



LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

SELECT COMMITTEE ON ESTIMATES 2012-2013

(Reference: [Appropriation Bill 2012-2013 and Appropriation \(Office of the Legislative Assembly\) Bill 2012-2013](#))

Members:

MS A BRESNAN (The Chair)
MR J HARGREAVES (The Deputy Chair)
MS M HUNTER
MR B SMYTH
MR A COE

TRANSCRIPT OF EVIDENCE

CANBERRA

MONDAY, 2 JULY 2012

Secretary to the committee:
Ms S Salvaneschi (Ph 620 50136)

By authority of the Legislative Assembly for the Australian Capital Territory

Submissions, answers to questions on notice and other documents, including requests for clarification of the transcript of evidence, relevant to this inquiry that have been authorised for publication by the committee may be obtained from the Legislative Assembly website.

APPEARANCES

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Amended 9 August 2011

The committee met at 4.01pm.

Appearances:

Bourke, Dr Chris, Minister for Education and Training, Minister for Aboriginal and Torres Strait Islander Affairs, Minister for Industrial Relations and Minister for Corrections

Community Services Directorate

Howson, Ms Natalie, Acting Director-General

Sheehan, Ms Maureen, Acting Deputy Director-General

Hubbard, Mr Ian, Senior Director, Finance and Budget, Policy and Organisational Governance

Manikis, Mr Nic, Director, Office of Multicultural, Aboriginal and Torres Strait Islander Affairs, Policy and Organisational Governance

THE CHAIR: Thank you, Dr Bourke, for appearing before the committee this afternoon. The Legislative Assembly has referred to the committee for examination expenditure proposals in the Appropriation Bill 2012-2013 and the revenue estimates in the 2011-2012 budget. The committee is due to report to the Assembly on 14 August 2012.

The committee has resolved that all questions on notice will be lodged with the Committee Office within three business days of receipt of the proof transcript, with day one being the first business day after the transcript is received. Answers to questions on notice will be lodged with the Committee Office within five business days of receipt of the question, with day one being the first business day after the transcript is received. Answers to questions taken on notice will be returned within five business days after the hearing at which questions were taken, with day one being the first business day after the question was taken.

The proceedings this afternoon are focused on expenditure proposals and revenue estimates for the Community Services Directorate output class 3.2, community affairs, Aboriginal and Torres Strait Islander Affairs, specifically as this output relates to the Billabong Aboriginal Development Corporation.

The committee resolved that it wished to consider in more detail the evidence discussed at the public hearing on 22 June 2012 in relation to the Billabong Aboriginal Development Corporation, and accordingly Dr Bourke has appeared along with officials today. I thank you all for appearing today for this recall.

I draw your attention to the privilege statement on the blue card in front of you. I am sure you are all aware of the implications in that. Please be aware also that proceedings are being broadcast.

Before we go to any questions, Dr Bourke, obviously you would have received the correspondence the committee received from the Billabong Aboriginal Development Corporation and Mr Best. He has made a number of statements in that, particularly in relation to the evidence that was given, and also is seeking your apology. So before I

go to questions I would just like to give you the opportunity to make a statement if you wish.

Dr Bourke: I want to start by acknowledging that this is NAIDOC Week and I welcome the committee's ongoing interest in Aboriginal and Torres Strait Islander affairs. Nearly 400 people enjoyed the NAIDOC Week ball on Saturday night, which was a great celebration of the local Indigenous community and recognised those who are active within it. Yesterday we had another function, NAIDOC on the peninsula, despite the cold. Today was the NAIDOC flag raising in Civic Square, and after this meeting I am off to open two NAIDOC art shows. NAIDOC is an important community event in Canberra and I hope committee members will be able to attend some of the diverse activities being held during this week.

Now for the reason for the committee calling me back: a request from Mr Best to clarify some of the evidence given at the previous hearing. Mr Best's letter of 28 June 2012 states that there were factual errors in the evidence given to the committee on 22 June 2012 by me and my officials in relation to Billabong Aboriginal Development Corporation. He states that these errors were in relation to the name of the corporation, the nature of the original nature of the registration of the corporation and the current status of the registration of the corporation.

In relation to the name of the corporation, in my evidence I said:

I think they call themselves Billabong Aboriginal Corporation.

I acknowledge the name has changed and it is now the Billabong Aboriginal Development Corporation. I note that Billabong Aboriginal Corporation was registered under the Corporations (Aboriginal and Torres Strait Islander) Act 2006. It was deregistered under this act on 26 November 2008. I am advised that deregistration was voluntary. Billabong Aboriginal Development Corporation was then registered under the Corporations Act as of 6 November 2008. In the evidence given about the current status of the registration of the corporation, my words were this:

I said it is not an Aboriginal organisation in the context that it is not registered as an Aboriginal organisation.

