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TRANSCRIPT OF PROCEEDINGS

PRODUCTIVITY COMMISSION

INQUIRY INTO THE DISABILITY DISCRIMINATION ACT

MRS H.J. OWENS, Presiding Commissioner
MS C. McKENZIE, Associate Commissioner

TRANSCRIPT OF PROCEEDINGS

AT BRISBANE ON THURSDAY, 29 MAY 2003, AT 9.33 AM

Continued from 27/5/03 in Darwin

MRS OWENS: Good morning and welcome to the public hearing for the Productivity Commission into the Disability Discrimination Act 1992 which we will refer to as the DDA. My name is Helen Owens and I'm the presiding commissioner on this inquiry. My associate commissioner is Cate McKenzie. We have three breaks today; a morning tea break at around 10.30, a lunch break at 12.30, and an afternoon tea break at 3 pm for half an hour.

On 5 February this year the government asked the commission to review the DDA and the Disability Discrimination Regulations 1996. The terms of reference for the inquiry ask us to examine the social impacts of the DDA on people with disabilities and on the community as a whole.

Among other things the commission is required to assess the costs and benefits of the DDA and its effectiveness in achieving its objectives. We have already talked informally to a range of organisations and individuals with an interest in these issues and submissions have been coming into the inquiry following the release of the issues paper in March. We are grateful for the valuable opinions we have received to date. The purpose of this hearing is to provide an opportunity for interested parties to discuss their submissions and their views on the public record. Following the hearing in Brisbane today there will be hearings in all other capital cities and we have already held hearings in Darwin on Tuesday this week.

We will then prepare draft reports for public comment which we will release in October this year and there will be another round of hearings after interested parties have had time to look at the draft report. We would like to conduct these hearings in a reasonably informal manner but I remind participants that a full transcript is being taken, hence the microphones. For this reason, and to assist people using the hearing loop, comments from the floor cannot be taken because they won't be heard by the microphones, but if anyone in the audience does want to speak I'll be allowing some time at the end of the proceedings to do so.

Participants are not required to take an oath but are required under the Productivity Commission Act to be truthful in their remarks. Participants are welcome to comment on the issues raised in other submissions. The transcript will be available on the commission's web site in Word format following the hearings. I now invite our first participant of the day. It's the Paraplegic and Quadriplegic Association of Queensland. Welcome, and could you please give your name and your position with the organisation for the transcript.

MR MAYO: Thank you. My name is John Mayo and I'm the manager, community relations for the Paraplegic and Quadriplegic Association of Queensland.

MRS OWENS: Thank you. Can we call you John?

MR MAYO: Please do.

MRS OWENS: Thank you, John, and thank you for being the first to appear today. Usually the early one, you don't get a large audience, but in Darwin we did get people coming in through the day so we'll wait and see. I understand that you have presented us with a submission and we have now got a revised submission this morning so I would be happy if you could run through some of your key points for us.

MR MAYO: Thank you. May I just begin by saying that in my position with the association I have an advocacy role and I have been working with the Human Rights Commission, and in particular, dealing with issues around the act since the middle of 1994, and I was involved with the precedent case in Brisbane concerning access to the Brisbane Convention and Exhibition Centre which was the first real test, if you like, of this particular piece of legislation, and upon which so much has hinged since the outcome of that particular matter.

The first thing that I would like to comment upon is the policy unit at HREOC. It has an enormous job to do but it seems to me to be seriously under-resourced. Given that there are four people who in fact contribute to the policy unit, but one of those is the deputy commissioner who has obviously other duties, so in fact there are only three people in the policy unit who are able to fully commit to the process of providing information on policy and developing policy on behalf of the nation and that seems to me to be far too small given the importance of the application, if you like, of the DDA, and also that group is the one that contributes advice to people to help them understand what does the DDA mean in this particular instance.

MS McKENZIE: John, that policy unit, so the deputy commissioner of course has got limited time to be able to, given the other functions to do policy work - - -

MR MAYO: Correct.

MS McKENZIE: - - - but are there similar policy units for race and sex discrimination matters?

MR MAYO: I cannot answer that. I do not know.

MRS OWENS: I was wondering, John, whether you raised this with the commissioner at any stage because as I understand it, HREOC would get an over-arching, an overall budget, and then it would be up to the commissioner to decide how to allocate that budget. So it may not be necessarily an issue about funding of that policy unit but the overall funding for the commission as a whole, and it may be quite tight, in which case he has limited flexibility in terms of how much he can allocate to that unit so it may be a bigger issue than just funding the

policy issue unit.

MR MAYO: It might well be, but I think the disability sector in particular had become concerned ever since the government removed such a large chunk of HREOC's budget a few years back. About 48 per cent went and that was seen as being something that was not desirable. There was enormous hope around how the DDA and its application would serve Australia, and the moment that that budget got slashed, it certainly brought a dose of reality, I suppose, about the fact that things weren't quite going to be as many people had hoped.

MRS OWENS: I suppose there's a degree of symbolism in that. I think the government slashes budget across organisations. We have had ours cut each year but in this case there is a very important agenda to be followed and if you don't have the sources I suppose it makes it doubly difficult.

MR MAYO: It does, and if I could just say that this legislation in historic terms is relatively new and it takes a while for a community to come to grips with new legislation to understand it and to begin to support it and to accept its application. We're dealing here with a significant culture change for Australia when suddenly we're taking on the notion of not treating any particular group of people less favourably than another and that has quite serious ramifications for a community when it hasn't begun to practise that notionality previously.

MS McKENZIE: So there's even more policy work required actually at the beginning of legislation.

MR MAYO: There is because it's very difficult for the community to understand often what a piece of legislation actually means in real terms. Legislation tends to be written understandably with a degree of legalese and the issue becomes, "Well, what's that actually supposed to mean? How am I supposed to apply that in everyday life?" So I think there has certainly been a willingness on the part of the Australian community to engage in the process but nevertheless it has been an issue of understanding, if you like; how does it work and - - -

MS McKENZIE: Yes. The other thing that occurs to me too is, and just harking back a sec to my question about the other two acts, the Race and Sex Discrimination Acts, they have been around for much longer.

MR MAYO: They have.

MS McKENZIE: So it may well be that the initial policy work has already been done, if you like, and so you simply don't have a huge amount to do.

MR MAYO: No, that's true. That's absolutely true.

MRS OWENS: But I think then some might argue then that it would be up to the commissioner then to withdraw resources from policy units dealing with those issues and reallocate the resources. He may have done so. I don't know. We'll look at the composition of the commission, I think, just to satisfy ourselves - and I'm not really sure whether that policy unit also has an educative function as well or is it purely to do policy? We can ask the commission when we talk to them.

MR MAYO: I think you will find that in fact there is an expectation that it does perform an educative role because there's no other division within the organisation to do that, and I think that in all honesty the policy unit probably struggles with that because how do you balance the priorities?

MS McKENZIE: Yes.

MR MAYO: But the truth of the matter is that it undoubtedly does perform an educative role, both in a macro and a micro sense. You know, the micro sense is that the organisation seeking an answer to a specific circumstance involving the DDA.

MRS OWENS: We're yet to receive a submission from HREOC but it may cover some of these sorts of issues. I would be surprised if it didn't, and so we will be able to get a clearer understanding of that point, but we'll follow it through as we're going.

MR MAYO: Okay, that's fine. If I could just move on now to number 2 and that's simply the benefits as we see in terms of developing DDA standards. We think there's no question that the development of DDA standards is beneficial to the nation. Indeed, we were around at the time when Elizabeth Hastings, the first commissioner, was seeking to establish HREOC and issues around the DDA within the Australian people and through our own experience we were one of the groups of people who went to her and said particularly to deal with the issues of a built environment.

We indicated to her that it would be really useful to produce a document that explained to people who were involved in the design and planning and building and development of buildings and infrastructure if there was in fact an educative document that explained to them what it was that the DDA was actually seeking from them and that led to her and her office developing the DDA Advisory Notes on Access to Premises which in fact was the first piece of educative material, and in a way, if you like, almost the first standard, without it being a standard, because it actually provided some prescription around answering the question, "What is it I'm supposed to do?"

We think that those advisory notes were and continue to be an excellent document and - - -

MRS OWENS: Do you think they're better than standards?

MR MAYO: Absolutely.

MS McKENZIE: I mean, does it ever have advantages?

MR MAYO: Absolutely, unquestionably, and could I explain why?

MS McKENZIE: Yes, please do.

MR MAYO: Australian standards are extremely difficult to work with for a number of reasons and they become unreliable in actual fact to people who are having to place some dependency on them. They're unreliable because of a couple of reasons: (1) some standards are quite weak; (2) some standards are actually non-functional. It is impossible to comply with them. I could cite you instances of those if you wished.

MRS OWENS: Do you want to? That would be lovely.

MR MAYO: For argument's sake, Australian Standard 1428 part 1 talks about the issue of door force. What is the force required to open a door, okay? It actually states in there that after the initial force to open the door it should require no more than six newtons of force to be able to push a door through its arc, okay? Now, many doors in Australia, for other reasons of compliance, things like air locks and toilets and so forth, require that a door closer be fitted to the door so that it automatically closes. You can't buy a door closer that would deliver six newtons of force. The best that you could buy is around about 20 newtons of force which is a long way off six. But here is the kind of Loony Tunes aspect. You wouldn't want a door closer that delivered on six newtons of force because quite honestly the airconditioning unit close by would simply blow the door open anyway on its own force.

MS McKENZIE: I'm sorry to be so hopeless scientifically, but is 20 stronger than six?

MR MAYO: Yes, it is. In this case the greater the number the greater the force.

MS McKENZIE: The greater the force.

MR MAYO: So you really need a door closer that will deliver somewhere round about 20 to 25 newtons of force in order that in fact it won't blow open of its own accord by the airconditioning unit or a strong breeze coming in through your door, but in fact can be successfully opened by a person who has a low level of functionality in terms of physical functionality to open the door.

MRS OWENS: So there's a balance that you need to achieve there.

MR MAYO: And the standard says categorically, "This figure of six newtons, which Australian developers and builders and designers can't possibly comply with. "

MRS OWENS: So where did the standard come from? Who cooked it up?

MR MAYO: Excellent question. That leads us to the next point. Australian Standards in fact has been developed through an organisation called Standards Australia.

MRS OWENS: Yes, I've heard of them.

MR MAYO: And Standards Australia is in fact a publishing house.

MS McKENZIE: Their standards are quite expensive, are they not?

MR MAYO: They are, but their standards are produced as the result of Standards Australia being a publishing house and it makes its money selling its standards, okay, and it chooses whom it wants; no particular process outside of that. It is an organisation who chooses who it wants to be on its committees, who will devise and/or review standards and it is not an organisation that is sufficiently strong enough financially to be able to conduct the research to alter standards which are now considered to be even non-functional, weak or outdated.

MS McKENZIE: So what does it do about those? It just leaves them in place?

MR MAYO: Yes, they simply languish in place making life fairly difficult.

MS McKENZIE: So that explains why - for example, take the building codes, as you obviously are aware - refer to lots and lots of standards.

MR MAYO: Correct. They call them up.

MS McKENZIE: Yes. One of the troubles that occurs to me in relation to the code is that I have no idea how any member of the public or even any lay builder, or for example, a disabled person who might want to know whether their building complies or should comply, can sort all that out because they may have to buy 20 different standards as well as having a code to try and work out, if they can, how it all interacts.

MR MAYO: You're absolutely correct. This is partly why the process is so difficult, but you're right, you may have to buy a multiple number of those codes and

they may range from 60, 80, 100 dollars per booklet. So, yes, it is difficult, but mercifully the DDA has chosen through its Advisory Notes on Access to Premises to identify standards that are in the main stronger standards because Standards Australia produce the standards in a couple of forms. In some instances, for argument's sake, there is a kind of weak standard and a strong standard. This is particularly in the case of 1428 part 1 and part 2. Part 1 is the weak standards upon which we have built just about everything forever, and part 2 is the stronger standard because it recognises the functional needs of people with a medical condition or ageing or person with a disability.

MS McKENZIE: Can you give me an example of the difference? I don't want to put you off your train of thought, but can you give me an example of the difference? We need educating.

MR MAYO: Yes, I can. For argument's sake the issue of a ramp; you want to put a ramp to connect you from, say, the footpath to a building. The standard 1428 part 1 says that you can run a straight line length of your ramp for nine metres uphill until such time as you then need to have a landing or rest point. Okay. So that's what 1428 part 1 says. 1428 part 2 says, no, you can only run a distance of six metres in a straight line before your landing. A six-metre length is obviously much more user-friendly to an ageing community or someone with a disability or a person with a medical condition or a parent with a pram or someone with a temporary injury. So it's those kinds of differences.

MRS OWENS: Do builders have a choice about whether they use part 1 or part 2 or does somebody say, "Thou shalt use part 1."

MR MAYO: They do have a choice, but because part 1 has been performing, in many respects, unchanged over a long period of time and part 2 only became available in 1992, there is the historic passing of father to son or university to student of part 1 down through the design and building industry, so part 2 is almost foreign or unknown to some sections of the design and building industry as a result.

MS McKENZIE: Even to certifiers, like - - -

MR MAYO: Certifiers are taking a view on this issue. They're either a part 1 person or they're a person who is now acknowledging the significance of part 2, but they only tend to acknowledge part 2 if in fact they first arrived at a position of saying, "Well, we need to consider the DDA." It's only those certifiers and they're currently in the minority, in my view - - -

MRS OWENS: How do they reach that position of needing to consider the DDA? What light goes on?

MR MAYO: What light goes on? It's because they become a certifier who considers the risk management issues for their client and says, "Hang on, the Building Code of Australia" - calling up Australian Standards - "will not protect my client in a legal jurisdiction if in fact the complaint is taken under state anti-discrimination or under Commonwealth disability discrimination legislation," because it's quite clear through a range of precedent cases that if you march into a legal jurisdiction such as the state government did here in 1994 and simply say, "We built the Convention Centre based on the Building Code of Australia under the Australian Standards it calls up," that did not protect the government, nor has it protected anybody else very much ever since that time who simply said, "I've built it based on the Building Code of Australia" - because there's such an enormous gap that exists between the Building Code of Australia and the DDA, which is exactly what the federal Attorney-General is now addressing with a team of people to develop a new Access to Premises Standard for Australia.

MRS OWENS: But my understanding was they were going to base that standard on the Building Code of Australia, or is that wrong?

MR MAYO: That's a little bit round the other way to some degree. There's some people who would say, well, their work will now incorporate the Building Code of Australia. It depends on who you're talking to.

MRS OWENS: Talking to people say in Tasmania, they say, "Well, we don't really like the idea of adopting this standard access standard because if it's based on the Building Code of Australia, it will be weaker than our own building code here in Tasmania and we want to stick with our code," and I don't know whether that's been holding the process up of agreeing on a standard or not for access to premises.

MR MAYO: No, I don't believe that it has. I believe that the Building Access Policy Committee, which is working underneath the Attorney-General in making all of this move forward, their issues have basically been trying to get a disparate group of people such as Property Council of Australia, Local Government Association, et cetera, and people who are obviously representing HREOC, to come together and achieve agreeance on the sort of prescriptive measure which they are seeking to now incorporate in this new standard and I personally have considerable confidence around the fact that the standard will be way superior to anything that we have previously had in Australia. Its limitation, however, is that it relates only to public buildings and public space.

MS McKENZIE: Not private? Rental accommodation, for example?

MR MAYO: Well, I can't pre-empt what will be, because we don't know yet what the content will be, but we know that essentially it's a - - -

MS McKENZIE: Public.

MR MAYO: - - - something that's dealing with public space.

MRS OWENS: Are you on that particular committee?

MR MAYO: No, I'm not, but I quite frequently contribute information to that committee.

MRS OWENS: You seem very knowledge about the issues.

MS McKENZIE: Can I just go back to the advisory notes thing? Is it - and I'm not putting words in your mouth - but are you saying the advisory notes are better because they're more flexible and they can be changed as either access requirements change or technology changes or methods of construction change and so on? Is it that they're more flexible and easier to change?

MR MAYO: No, I'm saying that the Advisory Notes on Access to Premises is the document, for me it's the bible, that one uses in order to provide duty of care to any client or individual in addressing these issues until such time as the Access to Premises Standard is enacted in the federal parliament.

MS McKENZIE: Okay, I understand.

MR MAYO: That's why I'm saying. Because the Building Code of Australia right now is not sufficient to protect anybody in a legal jurisdiction. The advisory notes, in my view, are because the advisory notes they use by people in legal jurisdictions to actually determine the outcome, therefore, the advisory notes are really saying to you, "Read me and I will tell you whether you are right or you are wrong and if you're right, stand your ground, and if you're wrong, don't come to court, go away and fix it." It's actually an educative document designed to keep people out of using legal jurisdictions, to give you the answer to the question, "Am I right or am I wrong in this particular instance?"

MRS OWENS: So you're not necessarily rejecting the idea of standard setting under the DDA, you're just saying that you think the advisory notes that are in place at the moment are preferable than relying on the current building code?

MR MAYO: I am and I'm saying they're preferable because there have been a number of legal cases nationally that keep proving that the DDA and indeed state anti-discrimination legislation sits above the building code and we have this gap in the middle, so if you don't want to be grappling with the gap in the middle, use the advisory notes until such time as the Access to Premises Standard comes into place.

MRS OWENS: Understood.

MS McKENZIE: Do you think that's a good approach in other cases? In a number of our submissions it's been said that a standard that requires parliamentary enactment is quite long time in the making; you know, it requires enormous consultation and so on. Do you think, as a sort of interim measure so that people know better where they're at, until the time when a standard can be finalised and enacted, do you think an advisory note in other areas also would be good?

MR MAYO: I absolutely do. I'm only concerned about the fact that this document was not originally proposed with the name of advisory notes. In actual fact it had another name proposed for it and in fact the commission wasn't allowed to use that, but in fact it was intended by the commission, back in 95, to make these notes settle under a name which was much more prescriptive. I mean, it was intended that this be in fact a legal guideline, but in fact the government of the day said that they felt that there were issues with that and disallowed the commission from being able to couch it in those terms, so it was ultimately altered to become an advisory note.

MS McKENZIE: But effectively that's how it's worked anyway, isn't it?

MR MAYO: It is, simply because it's been made quite clear that in fact people in legal jurisdictions will turn to the advisory notes to determine their outcome. So it's a backwards way, but nevertheless it - - -

MRS OWENS: It's still effective.

MR MAYO: That's where the power lies at the end of the day.

MRS OWENS: What are the advantages of going that one step further and having an Access to Premises Standard going to parliament and being passed through parliament? Is there any advantage of going that way - - -

MR MAYO: Yes, there's a huge advantage. First and foremost you then have a prescriptive standard which has been enacted, so it's very clear-cut about what it is that you're supposed to do, so that all parties, both the service provider and the consumer, then have a very clear understanding about what was supposed to have happened. You're no longer having to deal with the issue of, "Well, that's only a document called 'an advisory note'," okay.

MRS OWENS: It just has that added clout.

MR MAYO: It has all of that added clout, but bear in mind that the standard will have more weight because it has had much more in the way of consultation and contribution to its development than what the advisory notes did.

MS McKENZIE: The last thing I want to ask you about this area, because I suspect you might want to raise a whole stack more, but what about the question of very old buildings and how the DDA, whether by advisory notes or standards or whatever, should apply to them so that they can be made accessible? I mean, that's a matter that's been raised in lots of submissions before us.

MRS OWENS: And particularly heritage buildings.

MS McKENZIE: Particularly heritage buildings, but just very old buildings in general. What do you do about - how do we sort that problem out?

MR MAYO: My opinion of that is that if a building is an aged building, regardless of whether it's a heritage listed or a National Trust building, if the building is in fact designed to perform functions for the public because it's staffed by people to deliver those services, it's unquestionably a public building. We can't have a kind of separation, if you like, simply for aged buildings that says, "Well, we are delivering a service there to the public but of course you'll have to look at it differently because it's an old building." So in that sense I believe that the DDA is correct in saying that heritage listed buildings and National Trust buildings are not exempt under the act and I fully support that. It is also clear that there has been considerable adaptation and creativity shown by designers on how to, in fact, create equitable access to heritage buildings.

MS McKENZIE: While maintaining the heritage values.

MR MAYO: Absolutely. You do not need to delete the heritage values and occasionally in auditing work that I do - and I did one quite recently here in the heart of Brisbane of a building that was built in the 1800s - we manage to create accessible access into that building through a major refurbishment without causing one iota of harm to the heritage values of that building. You see you now have professionals who are quite able to do that.

MS McKENZIE: Yes.

MR MAYO: As to old buildings generally - because in that conversation now we've just touched on Trust and heritage buildings - but old buildings generally, they have a life, every building has a life, and at the moment I think quite rightly the DDA is saying, "If the building was built prior to the introduction of this legislation then in fact nothing has to be done to it until such time as the building itself requires one of two things, (a) to be demolished and rebuilt, or (b) to have a serious refurbishment, a major refurbishment," and major we're sort of talking 51 per cent.

MS McKENZIE: This is non-public buildings?

MR MAYO: I'm talking about basically any old building which may serve the public. I'm not talking about private dwellings. I believe that market forces sort of take over, if you like, and when a building owner decides that in fact it either needs to be demolished or refurbished, that's market forces at work and it will happen at that point. Nobody likes legislation which is retrospective. We would feel very unfavourable towards the Tax Office if they started issuing things that tax us retrospectively. I think we have to provide the same acknowledgment to a piece of legislation like the DDA which says, "We're not seeking to tax you on this building retrospectively." But there is one exemption and that is when a service begins to operate out of an old building and it's the only service, a monopoly service available to the community, the DDA and HREOC does allow people to lodge a complaint around the fact that a monopoly service is occurring in an old building and the service provider is simply claiming, "Well, I can't do anything for you because it's an old building."

MS McKENZIE: That really relates to access to the service in a way, rather than access to the building.

MR MAYO: Absolutely correct.

MRS OWENS: Because a service provider can always shift.

MR MAYO: Correct, they can, they do not have to be a tenant or they can in fact seek to manage to deliver the service to the client that can't access the building. So I think it's right that in fact that issue of the service then be separated away from the building.

MS McKENZIE: So am I correct in understanding, you're saying that pre-1992 buildings, pre-DDA buildings if you like, if there's a major refurbishment or you, with this exception or with the monopolistic service provision, then you've got to have complying access?

MR MAYO: Absolutely. It would have to comply with the exact requirements of both local town plan and the building code and DDA and state law as it applies right here and now.

MS McKENZIE: So if that's the case, if what I've just said is the case, then you'd never have a question with heritage buildings, because they're all built, you know, pretty much pre-1992.

MR MAYO: Yes. So we'd be seeking for heritage buildings, if they were operating for the public and certainly if they were operating in a manner which money was charged to go and visit them, that they in fact would be accessible to all

of the community.

MS McKENZIE: So DDA should really cover those, even though - - -

MR MAYO: It does, in our view it does. It basically says that those buildings are non-exempt from the DDA, that they do need to offer equitable access and the advisory notes actually say that.

MS McKENZIE: But I thought you said if they were built pre-1992 they didn't have to do anything. Or is it a lesser - in effect, it's a standard that's got to be adapted in accordance with the nature of the building. Is that - it's a somewhat different - - -

MR MAYO: No, the building itself doesn't have to have anything done to it unless in fact it is begun to be used by the public in a public traffic context. You either charge money to go and visit or you start operating services out of it. In that sense you'll need to be able to either make it accessible or have it deliver - or make it accessible in order to deliver its services.

MS McKENZIE: Okay.

MR MAYO: But if you're not operating services then there's nothing that you have to - - -

MS McKENZIE: Okay, I understand.

MRS OWENS: Okay. Yes.

MS McKENZIE: So it's the service element.

MR MAYO: It's the service element.

MRS OWENS: Yes.

MS McKENZIE: I understand.

MR MAYO: Yes.

MS McKENZIE: That was a big detour from your comments.

MRS OWENS: I'm sure we've entirely made you forget everything you wanted to tell.

MR MAYO: No, no.

MRS OWENS: It was very helpful for us.

MS McKENZIE: I think we've skipped a little bit up to your fifth point on the initial submission but we can backtrack now.

MR MAYO: Yes, I'm just still back on number 2.

MS McKENZIE: Yes.

