



Australian Government
Productivity Commission

PRODUCTIVITY COMMISSION

INQUIRY INTO ACCESS TO JUSTICE ARRANGEMENTS

DR WARREN MUNDY, Presiding Commissioner
MS ANGELA MacRAE, Commissioner

TRANSCRIPT OF PROCEEDINGS

AT HOBART ON FRIDAY, 13 JUNE 2014, AT 8.45 AM

Continued from 11/6/14 in Melbourne

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DR MUNDY: Good morning, ladies and gentlemen, and welcome to these Hobart hearings for the commission's access to justice inquiry. My name is Dr Warren Mundy, and I'm the presiding commissioner on this study which is being conducted along with me by Commissioner Angela MacRae. Before we go any further, I'd like to pay my respects to traditional aboriginal owners of the land, the Muwinina people, and their elders past and present. I'd also like to pay my respects to the elders past and present of all indigenous nations who have continuously occupied Australia for over 40,000 years.

As you know, the commission released its draft report in April, and the purpose of these hearings is to facilitate public scrutiny of that report to gain feedback and information which we may subsequently draw upon for the final report. Following these hearings today there will be hearings in Darwin and Brisbane. Hearings have already been completed in every other capital city in Australia. I'm not going to list them. The list is getting too long. Once we finish - conclude those hearings next week, we'll proceed to finalise the reports which will be provided to the Commonwealth government in September, and that report will be published within 25 sitting days by tabling in both houses of the federal parliament.

Whilst we like to conduct these hearings in a reasonably informal manner, we would like to note that under Part 7 of the Productivity Commission Act, the commission has certain powers to act in the case of false information or refusal to provide information. As far as we're aware, the commission has not had occasion to use these powers as yet. We do keep a transcript of these proceedings to facilitate our work, transparency of our processes, and as such it's not possible for us to take comments from the floor, but we will allow a brief period at the end of today's formal hearings for any person to make any further comments they wish to make. That said, whilst participants aren't required to take an oath, they must be truthful in their remarks, and we do welcome people commenting on the views that have been expressed to us by others.

Under Commonwealth health and safety legislation, I must inform you that in the unlikely event of an emergency requiring evacuation of this building, please listen to the instructions given over the PA regarding the safest exit to use, which will either be at the city end of the building, left upon the corridor and exit through the rear of the building - it's actually just out there - or the lift at the end - the lift end of the building, which is down there. I'll be going that way. We're then to assemble in the assembly area, which is in the diagram below, just out the back in Terminus Row. That concludes the formal opening.

Could we please have the Women's Legal Service of Tasmania? All three of you can come up if you want to huddle around the table. It's up to you. You're okay? Cool.

MS FAHEY (WLST): I'll drag them up if there's something.

DR MUNDY: Great. Could you please, for the benefit of the transcript and those poor souls who have to transcribe it state your name and the capacity in which you appear today.

MS FAHEY (WLST): My name is Susan Fahey, and I'm the CEO and Principal Solicitor of the Women's Legal Service.

DR MUNDY: Susan, would you like to make a brief opening statement? By that we mean not more than five minutes or thereabouts, and then we can ask you some questions.

MS FAHEY (WLST): Yes. Look, actually what I thought I'd do is just give you a really quick "this is what we do and this is why we're here," and then thought that given how many hearings you've already had and how many people you've already talked to, you might just want to ask me some questions.

So on a personal basis I've actually been with the Women's Legal Service since 2002, so I've actually been in and around and active within the sector for quite a period of time now. The Women's Legal Service is a statewide service which caters, obviously, to the women of Tasmania, more specifically those in low socioeconomic or disadvantaged situation.

We deal with several thousand women every year in our capacity in delivering information, advice, referral, community, legal education. We also have a support worker. So our interest in making a submission to the Productivity Commission both through input to the national association submission as well as the Women's Legal Services Australia submission for which Pauline, who is sitting here, is the convenor of that network at the moment is actually because we feel that women - women's legal services were ultimately all funded where there weren't any women's legal services in any state or territories in around 1996, 1995 through the access to justice statement which found that women were finding it much harder to access legal services and faced significant barriers to accessing justice.

We still find that today despite having all these services and things improving within the community. Particularly in Tasmania women are within the more disadvantaged part of the community, and they have a high representation. So our interest obviously is in any study into how services can be delivered or funded is obviously of great interest to us. So we're a service that likes to work with the Legal Aid Commission. We see ourselves as complementary to, not in competition with that service. We do work with the other community legal services. We work well with private practice and we have some very good networks and other partnerships going.

We don't look to replicate what someone else is doing, and if there's funding or assistance available somewhere else, we'll direct people to that and assist them to obtain it, as do, I think, pretty much all the Women's Legal Services. So if you've got any questions, I'm quite happy to talk on pretty much anything because obviously there's a lot of issues that are touched on in there, and anything from the - you know, obviously I think you've heard a bit about people's views on things like competitive tendering, [indistinct] unbundling of services. Anything like that.

DR MUNDY: I think our views on competitive tendering were slightly misunderstood. But anyway.

MS FAHEY (WLST): It's the kind of thing that scares this sort of sector.

DR MUNDY: It's the sort of thing people expect us to ask, and we know that it scares people. But we have to ask the question. Look, one question that we've asked a lot of - well, in fact I think we've managed to ask all CLCs that have appeared before us is that we understand that the Commonwealth is seeking to reprioritise its funding for CLCs to frontline services. We understand that there have been funding reductions to some CLCs.

MS FAHEY (WLST): Ours would be one of those.

DR MUNDY: So we understand. Could you outline to us what the nature and extent of your funding reduction is, what will be the impact of that funding reduction, and would you identify those impacts as being to frontline services or to what I think is referred to as advocacy in law reform?

MS FAHEY (WLST): Sure. Well, the funding reduction that we face is \$100,000 a year, and that's as at the end of June 2015. So our core funding from the Commonwealth is only \$210,000, which if you compare us to, say, Women's Legal Service in ACT, they receive about \$180,000 more. They've got a smaller population and our female population is far more disadvantaged than theirs.

DR MUNDY: Yours is not located in one city.

MS FAHEY (WLST): No. We have to travel all around the state, and technically too we cater to King and Flinders Island, Furneaux Group and all of that as well. So basically I would view us, as anyone in an NGO does, we're already disadvantaged when it comes to funding. We don't receive any state funding. So last year as what I think everyone is calling the Dreyfus money, we did receive for a four-year period an extra \$100,000 a year. That funding was provided to deliver an online app that we developed called Girls Gotta Know. That provided very comprehensive legal information, referrals, links and all sorts of things for - aimed at women, young

women, 14 to 24.

We rolled that out in Tasmania for about \$30,000 on a grant, and the Commonwealth gave us the extra \$100,000 a year to roll that out nationally, which it is actually in the process of just going live. So it's been made larger and has the same information of every state and territory in Australia. So we are half-way - by the end of June 2015, we'd be halfway through that additional one-off funding, and that's been cut. So fortunately we've already got most of the app done and paid for, but again the funding came into us in \$25,000 quarterly increments, so we had to take other money to pay for it. Fortunately we won't come out behind on that, but that money was also to provide services for family violence which effectively was for one - within our budget, one solicitor. So if we don't find that funding, it's effectively a solicitor's position or a couple of - we only have one admin person. It could be that. It could be - whatever it is, it translates to jobs. If we can't find - - -

DR MUNDY: How many staff do you have in total?

MS FAHEY (WLST): We have seven staff. So we have four solicitors including myself, we have one full-time admin person, and we've only had an admin person for about four years now. We have a part-time office manager who does all of the financial stuff and he's there to take some of the work off my desk, and we also have a three-day a week - actually, she works four days, but it's equivalent to three days a week position which is a community and support liaison person who basically she helps people out. So she takes work off the solicitors' desks to do sort of not quite paralegal work, but if we have someone who has literacy and numeracy issues she can help them change phone bills or go to appointments with someone if they need - - -

DR MUNDY: So to help people out who have an issue, but don't necessarily require a solicitor.

MS FAHEY (WLST): Yes.

DR MUNDY: But it's rather than send them down the street and round the corner.

MS FAHEY (WLST): And sometimes it is someone that - it will be one of our clients that we're working with, but it might be that we need them to fill out forms. My time is better spent seeing a client than sitting there filling out a form, so we'll kick it off and we'll introduce her into the process right from the beginning so they feel comfortable going back and forth. So I think all up, the full-time equivalent is around about six people, five and a half, six people. So the immediate impact of that loss of \$100,000 is actually front-line services. It is advice, it is all of that.

The law reform work that we do, we've done some fairly significant law reform

work down here in the past couple of years because we're involved in the reproductive health Bill, but realistically the law reform work that we do is usually through somewhere like Women's Legal Services Australia networks and things like that, making submissions to things like this. We have initiated some stuff in the past where we've talked to the Attorney-General, for example, in Tasmania.

It used to be, you know - still is, illegal for two women to be in a relationship together, two women to access IVF, only one could be on the birth certificate, and we were actually getting a lot of people coming in going, "I've been denied access to my child in the ER because I'm not on her birth certificate. I don't have the Family Court order." So we spent time doing things through the Family Court and working with them to make that process faster, but as we got more and more people coming to us because there were more and more people having children, we ended up talking to the state's attorney-general and said can we just not change the Status of Children Act and alleviate my work, - I actually said, "Alleviate my workload, please."

Apparently that wasn't the reason to do it, but Parliament changed the Status of Children Act and both parents can now be on the birth certificate. It wasn't a lot of work but it's taken a lot of time away from people going to the Family Court, it's alleviated stuff - - -

DR MUNDY: So that - I mean, obviously plus what you're saying, that piece of law reform has probably saved the Family Court time - - -

MS FAHEY (WLST): A lot.

DR MUNDY: - - - and money.

MS FAHEY (WLST): Yes.

DR MUNDY: It's probably made the people involved less aggrieved at a time when they don't really want to be hassled, and it's probably made life better for the staff in the maternity wards because they're not having to say, "Actually I do know who you are, but you're not allowed."

MS FAHEY (WLST): Yes, absolutely, and it basically made life a lot easier for children because they have two legally recognised parents. So it was something that really didn't take a lot of work. Fortunately, actually parliament made it retrospective back to when the Relationships Act commenced, so they backdated it for six years and a whole heap of people could have new birth certificates reissued and it made a lot of things a lot easier for people. So it was something that didn't take a lot of work. At one point there were a lot of sort of meetings and briefings and helping politicians understand how the law worked and what happened, but that's something that I think community legal services have a unique ability to do.

Private practice, I mean, you're sitting there - you're there to make money for your partners. You don't necessarily deal with that side of things and so you're not going to have the time to actually appear at a lot of briefings - I mean, certainly when I was in private practice I didn't have people emailing me questions from parliament. I do now, I have politicians who email me questions all the time because our service has got a reputation for being able to explain complicated law in a really easy to understand way. So I think removing the ability for community legal centres to do that is - I think that's fairly misinformed.

I understand that in the past there have been centres who might have done something that can be embarrassing or upsetting to a government or somebody because it's not going the way they want it to go, but really the only reason to stop that is if you don't like where things are going. I would look at any of the law reform work that we've done has only ever benefited the women of Tasmania.

DR MUNDY: Before we move on, do you assist women with issues other than around family law, violence, so you would help them with a full range of civil law matters?

MS FAHEY (WLST): Yes. Because we're a women's legal service, we get branded as being a specialist centre because we only deal with, you know, just over half of Tasmania's population, but I would actually really regard us as a specialist general centre because we answer questions on everything. So we have a 1800 line which was put in place - when Women's Legal first started they had basically a full-time coordinator and a couple of part-time solicitors. So even when I started - when I first started managing Women's we had three solicitors and that was it, no admin, nothing. So we've kind of built up from there.

We've always operated a 1800 line because that makes us accessible all across the state and we use other technologies to get face to face with people but Tasmania is a big country area, sometimes you really do need to go and see people and have a presence but basically, yes, for us we can answer questions on everything. We don't have access to say like the Legal Aid Commission has a really big database and they have someone part-time that keeps it up for their phone advice people. We don't cap how long someone can talk to us on that and we don't put any limitations on what law they can ask about.

DR MUNDY: So it seems a bit like some other women's legal centres round the country who really do - and I think they articulate their role to be family violence and family law matters.

MS FAHEY (WLST): Yes.

DR MUNDY: You see your role as much wider than that.

MS FAHEY (WLST): Ours is much wider because it's needed. If you look at say Victoria, Women's Legal in Victoria have a very specific defined role and I think that was a strategic move quite a long time ago because - their ex CEO is a good friend of mine actually and I was talking to her about that. Because one of the things you have to do in any NGO I think, but particularly in our sector, is you need to look at it and have that question, if you get defunded tomorrow, who is going to miss you. So you need to evolve and go, "What do we do?" That was one of the questions they asked themselves and they said, "Well, we need to be specific. What can we specialise in that at this point no-one else is specialising in? What's our niche market?"

That works in somewhere like Victoria because you have a lot of other community legal centres. Legal Aid does a slightly broader amount of stuff. In Tasmania, Legal Aid is funded to provide - they have got the criminal law band, and even that can be quite tight. Sometimes they can only fund stuff where you are actually really specifically facing a gaol sentence, depending on what funding is available, and in their family law part it's down to pretty much children's matters. So you can go in for the 15-minute advice thing during the day in their clinic and you can call their advice line and I think they have about a 10-minute sort of conversation with you.

If you want anything more specific and you're in that disadvantaged scenario, what's left for you is a community legal centre or private practice. So if you have some fairly general questions, and some of the questions we get is, "This has kind of happened. Do I even have a legal problem?" So we might get questions say - occasionally get women with say that have got mental health issues and they have had a problem with the council and their dog and it will take a letter or two to fix it. It doesn't take any time for us to basically - we know how to communicate with people so we effectively have a lot of early intervention and a lot of triage kind of sorting legal problems out that are small that could become really big.

That applies to the family law stuff that we deal with and the family violence that we deal with, but we've always resisted honing down to only doing family violence and only doing family law because in Tasmania there is nowhere else to go for a lot of those other questions that people have, whether it be having been fired at work for, you know, being pregnant, or if someone has - we get the odd wills and estates questions. We don't do wills, but we get questions about, you know, "Someone has died and this has happened. What do I do?" So we do direct a little bit of traffic but we do have a lot of people who can ring us, we can answer it and we can move it along and I would resist just going purely to family law and family violence because with that come a lot of other issues anyway.

DR MUNDY: Seeing you have raised wills and estates, and it's particularly the

resolution of people's estates, we've heard some pretty terrible stories about the winding up of people's affairs once they're deceased ranging from indigenous families fighting over burial sites and all sorts of other things, and it seems to us that Supreme Courts are a pretty big sledgehammer to resolve these issues. I guess our observation will be is that when families are in dispute and it's about the breakdown of the primary relationship or marriage within the family, our first course of action is to bundle people off to mediation and try and get them to resolve it that way.

We don't seem to do that when families are equally traumatised at the passing of someone who is significant within the family and the resolution of their estates. Given you deal with these issues, would you see that a more mediated approach like we see for matrimonial family disputes might be worth exploring in what you might call intestate family disputes?

MS FAHEY (WLST): Yes. Look, it's not my area of speciality, but I don't think that a mediated approach hurts anywhere to be honest. Thinking about those kind of disputes where as you said a lot of the time it's actually about hurt because someone has been in the will more or someone has been, you know - - -

DR MUNDY: Auntie Agnes didn't give me my favourite teapot or something.

MS FAHEY (WLST): Yes. And some of the things that I would have seen both in private practice and at Women's where there have been disputes, it is sometimes about the hurt or about a misunderstanding or a miscommunication, and so sometimes, yes - and there's all the grief and people just go completely crazy. So I don't think it ever hurts to try and sit people down in a situation like that. The Supreme Court here generally in a lot of matters does have a fairly good emphasis on trying to conciliate early on and they have some very good staff members that do that.

So I think - I mean, it's always good if you can do that without having to initiate proceedings and, you know, certainly although we wouldn't generally take on a matter like that, if we were handling something like that under our sort of philosophies and things we'd certainly try and mediate that anyway and try and have a far less aggressive approach in the litigation thing. Sometimes I think the outcomes can be a product of the system, ie people see Supreme Court jurisdictions as an adversarial system and sometimes, you know, it's that whole thing, if your only tool is a hammer, you'll treat everything like a nail, and that can be the attitude occasionally, whereas certainly in the community legal sectors there's a very wide variety of tools and you're encouraged to use all of them.

DR MUNDY: So that behavioural issue about the hammer and the nail, if the place for resolving intestate family disputes might be some sort of tribunal, you might actually see a bit of a change in conduct.

MS FAHEY (WLST): Could be, yes, I think so. I don't think it hurts to ever - I mean, whenever you have something that specialises in a specific area of law, then if you have a tribunal that matches that, it's a little bit like drug diversion programs or specialist family law lists, if you have someone in there who knows what the issues are, what the emotions are behind it, because a lot of law is about emotion and actually getting people to either curb that or take a bit of a check on that, if you can actually have someone who is handling it that has a really clear understanding of what the beast is before them, then they probably know how to navigate through that.

DR MUNDY: Okay.

MS MacRAE: Just in relation to the issue of mediation, we've heard that some concerns - well, generally I think people are very supportive of the family dispute resolution process, but there have been concerns raised about whether there's adequate acknowledgment where there's violence or other problems involved and the power imbalance that might be in those situations, whether that's adequately sort of streamed and catered for. Would you have views about that?

MS FAHEY (WLST): Fairly strong ones. Look, I think in principle family dispute resolution is really good and we were actually involved in the coordinated family dispute resolution pilot down here that was something that the Attorney-General's Office funded Women's Legal Service in Queensland to devise, and they rolled out a few pilots cross the country and I think AIFS did an evaluation of it, and that pilot put a mediator - sorry, had the dispute resolution practitioners along with a lawyer and a counsellor for each party and there had been violence and it was actually getting the parties in a room together sort of thing.

So we're always open to trialing things like that. The issue that you do get is when you get a family dispute resolution practitioner who doesn't properly acknowledge the family violence that's there and doesn't actually listen to what they're being told - because people won't necessarily come in and say, "There's violence. This is what happened." A lot of the issues what we're seeing now, I had a conversation with a really senior family law practitioner down here recently and I actually said to him, "Question for you. The family violence that you're seeing these days, how is it manifesting," and he said, "Fair less actual violence. It's controlled pattern behaviour. It's financial abuse. People are getting much more clever about how they abuse their partner."

I said, "Yes, that's kind of been my experience." I said, "Obviously I've only been dealing with women for a really long time." So you can have a really good dispute resolution practitioner who knows how to broker a negotiation and do all that sort of stuff but if they don't get - for example, in a session that I had, the guy that was twiddling with the glasses on his head, was twiddling a set of sunglasses that he

had actually taken off her when he had flattened her and kicked her and beaten her up, and then he was just reminding her what would happen if she didn't agree in that mediation.

If the people in the room don't know what those glasses are or they're not tuned into that, then a whole lot of stuff can happen right in front of you that you don't even know what's going on. I didn't know what those sunglasses were until I could see my client was starting to show a [indistinct] distress response that shouldn't be happening and said, "I just need a minute," and said to her, "What's the go?" and she just said, "This is what happened," and I was, like, "Yes, okay, we're done. We can't do this in the same room if this stuff is going to happen. So if you have someone who can't pick that up, and sometimes the lawyers don't pick that up because people don't necessarily tell you, but if you're not tuned into that stuff then some really bad things can happen right in front of a bunch of otherwise intelligent people who know their jobs.

The other issue that we find down here with the family dispute resolution, some of the practices, is that there is definitely a lawyer aversion. We recently had one FDR practitioner give contrary legal advice and they're not a legal practitioner and they shouldn't have been giving legal advice anyway to our client, that basically undermined our client's faith momentarily in their lawyer because we had said, "No, this is the violence. This is what's happened. This is how the Family Court or the Federal Circuit Court would treat this matter," it was very clear cut how they would handle it, and the FDRP basically told them something completely different and said, "No, no, you need to do this."

You could see what they're doing, which is they were trying to get people to manage expectations and get people to move off certain marks and do things like that, but they then told her ex this, so he was feeling really bullied and rang her and gloated and said, "Well, they told me this is what would happen and this is what I could expect," and then she was like, "Well, why am I doing this and what's going to happen, and I don't want that," and we had said, "That's not what the court would order and you don't have to accept that. This is what they will probably try and do."

So when you have an FDRP that really oversteps and tries to push people into an outcome, because for them outcomes are important, whereas I guess with a lot of lawyers, even if they don't get an outcome, for me, if you can get two people in a room and actually start to talk and have a civil, or at least semi-civil conversation, and if nothing else, narrow down the actual issues - I mean, that's probably an overly lawyerly way of looking at it, but it's the same thing the registrar does down here in the Federal Circuit Court and Family Court, even if he can't get an agreement in his conferences, if he can narrow down the issues and there's less to argue about before the court or at a later date, then that's a good thing.

So I think sometimes the FDRPs can be very, "Well, you know, we need to come out of this with an agreement," and it's human nature to go, "Well, if we're in here, we need to come out with an agreement," and people don't understand sometimes, including FDRPs, it's okay not to have a full agreement but if you can actually find some points of agreement or you can narrow it down at least.

MS MacRAE: Would you say that that's a systemic problem, or is it an occasional one-off - - -

MS FAHEY (WLST): Down here it's systemic, but that example is something we run into a lot. There's definitely a lot of them and us, lawyer and FDRP stuff, and it's just something that I don't even know how people - how we overcome that sometimes. I think sometimes, to be honest, sometimes government policy sort of says, "Well, we'll fund FRCs really heavily," and, you know, at one point I think it was something like your average FRC a few years back was getting one point something million dollars and your average community legal centre was getting like 250, 300 hundred thousand dollars - it was 330 actually.

