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TRANSCRIPT
OF PROCEEDINGS

PRODUCTIVITY COMMISSION

INQUIRY INTO DISABILITY DISCRIMINATION ACT

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

TRANSCRIPT OF PROCEEDINGS

AT CANBERRA ON THURSDAY, 19 JUNE 2003, AT 9.12 AM

Continued from 5/6/03 in Hobart

MRS OWENS: Good morning, and welcome to the public hearing for the Productivity Commission Inquiry into the Disability Discrimination Act 1992, which we will refer to as the DDA. My name is Helen Owens and I am the presiding commissioner on this inquiry. My associate commissioner is Cate McKenzie. We will be having three breaks today: a morning tea break at 10.30 for half an hour, a lunch break around 12.30 and an afternoon tea break at 3 o'clock for half an hour, and finish proceedings at 5 pm at the latest. We'll need to stick fairly closely to our timetable. We're already running late. You are welcome to take a break and re-enter at any time if you need to. Our commission staff, Lawrence McDonald and Julie Toth will assist you if you might need anything during the course of the day.

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 asked 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're 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're grateful for the valuable contributions we've heard from people during these informal discussions, and your colleagues in Victoria in particular.

The purpose of this hearing is to provide an opportunity for interested parties to discuss their submissions and their views on the public record. We've already held hearings in Darwin, Brisbane and Hobart. Following the hearings in Canberra today and tomorrow, there will be other hearings in the balance of the Australian capital cities. We'll then prepare a draft report 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 like to conduct these hearings in a reasonably informal manner, despite the microphones, but I remind you that a full transcript is being taken. 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 will be allowing time at the end of the proceedings for you to do so. If you'd like to take up this opportunity, please identify yourself to the staff.

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. I'd like to emphasise that the Productivity Commission is a research body and cannot deal with individual complaints. There are other avenues to resolve specific grievances. To be most useful to us, comments should be directed towards the lessons learnt and policy implications of your experiences. The transcript will be available on the commission's web site in Word format, following the hearings.

I now invite the National Council of Independent Schools Associations to participate. I'd like you to each give your names and your positions with the National Council for the transcript.

MR DANIELS: Thank you very much. My name is Bill Daniels and I'm the executive director of the National Council of Independent Schools Associations. By way of explanation, and perhaps to avoid some confusion, from 1 July we are changing the name of our organisation and we will be the Independent Schools Council of Australia. I will inform you of that formally.

MRS OWENS: Thank you.

MS JACKSON: Audrey Jackson. I am the executive director of the Association of Independent Schools in Western Australia.

MS YATES: I'm Robyn Yates. I'm from the Association of Independent Schools in New South Wales, and I'm a director there. Thank you.

MRS OWENS: Thank you all for coming and thank you very much for your excellent submission and all the work that you've put into it. We do appreciate that and we particularly appreciate getting the material that Robyn, I think, has been involved in preparing for us. We find that sort of material extremely useful when we're doing our own work. So thank you for that. I understand that you would like to make a few opening comments and then we'll open it up for some discussion.

MR DANIELS: Thank you. Would you like me to call you commissioner?

MRS OWENS: No, we'd like you to call us Helen and Cate.

MR DANIELS: Okay.

MS McKENZIE: As long as you're happy for us to call you by your first name.

MR DANIELS: Absolutely. Thank you for the opportunity to appear before the inquiry. The issue of the education of students with disabilities is one of considerable importance for the independent schools sector which has a strong commitment to meeting the educational needs of these students. We welcome this opportunity to comment on the DDA as it impacts on independent schools as providers of education services. At the outset I would like you to be aware that our submission was developed in close collaboration with the eight state and territory associations of independent schools. Two of those associations - the Victorian and South Australian associations - have lodged separate submissions to the inquiry.

There are a couple of points I'd like to make at the outset. First of all, as a peak body we represent the independent schools sector which comprises about 1000 schools with more than 440,000 students. This accounts for about 12 per cent of the Australian school enrolment. It's higher in secondary than in primary - about 16 per cent secondary. Contrary to popular media portrayal, independent schools are a diverse group of non-government schools, servicing a range of different communities. The socioeconomic background of its students is diverse with the vast majority of schools catering for students from what I would term average - in inverted commas - Australian families.

Since the DDA was passed in 1992 the enrolments of students in independent schools with disabilities has increased sixfold, so there are now more than six and a half thousand students with disabilities in independent schools, with regular schools accounting for some 80 per cent of these enrolments. While the act has undoubtedly played a significant role in this expansion and diversification, it's not possible for us anyway, to quantify the magnitude of this effect. We believe that students with disabilities can and do bring important benefits to independent school communities. They add to the richness of the fabric of school life and they broaden the experience for all students in those schools and their teachers.

One of the points we've considered in writing the submission and which we think we need to draw attention to is that school education differs in degree from many other goods and services provided to people with disabilities. It is not a fleeting transaction, with the relationship between the school and the student often being the most significant relationship outside the immediate family and, in many cases in independent schools, it occurs almost daily and can last for 13 years. Hence, the educational support needs of those students can change and change quite significantly over that period. So we think this is a significant factor when considering the impact of the act on the community.

Meeting the needs of students with disability generally imposes additional resource costs on schools, the nature and level of these costs are specific to each student and can vary widely. Some students with disabilities, as defined by the act, are eligible to receive additional Commonwealth and state government funding to meet these additional costs, but rarely does this funding fully meet the cost and often there's a substantial differential. Given this funding context, the operation of key parts of the act, such as the unjustifiable hardship provision, becomes critically important. Further, I would note that many schools are simultaneously seeking to meet the needs of a number of students with disabilities, not just one.

In developing our submission we formed the view that the focus of your inquiry was not the question of funding, but to examine the impact of the act, the operation of the act, given the reality of the current funding position. Our view, which has been consistently argued, is that school education costs of students with disabilities should be met by society as a whole through government expenditure.

I hope that during the course of the discussion this morning we will be able to explain more fully some of our views, expressed in the submission, in relation to issues about the varying definitions of what constitutes a student with a disability; the impact of a requirement that every school meets the needs of all students with disabilities - especially those requiring very specialist assistance, given the current and likely ongoing shortages of expertise; the impact on schools to appropriately meet the needs of parents with disabilities and, given the diversity of the sector, the difficulties faced by some individual school communities in meeting the additional costs of particular students; the inherent difficulty for a school in determining in a particular situation whether unjustifiable hardship is satisfied, and associated legal risks and the possibility of some schools enrolling students whose needs are not or cannot reasonably be met; the compliance costs on schools and parents imposed by the act and the impact of the proposed disability standards for education. Finally, I reiterate that the independent schools sector supports the objectives of the act and, in particular, its goal of ensuring as far as possible the full participation of people with disabilities in the community generally and school education in particular.

Helen, we had three attachments to our submission and I know that attachments are often difficult to read, but I was wondering whether we might be able to talk you through two of the attachments.

MRS OWENS: Yes, why not?

MR DANIELS: The three attachments - there was a submission to the Senate Inquiry into Students with Disabilities, and I don't propose to say any more about that, but you may wish to ask us about it.

MRS OWENS: The submission, I think, is very clear and we have got it.

MR DANIELS: The second one is a study done by the Western Australian Association of Independent Schools called A Choice For All. I was going to ask Audrey to talk us through that. The third is the document that you referred to earlier, which is a study done by the Association of Independent Schools in New South Wales, which tries to actually put a dollar cost on certain student scenarios.

MRS OWENS: Okay, that would be terrific. We'll hand over to Audrey now.

MS JACKSON: Yes, thank you, Helen. The association of Western Australia supports students with disabilities in two ways: first, we administer, on behalf of the Commonwealth, the Commonwealth targeted program and we do that through the support of an educational consultant in special needs who works with a group of teachers from schools who have expertise in that area. The consultant is also available to work with individual schools to develop individual education programs.

This service is replicated in the larger states and territories. I make that comment because some of the smaller associations can't provide the support of an education consultant, although they do administer the funding.

In 2002, AISWA published A Choice For All. It's the West Australian independent schools' responses to students with disabilities and learning difficulties. The research study was conducted by Associate Professor Heather Jenkins of Curtin University of Technology. It's a report about inclusion in action. I'd like to table a copy of that report for the information of the inquiry.

MRS OWENS: Thank you. I know we have got one at work, but it would be nice to have another copy.

MS JACKSON: This study notes that independent schools are developing inclusive models of educational provision, characterised by four key factors: the development of new school policies to incorporate inclusion; the provision of new staffing provisions to ensure that students with disabilities are appropriately supported, as are the teachers who are going to work with them in the classroom; probably one of the easier ones - building modifications; and a very important one - training and support for the teaching staff and teacher aides who are going to be working with the students. The report was developed through initially a written survey which attracted 82 per cent of responses. I'm told that that is quite phenomenal in terms of responses to a survey.

MRS OWENS: Yes.

MS JACKSON: It was then followed up by face-to-face interviews where possible and telephone interviews where not, because Western Australian independent schools cover the length and breadth of the state. However, there were a small number of driving forces that emerged from this research and these are associated with not only the current provision but the future provision of education for students. Not surprisingly, equity of funding was one of the first ones that was identified, and that's already been mentioned.

A key factor that was felt to lead to a positive inclusion strategy was a schoolwide development of policy and of effective leadership. Leadership has to come not only from the principal but other key personnel and, particularly if the school has an effective learning support coordinator, this can make all the difference. The schools have experienced a very positive attitude change through the enrolment of students with disabilities and felt it was really important that they could put in place informed, equitable enrolment policies and practices.

I have already mentioned workforce development. In this regard the schools do report a frustration in accessing allied health services, particularly therapy services. These are scarce for all schools, not just for independent schools. Educational program design and implementation is seen as a key to success. It's acknowledged that these create additional workloads on teachers, but that through teamwork you can in fact enhance that program development. On one note it said that the inclusion program really highlights one of the contemporary dilemmas for schooling for all students, regardless of their status, and that is the need to respect their individual and developmental progress and to try to put to one side any necessity to work to national benchmarks; that you need to honour the individual student.

In summary, the report states that schools are making noteworthy progress towards genuine inclusive education, in spite of significant inequities of funding. The impression emerges of an education sector undergoing major transition, one that recognises its shortcomings, while continuing to adapt and to respond to a significant group of students with special educational needs, whose parents seek the educational choice and diversity that is the distinguishing feature of independent schools within Western Australia. I think Heather is giving the impression that the schools have done well but they know that they have a long way to go. Thank you.

MRS OWENS: Thank you very much. I look forward to reading the report. Do you want to - - -

MS JACKSON: Do you want to speak to the spreadsheet, Robyn?

MS YATES: I would really like to speak to the spreadsheet!

MRS OWENS: Okay.

MS YATES: Thank you. If I could just give you a background to the spreadsheet - and I first of all would like to apologise to Cate for not having it in front of her in Braille - - -

MS McKENZIE: No, that's not a problem.

MS YATES: - - - because there's an awful lot of information in it. The background arose out of the discussions about the draft education standards. I was very conscious - I think all associations of independent schools were very conscious - of the different interpretations of what the standards actually meant, and how much was a reasonable adjustment and how much wasn't. We were finding, working with the families and asking what they want and how they interpreted it, working with schools and looking at their interpretation, and then asking experts in the disability field for their interpretation, we weren't always coming up with the same answer.

For this to move forward, we really need everyone working together and being able to get some consensus on what is a reasonable adjustment and what is appropriate. So we looked at the students within the independent sector in New South Wales, and rather than do specific case studies - because we were talking about not what a school is currently doing but what services, that there was some agreement around, would be fitting in within the draft education standards. So we actually selected a range of students and did a generic description of that person's educational need, and included their disability, and from there looked at - using the standards as a base - what a range of consultants, both within New South Wales and across Australia, considered to be the appropriate standard of service in their interpretation of the standards.

MRS OWENS: I was going to ask you about that in terms of your cost assumptions. Those cost assumptions are based on what you think would be the appropriate facilities for that particular child based on the draft standards?

MS YATES: Based on the standards, and rather than using just our own opinion, we have actually put it out to a range of consultants: the itinerant services that are providing support in this area, and consultants across Australia, as well as a few disability consultants.

MS McKENZIE: How did you deal with the situations where they disagreed? You just mentioned that there is disagreement.

MS YATES: We just kept asking opinions and modified it as we went, so it has been quite a process.

MRS OWENS: Was it an averaging sort of approach if there was a diverse range of opinions?

MS McKENZIE: Did you take a middle option, if there was one?

MS YATES: In most cases what we have here is where the vast majority agreed. There would be an occasional person who would be at either end, but the vast majority is in agreement.

MRS OWENS: So you didn't go for the worst-case scenario?

MS YATES: No, we haven't.

MS McKENZIE: Or the best.

MRS OWENS: Or the best-case scenario.

MS YATES: No.

MRS OWENS: You went for the majority scenario.

MS YATES: We went for the majority. We have to be realistic and recognise that there will still be people who will agree or disagree with this.

MRS OWENS: And, of course, as one of you said earlier, every child is an individual - - -

MS YATES: That's important.

MRS OWENS: - - - and so this is just an average, for an average child, but you might find one of the kids in one of these particular groups might have other special needs that means they need extra staff, counselling or whatever.

MS McKENZIE: But if that is so, were you looking at the average child with a particular kind of disability or were you simply looking at individual children?

MS YATES: That's a very good question. We obviously didn't want to do a case study, but what we did was look at the range of students within the sector and do a description that actually reflected students that were being serviced within the sector. They're representative of children who are currently being educated within the sector.

MRS OWENS: What would really be interesting would be to have a cross-section of kids in, say, New South Wales, and using these assumptions - I mean real kids - and then aggregate it up so you could say, "For New South Wales the cost of applying these standards would be X. The amount of dollars that we're getting now is Y. Here's the gap." I think it's probably a really difficult exercise and I don't expect you to do it, but it would be a very interesting result to see where it came out.

MS YATES: Certainly, yes.

MRS OWENS: I presume there would be a fairly large gap.

MS YATES: There is a whole page of assumptions within the spreadsheet, and one of the assumptions is that there is a huge diversity within the sector. We took an average-sized school and then chose urban and rural so that we could do a comparison. I think those sorts of things are important, because what you mentioned earlier about the individual student needs will vary according to the setting - they certainly will, but we couldn't accommodate that when we were trying to develop this spreadsheet. So what we have done is identified a student, looked at the educational needs that student would have, looked at what sort of resource needs would that imply, and therefore what are the implications for staffing and the cost assumptions that would come from that? We looked at the differential of a city student compared to the same student in a country school of average size, and then we did look at costings as well. But the premise behind this was trying to get some sort of agreement on what could be expected from the standards.

If we could take the first student in the spreadsheet, Rhys is rather, I think, representative of many, many students within the sector. In this case we have said Rhys is in grade 6; that he has already repeated; he's the oldest student in the year. He has been diagnosed with dyslexia. His reading is at grade 2 level; maths slightly better. There are some fine motor difficulties, and he's also becoming quite unhappy. He's changed schools quite a lot and is becoming quite unhappy and they're worried about him refusing to go to school. This is the accumulated failure that is having an impact.

Taking the family's concern about the behaviour and wanting to work with it quickly, we looked at what does that mean for educational needs and what sort of additional instruction would be required, what sorts of adjustments would need to be made to texts and curricula materials, what sort of support would there need to be in terms of a reader, a scribe, keyboard instructions, and counselling support? We costed that out in terms of: that would mean a special education teacher, a teachers aide, a counsellor - and most importantly, staff training, and I think that's a fairly critical part. Whilst most schools have students with disabilities, there's a constant need to ensure that staff are aware not only of the rights of students with disabilities and their families but to ensure that they are providing appropriate reasonable access and reasonable adjustments, and, whilst there are generic issues there, they must also accommodate the individual needs of the individual people.

We looked at that and worked across, based on the average-sized school. The reason we needed to look at size of school was that, when you're looking at staff development and you're looking at support services, there have to be assumptions made about what services are available. So there were assumptions about there already being a part-time special ed teacher, a part-time aide, and a counsellor, and then of course the staff development went according to the size of the school.

MS McKENZIE: And those assumptions are made because you're looking at an average school.

MS YATES: We needed to be able to differentiate between size of school, so we took the average-sized school, yes.

MRS OWENS: But if there's already a counsellor in the school, have you added the cost of that counsellor in?

MS YATES: If it meant additional work, yes, we have added it in.

MRS OWENS: Just the additional work?

MS YATES: Just the additional work. This is always additional only, so we have made assumptions that there are some services there, and that may or may not be the case.

MS McKENZIE: But in an average school, there would be?

MS YATES: One would think it's possible, certainly in terms of some of the services, yes. In the country there may be additional costs in travel. For example, if it needs to be a psychologist, they may have to travel from a rural area. We actually looked at the situation of every independent school in New South Wales and the vast majority were within 50 kilometres of a regional centre, so then we had a cost base to work out the travel rate. Therefore you will see that whilst in the costs for an urban school and a country school there is absolutely no difference in terms of staffing, once you get to adding a psychologist into the equation there would be some additional travel cost, assuming that they're coming from a regional centre.

And the same with the professional development: there is a differentiation according to school size and, according to the ABS, rural schools are often smaller than city schools. That has been calculated in. So you will find that the costs of PD vary quite significantly, depending on size of schools. We have also recognised, within the staff training, all schools need to do generic training for all staff but provide specific support for the staff who are working with the student with a disability.

Having costed it out, we then looked at the income from governments towards the education of a student with a disability. In the case of Rhys, who has dyslexia, it comes under the "learning differently" under the DDA but under the New South Wales definition of "disability" there are no funds provided for that purpose.

Therefore, the additional costs that would be met by the school community - and I say the school community, because in an independent school it is the school community that are paying for the student as a total - would be the full cost, whether they be country or city.

MS McKENZIE: So there's no subsidy.

MS YATES: No.

MRS OWENS: Just explain why there wouldn't be a government contribution in that case?

MS YATES: For the disability - for the student - - -

MRS OWENS: For that type of disability?

MS McKENZIE: Because of the definition of "disability".

MS YATES: Because the definition of "disability" is different, there is no contribution. If we could do a comparison and move onto Georgina - - -

MRS OWENS: Which one was Georgina - which number?

MS YATES: There's a yellow tag on the sheet.

MRS OWENS: Yes, I've got the yellow tag. Thank you. You've thought of everything.

MS McKENZIE: I do have some difficulty with the colour coding.

MS YATES: I do apologise for that. Georgina is a primary-aged student who has optic atrophy. She is working, reading at a print size of N24. There is in a regular classroom and she is working at grade level, but obviously it takes longer to access some of her work. She just needs her print enlarged, and support. She uses a visualettes and a slope table. She has access to computers and uses Windows on it. She's working on her keyboarding skills, but it's not sufficient at this stage to be independent. She uses a monocular for distance viewing, for the whiteboards and outside, and her reading speed using large print is slightly lower than her peers, purely because of the size of the print and the manipulation required to actually deal with the large print.

When we looked at what she would need - and, once again, we put this out to specialists in the field; it wasn't our opinion - they looked at the large print, they looked at the need for a buddy system to ensure support within the playground. Then they looked at the need for additional support with audio materials and information from other personnel, such as the Guide Dogs Association and itinerant services. They looked at support during practical lessons for safety reasons for the student and for others, and obviously tuition in keyboarding, assistance with research work for assignments, then the use of optical aids was essential, access to the computer was essential, training in the use, technology, and then there were specific things such as extra time to read and to produce work; orientation to the school environment and particularly, whilst this is an issue at primary school, it becomes a significant issue at high school, where the students are moving around constantly.

Then of course the assignments again, the awareness for the whole school re the obstacles for the student. If I could give an example: I'm aware of a very similar student where one stairwell had an overhang that everybody else could see, but it was an absolute danger for the student with vision impairment, and it hadn't occurred to the school until it was brought to their attention. It's very important that people actually understand what the obstacles are. Then there is the equipment, of course.

Once again we looked at this in terms of what this means and what it would cost. In this case, there would be obviously an itinerant service, et cetera, that would be required, but obviously training for the classroom teachers, materials, visualettes, equipment. In terms of the difference between a city and a country school, it would mainly be travelling time for the itinerant teacher and the different size in the school for professional development. The difference in this case is vision impairment at this level would be within the state definition, so there would be some contribution from Commonwealth and state governments for this student's education.

The equipment would be purchased through Commonwealth funding. The other services, there would be a contribution from state and Commonwealth. You will notice on the spreadsheet that I've distinguished between category 12 and category 1 schools. It's a system used in New South Wales; it is particular to New South Wales. Basically, the New South Wales state government provides category 12 funding, which is a recurrent amount, per capita amount, for every student with a disability. However, the schools are categorised from 1 to 12, and therefore a category 12 school is already getting category 12, so there would not be a specific extra amount for the student with disability. A category 1 school would be getting the difference between category 1 and 12.

MRS OWENS: So category 1 schools currently get much less per student than a category 2 because they're wealthier schools or larger schools? What's the criteria?

MS YATES: It's not a socioeconomic status group, but it's basically looked at financial. Yes, it is a financial issue. So there is a range. That means that within

New South Wales schools in particular, when you combine Commonwealth and state funding, there is a differential, so some schools - they will receive different amounts. So if we look at Georgina, for example, the maximum a student would receive would be about 8 and a half thousand in a category 12 school and about 9 and a half in a category 1. That's approximate. Then we'd look at the differential in terms of costings. So the range in a city school that the school community would bear would be from $45,868 to $45,013.

MRS OWENS: This is after you've minused the funding.

MS YATES: After we've removed the funding.

MRS OWENS: So why does the category 1 get more now - because the category 12 is not getting any more money because they're already getting it.

MS YATES: That's right. They're saying that every student with a disability gets category 12, so if you're already getting category 12, that's the differential.

MS McKENZIE: If a school gets category 12 funding, that means all its students with a disability get that category 12 funding, whereas - - -

MS YATES: And so does every other student, so there is actually no extra for the disability.

MS McKENZIE: Yes, every student gets category 12. There's no difference between disabled and non-disabled students.

MS YATES: That's exactly the issue. Then of course if you look at that same student in a country school, adding travel for itinerant staff, et cetera, the school community would be looking at a differential of $47,688 to $46,834, based on those services.

MS McKENZIE: That's per annum?

MS YATES: That's per annum. In this case, the capital costs for equipment have been included. However, they would be looked at - Commonwealth funding would be there, so that wouldn't be included in that recurrent cost there.

MR DANIELS: Can I just ask Robyn, in the case of Rhys, what was the bottom line there?

MS YATES: The bottom line there: $27,187.

MS McKENZIE: That was where there was no funding?

MS YATES: No funding.

MRS OWENS: The government funding, that's presumably not really based on the actual cost of educating these children. I don't know what the underpinning of those figures is.

MS YATES: The Commonwealth funding is supplementary and the state - for a contribution to education of students with a disability, there is a per capita amount from the Commonwealth of $620. There is also then through the SASO program some additional funds, but it is specified that it is supplementary.