MR MAYO: All I'm saying there is that the notion of developing DDA standards is an excellent notion. It worked well when those advisory notes were first developed. It's seen as a good process in terms of the other - of the standards that have then followed. The transport standard would be an excellent example. It's literally impossible in a country the size of Australia not to have access to transport and not everybody can afford private transport. So accessible public transport is just essential for a country of the size and make up, and the fact that within 20 years we'll actually have a nation which has an accessible public transport outcome is just going to be so beneficial to this nation.

Most people think, however, of its benefit socially, and I think that it has this enormous economic benefit that's just as equal as the social benefit. It's not possible for us to maximise our performance as a nation in terms of our markets and sales and profits if in fact we don't make it possible for all of the population to be access our goods, services and information. We currently can't do that and my estimation is that about 35 per cent of the nation is struggling to access goods, services and information and wherever those three items are sold that simply means that there's currently a 35 per cent gap at the cash register, which equally means that that's a 35 per cent gap on the nation's economy. Let me just flesh that out a second for you.

The University of Technology in Sydney, in the mid-90s, did some excellent research around the tourism industry in Australia. It was done by a man called Simon Darcy through the university's Department of Leisure and Tourism. Essentially his research findings showed that in the mid-90s, 95 and 96, Australia lost 5.5 billion - that's billion, not million - dollars per annum in lost domestic tourism because we were not an accessible nation in a tourism or day trip context. For Queensland, for argument's sake at that time, that represented $470 million lost in accommodation alone to the economy here. Darcy's breakout said that $2.5 billion was lost per annum in lost domestic tourism in the sense of people actually having a holiday and 3 billion was lost in people's inability to take day trips.

Now, if this is one industry in which we lose $5.5 billion per annum, if we apply the multiplier effect across a range of other industries in Australia it gives us some notion of the economic shortfall that exists whilst we continue to be inaccessible. Here into play comes the role of the DDA in helping to close that gap

because it's seeking to deliver an equitable, integrated community and it's seeking to deliver the opportunity for all people to access the goods, services and information that we charge for.

MRS OWENS: We are interested in getting any access to any of these studies. I'm not sure whether the team has got that particular study but we'll talk to you a bit later about how we find it.

MS McKENZIE: Yes, we'll get them to talk to you.

MRS OWENS: Thank you for that. I was going to ask, while we're talking about the transport standard, whether there's any obvious improvements in Brisbane or in Queensland yet.

MR MAYO: Well, here we go. The one great sadness about the transport standard is that it has actually been available to enact since 1996, but the government - - -

MRS OWENS: You mentioned that in - sorry.

MR MAYO: - - - shows an enormous delay on this, around which there's no considerable cynicism and worse by the electorate in terms of well, how long will it take the government to pass the Access to Premises Standard, once it is ready to go. Okay? We don't want to wait so many years. However, the value of the transport standard in this part of the world at least has been that the state transport department has recognised its value and has been quite strident in trying to get it legislated, and became frustrated to the point where the transport minister for Queensland, the Honourable Steve Bredhauer actually took a decision in the year 2000 that his department would issue all future contracts to public transport providers as if the standard had been passed.

As a consequence, taxi companies, bus companies and other transport service providers have in fact been dealing with that issue and they've been ahead of the game, if you like. So we actually have, on a rolling stock basis, or on a per capita basis, a fairly good position in Queensland because we've started on it much earlier. So we have a number of - we have something like 4000-odd accessible buses in the state. We have rail rolling stock which is accessible and is increasing. We have accessible ferries, for argument's sake, along the Brisbane river, and we have a taxi fleet where the benchmark of 10 per cent of the total fleet was to become an accessible fleet. That has been met and exceeded.

MS McKENZIE: One of the submissions, or a few of the submissions have raised that question of, it's all very well to have accessible buses, for example, but you need also to have accessible stops.

MR MAYO: Correct, yes.

MS McKENZIE: Is that a problem, do you think, in Queensland or not?

MR MAYO: Yes, it is a problem. It is a much greater problem in the regional areas than it is in cities such as Brisbane because a local authority of the size of Brisbane as much easier access to the funds to develop accessible bus stops. But the regional areas find it much more difficult. They're in a low - local authorities are generally in a lower funding environment then they have found themselves in many years and so their ability to deal with this is difficult. All they can seek to do is to deal with it progressively and to try and work out some system, some priority system that seems to meet the community's needs. But I mean, it's always a dilemma for a local authority. It only has a limited bucket of money and it must do the best that it can with that. But you do raise an excellent point and it is an inhibitor to the development of accessible transport, that we don't have this local infrastructure in place to support it. It doesn't actually require huge amounts of money to fix, say, individual bus stops or transport connections. But because there's quite a number of them - - -

MS McKENZIE: It's the numbers, yes.

MR MAYO: - - - the sheer volume - - -

MRS OWENS: Yes. What about the railway stations? Have they got lifts in them and so on now?

MR MAYO: There is a progressive funding and works program in Queensland for the refurbishment of both of its metropolitan commuter line stations and its outlying regional stations, which is well-known to the disability community. They have a DDA coordinator on staff as of this year, but in fact people like myself have been sitting on their reference groups for quite some period of time and we're - they have, essentially, a $50 million budget of just progressively dealing with these issues. That is known and operative at the present time.

MRS OWENS: And just know, we're staying at the Holiday Inn at the moment and just trying to get from the Holiday Inn over here, if I was in a wheelchair I think I'd have enormous difficulty just going from A to B.

MR MAYO: Yes.

MRS OWENS: But that's another issue.

MR MAYO: It is indeed, yes.

MRS OWENS: Yes, keep going.

MR MAYO: Item number 3, I want to be very brief with this.

MRS OWENS: Yes.

MR MAYO: It's about the education standard regulatory impact study.

MRS OWENS: Yes.

MR MAYO: The only reason to raise this issue with you is the fact that it was appallingly conducted in this part of the world quite recently. As a consequence I think it had, fully, two people who attended the process. The only reason to raise it is that if HREOC had had some resources to be able to participate in the process we suspect that the dreadful way in which this process was conducted wouldn't have occurred. But those kinds of things do cause anger and suspicion amongst constituents and I've just noted that for you. So I'll leave that if I may.

MRS OWENS: So you saw that just purely as a resource issue for HREOC?

MR MAYO: Yes.

MS McKENZIE: And our - - -

MR MAYO: Yes, yes.

MS McKENZIE: A failure of the process, basically.

MR MAYO: The other thing is, of course, is that there's a touch of mud about that and mud tends to stick often to the groups that it's not supposed to, if you know what I mean.

MRS OWENS: Yes.

MR MAYO: In this case it might stick to HREOC and the DDA.

MS McKENZIE: No, it's a great pity if you don't allow enough consultation time.

MR MAYO: Yes.

MS McKENZIE: I think it's a shame because then there's a - people don't own it, they don't own the process.

MRS OWENS: That's right.

MS McKENZIE: They don't own the outcome.

MR MAYO: No, and to some degree it's valueless.

MS McKENZIE: I note in your revised submission you've put in a little bit more information about that. That's one of the areas you have expanded on.

MR MAYO: Yes, it's true, yes. Item 4 - I'm just identifying there that because the DDA is still relatively new legislation and I think there's a willingness on the part of government, business and the community to ask the question, "Well, what is it I'm supposed to do?" It's not particularly easy for them to receive the answer. We have the set of Advisory Notes on Access to Premises but that only covers those particular items. It only covers that sector, if you like. I'm just suggesting that in fact the commission probably needs far better funding in order to be able to provide the Australian community with information about what the act means to them and how they're supposed to operate.

In particular, the commission, particularly through its policy unit, really does have a significant role in being able to advise people and to help people get through the process of dealing with equity issues. When you're dealing with legislation you have to make decisions about, well, how far do I carry this? Where are the parameters? Do I decide to take this into a legal jurisdiction or not? Should I make a complaint? What are those processes? People quite rightly would want to go to HREOC to understand some of the answers to those questions because just going to your solicitor will not necessarily give you the right answers. If your solicitor is not someone who has specialised in this area - - -

MS McKENZIE: It's a specialist body.

MR MAYO: It is.

MRS OWENS: Do you want to have a little break for a minute, because you're obviously having problems with your throat.

MR MAYO: No, I think I'm okay, thank you. So I'm just identifying that because it's relatively new and because it is specialised, it's really critical that people can go there and secure the information, and if it has such a small team to provide that information to Australia as a nation, it's not going to work as well as what it should. The other thing that I'm noting in that item 4, which is additional to my previous document to you is that HREOC, with greater support, has a role to step in and help people find solutions. The banking industry voluntary - - -

MS McKENZIE: The ombudsman scheme.

MR MAYO: No, no I'm talking about the fact that HREOC came together with the banking industry over the issues of people accessing ATMs. What it did was it engaged the banking industry in a voluntary process of dealing with the issues. In other words, it said to the banking industry, "Look, here's a bit of stick and a bit of carrot but it would be a really useful thing if you voluntarily did some work with us to examine the kind of solutions that you'd begin to put in place so that in fact people can access ATM machines." After all, if you can't get the money out of the bank you can't shop, you can't do anything. I'm just identifying that that's a really good process - - -

MS McKENZIE: Yes.

MR MAYO: - - - and given the resources, in fact HREOC could perform that process across a wide range of industries and hasten the process of delivering accessible services in Australia.

MS McKENZIE: And it's a systemic thing as well, because - - -

MR MAYO: It is absolutely systemic and the fact that it can happen without progress through the courts - - -

MS McKENZIE: Yes.

MR MAYO: Where you can get people around the table to identify issues and begin to develop solutions and have organisations that have not previously thought about the notion of not treating one group of people less favourably than another in a society which has now changed. Can I just make that point? You know, we are not the group that we used to be promoted as in the 1950s and movietone years. We are not all surf lifesavers who are fit and healthy, okay?

We now have a population which has 19 per cent of the population according to the Australian Bureau of Statistics as having a disability. We have around 13 per cent of the nation who is aged, that's 65 and over. We have 7 per cent of the population who are parents with children sort of one to four, parents with prams, if you like, okay. We can't identify what the population is of people who have a temporary immobility impairment, usually through injury, recreation or at work, and we can't identify the number of people who'd be classified as having a medical condition because the figures aren't there to tell us precisely and there's too many overlaps with the other groups. But when you consider that people with a medical condition include arthritis, 16.4 per cent of the Australians, asthma, 25 per cent of children, 10 per cent adults, osteoporosis, 10 plus percent of the population - I don't need to go any further.

You begin to add those sorts of figures to the other figures that I've identified and you can see that, you know, we do have a changed population and - with an aging population we have the double whammy of increased longevity, so we're living longer. Our benchmark of 65 for age is expected to rise up to 71. Our lifespan is expected to be 93, 95 in the not too distant future - 95 for the women. They always live two years longer than the men do, historically.

MRS OWENS: Yes, aren't we lucky.

MR MAYO: Yes. So against that backdrop we are a changing community and we do have large sections of the population with less functionality and we need to take account of that in the way in which we will deliver our goods, services and information to the Australian community.

MRS OWENS: But I think you've made a very important point about HREOC. It's a very positive way of addressing their responsibilities, to be able to go out there and work with an industry in the way they did with the banking industry - - -

MR MAYO: Yes.

MRS OWENS: - - - rather than having to deal with it through a complaint, which is about confrontation. It's negative.

MS McKENZIE: And it's about one individual or a small number of individuals. That's the other thing.

MR MAYO: Yes, absolutely. That is exactly the point and if we could think, however, in another way. There is nothing else on Australia other than the DDA and HREOC that actually allows us to do this. I mean, that's part of its great strength. There's no other - refer me to any other thing that allows us to have the ability to do this. There isn't anything. What was there before the DDA and what was there since the DDA? It really is the DDA and HREOC that's allowing this type of opportunity to occur.

MS McKENZIE: There would be nothing to prevent the anti-discrimination commissions in each state doing something. But the trouble is, it would only relate then to the industry within their state.

MR MAYO: Correct, and it's really essential given that Commonwealth law overrides state's law. It's really essential that in fact the DDA and HREOC are able to assume this parenting role, if you like, this sort of more all-encompassing role for the nation.

MS McKENZIE: That's a very nice way to put it.

MATERIAL: My next point is very brief. I'm just suggesting a recommendation to amend section 31 of the act to allow HREOC to be expanded in order to allow it to develop DDA standards in all areas covered by the DDA. Presently we're literally only dealing with four standards. I'm suggesting that a mechanism be put in place through section 1 that simply allows HREOC to consider, to develop DDA standards for the other various things that are covered.

MRS OWENS: So what are the priority areas you think that they could get to? I mean, there's still gaps in the areas they can do, like public government services. I don't know if they've started there and some have fallen by the wayside. So where are the other areas you think that should be a priority?

MR MAYO: I don't think in this instance it's for me to say. I just know that various people will indicate, you know, different needs and those needs couldn't be addressed at the present time simply because it would require an amendment to section 31 and that's all I'm recommending.

MRS OWENS: Yes. At the moment they simply can't do anything about it.

MR MAYO: They can't do anything.

MRS OWENS: They haven't got the chance to be able to.

MR MAYO: And I'm just identifying more flexibility, that's all.

MRS OWENS: Yes.

MR MAYO: Number 6 is also new. I'm talking there about the role of the commissioner as the complainant and I've said - question:

> Must people with a disability spend all their lives lodging complaints in order to secure equity and inclusion for every situation in life? Is making complaints for everything through a legal jurisdiction a sensible way for a society to make progress?

I conclude:

> Clearly it is not. Therefore to me it's essential that a provision be created to allow the DDA commissioner to tackle complaints on behalf of the community.

So the only way that can happen is to allow the commissioner to be the complainant.

MS McKENZIE: Do you think there's any potential or apparent conflict between the commissioner's - if that were an amendment made - between the commissioner's role as a complainant on behalf of a group or a sector and their role as conciliator and again as, you know, educator and policy adviser, policy maker?

MR MAYO: You raise an excellent point and I just think that it simply requires policy and procedure to provide the checks and balances to ensure that doesn't happen, for argument's sake. One firm of lawyers can handle a case for both the complainant and defendant as long as they've got the appropriate policies and procedures in place, and I'll just suggesting that the same thing would occur here. I also believe that with those policies and procedures it would make it quite easy for the commission and commission staff, and also a tribunal if there was one, to make clear-cut decisions about when to take up this opportunity and when not to, when there might be clearly perceived conflict of interest.

MS McKENZIE: Is there any need, do you think, to look at for example appointing some sort of special commissioner, a bit like what I am for example? I'm appointed for the purpose of a particular inquiry of this commission but not otherwise. Would there be any mileage in looking at a system where, if you like, an associate commissioner would be appointed for the purpose of dealing with that special complaint? So that person was not part of the normal commission activities but equally the normal commission activities could be continued by the Disability Discrimination Commission or the member of the commission who might be handling those duties.

MR MAYO: I think that's a perfectly reasonable suggestion. It might well be that there are certain matter that may be raised where in fact it would be excellent to have the opportunity to go to a second party, an independent person as you're referring to. So I think that could work quite well. I don't think it may be necessary in every instance.

MS McKENZIE: No.

MR MAYO: I still think the commissioner could have a role as a complainant. But I do think that having an additional independent would certainly allow to facilitate for some particular types of complaints and might be seen as being desirable by the commission.

MRS OWENS: It won't surprise you to find that there has been a number of others making this same suggestion?

MR MAYO: No, it wouldn't surprise me.

MRS OWENS: It's popular in a large number of submissions.

MR MAYO: Before I move off it, can I just say that the DDA and also state anti-discrimination legislation has been just enormous in terms of its value to the people who have struggled to have their voices heard or to be able to seek change within a community. But nevertheless it's a fairy arduous process for people to have to keep going to legal jurisdictions and make complaints and take these matters on their shoulders personally. It's a quite difficult process and for people who have severe disability it's a pretty difficult thing for them to have to contend with. They're grateful for having the avenue but by gosh it's hard work and systemic changes as a result of the things done by individuals is awfully slow showing itself.

MRS OWENS: Yes, and it gets into other issues that others have raised, that often there's an outcome but that it's a confidential outcome; there's confidentiality clauses. So you don't necessarily get any systemic changes elsewhere or education from that particular case.

MR MAYO: No. You see, there's no public communication with those things. The media doesn't cover them. Where do you find it? You just don't. So in fact this is almost all by stealth, it's all so quiet. So it is difficult, very difficult. Okay, thank you for that. Item 7, I just want to talk briefly about the development of the Access to Premises Standard for Australia. It is one of the most significant things that's occurring within Australia at the present time. It will have a remarkable influence on Australia in the future. I'm acknowledging that it's a difficult task to have some of the groups who have previously regarded each other as being the enemy. You know, how is it possible that suddenly the disability sector is sleeping with the Property Council of Australia? But we are all on the same course.

We may have different agendas but the truth is that all of the people participating in that process want the one same thing and that is certainty. So that's a really good thing and we're clear about the fact that we might have our own reasons but we all want certainty as part of this process. So I'm very heartened about the sort of work that the Building Access Policy Committee is doing in the developing of the Access to Premises Standard and I'm just identifying how significant that standard is and what impact it will have on Australia. I'm hopeful that more people will come to understand quickly the value of this work because we'll minimise, to a large extent, the need to go to the legal jurisdiction when this comes into play, because we won't have that grey area to deal with. The certifier, the designer, the builder, the developer and the consumer will all have a clear understanding about what it is that's supposed to occur through all of us having access to this new standard.

MRS OWENS: But it will need enormous education so that you don't finish up with the problem where some people know about it and some don't.

MR MAYO: True, correct. You're absolutely right, yes. But it will help us, us as a

nation, to become what I simply call an accessible Australia and it will, in the process, simply raise the bar for social justice. But it will also raise the bar for the Australian economy because it will have given us the opportunity to maximise the performance of our buildings and our infrastructure, our precincts, our assets, our goods, services and information, and as a consequence of that it will maximise our markets, sales and profits and that can't be a bad thing for a nation of our size when we have a relatively low volume of population compared to many of the countries around us. Thank you, those are the things that I wanted to raise with you.

MRS OWENS: Thank you very much, that's fantastic. You have asked a lot of questions I think, Cate.

MS McKENZIE: No, I think I've asked a few million in the time - - -

MRS OWENS: At least a few million. But I think your submission and your presentation were excellent and I thought the way you expressed some of your sentiments are, you know, wonderful quotes for us. I can just lift some of those and there's no copyright on your submission.

MR MAYO: No.

MRS OWENS: So we can just use some of those because they're beautifully written so thank you for that and we'll now break and have morning tea. We, I think, are resuming at 11.30 so thank you.

MS McKENZIE: Thanks very much.

MR MAYO: Thank you very much for the opportunity.

MRS OWENS: The next participant is Dennis Denning. Could you repeat your name and the capacity in which you're here? That means that you're coming as a private individual. Just repeat it for the transcript. It's just for them to get your voice level.

MR DENNING: Yes, my name is Dennis Denning. I am a disabled person. I'm on my own behalf.

MRS OWENS: Thanks, Dennis, very much for coming and I'm pleased you turned up early because then we could start again early and that's terrific.

MS McKENZIE: Yes, that's great.

MRS OWENS: I understand you want to make a few opening comments for us so would you like to go ahead?

MR DENNING: Yes, right. The first one I have is with the Disability Discrimination Act inquiry is that, (1) - I put down key points here, (1) is education, (2) is employment, (3) is government, (4) is employers, (5) is transport and (6) is public premises. Where it comes down - I'll start with the education in the part of my submission to the commission - I had to do something in my life to get ahead again, to have the mental - get my mental faculties back to square 1 after going through this physical disability. I had it acquired; I wasn't born with this, so I decided that I had been at college years ago. I'd lost the opportunity to become a teacher of manual arts.

At the time in the 1980s I applied for a job when I was a boilermaker to teach high school students manual arts. What happened was my health went down so therefore I lost that opportunity. I would have been now sitting around probably a manual arts teacher. Other people said you'd probably do something else but it doesn't bother me. I then later on, after my illness, looked at the different things that are happening for people, I realised that I was disabled and I found that things were changing. Education was improving for people. It didn't mean that everyone was going to get a job if you were disabled but I found that when I went back to college - I had been at university for a couple of subjects. I had to pull out because of illness and I decided that it was about time for me to get back off my backside and try so I then achieved the three avenues I went for and it took me a fair while.

I didn't find anything in the education area, for me personally - I never found my disability - I never used an excuse and I never had any problems with the support I got from Southbank Institute of TAFE here in South Brisbane. They were very good. They would help me out if I needed it. I never asked for much help but could have. I found that I've also realised that there has been improvements and I hope the legislation has done this through the states and also the federal legislations, to

improve for people to get there because I've never found anybody being knocked back. If you did have the ability to do a course I found that most of the TAFE colleges were very happy about helping people. Universities seem to be able to do that today. They have a bridging course on most things. If you haven't got up-to-date skills you can do a bridging course which gets you up to date. I had to go from grade 10 equivalent and I finished up doing a bridging part of my advanced diploma of engineering by doing maths A and maths B within 14 weeks.

MRS OWENS: Out of how many weeks would that - - -

MR DENNING: 14 weeks it took me. I did the two of them. I did the two subjects in senior maths, equivalent to senior maths, to make sure I could keep on studying for this advanced diploma.

MS McKENZIE: Because they're normally year subjects, aren't they, both of them.

MRS OWENS: A year subject.

MR DENNING: That's a new subject for me because I only went to equivalent of grade 10. So I was there at college there doing it in that amount of time plus doing another three subjects at that time. So I didn't use - if I failed the test I never used that as an excuse. I never used my disability as an excuse to fail a test because I think you go backwards. I found that I've never seen anything myself, where there's any sort of discrimination against students with disabilities. I've also made a comment about your issues paper, on page 32 of the issues paper, about the - prohibits the arrangement of people with disabilities by education staff, but not by other students. That's section 37 and 8. I put down here, "However, an education provider might be held indirectly responsible for such harassment." That was in your issues paper. I maintain here that any student who harasses people with a disability should be held responsible for their actions, the same as it is for education staff if that was the case, but no-one ever would try anything about it on me anyway. They'd get a mouthful back.

MRS OWENS: I bet they would.

MR DENNING: I don't take things lightly.

MS McKENZIE: But there are some people who are unable to give it back so well.

MR DENNING: Yes, there are, yes. They are somewhere, in some areas.

MS McKENZIE: That's the thing, yes.

MR DENNING: Yes, I would agree with that. There are some people who, you know, don't have enough assertiveness about these things.

MS McKENZIE: Yes, or perhaps more sensitive; less able to cope with them.

MR DENNING: Yes. On the basis of my submission there under education, I believe that the issue of increased education for disabled people is a complex area. I suppose I could explain it a bit more about a complex area. What do you actually do with somebody such as myself at my age group, where I've put myself through these courses but where do I go from here? That's the problem. The legislation is a problem in that sense, that it's okay to have that and that's terrific but there's another area outside of that legislation. What are you going to do with using people who have got those wonderful skills? Like, you might have someone who is disabled who does a degree in something like IT. Where are you going to put them? Have they got the opportunity to get ahead?

MS McKENZIE: So in a way it's a waste.

MR DENNING: That's what I'm saying to you. That's the waste of the thing and the legislation might say, "Well, let's stop the harassment of disabled people," but if you haven't got a job you're losing your brain drain.

MRS OWENS: Although, Dennis, the Disability Discrimination Act and I think the Queensland Act also do cover employment. I think the difficulty is not that they don't cover it, it's just that it's very easy in very subtle ways to discriminate against certain people. It's very hard to prove discrimination in employment.

MR DENNING: Well, that's what I was going to say to you in this other area of employment. I've actually - I put that area of employment and employees in a different category but I more or less - well, I'll go on with employment then?

MRS OWENS: Sure. They do overlap. I mean, the point you're making - yes.

MR DENNING: They do overlap in the sense - now, when it gets back to the paid workforce, once you've been out for a long period of time like I have it's very hard to sort of get someone who'll take you on. That's one of the problems of it. So the legislation sort of can't really do anything about that. It really can't sort of - it's like someone can say it's unjustified like you said in your issues paper; unjustifiable hardship. That's one of the difficulties.

MS McKENZIE: In a way it's also a problem not just for disabled people but for the long-term unemployed for whatever reason, you know.

MR DENNING: Yes, it's what I say, because as I said, it's sort of an issue that's

very complex in the sense that it's - how do you get that back when you've got other people you're competing against and the competition out there is very fierce in some areas and that's just not - you know, that doesn't mean that just because you've got - well, I don't take it personally. If there's no job available then I just can't do anything about that. That's the way it goes. There's night-time I can do about that so I just have to live with that. I've said here, the legislation can only cover so much about discrimination so that's where you've talked about full-time people - other students looking for work that are able bodied. There's a problem for everybody.