It was like there's a heavy emphasis that you must go to the mediators and this is the way to go, stay away from the lawyers, whereas you should be having the two kind of working together, you don't have to put them in the same building, but they should be complementary and I think while ever your funding policy says, "Lawyers bad, or less preferable," then I think if you can have a situation where they're each, you know, referring - like, we will refer to them and we always have but, you know, I know, for example, down here it's a lot of the time you send people to the FRC because you know you have to do that, but you have to give them fairly careful sort of - you know, set where you're going to go, put in a time to go away and think about it. Don't just agree to something on the day, otherwise people get bulldozed into a parenting plan that they really don't want. If that happens and then they were to back out of it then you have even more ill feeling, so sometimes I think in that part of the system the drive to get an agreement can actually cause more problems than actually just getting in and seeing if you can get people to start talking in the first instance and see if we can get them to agree at least one or two things.

DR MUNDY: I guess telling from all that, particularly in the family law space, you'd see that lawyer assisted mediation is preferable to non-lawyer assisted mediation?

MS FAHEY (WLST): Some people can go off and, like, I can talk to them and say, "These are the sort of things that will come out," and I will say to someone, "Look, this is probably what he is going to want. How are you going to respond to that?" I will help them prepare for that. They'll go along and they'll be fine.

DR MUNDY: Yes.

MS FAHEY (WLST): If you have someone who has been through family violence then, yes, lawyer assisted mediation is a lot better because they've got someone they can talk to. You always get practitioners who don't necessarily practice in the way you would like them to, which is in their client's best interests and getting things resolved. Some people will just sort of coast along a little bit. For me personally, if I'm sitting in a session like that with someone, I always keep giving them reality checks and try and be that voice of reason to say, "What he is raising isn't actually unfair. How could you make that work?" or something like that, or I might say, "No, that's absolute rubbish and that's not workable for you because of this, this and this reason and just effectively doing what I'm meant to do which is give them advice and help them come to an outcome there and some people need that. There are some people.

That's when the CFDR Pilot was really good, horribly expensive framework to run but it also meant that you had people who had absolutely really no other option but to go to court and have that decision made for them because they can't communicate; they can't agree and they are just so opposed to even talking to each other for various reasons that, yes, having a couple of lawyers in the room with them is a really good way to go and to a certain extent having a lawyer in a room with someone, it provides a buffer zone.

To be honest, in Hobart any of the really good family law practitioners having them in a room is actually only going to help the situation. It's not actually going to make it worse. They're not there to make the situation worse. You do get the odd bad one that does prolong it but that's a rarity down here,

MS MacRAE: Those pilots had a counsellor in the room as well, did you say?

MS FAHEY (WLST): Yes.

MS MacRAE: Yes, okay.

MS FAHEY (WLST): So basically how that worked was initially it was paired with us and an organisation called SHE which was Support Help and Empowerment who've been counselling women in family violence for 25 years and the guys had someone at Hobart Community Legal Service and they had someone from TassieMale which was a program from Relationships Australia. If nothing else, that program was really good because it was guys who really needed counselling and assistance being asked to access at least in the first instance counsellors who knew their stuff and who could actually open a communication and knew how to do that without making them feel judged or without putting the guys on trial, because usually they were the perpetrator, so the good thing about that was that they at least had access to something they might not have otherwise had the thought to go and see

or in some cases might not have been able to just take that deep breath and go, "Actually I need to see someone." You could see with some of them they're actually relieved that they were starting to talk to someone. So in that respect it was good.

DR MUNDY: I'm just mindful of the time. On page 8 of your most recent submission to us, in the third complete paragraph you say, "As funding from the LACT became - - -"

MS FAHEY (WLST): Legal Aid Commission, yes.

DR MUNDY: Yes - "more restricted, there were significant numbers of women seeking assistance from our service whilst eligible for aid, were unable to obtain it due to lack of funds." What were the consequences for those women? Were you able to - we've heard stories, because of Legal Aid policy, in Victoria where women have had to appear in court unrepresented and be cross-examined by those who have brought violence against them.

MS FAHEY (WLST): Yes. That can happen here too.

DR MUNDY: Is that what's happening here?

MS FAHEY (WLST): Yes.

DR MUNDY: How often does it happen?

MS FAHEY (WLST): We see it happen fairly often. The thing with the Commission is that they do make a small amount of money go a long way and they've modified things so that they can do that which is really good but, yes, basically for us what happened was we were getting calls from lawyers, both private practice and Commission lawyers, going, "Our client has been defunded." We actually had one private practitioner, from memory, who rang in. His client had been defunded two days before a full trial which obviously we couldn't do but what we were doing with any of those women was we would try and do something for them but our fairly strong policy is that, particularly with family law stuff, we try and make sure (a) people get off the referral roundabout, so once they get to us, if they've been to 10 other places then we don't try and just flip them on to someone else and we'll follow up and make sure that wherever we've got them going, they get help.

So for women described in that paragraph, basically it might mean that we were drafting affidavits for them. In one case Pauline drafted a number of affidavits and a number of court documents and then actually assisted a woman prepare to conduct a trial herself. That was actually a relocation matter. Part of the reason she lost her funding was because she had had to change - because of the family violence and everything, she did end up changing the orders sought to be able to relocate, so

that was why she couldn't then continue with aid. So we actually then assisted her with that and Pauline didn't appear at the trial but basically prepared her and helped her with the questions and ultimately she was actually successful in her application.

DR MUNDY: So in that, effectively, what we call in the report unbundling, did you appear as the solicitors on the court documents?

MS FAHEY (WLST): No. We prepared all the documents for her. We do that for a lot of people. We'll actually prepare the documents for them. Because of resourcing effectively we can't appear for everybody that we act for, so sometimes if we have a client that we go "Yes, you're actually quite capable of doing this or having a" - you don't want to see anyone doing a relocation application on their own. Even lawyers don't like doing those because they can go any way. They're complicated but basically we talked about the unbundling and some of the issues that had arisen from people in other states and frankly CLC is unbundled stuff all the time. I don't think much is bundled. We prepare documents for people. We'll do affidavits for someone if they're coming in really all they need is - it might be that they seem like they've got it nailed but they need a trial affidavit or they need the case summary or something like that and we'll help them with that or we might write a few letters for them.

Sometimes we will actually write letters for clients who are trying to negotiate something themselves. The introduction of a lawyer or legal letterhead is actually - for example, I was helping someone with a property division the other day. On merits I could have sent a letter to the other party but they were really feisty, quite unstable and in a not good place at the moment, and the introduction of the piece of legal letterhead would have been a really big red rag to that bull, so I wrote the letter from my client to them and I wrote it in language that wouldn't look like a lawyer had written it for her, so that they could keep negotiating and actually have a bit of control over it without actually escalating it.

DR MUNDY: It does appear that the legal assistance sector broadly defined quite happily unbundles [indistinct] every day of the week. It's put to us that the contrary argument is, and you still have to have legal indemnity insurance and you're still liable to being hauled up before a judge and then asked - - -

MS FAHEY (WLST): Absolutely.

DR MUNDY: Is it your experience (a) that you suffered from insurance problems or (b) that you get hauled in by judges saying, "What's all this about?"

MS FAHEY (WLST): No. Look, the thing for us is that in the community legal centre sector we have a pooled scheme. I'm not sure if anyone has told you about that but basically we would pay less for our four solicitors than we would for one

person.

DR MUNDY: Yes.

MS FAHEY (WLST): And because of that, we have to go through constant cross-checking and audits and do training and all sorts of things that private practice just doesn't have to go - - -

DR MUNDY: Yes, and the insurers when pulling all the risk of a community legal centre knows they do this and, "This is the risk I'm pulling on, so - - -"

MS FAHEY (WLST): Yes. Probably realistically, with the rigorous stuff that we have to go through, including all the accreditation that we are now having to jump through, we constantly have people checking what we are doing which you just don't even have in private practice. Basically we are actually a much lower risk, even though we probably at times do higher risk work. We are a much lower risk on an insurance basis. Basically we are because of our scheme.

The other thing that I think is important to look at though with unbundling is that it is not a matter of someone just coming in to me saying, "I need an affidavit for this. Can you fill it out?" I will talk to them about their whole matter and then I will identify what other issues might arise from that because most lawyers get into trouble for the advice they don't give, rather than the advice they do give.

DR MUNDY: I suspect most people don't know what an affidavit is when they walk in the door.

MS FAHEY (WLST): Exactly, yes. Basically I won't just sit down. You know, if someone comes in and says, "I need this", I won't just do that. I have to look at the matter, what is going on, where does that sit, is that the most appropriate course of action? While you're unbundling it because you might just do one part of their action for them, you still have to give full legal advice. You still have to be apprised of everything that is going on in there and you have to be confident that what you are doing is the appropriate course of action. We are not just scribes or someone there - you know, we are not overly qualified secretaries basically.

Provided people adhere to what they are ethically required to do and they follow their legal professional responsibilities, doing bits and pieces for people is okay and certainly in our service we have a requirement that we run obviously not only to the requirements of a lower insurance scheme but we run like a law firm in how we do that. Part of that is because a lot of the practitioners who start with us, it might be their first job so they have to get that grounding from the very beginning. "This is what you must do. This is what you must not do. There are lines that you don't cross." That comes with the unbundling stuff as well.

We hold everyone in our service to an exceeding high standard because (a) just because a client can't afford a lawyer doesn't mean that they should have a substandard experience with a lawyer and (b) frankly the community legal sector pay is awful so there comes a time when people want to move on. I don't want our service to have a reputation of turning out dud lawyers, not that I want people poaching our lawyers but we want lawyers who people would quite willingly say, "Actually, we have got a spot. Let's pick her." Unbundling is fine and doing bits and pieces for people is fun but you still have to give them the absolute full amount of advice and you have to be sure that it is the right thing. I don't have time to be someone's secretary quite frankly.

DR MUNDY: I am afraid we have run out of time.

MS FAHEY (WLST): That is all right. No worries.

DR MUNDY: Thank you very much for your submissions and taking the time to come and speak to us.

MS FAHEY (WLST): Thank you for hearing me.

MS MacRAE: Thank you.

DR MUNDY: Could we please have the Legal Aid Commission of Tasmania? For the record, could you state your name and the capacity in which you appear please?

DR HILL (LACT): My name is Graham Hill and I am the Director of the Legal Aid Commission of Tasmania.

DR MUNDY: Thank you, Dr Hill. Could you perhaps make a brief - and by that we mean no more than five minutes - opening statement? Then we will take you through some questions.

DR HILL (LACT): Certainly. Thank you for the invitation to come today and speak to you. First of all, I would like to congratulate you on the draft report that you have produced. As far as legal aid commissions go, which is the only thing I would comment on, I thought it was very fair, accurate and thorough and I wouldn't seek to change a word of it in respect to legal aid commissions.

I have been in this role since 28 January this year so I am relatively new and don't bring a huge corporate memory to the hearing today, although being new has its advantages because I have obviously done an audit of the place and had a look around it.

The hearings being in Hobart today, I did want to make the point to you when talking about the legal assistance sector in Tasmania that Tasmania, as it is often said, has lower than average socioeconomic status. That is I think a profoundly important point - that Tasmania has the lowest income, the highest unemployment, the lowest literacy and the least education. I am told that the mean household income in Tasmania is 26 per cent below the national average; that 31 per cent of people in Tasmania are [indistinct] living on government pensions and allowances; that unemployment is frequently around 8.4 per cent which is one-third higher than on the mainland. That has a flow-on effect in terms of the need for the legal assistance services in this state and it has an effect on some other issues too, so juniorisation of the profession which has been raised in other states is not a problem down here. Getting private lawyers to act is not a problem down here.

The Legal Aid Commission of Tasmania has six staff spread over four offices: Hobart, Launceston, Burnie and Devonport. Like all legal aid commissions, we give advice and information, and we do representation. On information - - -

DR MUNDY: Did you say six staff?

DR HILL (LACT): No - 65 staff.

DR MUNDY: Sorry. I thought you said six. I thought: you need to talk to the CLC.

MS MacRAE: It did sound like six.

DR MUNDY: I have a bit of a hearing impairment, so forgive me, but I just wanted to make sure.

DR HILL (LACT): It was probably my desire to squeeze into the five minutes. We give information, advice and representation, like all legal aid commissions. In terms of information, 340,000 people look at our web site and get a push in the right direction. We do about 150 community legal education events a year that reach 3000 people. In terms of advice, we take 22,000 calls or our lawyers take 22,000 calls for advice. They see 4600 people a year face to face. We do 2400 duty lawyer services at the courts and in terms of representation, somewhere between 6000 and 7000 grants to new clients each year.

The Legal Aid Commission of Tasmania has some islands of absolute excellence and I can't take the credit for them because I am too new but in terms of grants, National Legal Aid says that where somebody applies for legal aid, the application should be determined by the commission within five days. No state in Australia meets that five-day benchmark. Tasmania does it in about two hours.

National Legal Aid says where private lawyers render a bill, it should be paid within 14 days. Again no state meets that benchmark. Tasmania does it the next working day. The National Legal Aid benchmark is that the administrative of grants shouldn't absorb more than 5 per cent of the total value of grants. Again no state meets that benchmark. I think the best state is at 9 per cent and the others are in double digits. Tasmania is under 4 per cent. That is done because of fantastic IT that the Legal Aid Commission has.

Our family dispute resolution is also another island of excellence. We do about 500 cases a year. These are high conflict disputes over children's issues in family law. We do about 500 a year with a 93 per cent settlement rate which is very, very high by National Legal Aid standards. Family Court judges in Hobart have told me that their court would fall over without all of those cases being settled.

In terms of civil matters, our lawyers will give telephone or face-to-face advice to people on any civil matter. We have a minor civil assistance scheme where we will act for people, do an occasional appearance, write letters - all of those sorts of things for contractual disputes or motor vehicle property damage, those kinds of things. We have a small consumer credit service that helps people who have difficulties with loans and mortgages and of course we have a civil disbursement fund. Where private practitioners want to run a personal injury case for people but can't afford to pay the out-of-pocket expenses for medical reports out of their overdraft, they can apply to the Legal Aid Commission and we have a scheme for

paying those out-of-pocket expenses and recovering them when the case is successful. We have done 700 of those over the last few years. I think that's probably enough for the five minutes.

DR MUNDY: Thank you for that. Can I just ask you; you mentioned a civil advice service. Does that extend only to individuals? Would it extend to small businesses?

DR HILL (LACT): It would be to individuals in the guise of small business.

DR MUNDY: So if I am a small business person, I come in and I have got a problem with someone else, you are not going to inquire whether I'm a sole trader or whether I'm incorporated necessarily and turn me away on that basis.

DR HILL (LACT): No, so in terms of telephone advice, there would be no means test at all. They would give it anybody who phoned up. In terms of acting for someone and writing letters and helping with documents, those sorts of things, there is no strict means test. It's left to the discretion of the lawyer but - - -

DR MUNDY: I haven't thought about this, commissioner, as an entirely reasonable answer to this question. Would you think because there is no small business commissioner in Tasmania, the place that people turn for the advice that might have been provided by such a body in every other state other than Queensland, some of that work might come to you?

DR HILL (LACT): I don't know but I would imagine that is correct.

DR MUNDY: The Commonwealth is re-prioritising the focusing of its expenditure on legal assistance matters. We have heard about how it has impacted on Women's Legal Services Tasmania. Have these recent decisions over I guess the last nine months or so had any impact on your organisation?

DR HILL (LACT): You are referring to the announcement in the federal budget.

DR MUNDY: They would be them.

DR HILL (LACT): For the Legal Aid Commission of Tasmania, I think it's \$444,000 that we were promised and anticipating that we were getting we now won't be getting and that money was earmarked to fund independent children's lawyers in more complex cases. It was earmarked for family dispute resolution which, as I said in my opening, is a very successful program. It was earmarked to expand that and it was also funding the consumer credit service that we provide, so in the absence of that money, our starting money would be to scale back those three things to the extent that it was funded by the Commonwealth for the next financial year.

DR MUNDY: Doctor, would you describe those as frontline services?

DR HILL (LACT): Yes, absolutely.

DR MUNDY: Were you consulted by the Commonwealth about the impact of these proposed funding cuts before they were announced?

DR HILL (LACT): I have been in the seat since 18 January and, no, I wasn't and I don't believe my predecessor was.

DR MUNDY: I want to think about this for a moment. Commissioner MacRae.

MS MacRAE: I would just be interested, given the difficulties that are present in Tasmania, and I assume you have got a lot of pressure on your resources on the criminal side of things, how you manage your budget in terms of what goes into civil law and from the introduction, it sounds like you do a little more civil law than some of the other legal aid commissions. Internally with your budgeting, how do you sort of work out what resources you have available for civil law and what does that mean for your means test and your eligibility criteria?

DR HILL (LACT): Well, I suppose our starting point is that we don't do a little of civil and our starting point is that we want to maintain the profile that we have and not go backwards in that, so as we create our budget each year, we would try and build around that. You know, our advice and community education team, who take the phone calls and do the face-to-face advice, we want them to keep operating without a means test and do civil matters and we will maintain that for as long as we can possibly afford to and consumer credit will take a hit and contract - - -

MS MacRAE: We heard quite a lot, just some of the case studies we have had, how some of those consumer and credit issues can look small at the beginning but then can escalate into matters that might even turn criminal, where people find that they can't pay bills and then they're actually sort of imprisoned down the track or they might be driving unlicensed, those sorts of problems. Are you aware of that sort of escalation happening in - - -

DR HILL (LACT): The anecdotal evidence is that there's huge flow-on effects from not addressing them, that they impact on other government services and that someone losing their home, it can have a flow-in effect in terms of mental health, in terms of proper care for children, domestic violence, in all sorts of areas, so I think there is a lot to be said that's addressing these issues before they escalate, while they are still small cracks rather than a complete disaster.

MS MacRAE: Would that be one of the driving factors where you do get extra resources, trying to focus them in that area?

DR HILL (LACT): Yes, definitely. I think there is a high return on the dollar. It's a most worthwhile area.

MS MacRAE: Just in relation to the funding, we heard a little previously from the Tasmanian share of the money. How do you see the allocation of funding between the states and would there be reforms there that you think are necessary? We had a little bit of a discussion about that with the West Australian Legal Aid Commission, who felt that they're being duded under the current formula.

DR HILL (LACT): It's relatively easy for Western Australia. Yes, they have been known to batter the Commonwealth, haven't they? When I go to National Legal Aid meetings with all the directors from other states, it's already pointed out to me how the smaller states like Tasmania get a larger per capita share than New South Wales and Victoria and so, you know, I don't think I would have anything more to add on that. Obviously, Tasmania has its unique problems and in terms of addressing need, it's quite appropriate for the Commonwealth to fund Tasmania heavily. As to whether the carve up should be done differently, I don't think I know enough about that to address you.

MS MacRAE: Does the CLC money come through you in Tasmania? Pardon my ignorance on that as well.

DR HILL (LACT): As I understand it, it does in terms of being the bank account. It comes to us. It goes to the CLC and then we are collecting data to report to the Commonwealth as to how it's acquitted. I think that's a fair way of describing it.

MS MacRAE: But you would regard yourself more as a post box than as a decider about how that money is distributed.

DR HILL (LACT): That's right, yes.

DR MUNDY: So do you sit down with the CLC sector and have a discussion about where the unmet need is, where the priorities are, make sure you are not overlapping? We heard some interesting models from the Victorians and Western Australians, who seem to be in a desperate tussle to prove who has got the better institutional arrangements, but is that something you do?

DR HILL (LACT): Yes, it is. You know, I have had a coffee with Susan and I think this month I attended the annual general meeting of the CLCs and had a talk to them. We value the relationship with CLCs and think they provide a complementary service to the Legal Aid Commission and we certainly have been talking quite recently about coordinating in community legal education, to make sure that what our people are presenting on works in with what the CLCs are doing in those areas.

DR MUNDY: So there is no sense in which institutional reform is required to prevent unnecessarily duplicational overlap, in your view.

DR HILL (LACT): I don't think there is any real duplication with CLCs. I think they do things differently, have a different client base to the legal aid commissions. From my vantage point it seems they provide an important safety valve out there in dealing with people who would fail our means test, but yet are still under the poverty line; so I think they play an important role there. I think the development of legal aid commissions and CLCs developed side by side in the early 1970s, I'm old enough to remember the movements behind each, there's just different historical reasons for them and they are different creatures.

DR MUNDY: We had a discussion with the previous witness about their submission, and I don't know whether you were here when we discussed it, but I will just read you the paragraph that's relevant, it's on page 8 of their submission.

As funding from LACT became more restricted there were significant numbers of women seeking assistance from our service -

that's the Tasmanian Women's Legal Service -

who, whilst eligible for grants of aid were unable to obtain them due to a lack of funds at the time of their application.

I guess that the question that that begs is that during the course of the year do you have to modify your criteria in the event of availability of funds. Is that a regular occurrence and, if so, how many people does it affect?

DR HILL (LACT): You are asking me how frequently we would change our - - -

DR MUNDY: Yes, and I guess my next question is on 1 July in the subsequent year did your eligibility criteria return to where it was?

DR HILL (LACT): Yes. We track our budget daily, weekly and monthly as to how we are going, you have to in grants to keep track of it, and where we were exceeding budget usually the Board of the Commission will impose a guideline. Last year they said we would no longer, for example because we were overspending, they said we would no longer represent people who were charged with breach of suspended sentences. When the budget corrected itself a couple of months ago, I think in February, they reinstated, they removed that restriction; so they do change from time to time.

DR MUNDY: I guess my interest is particularly in relation to family law matters,

because essentially that's all we had spent Commonwealth money on, because I don't imagine you have much customs-related crime and stuff in Tasmania, so I guess the concern, and we have heard issues in relation to Victoria, where women have to represent themselves in court and be cross examined by those who allegedly have perpetrated violence against them, is that a regular occurrence in Tasmania?

DR HILL (LACT): I don't think I could answer that.

DR MUNDY: I guess a better question is, is your need to restrict access to aid typically not in relation to Commonwealth matters?

DR HILL (LACT): I put it this way, in Commonwealth matters we always fund independent children's lawyers where the court requires there to be one; so we have got complete coverage there.

DR MUNDY: They are first cab off the rank?