MS McKENZIE: And then there's the equipment funding.

MS YATES: That's part of the SASO funding.

MS JACKSON: The way the state supports, as you've probably gathered, varies dramatically across Australia. For example, in Western Australia you get a multiple of the category of funding that the student is entitled to, and it varies from 1.3 times the funding the student is entitled to for a mild disability through to two - double, for a student with a severe disability. So it's a slightly different approach to the New South Wales one.

MS McKENZIE: Give me an example - I don't want to interrupt your thread. If you want to give me more examples that you wanted to point out from the spreadsheet, please do so, but when you're doing it, can you give me an example of a child with - so far you've talked about children with - and I'm not in any way downplaying the severity of the disability, but with what I might term not the most severe of disabilities. Can you give me an example in your spreadsheet where you deal with a child with very severe and perhaps multiple disabilities? How does the funding situation operate?

MS YATES: Right. I'll certainly find one of those. I would like to just say that in the case of Georgina and children with visual impairment - I know you've also received a submission from the Royal Institute for Deaf and Blind Children, where these students use braille - the itinerant support and braille charges alone are between 60 and 70 thousand dollars per year.

MRS OWENS: We've got Daniel on the next page, who's 17, and he's blind.

MS YATES: Yes.

MRS OWENS: And he ends up costing an awful lot of money, doesn't he, especially as he lives in the country?

MS YATES: It's the cost of the braille because independent schools in New South Wales would be working with someone like the Institute for Deaf and Blind Children.

MRS OWENS: Actually he's cheaper in the country than if he lives in the city in this one.

MS YATES: As Cate requested, I'll find a child with a severe disability. Alex, the second child, is a young boy with a severe intellectual disability and autism. He's very active, has difficulty staying on task; he has six verbal utterances, uses gestures to communicate; he uses a visual picture system to express his basic needs and everyday routines. He can go to the toilet when prompted, and eat independently when supervised, but he does need supervision. He needs assistance with socialisation and mixing with other children, and obviously any change in routine is very difficult for him. When due to lack of communication, there can be aggression, but I do emphasise it's lack of communication that causes frustration, and he does get upset if it's noisy and will often seek to escape those situations.

If we look at the cost implication for a student like Alex, the sort of assistance he would need is instruction in independent living, as well as monitoring in the playground and providing social skills training. The augmentative communication program would be absolutely imperative; support for learning within the classroom, looking at his sensory sensitivities and changes to routine, putting in a positive behavioural support plan and professional development for the school, and also making sure there is a quiet place where he can withdraw for safety and security.

The implications for staffing are extra special ed teacher time, a teacher's aide assistant, speech therapy, occupational therapy, behavioural support specialists, release of the teacher for training and liaising with all professionals, and ongoing staff training.

MRS OWENS: Can I ask you: if we had Alex at this school with this severe intellectual disability and we also had Christopher in a very similar situation to Alex, would the behavioural support specialists, the occupational therapists, be able to see the two of those children together, or would they still need to see them one to one? Could you share some of those costs?

MS YATES: I'd certainly try, but it comes down to an individual situation of working through that particular student's needs and with their family about what they think is appropriate, and obviously the school, and if it could be shared, you certainly would do that.

MRS OWENS: It raises an issue I think you do raise in your submission somewhere - and I can't remember which page it was - about there's a trade-off here. If everybody under the act has the right to go to whatever school they choose and have these sorts of support systems because we'll have an education standard in place, that means they do get full choice which is a worthwhile thing to have, but the trade-off is that it's going to cost an awful lot of extra money and the question is who pays for that and will the facilities - the dollars follow the standards, if you like.

Then what can happen is - I mean, you've got a number of options. You reduce quality of services for all the kids in the school, you reduce the quality of services for the kids with disabilities, or you increase the fees for the parents, or you discriminate. You haven't got a lot of really great options there if the funding doesn't follow.

MR DANIELS: Yes. The funding issue comes to the heart, I suppose, of the sort of concerns that we raised before the Senate inquiry. While we're referred to them in our submission here, we haven't tried to overemphasise the significance of them. Funding is a very complicated matter. The Commonwealth is involved, the states are involved and parents are involved. In the case of students with disabilities, there may be other support from other organisations as well. There are a couple of points which we would make: first of all, there is a question about the adequacy of the total resource available for students with disabilities in schools, irrespective of setting. We would have a view about that, as would most other school organisations, school owners - be they systems or individual schools.

MRS OWENS: But what you're really saying, in terms of - if we go to this system where this standard is put in place, that adequacy issue is going to be a bigger issue in the future. Is that right? Does the adequacy now - and you'll probably argue that there is not enough money now - and we're talking about implementing a standard which could then put greater pressure on the schools to supply these sort of services, to both take the kids and then supply services at this level.

MR DANIELS: Yes.

MRS OWENS: So that issue could be - we're talking about a bigger issue in the future.

MR DANIELS: Yes. The question of what's a standard and what's an acceptable standard is a matter for debate.

MRS OWENS: I wanted to ask you about that in a minute. But there is this draft standard out there and if that is implemented that is going to put the pressure back on the schools to provide services at a certain level.

MR DANIELS: I think it will have that impact because - simply because they are called standards - that schools will feel there are some standards, as opposed to guidelines or support mechanisms.

MRS OWENS: Yes, and as Robyn has shown, those standards are going to be - could be, for some students - very costly to the school.

MR DANIELS: Indeed.

MRS OWENS: If they take that student.

MR DANIELS: Indeed.

MS McKENZIE: But one of the things about the standards, if my recollection is correct, is that they're going to - let's put aside for the moment the question of whether this can happen, but they are going to apply the unjustifiable hardship provisions within school settings, not just to the pre-enrolment setting.

MS YATES: Yes, they do actually extend the act in that area. That can be seen as a benefit - - -

MS McKENZIE: But, equally, in a way there are swings and roundabouts. On the one hand the standard might make a school feel that they have to comply with its content, but on the other hand, the school will get a possibility for, if you like, modifying the strict application of that standard because of the unjustifiable hardship provisions that might then apply.

MS YATES: That's true, and that's also - - -

MS McKENZIE: Which they don't have now.

MRS OWENS: But we do have a problem about what unjustifiable hardship means in this situation, don't we?

MS YATES: Indeed. I think that's the critical issue; it's working out what is a reasonable adjustment and it was the debate around that that even started this project. Then, if you move on to unjustifiable hardship, the purpose of the standards and the use of unjustifiable hardship, is to provide clarity for people with disabilities, in knowing what is unjustifiable for a school or what isn't. My concern would be that what we have is a process, rather than a benchmark, which still means working through and it will still vary for every individual school and the circumstances of the person with the disability and their family. In terms of giving them surety of what they can actually ask for, while it remains a process that isn't there.

If we use case law and we look at what the commissioner and the judge said in the Finney case, there was obviously reference to the fact that you can't use other cases as an example of what is a benchmark, because it comes back down to the individual circumstances.

MS McKENZIE: Have you any thoughts about how this problem might be solved?

MS YATES: I've certainly participated in the consultation I think since the mid-90s. I wish I had some solutions. The difficulty is that the standards are trying to cover the whole of the education sector from pre-school to adult services and community education services. The breadth and the difference between services are just significant. So I'm not quite sure how it could be done while it's covering that breadth.

MR DANIELS: I think the fact that it's been a matter of policy debate amongst the stakeholders for seven years is an indication of how difficult the issue is; that there is no simple solution to this.

MRS OWENS: In your submission I think you said that you have a bit of a preference for guidelines rather than standards.

MR DANIELS: Yes. Our view - and we've argued this for some years now - is that guidelines are useful to enable schools to interpret the act and to put in place processes which allow appropriate decisions to be made. Calling them standard implies something quite specific and it's something you can go to almost like a building code or a building standard. These are not building standards or building codes. Education is not like that. It's not a physical thing. We've put our point and ministers will make up their minds, I think next month, about whether to adopt draft standards or not. We will go along with whatever the outcome is. We're not going to stand on our dig on this, but we feel that we've had a fair opportunity to put our case.

In relation to the non-government sector there is another issue. That is that the differential in the funding available to the school or to the family depends entirely on whether the parents choose to send their children to a government or a non-government school and the differentials are massive. So if a parent decides to send their child with a disability to a government school, there is a level of service provided by government, or governments. If they then decide to move that child to a non-government school, there is a massive reduction in that level of financial and other support services available to that child. The school that is chosen by the parents, the school community basically has to pick up the cost, the difference - however defined - which is really some of the point of what Robyn was trying to explain.

MS JACKSON: A relatively simple example from the Western Australian context - and I imagine it would be the same throughout Australia - a child who would have a full-time aide in a government school, because of the limits of the Commonwealth targeted program funding, in Western Australia would, at best, get about - what we'll get is sufficient funding for .75 of an aide, and they would have to be very severely handicapped or disabled for that to happen. In general, a student who would still qualify for a full-time aide if in a government school, might only get a half-time aide - that would be the most common scenario.

MR DANIELS: But hence our solution as set out in paragraph 21 is a position of principle in that first of all we believe that for these students the additional costs of services should be provided by governments. Whether it's Commonwealth or state we don't mind very much, but it ought to be a government responsibility. It should not arbitrarily be borne by a particular group of families simply because they make a choice about the individual school needs of their students. That's the current situation here.

MRS OWENS: I think there's a more fundamental question of who should pay. There's an underlying question, if you're unfortunate enough to have a child that's born with some disability - that doesn't necessarily need to be a misfortune, but if you have a child with special needs should it be the responsibility of the parents or society, as a whole, to support that child through its education. As a community I think there are certain things that we do - as a community - so that we're going to support them; we don't want to see anybody falling through the net in terms of health services, for example. There is, I think, an important issue as to - if people do have children with disabilities - I mean, as a community we're generally prepared to help support their health needs and the question arises about education needs and then, once you answer that question, then should those children have freedom of choice, as other children do in society to go to either a government or non-government school. They are really fundamental questions and once you answer that question, then the dollars - as I think I said to you before we started - should probably follow the child.

MR DANIELS: Yes.

MS McKENZIE: But, really, some of the difficulties that are raised in this submission are that currently there appears to be a decision as far as governments are concerned, that there ought to be some support, but that the support is not comprehensive. Again and again what the spreadsheet is really illustrating is that there is a massive gap.

MR DANIELS: And what the spreadsheets don't illustrate is that if you applied those scenarios in each state and territory, you would come up with a different bottom line, because the attitudes and the arrangements in place by state and territory governments vary dramatically across the country, so it almost is a question as to where you live as to how well you're supported in this community.

MS McKENZIE: None of this however would make you, would it, not support the trend or the philosophy that disabled children or their parents - the parents of disabled children should be able to choose to send their child with a disability to a mainstream school.

MS JACKSON: That's the issue we're trying to make. To say that they should be able to do that. I think one of the issues on funding and to be specific, one of the problems, is that the Commonwealth funding that goes to students with disabilities has never been based on a formula. So that if you have more students enrolling within the sector you do not get any greater degree of funding. So what you do is you spread the same amount of inadequate funding over a larger population and that's a persistent problem for all the associations. Within our report, A Choice For All, schools will time and again comment on the positive results of inclusion in their school and they want to be able to continue to do it, but they also want to be able to deliver a really quality education for the child with special needs.

MRS OWENS: I should point out that this is not an inquiry into the funding of services for children with disabilities. We're interested in the operation of the act and I think Bill made the point that you recognise that earlier. But you have raised, I think, some very important issues which we can raise in our report and say, "These are important issues that need to be considered." One of the issues is that if you are going to implement standards you need to be aware that there is a cost to be borne that needs to be borne by someone, and that you need a proper debate about that and a proper consideration of how you're going to deal with that issue, and whether children should have access to any school that they want to go to, or whether we go to a system where we say, "Well, you may not have geographic access, but there's a school that is going to - all the support services are going to be in that school, but not necessarily in this school over here."

That may be seen to be unfair because other people can go to the local school, but then it's a trade-off between the quality of services that the child is going to get versus geographic access. None of these are easy issues to resolve.

MS McKENZIE: But the other thing to say is that there is a link between the question of funding and the question of the DDA, because of course one response to funding difficulties, difficulties and resources, would be to discriminate.

MR DANIELS: Yes. I think there is another point, in that if you run a system of schools then conceivably at least you may be able to offer alternatives. If you are an independent school you don't have that option. You own and run the school, so it's not a matter of saying, "Look, go to our school next door or down the road or in the next suburb, where we can offer these facilities." Decisions are being made by independent schools based on their understanding about the service that they can offer, that they can afford, the sort of quality that they have on offer within the resources and expertise that they have, without really the option of being able to offer something else.

MS JACKSON: I think, too, I would want to put in the human factor in that issue. I was the head of an independent school which had a support unit and the reason we started that support unit was that there was a family of three students - three girls from the country. If we hadn't had the support unit the eldest and the youngest child could have attended, but the middle student couldn't. Those are the sort of dilemmas that schools want to be able to address.

MRS OWENS: Thank you for that. We have run over time with you, as I thought we might, because there's a lot of meat in your submission. I have got other issues that at some stage I'd like to talk to you about - maybe even talk to you out of session - but I saw from your submission you do cover some schools that look after indigenous children, and we are particularly interested in following up on indigenous issues, so if we perhaps could get back to you on that.

MR DANIELS: Certainly.

MRS OWENS: If there are any of your members that could help us with that, we would be very grateful.

MS JACKSON: I would be happy to do that.

MS McKENZIE: Yes, that would be very helpful, if you could give us contacts.

MR DANIELS: You're going to Perth, aren't you?

MS JACKSON: Yes.

MR DANIELS: Audrey is based in Perth. There are indigenous independent schools in Western Australia.

MS McKENZIE: I'm also going to Alice Springs next week, for what it's worth, so we might talk about that too.

MS JACKSON: Yes.

MR DANIELS: We're very happy to provide assistance.

MRS OWENS: I'm just checking, Cate, to see if there's anything else you want to ask?

MS McKENZIE: No. The major issues we have covered.

MRS OWENS: Yes, and I thought the way you clarified your spreadsheet - it was terrific to get that on transcript. Thank you. Is there anything else you wanted to say, Bill or Audrey?

MS JACKSON: No.

MR DANIELS: But we're very happy to follow up later, Helen.

MRS OWENS: Your submission and the attachments were very helpful for us.

MS YATES: I am sure other people will bring up the implications for professional development and teacher education and the shortage of expertise, but I would just like to flag them as certainly areas that will have a great impact on the effective implementation of the act.

MRS OWENS: Yes. Thank you. I think we picked that one up from your submission. And I think the other important issue in your submission, that we only touched on really briefly, was the parents with disabilities and making adjustments for parents. Thanks very much.

MRS OWENS: The next participant this morning is the Deafness Forum of Australia. Welcome. Would you like to give your name and your position with the Deafness Forum for the transcript.

MR ROPE: Sure. Brian Rope, chief executive officer.

MRS OWENS: Good. Again, welcome, and thank you very much for your submission. We have read it and I think you've made your points very clearly, but I understand you just want to make a few opening comments for us, and then we will open it up for discussion.

MR ROPE: Sure. I just really wanted to say that I haven't read all of the submissions that you've received from other parties, but we have read some of them.

MRS OWENS: I haven't either yet, Brian.

MS McKENZIE: We didn't expect you to.

MR ROPE: I just wanted to put on record that we support the views that have been expressed in the submissions by the Australian Communication Exchange and by the Royal Institute for Deaf and Blind Children. One of the other submissions that we have looked at, of course, is the Human Rights Commission's preliminary submission. We wanted to put on record that, generally speaking, we feel very comfortable with the views that they have expressed.

We do have one concern in relation to some comments they make on page 64 of their submission about access to public transport. The comments there simply don't acknowledge the need for forms of access other than physical access. Whilst I'm sure - indeed, I know - that the Human Rights Commission fully understands the need for other forms of access in things like public transport, I guess it highlights for us the fact that so often one of the problems that we face in terms of hearing access is that the providers of whatever goods and services we're talking about simply don't have a mind-set that allows them to see beyond physical access. I often say to people that I think that one of the basic problems is that the sign which is familiar to everybody is the wheelchair symbol with the line through it. Everybody knows that symbol even if they don't know what it means, but the number of people who would know the equivalent symbol of the ear with the slash through it, which is the hearing access symbol, would be much smaller. I think that was highlighted by the fact that even the Human Rights Commission in that particular section didn't acknowledge that there were other access issues on public transport, and certainly for our constituency there is a very bad access issue in terms of public transport.

In our submission we mention that we lodged representative DDA complaints against five hotels and we indicated that we had asked for it to be dealt with by a public inquiry, but that the indications were that that would not happen. In fact we have been advised by the Human Rights Commission that they do not propose to use the public inquiry process to deal with those five complaints but they will treat each of them as individual complaints.

MS McKENZIE: Did they give you any reason for that?

MR ROPE: I haven't had an official reason, but my understanding is that they thought it was too hard to get together the key stakeholders around the table because it's a very diverse industry, the short-term accommodation industry. I don't understand that. I would have thought that there are two or three organisations, like the Australian Hotels Association, which would reasonably adequately represent the industry.

MS McKENZIE: Yes. We hold inquiries all the time, as you know, and that doesn't let us off the hook - because we can't get the stakeholders together in any one place. We see them individually as we need to.

MR ROPE: Yes. When I was speaking with the policy unit at the Human Rights Commission about it, I said to them, "Well, this may force us into a situation of lodging progressively an individual complaint against every hotel in Australia, and you wouldn't be very pleased about that."

MS McKENZIE: It's going to be highly inefficient and very costly to do it that way.

MR ROPE: It would be very costly for them.

MS McKENZIE: And also very slow for everybody concerned.

MR ROPE: Very slow and very costly for us, because before you lodge the complaint you've got to at least approach the hotel and ask them, "Can you make a booking for this person? They have these needs." We will start lodging more and more complaints, but also we will be seeking to have discussions with the industry ourselves. Indeed, the Australian Hotels Association, having become aware of the complaints because of our media release, has made contact with us and asked to sit down and talk with us. I just bring that up because we are concerned that there is this avenue which we believe is an effective avenue of dealing with systemic complaints, and yet when we try to use it we are denied that opportunity.

MS McKENZIE: And what you said really also raises the reverse of that, namely that the individual complaints based system finds it very difficult to deal with systemic issues like that.

MR ROPE: Yes. Just one other interesting thing in relation to access to hotels is that we are currently trying to identify a venue in Melbourne for some meetings of our own later in the year and so we've approached a large number of hotels inquiring as to whether they can provide the facilities that our constituents need.

MRS OWENS: Tell us the sorts of facilities. Hearing loops?

MR ROPE: Yes.

MRS OWENS: What else do you need?

MR ROPE: Captioning on the television sets in the guest rooms and in the public areas of the hotels. Hearing loops in the function rooms, but more importantly for the individual constituents, access to text phones, TTYs, not necessarily in the room itself, although that's highly desirable. Access to volume control on the standard telephones. Acoustic couplers on the standard telephones.

MRS OWENS: What about fire alarms?

MR ROPE: That's the last point, fire alarms. At the very least, the hotels must have effective procedures in place which will ensure that they will get their deaf and hearing impaired guests out in the event of a fire. Ideally they would have some sort of alarm which would actually alert them to it themselves so that they could evacuate the same as the rest of us do.

When we approach hotels, we start with those hotels where we understand they do have the captioning facilities, because the Australian Caption Centre now has on its web site a list of all hotels known to have teletext TVs in at least some rooms. We approached a hotel listed on the site which said that it had teletext in every room and they told us that they didn't have captioning facilities at all. When we say, "How come, since you're listed on the site?" they said, "We upgraded recently and we replaced all our television sets and the new TV sets do not have the capability."

MRS OWENS: You mean they've downgraded.

MR ROPE: They've gone backwards. It's a classic example - - -

MRS OWENS: Because they haven't thought it through.

MR ROPE: - - - of the problem that people with disabilities face, because whoever made that decision didn't think about that issue. It's the same thing with hearing loops. The great majority of hearing loops that are installed in public places don't work, and often they don't work from the day they're installed because of incompetence on the part of the installer, but even if they do work when first installed, something goes wrong with them for a whole host of reasons and nobody ever fixes it.

We're again about to launch a series of complaints against some cinemas in Melbourne. There's an eight-cinema complex in Melbourne that some years ago was a three-cinema complex and it had loops in two of them which worked, and they upgraded twice and they're now an eight-cinema complex, and there are no loops.

MRS OWENS: Is this the Rivoli?

MR ROPE: I'm not sure which one it is.

MRS OWENS: They upgraded from, I think, three to eight.

MS McKENZIE: There are numbers of cinemas from three.

MR ROPE: Yes. The chairman of my board of directors lives in Melbourne and she has embarked on this personal campaign because she is sick to death of ringing up venues to see whether a particular movie is being screened in a cinema with a loop and being told "Yes", and then getting there and finding the loop doesn't work.

MRS OWENS: And that's the only way you can find out if it's being screened in a cinema with a loop - by ringing up, or do they put it into their advertisements?

MR ROPE: They don't normally in their advertising indicate which movies are being screened in which theatres. They'll say that there is hearing loop access available in the complex but you have to know the complex to know which cinemas have got the loops in, and you then also need to establish which cinema is actually screening the movie that you want to see. That leads me on to the other issue with cinemas relating to captioned movie screenings, which now occur three times a week in at least one cinema of the CBDs of all capital cities and occasionally in a small number of regional locations as well.

The cinemas, whilst they do it, they constantly complain that they don't get a large enough audience and yet they won't accept the responsibility for advertising the fact that the screenings are on. All they do is have a tiny little notice in the block advertisements on the movie pages. It strikes us as being rather odd that they don't promote a product when they would promote almost any other product they had for sale.

MRS OWENS: Sorry, have you finished your opening remarks?

MR ROPE: That's okay, let's just keep the flow going.

MRS OWENS: I was going to say, in your submission you do say that you think that there has been some advance in relation to the DDA being beneficial, but at the same time you also seem to be arguing that - or you also said there's been no significant social impacts on the community as a whole, and I thought this seemed to be a bit of an internal inconsistency, because there has been some advances. I think you talked about cinema captioning and so on, and it's moved in the right direction.

MR ROPE: Sorry, talked about what?

MRS OWENS: You talked about cinema captioning.

MR ROPE: Yes.

MS McKENZIE: But you're really saying it's not enough and it's not gone far enough and it's not consistent enough and it's not advertised enough.

MR ROPE: It's certainly a step in the right direction. I guess in a way it's unfortunate that the cinema chain started screen captioned movies at more or less the same time that captioned DVD started becoming readily available. So the people who otherwise would have been attracted to go to the captioned movie screenings, perhaps haven't been as attracted to it as they might have been, because they've got this other option now available to them. So in that sense it hasn't had the same sort of social impact as it might have had if it had happened earlier, and if it had been more extensive.