Later, Mr Manikis said:

As I understand it, Billabong are not a formal registered Aboriginal organisation and there are procedures for that to occur. I understand they are registered under the associations act, which is something different.

Given this evidence, I acknowledge that there was confusion in relation to the name of the corporation and the current status of the registration of the corporation. I acknowledge the new name and the fact that the Billabong Aboriginal Development Corporation is now registered under the Corporations Act.

I apologise to the committee and to the Billabong Aboriginal Development Corporation for any confusion, and I welcome the chance to clarify these points.

I raised the matter of whether the Billabong Aboriginal Development Corporation is an Aboriginal organisation because it is relevant to the policy of support for Aboriginal organisations alluded to in the question. In my discussions with other Aboriginal and Torres Strait Islanders in Canberra, questions have been raised as to whether Billabong Aboriginal Development Corporation is an Aboriginal organisation. Also it is not registered under the Corporations (Aboriginal and Torres Strait Islander) Act 2006. This is the only legislation which assesses and requires Aboriginal membership and directorship for incorporation. Another tool for assessment is the constitution of the National Congress of Australia's First Peoples, which defines Aboriginal organisations.

I welcome questions from the committee.

MR HARGREAVES: If my memory serves me correctly, minister, we were talking about it in the context of the provision of community housing predominantly to Aboriginal people. But if my memory also serves me correctly we were talking about it in the context of the national housing partnership. If I have got that title wrong, I am sorry about that—someone can correct me—but I think it was the agreement that was struck between the commonwealth and the states and territories around the provision of commonwealth funds particularly into what we call a social housing scenario within the states and territories.

What I want to know is: is or was registration a requirement for support funding in the context of that partnership?

Dr Bourke: I will ask Ms Sheehan to answer that.

Ms Sheehan: Thanks, Mr Hargreaves, for that question. Under the national affordable housing agreement, the ACT is not in receipt of any funds at all for Aboriginal housing. The commonwealth does have a national partnership for Indigenous housing; it is focused on remote Indigenous housing and again the ACT does not receive any funds under that national partnership, so there are no funds that we receive for that purpose and therefore there is no particular requirement for an organisation to receive the funds as we do not receive the funds.

MR HARGREAVES: Thank you. That has cleared up one confusion that may have been about. But I also seem to recall that there was a requirement, an agreement indeed, struck at ministerial council that all community housing providers shall be registered—and in fact we passed legislation in this Assembly setting out the criteria for that registration so that organisations would be registered organisations in the context of that. Would you please explain that to me?

Ms Sheehan: Yes. Thank you, Mr Hargreaves, for that question. The ACT government passed legislation to require registration for not-for-profit organisations if they wanted to be in receipt of government funds. That legislation sets out the requirements for registration and the ACT government made it clear to all community housing organisations that if they wished to receive ACT government funds they would need to become registered under the legislation.

There was a time period given for organisations to become registered. Extensions of

time were given for registration and the last organisation to remain unregistered was Billabong Aboriginal Development Corporation. The ACT government, including the former Chief Minister Mr Stanhope, met with Mr Jim Best on a number of occasions, the last occasion being 25 January 2011, at which point in time the Chief Minister told Mr Best that he would need to be registered by the ACT budget in 2011 or Billabong would not be able to receive further housing funds. So the government has made it very clear that in order to receive housing funds organisations need to be registered.

MR HARGREAVES: Thank you. Am I right in assuming that neither Billabong Aboriginal Corporation nor the Billabong Aboriginal Development Corporation registered by that time?

Ms Sheehan: That is correct.

MR HARGREAVES: Clearly Billabong Aboriginal Corporation no longer exists but the BADC does. Is that organisation currently registered under that scheme?

Ms Sheehan: It is not.

MR HARGREAVES: So it would be reasonable to say that Billabong is not an Aboriginal corporation for the purposes of that criterion?

Ms Sheehan: I am not sure that I understand the question.

MR HARGREAVES: Okay. If an organisation is required to be registered to receive funds, it would not be incorrect to say that an organisation is not an organisation for the purposes of receiving those funds if they are not registered?

Ms Sheehan: It is not a not-for-profit housing provider within the terms of the ACT legislation.

MR HARGREAVES: Thank you. So in fact what we could have had was just the fact that there was a piece missing off the end of the comment from the minister.

THE CHAIR: Before I go to Ms Hunter, don't Billabong come under the requirements of the Housing Assistance Act?

Ms Sheehan: The Housing Assistance Act is amended for the purposes of creating the registration legislation, or the parts of the legislation that require or that enable organisations to become registered. Not-for-profit—

THE CHAIR: But they do come under the requirements of that act, though, don't they? Taking the registration as a separate issue, they came under the requirements for that act?