DR HILL (LACT): That's right, and then where there is an urgent need to recover children or a child, or a parent has urgent need, I think we cover that all of the time, and then I think when you have one parent who is unrepresented and the other parent has representation and is seeking to change the orders that are in place, we cover that as well. After that it starts getting patchy, so opposing a relocation to another state, we might or we might not - - -

DR MUNDY: So if a man appears unrepresented in a matter which the - the fact that the male might be unrepresented would be a contributing factor to the decision to ration legal aid not in favour of that woman?

DR HILL (LACT): That's right, yes.

DR MUNDY: Okay, thank you.

MS MacRAE: Can I just ask, we have heard various evidence on how self-represented litigants impact on court processes. You have some duty lawyer services that you fund, and I'm wondering if you could just talk about how effective you feel they are in helping self-represented litigants and whether you see the extent of self-represented litigants in the courts in Tasmania as a problem or otherwise.

DR HILL (LACT): Yes, I think self-represented litigants have certainly been a growth industry over recent years, and I think it's now up to about 30 to 40 per cent of all matters involve self-represented litigants. We regard them as the norm, if you like. They are here to stay. It's not a passing fashion, and it's quite clear the evidence from the courts is that it's a major drain on court time. The courts are trying to appear impartial in a dispute before it but yet the judge has to go to extraordinary

lengths to assist a self-represented litigant and get them through, so it's an uncomfortable situation in an adversary system, so we do have duty lawyers in state matters. Certainly, at the Magistrates Courts we have duty lawyers, and in the Family and Federal Courts, Launceston and Hobart, we have coverage with duty lawyers. They are in an office at the court and they will see and help a dozen or so people on a sitting day, and I'm sure it makes a big difference in telling people what to say, how to frame things and what's relevant and what's not.

MS MacRAE: Do you think that's a service that's under stress in terms of - are they able to service the client, given that there's an increasing number of these?

DR HILL (LACT): It's something that we spend a lot of time talking about. First of all, I think that the duty lawyer service should be expanded, and I'm dearly searching for ways that we can do that, to reallocate resources. I think within our existing resources we probably should tip more into that area. I think the returns in terms of public value are very high, and we need to look at that. Self-represented litigants generally is something that we are talking about all the time. I think that they have, as we say, they have come about, crept up on us and they are [indistinct] at 30 to 40 per cent; they're here to stay, and I'm not sure that legal aid commissions around Australia are necessarily configured to meet the challenge, and I think in terms of do-it-yourself kits and duty lawyer services and YouTube style things on our web site to tell people what they can expect at court and where they might have to go and those sorts of things. There is tremendous opportunities for us to meet that challenge, and that's something we really are intending to do in the next year or so.

MS MacRAE: In terms of how the courts are set up, we have heard it from at least one magistrate, that he felt that the court itself should be set up to cater for self-represented litigants and that, ideally, that court should be accessible for someone who does have to self-represent. Would you see that in Tasmania as a sort of a reasonable expectation, that in the lower-level courts self-representation should be regarded as something that should be able to be accommodated?

DR HILL (LACT): I think there is little choice but to move in that direction.

MS MacRAE: Are we getting there, or do you feel like it's getting - I guess we have heard various evidence about how even some of the tribunals have become more legalistic and that it is becoming harder for a self-represented person to appear in some of those venues when, really, the founding of some of those tribunals was that they should be easy and accessible to people on a self-represented basis. Do you see those sorts of problems of what we have described as creeping legalism as a problem anywhere in Tasmania?

DR HILL (LACT): I'm probably not the best vantage point to judge that, so no I don't. I hate to admit it, but I think the courts have actually led the way on

reconfiguring for self-represented litigants. They do have a coordinator and they have committees of magistrates and judges that look at the forms and work through them in changing forms and rules, so that they are easier for people, they don't have to draft pleadings and things like that. So I think they're down the path - - -

MS MacRAE: Right, okay.

DR HILL (LACT): - - - for that way.

MS MacRAE: Thank you.

DR MUNDY: In respect to unbundling of services, how do you deal with the particular challenges of people suffering some form of disadvantage, or some sort of disability? Do you provide training for your duty solicitors in dealing with people who have special needs?

DR HILL (LACT): No, we don't. Certainly our guidelines for granting of legal aid requires grants officers to take that into account, and so although we talked about, you know, cabs off the rank and priorities before, it's common for people to leapfrog up that if someone has special needs and - - -

DR MUNDY: So your criteria are about matters, but there are also - - -

DR HILL (LACT): yes.

DR MUNDY: - - - characteristics of the individual, and then we might call them economic criteria as well.

DR HILL (LACT): Yes. So, you know, if a grants officer forms a view that someone has special needs and they really can't go to court unrepresented, then they will - - -

DR MUNDY: Move up the list.

DR HILL (LACT): - - - certainly meet that, yes.

MS MacRAE: One of the things we heard, I think in Victoria, was that it wasn't so much the hourly rate that was a problem in funding private lawyers to do legal aid work, although there is an increasing gap between, you know, private fees and what's paid under the legal aid fee rates, but time taken for particular cases was a particular issue. So, as I say, they weren't so much concerned about the hourly rates, but more about the time that it was assumed a case would take, and that they felt that there was an undercutting there of the time that was really required to adequately service a case.

We heard from the disability advocacy services that part of the problem for them in legal aid funding is that often if a person has a disability of some form, that it will necessarily take a longer time to be able to service that client effectively because you might have an interpreter, or someone is having to really translate what the lawyer is saying into language that someone with, say, a mental impairment can understand. Is that also an issue that you would have here?

DR HILL (LACT): I don't think so. I think, you know, private practitioners apply for legal aid and would say what they feel they need for a particular matter, and the grants officer would assess that and make the grant accordingly. Clearly nobody is getting rich out of doing legal aid work.

MS MacRAE: No.

DR HILL (LACT): There's plenty of evidence that it's very low remuneration for private practitioners compared to other work. Having said that, we don't have any difficulty in getting private practitioners to do work. The profession has just been excellent in that regard, and the juniorisation in family law that's often talked about in mainland states, that's not been our experience here. Some of the most senior practitioners will do hearings, legal aid hearings in family law, and the independent children's lawyers are all - all of them are very experienced and capable practitioners.

DR MUNDY: You indicated that, unless I misunderstand you, was that if a matter comes up, the private lawyer will actually have a discussion with one of your officers as to presumably the length of time, the complexity, and then there will be an understanding reached about what the appropriate remuneration for that work is.

DR HILL (LACT): That might happen. I don't think that happens as a routine though.

DR MUNDY: Because what we understand and what was put to us by Legal Aid Victoria was the problem is not the rate, the problem is what the rate is applied to, and they didn't give any sense that that was a negotiable sort of issue, that you were remunerated on stages of proceedings essentially. But what you're saying is your arrangements might in some cases be more flexible.

DR HILL (LACT): Yes, and the application for legal aid might say if the practitioner is to do a plea, it's to allow this many hours for it, and that the grants officer will assess that and say yes or less.

DR MUNDY: All right. I think we're probably just about out of time. Thank you very much for - - -

MS MacRAE: Thank you.

DR HILL (LACT): Thank you.

DR MUNDY: - - - coming along today. Our next witness is Mr David Barclay, but I'm wondering if we could perhaps take morning tea just now to facilitate the comfort of the commission? We'll adjourn for 15 minutes.

DR MUNDY: Could you, for the record, please state your name and the capacity in which you appear?

MR BARCLAY (LST): David Barclay, I'm the Vice-President of the Law Society of Tasmania.

DR MUNDY: Mr Barclay, would you like to make a brief five minute or so opening statement?

MR BARCLAY (LST): Thank you. I've been given by my Executive Director some notes touching the matters of most relevance and concern to the Tasmanian Society. Just as a preliminary, though, the Society is a small society. There's only 500 lawyers in private practice in this state who are members of the Society. The Society employs only an Executive Director and an Assistant Executive Director and some support staff, so given the breadth and size of the report, we have only touched those matters of direct concern. The first matter I did want to raise, however, is the issue of the definition of access to justice. I'm not sure whether oral hearings have taken place in South Australia yet, but - - -

DR MUNDY: Yes, they have.

MR BARCLAY (LST): You'll recall then, and I won't stay too long on the point, that the South Australian Law Society referred to the definition of access to justice. The Commission has defined that as making it easier for people to resolve their disputes. Now, obviously if one focuses entirely on the economic aspect of access to justice then that would be an appropriate definition, however it's not a sufficient definition to recognise the role of the justice system to the fabric of our society. Access to justice means more than making it easy for people to resolve their disputes. The court's an independent third arm of government, and the definition does not include that aspect of justice, and South Australia and Tasmania regard that as a substantial omission.

DR MUNDY: Mr Barclay, if I could just pause you there, our terms of reference bring us to the resolution of disputes. Those are the terms of reference which were given to us by the Assistant Treasurer, and I say with respect that if you read our definition in the light of our terms of reference, you will find it entirely consistent. There was certainly no intention expressed or implied to read down the role of the courts. So if you would like to continue, I just wanted to clarify that point because we are concerned with more than court-based resolution.

MR BARCLAY (LST): Certainly. I understand that. Thank you. The next thing I wanted to touch on is a matter that directly relates to Tasmania, and this was regarding information and advice at chapter 5.2. It's not true to say that Tasmania

doesn't provide a law firm referral service to the public. It does so in two ways. The Society's web site provides a referral service searchable by firm name and/or region and/or area of practice, and the Society regularly receives telephone calls seeking referrals. When it does, it provides three alternative names. So in that way there is a referral service provided by the Society.

DR MUNDY: That may have been an oversight on our part.

MR BARCLAY (LST): Thank you. Following that, chapter 5.3, the draft report dealt with the appropriateness of sources of advice and considered the issue of a one stop shop. The Society strongly supports a one stop referral service, so long as, of course, as it is properly resourced. One of the issues that arises, of course, is that the family law particularly, being federal, there's a risk of duplication there, there's a risk of duplication for AAT matters and the like. So the one stop shop I hear of course, properly resourced, will result in savings as its costs increase, in our view, with access by members of the public to that assistance, and of particular note of course is the comment in the draft report that people rarely go to more than one service.

Chapter 6, costs and in particular disclosure, the Society would like to point out that our Legal Profession Act Part 3.3 contains 59 provisions dealing with cost disclosure. We're obliged to disclose costs at the start which includes the obligation in litigious matters to provide advice as to consequences of costs if the client was to lose and what the likely quantum of those costs would be. We're obliged to update our clients continually during the course of a matter when anything arises which may affect the initial costs estimate. We are obliged to provide written advice as to costs prior to mediation, and we are obliged to provide cost estimates and consequences prior to trial. In Tasmania we submit that that is sufficient to enable our clients to be fully informed in respect to costs. There are significant sanctions for failure to comply, not least of which is that you will not be allowed to rely on any costs agreement and you will only be allowed to have costs taxed at the Supreme Court rate which as a general rule is somewhere between half and two-thirds of what a costs agreement hourly rate would be.

DR MUNDY: That sounds much more comprehensive than other jurisdictions.

MR BARCLAY (LST): Yes. The answer to that I think is being a small jurisdiction people are more prepared to complain and a huge area of complaints - the Law Society used to deal with complaints - was the issue of costs and so I was determined that - "Let's fix it," and we think we have. There are still complaints of legal professional indemnity costs but - - -

DR MUNDY: If there are any materials that you could provide us which set out that other than direct reference to the Act, that would be most helpful to us.

MR BARCLAY (LST): I will just make a note of that and I will cause that to happen. Moving on perhaps to more important matters, the Society supports the recommendation insofar as it relates to dispute resolution. In Tasmania for many years there has been alternative dispute resolution. Initially it was informal. I have been around long enough to know that there was a huge backlog of cases for our compulsory third party insurer for personal injuries and it determined that it would mediate all actions over a certain age. I think it was three years.

The effect of that was that it settled a whole lot of matters and at that time there were no ADR rules, there was no ADR Act. It's just that they did it. It worked so well that it became the norm rather than the exception and then of course the ADR Act [indistinct] 2001 came in. Our Supreme Court won't allow a matter to go to trial until there has been an attempt to resolve the matter by way of mediation. In Tasmania the society submits that ADR is simply part of the legal landscape. In respect of the tribunals, the society has a concern obviously, being a union for lawyers, with the proposition that - - -

DR MUNDY: We will quote you on that but your honesty is both refreshing and welcome.

MR BARCLAY (LST): Thank you. I don't know where to go with that. The point is that - it was touched on slightly by the previous speaker - in Tasmania we find that those who appear in tribunals have special knowledge of the tribunal in which they appear.

DR MUNDY: Yes.

MR BARCLAY (LST): Tribunals that require leave - and I'm thinking particularly of the Fair Work Commission - will only grant leave where the practitioner in this state is going to be of assistance. Because the practitioners as a general rule have specialised knowledge of the tribunal, they appear and the Society's position is that it in fact aids resolution rather than is a barrier to resolution. We identify the issues, the actual issues in dispute and very often the matters are resolved in a much shorter and therefore cheaper way for the clients.

DR MUNDY: Given we are having a bit of a chat as we go along, our principal concern in that regard is there are a number of tribunals; I'm not familiar with the Tasmanian ones particularly but I suspect - they're not here but there are lists within places like VCAT where the procedures and the matters have been specifically structured so that citizens can appear and represent themselves and the idea is that leave is provided if one - leave will be provided to a party if they're disadvantaged in some way.

MR BARCLAY (LST): Yes.

DR MUNDY: That may well be because one of the participants has some sort of impairment or disability. It may also occur because an ordinary citizen appears up against a real estate agent who appears in the tribunal four times a month.

MR BARCLAY (LST): Yes.

DR MUNDY: So that was more our concern and what's being put to us is that in those - that's what leave has been provided for. The concern that's being expressed to us by tribunal members and presiding judicial officers in tribunals is that there does appear to be leave being granted more regularly and in perhaps less meritorious circumstances.

So that's what we were actually trying to get at because the concern was it was leading in some cases to lawyers talking it out and frustrating the purposes of the tribunal to seek a speedy resolution, although no lawyers were named and no cases were mentioned, but also it was leading to an imbalance in as much as that the represented party was perceived in some cases to have an advantage where the point was actually to address the disadvantaged.

MR BARCLAY (LST): Yes.

DR MUNDY: That was what leave was meant - so that's what we were - we weren't trying to suggest that no-one should ever be represented.

MR BARCLAY (LST): No.

DR MUNDY: But we do appreciate the point that you make.

MR BARCLAY (LST): It seems to me at least that there are leave provisions and it may well be that the tribunal is not having regard to the threshold that has to be got over.

DR MUNDY: I suspect that might be the problem.

MR BARCLAY (LST): Certainly that's not the case in the Fair Work Commission.

DR MUNDY: Yes.

MR BARCLAY (LST): Regularly you get knocked back there. In other tribunals in this state, if only one party is represented, that representation won't be allowed as being unfair.

DR MUNDY: Yes.

MR BARCLAY (LST): Coming from the legal profession, we turn up, we apply. If we get leave, we're in.

DR MUNDY: Yes.

MR BARCLAY (LST): If we don't, well, so be it.

DR MUNDY: Yes.

MR BARCLAY (LST): So really it may well be that the error stems from the way in which the tribunal have been exercising their discretion. I did want to say something about the costs recovery for court fees. That's the very next area, because it seems to me that it has got to be a barrier to entry. If a litigant or the losing litigant has the prospect of being responsible for paying substantial court fees, that of itself might be a barrier to a claimant making an otherwise meritorious claim. We regard the suggestion that higher fees are charged or that there's a real cost recovery as being flawed. The Society doesn't know of any other essential public service where the costs of providing such service are fully recovered; the government cost of providing health care services isn't, neither is education, neither is the cost of registration in respect to the costs of roads and road-building and no doubt there are other examples.

DR MUNDY: But there are contra examples, aren't there, Mr Barclay; for example, water, sewerage and drainage, the Therapeutic Goods Agency, the Civil Aviation Safety Administration, the provision of air traffic management services to make sure that people are safe when they fly. So I can list any number of full cost recovery essential public services.

MR BARCLAY (LST): Yes.

DR MUNDY: This Commission would be of the view that it is a failure of public policy that roads aren't better cost-recovered and we have recently produced a report. So I don't think the fact - I think it is simply not a statement of truth that no public services that are essential are fully cost-recovered.

MR BARCLAY (LST): Yes. You have to look at the type of area in which you're dealing. I would suggest that the legal schemes are more like the health case scheme because you may have very disadvantaged people and you often do. It's not the case that somebody is jumping in an aeroplane, paying a whole lot of money for an air ticket. It's a matter of choice.

DR MUNDY: I'm sure that the people who are resident on King Island don't think getting on an aeroplane to access their essential hospital services is a matter of

choice.

MR BARCLAY (LST): That's true but there's not full cost recovery for them in respect to health services.

DR MUNDY: The cost of the provision of the oversight of the Civil Aviation Safety Authority with respect to the safety of that aircraft is fully cost recovered. I think the real point is this: as you do note, matters such as the Bell Group litigation in the Supreme Court of Western Australia - which His Honour Chief Justice Martin told us last Friday cost that court \$15 million. He advises us the court might have recovered \$700,000, so let's call it a million.

MR BARCLAY (LST): Yes.

DR MUNDY: So \$14 million of the taxpayers' money of Western Australia was provided essentially for a dispute between banks and insurers.

MR BARCLAY (LST): Yes.

DR MUNDY: The more relevant fee, rather than having a debate around fact and the classification of essential public services and issues around chapter 3 of the Constitution - I think the better question is to say this: we charge court fees for some matters; we waive people for others. Our motivation for going down this path was actually to try and identify sources of revenues which could be put to work in improving the services and facilities provided by the courts.

I guess the more useful basis of discussion is in what circumstances should court fees be set, and in those circumstances how. To be fair to yourself and others, none of you I think are claiming that the Bell litigation, C7 or any other of those matters should have been free.

MR BARCLAY (LST): No.

DR MUNDY: So if the answer is they shouldn't be free, how do we go about that, because particularly in a lot of monetary-based disputes - let's think about commercial disputes - there is an alternative available in the vast bulk of matters for these to be resolved without the courts. They can be resolved by mediation, for which mediation fees must be paid.

MR BARCLAY (LST): Yes.

DR MUNDY: Part of what we're concerned about is that we have a fee for service dispute resolution system that's provided privately and when I worked for major corporations, every contract that I advised clients on for aviation service provision

had three pages at the back about binding dispute resolution, so it happens, so how do we set fees for those sorts of matters so that the matters that really do need to go to court which involve the establishment of precedent and all those things which we acknowledge in the report - how do we ensure that we get the ones going there? That's what we're trying to get at.

MR BARCLAY (LST): Yes.

MS MacRAE: Just as importantly, I guess, the ones that don't need to go there - - -

DR MUNDY: Keep them away.

MR BARCLAY (LST): Yes.

DR MUNDY: Because we're not talking about people's fundamental rights.

MR BARCLAY (LST): No. As you note, arbitration is becoming more and more and more prevalent and that certainly is user pays.

DR MUNDY: Yes.

MR BARCLAY (LST): The difficulty is, you're quite right, how do you set the criteria? I expect that those who would be entitled to a grant of Legal Aid would have fees exempt, perhaps subject to assessment at the end.

DR MUNDY: Yes, but these aren't the big money matters - - -

MR BARCLAY (LST): No. The Federal Court charges more for a corporation than it does for an individual. Perhaps prima facie one starts with that proposition that if you are a corporation litigant, particularly listed - - -

DR MUNDY: Yes, it raises some little issues. I mean little issues at the bottom between sole traders and small - - -

MR BARCLAY (LST): Quite.

DR MUNDY: But you can fix that.

MR BARCLAY (LST): I guess what we'd be concerned to ensure is that capacity to pay and barrier to entry is taken into account in whatever scheme is come up, but certainly, as you point out, we are more than comfortable with the fact that large publicly listed corporations should pay. Whether they pay the \$15 million is another thing.

DR MUNDY: But certainly more than \$700,000.

MR BARCLAY (LST): Absolutely; and that the individual who has a genuine grievance who needs access isn't excluded.

DR MUNDY: Can we just explore that a bit more because, I mean, we're not going to be able to set scales in every court in the land, but I guess what we would like to be able to try and do is make some recommendations about the sort of issues or things that people sort of think about. Obviously there are certain matters which we simply - the fee might be nominal.

MR BARCLAY (LST): Yes.

DR MUNDY: Let's forget about immigration appeals and all that sort of stuff, but in what we might call commercial matters would a reasonable set of criteria be the characteristics of the litigants, whether they're large corporations, individuals, small businesses?

MR BARCLAY (LST): Yes.

DR MUNDY: The size of the matter in dispute, because we obviously don't want trifling matters being brought to court. The fee should reflect what's on the table.

MR BARCLAY (LST): Yes, in commercial matters, absolutely. Yes.

DR MUNDY: Yes, and whether there is any particular public interest in the litigation. Are there really points of law that need to be resolved here for the benefit of others or is it just about the application of the existing - that would be a matter I suspect that only a judge could form a view about.

MR BARCLAY (LST): Yes. You might even need to have some sort of system whereby a registrar or somebody looks at the pleadings once they're closed and says, "Righto, this is going to be - - -"

DR MUNDY: And give the parties some forewarning rather than find out at the end.

MR BARCLAY (LST): This will be your first filing fee.

DR MUNDY: Yes.

MR BARCLAY (LST): We're back in the dark ages in our Supreme Court; \$650 and that's it for filing of a writ. There's no hearing fees, there's no nothing, just a simple filing fee.

DR MUNDY: So a typical commercial matter within the Supreme Court of Tasmania, bearing in mind it doesn't attract the very large commercial cases that perhaps the courts in Sydney or Melbourne, and to a lesser extent Perth and Brisbane - what do you think would be reasonable?

MR BARCLAY (LST): The first question is are we really going for full cost recovery or are we going for a reasonable contribution towards the cost of access to justice, because if you go for full cost recovery do you divide the judge's salary by the number of sitting days and say, "Right, there's \$5000 a day, \$2000 for the court, that's seven a day."