There was an article in, I think, the Better Hearing Australia's national journal just recently, where somebody had written in response to a previous article which had said how wonderful it was that there were captioned movies now available regularly, and this person was responding saying it's all very well if you live in a capital city, "But what about the rest of us?" As with all other areas, I think the problem of providing access to people who live in the non-urban areas, particularly the more remote areas, is the real issue. It doesn't seem to matter which area we look at, in terms of our constituency, the problem is greater for rural and remote Australians.

MS McKENZIE: And, one would have thought, even more serious as far as accommodation is concerned. You say that there are real difficulties with hotels in the CBD, but presumably there is more difficulties with accommodation, travellers' accommodation in other rural areas.

MR ROPE: Yes, although there are some isolated examples of hotels that are doing the right thing and the ones that I'm aware of are actually in regional centres. They tend to be resorts in Coffs Harbour and that sort of thing. Often, as is so frequently the case, it's because the proprietors or operators have got some deafness in their own family and they understand the needs, and so they respond to them.

It's a bit like every service station you go into on the highway between Canberra and Sydney, the only diet drink they sell is Diet Coke and people with diabetes get absolutely cranky that that is all they can ever buy that suits their needs. But then you'll go to some remote roadhouse in far northern Western Australia and you'll find a whole range of diet soft drinks simply because the proprietor has got diabetes and they understand the issue. I think that does illustrate that it's an awareness of how easy it can sometimes be to respond to needs that is missing, and if we can somehow overcome that then we might get a lot further a lot faster.

MRS OWENS: You've actually argued in your submission that you think we need to have - apart from having the act - government regulation to prescribe particular actions.

MR ROPE: Yes. A very good example is in relation to teletext capabilities on television sets. If it was a requirement that every TV set and every video recorder sold in Australia had teletext capabilities, then everybody would benefit from them. The use of captioning would go up very rapidly as a result of that. It constantly amazes us that people don't know what we're talking about when we talk about captioning on television. I've even had it with my own parents, who said to me not all that long ago, "We're going deaf. We have to have the TV on so loud." And I said to them, "Don't you have captioning facility on your television?" and they said, "What's that?" I said, "Give me your remote." And I pushed a button and there it was displayed, and it was that easy and now, of course, they use it all the time.

MRS OWENS: I should get my kids to just use captioning and not have the TV on at all.

MR ROPE: Indeed.

MRS OWENS: It would be great.

MR ROPE: Captioning actually provides a lot of benefits for people who don't need it because of their hearing.

MRS OWENS: Although there might be some in the community who say, "I don't really want to buy a TV set or a video recorder that's going to cost me more with those facilities, so I don't need it."

MR ROPE: Yes, it wouldn't - my understanding is that the difference in cost would be very small if every set had it, because of the economies of scale for the manufacturers.

MS McKENZIE: And many do, in any case.

MR ROPE: Yes, and there is a growing number that do in fact.

MRS OWENS: Are there any countries in the world where there has been this sort of regulatory arrangement put in place?

MR ROPE: Yes, certainly the US has it as a requirement. I can't identify other countries for you, but I'm sure there are some others.

MRS OWENS: So all televisions there now have to have that?

MR ROPE: Have to have it, yes.

MRS OWENS: I notice on the plane now you often see people just watching the news on the screens now without their headsets because they can just read the captions.

MR ROPE: Yes, that's right. The other example of where it just makes sense is in noisy bars or clubs. Sometimes you'll see a bank of six TV sets in a club, all showing a different program because they want to provide six different versions of the sport that we're all so enamoured of, and they don't have the volume on anyway. You think, why have they got the TV sets on just for the pictures, because you want to know what's happening? If they displayed the captions you would know what's happening. Turning the volume up is useless because it just adds to the general hubbub of noise. You're right - certainly on planes, actually hearing the soundtrack through your headphones is not always of the sort of quality that we can endure.

MRS OWENS: Coming back to some of the problems that haven't been addressed by the DDA as yet, there is another issue that was raised with us in Darwin, and that was by a young woman who lived in public housing and couldn't get access, or was required to pay for her own smoke or fire alarm system. It wasn't supplied by the public housing authority. She said it wasn't an issue when she lived in Victoria, but it was an issue there. Is this an issue that's been brought to your attention in relation to housing - public housing in particular?

MR ROPE: No, it hasn't been. But I'm certainly aware that there are differences from state to state. I think I'd be right in saying that the South Australian Housing Trust has the best track record, and they certainly do install suitable smoke alarms for deaf and hearing-impaired people for those tenants that need them over there. There is an alarm, incidentally, that you can get - you can even modify these existing ones if you put a computer chip into the detector. Then at the same time that it triggers off the sound, it will trigger off a portable monitor that you can have with you, which both flashes a light, and has a vibrator pad on it. So that's a fairly reasonable solution for hotels, for example. They could install those chips throughout the hotel and just have a number of those portable monitor kits to hand out to guests who needed them, to take into their particular rooms that had been allocated to them.

MRS OWENS: Why hasn't this happened? There is a public safety issue here, isn't there?

MR ROPE: Yes. That is a very interesting question. I had an experience with a hotel in Sydney when we rang to inquire about their facilities when we discussed the issue of smoke alarms and their response was, "Look, it wouldn't be a problem. The fire station is so close by they'd get here within minutes." So that indicates they didn't have a real concern for the safety of any of these guests. You would expect that hotels would at least have a standard procedure in place to ensure that all guests get out. I don't know whether it's just a matter of not thinking, or whether it's deliberately avoiding anything that might cost money.

MS McKENZIE: How should these matters be dealt with? You've raised a number of them, where you say that there are still real problems; one might say discrimination as far as people who are deaf or hearing-impaired, and they are in a number of areas. You know, there is the captioning question, there is the fire alarm question, there are other questions to do with making premises more accessible. You mention, if I recollect, in your submission, the question of access to some of the justice facilities. How do you think they should be dealt with? Should there be standards under the DDA to deal with them? You've mentioned systemic inquiry. Should it be the subject of a systemic inquiry?

MR ROPE: Yes, I suspect that there is not one solution that fits all. I think we almost have to look at each sort of issue and work out the best way of dealing with that issue. I do believe that systemic inquiries are a potential solution for some issues. I believe that standards are a solution, if we get them right. I certainly agree that guidelines can be helpful, but I think there are other areas where government does need to take specific action to require something. I certainly think that people with disabilities themselves have to be more proactive in raising their issues and their concerns and demanding their rights, if you like.

Certainly our constituency is guilty of almost pretending that it doesn't have a special need. As with a number of other disabilities they often talk about hearing impairment as an invisible disability, which it's not if you've got a behind the ear hearing aid which stands out. But unless you're a woman with long hair that covers it up - and a lot of them grow their hair simply to hide the fact they've got a hearing aid - there are many, many people who refuse to wear hearing aids and many people who pretend they don't have a hearing loss. We don't believe that's helpful to them in terms of discrimination issues. You can't accuse somebody of discriminating against you if you've hidden the fact that you have a special need.

MS McKENZIE: It also means that need may not be accommodated and the situation may worsen.

MR ROPE: That's right. Yes, indeed. The other issue of course is the cost issue, and I think that some of the issues can be dealt with by addressing the cost issue. The people who were here previously talked about costs in the education setting, and they're extremely important, but there are costs in a whole range of areas for our constituents. We have a very strong view that the individuals shouldn't have to bear those costs themselves, so solutions have to be found. The government has said to us, "Well, how should those costs be met?" and, again, our answer is that there are different ways of meeting different costs. For example, the government does provide free hearing aids to eligible clients. We would argue that eligibility needs to be extended to help a few more people, and that certainly is an effective way of responding to that. But there would be other ways of responding to it as well.

MRS OWENS: I suppose it's the role of the government - - -

MR ROPE: Affordable private health insurance for example; Medicare benefits when you go for your hearing test. The government does have schemes for contributing to the costs of workplace modifications, but there's a pathetic pick-up of that in terms of people with hearing loss.

MS McKENZIE: Is that because those schemes are not understood? People aren't aware of them?

MR ROPE: I think it's a whole range of things. I think it's some people with hearing loss hiding the fact that they've got it and so their employer is not aware of the need; I think in some cases it's employers not being aware of the existence of the scheme. In some cases it's an eligibility problem, and very few people who are deaf and hearing impaired are ever deemed eligible for the disability support pension, and the eligibility criteria for a number of the other government programs pretty much parallel eligibility for DSP. So the great majority of our constituents frequently are ineligible for the existing forms of assistance anyway.

I suspect also that a number of those schemes, such as workplace modifications, are underfunded. Tax deductions is another way to go. It's very interesting that in this year's federal budget there was one that came in which now says that if you have a hearing dog you can claim the expenses of that hearing dog as a medical expense in your tax, in the same way that you have been able to do that for guide dogs for the blind for years. That's marvellous that that has happened. It will only help a very small number of people, but it's still great. But if we can provide tax deductions for the costs of operating a hearing dog - if I can express it that way - then why can't we similarly provide tax deductions for operating hearing aids or whatever other things are needed? Costs of interpreters, of course, is a massive one, leaving aside the availability of interpreters.

MRS OWENS: There was another idea you put into your submission which was, when you talked about the responsibility of the people with disabilities themselves and said that they could establish a mechanism for looking at published disability action plans and contacting the companies.

MR ROPE: Yes.

MRS OWENS: I think that also raises the issue of the role of HREOC and those action plans. There are a couple of issues: should there be a proper enforcement mechanism for action plans and should they be compulsory? Should the hotels be required to have an action plan?

MR ROPE: I think that on balance it probably would be a good idea, if only for the reason that it would ensure that the hotels had to think about the issues. It seems in a way to be an unnecessary imposition on any business to have to do something like that, but I think that it's an imposition that probably has to be tolerated in order to achieve the necessary end result.

MS McKENZIE: Really, the thrust of what you've said is that, without that, little is done.

MR ROPE: Yes. I think the problem at the moment is that it is very much an ad hoc approach. Okay, if we approach a particular hotel or a particular motel in a particular location and raise the issues with them, then depending on who we actually get to speak to they may or may not give some thought and some consideration to it. But it would take forever for us to approach every hotel and motel individually. If there was a legal requirement on them to address the issue, then it seems to me that the prospect of some progress being made is enhanced considerably.

MRS OWENS: That's another idea for beefing things up.

MR ROPE: Yes. In fact, the idea of organisations like ours monitoring the existing action plans actually came from HREOC. They have encouraged all the peak disability bodies to do exactly that.

MRS OWENS: How are you going with that?

MR ROPE: We haven't done anything yet. But it's on our agenda as something that we need to do, and it's simply a resource issue. So what we really need to do is to find some volunteers who are willing to do the task for us, or at least to do the first part of the task of looking at the action plan and identifying something that somebody has promised to do which is relevant.

MRS OWENS: But, you see, if you had one hotel that had done the right thing and said, "We'll do a disability action plan" - I don't know whether any hotels in Australia have done that.

MR ROPE: No.

MRS OWENS: And then you took up the responsibility of monitoring that action plan and saying, "No, they're not doing it well enough," it's a real disincentive for the others to do an action plan if it's not compulsory, because they say, "Why should we put this up for it to be shot down?" So there's a bit of a problem with organisations like yours going around and monitoring action plans.

MR ROPE: Yes.

MRS OWENS: The organisations that have actually done an action plan, I think there's quite a lot of goodwill in them doing it in the first place. A lot of government organisations are doing it.

MR ROPE: Yes, although they don't always follow through on - - -

MRS OWENS: But there is a bit of an issue, you see.

MS McKENZIE: One point is implementation; the other point is just how general the action plans are in the first place.

MR ROPE: That's right.

MS McKENZIE: Whether it's possible to actually identify any particular things they ought to be doing because the plans are so generalised.

MR ROPE: Yes. I think that's also been the problem with the government department reports in response to the Commonwealth disability strategy. They're often very generalised and when you get down to the nitty-gritty to find out exactly what they have done, they really haven't done anything at all. But I guess we're all guilty of that, aren't we? My own organisation might, with the best will in the world, have the intention of making its premises fully accessible to every person with any type of disability and we can say, "Well, the only reason we haven't achieved that is because we can't afford the modifications," but the reality might be that the reason we haven't achieved it is because we simply haven't got around to it because it's not important enough to us. I'm not saying that is the case, but you can see how the best of intentions may not necessarily lead to implementation of anything.

MRS OWENS: Yes. I only have one other issue. It's not a small issue but it's an issue you did raise, and that was the issue of the inconsistency between regulatory regimes. I was just wondering what you would do about it. It's the issue of, we've got a Commonwealth regime, all the states and territories have got their own systems, and the extent to which that leads to some conclusion among people is probably at issue. Did you have any views on how we could handle that one?

MR ROPE: Nothing specific. I just think it's a matter of educating people and helping them to understand that they do have different options and what those options are and why they might choose to go one route rather than another.

MRS OWENS: Do you do that?

MR ROPE: We're starting to try to do it, but essentially at this stage we're only doing it on a case-by-case basis as people contact us for advice. We don't encourage them to go one route, rather than another. We simply outline for them what their options might be. Even if we put a lot of energy into it, the reality is that we would only reach a very small percentage of deaf and hearing impaired people throughout Australia.

MRS OWENS: Then because you're a national body, you'd have to have an understanding of what each of the regimes can do and what the advantages and disadvantages are of that particular regime versus the Commonwealth.

MR ROPE: Yes.

MRS OWENS: So it's quite a complicated task for you to do it.

MR ROPE: Indeed, yes. I confess that I'm probably better informed about it now, having read HREOC's submission to this review, than I was when we wrote our own submissions.

MRS OWENS: But we're not doing a review of all the state schemes, but we are looking at the interface between the operation of the DDA and the individual anti-discrimination acts. We're very interested in why people choose one system over the other.

MR ROPE: My suspicion is that they make the choice simply because they don't know that there is a choice.

MRS OWENS: Okay.

MR ROPE: They only know about the state discrimination body, so they use it.

MRS OWENS: Yes.

MS McKENZIE: Some have said that. People have already addressed this in a number of submissions. Some have said that they didn't know there was a difference, but others - and quite a number of others - have said that one of the reasons they go to their local anti-discrimination body is because it's local; because it's an office down the street that they can access.

MR ROPE: Sure.

MS McKENZIE: The people in Darwin said that they can even meet the relevant officers in the supermarket and stop them in the queue, whereas they feel that the Human Rights Commission being in Sydney is much more remote.

MR ROPE: Yes. I would agree with that. I think that's totally understandable in the Northern Territory situation, and I would think there's quite a bit of that through here in the ACT as well. Certainly Rosemary Follett is extremely well known publicly in the ACT because of her past positions, so I think she has a high profile and, as a result, her organisation has a better profile perhaps here than HREOC does amongst the ordinary people, as distinct from those of us who deal with HREOC all the time.

MRS OWENS: We're seeing Rosemary Follett tomorrow afternoon. I don't want to hold you up for that plane.

MR ROPE: That's okay.

MS McKENZIE: They're all my questions.

MRS OWENS: I've covered everything, too. As I said before, I thought your submission covered it all very well.

MS McKENZIE: It was clear and a really excellent submission.

MRS OWENS: Is there anything else that you would like to raise with us, Brian?

MR ROPE: No, I don't think so. I don't think there's anything new that isn't already in the submission.

MRS OWENS: Thank you very much. We will now have a short break and resume at 11 o'clock.

MRS OWENS: The next participant this morning is the Australian Association of Christian Schools. Thank you for coming. Would you like to give your name and position with the association for the transcript.

MR CRIMMINS: I am Peter Crimmins and I am the executive officer.

MRS OWENS: Thank you for the submission. I understand you want to make a few brief comments and then we will have some discussion.

MR CRIMMINS: Thank you, Helen and Cate. Firstly, thanks for the opportunity to submit to the Productivity Commission on this issue, particularly following the inquiry by the Senate. The two are not necessarily linked, because one looked at another issue, but there is a relationship that is very important to us in the sector.

There are 250 of our schools and they are part of the group of schools that Bill Daniels and his group represent right across Australia. We are a section of that constituency. There are 72,000 students in our schools and in 2001 in excess of 1200 of them were in receipt of Commonwealth funding and defined as students with disabilities; nearly 2 per cent of the student population. We understand that there are about 8 per cent of the age cohort five to 17 that are defined by ACROD as students with disabilities. We are only educating 2 per cent of that cohort in our schools.

We would like to think that the Disability Discrimination Act in its intention meant that parents of students in independent schools in general, and our schools specifically, could choose our schools as a place in which their children could be adequately and appropriately educated. That would mean a significant increase. Somewhere up to 5000 students would need to be educated for us to have the representation that is in the age cohort itself.

We view the legislation positively because we think it has had significant benefits, not only to the students themselves but also to the other members of the school community; their fellow students; parents of the students with disabilities and also other parents in the school and staff. It has, however, brought with it complications because there are significant professional development implications for staff, be they teaching or non-teaching staff, and there are significant social implications for the students and their parents, particularly the students who do not have the disabilities and the parents of the students who do not have disabilities.

We anticipate that the standards that are going to be attached to the legislation and will have the force of law are a necessary development, but we are concerned that the implications of those standards might further inhibit our ability to meet the choice requirements of parents who want students educated in our schools.

We also feel that HREOC from our point of view - and that is the body with which we deal nationally - has been put in a position where it is required to monitor, in a sense police, the legislation; but one aspect of HREOC's responsibility is to ensure that parents are provided with the opportunity to educate their children in a whole range of institutions which I noticed you mentioned in your issues paper and that no additional charges should be made to parents in order for that education to be obtained. Unless parents were to collectively, by mutuality, put in extra resources often our enrolling authorities are required in conscience to say to parents, "These are the resources we can apply to your children and if you choose to go to another school we understand the basis of your choice."

We are concerned that there are, from our point of view, discriminatory implications involved in the funding arrangements as they apply to the working out of the legislation and we do not think that can be maintained if the standards are going to equally apply across all sectors of education.

I am surprised to find that in the submissions you have received so far, and in the jurisdictions you have been into, there are no submissions from government education authorities while, on the other hand, there are five submissions from non-government education authorities. I cannot understand why they would not be concerned, as we are, about the level of funding available to students with disabilities generally. NCISA made the point in their submission that they were equally concerned about the quantum of money that was available to support the education of students with disabilities so that in the education sector the act could be adequately realised in both its spirit and intent.

MRS OWENS: Thank you. Can we just go back to the issue of choice for a minute if you would like to expand on that. Why is it so important that children and their parents be able to choose a Christian school over a government school?

MR CRIMMINS: Unless we are discriminatory in the way in which we approach the issue of choice we must use the same argument for students without disabilities as we use for students with disabilities, so that if we are saying that we want parents to be able to choose a Christian education for their children, then we say that regardless of whether the child has a disability or doesn't have a disability. If we were to say, "Well, you can exercise that choice and we will support your exercising of that choice, as long as your child doesn't have a disability," that in itself would be discriminatory from our point of view.

MS McKENZIE: And presumably parents choose according to whether they want their child educated at a government or at a Christian school, according to their religious values and the values that they want to be taught to their children. Is it fair to say that is what really governs that - - -

MR CRIMMINS: I think there is a mix of issues as to why they might choose a government or non-government school. In the case of the particular schools I am here representing, their beliefs would have a significant role in that choice.

MS McKENZIE: You have talked about the funding difficulties which make it difficult for you to fund a child with a disability appropriately and you tell the parents at the time of enrolment, in effect, that this is what they will get if they enrol their child at your school. Are you concerned that they may well be discrimination in itself?

MR CRIMMINS: Yes, we are. We are concerned and our principals. As Bill pointed out, our schools are independent. We are not systemic. Therefore we are not able to direct the students to another school and say, "While we can't provide these resources here, we have a school there which is geographically accessible to you that has the same philosophy and ethos as our school." So our principals we feel have an obligation to say to parents, "If we proceed with the enrolment of your daughter or your son, these are the resource implications of that."

We feel they are obliged, in conscience, to make parents aware of that. We have had no adverse reaction to that to date. We have had certainly pained reaction to it, but not adverse reaction to it. I have cited an instance in my submission where the parent is very much at pain about the issue.

MRS OWENS: Have there been any cases that you know of where the school has just basically said to the parents, "We just can't take that child. We just don't have the resources. We would not be able to do what is needed for that child. We wouldn't be able to provide adequate support"?

MR CRIMMINS: Yes, Helen. In Victoria a few years ago one of our schools enrolled a physically disabled child whose only method of communication was by blinking. That child had siblings in the Christian school but was educated in the government primary school prior to that where there were the resources that were appropriate to support that child. When they came to our school the mother, in order to secure the proper education for her daughter, undertook working as a waitress in a restaurant in inner-city Melbourne and all the money she earned went into providing a teacher's aide for her daughter.

The mother had a breakdown at the end of the school year. That is understandable, because she dropped her daughter off in the morning, then she worked herself frantic during the day and then picked her daughter up and went back. By the way, the father was equally supportive of what was being done as well. Then the mother understandably wanted to be able to keep the child in the school, but the school had to say, "Look, in your best interests and in the best interests of your daughter, we have not got the resources. We have spoken to the local government school and they have," and that child went to the local government school where over $20,000 was applied, quite legitimately, to the educational needs of that girl over and above the normal costs associated with education. We have no quibble with that. We just feel that those resources should be available to the non-government school over and above the base funding.

MRS OWENS: That is an interesting example.

MS McKENZIE: There are some cases which deal with disabilities which affect behaviour and whether or not that behaviour should be picked up in the provisions of the Disability Discrimination Act, particularly in the definition of disability. Do you have any views about that?

MR CRIMMINS: Yes, we do. There are a variety of definitions. I think that's been referred to in the NCISA's submission and spoken about as well, that apply unequally across the country. For example, you can get funding from Commonwealth sources through an AIS - association of independent schools - in a particular state or territory for a particular, say, psychological or behavioural disability, but you cannot get it in another jurisdiction because the definition doesn't apply. There doesn't seem to be adequate coverage for that in the act, as it now stands, so that unless the Commonwealth and, in turn, the states make it possible for that child with that particular behavioural disorder to attract funding, you will get minimal support for that child.

We've had a school in New South Wales where they've had to set up - because of behavioural issues - a separate annex to the school so that students with a variety of behavioural issues, associated with their education, can be taught in a way that's more appropriate to their needs. But in order to secure appropriate funding for that, the resources are just not available through the channels that exist, not because the AIS in New South Wales wouldn't make them available, they're just not there. There aren't even enough funds to meet the existing needs.

MS McKENZIE: And that's irrespective of whether the behaviour stems from a disability or not.

MR CRIMMINS: Precisely.

MS McKENZIE: Right. Maybe I'm extrapolating too far from what you said, but perhaps the issue should be looked at as a question of how to provide education which will benefit students with these behavioural difficulties, irrespective of whether they flow from a disability.

MR CRIMMINS: That's right, and not to say these behavioural issues are always related to a disability as currently defined.

MS McKENZIE: Yes.

MRS OWENS: I was going to ask you about standards, and you were here when we were talking earlier about the education standards and you did raise the issue in your opening comments, but what implications will those standards really have for your own schools? Is this going to cause major problems?