Ms Sheehan: The Housing Assistance Act does not refer to organisations other than the position which is the Commissioner for Social Housing and the—

THE CHAIR: But they are an incorporated body; they come under the requirements of that act in that respect?

Ms Sheehan: They are not registered or incorporated under the Housing Assistance Act.

THE CHAIR: But they are an incorporated body, aren't they? So that means they come under the act?

Ms Sheehan: They are a corporation under the commonwealth legislation, which is the information that Mr Best has provided—

THE CHAIR: So does that bring them under the requirements of the act to receive that?

Ms Sheehan: No, it does not. The Housing Assistance Act refers only to organisations other than Housing ACT and the position of the Commissioner for Social Housing with regard to the registration of not-for-profit organisations. The requirement there is for organisations that have more than eight properties to become registered, and Billabong Aboriginal Development Corporation is not registered under the legislation.

THE CHAIR: From my memory, though, wasn't the issue that it was to do with some of the other assets that Billabong had—that if they did register they would come under the purview of government essentially—

Ms Sheehan: Billabong were concerned that, because the not-for-profit legislation has provisions for the compulsory transfer to a like-minded organisation that has like provisions in its constitution in the event of the failure of the organisation, its non-housing assets could possibly be transferred under those provisions and therefore had informed the government, including the former Chief Minister, that it would establish a separate housing organisation which was called Bambara and that Bambara would become registered. But Bambara did not become registered either.

Dr Bourke: Chair, I feel we are venturing outside of my portfolio area.

THE CHAIR: I only asked, Dr Bourke—

Dr Bourke: Okay.

THE CHAIR: because Ms Sheehan raised these issues and Mr Hargreaves asked those questions. So I think I have a right to follow that up. Ms Hunter, do you have some questions?

MS HUNTER: For me the issue here is how the statements made in estimates were received by Mr Best and his organisation. To me, the correspondence from Mr Best clearly shows that they had some distress or were quite upset by the statements made that they were not an Aboriginal organisation. Dr Bourke, you have said, and we will go to *Hansard*, that it was about being on a particular register or registered under a particular act; that is what makes them an Aboriginal organisation.

I do not agree with that. I think that you can be a particular multicultural group or

Aboriginal organisation or a youth organisation and be registered under the incorporated associations act here in the ACT and be understood to be working on behalf of, championing—whatever your role is—those groups.

The key for me is that Mr Best has written in to say that, number one, they dispute the history; that they were at one point under the commonwealth Aboriginal corporations act. Along the way their advice was to move to another act, which they did, but that change in how they were registered did not change the fact that they are an Aboriginal organisation.

You have received the correspondence at this point. You have had time to read through it. What is your response to what is clearly Mr Best's and Billabong's distress at what went on in the estimates hearing?

Dr Bourke: With regard to the letter from Mr. Best, I note that nowhere in it does he raise a concern about the description of Billabong as either an Aboriginal or non-Aboriginal organisation. The letter is quite clearly written but he does not touch upon that particular point. He touches upon the point of the name of the corporation as the Billabong Aboriginal Development Corporation, the nature of the original registration and the current status of the registration.

I have addressed each of those points in my initial submission. I have also addressed the reason why I brought this up, and that was because the allusion in the question was to the support the government should provide Indigenous organisations, and therefore that means I need to have a means of working out what an Indigenous organisation, an Aboriginal organisation, is, and I have proposed several issues that were raised with me about that in my statement.

Firstly, I suggested, as you have correctly pointed out, it is not registered under the Corporations (Aboriginal and Torres Strait Islander) Act 2006. As you correctly point out, an Indigenous organisation does not need to be registered under that Corporations Act to be an Indigenous organisation. However, as I said, I have had people from within the Aboriginal and Torres Strait Islander community discuss with me the nature of whether Billabong is an Aboriginal organisation or not. Another tool for assessment, as I said, is within the constitution of the National Congress of Australia's First Peoples, which defines Aboriginal organisations. I do not believe under that definition that Billabong meets that definition as an Aboriginal organisation.

MS HUNTER: I do not know whether that has made it any clearer for me.

MR COE: Dr Bourke, do you personally associate Billabong with being an Aboriginal association—or an Aboriginal organisation rather?

Dr Bourke: My opinion here is as minister.

MR COE: As minister, do you consider Billabong to be an Aboriginal organisation?

Dr Bourke: I have already stated for the record in my statement, as well as previously.

MR COE: Do you understand why that might be distressing for them?

Dr Bourke: I understand that that could be distressing for an organisation, but I have got a letter from Mr Best in front of me that does not raise any issues of distress about that particular matter at all. If he was distressed, why didn't he say it in his letter?