I've found that when I actually tried this out on a couple of places for design drafting, I rang up a bloke in the valley - I forget his company - and I said, "Look, I'm looking for a job as a design drafty. I've got these qualifications. I've worked on blueprints." I knew what I was doing. I worked on some of the biggest projects in Australia; drag lines up at Goonyella and all those areas. I'd been on the fabrication of those in a work place. I'd been in a mine in Panguna on Bougainville Island 30 years ago. I knew the ins and outs of the trade and then this is where I come across an interesting case: he said, "Seeing as you haven't - you wouldn't be able to do this job as a design drafty." That was his attitude. He was not going to employ me because when I started giving him my qualifications and my background he sort of said, "I don't think you'd be suitable for this job."

MRS OWENS: Did he say why?

MR DENNING: No, he wouldn't say. He just got off the phone straightaway so I just laughed about it, but that was one of the things that I come up against. I wasn't going to bother about ringing up anybody or whatever. I've just kept it at the back of my head who the bloke was and I know the name of the place and he keeps on looking for drafties so he mustn't be a very nice bloke to work for.

MRS OWENS: Yes, maybe you would be better off - - -

MR DENNING: Yes, that's right, yes. So those sort of things never worry me about jumping on to complain about something because sometimes these places, they make a rod for their own back and they can't find their own staff when they're fully able staff.

MRS OWENS: But you weren't tempted to put in a complaint?

MR DENNING: Bit of an iffy at the time. I just wasn't at the time worried, you know. I just can't be bothered sometimes. I've run up against employers years ago in certain situations where, you know, you know it's not going to work out so you don't worry. You can't always - you don't let them get to you.

MRS OWENS: But you weren't put off putting in a complaint because - you seem

to say, "Well, I won't let it get to me" but there weren't other factors putting you off making a complaint, not just the difficulty of doing it or potential cost?

MR DENNING: No, I don't think it would have been that difficult to do it, just at the time I thought I'd just drop it and get on with something else.

MRS OWENS: Your decision, yes.

MR DENNING: Yes, I made my decision at the time, you know. I probably could have just said, "You know, why don't you do this and that" but no, I just did it on my own bat. That was my choice at the time. I've never wavered from that. In the area of the - I've said here about the employment - I sometimes think that no amount of legislation will change the attitude of some people when it comes to employing people with a disability. I look at it this way: there's so many able bodied people who are looking for work and a disabled person has so much competition with able bodied people in the job market that it becomes frustrating for a person like me. Some of those areas - I can't drive a motor car so there if a job comes up and an employer wants that well, then it's not sort of easy for the employer and it's frustrating for me because I'd like to get back and drive myself, to get a job.

MS McKENZIE: So there are a number of jobs that are kind of barred to you because they have those requirements.

MR DENNING: Yes, they have those requirements and that's understandable because in the area that I wanted to get back into, in design drafting, it's very difficult sometimes because they might want you to do four or five different things today, whereas before they might put someone who's just in the office and stays there whereas today they want them - all this multiskilling stuff and they want everybody to answer a phone at the same time so they don't employ a secretary to do the work. You know, when it takes you so long to get through. That's one of the problems that you could come across. I'll go to the third point on government I've got here. I've had a bit of a run in with governments, both state and federal, at some time down the track with my disability pension years ago. They said - some people said, "We can get you a job," and I said, "Well, let's try it," and when they did they found out they couldn't.

Rehab back at the time, back in the 80s, had said, "What would you like to do?" I said, "I could go back into say doing contracts administration or in the drafting side or in the estimating side," when they started looking for work and they put me on a program, rehab, they started to realise that the competition out there was very fierce; that employers weren't going to be putting people on at that time. So I went off the rehab program at the time through the rehabilitation in the federal area. That didn't bother me. I just did my own rehab by myself. Took myself back to college. I've always wondered about the government policies about disabled people

because it appears to change like the wind. One minute they come up with some idea, and then next minute they'll change it.

A good example for people if you've got a disability and you want to get some money; back in 1993 the government at the time had a policy of credits where if you worked so many hours you had to get up so many hours and then you would start losing your pension. That was a good idea because my wife was working to help me - to cart me around to this place for the Brisbane City Council stuff. Anyway, two years later I inquired about it and they said, "We've dropped that now. We've got rid of that idea." So there was an idea that the government had working for a change. It was brilliant. It helped people out to get you to the head. Next minute, "No, we don't do that any more."

MS McKENZIE: So how did it work?

MR DENNING: Well, you had credits where - my wife was - I never got paid for this job with the council. I was doing this thing for - - -

MS McKENZIE: Voluntary basis?

MR DENNING: On a voluntary basis and my wife was employed as my driver to get me to and from places to check out disabled - where people can get access to anything with disabled, in shops, and what was feasible. The council put out a booklet in 1993 - I forget the name of it now - that told people where they could go for access to - it was a very good book for people, you know; you can go to places. I found that it changed and then when they decided - the government, whatever government it was at the time, they changed it. They changed the credit issue.

MS McKENZIE: So they didn't sort of give credits any more?

MR DENNING: Yes, but now I've heard on the grapevine, through a couple of people in the inside in Centrelink, that they're thinking about doing it. So this is another one. They'll come up with a new idea again and then someone will come up and put in their CV and say, "I proposed this." The thing was already done 10 years ago, you know. New idea but it's an old idea.

MS McKENZIE: So how did the credits work? Like, what sort of - - -

MR DENNING: Well, what happened was my wife got paid for so many weeks of work and the money she was given was then added up and it worked out that if we worked - she worked any longer then they would start taking off so many hours, they would then start taking off so much in the dollar from your pension. But we only worked up to that, say, six weeks. If we were to work for say three months then that would have started because we would have used up what our credit was.

MS McKENZIE: Okay, okay.

MR DENNING: It's like a credit they call it. It was a complex system but it was very simple in - bit of a contradiction in terms but it was very good the way it was put. Then someone decided - had a brainwave - and decided to scrap it and now they're thinking about - on the grapevine - thinking about doing it again. So someone will come up there and have fanfare and tell you it's all a new idea. Usually that's what happens I find all the time; new ideas are old ideas.

MS McKENZIE: Different packaging.

MR DENNING: Yes, just packaged a different way and then someone puts down in their CV, "I implemented that, you know, doing this." Every time I see CVs I wonder what they're like. I look at my own and think, "Jeez, there's some gobbledegook in there." If I can go on, I think that the Discrimination Act could be useless if it's not - if they're not sort of - maybe, well, I was just looking at this in my submission. The question I would ask is, do the three levels of government in this country provide a quota or a set target to employ disabled people on a part-time or full-time basis within departments? That was another area that maybe needs to be looked at for discrimination; whether the government would be prepared to employ X amount of people. I don't know whether that would be feasible or not. That's just to help people to stop the brain drain.

MRS OWENS: There are some examples of that overseas where there's positive, affirmative action.

MR DENNING: Even if it's part-time - yes.

MRS OWENS: There are arguments that go the other way that by employing somebody with a disability you might then be discriminating against somebody else who may have been better qualified.

MR DENNING: Yes, well, that's another point too.

MRS OWENS: It's quite complex really.

MR DENNING: Yes, that's another thing too that I've noticed with a lot of things that it's not always cut and dried with a lot of issues. In my case my level of disability is different to somebody else. How they define - sometimes how they can define a level of disability, well, it's open debate really on what happens. I know that if I was to say I would never be able to work back in my trade because I haven't got the motor skills for that, so that's not discrimination as far - I wouldn't use that word "discrimination" because the job requires me - the faculties, because otherwise, you

know, I've had mates killed on the job. I know a mate that died 30-odd years ago that I saw crushed with a crane, doing things on the job.

MRS OWENS: No, there is something called the inherent requirement of the job, and the employers can use that as a reason why they won't employ a particular person. So they won't employ you to drive a taxi but there may be other jobs where they say, "Well, you need to do A and B but it also requires you driving over to the other office two times a week," now that is not an inherent requirement of the job really because they could just give you a taxi voucher and send you off in a taxi.

MR DENNING: Yes. With employers, I put down here number 4, it may not be easy for employers to employ disabled people. It's become a very litigious society. That's one of the areas too we were just saying about doing things because if you've got a place of work and it's not quite up to the safety standards of that, then it can be a danger, that employers would be reluctant to employ you, especially with a safety angle, depending on where you are. That would come down to again workplace and safety, and that's a legal minefield, I know that myself. You just can't expect to be employed if the job requires you to be physically fit in those areas.

The other area I can dwell on is number 5, I put down here "transport". Now, in Queensland, the access on public transport has improved. Maybe that's because of legislation within the state area, as well as the federal, because that has improved dramatically. I've noticed a hell of an improvement. Also Queensland Rail - now, this is one of the things that worries me down the track, even though you've got the legislation. I'm a bit worried about the Queensland government. I put it in my conclusion here about transport. I've thought about that there should be a review of how the transport structure works and the different authorities with the act enforced if necessary.

But I'd be looking at that, that any of the disabled groups should actually be talking with, say, Queensland Rail, because I heard it on the grapevine - another couple I've got to know, they were talking about taking guards off of the passenger trains here in Brisbane and having a driver, so that anybody who has to have access to a wheelchair, which means the train will take a bit longer to get off the platform. That means aggro passengers who are able-bodied missing their time, but also you've got aggro because the person who's in a wheelchair has to wait so long for the driver to get out of the train. That's what they're talking.

MRS OWENS: We've faced this very issue in Melbourne because they took the drivers off the trains - I think under the Kennett government, was it?

MS McKENZIE: The conductors off trams?

MRS OWENS: No, but they took the guards off the trains as well and it meant that

disabled people, if they needed to get on with a wheelchair, had to be up the end of the platform where the driver was and the driver would bring a ramp out and put it there so that the person could get on the train - this is my understanding - but then they would have to remember to take the ramp and give it to them when they were trying to get off the train as well. Now, if they forgot to do that, you go to the wrong station. There's also safety issues about mothers getting off the train with prams and all sorts of things and there have been some near-misses there as well, with prams being caught because a driver hasn't seen the pram. Yes, I think there's been all sorts of issues in Victoria about this particular initiative.

MR DENNING: Yes, because I find - I've noticed that when the guards on these trains get people off in a wheelchair, it doesn't take them very long, they're very quick and they're very efficient at it.

MS McKENZIE: So guards are on all passenger trains in Queensland at the moment? Is that how it works?

MR DENNING: In the metropolitan area here, yes, because what they do is - this is where it's improved for disabled people in the sense that if you go to six-car trains, the guard is in the last one of the first three carriages. He's in the centre. The train is more or less in three bits - three cars, three front. In one of those is the guard. They've got markings now on the platforms for disabled, for a wheelchair. So if people get there on the time allowed, then they just take the ramp off on the platform, unlock it and put it straight there for the train, the people come straight on. It doesn't take long. I timed it one day, it took under half a minute for them to get three people on with wheelchairs with electric motors. That was how quick they were.

MRS OWENS: It will take quite a lot longer if it's the driver.

MR DENNING: Yes, that's why the issue about the legislation - it should be reviewed.

MRS OWENS: Have a look at what's happened in Victoria.

MR DENNING: Yes, they should look at that legislation for that for transport because I do travel on trains and buses. Trains, of my notice, are very efficient in that way because I always get on a train - if I'm taking a train I always get on most times where the guard is going to be. So if I was to slip I know that the guard is there and when I get off the guard can see me. Most times I always make sure that the guard can see me, and the guard might say, "Are you okay?" and I say, "Yeah," and he said, "Where are you going?" So if I tell him so-and-so and he's changing trains with his mate - they're changing at, say, Barwon Hills and I'm going up the line, they might say, "So-and-so, he's going there. Just keep a lookout for him just in case as he gets off the platforms." So there's another issue that's improved a whole of

a lot. It seems to me the legislation has improved the way that transport has been working.

The Brisbane City Council also got these new buses where they have wheelchairs but I'm actually - I've never seen anyone who used a wheelchair on a bus yet - a couple of times I've seen it, that's about all. But most other times buses are not that really efficient when it comes down to wheelchairs because where people live too is a problem where you've got hills. You just can't get wheelchairs onto them. Also too I find, as I've said to you before, I like going up ramps but going downstairs and walking. It's easier for me. It doesn't mean it's easier for somebody else. But there is definitely much improvement with the way they do it here in Queensland; also too a lot of the staff have - they seem to be able to - I've just experienced this with other people. I've seen other people get on with wheelchairs and I've seen them be very efficient in helping them. So that's been a plus. I've seen that improvement 100 per cent.

Also too at the access in the railway stations they've improved that. They're doing that all the time. That's making it easier for people, not only who are disabled like myself in having to climb stairs, I've also found it easier with the lift system where a person can get in to catch a train and go in on their wheelchair or a person like me can use the lift. So that's been a magnificent idea, and that's improving all the time, gradually on different stations, so they're making them access to everybody who are disabled. It also helps for people who want to take their kids out with a stroller and a pram. So it works both ways. It works for everybody and it works for people who are getting older, who are having a hard time climbing stairs. So they can get access to everything too. There are a hell of a lot of improvements that I've noticed in the last 15 years. It's been a gradual process and it will take a bit longer, it's not going to be overnight.

MRS OWENS: The challenge we face, Dennis, is that we've been asked to look at the impact of the Disability Discrimination Act specifically and it's very hard to decouple the impact of that act from the impact of, say, the Queensland Anti-Discrimination Act and just generally the impact of government policy over time which is leading to these improvements. So we've got that challenge ahead of us.

MR DENNING: That's why a lot of these things I've found that it's not all easygoing, you know. You won't be able to please everybody. I can't be pleased sometimes either but that's the way life is. That's a part of life. The area that I'd probably look back on too - there's one thing here I've got in my conclusion on this. I go back to government. The point I make here, governments don't always obey their own rules. I give an example of this, I put it down here:

Lack of foresight in planning is one trade of government.

This is only just my opinion, other people can have their own. I'm looking at this, saying a good example was when the Queensland government had the Brisbane Exhibition and Convention Centre constructed. This is where I found it funny when I first started in 1995 down at Southbank Institute of TAFE they were putting that building up on that corner. What happened was, I put it down here:

> The brilliant design has left out a lift to the front entrance for those who had to use a wheelchair.

They were going to put it around the side. So it was only the kerfuffle from I think it was the paraplegic - one of the groups there or advocacy groups on behalf of disabled people, kicked up a stink. What happened was the government of the day didn't work out that they were actually breaking their own rules - and that was one of the things in the legislation in Queensland, they actually broke their own rules because they didn't put an access to it in the right place. Now they put that in, down here in South Brisbane, it's a marvel. I've used it myself when I want to go into the place. It's also been great for anybody who's got kids with a stroller. There's another access again for everybody else. So it served - just by forcing that on the government of the day to change just that little bit because they broke their own rules. They left people - "Oh, you can take it around the side," which was not accessible for people with a disability. It was easier for people to get around the front.

So actually the Queensland government broke its own rules at that time. That was an area I found incredible that they actually broke their own rules. It would have been a political embarrassment, and it cost them a bit more for the lift.

MRS OWENS: You wonder whether they just overlooked it or whether it was just bad planning, how they managed to do that, because they are the most terrifying stairs that staircase at the front.

MR DENNING: It is. It's a very terrifying thing to go up and down because they used to put pot plants in the front there on a rail. I tried to get down one day and they were putting it near a rail and I thought, "Jeez, you could really go to town on this that these people are putting a big pot plant right at the bottom." I mean, if you've got someone who's a bit frail and they're trying to hold onto the rail and they're going down that - - -

MS McKENZIE: Yes, they're going to fall over that.

MRS OWENS: I wouldn't have designed the building like that in the first place. I would have had an access at ground level for everybody.

MR DENNING: I'll just finish off with this. I've only got public premises - is that

okay, I'll go back to public premises again?

MRS OWENS: Sure.

MR DENNING: In your issues paper you've got about the Building Code of Australia. Now, what I've made a point here on number 6 in my submission, I put in:

> The Building Code of Australia should be revised and meet the requirements of the Disability Discrimination Act.

What I've looked at here is, I don't know whether this can work or not, it's just a thought of mine - maybe it could, maybe it couldn't. I've got here:

> Representatives of disability groups and representatives from the committee who formulate the Building Code of Australia should meet to discuss what can be feasible. There have been improvements made for access into and out of public premises.

The idea of the building code is that when you're doing - when you've got this code, it's like here for these buildings - access into and out of. I always think that there's got to be some way with the legislation to make it so that anything that's reviewed over a period of time to look at how it's going. I recommend that you've got the Building Code of Australia and you've got many disability groups who can all get together and have a pow-wow and work out what sizes are for this, that and the other for access, especially the size of wheelchairs to get in and out of areas - like corridors of buildings - is it feasible, is it not. That should come down to the initial designing of a building. That's what actually the design engineers should be looking at. That's one of the most important issues for people in that area.

MRS OWENS: The Human Rights and Equal Opportunity Commission has got Advisory Notes on Access to Premises and there is a process in place to develop a national standard. I think there is a lot of interaction between the different groups and a lot of consultation to develop that standard.

MS McKENZIE: So you would say it's a really good thing.

MR DENNING: Yes, it's a good thing because you've got to get brains working on both sides. It's like design drafting, I can do something and say, "Oh, yeah," but unless I can look at it and it's going to be practical, so the practical thing is you've got people who are having to get around in wheelchairs, you know the measurements are going to be this to get in and out of places, you know. You're going to go into toilets that isn't accessible - the door goes this way or that way. Is the door too hard to push to get in, you know. Has that person got - who wants to get to that place, or is it accessible to go into, say, an entertainment centre where you want to see a show, you

know, and if they've got those areas set aside at that time.

It's like what they do in the carparks where you've got access for people with disabilities who drive. They're a wonderful idea. They've improved on that, when carparks are put into major shopping centres. My wife gets cranky with me because I haven't gone to the Transport Department to get a little sticker for her. But I'm not going to get one, the reason being is quite simple: I would then have to go out to shop with my wife, wouldn't I, all the time. So that's the reason. I'm just telling you this, so don't tell anybody else. But that's the reason why she's not going to get it.

MS McKENZIE: Maybe I'd better explain to you, this is being recorded and the recording goes onto the web sites.

MRS OWENS: And I thought we might send a copy of the transcript to your wife.

MR DENNING: That's fine, yes. That's all right, I'm always in trouble, it doesn't make any difference. I could finish off and say that most of the stuff in there is going to be - it's very difficult sometimes to know how to go about things, and not all things are going to be black and white. That's a part of the way we are in the world. There's no right or wrong sometimes in issues. I've found that I've had to learn to live with the disability. It's a matter of how my attitude is to it. Sometimes I have a day where I don't like it; some days there I go, "Jeez, why me?" I go through that, that's a phase of life. That's all I can contribute to the commission.

MS McKENZIE: That's really helpful.

MRS OWENS: Yes, I thought it was a wonderful contribution. I think we've asked our questions as we've gone through.

MS McKENZIE: It's easy to ask you as you go along because then we don't forget them. As long as it doesn't interrupt you too much.

MR DENNING: No, that's all right.

MS McKENZIE: That's great.

MRS OWENS: Thank you very much. We don't want to hold you up from going out shopping with your wife this afternoon. Thank you, Dennis, for appearing, we really enjoyed that. We will now break. We will resume at 1.30.

(Luncheon adjournment)

MRS OWENS: The next participant this afternoon is Larry Laikind. Thank you for coming and thank you very much for the submission which we've both read. I think you bring some insights into this inquiry which will be very useful for us because of your legal background and your ongoing involvement with the operation of the Disability Discrimination Act, so I thank you very much for taking the time to come. I will hand over to you now and you can start talking to your submissions.

MR LAIKIND: Okay. I guess first I will say a little bit about myself. My name is Larry Laikind. I am both a solicitor and a dentist. In addition to being the first disability discrimination solicitor as far as the advocacy services that were set up in 94 - and I'm still doing that work - I'm a member of the Guardian and Administration Tribunal and Mental Health Review Tribunal and perhaps maybe another tribunal. Now, I've been doing this work for over seven years, in that from 95 to 97, I took two years off and did a master in law at Oxford University. I had a Commonwealth scholarship. I was first (indistinct) of law - coming back, and then I came back and I resumed the work and I have, continuously since 97.

So 94 to 95 and 97 onwards. I'm only doing it about three days a week now, two, three days a week because of my other commitments. But my experience is vast in that I deal primarily with the Queensland Anti-Discrimination Commission because they're quicker, things are here, they don't have the ability to reject things, as under section 71 to, I suppose, (a) to (g) or (h) under the Disability Discrimination Act - and I find that things work out a bit better there. So I do use the Disability Discrimination Act when I need to, when I have to. Indeed, perhaps when it's against the Commonwealth or a commonwealth agency when I - I perhaps settle maybe 15, maybe 100 or more matters each year in terms of conciliation. So I was asked, actually, for a submission not from the Productivity Commission but from DEAC, who wanted me to write an article about the conciliation process, the processing resolving disputes at the Human Rights Commission and whether conciliation works. So that particular article is the one I sent to them and it will be probably in the June article of DEAC or Access Rights or whatever they have.

But I'll speak a bit to it. Basically, I've given a submission that says, well, in terms of conciliation it resolves one on one issues in confidence and, as such, it has limited value, particularly in reaching the objectives of the Disability Discrimination Act, particularly in the area of employment. It may be possible to get certain proactive things but that often requires the respondent to play ball and that isn't very often the case. It can happen occasionally and I might give a list of maybe five or 10 issues that have resolved very well in conciliation and have left perhaps a lasting increase to the objectives, albeit to a state anti-discrimination legislation or Commonwealth ones. So basically in that brief submission I was limited to one to 2000 words for the article to talk about the objects of discrimination legislation, the complaint process, some of the things that have happened to the good. I speak a bit about employment and I give some alternatives. I'll go through those now.

I first looked and - when I was in Oxford I did both comparative human rights and a one year thesis on an aspect of human rights law. The professor who supervised the thesis, Christopher McCrudden, said that in terms of anti-discrimination one can sometimes look backwards and see what the objects are and approach things in a multi-factoral way, that you can use a lot of mechanisms to gain your objectives. Now, one looks at the objectives under Australian anti-discrimination legislation you've got human rights principles entirely and these often differ from say principles in the United States or England. What we've got here is the removal of discrimination in certain areas, equality under the law and recognition of the rights of - persons with disabilities having the same rights as other persons. You'll find similar objectives, principles espoused in the Queensland Anti-Discrimination Act, for one thing. They're pretty interchangeable.

Now, one could perhaps have other objectives. It might be justice or equality or perhaps equality of opportunity which is the name of the commission, however it's not stated as an objective. I may not have put that in the submission, but equality of opportunity is a nebulous concept which, according to various theorists - and they've all lecture at Oxford at one time or another - might be something very minimal; say, not having direct discrimination, to total equality which is very difficult, to perhaps more full equality in the community, and I think from my own perspective (indistinct) as far as more full equality of opportunity is a better way to put that concept, but that's another objective, and I'm surprised that it's not listed as an objective in terms of this legislation because that's the name of the commission, and they haven't changed their name. So they're an equal opportunity commission, but equal opportunity is a very difficult concept.

So the first point is objectives of legislation. I think in the next point I look at what we've got here in terms of commissions, whether it be at the state level or in this case the federal level. We've got a body which maintains independence. So they themselves don't initiate complaints. The second point, we've got a system which is essentially a one-on-one complaint so that a complainant comes with a complaint in writing within 12 months of the alleged discrimination. It is assessed to see whether or not it meets minimum criteria for the complaint to be accepted. Then it's investigated to some point. The complaint is given to the other side, and if the complainant doesn't like the response and wishes to reply, there may be a conciliation conference conducted, and in this case a conciliator may fly up from Sydney and take rooms.

There'll be a confidential conciliation probably, but maybe not, and if the thing resolves, well, it will resolve by way of a confidential conciliation agreement, and this agreement will have three terms in addition to those advantageous to the complainant. It will have that the complaint is without admission of legal liability, that no further action be taken in the matter whether at the Federal Court, the

Magistrates Court or Anti-Discrimination Tribunal, and that the matter is confidential except as between the parties, and what one might find would be, say, one would get the thing one is after hopefully, like the access, perhaps the installation of a lift of perhaps reinstatement, although with this legislation it usually doesn't work that way. Maybe compensation in one form or another for hurt feelings and humiliations - say not being allowed into the restaurant with a guide dog or the way the discrimination occurred - employment. One might also get compensation for lost wages and future wages. Those are the sorts of things that are fairly common.

