacing the Northern Territory Self Govt Act?	
64	Ludwig	Compensation	What is the rationale of the formula 'reasonable amount of compensation'? Is solatium excluded?	
65	Ludwig	Compensation	How would 'in-kind' compensation work, as referred to by the Minister? Is this the reason for the 'reasonable' formula?	
66	Ludwig	Compensation	Isn't it a big risk for the Commonwealth to depart from the basic 'just terms' formula and risk invalidity?	
67	Ludwig	Permit system	Does the Commonwealth regard the permit system as comprising a property right?	
68	Ludwig	Legislation	Why is there no acquisition provision for Schedule 3 of the FACISA Bill?	

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QON #	SENATOR	TOPIC	QUESTION	
69	Ludwig		Could you outline the cumulative impact of the measures contained in the package of Bills on Aboriginal property?	
70	Ludwig	Legislation	What other provisions in the bills, like the extension of ACC examiners terms from 5 to 10 years, are unrelated to the purposes of the emergency intervention in the Northern Territory? Please highlight all such provisions and provide an explanation for their inclusion in this package of legislation.	
71	Ludwig		When the intervention was first decided, is there a timeline of events since then that can be provided? Has an Interdepartmental committee been formed between the relevant departments? If so, who is on the committee?	
72	Ludwig	Legislation	When was the request for drafting of the bill made?	
73	Ludwig	Legislation	Could a timeline of drafting the bills be provided?	
74	Ludwig	Consultation	In respect of the intervention? When did FACSIA begin consultation with other relevant committee's, such as AGD, etc?	
75	Ludwig		When was the NT government formally advised of the NT intervention?	
76	Ludwig	Consultation	Has the NT been consulted about the bills? If so, when? If not, why not?	

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QON #	SENATOR	TOPIC	QUESTION	
77	Ludwig	Legislation	Has the classification amendments been advised to the classifications Ministers? If so, when and in what form, if not why not?	

Senate Legal and Constitutional Affairs Committee Inquiry on the NT National Emergency Response Legislation

Dr Sue Gordon AM, Chairperson Opening Remarks

As a magistrate of 18 years standing in the Perth Children's Court of Western Australia, I deal with crime and child protection on a daily basis and am appalled in this current climate that child protection is not given the prominence that I would expect.

Children are the most vulnerable people in our community and I am appalled every day at what I read and hear is happening to these special people.

I came to this Taskforce with this background. I have not allowed myself to become caught up with other issues but have maintained my focus totally on child protection.

I would now like to bring to your attention the fact that Australia ratified the United Nations Convention on the Rights of the Child, which came into force on 16 January 1991 and we are still not treating children as a priority for protection across Australia.

PART I

Article 1

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.

Article 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

Both the Prime Minister and the Minister in relation to these interventions said that 'All action at the national level is designed to ensure the protection of Aboriginal children from harm'

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

The legislation currently before the Parliament addresses this.

Article 6

1. States Parties recognize that every child has the inherent right to life.
2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

The legislation currently before the Parliament addresses this: in particular the legislation for improving child and family health.

Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

The permit system as it stands has not had this effect – most abusers are known to the victims – the permit system as it stands has protected the offenders. The legislation before Parliament addresses this.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

The National Indigenous Violence and Child Abuse Intelligence Taskforce set up in October 2006 is addressing this and the legislation currently before the Parliament also addresses this. The measures related to pornographic DVDs and videos and government funded computers also relates to this.

Article 24

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:

(a) To diminish infant and child mortality;

(b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;

(c) To combat disease and malnutrition, including within the framework of primary health care, through, *inter alia*, the application of readily available technology and through the provision of

adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;

(d) To ensure appropriate pre-natal and post-natal health care for mothers;

(e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breast-feeding, hygiene and environmental sanitation and the prevention of accidents;

(f) To develop preventive health care, guidance for parents and family planning education and services.

The legislation currently before the Parliament addresses this.

3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

Abuse by a minority of men in relation to customary law as it relates to promised marriages is being addressed as part of promoting law and order which includes protective bail conditions.

Article 27

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

This is where the employment and welfare reform addresses these points. The Minister also links the five year township leases to this.

Article 28

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

(a) Make primary education compulsory and available free to all;

(b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;

(c) Make higher education accessible to all on the basis of capacity by every appropriate means;

(d) Make educational and vocational information and guidance available and accessible to all children;

(e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

Enhancing education as part of the legislative measures is aimed at addressing this article.

Article 33

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

This is currently being addressed through the Drug Desk in Alice Springs and the National Indigenous Violence and Child Abuse Intelligence Taskforce.

The permit system as it stands has not had this effect; rather it has protected the offenders.

Article 34

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent;

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials.

Again, the National Indigenous Violence and Child Abuse Intelligence Taskforce are addressing this together with the Law and Order measures.

The permit system as it stands has not had this effect.