MR COE: He did go to the length of querying the evidence that you gave, so to that end that is quite a serious step, and I do not think Mr Best would have done so lightly.

Dr Bourke: This is a very specific letter, Mr Coe; it does not mention the matter that you have raised.

MR COE: I think we can take it as a given that Mr Best is taking this issue very seriously.

Dr Bourke: I think we can take it that Mr Best is taking the issue of the evidence given very seriously. That is why he has given a very detailed and specific letter, which does not mention the matter that you have raised.

MR SMYTH: Back to the original question: do you regard Billabong as an Aboriginal organisation?

Dr Bourke: As minister, there is no evidence that I have that allows me to conclude that Billabong Aboriginal Development Corporation is an Aboriginal organisation, for the reasons that I have previously outlined.

MR SMYTH: So is that a technical definition, because they are not registered under one part of the Corporations Law?

Dr Bourke: No. I have already been through three elements to my thoughts as to why Billabong Aboriginal Development Corporation is not an Aboriginal organisation. As I said, firstly, because in my discussions with other Aboriginal and Torres Strait Islander people in Canberra questions have been raised about whether Billabong Aboriginal Development Corporation is an Aboriginal organisation. Secondly, it is not registered under the Corporations (Aboriginal and Torres Strait Islander) Act 2006, which is the only legislation which assesses and requires Aboriginal membership and directorship for incorporation.

As I suggested, there is another tool for assessment and that is the constitution of the National Congress of Australia's First Peoples which specifically defines Aboriginal organisations which are able to affiliate or have membership of congress. I do not believe on the evidence that is in front of me that Billabong meets that definition.

MS HUNTER: So what is that definition? Could you give us a rundown of that definition so that we can—

DR BOURKE: Yes, I shall. I will read it out for you.

THE CHAIR: I just float that I have another question too. You said groups have raised concerns about Billabong. I would like to hear you address that point as well. But go to Ms Hunter first, for the definition.

Dr Bourke: The definition of an Aboriginal and Torres Strait Islander organisation within the constitution of the National Congress of Australia's First Peoples is (1) an incorporated organisation that has at least 51 per cent of its members being Aboriginal and Torres Strait Islander people; (2) which has at least 51 per cent of its governing board being Aboriginal and Torres Strait Islander people; and (3) whose principal purpose and activity is related specifically to Aboriginal and Torres Strait Islander people but which is not a national Aboriginal and Torres Strait Islander organisation.

MR COE: The criteria: is that "and" or "or" for each of those?

Dr Bourke: And.

THE CHAIR: Wouldn't Billabong fulfil that definition?

Dr Bourke: It does not; in evidence before me, definition 3, principal purpose of activity—if you turn to the constitution of Billabong, which is in front of you in the papers that Mr Best sent in—you will notice that the principal purpose, the objects for which the company was established:

(a) For the purpose of owning land or the holding of leasehold interest in land, infrastructure associated with the owning of and or the leasehold interest in infrastructure;

That is the principal purpose of Billabong Aboriginal Development Corporation. It then talks about the secondary or ancillary purposes, four out of the 19 ancillary purposes of the corporation of which are Aboriginal specific.

MR HARGREAVES: Sorry; how many out of the 19?

Dr Bourke: Four.

THE CHAIR: Are you saying that, because of the way that has been structured and because of other concerns you have had raised with you, you do not think they are trying to provide a service specific to Aboriginal and Torres Strait Islander people—sorry, to Aboriginal people?

Dr Bourke: When the National Congress of Australia's First Peoples assesses an organisation's application—

THE CHAIR: No, I understand that.

Dr Bourke: within that definition they look at the constitution, which tells you what the principal purpose of that organisation is.

THE CHAIR: Because of the interest, if you have any other information—because from what I know of Billabong, that is what they are pursuing; they are pursuing the interests of Aboriginal people. From that definition that you have outlined, it would seem, from what I know, that Billabong fulfilled that definition. So what information do you have that they are not fulfilling their obligations—providing anything other

than a service to Aboriginal people? And in that what concerns have you had raised with you by other people that they are not fulfilling their purpose?

Dr Bourke: It was not a question. The purpose is as is defined in 2.1(a) of their constitution; that is their principal purpose. The fact that their major activities involve provision of services to Aboriginal people now within the definition of the national congress does not make them an Indigenous organisation. You may have an organisation which specifically provides services to Aboriginal people, but that is not its main purpose within its constitution.