Less common would be the proactive-type remedies such as a change in policy or to get things done for other persons and other things. I find that far less common, although it has happened and I'll list maybe five or 10 instances in conciliation where really great results have happened which meet the objectives of human rights legislation, whether it's a state or federal.

Now, the convention centre case - Cocks v State of Queensland - getting a lift in front of the Brisbane Convention Centre, I won't deal with that because that was a hearing, but to give you some examples; in the area of persons with hearing impairments, I've had about seven or eight complaints that have resulted in very satisfactory results to have sign language interpreters incorporated into the hospital system. Queensland has a policy for translators and interpreters where interpreters should be provided by state government departments. They in practice hadn't been until these discrimination complaints, and I'd use the state legislation because it's similar to the Commonwealth legislation which has the administration of Commonwealth laws and programs as an area of discrimination, state legislation section 101 and administration state laws and programs, there's no defence of unjustifiable hardship. That was one of the reasons I had the Cocks matter changed from a DDA complaint to an ADA complaint. You have that benefit of a section which doesn't have a defence of unjustifiable hardship.

So I've had a number of those, and very good results and conciliation in terms of having a policy in practice to get trained sign language interpreters provided by the hospitals like Princess Alexander and Royal Brisbane at a very early stage and not missing out if you're a person who uses an interpreter. Good results. Insofar as a bus complaint with bus and trains, I've had accessible low-floor buses put into service to meet every accessible train on the Gold Coast route, and that was through conciliation. I've had $10 million of funds to make trains accessible for persons with vision impairments, and that was through conciliation, as against Queensland Rail. I've had the situation where, as against Birch, Carroll and Coyle, they have removed seating on all of their theatres, and not just a particular theatre in question, to allow access for persons with physical impairments into the theatres, and similar changes insofar as Coles and Woolworths regarding access to stores as far as opening doors and changing aisles and heights of things to all persons.

That really depends on the other side playing ball, as opposed to say complaints for persons with physical impairments against National Bank where they might put in an automatic door for the complaint at question, but have been loath or have refused to look at all of their branches and change everything. It's possible that the Access to Premises Standard may help whenever it comes through, but you've got one of the problems with the one-on-one complaint type thing.

Other examples, in the education area, I have the Hashish case which went as far as the High Court, sought leave in the High Court, but didn't get leave because Education Queensland changed its Education (General Provisions) Act 1989 on the steps of the High Court as far as leave. That was something where there was a provision which said, as far as a special school, only children with special needs that have specific impairments could attend them, and they could only attend until the age of 18. There was no post-school options, and after the age of 18, they were simply left in an abyss. So the change that Education Queensland made for the legislation is to remove any reference to age or impairment, and to say that all children are entitled to 24 semesters of education, and then up to another six semesters based upon some criteria such as educational outcome, need and costing, and that was a pretty good outcome.

Also we had no post-school options, and I brought another complaint, Finn, and that had resolved after a group joined in the particular complaint. I received an interim order that Vanessa Finn stay in her particular educational establishment. A number of families joined in that particular complaint, made a representative complaint, and that was resolved by getting post-school options for Queensland which is a very good program, up to $18,000 for the next two years - and this could be converted into options plus. So for persons with severe impairments where there was nothing, there is now an education, recreation, training program to meet their needs. Other states had some things. That's been a very good outcome, and there were many examples - say trains for persons with guide dogs for the hearing impaired, situations during conciliation where there's been posters all over the state at every train station which show that - getting the hearer dog posters that a guide dog for hearing impaired can be any sort of dog that's recognised by an orange lead and card, and these persons are entitled to take their dogs on the train, not just a guide dog for vision impaired. A pretty good result and I could go on and on, but there is some limit, and I'd particularly like to make note of employment. Employment is an area that I see as - it's often been quite difficult to get the proactive result. I can remember one principal who worked in education and he will probably be talking to you later today. He received a proactive result in that he wanted - he uses a wheelchair and he wanted a situation whereby he could apply and it wouldn't matter that the particular school was, say, a high set Queenslander school and he couldn't get into it, that the school would band him and perhaps assist him in his promotion so a change in promotion policy was quite a good proactive result as part of his conciliate outcome.

One can point to many things that are good results in terms of conciliation; mostly in the goods and services, transport, banking and other things; not so often in employment. Frequently one gets some money and it can't be referable to anybody else, and even in that same employment circumstance it's likely that discrimination will happen again for somebody else; whether it's a big employer like Telstra or what have you. I can remember having multiple complaints on different things against Telstra and things just happen again, or Queensland Department of Police or various organisations. You'll get a result which is the one-on-one result for that person that is confidential.

Now, there are some things which are disturbing and I don't know the actual source of the studies but I believe that participation rates and employment for persons with disabilities have fallen over the last 10 years which is about the length of time that the DDA has been going. It's a bit disturbing to me and I have in certain books, although I can't quote the sources, that the overall employment rate for a person with a profound hearing impairment is only about 50 per cent whereas 75 per cent of persons with disabilities - well, with severe vision impairments - these persons are also unemployed as well. Again, don't quote me the source, I don't know it, but if one is looking at an outcome in terms of better participation in employment it appears as if anti-discrimination legislation, particularly the DDA and Queensland ADA haven't gone very far to achieving that if at all.

MS McKENZIE: So what do the 50 per cent and 75 per cent figures mean? 50 per cent of what?

MR LAIKIND: Of adults of working age with profound hearing impairments on - - -

MS McKENZIE: There's 50 per cent unemployed in that group.

MR LAIKIND: 50 per cent unemployed as opposed to the general disability unemployment rate which I believe is in the 30s. So general disability employment rate in the 30s, whereas I guess if you look at your employment rate overall for Australia it might be 7 per cent or 8 per cent, so a fairly high rate for a person with a disability and then even higher for specific disabilities. I said for persons with a hearing impairment, 50 per cent; 75 per cent with persons with a vision impairment, although don't quote me as far as the sources.

MS McKENZIE: Do you think the figure for unemployment has actually risen over the last 10 years?

MR LAIKIND: I believe so, and the source for that was the human rights book that came out as far as the 10-year survey in terms of what they've done, their

achievements. It was mentioned in that, that the rates of unemployment have actually increased. Some people postulated this might be due to required multiskilling, so getting rid of the AO1 or AO2 positions - as far as Commonwealth positions, ASO1, ASO2, the cleaning positions, and there are many of those, and making a person so that he must do four or five different jobs and damn this person at, say, AO3, AO4 or AO5 level and eliminating perhaps a person with an intellectual impairment or persons with acquired brain injury. That's one hypothesis. I don't know answers as far as exactly why that - but it seems disturbing to me.

MS McKENZIE: I agree. As far as the conciliation question is concerned in employment, you've talked about a number of conciliations in other areas where the conciliation seems to have been able to achieve general outcomes, not just outcomes that are beneficial for the - - -

MR LAIKIND: Proactive outcomes, yes.

MS McKENZIE: Yes, but not in employment?

MR LAIKIND: Generally not in employment.

MS McKENZIE: Have you any thoughts about why? I know it's a very difficult question.

MR LAIKIND: Well, it is a difficult question.

MS McKENZIE: It seems most unusual, doesn't it, that it's possible to achieve at least some general outcomes in the other areas but much more difficult than this.

MR LAIKIND: I have hundreds and hundreds of conciliation conferences, to give you an idea, in April. The first 10 days of April I have 14 conciliation conferences. I have two a day, because they have changed the legislation so that within six weeks of accepting a complaint there must be a conciliation conference and they're going willy-nilly for this using of the time. So indeed even in the goods and services area it's not everyone, indeed it might be some percentage - and I don't keep a percentage table. It might be 20 per cent or 30 per cent that one gets a proactive remedy. In employment it's next to nil. I think possibly that the remedies that the individual is going for, particularly for that person, that's maybe an answer; another is, well, they say they've got discrimination policies already in place but by the same token these don't get one very far.

The result that one gets - and it's usually reinstatement, it's usually too late by the time something gets there. Perhaps it will be changed as far as the state commission because of having conciliation conferences at an earlier stage, maybe there will be more reinstatements. But it's usually money is the only thing that's left.

Insofar as that, money is what you get and a confidential agreement and it doesn't go out.

MS McKENZIE: The matters that you're speaking about are primarily through the Queensland system, rather than the DDA?

MR LAIKIND: I do both. I do the Humphries decision which took or three years and I represented that at Federal Court level, Federal Magistrates Court level, and since 1997 or 1998. It didn't get the result I wanted but I took that as a DDA one and I've taken a number of DDA employment ones which many resolved through conciliation with money.

MS McKENZIE: But you do go right through to the Federal Court with some of these complaints?

MR LAIKIND: Yes, unfortunately. Well, as far as my time goes, last year I did the Phillip Sheahan one - assistance animals - section 9 of the DDA. He was a person with post-traumatic stress disorder and it won against Tin Can Bay where he wasn't allowed to take his dog or they required him, if he was, to take his dog on a lead. So that was a Federal Magistrates Court one and that was also DDA.

MRS OWENS: Have you encountered any concerns from your clients about potential costs being awarded?

MR LAIKIND: Yes.

MRS OWENS: Has that stopped people going - - -

MR LAIKIND: Yes, it's stopped hundreds of people as far as progressing to the level where costs would be incurred.

MS McKENZIE: Beyond conciliation, basically.

MR LAIKIND: Well, under the Queensland legislation one has conciliation at two stages: first, the commission and then once the matter is referred to the tribunal you don't have a hearing next week, you have 12 interlocutory stages.

MS McKENZIE: 12?

MR LAIKIND: Yes. And it's possible that one could have that many in the Federal Court, Federal Magistrates Court. One has points of claim; a defence; a reply; another conciliation conference; a stage 4; a two-stage discovery process as far as a list of documents and inspection of documents; and then affidavits for, against, in reply; list of witnesses and then a hearing. It's possible that the Federal magistrate

or Federal Court judge would require similar but it's up to then as far as whatever interlocutory stage they want.

MS McKENZIE: But you regard the costs concern as a significant deterrent.

MR LAIKIND: Yes, very significant. Usually those people that are best placed are those who have nothing, who are on a pension and costs wouldn't matter to them. Another case where costs don't really matter would be in the education ones where - there was a Queensland case of (indistinct) Schools No 2 in 1997 where it said that you couldn't get costs against the parents who have brought this complaint against the six-year-old with Down's syndrome. The costs order would be against the child, so good luck. That's a plus factor if one is bringing the education complaint. But costs are a huge deterrent. That's one of the reasons I put some possible changes in. I might mention those changes now if you want.

MS McKENZIE: Yes, sure.

MR LAIKIND: Okay. I mentioned about four or five changes. Indeed that's only a few. I could probably mention eight or nine if one wanted to. The first thing I said was there might be a change in the actual status of the commission. I said that commissions in other jurisdictions - and I think I mentioned the Commission for Racial Equality or the Equal Opportunity Commission in England, they actually are the body that brings most of the test cases anyway. Their legislation is such that they have got a broader ambit and they don't have to be independent, they can actually bring the complaint. Similarly in Canada, the United States, the commissions can bring the complaint and that would often solve the cost problem because complainants aren't worried about cost. Sure the complaint is there but it's the actual commission that's running the thing.

MS McKENZIE: There's no difficulty then about having a commissioner that's also a conciliator?

MR LAIKIND: That's a different function. They don't have a problem separating those roles. The commission is sometimes acting as complainant and sometimes it's acting as an independent arbiter. They do work.

MS McKENZIE: How do they work? If it's made the complaint then who does the conciliation?

MR LAIKIND: They don't have a conciliation.

MS McKENZIE: So what do they do, go straight to court?

MR LAIKIND: Yes, straight to court. Indeed in certain things - perhaps that's a

good way - and I guess that's another question. That begs the question, is the mandatory conciliation model that which is best suited to reach the objectives of the legislation. Now, the mandatory conciliation model may well be something which is excellent for family law or it might be excellent for some other forms of dispute resolution, perhaps personal injuries, where one wishes to save court time and one is not looking at raising the bar and seeking some form of full participation and more fruitful participation as an objective. One is simply using conciliation as a way to scale down the load on the courts. So one has to ask oneself, why are we having mandatory conciliation with these human rights legislation. I guess that begs another question: what you really receive at conciliation is generally a fudge, something which is in between both parties, and if you have it in terms of confidentiality, then you've got a confidential fudge. How does that, on a one-on-one setting, change things?

MS McKENZIE: But it might be said that conciliation gives the parties to sit down and speak about this without the pressure and formality and stress which comes with a hearing. It may be said that that has some value.

MR LAIKIND: Yes, and I think it's worked a number of times in certain areas, a productive result has been achieved; in very many cases not, particularly employment. So I guess that's a point to conciliation - and to that I might add that it might be that in certain conciliations perhaps the commission might have some policy that certain aspects of an agreement be made to be non-confidential. I put that in as an afterthought in terms of this but one could examine perhaps the results of conciliation and this one-on-one conciliation thing. Indeed there are very few complaints under the Queensland jurisdiction are even accepted on a representative basis because one needs to have the same fact in law as far as every person in the class.

MS McKENZIE: So it's not similarity of issues or at least some common characteristic - - -

MR LAIKIND: No, it would mean that - - -

MS McKENZIE: - - - it's a much stricter test.

MR LAIKIND: Say, a complaint on behalf of a person with vision impairment, they would have to have the same vision impairment and they would have to be affected in the same way. So you're basically never going to have a represented complaint, or just about never, in Queensland. It's not quite as demanding - - -

MS McKENZIE: But could you have a more relaxed - - -

MR LAIKIND: Yes, you could have a more relaxed test. That was changed

judicially from an interpretation in the Cairns Bus case about four years ago, so that could be a more relaxed test but I guess that - - -

MS McKENZIE: It would be better to make it clear.

MR LAIKIND: Yes, it would certainly be better to make it clearer. I didn't mention things like mainstreaming of disability issues which is a common way to try and achieve the objectives of Queensland ADA or the Commonwealth DDA. Queensland has its disability services. I recently sat on a committee to have a new Disability Services Act which hopefully have some enforceability in monitoring and give enforceable rights whereas it currently doesn't. So that's another way to achieve these objectives because that legislation has similar objectives.

MS McKENZIE: So this is positive, if you like, positive duties - - -

MR LAIKIND: Yes, positive ways to go to mainstream them to government departments the objectives of anti-discrimination legislation because there's more than one way to skin a cat. Then I mentioned a couple of other things, these being affirmative action and an offshoot, a specific type of affirmative action. Affirmative action is well known, it has existed for nearly a century in terms of various places around the world. One could use the word "special measure" or "positive action" or "reverse discrimination". There are very many forms of it, as to whether one gives a tie to the female or the person with a disability or one could give a preference as far as a person without qualifications. There are quota systems. There all sorts of mechanisms around. In the early days most of them were used for race, then sex - in the United States - to actually favour the person.

I gave an example there of the 1945 British Disabled Persons Act which came in after the Second World War basically to get persons who had been injured, lost limbs, back into work.

MS McKENZIE: How long did that act stay in place?

MR LAIKIND: It was repealed when the 1995 British Disability Act came in. So when that act came in, that other one came out. So it was going for 50 years - 51 years actually because the British DDA didn't come in until 1996. My Oxford thesis was a comparison of the defence of undue or unjustifiable hardship between Britain, United States, Canada and Australia. So that act was necessary for me to look at - yes, 96 or so. That required I think with employers of 20 or more persons to keep a register and 6 per cent of their employees had to be from that register a person with a disability. The problem with that act is that it wasn't policed so employers go (indistinct) even though this act was there. They didn't like it. People would say, "This is a reverse discrimination type thing and we don't like it." The problem is things seem to be going backwards and the equality legislation just may not be

working that well.

The philosophy behind affirmative action, things are - usually as far as race - to take account of the effects of past discrimination. One could use the same thing for disability here that a good reason to have more affirmative action - there's affirmative action policies for a person with disabilities through government, throughout the Commonwealth. You'll see the benefits one can receive with a pension card. All these are affirmative action type things. They're allowed to exist by section 45 of the of the Disability Discrimination Act or section 104 and 105 of the Queensland Anti-Discrimination Act but unfortunately if they don't operate very well one can't use equality of legislation to challenge it. That's the current position. It might be that some specific employment measures might be needed or something else might be thought of. Anyway, that's a particular submission.

Another thing in regard to affirmative action, it can be used to gain more representation. People have said, well, we can have more full participation in the community. Not many cases have said that but a few have. There have been cases, particularly in the United States that when it comes to persons that are actually in a job they might be said to have some accrued rights. So it might be that where an affirmative action policy derogates from their rights one can back off. Indeed, one can say, have the affirmative action policy only in regard to the pre-employment situation. If somebody has some sort of accrued rights through administrative law, well, back off on your policy - tailor the policy.

I gave one other example of contract compliance where - the United States have been using this since the 1974 Rehabilitation Act, which is the precursor of the 1990 Americans with Disabilities Act. This has been used for the past 30 years, contract compliance, whereby in order to contract with the government, to receive a government contract, the employer will have to say, okay, well, a certain percentage of my employees have disabilities and the following - or have certain representations as far as race or sex or what have you. So it's basically an enforced affirmative action policy in order to get a contract from the government. I don't think the government here does that but it seems to be quite an effective mechanism to have private companies enforce affirmative action.

MS McKENZIE: I was just going to ask, with this contract compliance approach in the US and you mentioned earlier the UK, the initial 1945 act, has there ever been any evaluation done of either of those approaches? Has there been a lot written about it? You know, I'm interested in what are the possible outcomes.

MR LAIKIND: They have written things in the United States written as far as how contract compliance is quite effective. The articles that I've read as far as the 1945 Disabled Persons Employment Act was that it was not very successful because it wasn't being monitored.

MS McKENZIE: I presume when the new act, the Disability Discrimination Act came in in 1996 - - -

MR LAIKIND: Yes.

MS McKENZIE: - - -that those sort of provisions were no longer in that revised legislation.

MR LAIKIND: No, they weren't. They didn't have affirmative action policies for employment there.

MS McKENZIE: Was there a debate at that time relating to whether they should go in or out? I mean, is there something useful we could go and look at?

MR LAIKIND: No, I don't know that you would see much about that. Things that have bothered me with both the American Disabilities Act and the British Disabled Person Employment Act is the definition of disabled person there, that they take a very narrow approach as far as who gets in. That's one of the reasons why employment complaints, both in England and also the United States frequently lose because you don't make it to first base. You don't fit within the medical model of the disability. So say both of these areas - you've got to have a specific medical impairment, whether it be anatomical as far as one could pass to you something else, and this must then limit you to a significant extent physiologically, and then it must have existed for a substantial time. So there's at least 12 months or until the person dies.

MS McKENZIE: So there are a lot of limitations.

MR LAIKIND: A lot of limitations.

MS McKENZIE: Can I ask a couple of questions about the affirmative action thing?

MR LAIKIND: Yes.

MS McKENZIE: There are two arguments which I want to ask about. The first is, what about the argument which says that having affirmative discrimination policies may well finish up making at least part of the rest of the community furious because they feel that, in a way, it's called reverse discrimination - in a way they are being discriminated against.

MR LAIKIND: They are.

MS McKENZIE: And it's a particular difficulty when there are times of high unemployment.

MR LAIKIND: My answer to that is people have not jumped up and down in the United States with the affirmative action policies, particularly in regards race. They state - and you'll find person after person saying look, I'm in favour of affirmative action." It's there. So that's - - -

MS McKENZIE: So it hasn't generated, you know, community hostility?

MR LAIKIND: No, it hasn't generated community hostility and to the extent that somebody has accrued rights are perhaps infringed, the policy can be backed off. You could have affirmative action in so many ways where you have a simple tie-breaker situation or something else.

MS McKENZIE: The second question is about tokenism; if you have - it's not going to apply with all affirmative action policies - but if you have a policy that says you need to employ so many people in your organisation - being people with disabilities - is there a danger that employers or service providers or - well, employers particularly, let's limit it to that - is there a danger that employers will say, "Okay, I've got to do so many per cent and I won't care after that. You know, I'll continue to discriminate against people - - -

MR LAIKIND: There's all sorts of dangers as far as that. One of the dangers might be that a person - well, the employer is going to pick the highest functioning disability that they can find. Say if it's some computer programming thing they're going to maybe go for a person who might have paraplegia, who is a very high functioning person and will do their job fine and maybe they've got a nice successful office and they won't bother with a person with maybe a psychiatric impairment because they're afraid of them and they might stereotype and think this guy is a menace to the community.

MS McKENZIE: Is it a real problem, do you think?

MR LAIKIND: Well, it's a problem the way something is worded and the way something is drafted, I think. But I don't think it's an insurmountable problem. I think it would depend upon the groups you target and the way some legislation would be drafted. But I can see all sorts of initial resistance and an employer trying to take the easiest way out if possible.

MS McKENZIE: So it needs to be drafted in a way that will stop that happening.

MR LAIKIND: Yes. I would see that - I'm sure there are other things but it's my submission that one uses all of the eggs or as many eggs that one has to address the

particular problem. Now, anti-discrimination legislation has gone a significant step forwards, particularly in the area of goods and services. So the DDA so far has transport standards which would be very good. Indeed Queensland has worked towards the transport standards as if they were in existence six years ago. So they're up to 20 to 30 per cent compliance in every aspect already. They'll probably be up to 100 per cent in another 15 years, 10 or 15 years. So they're doing quite well and I think that's quite excellent.

The Adelaide bus case was very good. Scott v Telstra was a good case. There haven't been that many though and they've been principally in the areas of goods and services. Employment hasn't been easy. Employment - and employment is over half of the complaints that come. Initially the DDA was only going to cover the area of employment, so my submission is that if the DDA was only going to cover employment the whole thing would have been a dismal failure.

MS McKENZIE: Are standards then, do you think, in the employment area - you've just said standards in the transport area - yet other - is a good - - -

MR LAIKIND: Standards are in transport and - I think standards will also be access to premises within the next 12 to 18 months. They've been working on draft standards now for sometime. They have the approval of all sides, that one can get certainty and that's good for builders, architects, lessors. It's also good for complainants. One has the possibility of 500,000 or more access complaints. If one can be dealt with by what a building should be through a standard that's a better way to go, much better way to go.

The problem with the employment standards, the education standards, was that what was put forwards was basically just some clarification about certain concepts, these being a justifiable hardship, reasonable accommodation and inherent requirements of a job or inherent requirements. That's the sort of material that was put forward and by accepting that as a standard that would remove the ability to bring complaints and you merely have definitional material but rather than a situation that covers every disability and every employment situation and basically works the same way as the Access to Premises Standard, which will cover every situation.

MS McKENZIE: What are your views about the unjustifiable hardship defence?

MR LAIKIND: My view is that - well, it's everywhere around the world and it's the major defence in terms of cost-benefit around. My views are that in terms of employment there are cost-benefits to employing a person with disability, such as they have higher attendance. They stay at the job for far longer than a person without a disability, that most accommodations cost nothing, that - there's only a few accommodations that cost a lot of money and the benefit of keeping the employee will generally outweigh any expense. So that's my feelings and they're the same as

Berkowitz and many of the others who have had studies regarding that.

Regarding this in other areas, yes, I think that the bar has changed from time to time regarding that particular defence in Australia and other jurisdictions. Say, in Australia I can remember a case in a department store about moving a lift - I don't think it was Best and Less but one of the stores anyway. That was set back in the mid-80s or possibly even early 80s under the former Victorian legalisation that you don't have to do much in terms of unjustifiable hardship that even just doing a little bit, that could be a justifiable hardship. But cases like Cocks v State of Queensland you've got to do a whole lot to reach that bar. That was a very good case because after winning that the bar was raised to such a level that nearly every access complaint would win and things would settle in conciliation time and time again.

MRS OWENS: It's almost which word is emphasised. The earlier case looked rather at hardship. The latter looked rather at unjustifiable, I think.

MR LAIKIND: Yes, well - - -

MRS OWENS: In a way - - -

MR LAIKIND: - - -I think it's just if you do anything that was considered and then Cocks back in 94 for access to premises. Okay, you've got to do a whole lot to show this to be unjustifiable hardship because a lift at the expense of $300,000 was not, and they couldn't establish their delay cost, which they said would be an extra $500,000. But they couldn't establish through their expert witnesses that it was going to delay the project any longer.