MR CRIMMINS: You probably know that it will depend on HREOC. My concerns are that there have been areas where HREOC has worked purely within what might be seen to be the arms of the legislation and not taken account of what I consider to be the discrimination faced by the school in terms of the resources available to it. For example, what's going to be unjustifiable hardship for the school when these standards - I have no problem with the standards, I have a problem with compliance. I also know that there is a vexed issue about you saying - and you're quite right - that choice can't be unlimited. You can't have everyone making this choice virtually in every school around the country. There has to be some sort of rational approach to resource provision.

However, at the moment, the approach to resource provision for students with disabilities in the non-government sector is rarely up to 25 per cent of the same resource provision for the same students in the government sector. I'm not talking about their base level education. I'm talking about the additional resources. Therefore our concern would be: why should Joan in a government primary school in year 6 in 2003, attract quite legitimately $20,000 - and I note that that is in the National Catholic Education Commission's submission as the benchmark figure they use - and I think the work that Robyn has done in New South Wales and what's being done in WA would support - that's a conservative figure, on average - the additional resources needed. When that child comes to a non-government school and it wouldn't matter whether it was a Catholic school, whether it was an independent schools or whether it was a Christian school, it would be lucky for that same child in year 7 to attract $5000. How do we comply?

MRS OWENS: We always have resource constraints right across the economy.

MR CRIMMINS: Of course we do.

MRS OWENS: We face resource constraints, so there are limited dollars, but what you're saying is that those limited dollars are not being allocated in a fair way.

MR CRIMMINS: I don't think that there should be a limitation on the dollars that is constrained by choice. I think the resolution of the issue is that choice is not the resolution.

MRS OWENS: So is the resolution of the issue a voucher, that every child is entitled to a certain amount of money to spend in whichever system they choose to go to?

MR CRIMMINS: We're not talking about general recurrent funding now, we're talking about students with disabilities, I presume.

MRS OWENS: Yes.

MR CRIMMINS: Yes, I would say that would be a much more just and appropriate resolution of the issue and then parents can exercise the choice wherever they wish to.

MS McKENZIE: What's more, it would be easier, wouldn't it, if a school were not satisfactory in one way or another - it would be much easier then if the voucher just could be moved from one part of the education system to another.

MR CRIMMINS: That's right.

MS McKENZIE: For the parents to be able to move the child to find a school that better suited the child's needs.

MR CRIMMINS: Yes.

MRS OWENS: It raises issues. Vouchers work quite well, if you're talking about recurrent funding, and paying for supports for the individual child - teaching supports and so on. You've got an issue with capital funding to think through, but - - -

MR CRIMMINS: Helen, sorry for interrupting you, schools are more compliant about capital funding in the sense that once you incur the cost, it's usually a one-off cost and then it's a maintenance cost after that. Those costs can be significant. I know here at Turner Primary School, a government school, putting in an escalator - which has a special education unit in it - was a major cost item in capital terms. That's rare. Most of the capital expenditure - and there is government support for that - can be met by non-government school authorities. Not always.

MS McKENZIE: It's the recurrent.

MR CRIMMINS: It's the recurrent costs. You've got to maintain the education of that child from K through to year 12. If the choice of the parent is in the non-government sector, the provision for that child should be a quality education equal to the student without disabilities, from K to year 12.

MRS OWENS: I think there’s something fundamentally wrong in the system when you have a parent having to go to work as a waitress to pay for support for the child at the school of choice. There is something I think fundamentally wrong.

MS McKENZIE: And to follow it through, then for the child’s education to be made more difficult in the sense that the child would then have to move schools when that simply wasn’t an option ultimately.

MR CRIMMINS: That’s correct, and where that mother now feels a sense of guilt about the fact that she wasn’t able to provide the support so that her daughter could get the education that her brother was getting in that school.

MRS OWENS: It doesn’t solve the problem of inadequate funding. If you distributed the small pot more fairly you still might not have adequate funds within government or non-government schools, so it raises the bigger question of how much should be going into supporting these children once you introduce standards which are going to mean that the requirements are going to be stricter and schools are going to be required to do more, I presume, than they’re doing now. So it raises a whole other set of issues. We’re not doing an inquiry into the overall funding.

MR CRIMMINS: I understand that.

MRS OWENS: But, as I said to our previous participants, we can raise these other issues and say, "By the way, we’re reviewing the Disability Discrimination Act, but by the way, for this act to work appropriately there are a number of other issues that you need to be considering, and here they are." I think this is one of those issues.

MR CRIMMINS: I haven't seen, in any of the submissions - neither the presentation this morning from NCISA, nor in the submission from the National Catholic Education Commission, or the submissions from the AISs in South Australia and in Victoria, any quarrel with the legislation or any quarrel with the mainstream education of students with disabilities in the non-government sector in general, or the independent sector in particular. Our concern is to make sure that we provide them with a quality education comparable to their peers in that school.

MRS OWENS: Yes.

MR CRIMMINS: That does have resource implications and it's going to have compliance implications. That's part of the DDA which the standards will be attached to. My understanding with the standards at the moment is that it's now closer to acceptance through MCEETYA, the ministerial council that meets in July, than it has been during the gestation period of the last seven years. As soon as that's accepted by them, and the Commonwealth gets the support of the education ministers in the states and territories - mind you, MCEETYA is a government-only education body - then there are serious implications for the whole non-government sector. Those implications are resource implications and compliance with the act. I want our schools to be able to say yes to those children, except where there's an obvious reason why they might say to a particular child, "Look, the resources that are available at the local government school are so good, that we really recommend you - we're happy to take you but we want you to consider this alternative." People do that, particularly in country towns - they do that.

MRS OWENS: I think the other issue you raised - while we're still talking about funding - is the issue of Commonwealth versus state responsibility. We've already heard that different states are funding at different levels. I was just wondering - you say that funding should be a shared responsibility between the Commonwealth and the states, but of course when you have shared responsibility between different levels of government, there's always potential for cost shifting or one level saying, "No, it's their responsibility," and vice versa. Why not one level of government taking responsibility?

MR CRIMMINS: Because, according to the Constitution, education is primarily a state responsibility. What is happening - and I think this is a serious legal issue apropos the act - is when students move from the government school sector to the non-government sector, the states by implication cost shift the public responsibility for those students to the Commonwealth; also, by implication, a significant cost shifting to the parents. Because of the DDA in its current form it has shifted to the parents in the non-government school on a mutuality basis. You can't increase the fees for the individual parent, so you increase the fees for all the parents in the school community.

We have a school in Sydney that has over 40 students with disabilities in the school. The school has negotiated with the whole parent community increasing the fees purely to ensure that that school can adequately educate the students with disabilities that are attending it.

MRS OWENS: And the other parents were agreeable.

MR CRIMMINS: They agreed to that. Now, that is our wealthiest school in AACS. That's the school with the highest socioeconomic rating in the country.

MS McKENZIE: Is it also the school with the greatest number of students with disabilities?

MRS OWENS: It sounds like a lot, doesn't it?

MR CRIMMINS: No, it's not. That school is in the north-western part of Sydney, but we have another school that Robyn would be familiar with in the south-western part of Sydney which is much lower socioeconomically, that has an equal or greater number of students with disabilities.

MRS OWENS: That means at that school it would be very difficult for some of the parents to be paying higher fees.

MR CRIMMINS: They do. It means that staff and other resources are reduced for everyone. You understand what I mean: that the level of educational provision then has to be ratcheted down across the board.

MS McKENZIE: Including for the - - -

MR CRIMMINS: Mainstream students. All mainstream students, including the students with disabilities.

MS McKENZIE: Get a lower level so that all can be catered for.

MR CRIMMINS: That's right. It has effects on class sizes, it has effects on the range of options that are in the school, et cetera, in terms of subject choices.

MRS OWENS: I think we have covered all our issues, or at least what I wanted to raise, and I think what Cate wanted to raise.

MS McKENZIE: It was a very thoughtful submission and we are very happy to have received it. Do you want to make any comments before we finish about the earlier submission that we heard today in the earlier presentation from the National Council of Independent Schools Association?

MR CRIMMINS: No, except that I wish it was mine. It was very good.

MS McKENZIE: Well, they're complementary and I think quite consistent. What we're happy about is that people raise the issues.

MR CRIMMINS: I'd like to put a qualifier in, and it's after reading the NCISA submission that I'd like to say this. I have quoted in my submission the resources made available by the Commonwealth, in effect, for students with disabilities. There's a little bit of camouflage in that, because it says in the submission I've got -

it's legitimate to say what I've said and to cite those figures - that there's nearly 34 million available there in 2001, but the literacy and numeracy program is not exclusively for students with disabilities. Even if 8 per cent of that program went to those students, that would be larger than the proportion of students with disabilities that are in the independent sector. So there's nothing like $34 million available from Commonwealth sources to support the additional needs of students with disabilities.

MS McKENZIE: So the 34 million includes the whole of the funding for the literacy and numeracy program. Is that right?

MR CRIMMINS: Plus all those others that are - - -

MS McKENZIE: Plus all the other additional funding.

MR CRIMMINS: - - - specifically for students with disabilities.

MRS OWENS: Have you got any understanding of what the relevant level of funding would be, once you net that out?

MR CRIMMINS: NCISA would have a much better grip on that than I would. That's hard, because it depends on state definitions - as I think Robyn pointed out when she was speaking to her spreadsheets - as to what they will say, for example, is hearing impairment of a certain level in New South Wales. It may be entirely different in Queensland, so in Queensland the AIS may be able to provide the support that the school needs. In New South Wales they can't provide that level of support because the definition doesn't attract that level of support.

MRS OWENS: And they don't get the funding.

MR CRIMMINS: Or the funds aren't even there.

MRS OWENS: I think that's one of the advantages that we're hearing about the Disability Discrimination Act: that it has very very broad definition so it tends to sweep almost everything into the definition. People are saying that is a good thing.

MR CRIMMINS: It is a good thing.

MRS OWENS: But then you get these disparities, don't you, between the coverage of the act and then the coverage of what's happening in the states.

MR CRIMMINS: And its application, yes.

MRS OWENS: Thank you very much for that. We will just break for a minute and then we'll talk to our next participant.

MRS OWENS: We will now resume. The next participants this morning are Mr Trevor Oddy and Mrs Maree Oddy. Would you like to both give your names and the capacity in which you're appearing, for the transcript.

MR ODDY: My name is Trevor Oddy and I'm appearing just for myself.

MRS OWENS: Thank you.

MRS ODDY: I am Maree Oddy. I'm Trevor's spouse and also his virtually full-time carer now. I also have a lot of interest in this. I have worked as a registered nurse and in the disability sector. Currently I also have a part-time position doing total and permanently incapacity insurance claims, so I'm also seeing the other side.

MRS OWENS: You'd have some very interesting things to say to us about those issues.

MRS ODDY: Yes.

MRS OWENS: Welcome, both of you, to the hearings. I'd like to thank you very much for your submission because I know that it takes quite a lot of effort to sit down and write a submission for these sorts of occasions. We both read it very carefully and I think it's got some very valuable information in it about your experiences. I think we both appreciate getting that, because I know it must be quite painful having to sit down and think it through again and write it down again, and I'm sure that it's been something you in some ways would prefer to forget, but it bounces back. So we're grateful for that.

MRS ODDY: I'd just like to comment that the resources it takes to - once you become a person with a disability, or a carer, or any of these things, often you need resources. Trevor and I are both tertiary educated and we have the assets to do it, but it's eating into our assets. For instance, telephone calls: I found a submission yesterday that was of interest, so the other person who put that submission in, we've had several calls because they're very keen. I don't think this is very well noted, the cost to individuals who really want to either address their own issues or address them on behalf of others; that you're working in a sector where the community - there's funding there, but there's no funding for individuals who have very valuable information, and it's really good to be able to come here today.

MRS OWENS: We've tried to make it as simple as possible. Some people have not been able to prepare a written submission so we have had them ring in to us. Again, that does cost money, but we've just tried to make it as easy as possible. Next week I'm going to go out to country Victoria and have a number of forums; go to the people with disabilities rather than ask them to come into this more formal type of setting in a city. We're trying our best to find ways around those problems, but you can never totally solve them.

MS McKENZIE: The other thing I should say is that if someone didn't feel able to come in to one of these hearings, or maybe to a forum or whatever, they could make a submission by phone. That's not a problem. Even if we were having a hearing, as long as they tell the staff in advance we can organise a phone link so that they could do their submission by phone to the hearing.

MRS OWENS: Although there's still a phone bill at the end of it.

MRS ODDY: They can be reverse charges.

MRS OWENS: We can ring them, yes.

MS McKENZIE: All you'd have to do is give us a phone number and then we could arrange to ring at a particular time, so it means the charges wouldn't be the person's.

MRS OWENS: So if we need to talk to you again later in the process, we might be able to arrange something like that. Anything to make it easier; just so long as we get the input. The other point I wanted to make was that we at the Productivity Commission - it's really a research organisation, so we're not dealing with individual complaints. We just want to make that really clear. As I said to you before we started, it would be very useful if you can address your issues to the policy questions rather than talk about the individuals that are not here to defend themselves.

MS McKENZIE: And how the process in the future might be improved so that other people don't have to have the same problems that you did. That's the really important part for us.

MRS OWENS: So thank you. I understand you do have a few opening comments you would like to make, Trevor. I don't know; Maree might have some as well. So why don't we start.

MR ODDY: Yes. You've got the detailed submission we've put in, but the aim of this today is basically to concentrate on the employment part of the Disability Discrimination Act and hopefully help you with making sure these sorts of things don't happen to other people. I know you can't fix my situation up in any way, but if we can highlight what happened and how we may be able to improve it for other people.

As we have discussed earlier, I've got multiple sclerosis. I've had it for

22 years. I've been diagnosed with it for 12 years, and for that whole 12 years I worked with the National Capital Authority with the exact same supervisors, so they knew exactly my condition, backwards basically. So I've been in the Commonwealth public service for 32 years. I've got two or three different qualifications. I've got a university degree and other studies that I've done, so I've read up and I've got a bit of an understanding of the Disability Discrimination Act and those sorts of things.

MRS OWENS: Did your colleagues understand what multiple sclerosis involved, what it meant?

MR ODDY: If you ask them, they did. They got paperwork and looked at it and that sort of thing, but until you've spent time with it, I don't think you realise that everybody with it is different. We ourselves are learning more and more all the time.

MS McKENZIE: Would I be right in saying that really what you're saying is that there was a lack of understanding and what you feel was a lack of accommodation for the difficulties that you were having?

MR ODDY: Yes, that's really the main point of it all. You've got this condition, but when your immediate supervisor decides to change his tack and get very critical of you because in his opinion - he made it very clear several times that I was not achieving, I was not doing what he wanted me to do in a way. It was really unbelievable. You're working your head off to do everything you can, and he says, "Let's forget the MS. You're just not doing the work you're supposed to be doing." It got to that level that he actually stated that in writing at one of my last appraisals.

MRS ODDY: Actually, it wasn't an appraisal. It was just a meeting he had.

MR ODDY: He said, "We'll forget the MS. You just haven't achieved," and with a workload as big as mine was - I was running 14 jobs at a time, and with a short-term memory loss problem - he couldn't understand why I was writing everything down. So when it came to this report, I've got everything in writing if you want to see it and read it. That's why putting the thing together for me wasn't all that difficult. There was everything at home. We were about to throw the lot out, and we've had enough in that sense, but - - -

MS McKENZIE: So how do you think future people - never mind about this single employer, but just any employer with a person who had this difficulty - - -

MR ODDY: It's exactly correct, what you were saying. They've got to learn what it's about, and understand. There's one short paragraph that comes in the MS book. I don't know whether we've actually got it, but it says in detail that your friends, your family, your relatives and the people you work with may think you're being a bit on the lazy side. What they don't realise is that you're actually busting your gut. You're giving it a hundred per cent, your best effort. They just don't realise that your body doesn't have the energy and strength that it used to have.

I didn't realise - Maree had to say it to me - that for the last three to four years of work - three years basically - I was going to work every day, giving it my best, coming home. I was falling asleep and she'd have to wake me up to have my evening meal and then I'd fall asleep again. I didn't do anything else but recover, ready to get back to work the next day. Now that I'm off work I'm realising there are things at home that didn't get done, that need repair work and - - -

MS McKENZIE: But the employer really has a duty of care to their employees and to - what they say in the act is "make reasonable adjustment". I don't know what you would have expected as reasonable adjustment, but it may have been taking you away from your immediate supervisor, who was not sympathetic, and putting you elsewhere in the organisation; taking some of the workload off so that you weren't having to do - - -

MR ODDY: That actually happened, but without moving me and taking me away from my job. We identified that there was this major problem and there was conflict. The union became involved with me. We had meetings left, right and centre. The Commonwealth Rehabilitation Service came in on it as well and they made a written recommendation that the situation with my immediate supervisor needed to be reassessed, and it was.

MS McKENZIE: But it took a long time. Was that the problem?

MR ODDY: Just a little while, yes.

MS McKENZIE: It took years.

MR ODDY: It was perfected in the end because my immediate supervisor went away to England. He actually ended up having four months off work - three months on leave and one month on sick leave, rec leave and sick leave - and - - -

MRS OWENS: You said that was a really good four months.

MR ODDY: Yes - - -

MRS ODDY: Can I just come in on that.

MR ODDY: - - - it ended up, because the number 2 person became leader of the section.

MRS ODDY: As Trevor's spouse - and I know a lot of the people he's worked with; we've been married for over 30 years and we've known some of those people he worked with nearly that length of time - it was amazing with the whole section, just the attitude, when Trevor's immediate supervisor was away and the other person came in. Ultimately, it was for Trevor to work with him - Trevor was a professional officer. He didn't need to work to someone; he just needed that professional support. I couldn't get over the difference in Trevor. He was less physically stressed and emotionally stressed, but also the other staff; they all said, "Oh, this is a wonderful, environment." As soon as that other person came back, the environment went back to the old game.

But the point was, because Trevor had a disability, he was the loser in it because he couldn't fight the other elements in it and also - and this needs to be brought into this - he had someone who was junior to him who came in by favour, into his authority there. He was actually a son of one of the embassy staff who was able to come in and this, as I say, shows what happens. People with disabilities often can't do this. He came in for work experience because he didn't need an income or anything. He used his connections to get in to work as a public servant under work experience provisions. He then was able to sit there for 12 months until a position came up. Because he was actually in the chair, he got the position.

I think this shows the difference between someone with a disability who may come along and say, "I've got a disability. Could I have 12 months' work experience?" A lot of organisations won't do that. He got in the door that way, and then he started - he had less experience than Trevor, but once he got in there, because Trevor had MS, he was using Trevor's disability to undermine, to move up. This was also compounded. His wife, who had never worked in Australia, wanted a job there, too. She came in as well, and she was actually working there. What was going on, you had this interplay between two people, but unfortunately Trevor had a disability so he was unable to deal with a lot of this going on as well.

MRS OWENS: You need a lot of energy.

MRS ODDY: I don't want to say any more about that.

MS McKENZIE: Can I just broaden it out for a minute, because I want to look at what suggestions we can make for better process perhaps in the future. the first thing really is the importance of a supportive environment. That's the first thing, isn't it, that you're telling me, and without that - - -

MR ODDY: That's what I got with this other gentleman. Following the Commonwealth Rehabilitation Service involvement, they actually agreed to this other person becoming my support officer, and the whole arrangement changed dramatically. I had more meetings with him. Instead of dealing with 14 jobs at a time, I was only dealing with five or six at a time. That instantly changed everything. The simple things like the letters I was writing, very few got amended by him, yet the other officer, he amended like 10 out of 12, and this was really pathetic. It got right out of hand.

MS McKENZIE: So the first thing is to be really responsive, to understand and try to be responsive.

MR ODDY: Yes, give the person the time they need, the discussion they need - that sort of thing. How that all failed for me was that the National Capital Authority, out of their own thought pattern, decided to totally change the structure of the organisation - just like bang, the decision was made. The chief executive came in and said she was going to change the culture of the place. She used that word - she was going to change the culture - and so we all - - -

MRS OWENS: Sounds like the culture could have been improved.

MR ODDY: Yes, but it went the wrong way.

MS McKENZIE: Really one of the things you might be saying is that restructuring without attention - - -

MR ODDY: That's the exact word.

MS McKENZIE: - - - to your particular problems makes it more difficult for you.

MR ODDY: As well as the restructuring, though, they gave six people involuntary redundancies, including my support officer who was just helping me. So he went; he left that day. He had no idea this was going to happen to him, and they at no time thought about the impact that that actually could have on my workload and my health, and it was nearly overnight, because they brought in two new officers that had to be trained, supervised and helped to get going. They didn't know what happened there. We just lost an extremely experienced guy who was my support officer as well as an experienced bloke just overnight. He went into a state of shock himself nearly.

MS McKENZIE: So again, to just make it general for the future, it's not just looking at what accommodations are necessary for someone who has come in, for example, with MS; it's also keeping looking at that when there's going to be a restructure happening.

MR ODDY: Honestly, big time.

MRS ODDY: Could I just make a comment. I know from my work, I've seen that people with disabilities need that continuum of support in all organisations, and if they do not have someone in the organisation who is their advocate or resource person, this is where things go wrong. You can have changes around them, but if there's not that pivotal person there to support them, this is where it falls down for people with disabilities in the workforce.

MS McKENZIE: They have to be thought about when these changes are made.

MRS ODDY: Of course,

MR ODDY: You see, I tried to help do the right thing for other people in the authority, as well as myself, by becoming the OH and S officer, so I became involved in that.

MS McKENZIE: The rep.

MR ODDY: The rep in our area, and it's quite funny because the majority of the committee was made up of people in the personnel area and management area, trying to get themselves a promotion - inexperienced, unqualified. I did a five-day course in it; taught them how to use a wheelchair. Some of them had never been in a wheelchair. Until you've been in one, you don't realise how difficult life can be.

MS McKENZIE: I agree. I'm not a good driver at the best of times, and I'm much worse when I try doing that.

MR ODDY: It's really quite funny, these little things. But as soon as you get into that environment in there - the OH and S thing - you start raising issues and they don't comply with them, and they come up with excuses why not to comply with them. Really, they start looking at you, and you just - as well as your disability, that becomes another issue as to why they don't particularly want you around. My immediate supervisor raised the issue. He thought I was spending too much time on OH and S issues. I was attending one meeting a month and he actually raised that with the chief executive officer as to why I'm doing it, why should I keep doing it, and she said to him, "Come on, that's an important issue which will be recorded against" - she really slashed him for that a bit.

MRS OWENS: Good, because if you're a nominated person to get involved in that work, your supervisor can't complain.

MR ODDY: A simple unbelievable thing. They didn't even have a sick room, and

I demanded there be a sick room, and the person who went out and organised the sick room came back with an on-the-floor flat bed.

MRS OWENS: That's useful.

MR ODDY: Yes. Just imagine anybody trying to get down onto it, then trying to get off it and someone trying to attend to you when you're down there. You'd land up with more Comcare claims - people with back injuries.