THE CHAIR: Okay. As I said to you, it was like in response to my question; from what I know that Billabong do, that is what they are actually doing—providing services to Aboriginal people. So if you have other information which is saying that they are not fulfilling that definition, which it seems they are, if you are using that as your criteria, and you said one of the other reasons you did not see them as an Aboriginal corporation was that you had had concerns raised with you about what they are doing. What are those concerns and what is the other information that you have that they are not fulfilling their purpose? You have used that as one of your reasons—

Dr Bourke: Yes.

THE CHAIR: So what are the concerns that have been raised with you?

Dr Bourke: As I said, I have had discussions with people as to whether Billabong is an Aboriginal organisation or not, and most people's responses are either negative or ambivalent.

THE CHAIR: And what is that based on?

Dr Bourke: On their opinion; on the opinion of other Aboriginal and Torres Strait Islander people.

THE CHAIR: But what is the information being put forward to support that claim?

Dr Bourke: I do not know the basis for their decision making.

THE CHAIR: That goes to my point: you have used it as one of your three reasons as to why you do not consider them to be an Aboriginal organisation. But you cannot provide us any information to support that.

Dr Bourke: I just have. I have—

THE CHAIR: No, you have not, actually.

Dr Bourke: I cannot answer for what other people's opinions are.

THE CHAIR: But you are using that as a reason.

MR SMYTH: You seem to be agreeing with them.

THE CHAIR: That is my point: you are using that as the reason, but you cannot provide us with that information. That concerns me.

Dr Bourke: In what format would you like it to be provided?

THE CHAIR: You are using that as a reason today—to say that is one reason why you do not consider them to be an Aboriginal organisation providing services. But you are saying that it is based on people's opinions. So what has that opinion been based on to support that claim for you to use that as a reason?

Dr Bourke: I do not know what people's opinions are based on.

THE CHAIR: That would concern me then, because you are using that as a reason.

Dr Bourke: Okay.

MR SMYTH: What is your explanation?

MR COE: What is the reliability of that evidence?

Dr Bourke: Perhaps, Ms Bresnan, if the Assembly wishes to develop another definition of what is—

THE CHAIR: I do not want to develop another definition, Dr Bourke. I am actually asking you, because you are using that as a reason today. You have come into this committee, in response to these concerns that have been raised in this letter and our recalling you today, and you are using that as one of your reasons as to why you do not consider them to be an Aboriginal organisation. But you cannot back up those claims.

Dr Bourke: This matter was not raised in Mr Best's letter.

THE CHAIR: No, but you are using that as a reason here today; that is why I am asking you. But you cannot provide us with information on that. That concerns me, and I cannot get an answer on that.

MR COE: In a nutshell, how reliable is this information which you are basing your opinion on?

Dr Bourke: What does that mean, Mr Coe?

MR COE: You have cited opinions; how reliable are those opinions? What are those opinions based on?

Dr Bourke: What are you suggesting—that people might tell me something that they did not think?

MR COE: No. I would like to know what is the information underpinning what they have said.

Dr Bourke: I have already described to Ms Bresnan: these are opinions that people have offered to me.

MR COE: But what is the information that underpins those thoughts?

Dr Bourke: That would be known to the people who have provided the information to me.

MR COE: Do you not think it is extremely unreliable for you to come in here and cite that as evidence but in effect you do not know what it is based on?

Dr Bourke: That is one piece of a—

THE CHAIR: But it is one of the reasons you are using.

Dr Bourke: trio of pieces of information. If the committee or the Assembly can offer to me another way in which we can define an Aboriginal organisation, I would be happy to run with it.

MR SMYTH: No. We are trying to work out how you have defined what an Aboriginal organisation is. You have said there are three planks. One of the planks is that people have said to you words that have led you to believe that Billabong is not an Indigenous organisation. So the question from the chair was: what is this evidence that led you to believe that Billabong was not an Indigenous organisation?

Dr Bourke: The opinions of people when I have talked to them about it.

MR SMYTH: Okay. And what was the basis of those opinions and what did you do to check the veracity of the evidence?

DR BOURKE: It was an opinion.

MR SMYTH: So you have based all of your efforts on Billabong on an opinion of someone that you will not share with the committee and you will not tell us what it was that led you to believe that their opinion was better than Billabong's registration under the Corporations Act?

Dr Bourke: I was satisfied that it was their opinion.

MR SMYTH: It became the basis of your decision.

MR HARGREAVES: Can I ask a question on that? This has gone round and round a couple of times.

MR SMYTH: I am sorry, John, but if I can just finish.

MR HARGREAVES: Yes.

MR SMYTH: It became the basis of your opinion. You accepted it at face value; you

took it for a fact. It became the third plank in what you used as a tool to work out whether Billabong was an Aboriginal organisation or not. So surely you gave them some credibility; you thought they were credible.

Dr Bourke: Yes.

MR SMYTH: What were you told that was so credible about Billabong?