MRS OWENS: That's right.

MS McKENZIE: We heard in the Northern Territory the other day one of the participants there suggested that we could do away with the unjustifiable hardship clause altogether and just rely on temporary exemptions, combined with action plans.

MR LAIKIND: I don't think so. I don't think so because temporary exemptions are just that. They're unreliable as far as if they'll be granted and they have a limited time in terms of five years. So maximum - I don't think so. There are certain things, to my mind, to which an unjustifiable hardship defence would be quite prudent. Say even in the access to premises area an example might be somebody who has got a shop on the second or third floor of a building. He is pretty poor and the only way to get an access would be a lift - should this fellow have to do it? I don't know. In my mind perhaps not.

MS McKENZIE: No exemption can really sort that situation.

MR LAIKIND: No, and a temporary exemption wouldn't help that.

MRS OWENS: Yes.

MS McKENZIE: I think their concern was once you've got unjustifiable hardship there would be others that might - it's ongoing. Unless that person brought a complaint - - -

MRS OWENS: Another complaint.

MS McKENZIE: - - -three years later and was saying, you know, the complainant, then it puts them in a difficult situation. So I just thought I'd test that one on you.

MR LAIKIND: Yes, fine. Test it on me. I could see, perhaps, with the current High Court and Federal Court, I could see some of the high water marks being - - -

MS McKENZIE: Eroded.

MR LAIKIND: - - -dissipated to some extent as far as unjustifiable hardship being easier to raise and win now than in later - than 10 years ago. I can see that the composition as far as all conservative liberal members above High Court and many in Federal Court - the discrimination plans would not get that far. Their reading, for example, in the Purvis decision. Although that wasn't going down on justifiable hardship it's not going to help a situation where there are education complaints and a person has - like a child has a psychiatric illness, autism spectrum disorder and certain behaviours arising out of the particular disorder. It's not going to help a situation. I can see a backing down in terms of unjustifiable hardship.

MS McKENZIE: What about other anti-discrimination legislation like sex and race? There is, as I understand it, no unjustifiable hardship clauses in those legislation - types of legislation.

MR LAIKIND: Okay, well, there isn't in terms of race. One doesn't need to provide a lot of accommodations except removing barriers and changing attitude for most of the discrimination. So if you're simply, say, changing your work philosophy or so, you're not looking at the cost of providing computer equipment and readers for a person with a vision impairment or you're not looking at providing a lift. You're not looking at the cost of providing the various changes which are generally just breaking down attitudinal barriers. That's my explanation in terms of race.

Sex is probably the same issue although there could possibly be an argument for unjustifiable hardship in terms of maybe some pregnancy issues and maybe some others, although mainly attitude.

MS McKENZIE: Might have to put in a toilet but I don't think that that's a major issue.

MR LAIKIND: No, I was thinking about the pregnancy from the terms of having the baby and how much leave and whether it should be paid or unpaid maternity leave and how this is going to affect a small employer and things from that perspective, and I guess toileting is another thing - some mothering and whatever - nursing.

MS McKENZIE: One of the other issues - maybe you were going to get onto this - we've probably gone well over time with you and you've probably got other work to go and do.

MR LAIKIND: No, in fact there was a fellow that - and I didn't know the - they haven't booked on for two conciliation conferences at the ADCQ today but they didn't tell me about it. I found out in the papers in the morning. I had clients coming in and 20 phone messages. I did the first one via telephone and the second one rescheduled. It worked out okay over the phone - had three or four intervals.

MRS OWENS: Perfect. Have you got other issues you want to raise with us?

MS McKENZIE: I've got one more and that's the - - -

MR LAIKIND: Yes, I've got a few.

MS McKENZIE: Removing the confidentiality clause.

MR LAIKIND: Yes?

MS McKENZIE: You I think recommended that that should be removed.

MR LAIKIND: The possibility of something to be done in a situation where a proactive remedy is accepted then for this proactive remedy to make it to the wider community then that be broadcast and made known to the wider community. So for that you'd need to remove the confidentiality bit for that. I suppose if there was some control by the commission over that then that would take it out of the hands of parties.

MS McKENZIE: So you're not saying remove it in all cases. You're just saying in some case it may be - - -

MRS OWENS: It may be appropriate.

MS McKENZIE: - - -appropriate.

MR LAIKIND: Yes.

MS McKENZIE: I may perhaps make respondents a bit less willing to settle.

MR LAIKIND: Yes.

MS McKENZIE: But perhaps also if it's tailored so that the commission could realise information in some depersonalised form that may not occur.

MR LAIKIND: Yes. How are we doing on time?

MRS OWENS: We're well over.

MS McKENZIE: We're well over, but are there any other matters you want to raise with us before - - -

MR LAIKIND: Okay, this inquiry I guess will take some months and I think there could probably be a number of possibilities in terms of outcome, whether it be changes to the current composition of the Human Rights Commission. It could be a change in the legislation. It could be an increase in services. It could be a decrease. It could be a total revamping or doing away with the commission. There could be many possibilities on board. I guess that will be found out in a year or two from recommendations through parliament.

MS McKENZIE: Can I just say a couple of things. The first is, it's going to be less time than that. But a draft report will probably be prepared in October. Then we'll have another round of hearings to gauge responses to the report and those hearings will happen from December onwards, from December to, say, February and then a final report will be released and there's a deadline. Actually the deadline was February. We would hope the deadline, it might be possible to change it until the very beginning of May. But that will be the very latest that a report will be made. As far as the composition of HREOC is concerned, our difficulty is that really that raises a much broader matter than our terms of reference cover.

Our terms of reference are only specifically to do with the DDA. Now, certainly it's arguable that various different compositions of HREOC might have some indirect effect on how the DDA might work. The real problem about that is that that also will affect the Sex Discrimination Act and the Race Discrimination Act because presumably any recomposition will involve those acts as well and really, at least at the moment, I feel that that goes somewhat beyond the terms of reference that we've been given when this matter was referred to the commission.

But certainly any matters that directly relate to the DDA, its form, what

amendments should be made, whether its coverage is as it should be, whether it's effectively achieving its objectives or some other changes can be made to make it do that better, the complaints and conciliation process, all of those matters are squarely within what we are supposed to be doing.

MRS OWENS: Yes, I think a few people raised your name with us so - - -

MS McKENZIE: They said you're an expert in the field.

MRS OWENS: And we're very grateful that they did, because I think it's an extremely thoughtful and useful submission for us, and I think the discussion we've had today has been great. I don't think we've had a lot of questions because I think what you've said has been very clear.

MS McKENZIE: I've asked you lots along the way, but what you've said has been clear and has covered a lot of the matters. If you had been less clear I would have had to ask you more questions.

MRS OWENS: I suppose the only other area where we haven't talked to you about is the definitional issue where we've got other participants have raised issues relating to the definition of disability which is based on more of a medical model and definition of unjustifiable hardship and so on.

MR LAIKIND: Well, this definition is huge as far as DDA, Queensland ADA; it's absolutely huge and totally inclusive. You basically always get over step 1 which is: does a person have a disability?

MRS OWENS: Yes.

MR LAIKIND: Entirely huge.

MRS OWENS: And I'm right in thinking that you wouldn't want to cut back in any way. You think that's absolutely - - -

MR LAIKIND: I think that's right. That has never been the problem.

MRS OWENS: Yes. What about this issue about it being a medical definition rather than - - -

MR LAIKIND: Well, it isn't. The definition here, disability, covers really anything when you think about it. It's a huge definition and it has the advantage as not being something that one can challenge, either under a former Australian anti-discrimination legislation, like for instance South Australia didn't have mental illness covered and the New South Wales legislation prior to the 1994 amendments

was quite restrictive in a number of ways. Now, if you compare this to the United States and Great Britain but not Canada, you're comparing an expansive model to a restricted model and people could argue that, "Well, you haven't had this condition a year," or, "Even though you've got this condition it doesn't limit you in particular ways."

MRS OWENS: So you spend all your time arguing those points.

MS McKENZIE: Technicalities, yes.

MR LAIKIND: Yes, technicalities, getting through the front door, and it might be you don't get through the front door. Like, there was a KIT decision that the person with epilepsy - that epilepsy wasn't covered as a condition because they didn't have neurological condition in the New South Wales definition of the 1977 act. That required the 94 amendments. So you've got currently the same as Queensland ADA, very expansive. I've never had any problems getting in it.

MS McKENZIE: Can I ask you one other question which is about - we've talked, in a way, around the subject about the effectiveness of the DDA in achieving its objectives and they're very broad objectives.

MR LAIKIND: Yes.

MS McKENZIE: Is there any measure that you think can be applied? I mean, some submissions, I wondered whether there might be some things to look at, to measure how effective the DDA is and some have suggested perhaps you look at complaints received. But then they've said that's not a very good measure either because they may well not at all reflect what's going on out in the community.

MR LAIKIND: I think it's a different measure for the particular area that it has covered. So a good measure that has come out of this as far as the Transport Standards and Access to Premises Standards is an excellent measure that within time, with compliance, will go a really long way to meeting their objectives.

MS McKENZIE: Yes, and they're a measure in the sense that they have specific things that you can look at and say, "Has this been done?"

MR LAIKIND: Yes, in those bigger areas. Now, in employment my submission is okay, look at participation rates in employment for persons with disabilities. That's one measure and if the participation rate has gone down it's not a good answer, in my view, that the legislation is working.

MRS OWENS: I suppose you get into problems of interpretation there which is that maybe who gets picked up as being defined as disabled may change over time.

MR LAIKIND: Yes.

MRS OWENS: I don't know. There are some confounding factors there.

MR LAIKIND: Yes, there are definitions as far as through Australian Bureau of Statistics, how they measure what's a disability.

MRS OWENS: Yes.

MRS OWENS: Well, that has changed. For each survey it has changed, it just changes slightly. So you're never comparing like with like.

MS McKENZIE: They're different percentages, yes.

MR LAIKIND: That's a problem.

MRS OWENS: Yes. I'm sure all those things you can deal with in one way or another.

MR LAIKIND: I suppose it might differ for each area that you look at. I'm not sure how you do it as far as education. How would you measure success in terms of reaching objectives? Is it through inclusive education? I don't know. I don't know how you measure that.

MS McKENZIE: It may be through having choice of educational models.

MR LAIKIND: Maybe. I think the Access to Premises are fairly clear through that standard.

MS McKENZIE: Yes.

MR LAIKIND: One can point and say, "Okay, well, I'm a person in a wheelchair. I can get into these places whereas I couldn't 10 years ago." That one's not too hard to demonstrate.

MS McKENZIE: Well, thank you.

MR LAIKIND: I think there have been some pretty good changes in the anti-discriminatory - - -

MS McKENZIE: Thank you very much though.

MRS OWENS: Larry, that's just fantastic. It's a great submission. Thank you very

much indeed.

MS McKENZIE: And thank you for staying so long. We'll just break for a few minutes.

MS McKENZIE: The next participant this afternoon is the Physical Disability Council of Australia. Could you please give your name and your position with the council for the transcript.

MS EGAN: Yes, my name is Sue Egan and I'm the executive officer of the Physical Disability Council of Australia. I'm also the national convenor of the DDA Standards Project.

MS McKENZIE: Thank you, Sue, for coming and thank you for the submission and also for the telephone hook-up that we had quite a while ago now. That was, I think, very useful and got us thinking about a number of issues. But I think your submission has got a lot of meat in it, I think, and it's very nicely written and you've also spelt out quite a number of recommendations to get us thinking as well. I thought what we might do is maybe just run through some of those issues that you've raised and you've made recommendations on, and just to try and tease some of them out.

MS EGAN: Yes.

MS McKENZIE: And I think one of the early recommendations you made was about changing the definition of disability from a medical to a social model. I don't know whether you were here when we raised this issue with Larry.

MS EGAN: No.

MS McKENZIE: To just see what his response was. But I think we were wondering have you given any thought to what that sort of definition would look like? Is it something that would be workable in the context of this particular act? I think the resident expert on definitions within acts is sitting right next to me here. But I just wondered if you had taken the thought process beyond just suggesting a change in definition.

MS EGAN: I suppose that our council, the Physical Disability Council of Australia, shortened to PDCA by the way, we have given a great deal of thought to this and I suppose by the very nature of the disability that we represent it's possibly much easier for us to move toward a social model and away from the medical model because in the main most people's conditions stabilise after accident, after illness or after birth. So they're left with a type of disability which is lumped under the topic of physical. It's not quite so easy for other disabilities which are episodic and so on, which require more intervention with medical treatment and so on.

But over the years in Australia it's more and more seen that we need to move away from the medical model of disability because that disempowers the individuals by its mere medical nature and I don't know that there is an accurate description of

disability other than - what we currently use is the World Health Organisation definition at the moment and I understand that that's an ongoing process, that they continue to look at the definition of disability to find something that's suitable to everyone I guess. So the short answer to your question is no, we don't have anything other than the social model of disability which looks more at the person's abilities rather than their disability, if you want.

MS McKENZIE: So you're really saying it's looking at barriers to being able to do things rather than at particular medical conditions.

MS EGAN: That's right. Well, a really simplified explanation for a social model is that if the whole world, or everyone in this room, used a wheelchair then none of us would have a disability because we would in fact be exactly the same. If the whole world were deaf and we all used auslan or some kind of language then we wouldn't have a disability because we would all be the same. It becomes the norm rather than the different and if everyone experiences mental illness for instance then that would be the same thing. It's not difference and it's just looking at that socially and culturally people with disabilities are isolated and segregated in the same way that people of different race are or different languages or so on. So once a person has their needs met medically then they become a citizen but they're still different and it's society that in fact makes that difference.

MRS OWENS: But when we were talking to our previous participant we, as I said, did discuss this and he said that the advantage of the approach that's adopted at the moment is that it's a very inclusive definition. It virtually covers everything and so the advantage is that, You know, it's very hard to challenge. You don't have to spend all your time, he said, getting through the front door. They don't have to spend time debating the point about whether that person - - -

MS EGAN: Well, I would disagree with that, with respect to Larry. I assume we were talking about Larry.

MRS OWENS: Yes, we are.

MS EGAN: Well, with respect, I would disagree because in fact if we used Centrelink and the assessment process as an example then people with epilepsy are not ordinarily - or it can't be assumed that people who experience epilepsy are recipients of the disability support pension because in fact there has been a very big move to try and include many kids with epilepsy or adults and it hasn't been successful, and that's because it's an episodic condition that at other times the person may experience a fairly normal lifestyle but it's not considered a disability. Another example is in the area of intellectual disability.

There would be hundreds and thousands of people in our society who would

say their child or their offspring do not fit under the banner of intellectual disability. People with Down's syndrome for instance, many of the parents of those children will say, "No, my child doesn't have an intellectual disability. My child has Down's syndrome," So therefore don't fit under that banner. So I don't think it's as easy as perhaps Larry thinks. But then Larry's talking from a legal point of view and from the legal point of view it may appear to be easy. But if you're coming down to - you know, down on the ground, no, it's not. There's a lot of difference.

MS McKENZIE: So I just want to try and understand. So what you're really saying is that rather than looking at the particular medical conditions or illnesses or whatever you want to call them we should be looking at what different treatments society gives.

MS EGAN: Well, more or less. In a roundabout way, that's really what we're saying. What we're saying is, "Let's leave the issue of disability and difference alone," and just say that we are all people and that we need to remove the discriminating factors that make us different. That's what it's about.

MRS OWENS: So it's an inclusiveness thing.

MS EGAN: Very much.

MRS OWENS: Is that really fair - - -

MS EGAN: Very much, and a removal of labels so that the issues like Down's syndrome and so on are not issues, and the issue of people who are deaf who use a language of their own and not actually segregated because they do use a language that the majority don't use, so it's an understanding that everybody is different but we all fit into the same criteria, if you like.

MS McKENZIE: And really it's by society's lack of understanding.

MS EGAN: It's by societies they have understanding, by society applying labels which it wouldn't apply to others.

MS McKENZIE: Yes. That's a thing that results in the sort of non-inclusiveness.

MS EGAN: Yes. It's very much along the same lines of Muslims at the moment; by the very nature of historical facts now, people who are Muslims are labelled as being terrorists or of being aligned to a particular culture or religion that is not favourable, yet for everyone that is of that discipline or is a terrorist, there will be millions who aren't.

MS McKENZIE: So as far as the DDA is concerned, to change it to reflect the

model that you're talking about, and I'm thinking - I'm a lawyer, you see, so I think slightly like a lawyer. I do my best not to all the time, but as far as the actual differences to the DDA are concerned, one of them would seem to me that you would want a different kind of objective. Am I right about that? Because it's very much in terms of - if you look at the objectives, it's certainly quite - there are some objectives that would in a way reflect what you're saying. One talks about quality before the law. The other one talks about attitudes to promote recognition of certain attitudes as far as the human rights of people with disabilities are concerned, but am I right that you would also like to see in that act some objective about inclusiveness?

MS EGAN: Absolutely, because I think that should be the intention of the act from the first instance.

MS McKENZIE: Then would you also perhaps like to see some positive provisions in the act about inclusiveness rather than - see, the current way the act works, it basically says, "You must not do X, Y, Z. You must not, on the ground of someone's disabilities, dismiss them, not promote them, not allow them to service provision," and so on and so on, but if I'm right and you're looking at a more inclusive way of looking at society, you would rather see some positive things that have to be done. Is that right?

MS EGAN: I think so, because I think the message that goes - I mean, for instance, I don't need to use the DDA in my practices. I'm part and parcel of the disability sector and if I'm not aware of what legislation there is, I shouldn't be working in the industry. But the people you're trying to educate with a piece of legislation are those that don't have experience with disability in the same way that we do. If you want them to understand, then there has to be some encouragement and positive message in that piece of legislation to say that there's a better way to treat people than simply saying, "No, you can't discriminate," because I think we're not getting as far as we need to with this legislation as it is.

MRS OWENS: But as Cate said, one of the other objects of the act is to promote recognition and acceptance of the rights of people with disabilities which is, I think, a very positive statement.

MS McKENZIE: But if I follow through what Sue's saying - if I'm right, Sue, in what you're telling me - that still goes back to the idea of these are people with disabilities. What you would want people to look at rather is that the attitudes we're supposed to be promoting are an inclusive one as far as society is concerned.

MS EGAN: Yes.

MRS OWENS: But is there maybe some interim period where you still need to have an act drafted it his way because maybe at this point in time people still

typecast other people as having a disability which means certain things and it may affect how they treat that person, say, in the workplace or in terms of access to education, access to goods and services or whatever, and maybe there is still an enormous education role to take place which could be the role of HREOC or whatever, but we haven't got to that ideal world yet where people do see - they see past the disability to the person and maybe we need to - or maybe this is an act where you would like it to have a use-by date and then you move on to another act which does promote inclusiveness and so on. Maybe this one is trying to do something that needs to be done right now.

MS EGAN: In the ideal world, we wouldn't need the act at all. That's the real point. We wouldn't need a piece of legislation to say, "People must do this and must do that." I would like to think that we, 10 years down the track, are a little bit more educated in the community and can start to work towards more positive things. I agree that there needs to be more education. That's always a bonus and it's always a necessity in any community. You can't take it for granted that the community is educated and aware of disability because they're not. But I think that this is an opportunity for the legislation to work in a way that the sector wants it to work and to, I guess, be a friend to the sector rather than keeping people apart. It's a piece of legislation that has been difficult to work with for people with disability because of the mere way it's written and I guess people want to see more of it, want to see more out of it.

MS McKENZIE: So to take a simple example, say you have an employer who dismisses a number of his or her disabled employees and dismisses them because they're disabled in some way or another because of their disabilities, the way the current act would work is that would be a breach of the act because of the prohibition. How would you see a better model working?

MS EGAN: The way the act works at the moment, the person could claim unjustifiable hardship and they would be - - -

MS McKENZIE: Perhaps.

MS EGAN: In most instances so far, people - well, there's a minority of issues that actually go through the Human Rights Commission in terms of employment and employers will in fact just not employ another person with a disability because of their experiences.

MS McKENZIE: So that will have - - -

MS EGAN: It's a derogatory effect.

MS McKENZIE: Yes, a compounding effect.

MS EGAN: That's right. But I think in the future what could happen is if we had something that was more positive, then employers would maybe feel that they could actually work with something more positive and it would encourage employers to sit round the table to in fact try and find a solution to suit all parties. I mean, part of the reason that the draft employment standard failed was because employers felt it was too prescriptive and that it was unfair to them. Well, pardon me, but it wasn't supposed to be that fair to employers. I thought it was fair to people with disabilities who persistently are under-employed in our community.

MRS OWENS: You also, along the same line, talked about introducing a concept of structural or institutionalised disability discrimination into the act.

MS EGAN: Yes.

MRS OWENS: Could that be dealt with by having power for the Human Rights and Equal Opportunity Commission to introduce its own complaints which are of a more systemic nature?

MS EGAN: Yes.

MRS OWENS: Would that help achieve that objective?

MS EGAN: Yes, I think so, because in the years that I've worked for my organisation, and also been the convenor of the DDA project, I've either been a party to or witnessed issues that have gone across my desk that could have been picked up by HREOC as a systemic issue, but in fact because of the definition of their role, haven't been able to. One of the issues that we have persistently wanted them to take up has been the role of discrimination by the airlines and my understanding is the way that works, there are not sufficient complaints received by HREOC and yet the issue compounds on every person who has got a physical disability that actually travels, but unless we get all of our members to in fact lodge a complaint, then it will never be picked up with the public inquiry. The fact that the electoral voting issue was picked up was the fact that many of our members in fact did write a complaint to HREOC, but I do think that some of those issues can be resolved by a more structural or systemic kind of role from HREOC.

MRS OWENS: I think we're getting quite a few participants supporting that sort of approach. It's coming up time and time again with participants. You also have recommended that temporary exemptions be linked to action plans but we've got the impression that HREOC already does take action plans into account when it's looking at issues, when it's looking at temporary exemptions.

MS EGAN: Yes, but I don't think it's mandatory.

MRS OWENS: So you would want them to require them. Is that - - -

MS EGAN: Absolutely.

MRS OWENS: You were also recommending mandatory action plans that are monitored.

MS EGAN: Yes. There's no point in having an action plan if you're not going to be adhering to it. The reason that we say that is that our organisation recently undertook a project on parking permits throughout Australia which is a big issue for many of our members and what we did as part of that - the first part was actually canvassing around areas to get our members to report indiscretions and misuse and so on, but the second part was in fact writing to the Australian Local Government Association, all of the individual councils. One of our questions in that survey was in fact, "Do you have a disability action plan?" and overwhelmingly the responses were, "No, we don't need one," or words to that effect.

The small towns, for instance, gave answers saying, "Well, we don't have any people with disabilities living in our town so we don't need it," so the lack of understanding, that it doesn't just apply to the citizens that live in your town; it applies to all citizens of Australia who visit your town, for instance. The disability access is not about just for the people who live there, it's for everyone. It was lost on them entirely. They did not understand that, and where they had ones that did have a disability action plan didn't connect the parking issue to the action plan. The disability action plan to them spelt out access, a ramp into an office or a council chamber and a public toilet that was accessible but it didn't come to parking - - -

MRS OWENS: Didn't go the full way.

MS EGAN: - - - and it was not the big picture thing so I think that in terms of talking about the education process, I think a disability action plan is a good way to in fact educate many of the businesses in our world; that by the mere fact of looking into an action plan and what makes a good action plan shows just what disability access is all about.

MRS OWENS: Even the making of one.

MS EGAN: That's right. You see, most people won't think that by looking at an action or putting an action plan together means having signs in a language that everyone can see and can interpret or having alternate formats for any documentation. It doesn't go beyond, say, having a door that opens and a wheelchair-accessible toilet but an action plan is bigger than that. It's not just about the obvious things, so I think that having organisations do an action plan would be a

really good education process.

MRS OWENS: You're talking about not just government organisations, you're talking about private companies as well?

MS EGAN: I think, you know, like the airlines for instance, they could really do well to do action plans because they're public carriers, and anything to do with the public, I think, could benefit from an action plan.

MRS OWENS: What about small companies, small businesses?

MS EGAN: I guess it depends on what their interaction with the general public is. I mean, Kentucky Fried Chicken, for instance, they sell to consumers so therefore they could have an action plan that would include disability as well but - - -

MRS OWENS: What about Joe's Fish and Chip shop down on the corner? Do you cut it off at some point?