MRS OWENS: It sounds like you've been a bit of a trailblazer there.

MR ODDY: I tried.

MRS OWENS: Maybe things have improved for the staff that have followed you.

MR ODDY: Yes. It wasn't just for me.

MS McKENZIE: Hopefully you've raised some of those issues in your submission which you would have made to this commission's inquiry.

MR ODDY: I think that one is in there.

MRS ODDY: Some of it, yes.

MRS OWENS: Out of the employment issues, I think there's a couple of lessons I've picked up from that. One is that the employer needs to make reasonable accommodation. They need to make it promptly and be responsive.

MS McKENZIE: And including during a restructure.

MRS OWENS: Including during a restructure. The other is to make sure that you have continuum support, ideally from somebody who's a sympathetic and - - -

MR ODDY: Yes. The Commonwealth Rehabilitation Service guy was very helpful to me. He put it in writing and the bosses realised they had to do something, because they ignored what was given to them in writing from my neurological specialised - totally ignored it. They said, "You shouldn't give him whole new programs and expect him to do new studies, and all these sorts of things. You're just pushing the mental capacity of that person." They were ignoring those sorts of things.

MS McKENZIE: That's important for your individual case.

MR ODDY: Yes.

MS McKENZIE: But really the lesson that we take for the general for the future is a really general understanding of accommodation and also general understanding of what the disability is about. Who do you think should do that education?

MRS ODDY: I'd like to comment on that. First of all, I believe anyone in management - even in a personnel area - as a prerequisite should go and have attended a basic OH and S. They should have an OH and S qualification, some sort of disability - I've challenged over the years people who have taken me on regarding - because *I've had injuries myself and all this with Trevor and I say to them, "Well, have you ever read the Disability Discrimination Act? Do you know what it looks like?" and most of them are making big decisions. Not only that act, but they don't know the proper accommodation guidelines and all this sort of thing.

MS McKENZIE: So there should be some disability awareness component as well?

MRS ODDY: I believe that this is the only way to start - we have to start in a sensible fashion - to look at people who are employed, even if we start in the public sector and it will flow on. But the private sector, anyone who calls themselves a manager should have to pass a competency thing. When people go to TAFE - our son is an electrician; he has had to do basic competencies. He has to have a first aid certificate, and even this year he had to go and renew his OH and S. He had to spend a whole day, unpaid, to go and do an OH and S course. Now, if a basic person who is just getting his electrical licence has to do that, why do we have CEOs and personnel managers and directors, or just supervisors, who have no idea? The education needs to come from a variety of people. It needs to come from not only - often they bring in health professionals, but what you need are health professions or other like ergonomic professionals - that sort of thing.

MS McKENZIE: What about some people with the disabilities themselves?

MRS ODDY: Yes, that's what I'm saying. But what we need to look at is, particularly for people with disabilities if they're going to survive in the workforce, education, as you say, from people who have actually experienced it. This is why if we use people who do have disabilities and have an open mind on disabilities and train them to go and undertake this work, there's a twofold thing in that. You're giving them employment, but it's productive employment, and they're also receptive, and they can stay away from the issues of the workplace because what's happening in a lot of organisations - - -

MS McKENZIE: They're independent.

MRS ODDY: I know where Trevor was working, it's the political inferences that are going on with the managers who have other agendas, and they don't have the time or they're being pressured. Some of them may have sympathy for disability, others won't, but it's political, the sidelines. You need someone independent.

MRS OWENS: Very interesting.

MS McKENZIE: Can I ask you some questions about the HREOC process. Again, it's the same sort of thing.

MR ODDY: How much time have you got?

MRS OWENS: As much time as you need.

MS McKENZIE: Really, it's the same sort of thing. What improvements can we suggest that will help people who come in the future?

MR ODDY: In my opinion, HREOC should be closed down. It's a waste of time. It's to the National Capital Authority's advantage in that. It was terrible. They knew, because they had power to have access to the attorney-general's solicitor, he told them straightaway obviously - I've got nothing to prove that he did - that there's nothing HREOC could do to them. It didn't matter what they did. I'll achieve nothing by it, and that's exactly what happened. They didn't even read my second submission to them. They turned up and said, "We'll give you nothing, take you nowhere," and HREOC just said, "Well, we've heard that one. That's it. We'll move to the next one." And then HREOC as well, I could've just about lodged a claim against them because the room that they set this all up in was - - -

MS McKENZIE: This was a conciliation.

MR ODDY: In the conciliation. They hadn't even got that properly organised. There wasn't airconditioning organised in the room, the disabled toilet was in the ladies' toilet not in the men's one, and carparking was wrong, and then the lady who did the conciliation hadn't even read my submission. The whole thing was just a pointless exercise. Then she held a conversation with the NCA and the attorney-general - the Australian Government Solicitor bloke afterwards sort of saying, "Oh, they haven't been to a solicitor. It's okay. They won't do that." It was terrible.

MS McKENZIE: What do you think could be done to make the process better and more efficient? Obviously have better premises.

MR ODDY: Yes, this is Maree’s specialty.

MRS ODDY: Let’s go back to the start. The problem is that we’re educating people that, "The Disability Discrimination Act will help you."

MR ODDY: Will look after you.

MRS ODDY: We won’t go into what else has happened to us in public, apart from the fact that we’ve got a place down the coast and we’re just about to sell it because the local shops there - because Trevor complained about access to the shop, we are being abused every time we go down.

MR ODDY: We can’t go to the shops now.

MRS OWENS: They didn’t like what you said.

MR ODDY: All seven shops have a step into them. I complained about that.

MS McKENZIE: So not one is accessible at the moment?

MR ODDY: Not one.

MRS ODDY: No. So that’s just a sideline.

MRS OWENS: You’re not going to put in a complaint?

MR ODDY: Got an article in the newspaper.

MRS ODDY: This is why - after what has just happened with this - - -

MS McKENZIE: You’re very reluctant.

MRS OWENS: We’re talking about the coast. It is a little side track, but you’re talking about an area where there might be elderly people - - -

MRS ODDY: Yes, there are.

MR ODDY: Bags of them.

MRS OWENS: - - - who would have great trouble accessing those - - -

MR ODDY: Yes.

MS McKENZIE: And mothers with prams.

MRS ODDY: Exactly right.

MR ODDY: Yes, there's more to it than wheelchairs. People with walking-sticks and all these sorts of things, people with eyesight problems that trip over everything - even the pharmacist has got the step into it.

MRS ODDY: As you know, we've got the Disability Discrimination Act, we spend a lot of time making publications. At home - I showed Trevor, except I can't be bothered bringing it by the time we get the wheelchair - I've got a file this long and people will give publications, pamphlets, fancy things saying this, this, this and it's illegal to discriminate. You know, it's against the law to discriminate and that, so we've got all this hype going around. Now, people get a false sense of security with that. Then what happens is people go around and the minute you mention to someone, "This is in breach of the Disability Discrimination Act," you get discriminated against.

Then, what happens - the next process is if you feel strongly about it, as we do, you try and do something about it. The minute you've mentioned to someone, "I'm going to make a complaint," you get their backs up and, as what happened with Trevor at work - once they were aware, and we noticed they put in an action, they submitted an action plan - you know, what is it?

MRS OWENS: A disability action plan.

MRS ODDY: Yes, a voluntary action plan to cover themselves.

MR ODDY: It's in the annual report.

MRS ODDY: Yes.

MRS OWENS: That's nice, this is after you left.

MR ODDY: With a complementary letter from HREOC saying, "You've done a wonderful job, we're really impressed and pleased with what you've achieved."

MRS ODDY: And they didn't bother to - - -

MR ODDY: When there's a complaint against them from me.

MRS ODDY: They didn't bother to mention in their annual report that they had a disability discrimination complaint pending.

MR ODDY: Claim against them.

MRS ODDY: And currently - - -

MR ODDY: What a joke.

MRS ODDY: When we went to the conciliation Lindsay Evans was arguing with us that he didn’t have to declare it. Now, as I said to him, "Don’t forget to put it in your annual report this year, you’ve actually got a complaint; don’t cover it up by saying two years in a row" - while they’ve got all this hassle with Trevor - they’re putting in, "And HREOC have congratulated us" - it’s there; read it if you want to. So the problem is that a lot of agencies are relying on saying, you now, it’s okay. There’s this discrimination act protecting people, but then what happens is because that act is there, people in good faith believe they can use it.

There are instances - I think there are some very positive things about it; I won’t say there’s not. There are some wonderful employers and individual organisations and the community who use the act to do things favourably for people with disabilities. But for the great majority it’s not working and the process - first of all, when you ring up and the thing is to - with the human rights you’ve got to decide, particularly in the ACT or New South Wales, which jurisdiction you’re going to have it. You get fobbed off from one place to the other.

MRS OWENS: How did you decide on going the HREOC route?

MRS ODDY: Because Trevor’s - - -

MR ODDY: Commonwealth employee.

MRS OWENS: You had no choice.

MRS ODDY: We had to go to that one.

MRS OWENS: HREOC.

MRS ODDY: Yes.

MRS OWENS: But did you explore - did you know that up-front, or did you have to explore the options and find that out later?

MRS ODDY: I knew, because of the processes and I know of the local one, too, because I’ve been doing a lot of work with people with disabilities for quite a while.

We realised that we had to go to the federal one for that. But it's going through the process. First of all, you ring up and you tell your story and unless you're very alert to things, like I am, that there are 1800 numbers you could spend a fortune ringing Sydney. A lot of people don't realise there's a 1800 1300 number.

MS McKENZIE: You mean they try to ring Sydney and - - -

MRS ODDY: What happens, particularly I know from - we have this place down the coast. Anything we need to deal with in New South Wales there are very few 1300 or 1800 numbers; everything is STD calls. This is what - people, by the time they tell their story or get through, it's very frustrating and that. Then, what happens, you get an officer at HREOC who listens to it, but "We can't advise." You ask these questions. You can realise I've got a lot of background in this ,but I've got specific questions. Well, what will we do about this? "You'll have to go and seek legal advice."

MR ODDY: That's a cop-out.

MRS ODDY: Seek legal advice.

MR ODDY: That is every time.

MRS ODDY: The first thing they want to know is - - -

MR ODDY: Money, money, money.

MRS ODDY: They want to know what your circumstances are so they know where - we have assets, so "You should go and seek this" - but this go and seek - "We can't advise you." They're basic questions that I believe - - -

MRS OWENS: These are questions about your rights under the act.

MRS ODDY: Yes, and I believe the staff then can answer them, and that's what I think the majority of people around who are wanting to make complaints, want these questions answered by the staff at HREOC. They're not interested in just being sent out a form to fill in. I must comment on this process. The staff of the Productivity Commission have been wonderful with providing information.

MRS OWENS: That's good.

MRS ODDY: It's just such a change in attitude, but at HREOC you get this constant - you get one officer and the person who dealt with Trevor - in Trevor's case was very good - but constantly it was always, "I can't comment on that." As you can see, he's got pretty hot at times and we needed to know what was going on. We were aware that his employer was probably getting favourable assistance elsewhere or with them, too. But the point is then trying to get through this process. You know, we're quite capable of filling in the forms. They do offer other ways of filling them in if you need to, so that was fine but we were able to send that in. Then they wanted extra information. They handed it over to Trevor's employer and we received back the details. They wanted to argue every point, so we had to go through that process. We had to contact the solicitors here. In the ACT we could not find a solicitor who was either - didn't admit that they have - - -

MR ODDY: Government contracts.

MRS ODDY: Can I just talk? Sorry, as I say, it goes over my head. Yes, didn't have a government contract and some of them will say that outright, and some of them namely because I've networked with a lot of people with disabilities, they've actually taken on contracts for Comcare and things like that, so they've got a conflict of interest. We went to the Disability Discrimination Legal Service. That place - if you want to take a walk at lunchtime, go down here to Havelock House - go down there and have a look. Do you live in Canberra?

MRS OWENS: No, we live in Melbourne.

MRS ODDY: Just take a walk down there. It's an old building. It's antiquated. We couldn't even get in. The pavement was broken up. They've fixed the paving since, but there's no - - -

MS McKENZIE: Are there steps?

MRS ODDY: Yes, you can't get in.

MR ODDY: They're dangerous.

MRS ODDY: The last time we got actually locked out and the woman said, "Oh, why don't you go right around the back." But they're underfunded.

MR ODDY: Then, when you get inside, their resources from the (indistinct) disgusting. Tight spaces - - -

MRS ODDY: The Disability Discrimination Legal Service here is actually in a room that is part of the Tenants Association Welfare Rights and Legal Centre. It's really a mess. It's only - the last time we rang they were only working two hours, two days a week and even then they aren't available at that time because they say they haven't got anyone to work there. The people who work there I believe are people who are really only doing legal workshops or whatever. They are very young. Nothing against young people, but as I say, if you're going to deal with disabilities you need to have a little bit of experience, personal experience, and I feel they don't. They just sit there and say, "Yes, yes. Look, I'll go and get a copy of the act. Yes, look, you could do this, this." They can't expand on anything for you.

MS McKENZIE: Are there things like disabled toilets and so on?

MRS ODDY: No, there's nothing. We can't even get Trevor - the room - we've been for two or three appointments there and you have to push to get these appointments, because they keep saying, "We don't have the funding to see you people." I say, "Well, I'm sorry, we want information on the Disability Discrimination Act, so we're coming." The last time we went, actually physically went there, the appointment - the person was sick and they didn't even bother to check the answering machine and ring up, so we went - and it was pouring.

MS McKENZIE: And they weren't there?

MRS ODDY: No.

MR ODDY: We turned up and it rained and the disabled parking space is so far away, we drowned getting back to the car. It was a bit of a bad luck one.

MS McKENZIE: Not a good experience.

MR ODDY: Yes, we've had some good runs.

MRS ODDY: It's just appalling. I feel for people who - we're comfortably off. We're both well educated. We can get around and I've got a background in community and I can deal with it; I'm used to these things. But there are a lot of people out there that don't have the support, and they don't have a loving partner to - - -

MRS OWENS: I was going to say Trevor is very fortunate because he's got you to ring people up and fight a few of the battles.

MRS ODDY: But I get targeted here professionally. I've been targeted, not only for myself but because I've taken on things for Trevor and his disabilities, and for other people in the community. You get targeted and then professionally you can't even go - you turn up at a seminar and it's "Oh, here she is again." But the whole HREOC process is - obviously I really don't think it's working. I think we need to get real.

We need to get people working in there who - as I say, I think we really need to rethink the disability thing and we need to take people with disabilities who also - not just people with disabilities, I'm talking about people with disabilities who are prepared to get the appropriate educational standards to help others. You can't have - just because you've got a disability doesn't mean that you're an expert in disability, and the other way - just because you're a doctor or a dentist doesn't mean you're an expert in disability either, because you've done one unit at uni. This is what - we have to marry those things together.

MS McKENZIE: Do you feel that, as far as the commission is concerned - is there some - apart from the staffing issue which you've already mentioned - other way you think the processes could be improved to help people for the future?

MRS ODDY: I think what we need is some sort of a shopfront for people with disabilities, so that they can go there and - in another words, it's like having a card. If you've got a disability that's recognised you should be able to have a card regardless. As it is we don't - because of Trevor's income and my income we don't have any cards or any health cards or anything like that. A lot of people access services via that. Some services they get are probably good, through that, but there's a large percentage of the community who don't have access to anything, and I firmly believe people with disabilities - that disability is there whether it's a congenital one or acquired later in life, whether it be through their own fault or whether it just be through work-related incidents, or car accidents, or anything. They've got a disability and it doesn't matter what your income is, you should be able to access the same information regardless of who you are and what your income is.

There is too much emphasis now on just putting people through Centrelink and other community agencies. I think that's giving a disparity to people with disabilities. I really think the only way we can do it, as I say, is to have a dedicated area so that people with disabilities can go - like a shopfront, you might say - where everything is there and where they can, for a start, get proper access; just know that when they turn up at the door, like even - this building is a typical example at the front here.

MR ODDY: The front of this one - - -

MRS OWENS: Yes, how did you go? Because we - - -

MR ODDY: The front of this is just like where I work, where I used to work, sorry. Out the front there was the one strip and you put up there - where else were people going to park. Here you get down in the carpark, but where I worked there was a ramp up that no-one could walk in any way, or come out of and there was no lift out of it. You then had to come down steps from that one.

MRS OWENS: You described all that in your submission.

MR ODDY: Unbelievable.

MRS OWENS: Did you find this building easier? We selected it fairly carefully, but - - -

MR ODDY: Awkward in the sense that from (indistinct) you had to come to the front door and come in, to find how you're meant to get in down there, that sort of thing. So then you block the lane.

MRS ODDY: I was telling Trevor I've been here. I was here once before - just quickly about that - to this building. I came here for an interview and not being familiar with - I'm very familiar with Canberra, but this has been built - I haven't been in here. I pulled in straight in there off Northbourne, which is very busy. There was a car parked there, like there was when we got here today, so I couldn't get through. So I went to the front foyer. The person who owned that car had disappeared and I was there 20 minutes trying to get somewhere. This is just an example of the difficulties for people with disabilities trying to get in and out of places - access.

MS McKENZIE: Am I right also that you think that the questions that you are asking of the HREOC staff - there should have been some way that they could have assisted you with answers to those questions?

MRS ODDY: Yes. I get the impression that the staff we dealt with - as I say, the officer who dealt mainly with Trevor's thing, she was very good, very understanding, but I just felt all she was doing was just doing her basic job; she didn't want to extend further. Some of the questions we asked, they were reasonable questions and I believe anyone working in that area should have had the knowledge, and I don't believe there need to be barriers to answering sensible questions. They were not questions that were unreasonable.

MRS OWENS: We'll raise some of these issues that you've raised with us when we talk to HREOC. We're seeing them, I think, in Sydney.

MR ODDY: The big difference was the difference between this lady over the phone and the lady at the conciliation one. She was unreal, in the sense that she was questioning how we got to that point. When HREOC had already made that decision, she says the timings are all wrong, and all this sort of thing. We had gone through and that had all been cleared up, and she's questioning that in front of the National Capital Authority, and looking at them, saying, "How did you get here?" -

questioning what we were doing and telling us that some of the information we wanted to discuss, "That doesn't apply." Hang on, HREOC has had all this information. If it didn't apply, how come we weren't told before?

MRS OWENS: They should have worked that out internally, you're saying.

MR ODDY: Well, it did apply. We had been told it did apply. She hadn't read our submissions, she didn't have a good feel for the whole thing.

MRS OWENS: You reached an agreement at the conciliation?

MRS ODDY: No.

MR ODDY: We were going home. We'd had a gutful - excuse me.

MRS OWENS: So you didn't come to some sort of - - -

MRS ODDY: They had no intention right from the start. They absolutely had no intention of doing anything, and this is what's happened from the day Trevor - - -

MR ODDY: They didn't want the conciliation to occur.

MRS OWENS: When you say "they" who are you referring to?

MR ODDY: National Capital Authority.

MRS ODDY: They made it quite clear they had no intention, and what also compounded the problem was that when we were asked to say what we wanted - Trevor wanted an apology. He wanted all these things sorted out for his workplace to make sure it didn't happen to anyone else. He wanted acknowledgment. He wanted all these things sorted out. We did not ask for compensation. Then we were phoned by the officer at HREOC who said, "Oh, you haven't asked for any compensation."

MR ODDY: We had to put something down.

MRS ODDY: So what we did, we then put in a submission showing what Trevor's income - the real loss to our income. We didn't put a figure of what we wanted in that way. We just said, "This is our loss," which was $800,000 until he's 65. That's just projected, just pointing out the early retirement. We put that. We didn't say we wanted to be compensated for that, but we just pointed out would they consider offering him something. That was just an ambit idea, to put a point on what happens to people when they're forced into early retirement because of this sort of thing.

Then it was turned around, "Oh, these people are only after money."

MR ODDY: We've got to pay tax on it, from our point of view.

MRS ODDY: I know a lot of people start off these claims, putting, "I want this." They don't want an apology.

MRS OWENS: But that wasn't what was motivating you.

MRS ODDY: No, it wasn't, but it was played on.

MS McKENZIE: So perhaps, to look at that for the future, that's another question that we might raise with HREOC, just about the sort of advice that is given, in a way. You've said that there should be better advice, if you like, given.

MRS ODDY: Yes.

MS McKENZIE: I wanted to ask you another question. You said that you had some issues you wanted to raise about both health care and insurance. Insurance is a very interesting area from our point of view. There are some submissions about it which sort of raise it as an issue that ought to be looked at. Do you want to mention those? Would you like to mention those issues?

MRS ODDY: One thing that's come up with insurance issues is that when somebody has a disability or gets injured and puts in a complaint or brings it to the fore for some reason, it becomes public record, so those people then run into the situation where, with insurance, they can no longer get insurance.

MS McKENZIE: You mean life insurance or - - -

MRS ODDY: Life insurance.

MR ODDY: And the work insurance.

MRS ODDY: With the compulsory superannuation now that's being paid into a number of funds, particularly in the private sector, what happens is that a lot of the funds - compulsory - take one unit or charge people $1.50 and they give them this insurance or people take out insurance in case they run out of sick leave. What's happening is, say someone with a disability or whatever goes and makes a claim - even by going to HREOC - you're giving out all your details. They become literally parts of public records. A lot of people have access, which means then people are more or less compelled to make these statements on any claim or an application, just to obtain - - -

MRS OWENS: I think with insurance - I'm not an expert on insurance; you probably know more than I do - if you do have a disability, it's incumbent on you to write that on the form and inform them, because otherwise later they can deny your claim.

MRS ODDY: But what's happened is, it's taken advantage - and what's happening then is as has happened in Trevor's case. He doesn't have any of those insurances, so we don't have to worry, but what happens is, you go and notify the disability and then, like this, someone goes through a process of wanting to make a claim on something and it's knocked back. So what they do is, they bring in all these other things about your private life and everything else, to try and say, "Oh, this is not about their inability to work because of their disability. This is because they're stressed" or "they're having a marriage break-up", and all those things that didn't apply to us - but those things. So then the insurance companies use that to knock back what could be a genuine claim for someone - - -

MRS OWENS: For disability.

MRS ODDY: - - - for disability then. And they do. They quite often get knocked back because of that.

MS McKENZIE: What about the health care issues? You mentioned some health issues. You said that you're a registered nurse and have been involved in that area.

MRS ODDY: Yes. It costs a lot of money for people with disabilities just in the ordinary run of their lives. They have extra medical, extra prescriptions, physio and things like that that they have to pay for, just fees to get around. Trevor currently has two scooters. They're $3000 each. I've got a back injury. One of them we can't get into the car, so we have to have two. It's only because we can afford to have two, but - - -

MRS OWENS: You haven't got one of those lifts that get it into the back?

MR ODDY: We're having to start thinking about things like that.

MRS ODDY: But you have to buy a $60,000 vehicle to take a lift.

MRS OWENS: You've got to have the station wagon to put the lift in the back.