Dr Bourke: As I said, people either expressed ambivalence or negativity when I asked them—

MR SMYTH: What negative things did they feel about Billabong?

Dr Bourke: They did not say anything negative about Billabong Aboriginal Development Corporation. What they said was they were unsure or did not think Billabong Aboriginal Development Corporation was an Aboriginal organisation.

MR SMYTH: What did you do to guarantee for yourself that their opinions were correct?

Dr Bourke: Opinions are opinions, Mr Smyth.

MR HARGREAVES: Can I ask a question about the criteria that were applied. You mentioned that one of the ways in which people became registered was to have reference to services specifically and pretty much solely to Aboriginal people, as evidenced by a phraseology contained in their constitution, the principal *raison d'être* in the constitution. That is right?

Dr Bourke: Yes.

MR HARGREAVES: You read out what was the principal *raison d'être* in Billabong's constitution. Was there any reference to the provision of services specifically and targeted towards Aboriginal people contained in that principal *raison d'être*?

Dr Bourke: No.

MR HARGREAVES: So it would be reasonable to assume that Billabong could in fact provide services to anybody—to the Vietnamese, to English migrants, to anybody they wanted, the general community at large—because there is nothing in there which says that they would be specifically formed to support the Aboriginal people. Am I right?

Dr Bourke: That is correct.

MR COE: Do you accept that the objects in the constitution include to promote Aboriginal and cultural values?

Dr Bourke: Yes.

MS HUNTER: And to relieve the poverty, sickness, destitution, distress, suffering, misfortune, homelessness or helplessness of needy members of Aboriginal communities as a priority?

Dr Bourke: Yes.

MR SMYTH: Indeed, to strengthen, build up and contribute to the identity, sense of purpose and culture of persons of Aboriginal descent?

MS HUNTER: To promote Aboriginal cultural values?

Dr Bourke: Yes, those are the four ancillary objects within the Billabong Aboriginal Development Corporation which mention—

MS HUNTER: It is actually more than four, because it goes through and talks about—

Dr Bourke: I am sorry, five.

MR COE: Members of the community—

MS HUNTER: Members of the community that enable Aboriginal people to participate. It goes on and on. In fact, if you go through—

MR COE: To provide and maintain buildings and grounds for members of the community or wider community for education, training, employment, health, arts and craft—

Dr Bourke: Chair, I have made an error which I wish to apologise for. There are actually five ancillary objects which relate to the Aboriginal—

MR SMYTH: No, they are not ancillary—

MS HUNTER: No, it is more than that.

MR SMYTH: They are not ancillary; they are all in the objectives section of the constitution.

MS HUNTER: They are all in the objectives section.

Dr Bourke: They are 2.2(a), 2.2(e), 2.2(f), 2.2(h) and 2.2(i).

THE CHAIR: Thank you, Dr Bourke; we have got that. As Ms Hunter just said, there are actually more than five. They are listed in the objectives; they are not ancillary.

MR COE: Given who are members of this organisation, I would believe that the vast majority, if not all, do in fact apply to Indigenous people.

MR HARGREAVES: This is a question session, with respect. We can make views and our positions known in the deliberative sessions within the committee. I think it is

beholden upon us, in fact, to at least raise the question with the minister and receive a response. Then we will go away and chew it over and come up with—

THE CHAIR: Thank you, Mr Hargreaves, but given—

MR HARGREAVES: But we just did not have a question.

MR COE: I am afraid we are having a discussion here. We are trying to get to the bottom of this issue by doing that informally through, in effect, a conversation or going through questions one by one. I think we owe it to the Billabong organisation to get to the bottom of it today.

MR HARGREAVES: I do not disagree, except to say that there is nothing informal about this session. If this was informal there would be no Hansard and there would be a number of other people at the table. Please understand, this is quite a formal arrangement and it is not a discussion.

MR COE: I was not referring to the entire session. I was referring to how we conduct ourselves while here.

THE CHAIR: Members, please! Ms Hunter has a question.

MS HUNTER: I want to follow up on the part of the constitution that we have here. If you go to clause 1.4 it says:

The nature of Billabong Aboriginal Development Corporation

(a) is a public company limited by guarantee under the Act;

(b) is established solely for the Objects referred to in Clause 2.

Clause 2 is not just clause 2.1(a); it is also clause 2.2(a) through to (s). Would you agree, reading that constitution, that that is your understanding?

Dr Bourke: Clearly, corporate law is not something that we have all got a strong point on, because if you read the objects it says, “2.1, the principal purpose” and then it describes the other purposes as ancillary purposes. Chair, I must say that I accept—

MS HUNTER: No, that is not what ours says.