DR MUNDY: There are lots of statutory utilities regulators who perform an almost identical exercise. If we're talking about the resolution of commercial disputes only - - -

MR BARCLAY (LST): We would have a problem, I think, in this state because of the size of the litigation in a full costs recovery.

DR MUNDY: Yes. In a commercial matter that goes to the Supreme Court of Tasmania, are we talking about hundreds of thousands of dollars?

MR BARCLAY (LST): Yes.

DR MUNDY: Or a couple of million?

MR BARCLAY (LST): They tap out at probably two or three million, otherwise they go to the Federal Court or they're - in fact they usually go to the Federal Court if they're - - -

DR MUNDY: If they're corporations matters.

MR BARCLAY (LST): Yes.

DR MUNDY: But if they're a normal contractual dispute, they won't go to the Federal Court.

MR BARCLAY (LST): No, but speaking for where I work, we do a lot of construction work and of course that's arbitration. We do it because it's quick. I suppose there would be no reason that one ought not have regard to the fact that they could have gone to arbitration.

DR MUNDY: I was hoping you would get there.

MR BARCLAY (LST): And that this did get allowed, obviously, and that, "Well, that would have cost them X. Arbitration would have cost them \$70,000, \$35,000 each. Well, that might be a starting position."

DR MUNDY: Yes, because that has that characteristic of, "Well, you have made a choice to be here, not there, so don't expect it to be any cheaper."

MR BARCLAY (LST): That's right. Issues will arise if they have gone to arbitration first, of course.

DR MUNDY: Of course.

MR BARCLAY (LST): Yes, it's not without its difficulties, but I guess if we're having to look at guidelines and principles, we would say that you couldn't have full cost recovery in this state because of the kind of claims, and indeed the large corporations in this state are really state enterprise businesses or wholly owned statutory corporations.

DR MUNDY: Okay. We have probably belaboured that point enough.

MS MacRAE: One of the things you note in your submission is that there's no overarching obligations on the parties in this state and other states have that. Do you find that that's a problem here?

MR BARCLAY (LST): No. It's one of the consequences of being a small practice that we all know each other really well and you don't get away with it. Unmeritorious claims are soon weeded out. I would like to see - this is me, not the Society, but I would like to see the requirement to certify pleadings. We don't even have that requirement in this state. What I mean by that is to certify that the factual basis in the pleading is sufficient to raise a cause of action or a justifiable defence. Other than that, I don't see any difficulty arising in this state. As I say, we have 500 legal practitioners of which 100 probably do litigation. Of those, 30 would actually appear over the Bar.

DR MUNDY: How many people are at the Bar?

MR BARCLAY (LST): About 50, of which about 20 are active. So really it's a very small pool. We all know each other. We'll call each other if somebody is being silly. So at this stage it's not a problem.

MS MacRAE: But in relation to the sort of behaviours, if I can call it that, of government organisations, I note that you'd like to see the model litigation guidelines enshrined in legislation. Is that because you see that there's a problem with how they're working now and that's a frustration?

MR BARCLAY (LST): Yes. I think it arises from time to time with the Office of the Director of Public Prosecutions and/or Crown Solicitor. Unlike the Commonwealth, [indistinct] model litigants, they don't have an obligation to be, and we take the view that because they represent the state, that they ought.

MS MacRAE: Would you see that as extending to local government as well?

MR BARCLAY (LST): I think I'd better talk about that. I think yes. Yes. But I suspect they would take a different view because they've only got finite resources as well. At this stage, some of the councils are very small. 3000 rate payers, so they're tiny.

DR MUNDY: There's one in Western Australia with 42.

MR BARCLAY (LST): Well, I don't know how they have a good rate.

DR MUNDY: It has a land mass bigger than Tasmania.

MR BARCLAY (LST): Yes. I don't feel like I'm really able to talk about - - -

DR MUNDY: What about - I mean, the whole notion of the model litigant rules which effectively have legal force from the Commonwealth perspective, because they're in the legal services direction, the notion between a lot of rules is in part because of the power and the position of the state or the Crown, but also it's a reflection of the economic power of the state or the Crown. Obviously there are many pieces of litigation where say a person who has been denied an insurance claim comes up against a litigant which, for all intents and purposes, the relative economic positions of the parties is no different if they were facing the Crown as to whether they were facing a very large international insurer. Do you think that there's a case therefore to extend the expectations of model litigant behaviour to such private sector bodies, or is it in fact the peculiarity of the Crown that creates the obligation for model litigants?

MR BARCLAY (LST): I think it's the Crown. You've got to remember at the end of the day that corporations have shareholders to respond to and to ensure that they can attempt to make a profit. So they're big, but they're essentially not in the same position in my view, as the state. But what I can say though is I think the common law is going to catch up. I think it's only a short step until the common law says that corporations, particularly insurers have a duty of care to an insured when they refuse a policy. It was many years ago there was a case called Dixon which almost got there, but didn't.

DR MUNDY: Are you able to provide us with a reference to that?

MR BARCLAY (LST): Yes. It was a strike-out case, but I think it's *Dixon v CGU*, but I'll find that for you. So I think it won't be very long until the common law catches up and says - particularly with insurance companies, "You can't refuse a claim." I'll start again. "You've got a duty of care when you exercise your rights of refusing a claim." That might also extend to making available, if they accept part of a claim, that they've got to pay the money within a certain time, those sorts of things.

DR MUNDY: We note you don't support unbundling of legal services. We know that - in fact we've had evidence here today that in fact this is almost the modus operandi of legal aid commissions and community legal centres. Given that these folk are - they're admitted in the same way as private practising solicitors are, they've got the same duties to the courts, they may have slightly different indemnity insurance arrangements because they may be self-insured by the state or they're part of the pool scheme that was described to us earlier. Why is this? It clearly isn't an ethical question because otherwise people like the Tasmania Women's Legal Service wouldn't do it, because they're highly ethical practising solicitors. So what is - is it just the insurance question?

MR BARCLAY (LST): I think that's right. There's also the issue of protecting, as much as a private practitioner can, your client's interests. We take the view that it's easier to do that if you have a hold of the matter. Very often matters are really - sorry, some matters aren't - don't go in steps as often - so for example, where we have grant of legal aid - we don't have civil grants in this state, so as - we accept the disbursement fund as I understand it. So you get a grant of aid to investigate and report. Well, that's really a discrete issue. Then you might get a grant of aid to do a plea of guilty, or you might get a grant of aid to do a hearing.

They're separate steps, but often in commercial matters and personal injury cases, there's - you don't have those steps so much. So the practicality of doing it is also difficult, and there'd be the position on the lawyer to make sure that the retainer is properly expressed, because of course at common law your retainer is the entire retainer to produce the end result.

DR MUNDY: Let's just consider this hypothetical situation: I come along to you. I hold any number of degrees, I hold statutory Commonwealth office, I'm clearly, at least in my view, a competent person. But I've got a problem with my builder. I've got to lodge these documents in the court, I've got - you know, I'm happy to run it myself, I reckon I can argue the law around the track. I'm confident about that, but I just need you to help me with this thing called pleadings because they didn't teach me that in my economics doctorate. So these things called pleadings, I'm happy to pay you for your time, more than happy to do that. At the moment that would be something you wouldn't think was reasonable?

Because what we're concerned about in very many matters is that, as we know, civil legal assistance is not available, and the only thing I might need to access the courts and get justice is a bit of help which I'm happy to pay for which I can't get from Legal Aid and frankly I probably don't want to tie their people up on the helpline, but at the moment that's very difficult for me to get unless I've got a mate who is a lawyer, which sadly I do.

MR BARCLAY (LST): In those circumstances I don't think the difficulty arises.

DR MUNDY: But we're concerned about your duty to me in that circumstance.

MR BARCLAY (LST): Yes, and our other duty, because it's a big question. It's not really just settling some pleadings to make sure they read properly.

DR MUNDY: No, I understand that. Yes.

MR BARCLAY (LST): I need the evidence, I need all of this stuff, so it's going to cost you \$15,000 just to do that. It's another not very much to go and do the rest or whatever it is, but it does present those sorts of problems because to protect ourselves, it's quite a big task.

DR MUNDY: If the parliament was to help - I mean, I accept this is essentially largely common law issues and people get hauled up by the Bench which we have on evidence now doesn't seem to be an issue for legal assistance lawyers, but we have heard stories about private practitioners being pulled up in all sorts of matters to explain dodgy pleadings and things. If the parliament was to provide some clarification around these issues rather than wait for the common law around lawyers' duties to develop, which I don't imagine is a particularly speedy process, even slower than the parliament perhaps, would that be something that you would object to fundamentally, subject to it being properly structured?

MR BARCLAY (LST): Sure. I don't think so.

DR MUNDY: Okay.

MR BARCLAY (LST): If we were talking about, firstly those sorts of things, it doesn't happen, but it's happening more and more and more in commercial matters, where you have event-based costing, so rarely with the other side.

DR MUNDY: My issue really there is we have this concern, it's not a proposition that has been challenged to date that the ordinary person in the street on a decent-sized claim about a normal event in life, dodgy builder, dodgy tradesperson-type thing, can't afford a lawyer, but might be able to afford maybe \$1000 for a bit of advice that they feel they need, but might not be able to afford the

15 grand that you talk of. That's what we are concerned about in this whole - - -

MR BARCLAY (LST): Yes, you're right. That would require there to be an alteration of the common law obligation that we have so that we can say, when we get hauled over the coals, "This is what we got, and that's from what we gave the advice - - - "

DR MUNDY: So we need the parliament to help us out.

MR BARCLAY (LST): Yes.

DR MUNDY: Okay. Angela?

MS MacRAE: I think one of the last things I just wanted to ask you about comes up in our submission is in relation to costs awards for self-represented litigants. We are attracted to that proposition, partly because of the disparity that otherwise arises for the opposing party that would have no costs awarded to it so that incentives are different, and that seems to be an unattractive imbalance there. So on those grounds, I guess, that's the prime reason why we have gone for it, rather than a reimbursement for the costs that might have been incurred by the self-represented litigant, but nevertheless you might see that as some advantage, given that there is time and effort involved for those people. Can you just outline for us a bit what your concerns are around that draft recommendation and how you see that playing out.

MR BARCLAY (LST): It's a fundamental thing. Costs are the penalty, costs are compensatory. That's why we get party-party costs and simply primary indemnity costs, unless you can demonstrate some default on the opposing party; so if costs are compensatory, an unrepresented litigant has nothing to be compensated about, hasn't incurred the expense. If you want to change it and make all costs a penalty, which it seems to me that would be, then that requires a complete about-face, the whole reason we have orders for costs.

The other thing is, on what basis are the costs to be calculated? Do we say, "You were a builder and you would have earned this much money that day." That's going to leave it wide open for being arguments about whether that's right or not, so there's also a real risk when it comes to qualification of an unrepresented litigant's costs, that you end up having another litigious dispute about the quantum of those costs. As it presently is, we say the present system really needs to stay, unless there is going to be an about-face about why we have costs orders.

DR MUNDY: So the situation that we're concerned of, and we will put aside the querulous self-represented litigant, let's come back to my dispute with my builder, and let's say my builder is a large building company and is better-resourced than the poorly paid statutory officer of Commonwealth. I am there representing myself and

the situation is, well, if I'm there representing myself and there is no risk of a costs order, then the incentive to pursue this litigation unreasonably, you would concede, is greater than if they were exposed to an adverse costs order, simply by virtue of I had retained your firm to represent me in court. Because the consequences of loss and the effect of adverse costs orders, which are cited for many reasons as reasons why we shouldn't worry so much about contingency-based fees in Australia, but the effect of adverse costs orders, which constitute the bulk of the litigation costs, not court fees, are not there. So why would that not change the behaviour of the well-resourced litigant when the other side is represented as opposed to not?

MR BARCLAY (LST): It presupposes the highly-resourced litigant is going to act improperly.

DR MUNDY: It does, and there are examples of that, I'd suggest.

MR BARCLAY (LST): But it's rare.

DR MUNDY: Okay. So it's a theoretical possibility but not something that is in practice encountered so regularly as to upset the traditional balance?

MR BARCLAY (LST): I think that's right, but further, the proper way to tackle that is by judicial intervention. It says to the defendant, "You can't win. The other representative doesn't know that he can apply for summary judgment, and I'm about to tell him, and you lose." Now, you're not going to have a trial, so I think proper judicial intervention in proceedings such as that, where a party is acting improperly, is the way to resolve it.

DR MUNDY: Your view would be, by the sound of it, that in the vast bulk of these relatively small number of cases, the judicial officer would be onto it?

MR BARCLAY (LST): In this state, which is all I can really talk about, is yes.

DR MUNDY: If you could provide us with any cases where in fact the self-represented litigant has been in the circumstance you have just described, that would be most helpful. I don't expect you to know them off the top of your head. I presume you don't participate in such litigations, apparently.

Thank you very much for your time, and I do apologise for the slight late start and keeping you here a bit longer than you may have expected to be, but we do appreciate, and particularly we do appreciate the circumstances your organisation finds itself with resourcing, as compared perhaps to the resourcing availability of some organisations you may be a member of.

MR BARCLAY (LST): Thank you so much.

DR MUNDY: Could we have National Legal Aid please? Could you please state your names and the capacities in which you appear.

MR TURNBULL (NLA): I'm George Turnbull, and I'm the current Chair of National Legal Aid.

MS SMITH (NLA): Louise Smith, and I'm the Executive Officer for National Legal Aid.

DR MUNDY: Thank you.

MR TURNBULL (NLA): Just by way of explanation, National Legal Aid is a - it represents all of the directors of each of the legal aid commissions around Australia. It's a forum for engaging at a national level with governments and with other key stakeholders about the practice of legal aid and related issues. We meet three times a year, or as needed, and the chair is rotated on an annual basis. For my sins, I happen to be in the Chair at this time. We have got a permanent secretary, as I think Louise has mentioned, which is also supported by an administrative assistant.

Just in response to the draft recommendations, we concentrated really on chapter 21, reforming the legal assistance landscape, and to a lesser extent on chapter 24, which deals with data and evidence gathering. I am happy to hand it over for questions or I can perhaps make a few key points.

DR MUNDY: Whichever you would prefer.

MR TURNBULL (NLA): Yes, okay. I will just make a few points about chapter 21. From a Legal Aid Commission perspective, the question of whether the right mix of services are being provided or if we have got the balance right doesn't in reality arise because of the size of the funding envelope, so the reality is that we are overwhelmingly concerned with criminal law services and with also family law. We would have the support of a proportion of any new funds or any new moneys being set aside for civil law services, civil law assistance, and I guess also on the question of whether we are targeting the right people, again putting comment to one side, where we really have little choice, we of course are bound by the priorities set out in I think it's schedule A of the National Partnership Agreement and we also, in addition to that, take account of competing priorities and in an environment of limited funding in order to meet our budgets.

The question of whether eligibility criteria for the legal aid commissions and clearly community legal centres should be aligned, it really depends on the nature of the services being provided and the context in which it's being delivered. On Legal Aid rates and I add also, if you like, the allowances that are made for lump sum

payments which has also I think been raised by Victoria, the growing gap of course is an emerging problem and it's particularly acute in family law with the costs of services increasing significantly. We have made some suggestions in our submission about possible models for better aligning Legal Aid rates to the market. In relation to the distribution of funding, NLA supports accountability and transparent processes for the allocation of public money and we consider that there should be further investigation into the applicability of the current model but we would generally agree with the Dietrich principle.

We appreciate that not all CLCs, community legal centres, are ideally placed but we believe that this can be remedied over time with a collaborative approach such as that that was adopted in WA in 2003. No commission considers that competitive tendering would be appropriate. Questions about the extent of civil law needs, we think the best evidence we have got is the law survey that was undertaken and in relation to the National Partnership Agreement, we agree that there are significant deficiencies in the current agreement. In one sense, it's not a sort of real national partnership agreement. It only deals with the Commonwealth's obligations or the Commonwealth's funds and there are no state moneys involved. We would support a renegotiation which resulted in a genuine buy-in by all governments, provided that the service providers were consulted. That's very important and I think there are some real issues. We are aware of that and cost is a factor. I think that's probably all I can say at the moment.

DR MUNDY: Thank you for that. Can I perhaps bring you back, and it obviously relates primarily to the distribution of state money, but we heard from the Victorian Legal Aid Commission on Wednesday, I think it was or it might have been Tuesday, that they had taken a decision that they were no longer going to provide legal assistance for low grade traffic offences which were of themselves criminal but led to substantial risk of imprisonment, so they might be criminal in character but as far Dietrich was concerned, it wasn't really applicable, at least at that point in the game.

MR TURNBULL (NLA): Yes.

DR MUNDY: Is it the case that most legal aid commissions are funding those sorts of matters which Victoria has - and it may have only been temporary; I can't quite remember - but are funding those sorts of matters?

MR TURNBULL (NLA): Many are not. I don't know whether it's most.

DR MUNDY: I guess the question - and I'm happy for you to take this on notice - is this one: to what extent are resources being deployed for providing criminal legal aid for matters that don't have a realistic prospect of incarceration for the individual? In other words, how much money is being spent on criminal matters where Dietrich is not immediately in play? I would be interested to know because I think, to be

frank, that money could be devoted to other purposes.

MR TURNBULL (NLA): My sense is - I would need to check this - very little, very little, but can I just mention that it does depend a bit on the service that you're talking about.

DR MUNDY: Yes.

MR TURNBULL (NLA): If you're talking about the traditional grant of aid where the person has legal representation in the way we understand it, it would be very little but if you're talking about the duty lawyer service - - -

DR MUNDY: So if they are having a chat on the way in, that's a different story.

MR TURNBULL (NLA): It is, yes, but I would be surprised if - - -

DR MUNDY: It just struck me that if Victoria thought a solution to their funding challenges was - there must have been more than two-and-six in it.

MR TURNBULL (NLA): For example, in Western Australia, we would never grant aid for anything in the criminal sphere unless either there was almost a serious risk of imprisonment or alternatively, there were some really special circumstances.

DR MUNDY: Yes, a person that is particularly disadvantaged or there is a risk of them losing a livelihood, presumably.

MR TURNBULL (NLA): Now, I don't know if Louise could add anything.

MS SMITH (NLA): I would agree with the suggestion that it's very little. That's certainly my understanding and I am happy to take the question and make sure that it - - -

DR MUNDY: I guess what I want to clarify is that there isn't criminal work being done that isn't going to trigger Dietrich, because then I think there is a legitimate funding choice to be made available and I think at that point, there is a legitimate question for governments to say, "No, we want that money spent on civil work."

MR TURNBULL (NLA): At the risk of creating difficulties, I just want to mention one thing. Even though we would ordinarily grant aid where there is a risk of imprisonment, that is still contingent upon an assessment of merit.

DR MUNDY: Yes.

MR TURNBULL (NLA): That doesn't save you from Dietrich, because the facts

of Dietrich actually were precisely that. It was a County Court case in which aid was refused on the basis that there was no reasonable prospect of acquittal, so in a sense, we are currently exposed.

DR MUNDY: Yes, you can't apply the latter test as you would normally do.

MR TURNBULL (NLA): Yes.

DR MUNDY: No, I appreciate that.

MS MacRAE: Just in relation to the distribution of funding, can you just advise, or do you feel it's appropriate that the funding for the CLCs comes through the LACs and then on to CLCs and there seem to be some competing models about how that's done in various jurisdictions. Can you comment on the pros and cons of those things?

MR TURNBULL (NLA): I might ask for these two to comment but, for example, in my own experience it would certainly work quite well and there wouldn't be much adjustment that would need to be made, for example in Western Australia, because the program manager is employed within the Legal Aid Commission and the program manager is really the key person in relation to the funding distribution of CLC. Certainly that's the case in Western Australia.

DR MUNDY: But that's money from the state or from the Commonwealth?

MR TURNBULL (NLA): Both.

DR MUNDY: From both.

MS MacRAE: As compared to Victoria that has a statutory board that determines those things. I'd just be interested in whether you've got a view about whether one or other of those institutional frameworks works better?

MR TURNBULL (NLA): No.

MS MacRAE: Or whether you think it's a bit immaterial to - but in practice there's not that much difference. The Victorians seem to think pretty strongly it did have a big difference when we saw them last week - this week.

MR TURNBULL (NLA): When you talk about the statutory board, are you talking about the Legal Aid Commission?

DR MUNDY: Yes.

MS MacRAE: Yes.

MR TURNBULL (NLA): We all have a statutory board, so when I talk about decisions being made within the legal aid commissions, I'm talking about being made by the statutory board and we in effect being authorised by that board.

MS MacRAE: So in practice it's the same institutional structure there?

MR TURNBULL (NLA): Yes.

MS MacRAE: Because they seemed to have been implying it was somewhat different.

DR MUNDY: Yes, it may be the case, I'm not sure, but my recollection is that in some jurisdictions the Attorney-General's Department distributes the resources. They might take advice from the LACs and the CLCs but in Victoria the money goes to the Commission and the Commission doles it out. The issue that's raised there is the conflict of preference between the work of the CLCs and the work of the Legal Aid Commission's own lawyers, although, no, to be fair, no such prejudice has been able to be evidenced to us.

MS MacRAE: A couple of CLCs have given us evidence they'd prefer it not to come through LACs.

MR TURNBULL (NLA): Yes.

MS MacRAE: So to the extent I'm sure they can't prove anything but they feel I think that they - - -

DR MUNDY: There is on its face a governance conflict. The question is how real it is.

MR TURNBULL (NLA): It's not real; it's not a conflict. We've been working with the CLC community for many, many years. It's not a conflict. Just in relation to the point about where the funds should be channelled to, whether it go through a commission, the point I was making earlier about the example in Western Australia, it actually comes from governments but it's directed in the sense though the program manager who's - in fact the program manager in consultation with both governments will in effect be part of the determination of where those funds are going.

DR MUNDY: Given the uniform opposition to competitive tendering, and I guess I'm thinking of this as someone who was a treasury official in Western Australia once upon a time, if we're going to allow the sector to divvy up this money, be it the state government or be it the Commonwealth government, how are we going to be

assured that the services are being provided in the most efficient way and there being applied in the most effective way?