Article 36

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

These are only some of the articles of the United Nations Convention on the Rights of the Child that relate to the Northern Territory Emergency Response.

I appreciate very much Aboriginal people's concerns regarding permits and the acquisition of townships for five years, but believe that the protection of children, men and women in the communities who suffer violence and abuse on a daily basis, has been completely lost in this debate. I plan as a mother and grandmother to remain totally focussed on the best interests of children in our Aboriginal communities. I will continue to work with the communities, the Northern Territory Government and the Commonwealth Government to protect children.

Senate Legal and Constitutional Affairs Committee

QUESTIONS ON NOTICE

FAMILIES, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS PORTFOLIO

Northern Territory National Emergency Response Bill 2007 and Related Bills

10 August 2007

Topic: Legal

Question No: 1

Hansard Page: Written

Senator Bartlett asked:

Can the legal advice be provided and/or the general information obtained from the AGS and or the AGD in respect of the intervention and or the drafting of the bills, particularly in respect of the operation of the RDA

Answer:

No. It is not usual to provide legal advice.

Senate Legal and Constitutional Affairs Committee

QUESTIONS ON NOTICE

FAMILIES, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS PORTFOLIO

Northern Territory National Emergency Response Bill 2007 and Related Bills

10 August 2007

Topic: Compensation

Question No: 3

Hansard Page: Written

Senator Ludwig asked:

Will any of the current provisions of services by government be taken into account in determining the outcomes of just terms compensation?

Answer:

The NTNER Bill does not require the value of services provided by government to be taken into account in determining a reasonable amount of compensation, either in negotiating an agreed amount, or by a court.

Senate Legal and Constitutional Affairs Committee

QUESTIONS ON NOTICE

FAMILIES, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS PORTFOLIO

Northern Territory National Emergency Response Bill 2007 and Related Bills

10 August 2007

Topic: Appropriation

Question No: 4

Hansard Page: Written

Senator Ludwig asked:

In relation to the \$35million in administered items for the housing and land reform measure:

- (a) How much of this is earmarked for rent payable for the section 31 leases?
- (b) How much of this is earmarked for as a compensation contingency should a court determine that just terms compensation is payable to the traditional owners?

Answer:

- (a) None.
- (b) None.

As has been explained, the difficulty in predicting the quantum of any compensation that might be payable in advance of negotiations meant that while provision to pay compensation is made, there is no amount specified.

Senate Legal and Constitutional Affairs Committee

QUESTIONS ON NOTICE

FAMILIES, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS PORTFOLIO

Northern Territory National Emergency Response Bill 2007 and Related Bills

10 August 2007

Topic: Staffing

Question No: 9

Hansard Page: Written

Senator Ludwig asked:

Where will the funding come from after 30/06/2008? Is there an estimate? If so please provide.

Answer:

While the current bills contain some funding for activities linked to the second (normalisation) phase of the Emergency Response, it is recognised that further funding will be required to address the longer term issues. Further Commonwealth budgetary processes will include consideration of these requirements. Future year funding implications of measures contained in these bills will be considered at that time.

Senate Legal and Constitutional Affairs Committee

QUESTIONS ON NOTICE

FAMILIES, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS PORTFOLIO

Northern Territory National Emergency Response Bill 2007 and Related Bills

10 August 2007

Topic: Staffing

Question No: 10

Hansard Page: Written

Senator Ludwig asked:

How many police and ACC staff will be located in the NT and where will they be accommodated?

Answer:

The ACC currently has 20 staff in the Northern Territory. Funding for additional 16 staff for ACC is included in the Appropriation (Northern Territory National Emergency Response) Bills. The majority of these new staff will be based in the Northern Territory.

In total there will be approximately 66 additional police made up of a combination of Australian Federal Police and State officers. They will work under the command of the NT Police. NT Police and FaCSIA are jointly working on accommodation issues for locations that do not have suitable accommodation.

Senate Legal and Constitutional Affairs Committee

QUESTIONS ON NOTICE

FAMILIES, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS PORTFOLIO

Northern Territory National Emergency Response Bill 2007 and Related Bills

10 August 2007

Topic: Staffing

Questions No: 11 & 12

Hansard Page: Written

Senator Ludwig asked:

How many extra police are now on the ground? Where are they located? Have all the extra police arrived from the AFP and other States? If not, what is the timeframe for their arrival?

Answer:

Other jurisdictions have pledged additional support as follows:

New South Wales – 10 officers

Victoria - 10 officers

South Australia – 5 officers

Tasmania – 2 officers

11 AFP officers are currently stationed in Indigenous communities along with NT Police. Additional AFP officers are currently in training in Darwin prior to being sworn in as NT officers. In addition, the AFP has a senior officer and a workforce planner stationed in Darwin attached to the NT Police. That is a total of 10.