MR ODDY: More than a station wagon. You've got to have a big four-wheel drive. If we get a big four-wheel drive, Maree can't even get up into the seat because of her back injury.

MRS OWENS: My late colleague John Paterson had a scooter. I think it was just a Mitsubishi wagon, with the lift thing to get it in, but it took a long time.

MRS ODDY: Trevor has a wheelchair and a scooter, so we have to have a vehicle, and currently we've got a little station wagon. We fit them both in, but it's a struggle we have to pull them out.

MRS OWENS: So you've got all these extra costs.

MRS ODDY: Yes.

MRS OWENS: And I think you said you're not healthcare card holders.

MR ODDY: We get nothing.

MS McKENZIE: So that's your private cost.

MRS ODDY: We have to pay for everything.

MR ODDY: Everything. Because of my income - - -

MRS OWENS: So the new government policy on bulk-billing is not necessarily going to be of any - - -

MRS ODDY: No. We went to the GP this year, for instance, because of Trevor's MS. He's in the group that really should have a flu vaccination, and I'm having one as well because there's no use me getting sick, but we have to pay for those, whereas someone who is either Aboriginal and aged over 45 or 50 or whatever, or a person who's aged 65 who could still be full-time in the workforce, they can get it free but we can't.

MRS OWENS: And if you work in the Productivity Commission you can, too.

MRS ODDY: Well, probably lots of places, yes.

MR ODDY: Around it goes, and I get nothing, absolutely nothing.

MRS ODDY: For people with disabilities there's a significant cost to them. Even at work they may not be able to have money to go to the luncheons; even just expenses and the difficulties of getting around, as Trevor has found; or things are organised by people in social clubs who are fully fit. It's not that they do it deliberately but it's indirect discrimination. They organise functions, and people with disabilities in the workplace probably don't have, as I say, the income or the time either, the physical time, to attend because of their disabilities.

MS McKENZIE: And sometimes the venues may not be accessible either.

MRS ODDY: This is what's happened.

MR ODDY: There's one in my report there. It was terrible. It was up a set of stairs, and they declared me as the last thing they think of every time.

MRS OWENS: Have you had to use aeroplanes?

MR ODDY: Yes. We've had a good run with that. We actually went and had a holiday in Fiji and had a fantastic time.

MRS ODDY: Well, that wasn't so good. Actually, like Graham Edwards', this wheelchair was only a week old and we went to Queensland.

MR ODDY: And they damaged it. They had to repair my wheelchair.

MRS ODDY: They fixed the wheel. But they threw it off the plane, so Graham had - - -

MR ODDY: Pulled all the wheels apart.

MRS ODDY: I'll tell you what happened. We went to Fiji. That was good, getting there. On our way back we were an hour and a half late getting out of Fiji. Trevor is first on the plane. We were sitting on the plane. You can imagine the fumes in the plane. We were on the plane all that time, and then we were circling over Sydney for an hour and a half and I started getting sick. So then we went to get off. We were last off. Everyone was running late, so everyone just converged. We were right up the front this time, and you can imagine the effect of having all those people pushing past you. I felt sick. I then vomited. I had a splitting headache. Now, guess what? They had five people to get off the plane in wheelchairs and they only had three staff. So I was being sick; I was walking out vomiting into a plastic bag. No-one would help me. At Sydney International Airport eventually a cleaner came along, and they were more concerned about the vomit on the floor than me.

MRS OWENS: This was your good holiday in Fiji? Fiji was good.

MR ODDY: It was.

MRS ODDY: They wheeled us out. We had to get the bus to get back, and they wheeled us out to the express bus, and I got on that bus and I vomited all the way home.

MR ODDY: I was holding the bag for her.

MRS ODDY: I thought, "I've just got to get on that bus and get us home," because Trevor can't cope in Sydney on his own. They said, "Oh, we'll take you to the sick room," and I thought, "Well, what's going to happen to Trevor if I go to the sick room?" So I had to vomit all my way home on the Murrays bus to get home. This is typical of what can happen to people with disabilities. We need the Disability Discrimination Act to work proactively to make sure that these things don't happen. Even if the Murrays bus, you can't get on the bus. We booked and then we didn't realise - - -

MR ODDY: There's no ground floor part to it. They expect you to climb up these narrow little stairs.

MRS OWENS: So what do you do?

MR ODDY: We didn't know until we got there.

MRS ODDY: We just had to drag him up.

MR ODDY: So I had to get assistance to get up there, and then you get up there and they said, "Oh, the toilet is down in the centre."

MRS ODDY: Luckily he didn't need to use it.

MR ODDY: Fortunately, these days my bowel is in better control than it was two years ago. I couldn't go anywhere two years ago.

MRS ODDY: I honestly think if we used the Disability Discrimination Act in a proactive way, we wouldn't be spending money on people making claims. I think what we need to do, we need to turn things around. We need the act, but I think what we need to do is - and having learnt from Trevor and what's happened to other people, I think we need to also put into the act, as I've got here, that disability discrimination should be treated as an offence and there should be some form of disciplinary action taken against public servants and employers or others who write reports or whatever, who continue on, who do not treat people with disabilities fairly. As we have found with Trevor, people can write things and ignore your disability and then when you say, "Hey, my work performance was affected by my disability," they don't withdraw it. On the public record Trevor has got all this mud thrown at him - a public servant who has never had anything, not a negative thing, about him.

All of a sudden because he had an exacerbation and it caused problems at work - - -

MR ODDY: You see, it was very awkward for these people at work to write something for me because they knew to keep their job they had to write something that the boss would like, not what I would like, or not the truth.

MS McKENZIE: In other words, getting evidence is a problem as well.

MR ODDY: I don't know why it would.

MS McKENZIE: Where you've got your people from work - - -

MR ODDY: I got people who actually were prepared to lie, and I can prove they lied because I've got it written. I took them one of them up to the union before it got to that point - you know, he lied. That sort of thing - they're prepared to lie just to hold themselves out of - it's really sad.

MRS ODDY: That's the only way we can protect and move on, is to draw the hard line. After all, if somebody is working in a bank and they go and misappropriate money they face the Magistrates Court. I know in Canberra they do, but people here can go and write four reports - and this came up in the hearing we went to yesterday, about the medical specialist who writes incorrect reports and the work I'm doing - I've had a bird's-eye view because I've seen the reports of one specialist who writes for Comcare and then the work I've done - some of the work I've done, he's written reports for solicitors and his behaviour is totally different in both cases. As a matter of fact, the woman he favoured in the insurance work I was doing is someone who I found was definitely a fraudulent claim.

This goes to show that a lot of these reports - and particularly for people with disabilities and - I think the point is, too, people with disabilities are also on the receiving end of just like disciplinary things as well. Often their disability is used in that negative thing rather than as we say in that favourable thing, and what I found, too, is that people with disabilities - this is a generic comment, but people with disabilities - it appears that if you don't have a disability it doesn't matter what your relationships are. You can go to work and you can complain about fights you have with your spouse, or you can get divorced six times, your kids can be on drugs, all these things can go on in your life, you can have dramas all the time, but if you have a disability these people seem to be, "Oh, no, you have to be disciplined," or whatever and they target people with disabilities.

MRS OWENS: So it's applying a different standard.

MRS ODDY: Yes, applying different standards in the workforce. In a way what you said about education might help that.

MR ODDY: The National Capital Authority writes it in their annual report, that they've got a fantastic policy, they've got a great action plan, but there's one big step missing and it's called implementation - make it work; use it. There's all these written things everywhere, but they don't use them. They just - you think you've done a wonderful job and we'll evaluate your policy - but do they evaluate the actual work, what actually comes out of it, you know? That's it. From what we've seen on all these things so far is that the only people that win from Comcare cases and from discrimination cases are the solicitors. They just keep going back and forward, back and forward and the poor person with the disability ends up far worse off, and so we've decided not to go ahead with the Comcare any further, not to push the others - I can get on with my life; not the solicitor's life or anybody else's.

MRS ODDY: Just in reference to the submission number 66, by Terry Humphries - I've spoken to him, too. It just goes down the road of what we were warned would happen with Trevor's case. The same with Trevor's compensation. We were told by our solicitor that if we continued on - he had been spoken to by the Australian Government Solicitor who - the solicitor we had does probably a majority of compensation work for claimants here in the ACT. He doesn't work for Comcare but he does - and he was told by one of the Australian Government Solicitors, "Look, with this case you're probably going to keep winning through the AAT and the appeals things, but every time you do, we're going to appeal." So we had to make a decision, do we spend the next 10 years wondering - - -

MR ODDY: I think he was saying that because mine was an MS, there's got to be a first - - -

MRS ODDY: Precedent - they didn't want to set a precedent.

MR ODDY: Precedent - they weren't going to have it, so they were going to appeal at every chance. What's that going to do to my life? I am just going to be an emotional disaster.

MRS ODDY: So this - - -

MRS OWENS: Stressful and costly.

MR ODDY: I said, "Thank you, I'll get on with my life, you get on with yours."

MRS ODDY: I just want to say, having read the submission regarding this lady, and as I said to her on the phone yesterday - I really feel for her because she was actually offered a position as a person with a disability. She was actually invited into the workforce by the mere fact that - not the mere fact she had it but because she had a disability an organisation took advantage of that fact to say, "We are offering you a position." She went in there and now they've destroyed her life. I honestly feel that if this is the way employers are going to treat people with disabilities, they may as well just be out there smelling the flowers at home. I know it's not the ideal environment but it's more peaceful and - - -

MR ODDY: I enjoy the flowers.

MRS ODDY: This lady has got a husband and two children who are like my children - our children are - we all see the effects on our friends of what goes on when you're trying to fight something that's really not your battle. It's a battle that's created by people in the workforce who are, by the nature of the workforce - it's very competitive and there are a lot of people in the workforce, as I know in Trevor's case, who are so determined to get that job they don't care who they push out of the way. I think if we're going to have people in the workforce with disabilities - and I think we should have them - they should be free to work. That's what - the Disability Discrimination Act is treating them along the same level.

There are still expectations. People with disabilities should still have a similar education and background. They should not be given or treated overfavourably. I don't believe in that. But they should also have a standard of work performance that is appropriate to what they can do with their disability.

MS McKENZIE: I've completed all the questions that I needed to ask.

MRS OWENS: So have I. Thank you very much for that. Was there anything else you wanted to raise before we break? I've gone through all the different issues I wanted to raise.

MRS ODDY: Just that the federal, state and local governments should have identical legislation. I really think that's where things have fallen down a lot. There are so many hierarchies regarding the disability legislation, funding and everything. I think that came - what we heard of that submission beforehand. The discrepancies in funding between the states and just the compliance - when people I know - having worked in the ACT community, people are coming in with disabilities and what applies in one state doesn't apply - it's not transferable. It can be very devastating for people - housing, pensions and just even basics like what is available on the Health Care Card.

MR ODDY: This one that you were talking about - this submission - they were after $12,000 and the government spent 720,000 on legal fees, for 12,000. It's just a disgrace when you do that. I don't want anybody to do that on my behalf.

MRS ODDY: And you can have a simple slip in the local supermarket and it's guaranteed - I know here in the ACT someone just for example - the insurance companies tend to and it's printed in the papers that they're quite happy to pay someone out say around $20,000 just because they put in the claim. I think we need to look at something like that - perhaps people who are discriminated against, if they put in a claim and there's a reasonable expectation it did happen they should be offered something. That might also cut the costs of all this litigation that goes on with people who are filling up the courts and all the commissions and that just for money, but I really think we have to look at - that people have issues about what's happened to them and money, I can assure you, with disability - no amount of money will bring back your capabilities, so you've got to live with them.

MRS OWENS: Yes.

MRS ODDY: But you have to live in peace and people have to have a little bit of understanding for you, for people with disabilities to live as normal people in the community. They are, and some of them were normal people before that. People forget that. Other people, who are born with disabilities - they are normal people, too. They just have that disability.

MRS OWENS: That's a lovely quote, I think, that we can use in our report. Just what you said then.

MRS ODDY: They are, and I think people have to realise that we've all got our faults. I would rather be a size 10 blonde, but I'm not.

MRS OWENS: So would I.

MRS ODDY: But I'm quite happy. I'm quite happy being me because I'm me, and I'm proud of being me and what my life has brought me has given me a capacity to do - and I'm very happy in my life. I've had lots of challenges, but at least now I'm happy in my life.

MRS OWENS: All right, thank you.

MS McKENZIE: Thank you very much indeed, both of you.

MRS OWENS: Thank you for coming and your submission, that's really helpful for us, too, and hopefully for looking at processes for the future.

MRS ODDY: Yes.

MRS OWENS: We got some very good ideas. You raised some very big issues there and some very personal issues, and we appreciate that. Thank you.

MR ODDY: We're just about to start another little step now. Through the MS Society we've volunteered to go out into schools and talk to children about what MS is and so they can see a person with MS.

MS McKENZIE: Then you're actually doing the education thing that you've talked about.

MR ODDY: Yes, that's right. That's what we are going to try now.

MS McKENZIE: That's really important.

MRS OWENS: It's a good place to start, I think.

MR ODDY: Start at the lower level, yes.

MRS OWENS: Thank you very much. We'll now break and resume at 1.30.

MRS OWENS: We will now resume. The next participant this afternoon is Val Pawagi. Could you please give your name and the capacity in which you're appearing here, for the transcript.

MS PAWAGI: Yes. My name is Val Pawagi and I'm appearing as an individual. I am a member of the Physical Disability Council of Australia. I'm also a member of the Women With Disabilities Australia, ACT branch. I am currently studying government and commercial law at the Australian National University, and I work for the Commonwealth Department of Family and Community Services with the Working Age Task Force, looking at welfare reform issues.

MRS OWENS: That covers a fair bit of ground there. Thank you very much, Val, for appearing. Thank you for submission number 1.

MS PAWAGI: My pleasure.

MRS OWENS: As I said to you before we started, submission 1 always gets more attention than a lot of the others because it is the first one, and we've got absolutely no excuses. We have to have read submission number 1.

MS McKENZIE: Yes, we don't have any others to read at the time.

MRS OWENS: You almost get to learn it off by heart. It was a beaut one to get first, because it was on the definitional issues and it was a very good introduction to your thought processes. I found it, I have to say, extremely useful as a submission. Thank you for that. You said before we started that you do have a number of other issues that you wish to raise with us, so maybe I'll hand it over to you.

MS PAWAGI: Thanks, Helen. Just a few points that I'd like to make in relation to my submission. I do say in my submission that I do support a broad definition of "disability" with regard to disability discrimination, because the broader the definition the greater the number of people with disability can actually seek protection under the legislation. In saying that, I would like to say that the definition covers disability, plus health conditions. It is more than disability discrimination legislation. Because it is so broad and captures such a large population of Australians, I guess it makes it a little bit more difficult then to work out what subgroups within that population are the most vulnerable and those that require, I guess, specialised attention with regard to discrimination.

In particular, I see that there are probably about four groups who are the most vulnerable who, I think, require greater attention in the legislation somehow - that is, people with an intellectual disability, people with psychiatric disability, people with acquired brain injury, and younger people with disabilities currently living in nursing homes. There is no mention in the legislation about those groups. With regard to the actual framework that the legislation offers, it is basically a complaints mechanism framework. In that sense, it is really a "thou shalt not" framework. It doesn't really require the Commonwealth to provide services to people with disabilities, and I think in that sense the legislation has let down people with disabilities, because many people with disabilities require daily assistance.

Those four groups that I mention, I do consider that they are particularly vulnerable because of their level of dependence on people to basically get them up in the morning. They depend on these people for living basically and, without some sort of protective measures in legislation, the rights of those particular groups are not really going to be met.

MRS OWENS: Can I cut in at this point. It is a very broad definition.

MS PAWAGI: Yes.

MRS OWENS: So they are covered under the Disability Discrimination Act, but you're saying that there needs to be something more done for those people under the act, and you would say that the act in some way should be embracing service provision as well as disability discrimination. Is that where you're coming at?

MS McKENZIE: Or some positive obligation in the act?

MS PAWAGI: Yes. The definition is that broad that some people wouldn't even know whether they actually came under the legislation in terms of protection. The Social Security (Administration) Act has a particular section where it talks about principles of administration, and in that part of the act it refers specifically to vulnerable groups within the social security population.

MRS OWENS: Does it name those groups?

MS PAWAGI: Yes, it does, and it also talks about outcomes. But the DDA doesn't move beyond its objects. It's very hard to get a feel for what it is that it's really trying to achieve because the achievement of the objects is virtually impossible without any provisions being made for services, particularly for the most vulnerable of groups of people with a disability.

MRS OWENS: Aren't there other legislative tools to cover services, like the Disability Services Act?

MS PAWAGI: Both the Commonwealth Disability Services Act and state disability legislation do not provide people with disabilities access to administrative law, so in that sense it's fundamentally flawed. Also those particular legislations, they are, in principle, funding legislation of services. Even though the conceptual framework is about providing a quality of life to people with a disability, it is fundamentally set up to allow funding to be made to disability organisations.

MRS OWENS: And you think what we need is something that goes further than that.

MS PAWAGI: Certainly there's a great need for state disability legislation to be - there's considerable scope for expansion of the protection of the rights of people with a disability. I would think fundamental to any government decisions is access to administrative law. Without access to administrative law, it becomes very difficult then to question government decision-making and also to assist in the government - ensuring that it's being accountable.

Recently there was a report released in the ACT, the Gallop report into disability services. That particular inquiry was conducted because there were deaths of people with intellectual disability in group homes. The inquiry found that the rights and the interests of those particular people were being compromised by the current culture. Even though the legislation was in place, based on those particular findings, you could very easily conclude that the legislation was not being administered correctly.

MS McKENZIE: I don't want to interrupt your train of thought. Is the answer some kind of provision in the Disability Discrimination Act that deals with service provision to people with a disability?

MS PAWAGI: I think more broadly. The Commonwealth and states enter into the Commonwealth-state disability agreement and, under that agreement they say who is going to be responsible for what. The states say that they're responsible for accommodation support, but the Commonwealth does contribute towards the program, so in that sense I believe the Commonwealth has a responsibility to ensure that those particular programs are in fact run in such a way that the right to life of people with a disability is being properly observed. I think there's not enough critical thinking that goes on to actually assess whether current administrative structures protect the rights of people with a disability.

MS McKENZIE: So you're looking at trying to protect the right to quality of service and the right to be able to challenge decision-making.

MS PAWAGI: For sure, yes. Complaints alone are not sufficient, Cate, because many people with disabilities who belong to those groups that I mentioned are not really in a position to complain. They rely on others to complain for them and often the services are run in such a way that organisations have total control over their lives. That then gives rise to those sorts of services operating like a closed social system. There are lots of traps for people with disabilities when they rely on those sorts of services.

MS McKENZIE: However much you question them, you still have to rely on them.

MS PAWAGI: Yes, but I do believe that a separation - like with supported accommodation - if you separated out two particular functions, that it would lead to much better services all round. With group homes, with nursing homes - they all operate as a closed social system. It's very difficult for people to actually assess what is going on. The services are reluctant to offer information as well as to what is happening on a daily basis. People then feel uncomfortable about contacting them, and I think the fundamental flaw in these particular services is that you've got them, they're trying to protect the interests of two people or two groups of people. One is that they employ the carers, so they look after them, and they also look after people with disabilities. You can't have the same administration looking after the employment function of carers and also the rights of people with disabilities. They're two very separate groups, and so it leads to very uneven outcomes.

MS McKENZIE: Is that your argument: that HREOC and the DDA should then have responsibility for some broader issues concerning the rights of people with disabilities, particularly these vulnerable groups?

MS PAWAGI: Most definitely, yes. Because the Commonwealth does contribute towards supported accommodation programs, I think it has every right to query question about whether the actual administrative structures do adhere to a human rights framework. I believe the current structure doesn't. The Commonwealth is directly responsible for nursing homes, but there's very little noise that's made or- on the odd occasion noise is made about younger people with disabilities in nursing homes, but still no action has happened to ensure that they don't end up there.

MRS OWENS: Young people that end up in nursing homes, as I understand it, do so because there's just a lack of resources or lack of other facilities for them to go to. So it raises a sort of broader question and that's adequacy of resource provision to fund nursing home places, or shared accommodation or whatever.

MS PAWAGI: That's part of the story, Helen. I think what happens is - younger people with disabilities in nursing homes should not be the responsibility of the Commonwealth. They should really be provided with accommodation support. Nursing homes are seen as a last resort, but often when you actually meet people in nursing homes, you would see that the level of support they need may be no different than other people that have received accommodation support packages. It's not that - they're not people - some of them do require 24-hour care; others do not.

MRS OWENS: And the accommodation support packages are to live in the community.

MS PAWAGI: That's right, yes. The Commonwealth introduced the attendant care scheme in the late 1980s and that particular program was specifically set up to get younger people with disabilities out of the nursing homes, but then the attendant care scheme got blended in with the accommodation supported program, when the Commonwealth and the states first signed up to the first disability agreement in the early 1990s. Everyone says that nursing homes are not the right places for younger people with disabilities. In fact, I would argue that their right to life cannot be properly observed in those institutions and people acknowledge that, yet they still remain. I guess I would like to know why.

I don't believe it is just a funding issue. In lots of ways the states are not administering their legislation correctly. I would go as far as to say that they operate on priorities, not policy. If they were fair dinkum about applying their policy, it would apply evenly and these people would not be in nursing homes. But on the particular day that a decision is made, they may say, "We do not have the funds." But I believe that the government has a responsibility to find the funds because the needs of these people cannot be properly met in the nursing homes. You don't see teenagers going to child care centres, because it's inappropriate. But how is it that we think it's okay to place younger people with disabilities in nursing homes, which are specifically designed for older people?

MRS OWENS: I think as the legislation is written at the moment that doesn't cover those sorts of situations at all.

MS PAWAGI: It also means that people with disabilities can't question the decision.

MRS OWENS: Yes.

MS PAWAGI: Because they do not have access to administrative law at the state level. People with disabilities get to complain but that doesn't necessarily guarantee that their rights are going to be properly observed.

MRS OWENS: I suppose the question is whether the access to administrative law should be through a Disability Discrimination Act or through some other piece of legislation.

MS PAWAGI: I would like to see a more cohesive disability rights legislation which focuses more on the positive rights being - I’d prefer the Disability Discrimination Act to be entitled Equality Legislation, to look more at what you’re trying to achieve than what you’re not trying to - well, what you’re trying to make sure doesn’t happen. It’s all about getting people to refrain from doing things. As I said, while that’s appropriate for people who are not dependent on services, it is important that the legislative framework reflect the needs of people with disabilities. I think it needs to go beyond just saying, "Thou shalt not do this; thou shalt not do that," to people with disabilities, because it is unlawful. People with disabilities need services.

MS McKENZIE: So it should really establish, in your view, some rights as far as people with disabilities are concerned, in relation to services?

MS PAWAGI: Yes.

MRS OWENS: And it's their rights to services vis-à-vis other people with disabilities and vis-à-vis other members of the community, without disabilities. What's the comparitor?