MR TURNBULL (NLA): Yes.

DR MUNDY: This is not to say that I think there's lots of fat, lazy CLCs sitting around the country. I've got no evidence of that but I guess this is why people propose competitive tendering - to drive economic efficiency. We identified some reasons why you might not want to go that path in the report, particularly around the volunteer nature and source of the volunteers for CLCs, but the fact remains particularly if we were to recommend increases in public funding, we would need to suggest to government how they can be satisfied that the money will go to the areas of greatest need. So how are we going to advise them of the framework to ensure that?

MR TURNBULL (NLA): First of all we're not talking about a lot of money.

DR MUNDY: I don't know how much money I'm talking.

MR TURNBULL (NLA): No. They really are the poor relations in so many respects, the Community Legal Centres, and operating on a very low cost basis with, as you say, volunteers coming in. Certainly in the case of the review that was undertaken in Western Australia which I know a little bit about, there was some extensive research undertaken into areas of need along with the costs of delivering services. That was an approach which [indistinct] included officials from both the Commonwealth and the state, along with the CLC association, and the Legal Aid Commission were involved as well. Certainly as a result of that review there was an acceptance on the part of both governments that the placement of Community Legal Centres in Western Australia - they were appropriately placed and it also identified some gaps which provided the opportunity for the State Government to actually inject some additional funds into the program and new Community Legal Centres were put in place in some of the areas of high need. That was a process that satisfied governments and which I think produced a good outcome.

DR MUNDY: Have similar studies been undertaken in other jurisdictions that you are aware of? If you want to take it on notice - - -

MR TURNBULL (NLA): I think it - - -

DR MUNDY: Either who has or who hasn't.

MR TURNBULL (NLA): I'm aware that, yes, an exercise was commenced in Victoria but I'll take that on notice if I may.

DR MUNDY: Would it be your view then that it would not be unreasonable perhaps as part of the national partnership agreement, a new one which was truly a partnership, that that sort of study should be a key element and that its repetition periodically, because needs obviously change, but a study like that should be something that should underpin and then that study may give rise to the Commonwealth being able to identify where areas of need are - they might be in rural New South Wales; they might be in downtown Hobart - where its money would best go on a needs basis because I think you reflected to us in Perth a week ago that the study was statewide, and Commissioner MacRae and I both have a degree of familiarity with Western Australia, that there are some areas of profound disadvantage, particularly in remote Western Australia, and that your study picked up that regional characteristic as well and enabled a statewide - and if that was done on a regional basis, that would enable the Commonwealth to underpin its assessment and probably might help but thinking about its indigenous legal program as well. So it would give a nationwide basis for funding.

MR TURNBULL (NLA): We'd certainly support that.

DR MUNDY: Okay.

MS MacRAE: Maybe if we can talk about some other matters that are completely separate. We've suggested that there should be - and we've probably used the wrong word for calling it a single entry point because people have thought that means only one door that people would access services, and that's not what we mean.

MR TURNBULL (NLA): Yes.

MS MacRAE: But we have put out there that the Law Access New South Wales seems to be quite a good model that others could follow. Would you see value in that and is that a reasonable model, given the size of some of the jurisdictions. Obviously they couldn't have something quite as grand but do you support that sort of idea?

MR TURNBULL (NLA): I think it's a really good idea. It would vary a little bit around the country. For example, in some commissions we all have very well-developed telephone information and referral and in some cases initial advice services, and of course people walk in and we provide a similar service to people walking in off the street. That exists already. In most commissions that would be one possibility. Certainly in the case of Western Australia that's what we would be looking at and in fact the Law Society - we have been having discussions with the Law Society about their law access program being combined with our service. So I think that's - and I'm pleased to hear you say that it wasn't intended that it should be the only point of entry.

DR MUNDY: I mean, there was some concern expressed to us at various points about multiple information providers, there being overlap between the information being provided by CLCs and legal aid commissions. Naturally, you know, because of the efflux of time some material was more out of date than other material and that was what I think originally drove this but also quite frankly there may be some savings available in reducing particularly, if you like, the infrastructure overhead cost which could then be redirected back into making the service better. I mean, when we're talking about efficiencies in this study, it's not about reducing money, it's actually just making better use of the bulk of the money that's there. It was raised with us very early on in this inquiry, that that was an issue in another jurisdiction.

MR TURNBULL (NLA): I don't know how much of an issue it is, to be honest, but it no doubt is.

DR MUNDY: I suspect it becomes less of an issue over time as these things become more IT based rather than traditional bits of paper.

MS MacRAE: Just looking at family law, we talked a little bit with the Women's Legal Service this morning about the problems that can sometimes present where you will have a power imbalance where there's a requirement for mediation.

MR TURNBULL (NLA): Yes.

MS MacRAE: You have suggested that there be a national duty mediation service at all family law courts.

MR TURNBULL (NLA): Yes.

MS MacRAE: Is that partly trying to address that issue or are there other things that you or the reasons - if you could elaborate a bit more on the reasons for that.

MS SMITH (NLA): That was a proposition that was raised a while ago following a meeting of the national Legal Aid dispute resolution working group, basically comprising a representative from each state and territory and the managers of those programs. It was perceived that there was perhaps a need to be picking up those matters that had got as far as court but then appeared to be capable of resolution once they were through the door. So it seemed that there were numbers and some of the legal aid commissions now receive referrals from the courts.

I think New South Wales actually has a program at the court and those referrals do seem to be producing some success. So it was that sort of idea that we were looking at, picking up those matters that had actually for one reason or another got to court but there was still the capacity for them to settle without needing to proceed to a hearing. So that was the hope, that that service at the court would pick those

matters up.

MS MacRAE: So it was really just from your on-the-ground experience that there seemed an opportunity here basically to reduce stress and cost and all those things.

MS SMITH (NLA): Yes.

MS MacRAE: So it was potentially another layer, one that might be very helpful.

MS SMITH (NLA): Yes. I think the approach of the resolution people has always been to be constantly screening all the family law matters that they see to try and - you know, they might not have settled early but they could settle a bit further down the track given what has happened since.

MS MacRAE: Okay.

DR MUNDY: Did you make an attempt to cost this service?

MS SMITH (NLA): No. It was a very early proposal. It was made a while back in general terms, very much along the lines of what you see in the submission there. That was very much the extent of the proposal that was put and the basis was that we would hope to have sort of further discussions, have additional discussions around it and we would still hope to do that.

MS MacRAE: So coming then to the question of that power imbalance of that earlier stage in the family dispute resolution centre sort of stage, do you see - is having more lawyer involvement at that stage maybe beneficial for counsellors, and we heard a bit about some trials that are run in Queensland? Do you see that as a big issue and something that we do need to look at in terms of what might work?

MS SMITH (NLA): The power imbalance issue is a significant issue. I think all of our dispute resolution practitioners are alert to those power imbalances. The models that the legal aid commissions operate are legally assisted models, so the parties have their legal representatives there and the chairperson, the dispute resolution practitioner, is somebody with legal or social science qualifications and I think that model is a model that helps to address that imbalance and further to that, conferences may be undertaken over the phone, separate rooms. They can be run as shuttle conferences. That's quite common. So yes, I think certainly this model is a good way of addressing that issue.

MS MacRAE: Another issue that was raised this morning was in relation to the qualifications of those FDR practitioners. You mentioned some of them do have legal training but at least in Tasmania we heard that there might be a bit of a systemic issue where they don't have legal training, that occasionally they will overstep the

mark and give legal advice that can then be conflicting with a lawyer giving advice from a CLC or elsewhere. Is that a problem that you would say has been a problem elsewhere?

MS SMITH (NLA): I don't know that I could - certainly from the Legal Aid Commission perspective the chairpeople are all either legally trained or social science trained. The majority are legally trained.

MS MacRAE: Right.

MS SMITH (NLA): That's the in-house practitioners. We also have external practitioners on the Legal Aid Commission panels, the same qualifications. Those qualifications are pursuant to the family law regulations. I would imagine if things are being mediated by people who aren't legally qualified, there would be some significant issues in terms of the advice that people were receiving. I think it's quite a serious situation if that's occurring.

MS MacRAE: Yes.

DR MUNDY: Would it be possible - I mean, we have heard of a program in Washington State where people with limited - we will call them limited practising licenses. They are properly and fully trained in areas of family law within that jurisdiction but they are limited to practise within the family law space. They're professionals, they're trained, they're supervised until a point in their careers. Is that a model that you think might be usefully deployed to assist in increasing the availability of appropriately skilled people to handle these matters?

There's a whole pile of the Priestly 11 they probably get to avoid. I'm just wondering as mediation is essentially the preferred mode of dispute resolution in family law, whether people with limited but appropriate academic tertiary qualification in the relevant parts of the law, plus a pile of social sciences skills - would be something where we could actually in the course of time permit those people to do the work and be confident they could do it?

MS SMITH (NLA): I would like to know more about it I think and I would like to refer perhaps the question to the people who are the experts in the area.

DR MUNDY: Yes. I'm more than happy for you to do that.

MS SMITH (NLA): But on the face of it, it seems - - -

DR MUNDY: It's a bit like - you know, they're fully trained in family law. They're just not trained in contract - - -

MS SMITH (NLA): The other areas of the law.

DR MUNDY: - - - lots of stuff that they don't need.

MS MacRAE: Maybe just one last question in the family law area. We heard in Victoria - and we appreciate that like everyone else they have got strictures on their funding - that one of the guidelines that they have changed which has been quite controversial in that state is that family law, where one party is not represented, then the other party cannot be successful in getting a grant of Legal Aid even where there may be domestic violence involved. So there could be a situation where an unrepresented, usually a woman, would have to appear unrepresented and possibly be cross-examined by a partner that has perpetrated violence and that this can happen - so they can be supported up to the point where they go to trial and then at the point they go to trial, they lose that funding because of the guideline, and I am wondering if you could tell me if you're aware whether that happens in other states and the extent to which that may happen in any case, without the guideline as such but you might find that through means tests and other things, people fail that and you have got people unrepresented in a situation that has involved family violence.

MR TURNBULL (NLA): I mean, it could certainly happen. You would hope that in circumstances that you have described involving safety issues and family violence that there would be an independent children's lawyer appointed. That may not always be the case but if that were so, then I think the risks, it wouldn't necessarily mean that the person would not be subjected to some traumatic examination but it might give you a better - "guarantee" is the wrong word but a better - - -

MS MacRAE: Mitigate the risk of - - -

MR TURNBULL (NLA): - - - likelihood of an appropriate outcome.

DR MUNDY: This circumstance Commissioner MacRae has described has developed some notoriety, particularly in The Age.

MR TURNBULL (NLA): Yes.

DR MUNDY: We would be grateful if National Legal Aid could ask its members the extent and the cost of alleviating such an outcome. In closing, because we are running out of time, Commonwealth Legal Aid only extends to family law matters now where there are children involved. It doesn't extend to property matters. Is that the case?

MR TURNBULL (NLA): Property isn't included.

MS SMITH (NLA): Property is not excluded.

DR MUNDY: Let me rephrase it.

MR TURNBULL (NLA): It's not excluded but in practical terms - - -

DR MUNDY: Let me recast the question. In a situation where a woman has experienced substantial violence from her partner and goes to the Family Court to seek a resolution of the property of the marriage and it's beyond question that she has experienced significant violence from the man, let's say, is that a circumstance in which she would be provided Legal Aid?

MR TURNBULL (NLA): If it involves children - - -

DR MUNDY: No, there's no children involved.

MR TURNBULL (NLA): No children at all.

DR MUNDY: There's no children involved. Let's say there were never any children. It's before or after children. There are no children involved but violence is clear and palpable and well known. He has been convicted, for instance. Would she get legal aid or could you take it on notice and let us know which jurisdictions in which she might get legal aid?

MS SMITH (NLA): Yes, we would have to take it on notice.

MR TURNBULL (NLA): Yes.

DR MUNDY: We are out of time. Thank you for coming all this way, Mr Turnbull.

MS MacRAE: Thank you.

DR MUNDY: Can we please have our next witness which is the Launceston CLC. When you are comfortable and ready, could you please both state your names and the capacities in which you appear.

MS HOUSE (LCLC): I am Sarah House. I am the General Civil Solicitor and Clinic Coordinator at the Launceston Community Legal Centre.

MS DOWNIE (LCLC): And I'm Jessamy Downie and I'm the Principal Solicitor at the Launceston Community Legal Centre.

DR MUNDY: Thank you. Could we ask you to perhaps make a brief - by that we mean five minutes - opening statement and then we will ask you some questions.

MS HOUSE (LCLC): So in our report to the Commission, we were very specific in what we wanted to talk about, because we think CLC Tasmania, our state based body, and also the national association have touched on other matters that we didn't need to, so the main focus of our submission was on merit testing, assets testing, which we think could be a potential problem for our centre should it be implemented in the future, so that's what we focused on.

But just as a brief rundown, so the Launceston CLC, we are a general civil centre. The rule of thumb is we will see anybody about anything apart from criminal law, although we are starting to dabble a little bit in that, but we don't means test. We will see anyone and usually it's for a 45-minute appointment and that's it, so we do a bit of representation but mostly it's just one-off advice sessions and our concern is should the same merit testing and assets testing that Legal Aid use be applied to our centre, a significant number of people would not be able to get access to our service and that's not just an implication for them personally but the other parties.

Our centre provides a very holistic approach, or we try to, so a lot of our clients have complex issues, so lots of different legal issues, clear morbidities that aren't necessarily legal problems, so social issues, financial issues, and we provide a referral service, so it wouldn't just be the legal impact of them being able to access our service but potentially a lot of other impacts on their personal lives as well and also the courts and tribunals and the other parties involved, so those are main concerns, and I have outlined in my submission a few case studies that we thought the Commission might be interested to read.

Another impact that we see, especially in Tasmania, which is an aging population, is that potentially older members of the community would be excluded from our service, so they might be on the age pension but a lot of them might own their own homes or significant assets that again would exclude them from our service, which is a concern for us.

DR MUNDY: Particularly if they are self-funded retirees.

MS HOUSE (LCLC): Yes, absolutely.

DR MUNDY: Thank you for that.

MS MacRAE: I think probably just to make sure that we are on the same page, in our report when we were talking about means testing, we were talking about case work, so we weren't proposing in that instance that things like your advice line and your general information would be subject to those tests.

MS HOUSE (LCLC): Yes.

MS MacRAE: So I think probably that goes a long way to allaying your main area of concern, and I apologise if we were not clear enough about that, but I don't think we have any problem with having services made generally available that are at first information or an advice sort of stage. It's more case work that we were concerned about. We are really thinking how we would look at the means test for those as well but we certainly weren't thinking about means testing something like initial advice that people might come to you for, that sort of nature of a 45-minute chat about legal issues and the other things that you might need to refer on. We won't be proposing that that would be subject to a means test.

MS HOUSE (LCLC): Okay, yes.

DR MUNDY: You could spend the first 15 minutes administering the means test.

MS HOUSE (LCLC): Yes, and a significant amount of - - -

DR MUNDY: One of the issues that was raised with us was this whole question of inconsistency and the potential for forum shopping and I think we have probably got to the stage where we don't think that's an issue. Just before we come to the specifics you have raised with us, the Commonwealth has recently reprioritised its expenditures for community legal services and legal assistance more generally. As a result of the budget and other recent announcements, has your centre suffered any funding losses?

MS HOUSE (LCLC): Not from the federal budget that's been handed down. In the immediate future, we haven't been affected. Our CLSP agreement for the next 12 months is just the same as it has been. The only change that I know that's been made to that is that we are no longer allowed to be active in law reform. We have been stopped from doing that for the next 12 months.

DR MUNDY: So you won't be able to come and see us again.

MS HOUSE (LCLC): Maybe, potentially not, but for the next 12 months, we're going along much the same as we used to. July next year, there could be changes but what they are or could be, at this stage, we are not sure.

DR MUNDY: My next three questions are redundant.

MS MacRAE: Can I ask just in relation to that how much of the work that you do would you say does fall into that advocacy sort of law reform?

MS HOUSE (LCLC): In reality, very little. Most of our time is taken up with - most solicitors will see five clients a day, so we don't have much time left over for that. It's mostly when, mostly the State Government will send us a letter requesting, "What's your opinion on this potential legislation change," or there's something that we notice from a news article or something that a client has raised with us that we think, yes, we actually need to target and do something with that but in reality, it's not too much at all that we do.

DR MUNDY: So it's perhaps not of the character of the activities that would have been of concern to some people?

MS HOUSE (LCLC): I can only speak for the Launceston CLC, so for us it isn't a major change but potentially for other CLCs it could be. Some CLCs have a dedicated policy officer and law reform officer, so that would obviously be a big problem for them. But for us, not so much.

DR MUNDY: Is it fair to say from what your opening statement was that it doesn't matter - that the characteristics of the individual that walked through the door is not of concern to you. You don't bother to means test them. So any person could wander in. The local bank manager could wander in and get 45 minutes of free legal advice?

MS HOUSE (LCLC): Absolutely, yes.

MS DOWNIE (LCLC): Certainly anything proceeding from that, where it fits into one of our programs, that is merit tested.

DR MUNDY: Yes.

MS DOWNIE (LCLC): So fits strictly, so that - - -

DR MUNDY: How much of your work or budget is this 45-minute service as opposed to the subsequent programs that you just mentioned?

MS HOUSE (LCLC): We have a number of different services within our Centre, so general legal, family, employment, discrimination, welfare rights, so Centrelink issues. Most people who walk through the door will get 45 minutes in each of those services, so each of those areas. Depending on how much merit they have and what kind of a situation they're from, can they write a letter for themselves, do they need extra help, that's when we'll decide, "Can you pay for it? Can Legal Aid help you or is really us that need to do something more?"

DR MUNDY: Let's say I'm a small business person and I've had some work down on my shop and I've run into a dispute with the builder and I come in, is that something you'll help me with?

MS HOUSE (LCLC): Absolutely. Absolutely. Depending on how much money you earn, if you can afford to go and see a private solicitor, we'll give you that initial advice. So, "Do you need to take it further? Should you drop it? What things do you need to do before you go and see someone else and do you need to see someone else?"

DR MUNDY: If you formed the view that they did need to see a private solicitor - - -

MS HOUSE (LCLC): A private firm, yes.

DR MUNDY: - - - you'd say, "Here's Mr Smith, Mr Jones and Ms Brown," down the street?

MS HOUSE (LCLC): Yes, free referrals.

MS DOWNIE (LCLC): And we might provide guidance on what to do to prepare for that, to minimise costs going forward.

DR MUNDY: Yes.

MS DOWNIE (LCLC): And how to really make the most of that private service.

DR MUNDY: You have presumably got a reasonable idea of which private firms in Launceston do what sort of work and that sort of thing.

MS DOWNIE (LCLC): Yes.

DR MUNDY: So you send them on a - I was about to say a targeted goose chase as opposed to a wild one but that's probably not a good use of language but that's okay.

MS DOWNIE (LCLC): That's right. So the most appropriate firm for them,

absolutely.

DR MUNDY: Because we're an organisation obsessed by assessment, do you follow up these clients to see what the outcomes of the matters were to, in a sense, to quality assure the services you're providing. Once you've sent the small business operator down the road to launch his litigation against the dodgy builder, is that the point at which you cease to engage with them?

MS DOWNIE (LCLC): It depends, doesn't it, Sarah, so it depends on how much assistance has been provided at the outset, so if it requires follow up and you get a sense that that person might need a bit more support in following up, absolutely. Often they come back to us and tell us what has happened. So you know, we have an ongoing relationship in that sense.

DR MUNDY: But I guess I'm more thinking of it in some sort of performance measurement.

MS HOUSE (LCLC): No. As a matter of course, we wouldn't follow every single client that we see up, only the ones that we think might need a phone call to say, "Have you done this? Have you gone and seen someone? Have you gone?" Then even though it's supposed to be a one-off 45-minute appointment, if they need to come back, if what we've suggested hasn't worked or there has been an issue, they will come back.

MS DOWNIE (LCLC): And we do have a survey system, so we do survey clients to assess outcome.

DR MUNDY: So Mr Smith who was the small shopkeeper, if he happens to get pulled out at random, he'll get surveyed?

MS DOWNIE (LCLC): Exactly.

DR MUNDY: Was he happy with what he got?

MS DOWNIE (LCLC): Yes.

MS HOUSE (LCLC): Yes.

DR MUNDY: Okay, that's good.

MS HOUSE (LCLC): Also on the survey we ask, "What would you have done if we hadn't been around, so if you hadn't been able to access our service, what would you have done?"

MS MacRAE: What sort of response do you get to that?

MS HOUSE (LCLC): Nothing.

MS DOWNIE (LCLC): No, that's not true. They've improved as we've adjusted the way we're approaching the client. We found that sending them out in the post even with a reply paid envelope doesn't get a good response, so we're now targeting people as they leave the office, whether the solicitor flags it and then the receptionist says, "Would you like to take the survey with you? We'd really appreciate some feedback on how you found our service." We're getting a much higher rate of return. So it's just a matter of tweaking that, how to engage them in the feedback and in applications for funding we like to see how our service is meeting your needs and it's that trigger.

MS HOUSE (LCLC): And proving our worth I guess as well. When we ask people, "What would you have done if we hadn't been around?" their response is, "Nothing. I would have sat at home and buried my head in the sand" or "I wouldn't have known what to have done" or "I would have paid \$500 to go and get some advice from a private solicitor," so it's very validating for us to get those responses to know that people really do appreciate the service - - -

DR MUNDY: Could you remember if you asked them, "How did you know about us?"

MS HOUSE (LCLC): Yes.

MS DOWNIE (LCLC): Yes.

MS MacRAE: Would you say that there's a higher level of appreciation that you are there and that you were available?

MS HOUSE (LCLC): Absolutely, yes, and we do CLEs as well, so community legal education. We go around regional areas of Tasmania giving talks on different areas of law. That's a good way for people to find out about us because still a lot of people in our community don't know we're there and just the fact that we've gone out to them, we've tailored a talk for them, incredibly appreciative. Yes, it's great.