MS EGAN: I think that's a bit unreasonable. I don't see that there is a necessity, but if you've got things like an Access to Premises Standard, then that will cover the access to that shop. If you have got an employment standard somewhere down the track and Joe wants to employ a person with a disability, then one would hope that that covers that aspect, but no, not the smaller businesses. There would be great resistance.

MS McKENZIE: You said some things about the concept of reasonable adjustment and unjustifiable hardship.

MS EGAN: Yes.

MS McKENZIE: And you recommended that there be a duty to make reasonable adjustments. Do you want to talk a bit more about that?

MS EGAN: Well, I suppose what we're meaning is that there should be an expectation that there will be an area of reasonable adjustment that's taken into account. Like, for instance, an organisation or company should not be allowed to simply carte blanche say, "No, we can't do this and we can't afford it," but there should be some expectation that there will be some move toward compliance. I guess that's what we mean by reasonable adjustment. I think that too many organisations use the unjustifiable hardship category to in fact get out of responsibilities.

MRS OWENS: But you wouldn't necessarily drop the unjustifiable hardship clause from the - - -

MS EGAN: We would love to, but we don't think that we would ever get that.

MRS OWENS: No. It has been recommended by some other participants.

MS McKENZIE: People have recommended that.

MS EGAN: Then, yes, we would. We would love to see it going.

MS McKENZIE: But then I think when we were talking to Larry before, he said, "Well, you may have some small businesses where it might break" - he didn't use these words - but it would break the business if they had to put a lift into their building because it's just a small business.

MS EGAN: That's right. I think to be reasonable about things, it has been seen over the development of the standards that we have already that there needed to be an unjustifiable hardship clause, but I think that when an organisation or a company applies using unjustifiable hardship, for instance, applying for an exemption to a transport standard, I think that there has to be that example of the goodwill that they are going to be doing something during that time. The airlines that asked for an exemption to the standards for another five years, for instance, the smaller airlines, they need to show what they are going to do during that five years, or are they going to just sit there and do nothing at all? That has been a problem in the past and is still a problem at the moment but I think - - -

MS McKENZIE: That's why I suggested the action plan as a part, so that they can actually show what they're going to do within the five years of exemption.

MS EGAN: That's right, yes.

MS McKENZIE: Then you talked a bit about the advantages of having separate anti-discrimination laws, separate DDA, as against omnibus legislation. You have got omnibus legislation in Queensland covering lots of grounds. Do you want to add anything to what you said in your submission about that?

MS EGAN: What did I say about that?

MS McKENZIE: You said somewhere, I think, that - I mean, do you favour that the DDA should continue to be a separate piece of legislation, I assume?

MS EGAN: Yes, very definitely. I think the issue there is that there is some discussion about putting the DDA into a human rights legislation on its own and we would clearly not agree with that. We think that the DDA needs to stand alone as it does in other countries.

MS McKENZIE: But in all states and territories we have omnibus - -

MS EGAN: But it doesn't cover the Commonwealth though.

MS McKENZIE: But do you feel that it does work for those individual states to have omnibus legislation or not?

MS EGAN: I don't know that I can speak with expertise on the state legislation because I live in Queensland obviously but I'm not sure of the other states how effective it is.

MRS OWENS: What about the Queensland anti-discrimination legislation?

MS EGAN: I don't think there have been any problems. There's a clear distinction between each one. I deal mainly on the federal legislation. That's where my expertise is but I haven't seen or experienced any issues from the Queensland legislation.

MRS OWENS: The other thing you do is you recommend ending all exemptions, including for immigration and armed forces and so on. Do you think that that's a realistic approach, say, for the armed forces?

MS EGAN: I'm not sure what the question - - -

MRS OWENS: One of your recommendations was to say, "Get rid of the exemptions, all the exemptions in the DDA," and one of the exemptions is at the moment for the armed forces - that they're not subject to the DDA. I suppose these are special considerations.

MS EGAN: I suppose why I asked them to clarify was I'm thinking, "Why not?" because why would the defence force be - why would it remain not under the DDA? I mean, if someone within the defence force has, say, a mental illness, why can they discriminate on that basis? I don't understand that. It doesn't mean that every person that's in a defence force has to be at the front line and overseas in Iraq and so on. There are other functions within the defence force that people can do. The same goes for any other force, police force and so on.

MRS OWENS: So are you suggesting you really should be looking at these on a case-by-case basis?

MS EGAN: I think so.

MRS OWENS: Then they would have to justify, under the normal HREOC act.

They would have to either show that, for example, it was an inherent requirement that someone with this disability simply couldn't do.

MS EGAN: That's right.

MRS OWENS: Or that there was some kind of unjustifiable hardship perhaps involved. In other words, the other defences could apply but there wouldn't be just a blanket out.

MS EGAN: That's right. I mean, it's obvious that someone with, say, a physical disability that used a wheelchair wouldn't be eligible to apply to the defence force. But by the same token, that somebody who was in the defence force and had to go into a wheelchair for whatever reason should have to go out of the defence force on that basis, they should be able to stay in there.

MRS OWENS: Even you say that somebody in a wheelchair wouldn't necessarily be able to apply for the defence force, but as you said before, there probably are a range of functions - - -

MS EGAN: Undoubtedly.

MRS OWENS: - - - that somebody in a wheelchair could be equally well performing, the administrative functions and so on.

MS EGAN: Yes. I mean, that takes a whole mind shift which is moving away from the whole idea of "everybody is fit and able", which goes back again to the central model of disability, is that you are disabled if you're not fit, that kind of mind-set.

MRS OWENS: But given the range of defences that are already in the act now, as we said, inherent requirements of the job and reasonable adjustments and so on, do you think there would actually be any change from where we are now in practice if those exemptions went? Do you think they just - - -

MS EGAN: Yes.

MRS OWENS: You think it would shift?

MS EGAN: Yes, in terms of employment, absolutely. I had a conversation in Canberra a couple of months before Christmas. Basically it was to do with employment and public service, and how the number of people with disabilities have declined working for the public service and it was alarming numbers. I forget the exact figure but it would be worthwhile finding the exact figure, because it used to be about 15 per cent and I think it's now down to about 3 per cent and has been

declining. During a break in that particular meeting I was approached by a woman from the meteorology area and she said, "Look, we can't employ people with disabilities in our area because we're the Bureau of Meteorology and we take graduates and all the office tasks are going because of the computer generation."

I listened to this and I said, "But why can't the people who are doing the meteorology, the science of the weather and whatever else, be people with disabilities? Haven't you heard that we all go to university?" The fact that the menial tasks are no longer there doesn't mean that people can't operate computers, for instance, and I said, "Every university has a disability liaison person and I'm happy to give you those people's names and contacts and so on when I go back to my office," which I did, and it was like this whole mind-set had to be this whole education process, that people can work who have a disability. I mean, you're a lawyer and you have a disability. It's fact.

MRS OWENS: That's right.

MS EGAN: But the whole world doesn't see it like that. So I think, yes, if you took away a lot of the exemptions and you actually were shoving the employers a little bit more toward employing people, then the world would be an easier place in that there would be a lot more acceptance of difference and an acceptance that people with disability can do a lot more tasks than people think they can.

MS McKENZIE: It raises the whole issue of HREOC as an educator of people and I think you've said in the past - - -

MS EGAN: We have said that.

MRS OWENS: - - - that you had some concerns about HREOC's plan.

MS EGAN: Yes, about the various - that's exactly the word I was going to raise with you.

MS McKENZIE: You raise it then.

MS EGAN: No.

MS McKENZIE: It's just you have said it in different bits of your submission, the importance of HREOC's advocacy role. Tell me if I'm wrong, but from your submission it seems to me that you had some concerns that there may be either too many roles or perhaps conflicts sometimes between HREOC's different roles - the mediator role, for example - and then you recommend that HREOC could initiate complaints. Do you want to say some things about the different roles of HREOC and how you see them operate?

MS EGAN: I guess we see the role of the educator is not necessarily placed with HREOC. I think we see HREOC's role is, or should be in an ideal world, being able to raise complaints themselves, being able to raise public inquiries particularly, because I think that sometimes by a public inquiry it can be quite advantageous, and to be the mediator in complaints. Then I think that would be a valid role of HREOC. Our own experience is that HREOC sits, appropriately so, right square in the middle and you feel abandoned. You don't feel that they are there for you as a person with a disability and I speak with experience here.

I took a complaint to HREOC and it was quite a valid complaint with a very large business in Australia, and the difference in the way it's handled - HREOC basically had to sit and wait for the information to come from the large business before it could move. So the whole process took over 18 months for something that could have been handled within three months and it had to be left at a point where I felt that I really could not financially afford to go any further with this, had to leave it there and just accept the offer that was there. It was very clear that there were to be changes made by the other party and I was not the only person that complained on that issue. There were several other people that complained on that very same issue.

What I experienced and what the other person that I do know of experienced was that HREOC were really quite disempowered. They in fact had their hands tied to do anything at all, even down to insisting that this company hurry the process up, and it needs to be said that this company had the advantage of having the high-flying lawyers who could come to Brisbane to a hearing and so on, and who could deal with all of the issues, whereas HREOC was at the mercy of this company and I felt that I was really not supported at all, that the person who was the mediator went out of his way to show his middle-of-the-road approach, so that you felt as a person with a disability you weren't quite sure whether you were doing the right thing, yet you are supposedly using this piece of legislation that said, "This is your right." So I think that needs to be a lot more clear, and I only cite that example as that is the example that many people complain about, that that is what they feel. They don't feel empowered. They feel disempowered, and for most people with a disability. it takes an awful lot of courage for them to go that far with a complaint, particularly if you - - -

MRS OWENS: Yet the outcome was confidential, wasn't it?

MS EGAN: Yes. I can't tell you who they are and what it's about.

MRS OWENS: It's a pity.

MS EGAN: I know.

MS McKENZIE: But was there an outcome in the end? Was there a conciliation and outcome? So in other words, can you make a comment - there was a conciliation obviously.

MS EGAN: Yes, there was a conciliation and there was an outcome, yes.

MS McKENZIE: But we can't know what it was.

MS EGAN: No.

MS McKENZIE: But I just want to understand about which parts of the process you're talking about. So you're really talking about - - -

MS EGAN: Well, the outcome was not in fact, I believe, a satisfactory outcome that would advantage all people with a disability. That's as far as I could go. It was a small compromise on their part.

MS McKENZIE: Can I ask you about standards. Now, there are some comments in your submission. You might want to say some extra things to me about the various standards and what form they might take. You said that the transport standard is quite prescriptive.

MS EGAN: Yes.

MS McKENZIE: How do you see other standards perhaps taking shape?

MS EGAN: I think the Access to Premises Standard will also be quite prescriptive because it will be attached to AS1428 which is a standard in itself now. So you could pick that piece of paper up and you could see the width and the length and the depth of this, that and the other. So it's quite prescriptive in that sense. The education draft standard, that is not prescriptive in that it's a guide really for education providers and parents of what should happen in terms of mainstream education.

MS McKENZIE: So it's more like - sort of almost outcome based in a way or performance based.

MS EGAN: More or less.

MS McKENZIE: So if you do X, Y, Z, that will be fine.

MS EGAN: Yes, and I think the employment standard or the draft employment standard that was developed some years ago was that - there was a huge debate about that one, whether it should be prescriptive or whether it would be guidelines. What it

ended up with was guidelines that in fact were not satisfactory and because of the influence of the employers, group employers, it was tossed out because it was deemed that the sector couldn't agree on it. But the real issue was that the sector felt it was not satisfactory, it was not strong enough. It wasn't that the sector couldn't agree. What we all agreed on is that it was no good. But it was taken by powers that be as we didn't agree on it and we didn't want a standard that was really there in name only. There was no point; it was pointless.

MS McKENZIE: So how do you think standards could be made stronger? I mean, is it better to have more prescription or - - -

MS EGAN: I think prescriptive standards are easier. I mean, the problem - - -

MS McKENZIE: It's hard, isn't it?

MS EGAN: Yes.

MS McKENZIE: There's a question of uncertainty.

MS EGAN: That's right, and interpretation.

MS McKENZIE: Yes.

MS EGAN: That's the other problem, whereas if you have a prescriptive standard, then you can't really interpret it too much.

MRS OWENS: So with employment, I think you said when we spoke to you on the phone that you could at least make certain parts of the employment process fairly prescriptive or at least tangible, in that I think we talked about the interviewing processes.

MS EGAN: Yes.

MRS OWENS: You could set certain standards and how the interview should be conducted and so on.

MS EGAN: That's right.

MRS OWENS: I don't know then, once a person is employed, how you then put down in your standard some aspects of the operation of the workplace. I don't know; I don't think it's impossible.

MS EGAN: I don't think that one there is too hard. That one is not too hard because if you employ the person in the first instance and you know they have a disability,

then you've already made 75 per cent of the commitment to actually have them as a staff member and so therefore you're not going to baulk at too many other things in the workplace. You're going to start looking at, "What do I need to make this person productive?" and it might be some equipment and so on.

MRS OWENS: Yes.

MS EGAN: But there are methods and means to getting the equipment and one would hope that most people will be educated enough to know that there are resources out there that will help them. There's also things like wage subsidies and so on. But I think the problem, as I see it, is the getting in the door, that employers think it's all too much hassle and so therefore they don't bother. But if you have a piece of legislation that says you can't discriminate on the basis of disability, that an employer who will look at a person and say, "Oh, I can't turn this person down but I need to look at this person on their merits," I think that will go a long way to in fact enhancing people's opportunities.

I mean, my own life when I came back to Australia, I'd been away for 10 years and tried to get a job, and this is before the DDA. This is a year before the DDA. I applied to a very large community organisation here in Brisbane for a job and the person said to me over the phone, "Oh, yes, that's fine," and I said, "I am in a wheelchair." "No, look, that's not a problem." I got to the interview and this person interviewed me and then said, "Look, I don't think you're going to be able to do the job because the office is upstairs," and I'd been through that whole process before that person said, "The office is upstairs," and at no time did that person say to me, "We can locate the office for you downstairs," or, "You can work from home," or whatever.

But I think what that will do is, if you have a standard where people cannot discriminate on the basis that I was there, then people start to think outside the square, "Well, how can we do this? This is a good person. This person has got skills that I want. How can we do this?" and things like working from home and being really flexible in working and computers and things these days mean that people are really quite skilled.

MRS OWENS: And if the standard could address those matters to say that they have to be looked at, that might be some way along the path.

MS EGAN: Yes. I think to ignore the issue of employment now because it's too hard is actually quite ignorant of us, to just let it go. We need to push for an employment standard.

MRS OWENS: Yes, that was going to be my next question. You think that there should be one and it would be helpful.

MS EGAN: Yes, I do definitely and so does the rest of my organisation and most people that I speak to. We will be making that recommendation to the federal Attorney-General's Department at our meeting with them in September I think. The federal attorney-general is the funding body of the standards process and they have asked us, as the working group that report to them, to in fact come to the September meeting with recommendations for future work on the standards and this is because the transport standard is now in legislation and there's high hopes for the education standard to be legislated as well before too long.

So it's looking at the future and what do we do after those two standards, and we'll be making a recommendation that the employment standard is brought out again and we start from scratch, particularly in light of Minister Vanstone's push for Australians working together and the fact that many people with disabilities will be forced to go off disability support pensions if that new system gets into place, the reduction of the capacity to work hours.

MS McKENZIE: Should the act provide allowing standards to be made in all the areas which that covers? You know, at the moment it's not - - -

MS EGAN: There's five at the moment. There's education, employment, accommodation, transport and government - - -

MS McKENZIE: Government laws and programs.

MS EGAN: - - - laws and programs. I think so, and we will be recommending that the other three are worked on. The accommodation issue is a very large issue; issues come under it such as young people living in nursing homes and boarding houses and inappropriate accommodation, institutional type accommodation, and we think that that standard needs to be developed too in order to make a whole suite of standards that cover the major areas.

MS McKENZIE: Should there be power to make standards for the other areas which that covers, like sport clubs?

MS EGAN: I think so, yes, I do, because the water is not static, we change all the time. As people with disabilities become more and more involved in the community, their expectant lifestyle will change. I guess education opportunities and job opportunities will change as well. So I think there needs to be flexibility to change and to develop a standard where needed.

MS McKENZIE: The other thing I was going to ask you: we all know that it has taken some time for, for example, the transport standard to be developed and consulted about and eventually brought to the enactment stage, the tabling and

approval by parliament stage. Do you want to make any comment about the time periods involved?

MS EGAN: The time period for the transport standard was eight years and that was exceptionally long. That took so long because of the stakeholders, namely the Bus and Coach Association, were resistant to a transport standard. They didn't want to see it happen over many years. There was much toing and froing during the whole process. I guess in the end there was a lot of pressure put on to the Bus and Coach Association to in fact come to the party and to just let it go through. I think that it was always seen that it was inevitable because the state and territory councils had already started to instigate changes within the transport systems. You can see around Brisbane that there are nearly 200 accessible buses in Brisbane alone. It had already started to happen. So the Bus and Coach Association were out there on a limb really. They were going to be pretty obvious that they were clearly discriminating and yet they were powerful enough to stop the whole process at one point and delay it so that it took eight years.

The education standard is different in that it has been on board for about three years maximum from its working party draft to the fact that there's a cost analysis being done right at the moment and once that's done and providing it's okay - and that will go before parliament, one would hope, before the end of this year. So that process will be far less than the transport standard. The Access to Premises Standard is about two years long now. There will be extensive consultations happening next year and I think there's an expectation that that will be completed by the end of next year. So that one is not taking too long. I think if we use the education and the access, then there's a period of about three years from the inception of a working group, building up a working group, and to develop the standard. There's a lot of work involved in it of course, and all the legal implications and the consultations which need to be extensive because the sector is becoming more and more educated and aware and demanding more and more inclusion in the whole process.

MRS OWENS: You've said in your seventh recommendation that the role of people with disability within the processes for developing the standards be enhanced.

MS EGAN: Yes.

MRS OWENS: So you think there is still an opportunity to do more within the process.

MS EGAN: Absolutely.

MRS OWENS: In what way?

MS EGAN: I'll give you the example of the education standard. There have been two people only involved in that process who were allowed around the working group table. That's fine, except they were totally outnumbered. Every state and territory has a person representing them at the table in the working group. That's another eight. Then there's the Attorney-General's Department. They have at least one or two people there - probably two. Human Rights, HREOC, have at least one person there. So where are we - there's eight, 10 - - -

MRS OWENS: 11 so far.

MS EGAN: Then there are basically the people who take the minutes and all the rest of it, from DEET. But, yes, they have their own stakeholders there as well. So there ended up being at one time 15 around the table inclusively and only two of those people were people with disabilities. If you're talking about the state and territory people are representative of the education ministers - they come from the minister's department. So they carry a big clout. If they're saying, "No, we can't do this, it's too expensive," then our two little people are pretty well outnumbered. So, yes, we believe that it needs to be more equal.

We're not saying we want 15 people around the table as well, because that's unwieldy, but we do think that in order for people to represent 19 per cent of the population, it needs to be a bit better than two people. We've consistently had that argument.

MRS OWENS: I think we've just about finished, Sue. I just had one other comment I wanted to get on to the transcript, it was a comment you made again in our phone hook-up. I'm actually going back a couple of steps. When we were talking about HREOC's role as an educator, you did make the suggestion that there could be a possible role for local councils in having an educative role. I don't know if you want to say any more about that at this stage.

MS EGAN: I think that HREOC could possibly take on the education role if they developed a new unit within the disability rights area, but I think that you run the risk of watering down their role. We believe or have expectations that their role is something stronger than it is and we'd like to see that be stronger than it is and have more clout than it does. So when a person who has a disability genuinely complains about an issue that is very clearly discrimination they get the support that they need from the Human Rights Commission and that that's taken all the way through, and that all the big corporate organisations can get all their fancy lawyers but nevertheless the person with a disability is actually supported through that process by HREOC. So then you leave the function of educating about human rights to the organisations that are out there.

I think there's enough national and state based organisations to actually take on

the role of educating people on their rights. There's advocacy organisations; there's the Disability Discrimination Legal Services. Larry Laikind works for one of those. There's enough of those out there to take on the role of educating about rights. I think it's about time that the power was shared between some of those organisations so that it's not just HREOC's role.

MRS OWENS: I think HREOC has another disadvantage which is that they are Sydney based. We were in Darwin yesterday, it's a long way away, so you do need to think more laterally about how you get the word out.

MS EGAN: They used to have more offices but now it's just the one. I think you're right. I think that many members who live in remote areas, for instance, wouldn't even know what HREOC was about. When we did a survey a couple of years ago about human rights and the DDA, we were astounded at how many people had no idea what it was. It was well after - this is about four years ago. It was six years after the DDA and people were saying they had never heard of it and we were amazed.

MRS OWENS: We heard earlier today that there was some concern about the resources that HREOC have got to perform all these roles and the limitation on those resources.

MS EGAN: I'd agree with that, yes. It needs to be much bigger and I think government needs to recognise that the issue of disability rights or human rights is a big one. We represent 19 per cent of the population. That's the last figure. If the estimate that it goes up each year by at least 1 per cent - the last time that was done was 98, so I think we're well and truly over the 21 per cent now. That's a fair proportion of our community.

MRS OWENS: We'll have more information out from the Australian Bureau of Statistics next year, so we'll be able to see where it's - - -

MS EGAN: Yes, I don't know if they've done anything in particular on disability though. They're working towards the 2006 census which will be taking specific comment on disability.

MRS OWENS: Yes, there's going to be specific questions in the census but also the next survey is going to be - - -

MS EGAN: That's the small, random ones.

MRS OWENS: The smaller survey. There will be information out next year. Unfortunately the final results won't be out in time for our report but we're hoping we will be able to get some interim results. Have you got anything else you wanted to

say, Sue?

MS EGAN: No, I don't think so. I think the only thing that we believe is that the DDA standards project needs more funding than it has. I think that's number 16. We only get funded to the tune of 120,000 and that covers a full-time staff member, an office, it covers working group meetings and steering committee meetings and the working groups are the ones that work on the actual standards. It covers having reference groups. When you think that it's supposed to represent 20-odd per cent of the population, it's a very small amount to spend on developing a standard that can make the difference between discrimination and not. So we think that needs to in fact be looked at. But we're constantly told by the federal Attorney-General's Department that, "No, we don't have any money and you're lucky that you've got this much."

MRS OWENS: That was a very good place to finish.

MS EGAN: Okay, thank you very much.

MRS OWENS: Thank you again and I congratulate you on your submission.

MS McKENZIE: A comprehensive submission.

MRS OWENS: Very comprehensive. We'll now break and resume at 10 to 4.

MRS OWENS: Please give your name and the capacity in which you're appearing today.

MR HUNTER: Helen, yes, Mark Hunter. I'm here today as a private individual and would like to take the opportunity to explain a bit of my background when we get started.

MRS OWENS: Yes, okay, let's get started.

MR HUNTER: Just to give you a bit of a history, I'm a person with a disability for 25 years. I'm a principal of a school in Queensland, a school that has a large number of students with disabilities. In fact we have one of the largest percentage of students with disabilities in our school when compared with other schools. I've worked on a policy on disability and promotion for a government department. I've also drafted a training program on disability awareness for a government department. I've been an advocate for people with disabilities within that same context and presented some papers on issues associated with disabilities from a student perspective in an educational setting. But this is a personal submission based on my experience. It's founded not only, but primarily, as an employee with disability but also as a service provider for students with disabilities. That's my background.

MRS OWENS: Thank you.

MR HUNTER: Please interrupt when you feel the need. As an employee, I believe the legislation has had some impact but the impact, I believe, is limited for a number of reasons. It's interesting that I've been an employee prior to the legislation and post the legislation and find that I'm having to address similar issues, so I find that an interesting scenario; the same issues to maintain my employment and establish a career. Some of these issues focus around the need, when addressing issues around my employment and disability, for personal disclosure for people to understand where and what I'm coming from. I'm having to manage the same lack of knowledge associated with needs around disability prior to the legislation and after the legislation. That's at different levels, at a systemic level, individual and even a public level.

Sometimes in the area of reasonable adjustment I find myself having to explain the expenditure that may be associated with reasonable adjustments and I find that interesting that that existed before the legislation and after legislation, and I also have to manage - - -

MRS OWENS: Can I just ask you - explaining these expenditures to whom, the Education Department?