The Queensland Police Service now has a senior officer attached to the NT Police in Darwin. Additional Queensland police are expected in Darwin for training by the end of the month.

A number of other jurisdictions have indicated they have either completed or are undertaking selection processes. The timing of other state police force deployments to the NT is still being finalised.

Senate Legal and Constitutional Affairs Committee

QUESTIONS ON NOTICE

FAMILIES, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS PORTFOLIO

Northern Territory National Emergency Response Bill 2007 and Related Bills

10 August 2007

Topic: Township Leases

Question No: 23

Hansard Page: Written

Senator Ludwig asked:

Which agency or authority of the Commonwealth government will hold the 5 year township leases? Will the executive director of the office of township leasing hold the leases? What will be its role in the intervention?

Answer:

- (a) The Commonwealth represented by FACSIA will be the leaseholder.
- (b) No. There is no role for the Executive Director of Township Leasing under the NTNER Bill.

Senate Legal and Constitutional Affairs Committee

QUESTIONS ON NOTICE

FAMILIES, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS PORTFOLIO

Northern Territory National Emergency Response Bill 2007 and Related Bills

10 August 2007

Topic: Township Leases

Question No: 24

Hansard Page: Written

Senator Ludwig asked:

What specific liabilities will the Commonwealth be exposed to by becoming a lessor, and in some cases, a landlord over other parties in the townships? Have those liabilities been provided for in the appropriations?

Answer:

- (a) Because of the condition of many of the buildings and infrastructure on the land over which the Commonwealth will take a lease, there is potential for the Commonwealth to assume significant liabilities as lessee or landlord. The NTNER Bill therefore includes provision limiting the Commonwealth's liability for acts and omissions resulting in loss, damage, or injury as a result of the pre-existing state of the buildings and infrastructure.
- (b) No.

Senate Legal and Constitutional Affairs Committee

QUESTIONS ON NOTICE

FAMILIES, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS PORTFOLIO

Northern Territory National Emergency Response Bill 2007 and Related Bills

10 August 2007

Topic: Gilbert & Tobin Submission

Question No: 30

Hansard Page: Written

Senator Ludwig asked:

As a matter of policy, why should traditional owners have to climb over numerous additional legal obstacles to obtain compensation, proving that a constitutional ‘acquisition of property’ has occurred, when other property holders in Australia enjoy an upfront statutory right to compensation when their property rights are taken away?

Answer:

The NTNER Bill provides a statutory right to compensation if there is an acquisition of property in accordance with the Constitution. There are no additional legal obstacles for traditional owners seeking to obtain compensation as opposed to others who may seek compensation where there has been an acquisition of property..

Senate Legal and Constitutional Affairs Committee

QUESTIONS ON NOTICE

FAMILIES, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS PORTFOLIO

Northern Territory National Emergency Response Bill 2007 and Related Bills

10 August 2007

Topic: Gilbert & Tobin Submission

Question No: 31

Hansard Page: Written

Senator Ludwig asked:

Why is the payment of rent for a section 31 lease left to the Minister's discretion, as to whether he/she requests a valuation from the Valuer-General (see s 62)?

Answer:

The payment of rent as a component of agreed compensation is an option under the Bill to allow for a negotiated settlement on compensation to include a lump sum in lieu of rent.

Senate Legal and Constitutional Affairs Committee

QUESTIONS ON NOTICE

FAMILIES, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS PORTFOLIO

Northern Territory National Emergency Response Bill 2007 and Related Bills

10 August 2007

Topic: Gilbert & Tobin Submission

Question No: 32

Hansard Page: Written

Senator Ludwig asked:

Are these two obstructionist aspects of the compensation regime consistent with the Government's stated objective that Aboriginal people should derive greater economic benefit from their land rights than has been the case to date?

Answer:

There is no obstructionist aspect. The primary purpose of the five year leases is to improve living conditions. Improved living conditions are expected to lead to more socially and economically healthier communities involving greater economic benefits for Aboriginal people than has demonstrably been the case to date.

Senate Legal and Constitutional Affairs Committee

QUESTIONS ON NOTICE

FAMILIES, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS PORTFOLIO

Northern Territory National Emergency Response Bill 2007 and Related Bills

10 August 2007

Topic: Gilbert & Tobin Submission

Question No: 33

Hansard Page: Written

Senator Ludwig asked:

Are improvements on Land Rights Act (ALRA) land that are funded by the Commonwealth, such as buildings or infrastructure, assets owned by the traditional landowners? If not, what is the rationale for s61(c) of the Bill?

Answer:

- (a) Generally, yes, subject to specific provisions in, and proposed amendments to, the Land Rights Act.
- (b) Not applicable

Senate Legal and Constitutional Affairs Committee

QUESTIONS ON NOTICE

FAMILIES, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS PORTFOLIO

Northern Territory National Emergency Response Bill 2007 and Related Bills

10 August 2007

Topic: Gilbert & Tobin Submission

Question No: 34

Hansard Page: Written

Senator Ludwig asked:

Should s57 of the Bill be read as an indication that there is a close relationship between the forced 5 year lease provision (s31) and the creation of a headlease-sublease arrangement in townships?