MS MacRAE: I'm assuming that although anyone can come in your door, you would say on average that you probably see more disadvantaged people in whatever form that takes. You talked before about how the client base is changing a bit, so you're getting more older people coming in now. How do you sort of adjust your resourcing as those needs change over time? What sort of budgeting arrangements and things do you have in your service? I suppose it's very much demand driven, so given that I'm assuming demand is always going to be higher than the resources

you've got available, how do you ration what's available?

MS DOWNIE (LCLC): In terms of access to the service in general?

MS MacRAE: Yes.

MS DOWNIE (LCLC): It's merit based, so we have an assessment of an individual matter. There's a limit. There comes a time - we're limited. We have guidelines of how many hours to spend on particular things according to what they are. People can always come back and see us on a separate matter but it's generally maintaining that access. We always have the repeat clients who want to come back and ask a lot about every issue and it's about empowering them and directing them to other appropriate services, but we do have strict policies, strict guidelines about access to the service and they are monitored closely, so we try to maintain an equal access to it.

DR MUNDY: We're happy for you to go away and think about this but could you provide us with a copy of those guidelines. We're happy to treat them confidentially as much as we'd love to use them publicly but if you're not comfortable about that, that's fine but it is particularly helpful for our research team back in Canberra to have a look at something like that, to see a real operational version of a very general CLC.

MS HOUSE (LCLC): And just adding on to what Jess says, speaking from a personal point of view with the general legal service that I service at the centre, my rule of thumb is I see people once for 45 minutes and then if they want to come back and see me again, depending on their disadvantage, their level of literacy, "Do they need to?" that's what I make the decision about, shall I spend an extra hour of my time with them, or do I need to say, "I've told you all I can. You need to go to the Legal Aid hotline" or, you know, "There's nothing else that we can do for you." So on a case by case basis we do do that as well.

MS MacRAE: How difficult do you find it with your resources as you're a generalist centre and you're covering such a wide array of civil matters? How difficult is it for you to get staff that can cover that wide array of matters or do you find that you tend to - you talked about the specialist centres that you have. Is that adequate for the sorts of services that you're called on to provide I guess is what I'm asking?

MS HOUSE (LCLC): We don't really have trouble getting staff or retaining staff but the issue is training, so you're being thrown in the deep end with a huge amount of knowledge that you need to acquire quite quickly. I find once or twice a week I will still need to say to a client, "I'm sorry. I need to do some research for you and I'll get back to you," because what we deal with it's basically everything apart from criminal law.

MS MacRAE: So vast, yes, that's what I'm imagining, that you've got such a wide area of law you're covering.

MS DOWNIE (LCLC): That's a good point. Resources for training come in. We're very lucky in our centre that that is a priority and it's managed very carefully but the needs of the staff are met. Also, we work collaboratively with Legal Aid. I mean, our office in particular, I can only speak for our office, works very closely with Launceston Legal Aid office. We can access their lawyers for support as well, information. The Legal Aid advice line is very good for referring clients with other issues but we've gone to great lengths to identify areas of need that they are not meeting and try and meet them, so, for example, we have started an after-hours clinic, drop-in, where there is no other service available. Legal Aid runs clinics in the day. There's a Legal Aid advice line. We have appointments during the day but we saw a need for an after-hours drop-in service. The private practitioners have come on board on a roster basis, on a volunteer basis. I think we are attempting and we are meeting that, you know, taking a proactive approach to finding out what we can do to be most efficient within the constraints that we're facing.

DR MUNDY: So you are working collaboratively to address need and - - -

MS DOWNIE (LCLC): That's right, so, for example, at family dispute resolution conferencing for an unrepresented party, in some circumstances we can provide a lawyer for that purpose, to create equality in terms of bargaining power. It's just being aware of what is needed and trying to provide that service, so we did a collaborative community legal education program with Legal Aid as well, just to outline the difference in the services and what the public can access, the community can access and how to make the most of those free services for their particular problems, so we have found that to work really well.

MS HOUSE (LCLC): Just adding on to what Jess said, we work really closely with Legal Aid but also with private services, so with our clinic, we have private practitioners on a roster who come and give up their time to see clients for us and, you know, we get, say, stuck with some research, some legal research that we are doing, I would have no hesitation to call someone up in a private service who specialises in that area and to ask them to help me or point me in what direction I need to go in. We try to use our funding as best we can by outsourcing and collaborating, yes.

DR MUNDY: Do you have that informal sense with professional advice? I know in my profession I do too. Do you have a sense of how much of that you would actually access? I am just trying to think, because one of the issues we were asked to look at are issues around pro bono support and the debate starts with pro bono appearances in court supported by major law firms down through the sort of clinic

stuff you're talking about, but also this informal private network which is private in the sense of between practising lawyers. How much value do you ascribe to that? Do you do something like that weekly or monthly or daily? I am just trying to get a sense of it and how much value do you put upon it.

MS HOUSE (LCLC): Probably monthly I would say, personally, is how often I would contact someone for assistance but it's invaluable, you know, because with the CLC that we work at, all our practitioners, I think they are five years practising or under, so it's a very young scope of lawyer that we have working for us, so to be able to call someone with 10 or 15 years' experience, it's priceless to be able to do that.

DR MUNDY: It's almost professional mentoring.

MS HOUSE (LCLC): Yes.

MS DOWNIE (LCLC): I mean, I would say I would talk to someone at least once a week about an issue, a practice issue, particularly as we have started a domestic criminal service picking up matters where there is merit but they wouldn't attract Legal Aid funding, so where there might be literacy issues or, you know, something else that's contributing to their inability to represent themselves.

DR MUNDY: What sort of criminal matters would they be?

MS DOWNIE (LCLC): We have started off small with very distinct guidelines, so minor traffic, minor drugs and anything else - I mean, if there are special circumstances - I know we just had one that was stealing but there were particular circumstances where she had mental health issues and couldn't represent herself. We wouldn't normally do that and in fact we have relied very heavily on private sector mentors to guide practitioners in training and support and it has been invaluable and we are very grateful.

MS HOUSE (LCLC): Yes, absolutely.

MS DOWNIE (LCLC): We have had nothing but support. We have got the volunteer private practitioners. We have got, you know, being able to call them up or ask them questions that hasn't yet evolved to them giving up their time in a courtroom situation to help us with a client that maybe we can't take any further. It hasn't yet got to that stage but that's something that we definitely want to think about in the future.

DR MUNDY: Just remind me. I remember being concerned about this in a former life but are there any federal judicial officers in Launceston? Is there a circuit court there?

MS DOWNIE (LCLC): Yes.

MS HOUSE (LCLC): Yes, they have circuit court dinners, I know, so I assume that, yes, but because we don't attend court, we are not - - -

DR MUNDY: I am sure the President of the AAT attends regularly.

MS HOUSE (LCLC): Yes.

DR MUNDY: I am just wondering, because it was an issue many years ago when I used to do a different thing, so is there an issue about access to the courts for the citizens of Launceston?

MS DOWNIE (LCLC): On the whole, no, I don't believe so, in my experience.

DR MUNDY: Because there is no District Court in Tasmania, is there?

MS DOWNIE (LCLC): No, so we have - I mean, there are things like - I know there is a Family Court workshop that we refer to that's run by Legal Aid for access weekly.

DR MUNDY: Yes.

MS DOWNIE (LCLC): Look, I think that's always an issue for parties trying to navigate it themselves. I mean, the duty lawyer scheme - - -

DR MUNDY: There are registered magistrates in Launceston.

MS DOWNIE (LCLC): Yes.

MS HOUSE (LCLC): Yes.

DR MUNDY: The Supreme Court comes on circuit, does it?

MS HOUSE (LCLC): Yes.

DR MUNDY: The Family Court, it comes as well.

MS HOUSE (LCLC): Yes.

DR MUNDY: So presumably the circuit court comes on circuit as well.

MS HOUSE (LCLC): Yes. Do you mean access in terms of financial access or access in navigating the system, physical access?

DR MUNDY: No, I meant how do the citizens of Launceston go to the courthouse and get their matters dealt with?

MS HOUSE (LCLC): Physical access, yes.

DR MUNDY: So the Family Court comes on circuit to Launceston, so therefore the circuit court must come.

MS HOUSE (LCLC): Yes.

MS MacRAE: That's fine.

DR MUNDY: Thank you very much your time and coming down from Launceston. We really do appreciate it. Sadly, we haven't been able to conduct hearings in anywhere other than capital cities.

MS HOUSE (LCLC): Thank you.

DR MUNDY: Could we now have Environmental Defenders Office (Tasmania), please. Could I ask you state your name and the capacity in which you appear, please.

MS FEEHELY (EDOT): Sure. My name is Jess Feehely. I am the Principal Lawyer with the Environmental Defenders Office in Tasmania. I am here in that capacity but also as a representative of the Australian Network of Environmental Defenders Offices.

DR MUNDY: Thanks. Could you perhaps make a brief, which means no more than five minutes, opening statement.

MS FEEHELY (EDOT): Sure. I wasn't expecting to make a statement, so I will make it very brief indeed.

DR MUNDY: If you don't want to make one, you don't have to.

MS FEEHELY (EDOT): I guess the main purpose of our submission and of my appearance here today is really to articulate the role of Environmental Defenders Offices and the importance of recognising that access to justice needs to include access to environmental justice. I guess the significant change between our initial submission on the draft issues paper and on the draft report is that our funding was cut. Our Commonwealth funding was cut in December, so the issue of access to justice has become particularly acute for Environmental Defenders Offices around Australia. I guess it's our view that Environmental Defenders Offices provide a cost effective mechanism for providing that access to environmental justice but there are also a number of other issues around costs, standing, access to merits review and the things that we have listed in our submission that would also go a long way towards improving access to environmental justice around Australia.

DR MUNDY: Can I just make one brief observation - and this is not meaning to dismiss the issues and we did make a deliberate decision on this. The Commission last year finalised a report on major project assessment where we looked at, and I think it was chapter 9, at length, and I was one of the commissioners on this piece of work, at length around the issues of standing and all - - -

MS FEEHELY (EDOT): Yes, [indistinct] and we appreciate that.

DR MUNDY: And I think we probably weren't at vast variance and we did certainly find the assistance of a number of mediators and the national organisation particularly helpful in that matter, so we haven't come back there because, as you would be aware, the report is already too big and I know books can be written on standing and merit appeal, so we haven't gone to those issues but we are very interested in the funding question. We have certainly had evidence from your

colleagues in the ACT as to the effect of these funding cuts and their evidence to us was that the ACT EDO was likely to close. I guess more broadly, and I think we have asked this question of others around the place, are you able to, I guess, give us a sense of what is the funding cut for yourselves? If you are able to take it on notice, it would be helpful to get feedback on the funding cut for each of the EDOs, if you are able to do that.

MS FEEHELY (EDOT): Sure. I will - - -

DR MUNDY: What are the consequences for these? What is not going to get done that used to be done?

MS FEEHELY (EDOT): Sure, so I can definitely speak to the Environmental Defenders Office of Tasmania's position. I have been attempting to gather some facts from around the country and we will take that on notice and provide that in due course. For the Environmental Defenders Office in Tassie, the Commonwealth funding is the bulk of our funding. We do currently have a one-off grant from the Solicitors Guarantee Fund in Tasmania that does provide a bit of a buffer but as of 1 July this year, we won't receive Commonwealth funding and that's 90 per cent of our funding, essentially, so for us, that's a significant issue in terms of our long-term sustainability.

We are looking into various other options around philanthropic donations and being a donor driven model and those things, so the most immediate issue is that it's really changing the way we have to think about how we can provide our service long term. There is a significant risk that we won't be able to provide that beyond the expiration of the Solicitors Guarantee Fund money which at this stage looks like around March next year, March 2015. I guess in the absence of an EDO, there really isn't another service that provides advice on environmental law in Tasmania. We would frequently have people referred to us by government agencies and Legal Aid, simply because Legal Aid doesn't provide that information and the EDO has that expertise, so I think there is a significant service that will be lost if the EDO wasn't available in Tasmania.

I think one of the things that's often misunderstood or ignored is the role that EDOs play in actually discouraging litigation without prospects, so while I guess negative commentary around EDOs tends to focus on the litigations that we are involved in, it ignores the vast majority of cases where we are actually discouraging people from engaging in litigation that we don't see as having merits or prospects of success, so I think it's likely that the tribunal might see an increase in appeals that are taken because people haven't been able to access advice to say that that's probably not the best use of their time or resources to pursue that, because certainly taking away the Environmental Defenders Office doesn't make the community happier with environmental outcomes. It just means that they are not able to access expert advice

about what they can do about it and in some cases what they can't do.

DR MUNDY: I think there may well be a perception at large that EDOs really just bring very large high profile test case sort of matters. I know that other jurisdictions often, particularly where the planning law and the environmental law are one and the same thing or they bump up against each other, that quite often they are helping citizens with what might be relatively ordinary matters. Are you able to give us a sense of the extent to which the work of either your EDO or the EDOs more broadly are in those - I don't want to call them mundane, but community/individual/citizen type matters as opposed to bringing action to stop the pollution of Gladstone Harbour?

MS FEEHELY (EDOT): Sure. We have also tried to find a better word than "mundane" because we find ourselves using that occasionally too.

DR MUNDY: "Ordinary" doesn't work either.

MS FEEHELY (EDOT): No, so, look, I think certainly from EDO Tasmania's perspective, the vast majority of what I will call litigation work - and it often involves representation and often it's just the advice leading up to that or discouraging people from doing that but the vast majority of what we do is those smaller matters in the Resource Management and Planning Appeal Tribunal; yes, matters which matter very much to a particular community but don't really make waves at that broader level. It's the amount of media attention that the bigger cases get that kind of skew the perspective in terms of the amount of our time that gets spent on stopping development at that larger scale. I think that would be consistent across all of the EDOs in terms of the percentage of time that they are involved in the ordinary - - -

DR MUNDY: If we could get some evidence of stuff like that, that would be helpful.

MS FEEHELY (EDOT): Yes.

DR MUNDY: And perhaps just some case studies on the sort of - - -

MS FEEHELY (EDOT): Yes.

DR MUNDY: Because we have got lots of case studies about CLCs helping to pick up people with Legal Aid. We don't have any in this space, particularly those that relate to people who are disadvantaged on some sense.

MS FEEHELY (EDOT): Sure, and I think that's certainly one of our concerns around the justification for the cuts in funding being around EDOs not providing

frontline services, which from our perspective is a misunderstanding of what environmental law and access to environmental justice is all about, because it's not just a middle class indulgence. There are actually people who are affected. Their health is affected. Their access to a community pathway is affected.

DR MUNDY: Presumably even cases of small agricultural producers.

MS FEEHELY (EDOT): Absolutely, and particularly - well, across the country, but it's become an issue over the last year in Tasmania too; unconventional mining and people's concerns about the impacts that might have on rural property is increasingly an issue that we are contacted about.

DR MUNDY: Any information around that; I think there's a lack of information in the public domain for us to form a definitive view about these things.

MS FEEHELY (EDOT): Mm'hm.

MS MacRAE: To what extent do you have means tests when you are looking at matters with significant interest? How does the sort of rationing of your resources take place and I appreciate you will have fewer resources to worry about rationing soon.

MS FEEHELY (EDOT): Similar to Launceston, we don't have a means test for advice generally, so we would never ask the question when someone contacts us initially. In the instance where there is an application for us to represent - this is EDO Tasmania; I will speak more broadly about EDOs around the country in a minute - that needs to go to our committee for approval and there's a test that we apply which is around a number of things but our primary concern is public interest, so means or the capacity to pay is an issue but our primary concern is whether or not the issue that's being raised is a public interest environmental issue. There's obviously a bit self-selection that goes on.

People that come to EDOs are generally not people that can afford to go elsewhere, so it's not that often that we would have someone who is incredibly wealthy come and try and get free legal advice from us but that being the case, their capacity to pay would not be the primary issue that would dictate whether we did get involved. It would be the public interest nature of it, so whether it was a significant test of a legal issue and there is some uncertainty around the application of the law, whether the area that was in question was of significant public value and, really, it's about whether or not the person who is bringing the action will get some private interest from it or whether they are actually just trying to protect the public benefit and we would see that as our role, to assist them in that situation.

DR MUNDY: What about in circumstances - and the Warkworth Coal case might

be an example of this - where there is actually a community that's got a substantial private interest in preventing what appears to have been in the Court of Appeal in New South Wales an invalid ministerial decision?

MS FEEHELY (EDOT): And it is often difficult to separate that private and public interest.

DR MUNDY: Because essentially, it is that no individual in this matter was going to be able to bring this case and it's not the sort of thing that litigation funders turn up to assist with in the way they might with a case against - they see it as against their interest.

Even if there isn't a particular issue you ought to try, it's just - here's a bunch of citizens who individually can't bring this. They are not going to get this done any other way. Is that also the sort of matter that the EDOs would [indistinct] on, or does there really need to be this fundamental question of law involved?

MS FEEHELY (EDOT): Obviously EDO New South Wales was involved in the Warkworth case. For us, I guess it's about the deterrent value that that could provide, so even though there might be some private interests, you know, the law itself was reasonably clear, but it's the enforcement and compliance with the law that we would see as being a public benefit.

DR MUNDY: And the fact that it may well provide benefits to other groups of citizens down the track where they wouldn't need to - - -

MS FEEHELY (EDOT): That's right, so that's for the precedent value, would be kind of what we would consider as well.

MS MacRAE: So in this difficult situation that you find yourself, what are the other possible sources of funding for you? You mentioned philanthropy and I guess that's one of the obvious ones. Do you get funding from the public purpose funds now? You mentioned you do get something from the State Government at this time.

MS FEEHELY (EDOT): So the Solicitors Guarantee Fund is the equivalent of the public purpose funds in other states, but only over the last couple of years has it been available to community legal centres and we have been lucky enough to get grants from that fund previously. We would be hopeful of getting one in the next round. We will certainly be applying for it but there isn't really any consistent application of that, so we are unsure.

MS MacRAE: Are you just using a year on those things then? Do you get - - -

MS FEEHELY (EDOT): It varies. They are just one-off funds. Occasionally,

they will provide enough money in that one-off grant to carry through for several years but it's only a one-off grant. It's not a recurrent fund.

DR MUNDY: Is it money to do something? Is it project-based money or is it just general revenue?

MS FEEHELY (EDOT): Well, the two grants that we have received from the Solicitors Guarantee Fund have been projects, I suppose. One of them was to engage a litigation lawyer, so recognising that prior to that, there was only myself in the office and it's incredibly difficult to undertake litigation with only one person in the office. So the pitch that we made to the Solicitors Guarantee Fund was around engaging someone to take on and improve our litigation capacity. So it was a project in one sense but it was to fund a position without any particular detail as to how that would be rolled out. The second one was specifically the production of two publications, so that was very project related and so we have engaged someone to do those two publications.

DR MUNDY: This is probably a question with your national hat on but, roughly, what percentage of matters, I guess - this is probably me wanting too much data - both in terms of advice and litigation, fall within the Commonwealth's jurisdiction and fall within state jurisdiction? I suspect it differs from state to state. I imagine Queensland has more issues because of the reef and the - - -

MS FEEHELY (EDOT): To some extent, and I have looked at this because Camilla flagged that this was something that had been asked. Over the last two years there have only been four litigations that EDOs have involved in which have really dealt with federal matters, so principally the Environment Protection and Biodiversity Conservation Act. So the vast majority of the work that we all do in our various states is state-based, but then there will be years where the bulk of litigation is actually more on a Commonwealth issue. So it's largely demand-driven, if you like.

DR MUNDY: So four Commonwealth matters. Are you able to tell me what they were?

MS FEEHELY (EDOT): I don't actually have a list with me. I will just have to try and remember. So there was an application by EDO New South Wales in relation to Ashton Coal, so essentially looking at decision-making under the EPBC Act, and EDO South Australia took a matter in relation to Olympic Dam, so Buzzacott, and then the two EDO Queensland matters in relation to dredging in the reef this year, the Gladstone, yes. So there's a very small percentage which would actually be a Federal Court matter essentially. The rest of them are largely in the general state jurisdiction and the planning tribunals - - -

MS MacRAE: Is any of the nature of your work in the form of community legal education?

MS FEEHELY (EDOT): Yes, very much so.

MS MacRAE: What sort of work do you do in that space?

MS FEEHELY (EDOT): So we would do a number of things. There's publications; so the two that we're working on at the moment are a community guide to mining laws that are responding to the number of requests that we're getting for information about what landowners' rights are around, you know, proposals for mining on their property, and a farmers' guide to environmental laws. So there has been a bit of misunderstanding or lack of information available to farmers about exactly what their rights and their responsibilities are in terms of environmental issues.

So there have been similar publications in Queensland and New South Wales which have been very well received by rural communities. So we're producing one of those. We do workshops in communities, both at our own initiative and at the request of groups who want to know about a particular thing. It may be because something has been proposed in their area and they would like more information about the process to respond to that or it might just be apropos of not very much; they need someone to speak at their AGM and they have heard that we could talk on coastal issues or what have you.

Every roughly two years we also hold a conference and they have a community legal education role. They also have a kind of law reform and advocacy role and they're usually around a particular resource management issue and the laws around that and we would have speakers from government, academics, practising lawyers and community members, basically a forum for discussion around whether the laws are working and, if not, what could be done to change them.

DR MUNDY: These publications you're developing essentially for the - - -

MS FEEHELY (EDOT): Rural land - - -

DR MUNDY: Yes, rural landowners.

MS FEEHELY (EDOT): These two, yes. We have done ones previously.

DR MUNDY: Are you working with farmers organisations and your colleagues elsewhere presumably worked with farmers federations or whatever they're called in Queensland these days.

MS FEEHELY (EDOT): Yes. Certainly EDO New South Wales and EDO Queensland worked in close collaboration with their farmers federations. Our rural guide for farmers is being done in collaboration with the Tasmanian Farmers and Graziers Association. The mining guide isn't sponsored in the same way that the rural land holders guide will be but our education officer is doing a lot of liaison with the Minerals Council, with people who are land holders, farmers and graziers associations and community groups in rural area, conservation groups, the broad spectrum of people with concerns about these issues.