Dr Bourke: I accept, and I have never disagreed, that Billabong Aboriginal Development Corporation delivers services to Indigenous people, but that does not make it an Indigenous organisation. Many organisations deliver services to Indigenous people. My question to the committee is: where are your questions going and what do you want?

THE CHAIR: Dr Bourke, you agreed to be recalled. We can actually ask questions to investigate this matter. The reason I asked you those questions earlier was because you might say you have never disagreed with that, but you have actually made a statement in the three reasons you have given that there are concerns being raised that they are not providing services to Aboriginal people. You have used that as one of

your reasons. You have put forward—

Dr Bourke: No, you are misrepresenting me, chair.

THE CHAIR: No, I am actually not, minister. You outlined three areas. That is what I am asking you questions about. I think I have a right to ask those questions of you.

Dr Bourke: I do not dispute that, chair. My issue is: what definition of Indigenous organisations does the committee think we should have?

THE CHAIR: Dr Bourke, as I said to you, you came in here today and listed those three things, saying, “This is why we do not consider it to be an Aboriginal organisation.” Therefore, I am asking questions of you about that, given the definition you have provided as your third point. My understanding, and from the information we have before us, is that Billabong would actually qualify under that definition. You have also provided a reason stating that you have had concerns brought forward to you that they are not providing services to Aboriginal people.

Dr Bourke: That is not correct.

THE CHAIR: What were you actually saying then? That is what I heard you say. We have just had a whole line of questioning about that, saying it has been based on an opinion that has been brought forward to you, but you were not able to actually back up that opinion. If that is being used as a reason to make statements about an organisation, we have a right to ask you questions about that.

Dr Bourke: Chair, I am concerned that you are putting words into my mouth.

THE CHAIR: Well, you correct that statement then, because that is what I heard you say.

Dr Bourke: What I said was, and I will repeat my statement to you—

THE CHAIR: Thank you.

Dr Bourke: It is very clear.

THE CHAIR: Well, quite clearly not.

Dr Bourke: In my discussions with other Aboriginal and Torres Strait Islanders in Canberra questions have been raised as to whether Billabong Aboriginal Development Corporation is an Aboriginal organisation.

MR COE: Actually, you went on later to say that the dealings that you had had were ambivalent or negative.

Dr Bourke: The comments. You asked what was the nature of those discussions. I said that the comments as to whether Billabong Aboriginal Development Corporation was an Aboriginal organisation were either ambivalent—in other words, people were not sure—or they thought it was not.

MR SMYTH: But you took them at face value? You made them the third plank of your trio of complaints against Billabong?

Dr Bourke: I have no complaints against Billabong.

MR SMYTH: You made them the third plank of your justification for your decision against Billabong?

Dr Bourke: It is one of the aspects of my decision.

MR SMYTH: But you are unable to explain that third plank?

Dr Bourke: I have explained it.

MR SMYTH: No, you have explained that people have made comments to you. You have detailed none of the comments. You have detailed none of the checks that you made about the veracity of the comments. You have detailed none of the work that was done to come to a conclusion that you would use it as the third plank against Billabong. I have a different question: are you aware of the Office of the Registrar of Indigenous Corporations?

Dr Bourke: Yes. I met them on Sunday.

MR SMYTH: Are you aware that on their website the Office of the Registrar of Indigenous Corporations have a number of avenues for Indigenous organisations to be incorporated?

Dr Bourke: That is not correct.

MR SMYTH: Where the ORIC website says that Indigenous organisations do not have to be incorporated—

Dr Bourke: Mr Smyth, if I might speak—

THE CHAIR: Dr Bourke, let him finish.

Dr Bourke: I did not hear you, Mr Smyth, sorry.

MR SMYTH: The ORIC website states:

Other laws for incorporation

Corporations and associations

Indigenous organisations don't have to be incorporated with ORIC. For example, many are incorporated under the Northern Territory Associations Act ...

Dr Bourke: That is correct.

MR SMYTH: So you can be incorporated or be a cooperative in different ways and

still be an Indigenous organisation?

Dr Bourke: Yes.

MR SMYTH: You said that because Billabong were not incorporated under ORIC they were not an Indigenous corporation?

Dr Bourke: What I said was that would be one reason why I would consider them an Aboriginal organisation, if they were registered under that particular act.

MR SMYTH: The office responsible for the registration of Indigenous corporations says that you can be incorporated in a different way. So how did you apply the very narrow test, the very narrow gate, for Billabong to come through?

Dr Bourke: No.

MR SMYTH: So you do not accept that they can be incorporated under the Corporations Act?

Dr Bourke: Yes, they can.

MR SMYTH: And they can be incorporated under the Corporations Act and still be an Indigenous organisation?

Dr Bourke: Yes, they can.