Answer:

No.

Senate Legal and Constitutional Affairs Committee

QUESTIONS ON NOTICE

FAMILIES, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS PORTFOLIO

Northern Territory National Emergency Response Bill 2007 and Related Bills

10 August 2007

Topic: Gilbert & Tobin Submission

Question No: 35

Hansard Page: Written

Senator Ludwig asked:

Why should the Commonwealth be able to sublease ALRA land to someone else without the consent of traditional owners (s52(7)) when the Land Rights Act has always insisted that such consent is necessary and appropriate (ALRA s19A(8))?

Answer:

The measures provided for in the NTNER Bill respond to an emergency situation.

Senate Legal and Constitutional Affairs Committee

QUESTIONS ON NOTICE

FAMILIES, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS PORTFOLIO

Northern Territory National Emergency Response Bill 2007 and Related Bills

10 August 2007

Topic: Gilbert & Tobin Submission

Question No: 36

Hansard Page: Written

Senator Ludwig asked:

Why does the Bill prohibit Parliament from examining Commonwealth public works on affected Aboriginal land through the Parliamentary Standing Committee on Public Works, during the 5 year window?

Answer:

The measures provided for in the NTNER Bill respond to an emergency situation.

Senate Legal and Constitutional Affairs Committee

QUESTIONS ON NOTICE

FAMILIES, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS PORTFOLIO

Northern Territory National Emergency Response Bill 2007 and Related Bills

10 August 2007

Topic: Gilbert & Tobin Submission

Question No: 37

Hansard Page: Written

Senator Ludwig asked:

What is the Commonwealth's view on whether the just terms guarantee in the Constitution applies in the Northern Territory, since the High Court's decision in *Newcrest v Commonwealth*?

Answer:

This question involves legal issues on which the Department is unable to provide advice to the Committee.

Senate Legal and Constitutional Affairs Committee

QUESTIONS ON NOTICE

FAMILIES, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS PORTFOLIO

Northern Territory National Emergency Response Bill 2007 and Related Bills

10 August 2007

Topic: Gilbert & Tobin Submission

Question No: 38

Hansard Page: Written

Senator Ludwig asked:

In the Commonwealth's view, is the fairness of the process for recovering compensation from the Commonwealth for a constitutional 'acquisition of property' relevant to whether 'just terms' are provided?

Answer:

This question is a legal question on which the Department is unable to provide advice to the Committee. However, the Commonwealth considers that the process in the NTNER Bill is fair.

Senate Legal and Constitutional Affairs Committee

QUESTIONS ON NOTICE

FAMILIES, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS PORTFOLIO

Northern Territory National Emergency Response Bill 2007 and Related Bills

10 August 2007

Topic: Permit System

Question No: 39

Hansard Page: Written

Senator Ludwig asked:

Can you make the submissions and final report of the review of the permit system available to the committee? Who made the decision that the report would remain unavailable to the public and when was that decision made?

Answer:

The submissions to the permit system review are not public. Following the end of the consultation and submission period at the end of February 2007 the Government considered the submissions and announced changes to the permit system, particularly for public areas in townships, on 21 June 2007.

The Permit system remains in place for 99.8% of Aboriginal Land.

Senate Legal and Constitutional Affairs Committee

QUESTIONS ON NOTICE

FAMILIES, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS PORTFOLIO

Northern Territory National Emergency Response Bill 2007 and Related Bills

10 August 2007

Topic: Permit System

Question No: 40

Hansard Page: Written

Senator Ludwig asked:

I note that your evidence suggested the submissions are private. Can you advise how this was communicated to submitters and advise the committee accordingly? Whether in light of that can you now seek from submitters their permission to make the submissions public? And where that permission is given make them available?

Answer:

Permission was not sought to make the submissions publicly available. Notwithstanding, as a result of the review and submissions, the Government determined to leave the Permit system in place for 99.8% of Aboriginal land and even in the 0.2% of land (public spaces in townships and public roads) where permits will not apply, provision has been made for temporary closures for ceremony.

Senate Legal and Constitutional Affairs Committee

QUESTIONS ON NOTICE

FAMILIES, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS PORTFOLIO

Northern Territory National Emergency Response Bill 2007 and Related Bills

10 August 2007

Topic: Permit System

Question No: 41

Hansard Page: Written

Senator Ludwig asked:

How much was spent on the consultation?

Answer:

Approximately \$166 000 of FaCSIA funds was spent on the permit system review consultations.