DR MUNDY: So you're cooperating with - - -

MS FEEHELY (EDOT): Very collaborative.

DR MUNDY: You're cooperating with the Minerals Council of Tasmania?

MS FEEHELY (EDOT): We're in conversation with them and certainly the workshop series that will follow the release of the publication will be done in collaboration with various groups, NRM groups and the TFGA to provide both forums and to spread the word through their networks about the availability of those. We also do have a range of more general publications. We have got an online environmental law handbook which is basically the easy practical guide to environmental law in Tasmania.

DR MUNDY: I know. I've used it.

MS MacRAE: I guess just to clarify the point but it's probably an obvious one, that educational sort of type service and material would I guess with your funding cuts be potentially the first to go unless you can find sponsorship or something for it.

MS FEEHELY (EDOT): Yes. I think this is an ongoing discussion with our Board in terms of how we will spend diminishing resources and in some ways the education resources are the legacy product and so if we were to close the office, it's more important to actually make sure that at least that information is available in some way. So we would certainly not be looking to just cut that as a way of savings because we see that as a very important role that we play but when it's that or someone who has an urgent environmental issue and we need to down tools and get into, you know, a court action to represent them, then education would come second in that situation. It's certainly something that we see as a cost-effective way of using limited resources to actually improve environmental outcomes.

DR MUNDY: Perhaps just moving on to some other issues; we made a recommendation that protective cost orders should be available in public interest litigation where the government is involved and we were interested to explore the question about where the defendant essentially is a private party. Some have

suggested to us that Oshlack is enough and that may well be the case, and Oshlack works occasionally but not very often, as we saw in Victoria.

I guess the question is, why should a private party bear the cost of a protective costs order where it may ultimately be, to use their own language, an innocent victim of unmeritorious litigation? Putting aside the point that it's pass the judge test about being meritorious or not, why should the public interest be funded by the private party is, I guess, the question in our mind and, in such circumstances, should the state actually pay for the public interest, hence the idea of a public interest fund?

MS FEEHELY (EDOT): Sure. Yes, certainly. As you say, the protective cost order would only be issued in a situation where there was some satisfaction on the merits.

DR MUNDY: Yes.

MS FEEHELY (EDOT): I think from an environmental litigation perspective generally the private interest will be turning a healthy profit off the use of public resources, so the development is in some way already benefitting from the public interest and so there's some balancing out that goes with just bearing some of the cost of litigation in that respect. We are very supportive of the idea of a public interest fund to recognise that, you know, there are some situations where it might be appropriate that the state pay.

One of the difficulties for environmental litigants is often access to scientific expertise and so having a fund that was available to not just address adverse cost orders but also to assist with providing access to funds so that a scientific expert could be presented and the courts would be able to make more informed decisions.

DR MUNDY: Just on the public interest - I mean, there are funds available administered by Attorneys-General to allow cases of public interest where there's a general - - -

MS FEEHELY (EDOT): A test case, yes.

DR MUNDY: - - - legal issue to be resolved but I think it's fair to say that perhaps the Attorney-General's view of such public interest may be coloured by the nature of litigation given that the Attorney is a politician. Do you have a view about how such a fund should be - I guess, who should be determining the public interest, particularly in cases where the government is the potential defendant, and how such a fund might be funded?

MS FEEHELY (EDOT): EDO Tas doesn't do a lot of litigation as compared to the others, so I'm probably not in the best position to discuss this but certainly it's our

view that it would be appropriate for the Legal Aid Commission to potentially administer a public interest litigation fund. It would be important to have an independent panel to assess applications to that and obviously clear guidance as to what public interest actually meant and what the eligibility was.

DR MUNDY: So if a fund had statutory guidance which could then be applied by - we call them trustees or some people who are notionally independent in some sense.

MS FEEHELY (EDOT): It's embarrassing to admit but I did google this yesterday. I mean, I did notice that the ATO also has a public test case fund and I have no idea whether that operates well or not but certainly the panel that they have seems to be fairly broadly based in terms of effect - - -

DR MUNDY: Things around the ATO seem to actually operate much better than most people expect them to.

MS FEEHELY (EDOT): Just their recognition that there was value in cases that actually tested the law and created some jurisprudence around the application of that is noteworthy, I think. If I could just say, I didn't address your question previously about the other options other than philanthropy. Obviously, the Solicitors Guarantee Fund for us is - well, we would hope to be able to access some of those funds. Obviously, we will need to consider fee for service and I think Environmental Defenders Offices probably are in that position where some of our clients, albeit our position is that they are acting in the public interest and therefore shouldn't have to pay for services, potentially they are less financially disadvantaged than some of the other CLCs, so for large NGOs, environmental NGOs, we may need to look at some sort of fee for service. Unfortunately, it's a very tight market for everybody. Everybody is facing funding cuts across the board, so in the environmental space, it would be very unfortunate for the conservation groups to be suffering funding losses and then also having to be paying for advice that they haven't previously had to pay to get access to.

DR MUNDY: Yes, we are aware of the challenges of funding cuts. I am probably about done there. As I said, any information that you can provide us with reasonably promptly - - -

MS FEEHELY (EDOT): Sure. Yes, that's right. We have put the wheels in motion to get the stats together. We just haven't managed to get them together for today. I do just want to comment on the advocacy issue in terms of, I guess, the extent to which we are involved in advocacy. There is a little [indistinct]state by state but I would say probably about 25 per cent of the work that we do is around law reform, some of that proactive and a lot of it reactive to calls for submissions to particular proposed changes to legislation and often at the request of government departments seeking our input, so we would consider that to be a significant loss if

funding cuts meant that we weren't able to participate in that, because I think EDOs particularly feel that that's another cost effective use of our time, is to actually ensure that the laws that protect our environment are adequate.

DR MUNDY: I think our colleague Commissioner Coppel and I think it was a very good use of your time in the major projects inquiry. Just to finish on one question, just a factual one: is it possible for you to provide data nationally on, I guess the matters that you bring on a public interest basis, the number that get struck out as not meritorious and the success rate of those that go to trial?

MS FEEHELY (EDOT): Yes, sure. I can just speak briefly on that from a Tasmanian perspective. A scholar at UTAS actually did a study on this last year, a fairly clinical study of over the past five years, the number of cases taken to the tribunal not just by EDOs but taken generally and kind of sorted into what she saw as public interest versus private interest, and of the five that she recognised as having gone all the way through to hearing and were public interest, all five of them either succeeded in full or partially. They improved conditions.

DR MUNDY: It would just be useful, I think, to get this information.

MS FEEHELY (EDOT): Sure.

DR MUNDY: Because there does appear to be some view that matters brought by EDOs are frivolous, unmeritorious and - - -

MS FEEHELY (EDOT): I am sure we will be able to dispel that.

DR MUNDY: I am aware of a case which has been described as such which went to trial and was fully successful.

MS FEEHELY (EDOT): No worries. I can get that.

DR MUNDY: Thank you very much for your time. These hearings are adjourned until 1 o'clock.

(Luncheon adjournment)

DR MUNDY: We will reconvene these hearings and can we have Community Legal Centres Tasmania, please. For the record, could you please state your name and the capacity in which you appear.

MR BARTL (CLCT): My name is Benedict Bartl and I am a two day a week Policy Officer with Community Legal Centres Tasmania.

DR MUNDY: Thank you, Mr Bartl. Would you like to make a brief opening statement, and by that I mean no longer than five minutes.

MR BARTL (CLCT): Sure, so first of all, on behalf of CLCT, Community Legal Centres Tasmania, I would like to express our gratitude at being able to respond to the Productivity Commission's current inquiry on access to justice and, more specifically, your draft report. I should also note at this point, we would like to endorse the submission of our parent body, that is the National Association of Community Legal Centres, including their response to the draft report which we believe was provided in May of this year.

There is a lot that I could say but a lot of it has also been covered by the National Association, so I thought perhaps I could just focus on Tasmania. It's clear that there is significant disadvantage in Tasmania. Approximately one third of Tasmanians are in receipt of either government pensions or allowances. Up to half of the Tasmania population is illiterate and more than half are innumerate, so it's definitely the case in Tasmania that there is significant legal need and by legal need, we adopt the definition provided by the National Association, which is legal need that is unable to be dealt with by individuals.

Turning specifically to community legal centres in Tasmania, there are eight in total and if you have a copy of our report there, a complete list is provided at the end of our submission. There are three generalist centres and five specialist centres. CLCs in Tasmania do a variety of work. This can range from legal advice, legal information referrals, case work and law reform and the board of management of each of the CLCs determine what exactly will be engaged in by the centre.

In terms of the generalist CLCs, we have been able to provide some statistics for you on the disadvantaged in Tasmania and the work that our generalist CLCs do. A sort of broad point I would like to make about generalist CLCs is they are unable to meet demands. There is significant unmet need in the Tasmania community but they do do their best to meet unmet need and that applies equally to our specialist centres as well, so with our generalist centres, they are located in Hobart, Launceston in the north and Devonport in the north west and they also provide significant outreach to a number of towns in Tasmania and in Hobart, there are two satellite offices in Bridgewater and Sorell, which are approximately 20 kilometres sort of east

and north of Hobart.

Something that may be of interest to you is we were able to crunch some numbers and found that in Tasmania, for every lawyer working at a generalist centre, there is at least 9000 disadvantaged Tasmanians who may require the assistance of a lawyer and that, as the table shows, can range anywhere from one in 9000 to one in 16 and a half thousand in the north west. We were unable to find any similar figures from the mainland but I think it's fair to say that there is significant work for the lawyers at the generalist centres.

Turning specifically to the specialist centres, it is more difficult to provide statistics because they do provide state-wide services, so all of those centres will provide telephone advice, will visit people if required and will attend the court if they need to. I am, as I said, unable to provide any specific statistics but turning to levels of disadvantage in Tasmania, there's about 32 per cent of Tasmanians who are at risk of disadvantage or social exclusion.

The last point I probably want to make to you is about our funding. As our report shows, we receive approximately \$3 million across Tasmania; 64 per cent of that is from the Commonwealth and most of that is recurrent funding. It is of concern to all CLCs that of our state funding, most of it is provided for one-off, for project work and we would like to see the Tasmanian Government providing more funds and particularly more recurrent funds.

DR MUNDY: We should probably start on funding and thank you for that and thank you for the information you have provided to us. You say that just over \$3 million in funding is provided. Two thirds of that comes from the Commonwealth. I'm old enough to be able to do some mental arithmetic in my head still, so that's about \$2 million bucks a year from the Commonwealth, for the sake of the discussion.

MR BARTL (CLCT): That's correct.

DR MUNDY: That's the 2013-14 funding. What is your expectation about the 2014-15 funding levels or to put it another way, what are the effects on that \$2 million of the recent budgetary announcements?

MR BARTL (CLCT): Well, at the moment, it's unclear exactly how that is going to impact on Tasmanian CLCs. The federal budget recently passed - well, that was last year - no, earlier this year, showed that there will be a cut to all CLCs.

DR MUNDY: Yes.

MR BARTL (CLCT): Exactly how that applies to Tasmania we do not know at

the moment.

DR MUNDY: We have heard from the EDO. They know how much is going from there.

MR BARTL (CLCT): Yes. We are aware that the EDO will losing all funding and most of that - if you have a look at our funding, most of the cuts are to the EDO.

DR MUNDY: I might ask you to take this on notice but given you don't have a huge number of members, if you could just ask them individually what their expectations of their funding cuts are and perhaps let us know, because then we will be able to tally them up ourselves.

The Commissioner is well aware of the sorts of economic disadvantage that is faced by citizens of Tasmania. We may have a slightly different view about how it should be addressed but how do you think these levels of - you know, there are other regions in Australia which experience similar levels of disadvantage, particularly in relation to indigenous communities but also non-indigenous communities and often in the periphery of urban areas. Given that the Commonwealth must ultimately allocate money across states in some way, how do you think these levels of disadvantage should be reflected in the decisions that the Commonwealth makes?

The Commonwealth at the moment essentially funds nothing other than family law matters where there are dangers to children and so on. Should the Commonwealth funding I guess be directed at general measures of economic disadvantage or given the nature of the Commonwealth's funding, should it consider its distribution of funding around the matters that it actually funds? It's not clear to me because I don't know whether the general level of disadvantage expressed and the sort of economic indicators that you cite is directly correlated with the relative needs of Australian citizens, which is the Commonwealth's concern in relation to those matters that the Commonwealth is funding, or if you've got data that says it is, great.

MR BARTL (CLCT): Yes, look, that's a difficult question. Jane Hutchison who will be speaking after me is the head of CLC Tas and she may be able to provide some more information, particularly given that she has been working in this area for a lot longer than I. I suppose one point I would make is the finding of our national association, which was that we would like to see legal assistance funding provided equitably and consistently across Australia. I think at the moment the problem is that there's a hodgepodge funding arrangement, with some states being more generous than others. What we would like to see is all the states and territories coming together with the Commonwealth to ensure that funding is adequately and equitably provided across the board.

DR MUNDY: Page 5 I think reflects on some of the data you gave us. You pointed

out that in your view the advocate to demand ratios are essentially too low. I guess that begs the question of what's the right level, because if we were to establish the right, I would suspect I could probably find areas of western Sydney which probably have even higher and more densely populated areas, so the question is, it would help us understand how much money a rational Commonwealth government would, unconstrained, allocate money to the sector, if we had a sense of what is the optimal level.

The national NACLCL has told us helpfully that you probably need five or six people to run a viable CLC and the cost of running that is probably in the order of I think 5 or 6 hundred thousand dollars a year, a number like that, but do you have a view? What would be a reasonable ratio if it wasn't resource constrained? Is it one in 5000 or is it one in a 100 or are we orders of magnitude away or where would the optimal level need to be to meet the unaddressed need in Tasmania?

MR BARTL (CLCT): Well, we know that at the moment there is significant unmet need but in terms of a precise figure, I wouldn't be able to give you that. As I said earlier, we're not aware of any similar research that has been done in this area. The national association may be able to assist but we do know that for a lot of general centres, they're not meeting need. There is significant unmet need that, in our view, needs to be met.

DR MUNDY: The challenge for us is how much need needs to be met. I hate to say this but it is efficient that some need not be met because the cost to the community in meeting the need is greater than the benefit to the individuals concerned. We'll leave it there.

MS MacRAE: Just finally perhaps on the funding, you've got your eight CLCs. How is the funding determined, the split between those eight? Does that mechanism work well in your view or does it need reform?

MR BARTL (CLCT): All the CLCs receive funding from a variety of sources. They'll have a community legal service who you'll hear from next. It does a lot of Commonwealth work, so a lot of their funding is from the Commonwealth Government. The Tenants Union., on the other hand, who I work for three days a week, receives a significant amount of their funding from the State Government because they're doing tenancy law, which is a state issue. Then some centres, the EDO, for example, has a bulletin that people can actually pay for, so that's in our other column. Some centres are receiving money. So I suppose to answer your question, it depends on the program and who is ultimately responsible for providing that program. If it's a state issue, the state will usually pay or should be paying and if it's a Commonwealth matter, the Commonwealth should be paying.

MS MacRAE: Given the whole system is under pressure, is the extent of unmet

need felt, if I can call it, evenly across that sector or are there quirks of the fact that some matters are state funded and some are Commonwealth means that some of the CLC are doing relatively better than others? I guess we're interested in the other sources of funding but particularly how the state and Commonwealth money is allocated is of interest. Would you say, "If I was a CLC in Tasmania, I'd much rather be doing Commonwealth related matters because, gee, they get better funding than the states ones," or is that an unreasonable kind of question to ask?

MR BARTL (CLCT): I think it's more with Commonwealth funding. The majority of it is recurrent funding which means that those centres can plan for the future whereas those CLCs that are receiving a significant amount of money from public purpose funds are not able to plan for the future because the funding is only there for a one-off project which may only run for, say, three years. So I don't think any CLC - Jane might think otherwise, but I don't think any CLC staff feel that they would rather be working for another CLC, but, yes, in terms of - - -

MS MacRAE: The certainty of funding you're saying is more substantial if you're Commonwealth funded than if you're state.

MR BARTL (CLCT): That's correct.

DR MUNDY: I may have misheard but you mentioned Commonwealth money being put to Commonwealth matters. I just wanted to check whether you were just stating what the situation is or that it's in fact desirable that the Commonwealth funds be only limited to Commonwealth matters. It's open to this Commission to recommend the Commonwealth should fund things for all citizens if it so chose, so I just want to make sure that you're not - well, I want to know whether you're saying that the Commonwealth should only fund Commonwealth matters or have an open mind?

MR BARTL (CLCT): No.

DR MUNDY: You merely stating what the current state of play is?

MR BARTL (CLCT): Yes. In my opinion, if the state weren't to provide funding and Commonwealth funds were made available to do state matters, for example, criminal law matters that Legal Aid are unable to do, then in our view those funds should be used to assist people with criminal matters.

DR MUNDY: So if the Commonwealth felt that it wanted to fund a stand-alone civil law program which wasn't necessarily related to family matters, even though that would largely touch upon the state jurisdiction in terms of a statutory sense, that wouldn't cause you any concern?

MR BARTL (CLCT): No, we would strongly support that. I'm sure that you are aware of this but the former Attorney-General introduced a small amount of funding for a civil justice program. It would be great if that could be extended across all states and territories, and the funding on a recurrent basis.

MS MacRAE: [indistinct] talked a little bit in the national submission about an optimal size or, I guess it may be a minimum size, what they regarded as a good minimum size for a CLC. Are you able to just elaborate in relation to the eight CLCs you have here, what would be the smallest one that you have in terms of staffing?

MR BARTL (CLCT): The Refugee Legal Service which has only just started. That's run 100 per cent by volunteers, so volunteer lawyers, social workers, people like that. So that's more in the sense of it has very little funding. It has received a couple of donations but other than that - - -

MS MacRAE: Does it get state and Commonwealth funding?

MR BARTL (CLCT): My understanding is it received a small amount of seed funding to start with, maybe in the vicinity of \$5000 but other than that it has received no funding from either the state or Commonwealth governments and, as I said, is run by volunteers. So in terms of funding, maybe that is the smallest but in terms of the more established CLCs, yes, again it's a little bit tricky because some CLCs work out of other organisations. Worker Assist, for example, has three staff but it works out of Unions Tasmania. It is a small CLC but it works - - -

MS MacRAE: It's with a much bigger - - -

MR BARTL (CLCT): Yes, and then probably the more established CLCs, the North West Community Legal Service I think has 2.6 lawyers and probably another couple of admin staff, so, yes, that's probably the smallest of the bigger ones.

MS MacRAE: Thank you.

DR MUNDY: Can you give us an overview of the way that pro bono services - or how CLCs in Tasmania utilise the services of pro bono services of private lawyers?

MR BARTL (CLCT): Well, Jane, who will be speaking after me, will be able to talk in great length about that. In general, I can't speak as a policy officer in relation to that. I can speak in my other role, which is a three day a week lawyer at the Tenants Union. If pro bono were required, and that's the sort of significant cases in the Supreme Court or going higher, then generally because Tasmania is such a small jurisdiction, it's probably about who you know, who you feel you can approach. It is difficult. It has been difficult to get pro bono assistance at times, yes, and because there are no big firms in Tasmania, the Mallesons of the world, because of that, there

is a small chance within the small firms that there are here of providing pro bono assistance.

DR MUNDY: We have heard similar concerns in South Australia. Thank you very much for your time in coming today and the effort you have made in putting your submission to us.

MR BARTL (CLCT): Thank you for hearing me.

DR MUNDY: Could we please have the Hobart Community Legal Centre. You can both come up if you want. I thought that would solve the problem. Who said the Commission isn't practical? When you are all settled and comfortable and stuff, could you each please state your names and the capacities in which you appear, for the record.

MS HUTCHISON (HCLS): My name is Jane Hutchison. I am the Director of the Hobart Community Legal Service and that's the capacity that I am appearing today.

MS MITCHELL (HCLS): My name is Meg Mitchell. I am a Lawyer at the Hobart Community Legal Service and I have come to support our Director.

DR MUNDY: Jane, would you like to make a brief five minute or so opening statement. It can be shorter.

MS HUTCHISON (HCLS): I was just going to address what we were supposed to be going to say, so we just want to talk about some specific areas in general that you were talking about that we felt we were qualified to talk about but maybe before I go into that, I might actually just address some of the things from Ben's previous - - -

MS MacRAE: That would be very helpful.

MS HUTCHISON (HCLS): The size of the community legal centres; I would actually go with the National Association of Community Legal Centres' recommendation. We have had very small centres here that have been funded by the north west. I think just in recent times, over maybe the last six years or so, we have gone from one lawyer and one admin staff to two and a half lawyers. It's very, very hard to do anything substantial with those sort of resources. We ourselves have found that we got a substantial amount more funding, probably about five or six years ago, and that has made a huge difference to the services that we have been able to provide, so it does make a difference. If you have just got one lawyer and one admin staff, you are very, very limited in what you can do. If you go to the court, then there is nobody else there to see folk, you have got a day out where nobody is being seen and you have to weigh up all those things.

I weigh those up where we have one part-time lawyer and one part admin person and particularly in our offices in Bridgewater, which is the northern suburbs of Hobart, a big broadacre estate with massive social disadvantage, probably equivalent to some of the worst parts of western Sydney and places like that. At one stage, I think it had the most single mothers in one area in Australia and we do a lot of criminal work out there because the nature of the work is we get a lot of criminal work out there and I do get grumpy because the lawyer then has to spend a morning in Hobart at the Magistrates Court and it means that there's five people not being

seen, so we have to weigh up all the time how to meet the need as best we can and how to make sure people are best looked after.

Therefore, it's not suitable really to have an office with one lawyer. It just doesn't really work. As far as administration, I think most CLCs, we try and keep admin down to an absolute minimum and all our lawyers are expected to do their own typing except for one very senior elderly one, who I am not going to bring into that.

DR MUNDY: Most Productivity Commissioners do their own typing too.