MS McKENZIE: Or is there any?

MRS OWENS: Or is there any? At the moment the comparitor - under the DDA it's really the treatment of people without disabilities versus what's happening with people with disabilities.

MS McKENZIE: Maybe it's really that people with disabilities should have the same rights as the rest of the community to the provision of quality and age appropriate services. Is it fair to summarise what you've said in that way?

MS PAWAGI: Yes, or it probably would be a big ask of the Commonwealth to cover everybody in that respect, but I do believe that there is some need for protection of the most vulnerable groups; that being people with an intellectual disability, people with a psychiatric disability, people with acquired brain injury and younger people with disabilities in nursing homes.

MS McKENZIE: And they should be protected from - - -

MS PAWAGI: Because of their high level of dependency, it is very important - and because they depend on services for their very being, it is important that their rights be protected in legislation and that the Commonwealth and the states make an effort to ensure that their rights are properly protected - because they're not at present. Sure, we have legislation, we have glossy products, which all look very good and promote the government as being very rights-respecting of people with disabilities, but when you actually look at the statistics in terms of the proportion in employment and I guess just other indicators to do with the quality of life, it's just not happening. I'm not quite sure that I've made myself clear, starting from a fairly anxious position to begin with.

MS McKENZIE: No, that's why I keep asking questions. I want to make sure that I understand.

MS PAWAGI: Yes.

MRS OWENS: I suppose there is the issue of whether you achieve those goals in terms of service provision through an act such as this, which is then going to cut across the roles and responsibilities of governments to make policy decisions. Their policy decisions are going to be subject to the act - whether that is the appropriate way to deal with the issue. I'm still thinking it through. We'll have to go away and think about it.

MS PAWAGI: Yes. I know the history of the argy-bargy between the Commonwealth and the states in saying who is responsible for what, and that that argy-bargy is not just confined to the disability arena. But I do believe that there could be a greater cooperative effort in sorting through some of these issues.

MRS OWENS: We mightn't hold our breath on that one. Whenever we look at Commonwealth and state relationships, it's very, very difficult to often get agreement. It all comes down to funding and how much money is going to flow, rather than standing back and saying, "How do we ensure the best services for the people that need them and how are we going to get our act together to achieve that?" Often the goals are somewhat different.

MS PAWAGI: For sure. But if the Commonwealth is serious about having effective discrimination legislation for people with a disability, then it really needs to think about what framework it wants to apply to progress the group's rights. As I said, at present it's a "Thou shalt not" framework. It doesn't create any responsibility on the government - apart from hearing complaints and resolving them - to protect the most vulnerable of people with a disability.

MS McKENZIE: And it's really based, I suppose, on the philosophy that what you're looking to do is to redress any quality. What you're really saying, if I'm understanding you correctly, is that these people in these vulnerable positions are in positions of inequality, partly because of their dependency on services.

MS PAWAGI: Absolutely, yes. But there's no recognition in the act of the vulnerability of that particular group; there's no sort of sense that the Commonwealth is being proactive in protecting people. You've got the action plans that are voluntary on the part of the Commonwealth.

MRS OWENS: Do you think they should be mandatory?

MS PAWAGI: Absolutely. Yes. It's taken I think some departments some years before they've even gotten one together, and then you've got the goals and the targets that are incorporated into those action plans, and often they reflect what the departments think they can achieve but don't actually reflect what the - they don't actually really advance the objects of the act.

MS McKENZIE: In an earlier submission the other point was raised, about the generality of some of these plans; that they almost are too general to be an effective way of having a plan at all; that they need to be more specific.

MS PAWAGI: Yes, but I mean the way the Commonwealth does its business these days is about strategic planning, so everything is about plans. But then I think there is a real gap in the processes, in operationalising these plans. We know what we want to achieve, and we know how to put it into a plan but we're not quite sure on how to do it.

MRS OWENS: So there is a danger of paper compliance. People will say, "We've got a plan. It doesn't really mean anything. We put it on the shelf and we can say we've got one." We can put it in our annual report - as we heard before lunch. You can put something in the annual report saying, "We have now got a plan," and then it can just go away and it's business as usual.

MS PAWAGI: Yes, I couldn't have said it better than that - paper compliance is what it's all about, Helen. I think it needs to be a bit more than that. I mean, it needs to be much more than that. Such plans really need to be looked at in terms of: to what extent have we improved the position, the economic and social position of people with disabilities in this local community, or within this organisation? But a lot of the plans are about providing accessible information, but even then you may find that they have a target that, "Oh, gee whiz, we might - I think we can only provide such information over, within 48 hours, 75 per cent of the time." For goodness' sake, we're talking about paper here. We're not talking about moving mountains. It's all about the organisations and making them look good. I guess I'm a bit sick of reading glossies when the rights of people with disabilities are really not being advanced greatly.

MRS OWENS: Do you think HREOC or some other body should have a responsibility for monitoring these plans and looking at what's in them and then enforcing the plan?

MS PAWAGI: There certainly is a role for somebody. It certainly is not the Commonwealth Department of Family and Community Services. I say that only - - -

MRS OWENS: Do you think you've got enough to do?

MS PAWAGI: No, because they had a major responsibility in delivering disability programs. There just wouldn't be any independence in the assessment of the plans if they were to do it. I think it needs to be somebody one step removed from people who are providing direct disability services. I believe there is a role for HREOC in doing that, most definitely. I believe that for all Commonwealth government departments and corporations and other sort of government entities, that it should be made mandatory, and for other such organisations, for it to be voluntary.

MRS OWENS: So you would keep it voluntary for the private sector.

MS PAWAGI: Yes.

MRS OWENS: And for smaller organisations.

MS PAWAGI: Yes.

MS McKENZIE: Because you think the cost burden of it is too great for that sector, or those organisations, or - - -

MS PAWAGI: A lot of them simply don't have the expertise. There's no excuse for the Commonwealth not to have the expertise to have these plans in place and to make sure that they're operationalised.

MS McKENZIE: And do you think also it might have a flow-on effect to the private sector, if we began with the public sector, or the Commonwealth?

MS PAWAGI: For sure, yes. If the Commonwealth takes the lead, why not?

MRS OWENS: What about nursing homes out there in the private sector, or private schools or private hospitals? These are all - we just talked about young people in nursing homes - - -

MS PAWAGI: You could say any organisation that receives funding needs to comply. Why should the Commonwealth be handing out money to organisations who are not rights respecting? It just would seem hypocritical on the part of the Commonwealth to do that. I think the Commonwealth could be a little bit more vigilant in that regard. It's quite generous in terms of what it does give to the states and that it should be more demanding of better outcomes for people with a disability.

MS McKENZIE: Are there other areas you want to raise?

MS PAWAGI: No, I think I covered the main ones. If I was to recap, I would like to see the Disability Discrimination Act moved from a "thou shalt not" framework to an equality framework, involving provision of services to the most vulnerable groups of people with a disability and to move beyond complaints - from it being really a complaints-driven legislation. Many people with disabilities simply don't have the skill or the emotional energy to follow that through. Often a lot of their complaints involved things which would involve the general community, so if it wasn't that person with the disability who complained, it would be somebody else because it's impacting upon a broader group within the community.

MRS OWENS: What kind of mechanism would drive compliance with the act?

MS PAWAGI: I still think that there is a role for individual complaints handling, but more particularly where it involves the conduct between the person with the disability and somebody else. But where it involves community access, I believe that there is a greater role for HREOC to take that on, or for some other body to take that on in terms of following that through.

MRS OWENS: In some kind of systemic way.

MS PAWAGI: Yes, that's right, and for the Commonwealth to even make available to some businesses or other organisations, to assist with improving accessibility to their services.

MS McKENZIE: You wrote an article - a very interesting article, I should say - in the Canberra Times, which was published in February.

MS PAWAGI: Yes.

MS McKENZIE: And you said in that article, just towards the end of it, that the disability rights presently recognised in Australia could be strengthened if greater and more targeted use were made of UN human rights instruments.

MS PAWAGI: Yes.

MS McKENZIE: If the UN were to adopt a convention on the rights of persons with disabilities, it would pave the way for Australia to upgrade the legal status of disability rights in domestic law. So you would link what you've said about upgrading the act and changing the nature of the act to this process - this UN process.

MS PAWAGI: Yes. Not the declaration of the rights of disabled persons, or the declaration of the rights - I think it's mentally retarded persons. They're a little outdated, but the UN is working on the development of a convention on the rights of people with disabilities. But certainly the equalisation of opportunities for people with disabilities would be a worthy framework to look at. But, once again, those rights are not enforceable but they certainly provide a very good framework for implementation in domestic law. That particular article cut out all the meaty bits.

MS McKENZIE: Have you got the rest? Have you got the meaty bits?

MRS OWENS: Can you give us the meaty bits?

MS McKENZIE: You spoke to them - and they cut out all the meaty bits?

MS PAWAGI: No.

MS McKENZIE: They just edited it.

MS PAWAGI: Yes.

MS McKENZIE: As they do.

MS PAWAGI: Yes, but I was speaking earlier about the group home model of care, as you may recall, and I had an article published in the Canberra Times in August of 2002, on my analysis of what had happened in that system, and so I did bring that article. But I bring you the full article, not the edited article.

MRS OWENS: Thank you. You've got that there, have you?

MS PAWAGI: Yes, I do.

MRS OWENS: That's tremendous.

MS McKENZIE: Can you table that for us?

MS PAWAGI: How do I do that?

MS McKENZIE: You just give it to us.

MRS OWENS: Give it to us later.

MS PAWAGI: Okay. I will do that.

MRS OWENS: Then I can just say that it's tabled; that would be lovely.

MS PAWAGI: I also have another piece of information that I would like to table. It's about the principles of administration. One of the principles that I would really like to see underpin any sort of new disability discrimination legislation is that of community inclusion. A big theme in other disability legislation is community integration, but this particular paper here is about from community integration to community inclusion. Yes, it's a total package. That puts it in context and explains the term and also I have adapted some New Zealand research which looks at a typology of community inclusion.

MRS OWENS: That sounds very useful, thank you for that. You see, if it's officially tabled then it becomes officially part of our process.

MS PAWAGI: Sure, yes.

MRS OWENS: So that would be lovely. I just have one other question and Cate might have other issues, but what do you think about the role of the public advocate or the ombudsman or community visitors in protecting and safeguarding rights?

MS PAWAGI: I think the Commonwealth ombudsman does a great job. The Commonwealth ombudsman, as an organisation, is highly regarded. They're considered to be proactive. While they don't go on fishing expeditions as such, in terms of investigating systemic issues, these systemic issues fall out of the complaints that they receive. I guess I would like to see a much more proactive role on the part of HREOC to do that as well. I think it's time now to actually look at supported accommodation services in terms of more broadly understanding what it is that makes these structures not protect the rights of people with disabilities very well. What is it about them that makes people with disabilities even more vulnerable? My article to the Canberra Times explains that a little bit better and also looks at a solution.

MRS OWENS: Good, thank you.

MS McKENZIE: Thank you very much.

MRS OWENS: Thank you, Val. Is there anything else that you had on your list of things to tell us about?

MS PAWAGI: Not really.

MS McKENZIE: The fact that we haven't asked you questions about every single bit of your submission doesn't mean that we're not taking it into account. It's very clear.

MS PAWAGI: Yes, I thought the submission was a stand-alone piece and didn't require any further explanation.

MS McKENZIE: No, it's these additional matters that I'm really happy you've raised with us.

MRS OWENS: We look forward to receiving the tabled information.

MS PAWAGI: Which I have here, yes.

MRS OWENS: Thank you very much indeed. We'll just break for a minute.

MS McKENZIE: Thank you.

MS PAWAGI: Thanks, Cate.

MRS OWENS: Our next participant this afternoon is Mr Stephen Kendal. Could you just repeat your name and the capacity in which you're here, for the transcript.

MR KENDAL: I'm Stephen Kendal. I live in Monash in the Australian Capital Territory. I'm not representing any particular interest group. However, I do think that I'd like to make a couple of points, both in writing and, at this time, about the nature of human services, which I think you're trying to address through the legislation. I look at it from developed ideas that go along with being an experienced analyst of these sorts of services and concepts and, in that sense, I'm very involved in the nature of them, but they can be a bit distant, too, given most people's perspectives, because it can be emergency-driven or much more obvious than theoretical subtleties.

However, what I'm trying to say, and more importantly, is that the individual is the focus of attention, if an individual is to be strengthened or enhanced, which is obviously what everybody is trying to achieve by emphasising that people who are robbed of opportunities or performance capabilities ought to be supported, and in this sense any discrimination against their rights is bad. However, what I would like to say is that from the prospect of program design and actual field work or meeting folk and so on and helping them out and, in fact, in every way to be comprehensive about their needs - you need to be discriminatory if you're to be effective at the level of the individual.

There's an inherent logical and service-driven contradiction which you've got to come to terms with before you get to where the great need is, and that is in the functioning of the individual. The problem is that, if you have any in-depth sort of philosophy or ideas about this, formal channels of delivery from a government perspective or through a private provider don't tell you how the individual should behave or choose, yet self-choice and self-development is really a part of the story as well. So many of the overproof mechanisms of delivering to the individual are really meant to switch somebody on so they can really be vital and less vulnerable, but I think inevitably you've got to have both areas of conscience - the individual's conscience and the leadership - as well as a service pattern integrated together, otherwise you lose context and effectiveness, which is what we all want.

The people who I'm worried about - justice problems - emphasise this when it comes up in dialogue about discrimination and the evils of it. What we really want to do is conquer it and that means getting the individual off and going again in a positive way. That is not straightforward. The word "positive" isn't that simple. However, it's absolutely essential that the individual's ability to continually have better choices is made ready and possible through the delivery system and what it is, and if you don't have a discriminatory - that is tailor-made - approach, you won't help that individual in the way you really want.

MRS OWENS: You're really talking about when you provide services to people you really need to say certain people in the community are going to need more services, so you're using discrimination in that way that those people are going to get something that other people in the community are not, because they need it.

MR KENDAL: Yes. Some of the most informed approaches are based on a general expectation that's not valid for many people. They need to service - or a better range of services.

MS McKENZIE: Really what you're saying is that, in effect, each individual has different needs and expectations and so on.

MR KENDAL: Yes.

MS McKENZIE: Service delivery has to be responsive to that.

MR KENDAL: Very difficult.

MS McKENZIE: It is very difficult.

MR KENDAL: Very difficult area, and no-one quite gets it right. But the ultimate social justice patch-up, which is what we all want, can't come together until we really get these two things happening. I'm not sure how to bring this about, but maybe opinion seeking and climate-driven research that you're able to sponsor and highlight is one way of doing that.

Important dilemmas have occurred in the modern community where, at the community level where so much of this is done now through government budgeting and everything, there's not just enough money around but a lot of the well-intended folk don't have enough time or skills to get to everybody. When comprehensive approaches just haven't been possible, well-intended folk have dramatic encounters with people who need immediate help and there are no resources. Where does the money come from? It comes from anywhere. It may not be completely right or anything; just to get someone - it keeps someone alive.

It's really not good enough in the end because modern approaches to government budgeting have put more emphasis on - which is what I actually highlighted as necessary, for the individual to get themselves together, but if they're so damaged that they can't do this, the whole episode of presentation to someone could be fatal. In the areas of drugs and all this, there are so many illustrations. We don't need to highlight them all. There's just so much trauma and wreckage that results when people just can't get what they need at the right time, and too much reliance on people outside the official web of social security, if you like, to simply know what to do. That's what I'm trying to say.

MRS OWENS: Have you had any opportunity to look at the Disability Discrimination Act that we're reviewing?

MR KENDAL: I didn't look at it formally from a legal perspective. I'm glad that legislators have to take it seriously and that the area is getting acknowledged in a formal debating sense, to have an appropriate context for everybody to have a soul and mind about this. What I do think is that it's the individual - I notice that the consumers ultimately, in the legislator's mind, are the people who deserve this attention, whereas I think what is not really adhered to - I haven't look at all the fine coding and other fine matters, but the individual that's the beneficiary is somehow or other never going to get it right.

That's why you're actually afraid of discriminating against them so that their lives and aspects of service to them don't go wrong. But there's some sort of belief that they'll always be inadequate. That's sad. It may be that it makes people realistic about what must drop out of the financial bucket, for people who are obviously wrecked and get somewhere, but it doesn't really finetune everybody's economic resourcing and program delivery structures and all the rest that people are all concerned about, nor does it show the individual that they're going to get what used to be said as a one-stop shop approach perhaps, in this way, or in a more high-level government's context in that they can then (indistinct) across government methods to do this or whatever.

There's a context of saying that we can all be in it together to help people and so on, but so far there's no clear sign that anyone has ever done this. Too much unexpectedly happens - people are just smothered - to help them, because the whole finetuning just hasn't arrived in a way that saves us all from unnecessary hardship. Admittedly, things can go wrong, even in simple dialogue with a doctor. A doctor may have known a patient for years. Suddenly the whole relationship is ruined, so it's a big task, particularly at the level of government cooperation with all the elements of a very big system, in which this country has better ideas and gone further than most, particularly North America.

MS McKENZIE: Really you think that the system should be altered and also the relationship between the individual and the system, so that basically services finish up tailored to each individual.

MR KENDAL: That would be the ideal, if it's at all possible, but that doesn't remedy everything. The important thing is that delivery and the concept of gift, if you like, in simple terms, have to be really understood by everybody for everything to run perfectly. We all know there are some people - you can be a counsellor of someone. I always remember this: I met a young man who did outstandingly well when I was a young Commonwealth employment officer, in those days when it existed. He was in the Parramatta context. He had all this fantastic past - he would be a Rhodes Scholar or something. All he wanted to do was learn welding. No-one could ever talk him out of it, and I thought what a fundamental lesson to all of mankind that was. This man knew exactly what he wanted to be. We had official classes and things and probably knew what his best interests were. You know, who's going to determine all this individual's ability? In the end, you have to accept that, okay, his concept of wealth and what the service was for, and all that, was inherently his and that's all he wanted from it. What else could you do?

MRS OWENS: He wanted to be happy.

MR KENDAL: Yet you still wanted to help him along. It's not straightforward. Academics approach it like paradigms to explain all this. It's still not concrete when you're interacting with an individual, nor at this level of interesting ideas about leadership at a personal level which must all fit into these service ideas that the community and governments should, if possible, get right.

MRS OWENS: One of the issues that we're confronting is we're reviewing this act, and the act is really there to address issues relating to discrimination and is not focusing so specifically on service delivery, although there is an interaction between the two. But we're really interested in how individuals are finding their way through the system, if they've got some problem that's arisen, either in the workplace or through the education system or whatever, and we're really interested in finding out how individuals are coping with an act and provisions which are meant to be there to help them, which may be quite overwhelming.

MR KENDAL: Without creating too many jokes, when I was a kid we had to study a piece by Henry Lawson about the famous dog that went down after its owner with, I think, some dynamite or something connected to it. Anyway, it was very dangerous, the whole situation, and no matter where the man went the dog followed him. Sometimes these things develop in the most unintentional way. Everything is danger, danger, danger all the time, even though you try and switch it off.

It's really hard to know exactly how to formulate all this, but I wouldn't like to see total reliance on a private sector approach because there's too much of a mission. There is a mission needed to help people, but individuals ultimately - I think it's interesting. Individuals have the moral, if you like - it depends on your beliefs and philosophy - to lead themselves out of it. Maybe, rather than worrying about what makes them ultimately best off from someone else's perspective in a system really meant to enhance them, that we put more resourcing and tease out more ideas of how to use leadership ideas - which are usually in the corporate sector - in a welfare context. I think this is an ignored area.

Even the best doctors can't cure themselves sometimes. They see many doctors who they all respect, but no-one knows what to do or how to help them. It does happen. The question of leadership at some professional level, even in the best informed circle, especially a totally disabled individual, is never really faced adequately. In society, these ideas are best understood by people in the world of business through entrepreneurs and so on, where people do perform miracles. However, when you think about it, the necessary skills and individualisation and coping with the individualisation and all those things is not that foreign from someone who is disabled.

I once met a dramatically disabled man and a millionaire, and I suddenly came to the conclusion that these people are exactly the same people. It is an amazing thing to say - but, yes, if you have got these leadership skills you don't need certain resources which people are trying to entrust to people. That's what I want to say. It's actual freedom and self-determination of the individual that will help them most. However, they can't get there without health, without support and all the rest of it, which is what we all want. So without trying to make too big a deal out of what all this should be, if leadership can only form part of the current thinking in service delivery, we'd have a much better result for many folk; more valid results. That's what we all want. I think that's true.

It is not ridiculous to think that someone in the worst part of New York, living inside a box, has found something that works. There's a range of ideas and quality ideas that you really have to get to, and we're only halfway there. The official literature, if you like, of trying to be kind and provide human services doesn't answer all this. Many individual caretakers and carers know how to - people on a mission, like clergy or faith-driven service delivery, and such, know about this really well, but if they don't have the fundamentals right, and they may always be having to challenge those fundamentals, if they don't have enough resources, then they can't help anybody.

But if an individual can't really choose - this is not about what they do with the rest of their lives or how they live themselves - they can't benefit from whatever you're telling them. So it's really an essential feature of productive thinking, I think, in the future, and it is interesting that in the formal literature of welfare the Yanks suffer from some of the great tests of conscience about this in placing so much emphasis on an individual getting themselves together. But they have gone further in this leadership stuff than most communities, and there are resources for people to get into these things and there are no questions asked about where you come from and so on.

It’s silly to think that we have restricted ourselves to horrible dilemmas where someone has to cure alcoholism, whereas the broader need is self-development really. Do you know what I mean? I don’t want people who are in a really wrecked part of life not to find a solution, but there is a broader concern that could help everybody, if we only faced it, and that’s development of leadership skills. It may be that there’s business literature, a form of pattern thinking way, that can help the welfare carers, as well as the beneficiaries of human services, find a solution.

MRS OWENS: It’s about everybody reaching their full capacity, whatever that might be.

MR KENDAL: That’s right. More importantly, at advanced levels of policy analysis, where people have had a go. The great sources in the past - someone like Coombs in the initial commissions - the quest for value for money is really another way of looking at this. You don’t want to rob anybody through welfare, but you do need value for money, and even the best documents don’t ultimately resolve this. If we could only be more concrete about the serviced pattern, the tailoring of service to the individual, and the role of individual choice enhanced in their lives, we would get a much better result. There’s so much intellectual debate about this that we could spend a long time doing it, but the fundamentals have to be got to, and the value and all the justice matters can come together in a context like that, if we don’t miss the whole context of what we’re trying to achieve, and what the individual needs to get together for themselves.

MRS OWENS: Did you have anything else, Cate?

MS McKENZIE: No, I asked all my questions as you’ve been going along. Thank you very much.

MR KENDAL: I hope I haven’t created too many debates for you.

MS McKENZIE: No, you’ve made some very valuable - - -

MR KENDAL: I think we’ve lost the plot. If the American stuff on leadership is seen as executive stuff. It is a welfare position, if you look at it from that curious angle, and it’s amazing it’s not in our normal method of resolving these difficulties for folk.