Senate Legal and Constitutional Affairs Committee

QUESTIONS ON NOTICE

FAMILIES, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS PORTFOLIO

Northern Territory National Emergency Response Bill 2007 and Related Bills

10 August 2007

Topic: Aboriginal Land Rights Act – 1976 Section 71

Question No: 42

Hansard Page: Written

Senator Ludwig asked:

Under the new section 31 leases, will traditional owners continue to have the same bundle of rights of access to their land as guaranteed under section 71 of the Aboriginal Land Rights Act for traditional purposes? If not, which will be effected? and if so how will they be explained to the traditional owners?

Answer:

Section 71 continues to apply.

Senate Legal and Constitutional Affairs Committee

QUESTIONS ON NOTICE

FAMILIES, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS PORTFOLIO

Northern Territory National Emergency Response Bill 2007 and Related Bills

10 August 2007

Topic: Aboriginal Land Rights Act – 1976 Section 71

Question No: 43

Hansard Page: Written

Senator Ludwig asked:

Is a right to access for traditional usages curtailed by 71(2) which denies entry which would interfere with a lease held by a non-Aboriginal entity (such as the Commonwealth)?

Answer:

Yes, in relation to the land covered by the lease. However, the Commonwealth will permit the exercise of traditional rights where consistent with the emergency intervention.

Senate Legal and Constitutional Affairs Committee

QUESTIONS ON NOTICE

FAMILIES, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS PORTFOLIO

Northern Territory National Emergency Response Bill 2007 and Related Bills

10 August 2007

Topic: Aboriginal Land Rights Act – 1976 Section 71

Question No: 44

Hansard Page: Written

Senator Ludwig asked:

What right of access does the Bill guarantee?

Answer:

See answer to Question 43.

Senate Legal and Constitutional Affairs Committee

QUESTIONS ON NOTICE

FAMILIES, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS PORTFOLIO

Northern Territory National Emergency Response Bill 2007 and Related Bills

10 August 2007

Topic: Child Sex Abuse

Question No: 045

Hansard Page: Written

Senator Bartlett asked:

Can details be provided of the estimated number of child sexual abuse incidents in the Northern Territory, including the estimated number of child sexual abuse incidents in the Aboriginal communities that are to be covered by the measures in the legislation?

Answer:

There was a 15% increase in the number of children on care and protection orders across Australia between 30 June 2000 and June 2003. The number continued to rise between 2002-03 and 2003-04 in all of the states and territories that provided data. Increases were particularly large in the Northern Territory, where the number increased by 26%.

(Source: AIHW, *Australia's Welfare, 2005, p110*).

In the Northern Territory, the rate for 1,000 children aged 0-16 of notifications, investigations and substantiations all increased between 1999-00 to 2003-04. The rates are:

	Notifications	Investigations	Substantiations
1999-00	20.3	10.0	6.2
2000-01	20.9	11.7	5.8
2001-02	23.5	13.4	5.8
2002-03	24.6	12.3	5.7
2003-04	29.6	16.5	8.7

(Source: AIHW, *Australia's Welfare, 2005, p111*)

According to the AIHW report, *Child Protection Australia 2005-06*, (p27), the rate per 1,000 of children who were the subject of a substantiation in 2005-06 was 15.2 for Indigenous children.

Aboriginal and Torres Strait Islander children were over-represented in the child protection system. Indigenous children were almost five times more likely to be the subject of substantiation than other children. The rate of Aboriginal and Torres Strait Islander children in out-of-home care was over 7 times the rate of other children.

(Source: AIHW, *Child Protection Australia 2005-06, ppx,xi*)

Notwithstanding, the *Little Children are Sacred* report indicated widespread abuse and neglect confirming concern that abuse and neglect is under reported. This has been exacerbated by lack of policing resources and few NT child protection workers in remote communities. These reports have prompted Australian Government emergency action.

Senate Legal and Constitutional Affairs Committee

QUESTIONS ON NOTICE

FAMILIES, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS PORTFOLIO

Northern Territory National Emergency Response Bill 2007 and Related Bills

10 August 2007

Topic: Child Sex Abuse

Question No: 046

Hansard Page: Written

Senator Bartlett asked:

Is there any data to indicate whether this is increasing or decreasing?

Answer:

There was a 15% increase in the number of children on care and protection orders across Australia between 30 June 2000 and June 2003. The number continued to rise between 2002-03 and 2003-04 in all of the states and territories that provided data. Increases were particularly large in the Northern Territory, where the number increased by 26%.

(Source: AIHW, Australia's Welfare, 2005, p110).

The *Little Children are Sacred* Report identified widespread abuse in all of the communities visited.

Senate Legal and Constitutional Affairs Committee

QUESTIONS ON NOTICE

FAMILIES, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS PORTFOLIO

Northern Territory National Emergency Response Bill 2007 and Related Bills

10 August 2007

Topic: Child Sex Abuse

Question No: 47

Hansard Page: Written

Senator Bartlett

Can the government confirm that it sees a connection between accessing pornography via publicly funded computers and the perpetration of sexual or other abuse of children? If so, why are the controls only being applied to Aboriginal communities? Is there any prospect of similar controls being put in place in the rest of the Australian community?