MS HUTCHISON (HCLS): We don't work like traditional law firms. That's the big difference, I suppose, where we try and get the client to share their problem with us, whereas if you go into a traditional law firm, the client just basically hands over the problem, the lawyer takes over and that's what happens. We don't work that way. We try to get the client to actually take ownership of their problems and actually we try and teach them as much as possible in how to manage the problem themselves, because we take a very educational approach to it, because we feel that we know how to do it. You know, we do it time and time again but it's very important that the client, if they ever find themselves in that position again, that they find learn how to do it and that way, it means hopefully there will be less need for them to access services in the future.

MS MacRAE: Could I just interrupt you.

MS HUTCHISON (HCLS): Yes.

MS MacRAE: Just in relation to that matter of the optimal size of CLCs, in some of the larger jurisdictions, it has been suggested that you might get scale by amalgamating some of your CLCs but, I guess in Tasmania, you would be saying that for those existing centres, given that you have got eight and a couple of them are so small that they barely register - - -

MS HUTCHISON (HCLS): Yes.

MS MacRAE: That you wouldn't be suggesting that amalgamation would be a solution here, would you, that you need the centres where they are now, given the spread of resources that you need in the - - -

MS HUTCHISON (HCLS): Most definitely. It's also knowing your environment.

MS MacRAE: So there are no two sitting close together or that do something near enough that you would say, "Well, let's get a better scale by bringing them together." You would be saying at a minimum, you would be needing to be adding to the

resources of each of the centres that you have got here.

MS HUTCHISON (HCLS): Yes.

MS MacRAE: I just wanted to clarify that.

MS HUTCHISON (HCLS): There is quite a few kilometres between them.

MS MacRAE: Yes.

MS HUTCHISON (HCLS): There is only one in each regional area.

DR MUNDY: Yes, but the specialist centres, would there be any capacity for them to, if not merge in terms of their decision making frameworks, at least perhaps say to co-locate?

MS HUTCHISON (HCLS): Well, I can actually say the Tenants Union co-locate with us and keep down their costs that way.

DR MUNDY: I can see there may be issues with the Women's Legal Service co-locating.

MS HUTCHISON (HCLS): They did co-locate for a little while for us but it didn't work and they do need to be on their own, yes, because - - -

MS MacRAE: Sorry, to interrupt you.

MS HUTCHISON (HCLS): That's all right. I was getting a bit off track anyway. Yes, I believe there needs to be a optimum size for things to work properly. I will just address pro bono.

DR MUNDY: Sorry - and the national body has got the number right at about five or six staff and an annual cost of whatever it is in the national submission.

MS HUTCHISON (HCLS): Yes, I would say so, looking at the best-case scenario.

DR MUNDY: Six, a number like that, would seem to be the minimum number to deal with the sort of concerns that you have.

MS HUTCHISON (HCLS): That's right.

DR MUNDY: How many staff do you have in - - -

MS HUTCHISON (HCLS): We have the equivalent of seven full-time solicitors

across three offices, and two full-time admin people, including myself, and we've got an office manager, and then we have three part-time admin assistants.

DR MUNDY: So three and a half?

MS HUTCHISON (HCLS): Yes.

DR MUNDY: Okay, thank you.

MS MITCHELL (HCLS): Pro bono.

MS HUTCHISON (HCLS): There is a fledgling pro bono existence in Tasmania. The Law Society in the last five years, I think it was, have started up a pro bono clearing house. It is a huge job and I'm changing the culture here for practitioners to understand pro bono. The other thing I need also - it has been said we don't the large, huge law firms, so the best we can do with the biggest law firm would only be - it wouldn't even come in as a medium-scale law firm; so resourcing is quite different here for those types of things. It is happening, the culture is starting to get there, but it's nowhere near what the big eastern board states, et cetera.

We actually did experience, the Hobart Community Legal Service, we did a project using the NBN out of our Sorell office, where we partnered with DLA Piper, getting them to provide legal advice to our clients over the NBN. It proved actually very clumsy and didn't really work; we were doubling up the whole time and our lawyer was actually having to sit in with the clients. Our lawyer, first of all, had to find out what the problem was and then our lawyer then had to get that problem to DLA Piper. Then when DLA Piper gave the advice to the client, the lawyer had to be there to then translate the advice that was given to the client; so it proved - we just thought, "No, we don't need to do this." So what we ended up doing is they don't provide that type of assistance to us, but what they do is provide mentoring to our more junior lawyers, and also all our lawyers can go over and join in with their in-house training, which has been a huge thing for us, particularly we do a lot of work in industrial relations and Fair Work, and it means that all our lawyers are kept completely up to speed, because we just wouldn't get that training down here.

DR MUNDY: So do you fund the getting them there, and they provide the training, or do they fund - - -

MS HUTCHISON (HCLS): No, we do it actually over the Web, over the NBN. Just I transport them out to Sorrel, and they will sit round a computer, and when it gets very fancy, we do Web hours at their actual desks, which is even better; so that has proved to be very good, but, as I said, pro bono is in its early days in Tasmania, but I hope that it will - - -

DR MUNDY: What about the Tasmanian Bar? I know there's one particularly notable person who regularly appears at the bar in Melbourne, Mr Barnes.

MS HUTCHISON (HCLS): Yes, Mr Barnes, yes.

DR MUNDY: Does the Bar support pro bono services?

MS HUTCHISON (HCLS): Yes, it does, and they have actually just - I'm actually on the pro bono committee of the Law Society and the Bar has actually just recently joined that and becoming more active in it.

MS MITCHELL (HCLC): May I make a comment in relation to pro bono? We have got a large number of volunteer lawyers, so they are all in practice in either the public or private sectors. They have been coming for years twice a week to give after hours advice and occasionally take a case or act as mentor to a solicitor in-house. I think that's an extremely successful and long-standing example of pro bono being fostered by Hobart Community Legal Service.

DR MUNDY: Yes, we heard about something vaguely similar in Launceston.

MS HUTCHISON (HCLS): Ours has actually been going for years.

DR MUNDY: Yes, I think it's much more informal, the Launceston one. Some issues have been raised with us about lawyers on career breaks or retired practitioners who might be prepared to work pro bono, but registration fees, insurance issues, fidelity fund issues in some jurisdictions seem to be a barrier for them to do so. Are they barriers in Tasmania?

MS HUTCHISON (HCLS): No.

DR MUNDY: So if I'm a retired lawyer and I want to pop down and do pro bono work for you in my professional capacity, not as some sort of unqualified, but in my professional capacity, do I still have to - - -

MS HUTCHISON (HCLS): You would have to have a practising certificate.

DR MUNDY: Would I pay the same for a practising certificate to work pro bono for you as I would if I was still the partner of my mid-sized - - -

MS HUTCHISON (HCLS): No. The Law Society allows us very heavily discounted practising certificates for our in-house lawyers, but they would be also suitable - - -

DR MUNDY: So CLC lawyers get a concessional arrangement in any event?

MS HUTCHISON (HCLS): Yes.

DR MUNDY: So if I'm a pro bono lawyer, I would just slip in under your arrangement?

MS HUTCHISON (HCLS): Yes, and also the Law Society have also said in certain situations they are willing to give some sort of, I'm not quite sure what they call it, it was just mentioned to me that they would have flexibility there - - -

DR MUNDY: And your insurance would cover them because they are working for you?

MS HUTCHISON (HCLS): Our actual indemnity insurance would cover them.

DR MUNDY: Would the expectation be, because one of the concerns that has been raised with us was they wouldn't keep up their professional development requirements.

MS HUTCHISON (HCLS): That wouldn't be the difficulty, it would be making sure they were up to speed with the latest laws, et cetera.

DR MUNDY: But you would expect them to be kept up to speed?

MS HUTCHISON (HCLS): We would expect them, and in fact it would actually cost us money, because we would actually then probably have to pay for them to have the education.

DR MUNDY: Okay, so they would be in effect like one of your staff?

MS HUTCHISON (HCLS): They would be, yes.

DR MUNDY: Okay.

MS MITCHELL (HCLC): On that note, may I make a comment please? Because I have observed, we have had lawyers who in a sense are in that position, they've come in, the resources demanded in the office has been an issue, because especially if they are senior practitioners, they just think they can take anything and run with it. So there is an administrative - - -

MS HUTCHISON (HCLS): That's a very good point, we have had to watch that very carefully, because we tend to employ quite junior lawyers a lot of time. These older ones come in and think they can ride roughshod over the younger ones. It's carefully managing it all.

DR MUNDY: I suspect that we would have some staff that say our commissioners a bit like that. It wouldn't apply to Commissioner MacRae.

MS MacRAE: Of course not. I would just be interested, would you have any comments at all about the funding arrangements and whether you feel you are getting an appropriate share of funds and how the allocations are made? Have you got any comments about that at all?

MS HUTCHISON (HCLS): The bulk of our funding comes from the Commonwealth. I think, from memory, we get something like just under \$700,000 a year from the Commonwealth, and we get \$100,000 a year from the state government. That is specifically to run our Sorell office out of the state money, and the Commonwealth money pays for our Hobart office, our Bridgewater office and our specialised services.

MS MacRAE: So are you impacted by the latest budget announcements?

MS HUTCHISON (HCLS): Not so far.

MS MacRAE: All right.

MS HUTCHISON (HCLS): From what I can gather, I believe our state funding is still okay, and from what I heard from our State Program Manager, it's the only thing I have to go on, I gather from the Commonwealth is that our funding will be rolled over for the next 12 months. I don't think there will be any increases, it will stay at the level it is, and then from the next financial year, 15-16, then we will take major cuts, is what I'm expecting.

MS MacRAE: Okay. Are you able to tell us what impact that's likely to have on the services that you will be providing, or is it too early?

MS HUTCHISON (HCLS): It depends how much they are or what they are, but I would expect that they will mean that I would have to do redundancies, which will mean that we will have less lawyers to provide direct service delivery, which will mean we can take on less cases.

DR MUNDY: I was under the understanding that, and I may have been naive, but the Commonwealth was waiting to see the outcome of this inquiry before it made decisions, but you have been advised - - -

MS HUTCHISON (HCLS): No, that's what I was meaning. So for 14-15 we should stay - they haven't let me know.

DR MUNDY: No. I think - no, the point of my question - - -

MS HUTCHISON (HCLS): That's what I'm expecting.

DR MUNDY: So you have interpreted that - I'm just wanting to be clear about this, because you may have heard something that I haven't and I'd be interested to know about. We understand that the Commonwealth is waiting for the outcome of this inquiry.

MS HUTCHISON (HCLC): This inquiry and the Allens Consulting.

DR MUNDY: That's what I understand. Now, I suspect Commissioner MacRae and I know more about this than most Commonwealth offices in relation to our inquiry.

MS HUTCHISON (HCLC): Yes.

DR MUNDY: But when you say you've been - you're expecting that, is that your expectation, have you been advised - - -

MS HUTCHISON (HCLC): That is my expectation.

DR MUNDY: You haven't been advised by any Commonwealth office that there will be cuts.

MS HUTCHISON (HCLC): No.

DR MUNDY: Okay.

MS HUTCHISON (HCLC): I'm just going on what was in the projected budgets and I think it's been informally - nothing formal has been said, but it has been implied, put it that way, and we are expecting cuts.

DR MUNDY: I just wanted to make sure there wasn't an expectation that we had signalled we were recommending the cuts. That's all. I was concerned that people weren't representing something we hadn't formed a view on yet. Okay.

MS HUTCHISON (HCLC): I suppose my only comment then also would be with cuts, et cetera, I just see that the need for our services is probably going to increase in the next few years.

DR MUNDY: I think that's probably reasonable. The state funding you get - - -

MS HUTCHISON (HCLC): Yes.

DR MUNDY: - - - is that general? Is it of the character of project funding out of the Solicitors Guarantee Fund, or is it more solid than that?

MS HUTCHISON (HCLC): No, it's more solid than that. It's seen as - it's paid to us through Legal Aid through the community legal services project. We get \$100,000 per annum for our Sorell office, and the North-West Community Legal Centre also gets \$100,000 per annum.

DR MUNDY: Cool. Okay.

MS HUTCHISON (HCLC): And we get a little bit of Solicitors Guarantee Fund, but you obviously have to put in applications for that, and we use that to fund our law handbook.

DR MUNDY: Okay. You note that many of your clients have poor literacy, lack of access to computers - - -

MS HUTCHISON (HCLC): Yes.

DR MUNDY: - - - despite the preference given to the NBN by the Commonwealth to be rolled out in Tasmania, and this is an issue that we've come across in the past, that people rush to technology as a device for spreading information, but then people aren't able - and I'm sure our colleagues from the Tax Office have some experience of this, and I know that a number of regulators think all they need to do is put information up on the Web and small business owners whose third language is English will immediately be able to understand it.

MS HUTCHISON (HCLC): It's one of my great frustrations, that.

DR MUNDY: Yes, I've heard it a lot. I guess the question then is how do we achieve the - without wanting to not use the technology when it's available - - -

MS HUTCHISON (HCLC): Yes.

DR MUNDY: - - - for people who have - an increasing number of people probably have an expectation of its availability and get frustrated when they can't. We have colleagues like that. But these people who probably are more likely to be in some sense disadvantaged, what strategies do we need to put in place I guess around the whole information provision thing to make sure that those who are disadvantaged - and typically they're probably also strongly correlated with the people who don't have access or ability to use technology. What do we do about that?

MS HUTCHISON (HCLC): Yes. It's a huge challenge and it's something we

grapple with all the time, you know. Word of mouth works with them. So it's really getting word out amongst their community and making sure that you are part of that community, and that's what we try and work hard at, and also making sure that all the community organisations also know about you and understand about you because it's the only way you're going to reach those people.

DR MUNDY: Because it's leveraging off other community organisations and services that does the trick.

MS HUTCHISON (HCLC): Yes, and once again I must say what's also what we think is very, very important for us is to actually work with the community and other community agencies, and that's what we do a lot of.

DR MUNDY: I guess people who are disadvantaged, I mean would it be your experience, are typically accessing other community based welfare and assistance services?

MS HUTCHISON (HCLC): Yes.

DR MUNDY: And will often be the people most likely to present with complex legal needs. Is that - - -

MS HUTCHISON (HCLC): Very, very much so. A lot of our clients have very complex needs, and that's half the problem is also, you know, working out what's the legal problem, what's the social problem, and that's why, you know, we do need to work closely with their caseworkers and whoever they're working with in the community.

DR MUNDY: So I guess one of the things that we've had raised with us and encouraged to look at and we have done so I think reasonably favourably is this question about legal health checks, and I guess there is sort of two models for this. There's one for when, you know, a person comes and presents in your offices with a problem, do you then scan them to see if there's any other legal problems that might be floating around with them, so that's one model. But the other model is for people who are dealing with disadvantaged people more broadly, so some sort of instrument that can be used by non-lawyers when they're dealing with someone, it might be a social worker or someone like that, and they're dealing with someone and training for people to - not to solve their problems, but just to say, "Look - - -"

MS HUTCHISON (HCLC): To recognise them.

DR MUNDY: "- - - that looks like a legal problem." We know the South Australians actually have a TAFE course for non-legal - for community workers to teach them non-legal skills, but that's probably down the heavy end of the spectrum.

But do you do any work with other welfare organisations so that they learn to spot a legal problem and send them off to you without you having to be physically present to find it yourselves?

MS HUTCHISON (HCLC): Well - - -

MS MITCHELL (HCLC): So if I say something to start with.

MS HUTCHISON (HCLC): Yes.

MS MITCHELL (HCLC): I address all the social worker students at the University of Tasmania, and we often do make available to them to come into the office to actually sit in because we often have, you know, a lay person or a person from another profession sitting in, so that's one - - -

DR MUNDY: Do they take that up?

MS MITCHELL (HCLC): They haven't actually.

MS HUTCHISON (HCLC): No.

MS MITCHELL (HCLC): No, they haven't.

MS HUTCHISON (HCLC): Which is sad. We've got all the law students who are doing the legal prac courses. They all come through us, so they all get to know what we do. But, yes, no, that's - so, you know, we do it that way, by going and talking to groups. We also - as I said, we have strong ties with the community and a lot of community agencies, and we also encourage them to phone us and ask. We do that all the time, "Just phone us and ask us," and we do the same, you know. We get clients in who have got multiple needs, and then we also then - - -

DR MUNDY: I guess in a somewhat smaller place, jurisdiction, community - pick whatever word you want, you're probably - - -

MS HUTCHISON (HCLC): It's probably easier to do.

DR MUNDY: You're probably a bit closer to a lot of these services than your counterparts in parts of Sydney or Melbourne or Brisbane.

MS HUTCHISON (HCLC): Well, yes, but I would be sad to think that they weren't working with their community.

DR MUNDY: But when you look at somewhere like Marrickville CLC, who has - I think there's a million people - - -

MS HUTCHISON (HCLC): That's true.

DR MUNDY: - - - live in the catchment and - - -

MS HUTCHISON (HCLC): That's a bit different to this.

DR MUNDY: - - - you know, they're 15 miles away.

MS MITCHELL (HCLC): Often other workers, you know, social workers, et cetera, are actually an intermediary though.

MS HUTCHISON (HCLC): Yes.

DR MUNDY: Yes.

MS MITCHELL (HCLC): Between the client and us. But I suppose on the other hand, our work is pretty much - our time is pretty much occupied with the cases we've got. But it is interesting that, you know, you can have someone with an individual problem - and I have this experience. Another lawyer in the office just asked me something about divorce, so in the family law context, and I said, "Well, make sure you tell that client that if she's going to apply for a divorce that the clock - she set the clock running for a spousal maintenance claim and property, financial settlement, and he says, "Oh, will you speak with her?" Because she came into the office and I saw her paperwork, I think we ended up with eight files for her. There was a fraud matter, there was child support - - -

MS HUTCHISON (HCLC): Huge. There was family issues, there were consumer credit issues, there - - -

MS MITCHELL (HCLC): Solicitor negligence, like a former - a practitioner who had effected the sale of the former matrimonial home hadn't divided the proceeds of sale properly, and I suppose it just reinforced for me the danger of advice by telephone, because I've worked in that capacity both at the Law Society and at Legal Aid. It's always quite a worry, I think, to be giving advice because you're relying on that individual to properly represent their issue, and they come in with the paperwork and it's usually quite a different story.

DR MUNDY: Yes.

MS MITCHELL (HCLC): So I suppose if we were talking about technology, perhaps, you know, it would need to be, say, like a television screen so that you've actually got face to face, you can see the person and some method of transmitting their documents to you if you're at a different location, so you really are dealing with

the actual issue rather than someone - - -

DR MUNDY: Because a trained legal eye will see more in a document than the person reading from it necessarily will.

MS MITCHELL (HCLC): Yes.

MS HUTCHISON (HCLC): The other difficulty is the literacy of a lot of our clients. They can't read and write, and so half the time they just come in with this wad of stuff and just pop it on, "We've got this," and then you have to go through it and work out what - work it out for them.

MS MITCHELL (HCLC): That's the other thing. Telephone advice, that's the point that the recommendation - was it section 7 recommendation 5.1, having the single contact point. Basic - and I think there's an issue there that's - what was the clause - phrase basic advice - - -

DR MUNDY: Don't worry about too much of the language because it needs to be worked on.

MS MITCHELL (HCLC): Okay. So then there the caller has got to have the capacity to properly describe their issue and then a capacity and the confidence to act on any advice that they are given, and we find that a lot of our clients can't do that.

DR MUNDY: Yes.

MS MITCHELL (HCLC): You know, it might just be gathering documents, attending court, writing a letter. They've most likely got barriers that would prevent them acting on that basic advice.

DR MUNDY: And the degree of embarrassment involved by saying on the phone, "Well, I can't actually write," is probably - - -

MS MITCHELL (HCLC): And then they - - -

DR MUNDY: - - - a very high hurdle, but if you - - -

MS HUTCHISON (HCLC): They never tell you they can't read or write, you just gather when they say, "Oh, I haven't got my glasses. I can't quite see," then you start - - -

DR MUNDY: Whereas if you - - -

MS MITCHELL (HCLC): "I've forgotten how to spell Australia."

DR MUNDY: Yes. But if you see them in the flesh, you're more likely to be able to identify that than if it was on the phone.

MS HUTCHISON (HCLC): Very much so.

DR MUNDY: And these obviously aren't the people who are going to use some sort of online service.

MS HUTCHISON (HCLC): We actually have a policy. We try to do as little telephone advice as possible. We like our clients face to face because of that fact. I think really the only area we do provide information really on a regular basis on the phone is we have a consumer credit hotline for the state, but apart from - and that's just basic information then referral to resources in their areas.

MS MITCHELL (HCLC): It is partly why we run an after-hours service - - -

MS HUTCHISON (HCLC): Yes.

MS MITCHELL (HCLC): - - - too for people who wouldn't be able to get in or even make a phone call during the daytime.

DR MUNDY: All right then. Well, thank you for taking the time to put your submission to us and coming in - - -

MS HUTCHISON (HCLC): I was just quickly going to address the civil areas as well.

DR MUNDY: Yes.

MS HUTCHISON (HCLC): I was just going to mention that, you know, we do a huge amount of civil work and, you know, a lot of that is Commonwealth work as well, and the other thing I need to point out is Legal Aid here do not do civil work, and they do not fund civil work. That includes, you know, bankruptcy, consumer credit, Centrelink matters, administrative law, Fair Work, and so it goes on, and that's where we pick up a lot.

DR MUNDY: Okay, and that's either funded effectively both by - and the Commonwealth doesn't fund that for legal aid purposes either, so the - - -

MS HUTCHISON (HCLC): No. So therefore that's where we pick up. CLCs do pick up a lot of that work.

DR MUNDY: All right. Well, thank you very much for that.

DR MUNDY: Given I know exactly who everyone in the audience is, I presume no-one wishes to make a statement from the floor, so these proceedings are adjourned until 8.30 on Tuesday morning in Darwin.

AT 1.53 PM THE INQUIRY WAS ADJOURNED UNTIL
TUESDAY, 17 JUNE 2014