MR SMYTH: Given that Billabong is incorporated under the Corporations Act, can they not still be an Indigenous organisation, an Aboriginal organisation?

Dr Bourke: It is possible for an Indigenous organisation to be incorporated under the Corporations Act and be an Indigenous organisation.

MR SMYTH: Did you check whether they were incorporated under the Corporations Act before you told the committee that they were not an Aboriginal organisation?

Dr Bourke: Their incorporation under the Corporations Act is irrelevant as to whether they are an Indigenous organisation.

MR SMYTH: Why?

Dr Bourke: Because the Corporations Act does not assess whether they are an Indigenous organisation or not.

MR SMYTH: Yet ORIC, the Office of the Registrar of Indigenous Corporations, says:

Indigenous organisations don't have to be incorporated with ORIC.

Dr Bourke: That is correct.

MR SMYTH: It goes on to say:

An Indigenous organisation might also choose to form a cooperative.

There are a number of paths that they can follow here to comply with the law, are there not?

Dr Bourke: That is correct.

MR SMYTH: And still be an Indigenous organisation?

Dr Bourke: That is correct.

MR COE: Our frustrations stem from the fact that your evidence is reliant upon your pointing to anonymous people, yet you cannot give a rationale for what underpins that logic. Do you understand that? Do you understand our frustrations?

Dr Bourke: Yes, I understand that frustration.

MR SMYTH: Will you relieve our frustrations now by explaining your logic?

Dr Bourke: I have done so.

MR SMYTH: Clearly you have not done so because at least four of the five members of the committee continue to question you on your logic, which you seem unable to explain.

Dr Bourke: I have explained it.

THE CHAIR: You said to me before, “Why are you asking this line of questioning?” The reason we are asking these questions is that statements were made when you gave evidence, we have had a letter from Billabong that they are concerned about that, and then you have come in today and given us the three reasons why they are not considered, classified—whatever the word might be—an Aboriginal organisation to provide services here in the ACT. For me, that has an impact on the services that we are providing in the ACT to Aboriginal people.

That is why we are here asking these questions. That is why I am asking these questions of you. I do not think I need to provide a reason or evidence to you why I am asking these questions. That is why I am asking these questions, and that is why the committee is asking these questions. I think it does have a bearing on the services we are providing. I want to put that to you.

MR COE: Can you envisage that people involved with Billabong might be demoralised as a result of this hearing this afternoon?

Dr Bourke: I am not sure what people at the Billabong Aboriginal Development Corporation would think, but with regard to this principal question this afternoon about an Indigenous or Aboriginal organisation or not, I note that in the letter from Mr Best he did not raise that matter at all. He did not raise that matter at all in a letter,

which was detailed, which was specific, which had a range of evidence attached to it. So if it was a concern to him, why didn't he raise it? That would be my question.

THE CHAIR: But he has raised it in the letter. He said that he would seek an apology from the minister for this misleading information about the Billabong Aboriginal Development Corporation. He has said that in the letter. My concern is coming from the fact that we are applying these reasons why they are not considered an Aboriginal organisation.

As Mr Smyth has read out from the Corporations Act, you can still be under that act and be considered an Aboriginal organisation. It seems that, under the definition you are providing us today, that does not come under that definition, that we are providing a much narrower definition and that we are also basing it on concerns and opinions that have been put by people. But we do not know what they are. You do not seem to have information to back that up. That is what is concerning me.

That is why we have been asking these questions, trying to get clarity on that. I have not got clarity from what you have told us today.

I do not know whether there are any further questions.

MR SMYTH: On page 724 of the transcript, Ms Howson, you said:

... there has been an enormous amount of work done by Housing ACT over the last more than 12 months to ensure that Billabong are able to continue to operate

Can you detail what that enormous amount of work entailed?

Ms Howson: I think Ms Sheehan followed on from that statement and set that out. I will ask her to repeat the level of engagement that we have with the organisation over that period of them attempting to register.

MR SMYTH: It might be better if you took it on notice and got some chronology for Billabong.

Ms Howson: We could read it out now.

MR SMYTH: I would prefer it if you took it on notice.

Ms Howson: We are happy to take it on notice.

THE CHAIR: You will take that on notice. That seems to be the end of the questions.

As mentioned at the commencement of the hearing today, there is a time frame of five working days for the turnover of answers to questions taken on notice for the Community Services Directorate output class 3.2, community affairs, Aboriginal and Torres Strait Islander Affairs, specifically as this output relates to the Billabong Aboriginal Development Corporation. They should be lodged with the Committee Office within five working days of the receipt of the uncorrected proof transcript, with

day one being the first business day after the transcript is received.

I thank you for appearing today, minister and officials from the directorate, and giving evidence. This public hearing is now concluded.

The committee adjourned at 4.50 pm.