Answer:

The Little Children are Sacred report suggested that the cumulative effect of factors such as poor health, alcohol, drug abuse and pornography led to the sexual abuse of children. The report indicated that pornography was misused in Indigenous communities and that children were being inappropriately exposed to it. The report mentioned that some researchers conclude that child pornography relayed through the Internet is “regularly” used as a means of desensitising children and normalising sexual activity between adults and children.

Installation of a content filter prevents access to and downloading of inappropriate material. To require this in relation to publicly funded computers reflects the Government’s *Protecting Families On Line* program announced on August 10 2007 under which content filters will be able to be downloaded free of charge

Rules for appropriate use of IT systems are quite common across a range of APS IT systems already.

Senate Legal and Constitutional Affairs Committee

QUESTIONS ON NOTICE

FAMILIES, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS PORTFOLIO

Northern Territory National Emergency Response Bill 2007 and Related Bills

10 August 2007

Topic: Child Sex Abuse

Question No: 48

Hansard Page: Written

Senator Bartlett asked:

Can the government provide some documented evidence demonstrating the link between use (or misuse) of pornography and sexual abuse of children? If so, is there evidence that this causal link only applies in Aboriginal communities. If not, why are similar measures not being proposed for the rest of the Australian community?

Answer:

The *Little Children are Sacred* Report suggested that the cumulative effect of factors such as poor health, alcohol, drug abuse and pornography led to the sexual abuse of children. The Report indicated that pornography was misused in Indigenous communities and that children were being inappropriately exposed to it. The Report indicated that pornography was being used to prepare or 'groom' children for sex, and normalised inappropriate sexualised and violent behaviour in children exposed to it. Some commentators have also drawn links between pornography and sexual violence and abuse.

The proposed amendments to the *Classification (Publications, Films and Computer Games) Amendment Act 1995* are part of the Government's response to the National Emergency in the Northern Territory.

State and Territory classification enforcement laws already have existing prohibitions on children being exposed to pornography.

Senate Legal and Constitutional Affairs Committee

QUESTIONS ON NOTICE

FAMILIES, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS PORTFOLIO

Northern Territory National Emergency Response Bill 2007 and Related Bills

10 August 2007

Topic: Child Sex Abuse

Question No: 49

Hansard Page: Written

Senator Bartlett

What form of consultation has the government conducted with the Australian Crime Commission National Violence and Abuse Intelligence Task Force in:

- putting together the legislation
- implementing the intervention

Answer:

The Attorney-General works closely with the Australian Crime Commission National Violence and Abuse Intelligence Task Force and will continue to do so.

Senate Legal and Constitutional Affairs Committee

QUESTIONS ON NOTICE

FAMILIES, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS PORTFOLIO

Northern Territory National Emergency Response Bill 2007 and Related Bills

10 August 2007

Topic: Income Management

Question No: 51

Hansard Page: Written

Senator Bartlett asked: Why do the welfare quarantining measures in Aboriginal communities in the NT apply to everyone, regardless of their behaviours, when this approach is not applied to anywhere else in the rest of the country, including the Cape York trials?

Answer:

The arrangements proposed for the Northern Territory reflect the nature of the emergency response that the Australian government believes is required in those communities.

The Australian Government is seeking for limited periods of twelve months to stem the flow of cash going toward substance abuse in those communities. It is also seeking to ensure that funds meant for children's welfare are used for that purpose. The measures will cease as each community is stabilised.

The application of income management to the whole community will avoid the extent of 'humbugging' that would otherwise occur. It will help prevent responsible adults being exposed to intimidation and physical threats from others in an attempt to gain access to their money.

The concentrated and extreme nature of problems in NT communities prompted an urgent emergency response which is sunsetted after five years notwithstanding the expectation that NT communities are expected to transition from emergency related measures to national measures in the course of the emergency period. National measures begin rolling out from late next year.

Senate Legal and Constitutional Affairs Committee

QUESTIONS ON NOTICE

FAMILIES, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS PORTFOLIO

Northern Territory National Emergency Response Bill 2007 and Related Bills

10 August 2007

Topic: Permit System

Question No: 54

Hansard Page: Written

Senator Siewert asked:

Does the permit system (as amended) continue on land subject to a 5 year lease?

Answer:

Section 70 of the *Aboriginal Land Rights (Northern Territory) Act 1976* will continue to apply where there is a 5 year lease over Aboriginal land within the meaning in that Act. The defence in s70(2C) will be expanded to cover entering or remaining on land leased under clause 31 of the NT NER Bill.