MR HUNTER: Yes, can be; to the public; the clients for whom I work - that's the

adult clients - and even my peers and colleagues. Sometimes I have to manage the causal relationship drawn between disability and promotion, that is, I suppose, said to me or given to me by some of my peers and colleagues. Some of the indicators of this lack of influence that I would have hoped that came from the legislation include turning up to an interview for a promotion and it's upstairs and then having the interview relegated to an under-the-house type scenario, and advocating quite strongly for professional development to be in accessible venues, not only for myself but for other members, other peers.

So there's a number of reasons why I think that the legislation, while it has had some impact, because our language has changed - we're certainly using language like unjustifiable hardship and reasonable adjustment - I seem to still be facing some of the issues. Prior to the legislation I used my internal resources, I suppose, to advocate on my part but now of course I have the opportunity to advocate using the legislation to achieve the goals that I need to. An employee's ability to manage these issues should have been enhanced by the legislation - I'm talking now as an employee and I'd like to talk a bit about as a service provider for students with disabilities later - is limited for a number of reasons. In the context of the purpose 2A in the terms of reference, I think society held a faulty belief that passing legislation would ensure equality between people with disabilities and others in the community and that that same legislation would promote recognition and acceptance of the rights of people with disabilities.

It's like that myth of equality that those goals can be achieved by legislation, and whilst that is acknowledged in the pre-readings that was provided by the commission, I'd like to make sure that that is stated. These goals can be enhanced, however, by legislation when the legislation is made effective by stating clearly how employers must address the issue or the issues associated with disability in employees. Another reason is I think we have a problem that there's only one word for disability. Whilst the use of the collective noun to address the diverse issues associated with disability and then each disability that sits under, that is akin to me saying to a parent who enrols a child in our school with, say, autistic spectrum disorder, "Your child has ASD, therefore that child fits into this classroom," without looking at all the functionalities that that child brings to the Teaching and Learning Act. So I think that's a limitation; the solution to that, I'm not sure.

The next point is there was no obligation expected - and I'm now talking about government departments - to take any affirmative action to ensure the issues associated with disability in the workforce were managed effectively. I refer specifically to the optional arrangement for disability action plans. Under this optional arrangement a government department does not have to produce an action plan. It doesn't have to have a reasonable adjustment policy; doesn't have to have trainers, managers and the legislative implications of workforce management; does not have to develop disability awareness programs; does not have to comply with

decisions made in the context of the ADC.

I believe that it could be argued that a government department which fails to address effectively the issues of disability in the workplace will fail to address effectively the area of disability in its client group, no matter what government department that is. The next point - going all right, no concerns?

MRS OWENS: No, it's very clear.

MR HUNTER: Very good. In the context of EEO I find that disability and the legislation is in an interesting situation. These points that I'm about to share I think add weight to the need for the legislation to be prescriptive in its demand for compliance from particularly government departments and large organisations where action plans might be part of that compliance. In the context of equal employment opportunity, I think disability runs a very poor fourth for the following reasons: the gender agenda was the first target group - and perhaps rightly so, it needed to be, but it still dominates the agenda; state expectations for disability and employment have not been clear. We're now 10 years down the track, both in state legislation I think or approximately and in Commonwealth legislation and we still don't have a commitment to actively increasing employees with a disability or the percentage of employees with a disability in the organisations. The definition of the target group disability, well, I say gender is really easy to define.

MS McKENZIE: Not necessarily.

MR HUNTER: Okay, well, it may not be easy and there are implications for that with regard to say trans-gender issues and things like that but let's make it comparatively a lot easier, whereas disability is not. I think current data collection processes, which are strategies provided to organisations to indicate compliance or success in the area of disability and employment, are flawed. For example, some of the questionnaires that currently are used can be responded - "I think I have a disability and therefore I have one and I can tick the box." So that's one aspect of the data collection instrument, process, which I think is flawed. The other one is, "I can tick the same box on disability if I have a separation complex or if I have cerebral palsy and needing 24-hour care." This is not to say that one disability is more significant than another, it merely highlights the absurdity of current practice to determine compliance or accountability measures.

I think one of the other issues is the ability of the target group to advocate collectively. I think this is a major issue. If we go back to the gender issue, there was a very strong force behind the gender agenda but to group individuals with a disability or organisations that advocate for disability is very difficult. I believe the disability is still seen as a deficit by the legislation in the way it's worded and along with that we have the significant issue of the fear of disclosure. If you have a

disability and you're an employee, I think that makes it difficult for those employees to be counted as someone who has a disability in employment. I think in the area of employment if there is to be actual change, measurable change or an appreciative change in the identified terms of reference for the public, for the Productivity Commission review, the legislation has to be more demanding of action that is affirmative from large organisations and government departments.

When I was thinking about this opportunity to speak before the commission I thought government departments are really like children in many ways. They're hard to control, they're apt to changes of direction, they're wilful and when I approach these behaviours as a principle, I up the motivation for a child to exhibit more appropriate behaviours.

MRS OWENS: There's another difference, Mark, and that is you can't send them home to their parents.

MR HUNTER: No, you can't. So when faced with upping the motivation, I mean, I don't know whether it's possible but if we're looking for solutions to ensuring that state government departments and large organisations that are the subject or the recipients of federal or Commonwealth funding, then we need to link funding with compliance and perhaps that compliance is associated with the implementation of action plans that are effective, measurable, accountable. That's the first statement. I've got a different tack now, if there aren't any clarifying issues.

MRS OWENS: No, no, it's entirely clear. It's very clear, yes.

MR HUNTER: Judging the success of the legislation is a very, very difficult issue. It's like me as a principal trying to say that a child has exhibited improved outcomes because of one participate initiative when I know that there are a large number of initiatives or impacts on a child's growth or learning that have an impact on that growth. I think I would be careful or there would be a caveat around suggesting that we measure the success of the legislation by the number of successful conciliations that go on in the various tribunals around the country. There is a degree of compromise that goes with the conciliation and then there is no other data collection that follows those conciliations that determines degrees of satisfaction or in fact degrees of compliance on behalf of the perpetrators.

The issue of costs, and I know that that's been tabled by - and some of the submissions are quite interesting because if there's noncompliance on behalf of a perpetrator in a discrimination case the ability of an individual to take that further is severely limited by the costs involved. What evidence can I provide of progress in promoting the recognition and the acceptance of rights that people with disabilities - where in the past I relied on my own determination and personality to bring about change and gain an equal opportunity to be successful as a teacher and have a career

path, I now can use the legislation. It's the right deed, wrong reason situation and I don't know whether that's right. I would far prefer that I didn't have those situations and nor did others amongst my peers and colleagues, have those situations, when they're trying to achieve reasonable adjustment in the workplace in any way, shape or form. So that links back to, I think, looking at the role of action plans and the legislation that need to have more influence, if you like.

With regard to students with disabilities, it's interesting that inclusion of students with disabilities is a fairly substantial topic in schools and I know that because we don't have a consistent and proactive approach to affirmative action within our employee workforce that we have similar problems with catering for the needs of students with disabilities in schools. So some principals will not take students with disabilities because they - for a number of reasons, including their performance on statewide tests, which are pencil and paper tests - can be significantly impacted upon by having a large percentage of students with disabilities in your school population.

MRS OWENS: Can I just interrupt there. These are principals of government schools that can pick and choose which students they're going to take? Are these special elite schools or any principal can make this decision?

MR HUNTER: It's not policy or anything like that but there are some principals who would, when asked to enrol a student with a disability, say, "Better you go down the road because they have the resources to meet the needs of your child," thereby not having those students within their school population. So it's not about their school being, say, a specific school for sports, therefore that child doesn't fit in if they've got physical disability. It's about ignorance, a lack of social justice. I believe those are the issues that are there. I mean, whilst state schools are measured by their performance on a pencil and paper test, which is a high-risk assessment issue for principals, then I think we will have this barrier to effective inclusion of students with disabilities.

In our school we have about 10 per cent of our students with disabilities enrolled and some of those children, the disabilities they have are quite unique, and some of those children, we're now faced with a pencil/paper test where the teacher all of a sudden is changing the total environment, and if a child has got - well, I can quote - say, autistic spectrum disorder, they don't cope with that and we've had two children eat the test as their response to that participate scenario. So our results are impacted upon by those children's inability to perform in this absurd way of measuring the success or otherwise of a school.

MRS OWENS: I just wonder whether any of the parents have felt sufficiently strong to think about putting in a complaint if their child is rejected from the school.

MR HUNTER: It depends. I mean, the issue of a parent's ability to fight again, because they've been fighting for years, is determined by a number of factors I think and, for example, that would include their academic ability, their socioeconomic profile sometimes can be, so if you're confident in this particular forum, then you're going to be able to take the issue to this particular forum - not this one in particular, but a formal forum. If you're not, then your ability to contend with all the other issues complicates your desire to advocate and take action. So there's that issue. I think sometimes a parent's ability to advocate on their child's behalf is - the ability to communicate effectively is one issue. The other issue is if you've got a principal who's going to say, "Well, you're better off down the road," you wouldn't want your child to go "there" anyway - in inverted commas - unless it's absolutely necessary and that necessity defined by work or travel or things like that.

So I don't know; I mean, the policy is quite clearly in the state that if your child is living in your catchment area, then that is an allocated placement, it's not a preferred placement and the child has a right to go there. The problem is that we don't have this common understanding within our organisation that this should be the case. It could be from fear, lack of knowledge, but those things I can't accept as excuses in this day and age.

MS McKENZIE: So is it an attitudinal thing where really what is needed is education?

MR HUNTER: Sorry, Cate?

MS McKENZIE: Is it an attitudinal thing where what's needed is education, that the matter shouldn't be approached like that? These suggestions - the general policy, which is that if you come from a particular area, well, you can go to that school - ought to be underlined.

MR HUNTER: Is it the case? Yes, I think it's a case of - well, perhaps even a case of more than education, it's a case of stating this will happen. This person has this right and if the school has to undergo some reasonable adjustment, so be it.

MS McKENZIE: So be it, yes.

MR HUNTER: Part of our problem is that we don't have a common understanding in our large organisation of where reasonable adjustment is going to be funded. Economic rationalism is rife in most big organisations and government departments and if a school is faced with installing a lift and they believe they have to come up with the finances, then there's obviously going to be major concerns, but that's not the way it is. So there's a degree of ignorance that comes from a lack of a comprehensive, regular, accountable form of training on issues of disability on both areas. You see, I believe firmly if you're not addressing your client issues, your

employee issues, I don't know whether you're going to be able to address effectively your client issues.

MRS OWENS: Yes, one flows from the other, doesn't it.

MS McKENZIE: It does.

MR HUNTER: I think really both could be addressed under the one banner.

MRS OWENS: Now, at the Commonwealth level, Commonwealth departments are not able to claim unjustifiable hardship if somebody comes along and says they want something to happen, there's no let-out clause at all and I'm wondering if that should be the same at the state level, including in state schools.

MR HUNTER: It is the same - I think it is the same, Helen, because the government department is a large organisation. It has access to a large amount of funds and I think it's an issue of the managers throughout that large organisation not knowing that it's the whole system that is responsible for reasonable adjustment and therefore cannot claim unjustifiable hardship. While we have that ignorance, we're going to have other complicated issues, say with student disabilities or even an employee with disabilities.

MRS OWENS: So you really shouldn't be looking at the particular school.

MR HUNTER: No, it's a systemic thing and it gets back to that fact that the Commonwealth legislation in my view did not go far enough in its requirements for affirmative action. Perhaps in the context of an action plan, it doesn't have to be there but it has to be somewhere. You know, to say that employing bodies in Australia which rank among the top 10, numberwise, in this country don't have those sorts of things in place, is highly questionable and if those organisations have been able to not address it or slip through or whatever, then I think we have to look at the legislation and its impact.

MRS OWENS: Does the Queensland government provide special funding to schools for the kids that they take in with disabilities?

MR HUNTER: Yes, they do. We're actually looking at different ways and we've reached a stage where principals can be quite creative in the way they design their schools, so in our school we get a certain number of teachers, plus a certain number of para-professional hours associated with the number of students with disabilities we get; so that's what schools will get. In our school we've been able to create a unique situation where we put both those human resource buckets together and instead of having an SEU where students with disabilities got some support over in one block and then travel to a mainstream class in another block, we've put them all

together, so instead of having 20 primary classes and five SEU teachers supporting them, we've now got 25 classes where all our students with disabilities are included in classrooms throughout the whole school. So you won't see a special education unit when you walk into our campus.

So the government provides us with the funding. It's only now I think that the principals have been able to be more creative in the way they address the needs of students with disabilities in their school population and it's really exciting. I mean, we've been able to achieve great things for students with disabilities as a result of that move.

MRS OWENS: Sorry, we interrupted you. You've probably lost where you've got up to.

MR HUNTER: I think the issue of data collection needs to be looked at clearly. I don't know what the expectations are on Commonwealth departments but I don't think we have clear and accountable data collection processes - this is from an employee's point of view - we certainly do have, in the area of student disability, but I think that's something that needs to be linked to compliance with the requirements of any legislation that focuses on disability. So those are my basic issues.

MRS OWENS: Thank you for that. Can I just ask you a personal question, coming back to you as an employee; have you felt that your career at any stage has been held back by your disability?

MR HUNTER: My answer to that is in its early stages, no, prior to the legislation, no, which is really interesting, isn't it, because what happened is we had a central knowledge. The system was centralised and the people who were at the head of the department knew who I was and what my needs were, so when it came to promotion, they were able to go round the state and get possible locations that were accessible. I mean, I spent time out at Orgathella, so I didn't get any favourable locations because of the disability. Now it's more difficult. The strategies used to develop effective career paths use things like career shadowing - work shadowing rather - and that's very difficult for someone with an access issue or any physical impairment that has access issues because I can't work shadow on any site. I have to work shadow on only those sites that are accessible, so I have that limitation.

I repeatedly came across professional development opportunities for principals that were in inaccessible venues and that was post-legislation. It was only when I started to say, "This will not happen again because," that those venues were changed. For someone with a disability, sometimes the fight dominates, rather than the purpose and I think that I would be interested - I don't think our panel training is comprehensive in its - - -

MRS OWENS: What does that mean?

MR HUNTER: Panel training - sort of panels for selection for principals - is comprehensive in its awareness raising of the various disabilities that our employees have. You know, if I'm applying for a school that's on a hill it will take a grader to level if I was successful. Somewhere in the back of the mind there's, "Oh, Hunter can't quite get there," so that's why I advocated for a policy on disability and promotion which clearly delineates that if I was successful then I can gain the promotion where I'm at until another site that's suitable is made available. But even my advocacy in that area is hindered to a degree, and I don't know why because I believe that should be policy, not guidelines.

MRS OWENS: It should be just available to anybody.

MR HUNTER: That's right - and it's written for any disability and allows a panel to say, "All right. Well, if this applicant is not" - they can put aside the fact that this is not an accessible school for whatever reason and say that, "This applicant, if they are the best, will get the promotion and the system then will implement these things, steps, that will enable that person to gain that promotion."

MRS OWENS: Either by making that school accessible or to another accessible school. Is that - - -

MR HUNTER: Exactly. They would go in and see whether reasonable adjustment was - you know, didn't entail taking a grader to the whole site, and thereby finding another site with consultation with the individual. So it's interesting in the past that personal knowledge that existed within a big organisation, and the organisation hasn't changed in size substantially, enabled me to be more effective in my career path planning and success than I am now.

MRS OWENS: That's an interesting comment, I have to say.

MS McKENZIE: Yes, it's amazing.

MRS OWENS: Are you in a unique position in Queensland in terms of being a principal with a physical disability? Are there other people in the same situation?

MR HUNTER: I think I'm the only principal in a chair. I think there are other principals with physical disabilities, the extent of that disability I'm not aware of. You know, I'm aware of principals who walk with limps but I'm the only one in a chair. That was difficult. I mean, right at the beginning when I had my accident I was a teacher already and they wanted to tuck me away in the School of Distance Ed which was where they put all the non-performers in those days - and I had to fight that, and I won. At that time there were other teachers, and there are other teachers

now and I work with them from time to time who have significant physical disabilities who are now operating in classrooms, which is great.

MRS OWENS: I think it must be very useful for those kids that you're teaching that got disabilities to have you there as an example. It must give them a great deal of encouragement.

MR HUNTER: I get that comment from past students. I get it more from parents. It's interesting that when I was posted to a small school the parent community was really worried - how can this fellow who's in a chair teach our kids? This is going back a few years. But the student population is far more open and more receptive to difference, which is natural enough, kids are by and large. There are some that are not. So, yes, I think it is. On our staff we have a number of hearing-impaired teachers.

MRS OWENS: Have you got any profoundly deaf children that rely on auslan in the Territory?

MR HUNTER: Yes, we've just introduced auslan as our LOTE at our school which is - we did have Mandarin Chinese which is - the complexity of that language made it difficult for our children so we've introduced auslan in our school and it's going ahead in leaps and bounds. The teacher got up about three weeks after the introduction of auslan and got up on parade and announced the winner of the week in auslan without saying a word and the right person got up, so we were pretty impressed with that. I was really - I nearly got up and walked on that one - and she's done it repeatedly so - it's good for boys because it's a kinaesthetic language and it's good for our community because our unit is hearing-impaired coded so now our children with significant hearing loss in our school are quite remarkable, some of them are quite mischievous, but we've got one who's in our concert band.

Now, he's on an instrument and he and mum - yesterday I went to a performance where he was there with a whole lot of other schools - they were all beginners - and I watched him carefully and he began and ended at the same time. It might have something to do with he had this huge euphonium sitting next to him that he was able to pick up, but he's profoundly deaf. We have kids with cochlear implants, we have a whole range of disabilities.

MRS OWENS: Because you've now got auslan as LOTE that might encourage parents with profoundly deaf children to send them to your school because they'll know if they go to that school that they're going to be able to communicate with all the other students which is a bit like the old days of being in the special school: they get all the advantages of being able to communicate with their peers but then they're communicating with a group of students - you know, they're mainstreamed, so it's the best of both worlds.

MR HUNTER: It is.

MS McKENZIE: The students without hearing impairments, yes, get if possible even more advantages. They hopefully will finish their school with a different attitude.

MR HUNTER: On disability, yes.

MS McKENZIE: Yes.

MR HUNTER: That disability is an interesting one for our children to manage and interact with, whereas say the autistic spectrum disorder is more difficult for them because of the social implications. But our AD kiddies, you know, the non-hearing impaired kiddies are remarkable in the way they've picked up auslan and the way they're using it - sometimes in inappropriate places.

MRS OWENS: I bet.

MR HUNTER: But they are. And that's good for us. Now the staff are wanting to learn auslan, even the staff who don't have hearing-impaired kiddies in their classes.

MRS OWENS: They may in the future, you see.

MR HUNTER: Yes. They need to, because they're in the playground now. These kids don't have their playground tucked away in some safe little area that used to be the SEU playground. Now these kids are totally involved in the whole playground situation.

MRS OWENS: There is hope for the future in education.

MR HUNTER: Yes, there is. What we're doing, whilst I think it's unique in Queensland and possibly even Australia in the way we've structured our school to cater for the diverse needs in our school, I think it's actually attracting a lot of interest from the system, even from the union, because our average class sizes are reduced considerably. The system is looking at the creative use of human and financial resources to address the needs of kiddies, yes. So I think there is - I worry that our system is not consistent so that I worry because we've got principals who can say, "We can't cater for your needs, you're better off going down the" - that sort of stuff shouldn't exist.

MS McKENZIE: So not all schools are like yours.

MR HUNTER: No.

MRS OWENS: I think I've covered everything I wanted to cover too. I thought that was wonderful because you do have a perspective which we might not get from anybody else in any of our hearings and I think the education issue is a very important one for us. There's another set of sub-issues that relates to children with disabilities in private schools and I think the parents of those children at the independent schools have got a range of other issues, particularly financing issues, that I think we'll hear about later. But I think you raise some extremely important issues and we're grateful to say thank you.

MS McKENZIE: Thanks. Thanks very much.

MR HUNTER: I thank you for the opportunity to table some of these issues and I think that, God willing, the results of the review will have a significant, positive impact in an affirmative way on how we do things for people with disabilities. Thank you very much.

MRS OWENS: Thank you very much. We hope so too.

MS McKENZIE: Thank you very much, yes.

MRS OWENS: We'll just break for a few minutes.

MRS OWENS: Okay, we'll now resume. The last participant today is the Maroochy Shire Council. Would you like to give your name and your position with the council for the transcript.

MS JONES: Sure. My name is Erin Jones. I'm a project officer in community and cultural planning. Also within that role I coordinate the council's access committee. I thought I'd just talk today about how council has approached access issues and its relationship with the DDA legislation. A little bit of history: our council looked to developing an access policy and a subsequent action plan in 1997 in response to the legislation coming in in the five years previous to that. Consequently that work started or was continued when my position was established and it took us a while but we finally got an access policy adopted by the council in January 2001. What I'm going to talk to you about today predominantly is some current constraints that our organisation has found in the objective that we have which is to make the community more inclusive and our current constraints under the DDA as we are experiencing them.

When I first started doing this work I had an assumption which I think quite a few people have, that if you build a building to BCA it's going to work, and I quickly discovered that that was not the case. So I'll talk about that a little bit more. I'll just basically break down our policy and action plan - our action plan looks at seven categories: council as a community leader; council as an owner and manager of the built environment; as a planner and regulator of the built environment; as a service provider; as an information provider; as an employer and as a change manager in the community. Those are the areas that our action plan looks at. I suppose the ones that I'm going to mostly speak about today are the two areas of council as an owner and manager of the built environment and council as a planner and regulator of the built environment.

I just wanted to briefly touch - and a couple of speakers today have spoken about this - on the relationship between the DDA and the Building Code of Australia. One of the things that we've found - or I've certainly found in trying to move this work on in our community is the fact that the DDA and the BCA aren't on a common ground - there's a great deal of gap between them - and the consequent standards that the BCA calls up don't come up to scratch in terms of the DDA. As a local government in terms of our action plan we've actually taken a position that any of our new buildings will be built to part 2 of AS 1428. We've done that because we see that that's a more equitable way of providing a built environment and that's where the legislation is going to. But that does put us in - in terms of our role as a planner and regulator of the built environment we can't currently enforce anything that is outside the BCA.

We have had a number of legal opinions on this and the Coffs Harbour case had some different opinions on it but currently that is where we're up to in what we

can enforce. To try to counteract that we certainly try to encourage the built environment to go above the base BCA and we do that through a number of different ways: information forums and presentations to building industry type groups, talking about the market possibilities for having accessible businesses and tourist precincts and infrastructure. So that's one way, as we try to talk about all these business opportunities, that you can capitalise on if you have an accessible venue. The other thing that we're currently doing is that we put out an advice to developers at what we call pre-lodgment stage alerting them to the DDA and the possible requirements under that or the opportunities that they could take up by having an accessible venue or business place.

The other thing that goes out is when a building is approved - and I suppose I'm talking predominantly here about commercial premises as opposed to private dwellings - that something along the lines of, you might have got all the ticks in terms of the BCA but that doesn't mean that you necessarily come up to the DDA. If those developers want to follow that and actually get back in touch with their building certifier they may then put them in touch with someone like myself and I may be able to put them onto a designer who I know is au fait with this material and can actually say to them, "Look, your building could have some design improvements and effectively you'd be coming up to scratch with the DDA."

We see that as a bit of a duty of care to advise the development industry because as a local government organisation we're aware of the changes and the development of an access-to-premises standard and have been involved in some of that consultation, so we feel that as an organisation we have an obligation to provide that information to the development sector.

MRS OWENS: I'm sorry to interrupt. Will I mess up your train of thought if I ask you a question?

MS JONES: No, hopefully not.

MRS OWENS: No, finish to a point where you think I'm not going to mess up your train of thought.

MS JONES: No, ask the question, it's fine.

MRS OWENS: I just wanted to know more about the Coffs Harbour case.

MS JONES: Okay. I don't want to get it wrong, and it is discussed on the HREOC site in a couple of places. Basically - and you might need some more clarification on this but I'll just give it to you as my recollection of it. The Coffs Harbour case was a case where a cinema complex was being redeveloped and it comes back to John Mayo's comments earlier this morning about refurbishment and existing buildings

that were built before the legislation or built at any time. Now, this particular cinema complex was being refurbished, redeveloped and consequently a person in the community that had a disability went to the council and said to them, "This building is being redeveloped. I don't think what they're putting in place is going to be accessible."

The council looked into it and came back with the conclusion, from the information they had received from the developer, that the refurbishment wasn't a major works. In fact the work was a major work and - I'm just trying to recollect it - but the case went to council, because basically the complainant had gone to the developer as the first complainant and the council as the second complainant for allowing an inaccessible development. Now, I know that it went to the Federal Court on - and I just can't remember if it was upheld or not.

MS McKENZIE: Don't worry about it. It's just I can remember the facts but I can't also remember the result.

MS JONES: Yes, I'm the same.

MS McKENZIE: We can look it up.

MS JONES: You can look it up.

MRS OWENS: Yes, I'll check it.

MS JONES: But that case, I suppose, set some precedent.

MS McKENZIE: Yes.

MS JONES: To give it some context in our situation, we in the meeting were developing our town plan in 2000 - and to give you some context of the area - Maroochy Shire is on the Sunshine Coast, about an hour and a half north of Brisbane. The shires that make up the Sunshine Coast are considered Caloundra City, Maroochy Shire and Noosa Shire. Maroochy is the largest. It extends from Mooloolaba up to Peregian and out - taking up quite a large rural area and out to the Kenilworth State Forest. So it's predominantly the largest and has the largest population base of the three shires in the area.

Now, when we were developing our town plan in 2000 it coincided with the time of our access policy development and in conjunction with the consultants that we were working with at the time we actually looked at putting a number of provisions into our town plan about those areas and our area has a high tourism based economy. We looked in those areas which were high density tourism areas, of actually putting in some provisions about, you know, if you have X number of units

in your development then a certain proportion of them need to be accessible. There are a number of other provisions that were put in there at that draft stage and they actually got taken out by the state planning department.

I can't go into the detail or - I don't have the information to go into the detail about why they did that but it was something along the lines that we're constrained to current BCA and what the Queensland building regulations allow councils to enforce. So there were a number of things there that we did try to do and so consequently, coming back to our duty of care to the development industry and as a risk management strategy for our organisation, is to inform the development industry that look, we know there's changes coming. These buildings that you're building today possibly will be redundant when the Access to Premises Standard comes in in the very short future. We know about it. We're letting you know about it. We can't enforce you to build above current BCA. It doesn't mean that you won't have a complaint come against you, and we can cite you some research about the business sense of doing it but we're going to tell you so that you don't come back to us and say, "You should have told us and now we're consequently facing a complaint and have to retrofit a new building, effectively."

MS MCKENZIE: Do you put it in writing, Erin?

MS JONES: Yes.

MS MCKENZIE: So if they did come back later you can say, "No, well, we did warn you."

MS JONES: Yes, and that's why we've developed an advisory note that goes out at those stages.

MS MCKENZIE: Whereas on the other hand when the new standard comes out, well, either it will be part of the BCA because it's my understanding that may well be one way, so you would have no difficulty then in enforcing the standard.

MS JONES: No, and that's something that I want to get on to discussing. I mean, effectively, now, the BCA, by itself, has no power. The power that the BCA is given is - - -

MS MCKENZIE: Yes, it's picked up.

MS JONES: - - - when the state building legislation says - - -

MS MCKENZIE: That's right.

MS JONES: - - - we'll empower the BCA.

MS MCKENZIE: Yes.

MS JONES: Consequently Australian standards have no power unless the BCA calls them up.

MS MCKENZIE: Correct.

MS JONES: Consequently, as an organisation we have said that we will build to part 2, which is outside the building code.

MS MCKENZIE: Yes.

MS JONES: From my understanding of the Access to Premises Standard that will pick up a lot of the items that are currently in part 2 and it won't actually, effectively, be called part 2 any more. Those will then be put into part 1. So the building code will still effectively call up part 1 but part 2 will have integrated those elements - - -

MS MCKENZIE: Into part 1.

MS JONES: - - - into part 1. I mean, that whole suite of standards in the end will contain about nine standards covering a whole range of different areas. I mean, as a local government, one of the areas that is the most difficult is not in fact buildings but the interface between private infrastructure and public infrastructure because the building code looks at buildings, specifically, and finishes at the property boundary. So in terms of paths of travel, the connectedness between the public space and the front door to that private space, it's quite hard to administer, because currently there's not a standard there. There's some items that, if there might be a standard, it's silent on, and there's some items that the standard doesn't come up to scratch. I mean, an example of that - I think when one of your other speakers was talking - I'm just trying to - - -

MS McKENZIE: It's the ramp. Is that what you're thinking of?

MS JONES: Well, no, that's actually another example that I noted - was tactile ground surface indicators, TGSIs. Now, the standard 1428 part 4, which currently is looking at this, is actually not seen as being workable by some parties. One of the previous speakers made a comment about going to advocacy groups for expertise. While I don't want to downplay their importance I've also been very conscious in my position with the council that different advocacy groups have different opinions on what works.

For example with TGSIs you might see around Brisbane and Maroochy - we're following the same example - that we have our TGSIs, the little dimple ones, on curb

ramps, for example, on the top of the curb ramp. Whereas I think in the standard they're actually on the face of the curb ramp. So for someone using a chair they find them to be quite a hazard in themselves whereas what they're meant to be is a hazard indicator for someone that has a vision impairment.

MS McKENZIE: Yes.

MS JONES: So I've certainly always had a preference for developing standards rather than using individuals opinions or different advocacy groups particular opinions. Different advocacy groups even representing the same disability will have different solutions and in some areas some advocacy groups will be more vocal or more resourced or more active than others. Certainly as a local government we will quite often get people in the community coming to us, saying, "I'll audit that new building for you or that new streetscape or whatever it is." For a couple of reasons I would certainly hesitate on that. (A) just because that person has a certain experience with disability, predominantly their own if they have one, they don't necessarily have the design expertise necessarily to take into consideration other peoples' disabilities or, I think, the research that needs to go into looking at a standard that will work for everyone.

I suppose one of the things that our organisation is sort of coming to terms with and probably others is, even with the development of an Access to Premises Standard there are still going to be people that fall outside of that and I suppose 1428 part 1 the research done for it looked predominantly at the A80 wheelchair and the circulation spaces for that. Whereas 1428 part 2 looks at what they call the A90 or the 90th percentile of people that could use that. So, for example, someone with a motorised wheelchair that's using some sort of ventilation system is still going to slip outside of the next of the new Access to Premises Standard possibly. But - - -

MS McKENZIE: But it will cover more - - -

MS JONES: - - - it will cover more and give some certainty to the industry - - -

MS McKENZIE: Yes.

MS JONES: - - - and to regulating bodies. So I'm certainly a big advocate for the development of standards and standards that work. I mean I know Cyril was talking about the time that it's taken for this Access to Premises Standard to get developed. I mean, since I've been working in this field since 97 this standard has been in development as far as I'm concerned. I mean I think it has taken a couple of guises within that time and for a while there was a group working on it. It just came to a point where it was no longer functional and it's certainly taken on a lot more momentum in the last couple of years. But certainly for an organisation like ours that's trying to not only provide its good services and facilities to our community in

terms of the buildings and the services that we run but it terms of a regulator and a planner of the built environment.

I suppose getting back a little bit to the Coffs Harbour case certainly we've gone out a couple of times to get legal opinion on where does our liability stop in terms of allowing development that we know is not necessarily accessible or inclusive but currently comes up to scratch with the current BCA. I suppose it's one of those things. You can get different lawyers, you can get a different opinion on that. Certainly we went to someone that we thought would give us a - we weren't looking for an easy out. We went to someone who was acting in - I think at the time - as the current Anti-Discrimination Commissioner. We went to someone that we thought would tell us that if we can stop this development he would. Basically the opinion that we got back was, "No, under current legislation you are bound by the BCA and you can't force more than what is currently there." So, I mean, we've been waiting with bated breath because it would make my life so much easier - - -

MS McKENZIE: And every other council in Queensland - - -

MS JONES: Yes.

MS McKENZIE: - - - must be in exactly the same position because it's your Queensland legislation - - -

MS JONES: Every other place in the country.

MS McKENZIE: - - - that's the problem.

MS JONES: Only I think it's every other council in the country. While the BCA stands as it is then - and possibly it might be worth looking into the - because the Coffs Harbour case seems to indicate contrary, but certainly the opinions that we've had - and this is open to interpretation - doesn't seem to give us that ability to do that.

MS McKENZIE: The flexibility, yes.

MS JONES: As I say, we try to encourage the industry and certainly running forums and information sessions about the changes that are coming. John Mayo's organisation in partnership with Queensland Tourism ran a series of tourism workshops looking at accessible tourism and the market that's there. So at the moment it's a bit of a carrot approach because there's no stick. We can't enforce things. So it's looking at well, you know, there's some research that shows you there's opportunities. You can be ahead of your competitors. It's going to give you a competitive advantage.

One of the things that I've certainly advocated in my organisation and to my

community is we're not just doing this for people with disabilities. What we're trying to look at is we want an inclusive community. That means with parents with prams, for older people and our area particularly is - you know, we do have an aging population as the rest of the country does but it is an area that a lot of people do come to retire and certainly - so I try to mainstream the issues by - because, you know, we do get some resistance within the community and within some areas of organisation about, you know, the money and why are we doing this? I think you can sidetrack those arguments by looking at yes, certainly for a person with a disability, without it, it's the most difficult, but it actually works for everyone in the community.

MS McKENZIE: That's a point that's been made a number of times in submissions to us as well - - -

MS JONES: Yes.

MS McKENZIE: - - - that often these things you do, they're for people who are frail and older, people who have prams, and it goes on.

MS JONES: Yes.

MRS OWENS: Do you think there's an over-emphasis on the part of the developers on costs and saving costs? I mean, are they focusing down too narrowly and not thinking about these broader benefits - the clients out there, if you like?

MS JONES: Yes, I suppose it's a pretty cost-driven industry. I mean, it depends. It depends if your developer is there to make a quick dollar or if they're looking at - and I suppose that is an educational thing about saying, "Look, there is a market out there that you might not be currently thinking about." I mean, for example, John Deshon, who we worked with on our policy and who was heavily involved in writing the advisory notes on Access to Premises, he was giving an example in a forum I was in one day - so I'll borrow from what he said, I don't think he'll mind - about a fellow architect colleague of his that was doing a development of retirement units down here in Brisbane - had kind of come to John saying, look, you know, about doing a few - being accessible. John kind of said to him, "Well, look, why don't you make them all accessible?"

That way these people that are buying them - okay now they may be in their mid-50s and, you know, quite able and not having any conditions that come with aging, but this way you can sell them a unit and market them as the longevity of staying in this unit. It means it doesn't necessarily need to have the provisions there now but things like having the walls reinforced so that down the track they can have bars put in the bathrooms so that they don't actually have to leave their place where they've built their community and their friends and they don't have to - or they can postpone, if they possibly have to go into hostel accommodation. Some developers

certainly will see that and see the marketing opportunities. But that is an education process, so there's certainly an education process there and some developers will see and some won't and it really depends on their motivation. But consequently the way the standards are, well, the way the BCA is, until the Access to Premises Standard is put into place we are relatively powerless to do anything about it, so I can't wait till the standard is developed, I've been waiting and waiting and I know it's not far away.

One of the items with the Transport Standard, I mean, the Transport Standard is not just relating to the transport conveyancing devices and the structure associated with it, so certainly if people are looking for guidelines a lot of those things in the Transport Standard around, you know, the toilets at train stations and airports and that whole raft of things is there. So the information, to a certain extent, is there. It's about knowing where to look and certainly the development or the building and design industry, I think, certainly needs a significant amount of education because when I first started working in this field I have the naive assumption that you build a building and you build it to the BCA and you get an approval for it and it must be right. And that's not the case. So even if someone with the right intentions wants to do something, unless they happen across a council or a private building certifier who's au fait with this area, they may have their building completely constructed and operating and suddenly get a complaint without knowing that they're actually operating a discriminatory building.

And a lot of people, I mean, I've spoken to quite prominent architecture firms and I, as a non-design person, I mean, I'm not from that background at all, have to then educate them about the stuff, which is quite frightening, that these are prominent, fairly large architectural practices and if they don't know it then their clients aren't going to know it.

MRS OWENS: Can I just ask you what background you did have, or do have?

MS JONES: I'm a graduate in leisure management, actually, but the area of council that I work in is community and cultural planning, so we pick up a number of social justice issues and sports planning and development, arts and culture and so the project initiated from our department, the access committee that I coordinate, is made up of representatives from across the organisation including the building and design-type areas, building and certification, engineering, risk assessment, risk management and corporate policy, so it's a cross-departmental organisation and certainly, you know, our organisation has struggled with what some of the things mean and we're still trying to work on that and I suppose it brings me to one of the other notes that I made about one of the suggestions that one of the earlier speakers made about action plans being monitored. I certainly - I think that has some merit and in some ways, one of my hesitations about that suggestion is if there's a feeling from an organisation that the action plan is going to be heavily policed, my concern would be that organisations wouldn't do action plans.

MRS OWENS: What happens is you made them mandatory? If somebody else recommended that they should be mandatory?

MS JONES: If they were mandatory then I think that would be a bit of a different situation. As it currently is, when it's a voluntary thing and we've certainly lodged ours with HREOC, but it was a process to get ours adopted and - because there's significant costs associated with it and while I think it's a good thing that the organisation has taken that on and is aware of it and some councils aren't addressing these issues, but it's still - you know there's a lot of other conflicting things that councils have to finance and this is only one of many. So I suppose my comment is, I wouldn't have wanted to see our councillors scared away from taking those first steps.

MRS OWENS: That's a good point.

MS JONES: And it was an issue and, I mean, we were one of the first councils, certainly in our region, to have an action plan and I just think, I wouldn't want to see it becoming a barrier to organisations looking at these things, because being frightened to look at them because they know, well, "What if we can't provide what we need to provide now and so we just sort of stick our heads in the sand." I suppose that's the thing that I'd be wanting to avoid.

MRS OWENS: So you don't have such a problem with mandatory action plans, it's more with having mandatory monitoring. That's your problem. Is that right?

MS JONES: If there was mandatory action plans then I wouldn't have a problem necessarily with mandatory policy. With voluntary action plans that were then mandatory - - -

MRS OWENS: Mandatory monitoring.

MS JONES: - - - mandatory monitored, then I think possibly that may - - -

MRS OWENS: They wouldn't do the plan.

MS JONES: Well, I think they may discourage doing the plan in the first step, which I think for some organisation is the first step in educating the organisation to start with, is actually looking at the issues and saying, "There are some issues here."

MS McKENZIE: Do you have a problem with mandatory action plans themselves?

MS JONES: No. I don't have a problem with that. I think that would make it possibly easier to put in place. But while there is a choice, then I think that would

possibly be a difficult thing to convince that it was a good thing to do.

MRS OWENS: I suppose one issue with mandatory plans is that you might end up with paper compliance, ie, not too much trouble being taken, just putting in a plan, doesn't matter what the content is, just to say, "Well, we've done one; get the rubber stamp."

MS JONES: Yes. And I see that would be a possibility and for the organisation and presumably the Human Rights Commission collecting those or being the holder of those, to make sure that they weren't just worthless bits of paper. The monitoring for that would be a huge job.

MRS OWENS: There's a huge bureaucratic exercise there.

MS JONES: It is and so in some ways I actually don't know if that would be a worthwhile process for the cost and the time needed to actually do that.

MS McKENZIE: What if councils - you have annual reports, I assume?

MS JONES: Yes, we do.

MS McKENZIE: What if councils were required to include material on this in their annual report?

MS JONES: I think that would probably work quite well and I mean effectively the thing, I think, about having them monitored, I mean effectively they are monitored, they're monitored by the community. Ours is not a secret; it's a public document; it's available, it's something that anyone in the community can have a copy of and, you know, when they don't think we're living up to it they'll tell us. So effectively they may not be monitored by a government agency necessarily, but they're monitored by the community that we worked with to develop them. And they're ratepayers and if they don't think - well, some of them are, some of them aren't - and if they want to make it an issue then they can make it an issue through their local councillor and - when it comes to election time. So in different areas you might have at different times stronger lobby groups that actually put it on the agenda as an election item along with all the other things that different lobby groups want to put on the agenda. So I don't actually - now that I've sort of thought about it a bit more - I don't know if - I mean effectively they are monitored, they're monitored by the community that you're serving and I think for the time and expense involved in having them monitored - - -

MRS OWENS: Externally.

MS JONES: - - - externally, unless that was going to be resourced adequately and

as long as that resourcing wasn't taking away from another function, I don't know if it would be worthwhile. I'm just - - -

MRS OWENS: That was a useful insight.

MS McKENZIE: It is.

MS JONES: I'm just sort of looking over my notes and I might be repeating myself a little bit, but I've just said here, "The development of access standards will bring certainty and enforceability to the built environment and therefore leading to a more equitable and inclusive community."

I'll just talk a little bit about another issue which is also related to the built environment and I am focussing on the built environment but - buildings are in different classifications. Your private is considered a - what we call a class 1 building. A class 2 building is what was traditionally your - traditional block of flats which were owner-occupied or on six-month leases and a class 3 type building is your resort, hotel, motel, unrelated persons staying for a limited period of time usually. Now, in areas like ours and it's not unique to our area, it's in the Gold Coast and in Brisbane as well, in the last probably 10 or 15 years all those new developments and predominantly apartment buildings is what I'm talking about, are sold off the plan to individuals. Now, those buildings come to council and are effectively presented as a class 2 building, because there's nothing to say that if I buy an apartment in that building that I'm not going to live there and that could be the case. Every person that buys an apartment in that building could live there or could rent it out in the traditional sense of a six-month tenancy lease.

MS McKENZIE: Or you could rent it out to some sort of holiday accommodation people.

MS JONES: Or essentially how those buildings are predominantly used is as a class 3 building.

MS JONES: For short-term holiday use. Now, that's changed because I suppose the economics of the industry and large resorts now aren't owned by one large organisation, they're sold off the plan to a number of individuals. So a developer may come to council and sort of say, "Well, I've got this building and it's X number of apartments and such and such," and it effectively may be approved as a class 2 building, but effectively it's operating as a class 3 building. Now, there's a number of issues there in terms of emergency egress and those type of things, which are outside of what I want to talk about, but if the Access to Premises Standard, when that's developed, in these buildings, I think they'll function a lot better for all people and I mean this issue of developers building buildings and effectively having them operate outside of their classification is a real issue for councils, especially if there is a

problem with the building or an emergency and it's been shown that the building has been operating outside of its approval.

MRS OWENS: Can I just understand, why would the Access to Premises Standard look different for a class 2 or class 3 building? What are the differential requirements that you'd need for people?

MS JONES: Well, I suppose, a class 3 building would be more likely to have a lift, possibly. The public areas within a class 3 building - well, I was just going to give you an example but I think it's still in court, so I don't know if I can.

MS McKENZIE: You see, theoretically the public areas in a class 2 building might not have to be accessible, as long as specific owners or occupiers can get in and out, that would be good enough. Whereas, a class 3, because it's being used for short-term holiday accommodation, you may well have to look at it more as if it were a public building.

MS JONES: Yes. And that's the thing, effectively in an area like ours where a lot of these buildings are going to be used for tourism accommodation and if people can't find accessible accommodation, they're not going to come to your area and these buildings that are being developed have a lower standard of access.

MS McKENZIE: It's a problem, I suspect, for the building standards. I don't understand fully the Access to Premises Standards, how they're going to apply, but certainly some of the people who made submissions suggested that those standards would primarily apply to public buildings and buildings used by the public. Now, certainly your example would be a building used by the public probably, but what I don't know is how it would all work. It may well be that those standards wouldn't apply when it was constructed because everyone would think it was actually going to be a private building, just a set of flats, whereas suddenly everyone leases is for holiday accommodation, it turns into a public building. I have no idea then how the Access to Premises Standards would work, what the legalities - - -

MRS OWENS: Where the use changes after construction or where in fact the use is not truthfully explained - - -

MS JONES: That's right and that's - because the council or any approving body can only go on the information it gets at that time and at that time usually - I mean, these things aren't constructed at that time and there's nothing to say that - and this is the argument a developer would make - the people that do buy that aren't going to live in it. So it may be that yes, they do live in it for six months, but then they put it back in the pool which is administered - and there's a central reception-type area and certain features to that building that you would associate with a hotel/resort-type development, which is not the sort of thing that you would expect in the traditional

block of flats.

MRS OWENS: No.

MS JONES: But again I suppose it comes back to - - -

MS McKENZIE: That's a difficulty for the standard, I suspect.

MS JONES: Yes, and I'm not sure if the standard is going to pick that up, but it is an issue with - it's an issue for councils in terms of the way that buildings are being presented to them and the way that buildings nowadays are funded and developed, because they're predominantly sold off the plan and they're no, you know - I mean, in the past you'd have a major hotel corporation come and build an apartment hotel and that doesn't seem to be the way that the development industry works now. It's, you know, Mr and Mrs Joe Bloggs, that own apartment 5D and this one and that one and all the rest, and these things aren't constructed until a certain number of those apartments are sold.

MRS OWENS: So with these the intended use isn't clear at the time of your involvement.

MS JONES: No, and it's not clear. Certainly, lots of those apartments I suppose are sold and figures are touted about return on investment, so there's some expectation but - - -

MRS OWENS: But there's investment and there's investment. There's investment, ie, investing in an apartment which is going to be leased to somebody for six months or more, and there's investment in terms of having it as a holiday let.

MS JONES: And I mean, the egress, the emergency egress-type provisions, in a class 2 building you presume, to a certain extent, that people are familiar with the building, they know their neighbours and they'll probably know if they're home and if they need to wake them in the night if there's a fire or something like that. Whereas, in a class 3 building or a building operating as a class 3, then you don't necessarily know if there's someone in a unit next to you or where the emergency exit is should you need to get out in a hurry. So there's a number of issues and probably it's not with the scope of - not for this inquiry.

MRS OWENS: It's really an issue for the standard though.

MS JONES: Yes, so just a couple - I mean, these are just a couple of things that we have - some of the issues that come to our committee that we kind of look at and look at how we're going to approach them or just being aware of them basically and being aware of what's going on. I've just had a quick look at - I think I've just got

some notes here that the issue of the knowledge of the standard will become much less of a battle when it is called up by the BCA. We were talking earlier, one of the speakers, because currently a lot of people see it as an add-on, because it's not called up by the BCA, it's sort of - "Oh God, that extra thing that I've got to tack on at the end, to think about access," which is completely wrong. You need to think about it at the start and it doesn't necessarily cost you any more money if you do think about it at the start, but I think once that is put in place and the standard is there and it's not seen as an optional, then I think the building and development industry will make it their business to know the standard.

Currently, it's only what I would call enlightened-type operators within the sector who know or who choose to educate themselves about it. I think once something becomes something that they must know then the education process is a lot easier, whereas currently, I mean if we might try to run an education program we'll only really - I mean, it's almost like the people that we would engage through that don't need engaging because they're already looking for those opportunities and wanting to work in that field so I think that will be a lot easier when the standard is adopted and yes, certification education will need to happen but it's a whole lot easier when there's a - - -

MRS OWENS: A finite standard there.

MS JONES: Yes, and a force to make it happen. Just listening to today's comments, I'd certainly support the Human Rights Commission being able to be the initiator of complaints. I think the issue of outcomes being confidential only helps that one individual and I don't think that does anything, it just means you've got to have a number of individuals possibly to take on the same fight which is time and expense and a lot of personal angst. So I think if the commission could take on things more on behalf of individuals or groups and actually have those cases known and the outcomes of that known I think changes in the community could happen a lot quicker. I think that's probably about - I've covered all my notes that I made.

MRS OWENS: You did extremely well.

MS McKENZIE: It was a very helpful submission, especially prepared in probably the shortest ever time - - -

MRS OWENS: Sitting in here and watching us, I think that's a remarkable effort. Did you have any other questions?

MS McKENZIE: No, I've asked you lots as you've been making your submission. That's tremendous and very helpful.

MS JONES: Good.

MRS OWENS: I think your knowledge of these areas is admirable, particularly for somebody who is not an architect or a planner.

MS JONES: I think they think I want to be one now because - I mean, I started this work and obviously our section is a policy section - well, among other things. But to understand this I have actually had to become knowledgeable of building codes and standards to make it work.

MRS OWENS: Of course, understandable.

MS JONES: A lot of that will evaporate once the BCA and the DDA are aligned.

MRS OWENS: You'll be made redundant. No, no, then all the other issues that have arisen from the standard will come and you'll become an expert in that. Thank you very much indeed.

MS JONES: Thank you.

MRS OWENS: We'll now close today's proceedings and we resume tomorrow morning at 9 am.

AT 5.29 PM THE INQUIRY WAS ADJOURNED UNTIL
FRIDAY, 30 JUNE 2003

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