Senate Legal and Constitutional Affairs Committee

QUESTIONS ON NOTICE

FAMILIES, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS PORTFOLIO

Northern Territory National Emergency Response Bill 2007 and Related Bills

10 August 2007

Topic: Funding for Indigenous services

Question No: 55

Hansard Page: Written

Senator Siewert asked:

Is the Government taking money from Indigenous services in other parts of the country to fund the NT intervention? If so, how much and from where?

Answer:

The NT Emergency is funded from within existing resources in a range of programs and the additional Appropriations before Parliament currently.

The normal arrangements to allocate funds on the basis of need have not been specially altered nor has the ability to adjust priorities of expenditure. Existing programs will continue in accordance with appropriations and guidelines.

Senate Legal and Constitutional Affairs Committee

QUESTIONS ON NOTICE

FAMILIES, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS PORTFOLIO

Northern Territory National Emergency Response Bill 2007 and Related Bills

10 August 2007

Topic: Indigenous Funding

Question No: 56

Hansard Page: Written

Senator Siewert asked:

Have any Indigenous services had funding reduced in this financial year? If so which ones?

Answer:

It will not be possible, in the short time frame to provide this information, nor does it seem necessary for the purposes of considering current legislation before the committee.

Senate Legal and Constitutional Affairs Committee

QUESTIONS ON NOTICE

FAMILIES, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS PORTFOLIO

Northern Territory National Emergency Response Bill 2007 and Related Bills

10 August 2007

Topic: Income Management

Question No: 57

Hansard Page: Written

Senator Siewart asked: How will the government administer vouchers and store cards – will particular retail companies get contracts from this?

Answer:

The legislation contains provisions that enable a range of options to be used for income management across the nation. The Australian Government will be working to establish appropriate options in Northern Territory communities in the short term and then more generally throughout Australia to support the national income management measures. The detailed administrative arrangements for each of these options will be developed as they are established.

The most feasible options for initial use in Northern Territory communities are likely to be:

- the crediting of an account held by the person with a community store under new section 123YI; and
- the discharge of an obligation to a third person for expenses incurred under new section 123YG.

Centrelink's direct deduction facility provides the model for delivering these options.

Senate Legal and Constitutional Affairs Committee

QUESTIONS ON NOTICE

FAMILIES, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS PORTFOLIO

Northern Territory National Emergency Response Bill 2007 and Related Bills

10 August 2007

Topic: Income Management

Question No: 58

Hansard Page: Written

Senator Siewert asked:

Will people who move out of designated areas continue to be subjected to the income management regime?

Answer:

If person is subject to income management under Section 123UB *Persons subject to income management – relevant Northern territory area*, they will generally remain subject to income management if they move area. Centrelink will be able to exempt people in some limited circumstances.

Senate Legal and Constitutional Affairs Committee

QUESTIONS ON NOTICE

FAMILIES, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS PORTFOLIO

Northern Territory National Emergency Response Bill 2007 and Related Bills

10 August 2007

Topic: Quarantining Welfare Payments

Question No: 60

Hansard Page: Written

Senator Bartlett asked:

Has the Australian Government reached agreement with any state governments, in principle or in detail, regarding the application of measures that link to the proposed quarantining of welfare payments for truancy or child neglect/abuse?

Answer:

Initial consultations with state and territory officials occurred between Dec 2006 and March 2007. Since the announcement of the specific reforms, the Prime Minister and Minister Brough have written to Premiers, Chief Ministers and ministers with responsibility for child protection informing them of the Government's proposals. Further consultation will now occur on the details of implementation. No agreements have been reached at this stage.

Senate Legal and Constitutional Affairs Committee

QUESTIONS ON NOTICE

FAMILIES, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS PORTFOLIO

Northern Territory National Emergency Response Bill 2007 and Related Bills

10 August 2007

Topic: ACOSS

Question No: 61

Hansard Page: Written

Senator Ludwig asked:

In the ACOSS submission can you provide answers to the questions raised in the dot points under the unresolved questions (six questions at p.13 of ACOSS submission).

Answer:

First question – refer to Question on Notice number 57

Second and third questions - Income management will be tailored on a case by case basis to ensure that the needs of children and the family are met. Individuals will have the opportunity to discuss their expenses and needs with Centrelink and decisions about payments will be based on the priority needs of the person, their partner and their children and other dependants.

Fourth and fifth questions – refer to Question on Notice number 60

Sixth question - Under the Northern Territory income management measure, all affected persons (Indigenous and non-Indigenous) will have the right to an internal review through an Authorised Review Officer. They are also able to seek review by the Federal Court under the *Administrative Decisions (Judicial Review) Act 1977*. This reflects the urgent and emergency nature of the Northern Territory response.

Senate Legal and Constitutional Affairs Committee

QUESTIONS ON NOTICE

FAMILIES, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS PORTFOLIO

Northern Territory National Emergency Response Bill 2007 and Related Bills

10 August 2007

Topic: Compensation

Question No: 62

Hansard Page: Written

Senator Ludwig asked:

What is the Commonwealth's view of the Newcrest precedent? Is the Toohey dissent to be preferred?

Answer:

This question raises legal issues on which the Department is unable to provide advice to the Committee.

Senate Legal and Constitutional Affairs Committee

QUESTIONS ON NOTICE

FAMILIES, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS PORTFOLIO

Northern Territory National Emergency Response Bill 2007 and Related Bills

10 August 2007

Topic: Compensation

Question No: 64

Hansard Page: Written

Senator Ludwig asked:

What is the rationale of the formula 'reasonable amount of compensation'? Is solatium excluded?

Answer:

The provisions in clause 60 of the NTNER Bill have been drafted to ensure compliance with the Constitution. There are similar provisions in other Commonwealth laws including the *Customs Act 1901* and the *Commonwealth Radioactive Waste Management Act 2005*.

Senate Legal and Constitutional Affairs Committee

QUESTIONS ON NOTICE

FAMILIES, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS PORTFOLIO

Northern Territory National Emergency Response Bill 2007 and Related Bills

10 August 2007

Topic: Compensation

Question No: 65

Hansard Page: Written

Senator Ludwig asked:

How would 'in-kind' compensation work, as referred to by the Minister? Is this the reason for the 'reasonable' formula?

Answer:

The Department is unable to provide advice to the Committee on the specific question. However, if the reference is to section 61(c) of the NTNER Bill it requires the courts to have regard to any improvements made to the land by the Australian Government in determining reasonable compensation.

Senate Legal and Constitutional Affairs Committee

QUESTIONS ON NOTICE

FAMILIES, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS PORTFOLIO

Northern Territory National Emergency Response Bill 2007 and Related Bills

10 August 2007

Topic: Compensation

Question No: 66

Hansard Page: Written

Senator Ludwig asked:

Isn't it a big risk for the Commonwealth to depart from the basic 'just terms' formula and risk invalidity?

Answer:

This question raises legal issues on which the Department is unable to provide advice to the Committee. However, the provisions in the legislation follow standard drafting precedent for a clause of this type.

Senate Legal and Constitutional Affairs Committee

QUESTIONS ON NOTICE

FAMILIES, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS PORTFOLIO

Northern Territory National Emergency Response Bill 2007 and Related Bills

10 August 2007

Topic: Compensation

Question No: 67

Hansard Page: Written

Senator Ludwig asked:

Does the Commonwealth regard the permit system as comprising a property right?

Answer:

This question raises legal issues on which the Department is unable to provide advice to the Committee.

The broader issues of the permit system, where it applies, have been widely canvassed since the Australian Government issued a discussion paper as part of its review in October 2006. Permits will be retained in 99.8% of Aboriginal land, but the Government took the view that the advantages of more open communities with better scrutiny and economic interaction were compelling in removing the permit system for public space in townships. Open communities will improve future opportunities for children, remove veils of secrecy. Permits have demonstrably not served to protect children from child abuse and neglect nor communities from wider violence and corruption as is sometimes claimed.

Senate Legal and Constitutional Affairs Committee

QUESTIONS ON NOTICE

FAMILIES, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS PORTFOLIO

Northern Territory National Emergency Response Bill 2007 and Related Bills

10 August 2007

Topic: Compensation

Question No: 68

Hansard Page: Written

Senator Ludwig asked:

Why is there no acquisition provision for Schedule 3 of the FACSIA Bill?

Answer:

The statutory rights conferred under Schedule 3 do not involve an acquisition of property.

Senate Legal and Constitutional Affairs Committee

QUESTIONS ON NOTICE

FAMILIES, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS PORTFOLIO

Northern Territory National Emergency Response Bill 2007 and Related Bills

10 August 2007

Topic: Property

Question No: 69

Hansard Page: Written

Senator Ludwig asked:

Could you outline the cumulative impact of the measures contained in the package of Bills on Aboriginal property?

Answer:

In relation to freehold interests in land held by or on behalf of Aboriginal persons, the Commonwealth will acquire 5 year leases over less than 0.1% of Aboriginal land in the Northern Territory and over certain community living areas in the Northern Territory. The underlying tenure of the land is undisturbed.

In the case of leasehold interests in Aboriginal land or lesser interests in such land or licences, held by an entity representative of Aboriginal interests, these are generally preserved but the Commonwealth may terminate them.

In the case of leases over town camps held by an entity representative of Aboriginal interests, these may also be terminated by the Commonwealth.

In the case of personal property, there is provision for the Minister to give a direction to a community services entity in relation to certain assets owned, controlled or possessed by the entity, but only where this is necessary to ensure that those assets continue to be used for providing government-funded services to the community.

The cumulative impact is to provide a better ability for the Australian Government to effect improved living conditions and safer, cleaner communities for children without the artificial barriers that have prevented effective expenditure of funds under the current system where the Commonwealth does not have control or an interest in community assets.