MRS OWENS: No. It’s another perspective, isn’t it?

MR KENDAL: The poor things are often shot down in the welfare position - "You are invalid and you are an invalid leader. That’s why I’m helping you" - and there’s too much of this invalidity reinforced unintentionally, so they never develop the leadership that's required to get the most out of what's provided, and we don't offer supplementary help either that's valid through the way we try to help them at a more fundamental time in their lives.

MS McKENZIE: Thank you very much indeed.

MR KENDAL: That's all I can say about that, without being too complicated.

MS McKENZIE: No, not at all.

MR KENDAL: There's too much tension in federal politics, too, on this business of social security - like, "We've got you security." It doesn't work that way for people. They know that, but they need to get a fair deal.

MS McKENZIE: Thank you very much indeed for your submission. It's very helpful.

MRS OWENS: We'll just have a break for a minute.

MRS OWENS: The next participant this afternoon is Carers Australia. Could you, please, each give your name and your position with Carers Australia, for the transcript.

MS MADDISON: I'm Felicity Maddison. I am from Queensland. I'm president of the Queensland Council of Carers and I am secretary of the National Carers Association. My involvement with Carers is that I am a sole parent of three adults with disabilities.

MS AUSTIN: I'm Julie Austin. I'm a policy adviser in the Carers Australia secretariat here in Canberra.

MRS OWENS: Thank you, and welcome to you both. I'd like to thank you for what ended up being like a joint submission, which we've put in under the Carers Australia banner, but I thought both sides of the submission - the Carers Australia submission; the letter and the Queensland council's comments - were very useful for us. I was pleased that Queensland at least had responded to your request for information. I'm sure the other states probably have common interests, common concerns, but thank you. Maybe the other states, once they see what we're doing, might think it's worthwhile participating at a later stage.

MS McKENZIE: It was a very comprehensive submission.

MS MADDISON: I think people are a bit confused about where Carers might fit into the equation within the Disability Discrimination Act, and it's really not very clear.

MRS OWENS: Maybe you can make that point in a minute. Julie, you said you'd like to make some introductory comments.

MS AUSTIN: We just wanted to say that Carers Australia supports the intentions of the act in trying to eliminate discrimination and trying to create a more level playing field, and acknowledges there's capacity there for carers within the act as associates of people with disabilities, because obviously caring for someone you're concerned about their welfare and any discrimination that might be incurred as a result of that. As our submission said, in doing our research, we were trying to put some evidence before the inquiry before we made any claims, but that evidence wasn't very forthcoming in a numerical sort of way at least. We got a surprise when we found so little response out there.

When we did dig a little bit further within the annual report of the Human Rights and Equal Opportunity Commission, we found that there were only 25 complaints before them in any one year, so that probably explains why we didn't get much response. But at the same time, it begs lots of questions as to why people aren't taking up those opportunities. Probably the most obvious one is that carers are usually under a fair bit of stress themselves just trying to manage with their daily activities of caring, let alone trying to go through the very formal process of lodging complaints and that sort of thing, unless they were really emotional and very angry about the situation. Or at least that's what I'm assuming, without digging a whole lot deeper into this.

As you have noted already, the Queensland Council of Carers provided a supplementary paper there from more of a conceptual and design aspect of the act and how it might be improved. We'll leave it there for questions from you and some other points we've thought of a little bit further on down the track.

MRS OWENS: Thank you. I might just come back to Felicity's comment. You said you felt that there was probably limited participation or limited response to your request because where carers fit into the act was unclear. So you think there is a lack of understanding out there about the coverage of the act when it comes to carers?

MS MADDISON: Yes, I do. From the disability perspective - you know, this is a Disability Discrimination Act - although we get mentioned under the Disability Services Act that family members must be sort of consulted or be part of any decision-making, basically if you're the family member supporting a person with a disability you are subsumed by the person's disability; that you don't exist in your own entity. This wasn't disability discrimination because you can't take action - disability discrimination - against an organisation that is disability specific, that provides services only to people with a disability.

I had to support my daughter to go through a sexual harassment case through the state anti-discrimination and, although for her own safety, she had to be withdrawn from the service for eight weeks which put the impost onto me to provide extra supports, my impost was not acknowledged other than as jeopardising her support arrangements. Can you see where I'm coming from? When we were trying to identify the impact on me, it couldn't be identified as, "Hey, I had to take on a triple-whammy care load because of the poor behaviour of a person within that organisation." The way it had to be worded was that my daughter's supports were placed in jeopardy because of the extra stresses that were placed on her carer. So it became an impost on her, rather than an impost on me.

MS McKENZIE: That was the only way you could claim.

MS MADDISON: That was the only way you could approach it. It's really hard to get some sort of compensation for yourself if you're not a wage earner and you're pegged on a carer payment. It is also very hard to get legal advice or a solicitor, which is required. Be it anti-discrimination or at DDA level or HREOC level, you still have to have a solicitor represent you. We're a fairly litigious society and you can get into all sorts of deep do-do unless you have someone that has that expertise.

MS McKENZIE: Even at the HREOC level?

MS MADDISON: At HREOC level. If you take one at Commonwealth, it goes through to the Supreme Court, doesn't it?

MS McKENZIE: Yes, but - - -

MRS OWENS: In the Federal Court.

MS McKENZIE: - - - would you want to be represented, even before the court stage at HREOC?

MS MADDISON: No, at HREOC, I think you could probably approach the officers there, but if it goes to court - I mean, if you're going to start something, you've got to look at whether or not you can take it right the way through.

MRS OWENS: So you're saying you need the advice early on.

MS MADDISON: Well, you either take it out of the Supreme Court and bring it into an affordable venue - you're talking about probably the most disadvantaged people financially; the same for their families, if they're in full-time care situations. They're overworked, they're tired; a lot of people don't know the ropes. They're too busy existing from day to day. It was a learning curve for me, and I've probably been around the traps a little bit longer than other people, and I found it very exhausting, very draining.

MRS OWENS: So you tried to get legal advice.

MS MADDISON: We had to.

MRS OWENS: Did you get it?

MS MADDISON: We finally got a solicitor on a no-win, no-pay basis. When there was a conciliated agreement of liability, the solicitor gained more than my daughter did in the way of compensation.

MS McKENZIE: You mean because of the costs aspect?

MS MADDISON: Yes.

MRS OWENS: Was that through the Queensland system or through HREOC?

MS MADDISON: It was through the state anti-discrimination system, and it went on a generic of sexual harassment. Sexual assault got brought down to sexual harassment, and that's where the discrimination comes in because there is a perception that people with an intellectual disability do not make good witnesses and it's pretty hard to get something to a criminal court. I think the major issue is that a lot of people who have decision-making incapacity tend to be within a service rather than pursuing individual goals, and when they're in a service that is providing services only to people with a disability, then you can't have discrimination action occur within a service.

MS McKENZIE: That's why the claim was formulated in that way, and also is that why you didn't go under the DDA?

MS MADDISON: We were told we had no case under the DDA because it occurred within a disability-specific service. It wasn't a generic service. We would have had a case under breach of duty of care, but we didn't have the money to pursue it, and no solicitor would touch it on a no-win, no-pay basis.

MRS OWENS: We're reviewing the act and looking at ways to improve the act. Do you have any suggestions about how you could deal with that issue? Would you broaden the act so that it could apply to people within these services?

MS MADDISON: I think the comment in here about the act not being punitive, that it has no teeth, is a valid point. Should it apply within services? I think you'd find that people would say that the other discriminations, such as sexual or age or whatever, would apply equally within a disability service and in a generic service, so that you have to make the difference when it goes into a disability-specific service. Do you know what I mean? If it is all people with disabilities then there can be no discrimination.

MRS OWENS: Because the comparitor is people without the disability.

MS MADDISON: My concern is that families are disregarded and there is no Carer Discrimination Act.

MRS OWENS: But in your daughter's case where it was sexual harassment or sexual assault, as you initially considered it to be, and we are looking at disability discrimination, but if it had been a discrimination issue I don't quite know why you couldn't say, "Well, if somebody else who is discriminated against, say in the workplace, can go and put up a case" - - -

MS McKENZIE: You see, I can't see why you couldn't have gone under the Sex Discrimination Act. I mean in the case of your daughter.

MS MADDISON: It did go under the Sex Discrimination Act. It didn't go under Disability Discrimination Act. I am saying we went on a generic one rather than a disability specific one.

MS McKENZIE: But you went under the Queensland act, not the Commonwealth Sex Discrimination Act.

MS MADDISON: Absolutely. But what do you do when there is a discriminatory practice by the Commonwealth government against people with disabilities. For instance, people with disability, if they are aged under 18, their carers are entitled to different services to those who are caring for someone aged over 18. A person aged over 64 isn't entitled to access services that aren't available to anyone aged between 18 and 64.

MS McKENZIE: So you get services below 18 and services above 64.

MS MADDISON: They are different. There is a 46-year gap where specifically the carers of people who are aged between those years can't access similar services that can be accessed above the 64 and below the 18.

MS AUSTIN: Something magic happens when you have those birthdays. You don't need the services.

MS MADDISON: For instance, if you are a working mum and you have a child under 18, you can access holiday care and you can access child care services. However once your child turns 18 obviously you don't need those services, even if it happens to be that your son or daughter may have a disability that makes them as vulnerable as any child aged under eight or six. Also, although they have left school and are workforce age, you will find that most of the services that are available to adults or school leavers actually operate in kindergarten hours between the hours of 8.00 and 2.00 or 9.00 and 3.00. I prefer to call them alternative to work placements, but they are operating in those hours. You have to take holidays at the time the service providers tell you to. There is no post-school or post-day placement access to any support.

If you are a sole parent and you apply to the JET program, if you are caring for a child under 16 they will provide child support for you. You try doing that when you are caring for kids with disability or adults with disability and you still need that - and I am not being insulting here - sort of similar child care. It is just simply not available. They don't want to know about it.

MRS OWENS: So it makes it very difficult if you want to have regular employment to get a normal job with normal hours, doesn't it?

MS MADDISON: Yes.

MS AUSTIN: It is one of the major issues for carers of workforce age, trying to keep them out of the welfare system and allowing them to work, but the workforce doesn't accommodate it and neither do the services.

MRS OWENS: I think it was your submission that said that would be quite a good indicator for measuring the effect. Was that your submission?

MS MADDISON: Actually we were talking about carer-friendly workplaces. You were asking how I managed to get today off and I simply banked hours to enable me some flexibility, but I also work for a disability organisation that understands my position. So yesterday when my son was sick I brought him to work with me and when he was too sick we went home and I work from home.

MRS OWENS: You are fortunate enough to be working for an organisation that is going to understand those needs.

MS MADDISON: But not every organisation does.

MS McKENZIE: Is it just an education thing, do you think, or is it more?

MS MADDISON: It is more than education. If people aren't valued or have a total loss of identity - if they are not even identified as existing - then they are not going to make a noise. Certainly education, but also I think families on the whole are so totally overwhelmed by the disability of their family member that it is all-consuming. There are certainly not the supports out there to support families who support their family members with disability. It is a massive culture shock at each milestone when things change.

Supports that were in place when they were in education are no longer available post-school. At a time when you think your son and daughter, if they didn't have a disability, would be living independently of you and you would be experiencing empty nest, you are actually facing perhaps another 40 years of the full-time carer role with your son or daughter living at home with you because there are no alternatives available.

MS AUSTIN: There is also an issue about people actually identifying as carers when the caring has not been a lifelong experience for them, when caring is suddenly thrust on them. Do they see themselves as carers? This is a particular problem in some of the ethnic communities. Carers Australia has done some work on that. In some of those communities it is taboo to call yourself a carer; it is just the role you have to take on. It is not seen as a special - - -

MS MADDISON: So it becomes more of a family issue rather than a carer issue.

MS AUSTIN: It is not seen as an additional thing where you can seek outside help. If you can't get to that level then you are unlikely to get to the next level and talk about discrimination.

MS McKENZIE: It is just part of what you are expected to do in the family.

MS MADDISON: Might I also add there has been an absolute culture of intimidation in the disability area, too. That is, as I am sure Cate knows, organisations used to beat families around the head with a big stick and if they went to them to complain about what might have been occurring they were threatened with withdrawal of service. That still occurs. As a matter of fact, when I put my complaint in to the Anti-Discrimination Commission on behalf of my daughter, I also identified that the service provider - executive officer - had stated to me that of course if I pursued legal action the powers that be might view that as a conflict of interest with my son and daughter attending their service. There was a secondary charge of victimisation went in.

MRS OWENS: So you put in a victimisation charge?

MS MADDISON: I didn't but the commission did.

MRS OWENS: You told the commission and they said, "Right".

MS MADDISON: I put it as part of my statement.

MS McKENZIE: That is clearly raising an allegation of victimisation. You are right because it was part of the overall story, but it was only when the commission pointed out to you that that could be victimisation.

MS MADDISON: I thought it could be but I wasn't claiming it as victimisation. They chose to put that there. Victimisation does occur but again it is usually disability-specific, so if your sons and daughters are within an organisation that is providing supportive accommodation or a day service for people with disabilities - and usually specific disability type, such as the Royal Blind Society or Endeavour Foundation in Queensland or the Cerebral Palsy League - then you can't take a discrimination action there. You have the other avenue of victimisation, but then most families are so frightened to actually complain because they might lose service.

MS McKENZIE: Would that be an area where you think HREOC should have power to initiate a complaint itself?

MS MADDISON: Yes. There needs to be systemic change.

MS AUSTIN: You mean in terms of generating the complaint.

MS McKENZIE: Yes, so that the receiver of the service or the carer isn't seen as the author of the complaint.

MS AUSTIN: There could be a conflict of interest there if they are dealing with the complaint also, but I think there should be capacity for a third party to be able to bring forward a complaint for people who don't have the capacity and resources to do it themselves. We saw plenty of examples of that with carers with poor English; carers who are just plain stressed and all those sorts of situations. I was at a conference earlier this week with young people in nursing homes. There is no way those people in those nursing homes could bring forward a complaint on their own, let alone how they would progress it beyond the first instance. In that situation there is obviously capacity for a broader representation on their behalf and other people to take it up for them.

MRS OWENS: Would your organisation be able to carry out that sort of function?

MS MADDISON: No, we are not funded to do it.

MRS OWENS: But put the funding to one side. Is it appropriate for advocacy groups to perhaps perform that role?

MS AUSTIN: It is not something we have discussed, but the state and territory care organisations have advocates who are in direct contact with carers. If they were resourced in such a way to do it and people had the skills to do it, then it is probably a role for them.

MRS OWENS: Because coming back to the people in nursing homes, it is going to be quite difficult for any other group to actually know what is going on, to know that there is the issue that needs to be brought forward, so somebody needs to be looking around and saying, "Here is a systemic issue. This is something we do want HREOC to look at."

MS AUSTIN: We are just rolling out a new counselling service through the care and resource centres, so the two would be complementary in that regard if you like. It would be something to consider. I couldn't commit anyone.

MS MADDISON: Can I just say on that one that we are well aware that we are not funded as an advocacy organisation per se. We get around that by saying we lobby. We gather the information, collate the information, research it and then send it to where it needs to be. Advocacy is a little more than that. You can do it on a local level and you can perhaps do it on a regional level.

MRS OWENS: It is getting more involved in the day-to-day issues of individuals.

MS MADDISON: So you are doing a lot of individual advocacy, but if this transcript is going to the federal government perhaps they need to revisit their own statement to non-government organisations, and particularly advocacy organisations, that they would defund them if they stepped out of line. So you really have to get an approval of what you are going to say prior to saying it and if it is not approved - so that victimisation and intimidation that is felt by families, organisations could perceive that that threat exists over their head, too.

MRS OWENS: I was going to go back to your original submission - the first bit of it - and this is about the complaints mechanism and what we talked about earlier this morning, the number of complaints that have been coming from carers, and you speculated on a number of possible reasons why that may have been the case. It was quite an interesting speculation when you said one possibility was that the DDA was working so effectively that discrimination against associates of people with disabilities is not an issue. I think that might have been tongue in cheek.

MS AUSTIN: I think so. It would be very optimistic.

MRS OWENS: Yes. Then you asked the question: Are associates with disabilities using state-based anti-discrimination laws instead? That has been something we have been really interested in. As we have been going around we have been asking people: "Why do you use one system rather than the other?" We are finding in a lot of states that people are really relying more on the state organisations. Unless it is a Commonwealth government issue they tend to say they know they exist and they are more accessible. Would that be the case with your members as well? You said with your particular complaint, Felicity, you went to the Anti-Discrimination Commission.

MS MADDISON: Yes, because it was a local phone call. If I want to ring HREOC I have to ring Sydney and you have to do it between 9.00 and 5.00, which is peak hour, and when you are living on $180 a week carer payment, pennies count. You are disadvantaged by the tyranny of distance.

MRS OWENS: Did you know there was a 1800 number?

MS MADDISON: It's in very small print in the phone book. It's not well documented within any phone books.

MRS OWENS: It would be a problem if you had a sight impairment.

MS MADDISON: The problem is that I don't know whether it's - obviously a hearing impairment. I do have a sight impairment but not to the degree of disability that my son and daughter have, but you know, I've got the old age "need the glasses, can't see without them".

MRS OWENS: That's the 50-plus one.

MS MADDISON: Yes, that's the long arm one, or short arm one; you need longer arms.

MS AUSTIN: It's not just the discrimination legislation that is available too. There's other tribunals people that people can go to, such as the social security one. I was thinking, probably one of the areas that carers would feel most discriminated in - I don't have any firm evidence of this, I'm surmising - is in the area of carer payments and carer allowances because they're quite hard to get; there is a very strict eligibility criteria which Felicity is an expert on.

MS MADDISON: You have to be destitute.

MS AUSTIN: But things like the carer allowance, you have to live with the person in order to get it, which you don't with the carer payment. I do know of a case in South Australia where they're testing that through the Social Security Tribunal, but people could easily make claims there that that was a discrimination in that anomaly, but also in the way that the testing needs to be put in place to receive the carer payment.

MS MADDISON: You need to score 25 to get a carer payment.

MS McKENZIE: 25?

MS MADDISON: Points.

MS McKENZIE: Points.

MS MADDISON: Yes, on the level of support required by the person. This is scored on the person with a disability, so you need 25 points to get a carer payment. To get a carer allowance you need to score 30, and to get a carer payment you don't necessarily have to live with the person, but to get a carer allowance you do; you have to be living with the person. Mind you, that's a tax-free allowance, but you still have to score a base 30 to get that allowance.

MS McKENZIE: And obviously more than a carer payment.

MS MADDISON: Yes. So if you're actually receiving a carer payment and a carer allowance - there are people who are receiving a carer payment who may not necessarily receive a carer allowance because their support role is deemed not to be as severe as that of someone over 30.

MS AUSTIN: If people wanted to test that, they would go through an alternative route rather than through the DDA.

MRS OWENS: Another reason you gave was people may not be aware of the DDA and then you made the point that if that's the case more effort and resources are needed to educate people of their rights.

MS AUSTIN: Referring to this conference I was at just this week, the commissioner for the Human Rights Commission actually gave an address there, and this was an extremely interested audience he was talking to - about how to progress the rights of young people in nursing homes. But when he made the suggestion that the commission has the capacity to run inquiries itself, nobody in the audience seemed to have any idea that that capacity existed, let alone how to pursue it. So that then begs the question: just how much do they know of what the capacity of the commission is and how they can operate. I would have thought the people in that audience would have checked out what was available through the commission.

MRS OWENS: It was a pretty well-educated audience.

MS AUSTIN: Yes, not so much well educated but certainly trying to do the - - -

MRS OWENS: Well informed.

MS AUSTIN: Yes, as in trying to promote the interests of the people they were caring for.

MRS OWENS: There was one more on here - we're still running through the reasons.

MS AUSTIN: Yes.

MRS OWENS: Okay. The last one you had was the complaints process is not suitable or too difficult for them to pursue, and you talked about limited resources and stress and so on, and we touched on that before.

MS MADDISON: And it was the financial aspect, that although a complaint goes in and it appears to be straightforward, when you're actually complaining about an organisation or whatever, they'll want a conference and you might go along to support your person with a disability, to be confronted by the chief executive officer, five lawyers, a law clerk and that is a very intimidatory process. I don't get intimidated too readily but I know a lot of people who would be incredibly intimidated by that.

MS McKENZIE: This is even in conciliation.

MS MADDISON: Even in conciliation.

MS McKENZIE: Even in conciliation.

MS MADDISON: I was expected to appear at a conciliation meeting of my daughter and fronted to find the chief executive officer there with three legal eagles and two paralegals. So it taught me about adversarial.

MRS OWENS: That was very useful.

MS McKENZIE: I was just going to ask you about disability standards under the DDA. Have you got any views about those standards and whether they might be helpful to address matters of systemic discrimination.

MS MADDISON: In a lot of areas there are - the disability standards you're referring to?

MS McKENZIE: Yes.

MS MADDISON: You know, you've got your transport standards, your building code standards.

MS AUSTIN: There is the possibility to have others too - education, for example.

MS MADDISON: I think you have got to be careful on the education issue, that it shouldn't - because we were discussing outside that there will be always be some people with their disabilities - will preclude them from it actually being in their best interest to be within the mainstream school system. I don't think that people who -

and the gentleman who was here before actually identified a person who could have been a Rhodes scholar and what he wanted to do was to be a welder. I think you've got to take personal consideration into it and not force everyone to go down the same path; there are many different paths to get to the same end.

Housing standards I'm a hundred per cent happy with; we're living in a purpose-built home which is to disability standards. Transport standards are slowly but surely getting there, but they vary state to state, as we found when our organisation bought one of the SOCOG buses - to find that it was acceptable in New South Wales, it's not necessarily acceptable in Queensland. What other standards are they looking at introducing?

MS McKENZIE: No further ones yet but just the transport one.

MRS OWENS: The Building Code: access to public premises.

MS McKENZIE: The Building Code which is mentioned briefly now.

MS MADDISON: Well, that has been in place and I mean, it's still being breached.

MRS OWENS: Though it doesn't cover private housing.

MS MADDISON: Sorry, it doesn't cover private housing?

MRS OWENS: No.

MS MADDISON: No, but it's doing a lot of work on universal design with housing.

MS McKENZIE: And that's through the Australian standard presumably.

MS MADDISON: Yes.

MRS OWENS: You said that the house you live in is not - - -

MS MADDISON: I live in public housing.

MRS OWENS: And not entirely satisfactory?

MS MADDISON: It's entirely satisfactory.

MRS OWENS: It's entirely satisfactory - no, you said it was purpose-built.

MS MADDISON: Purpose-built, yes. So it has been built - it's a disability specific home. It's wheelchair accessible; I love it. My son and daughter have an intellectual impairment. They're legally blind with tunnel vision; they have other little bits and pieces as well, and some mobility. They're not wheelchair users but it makes it a safe house for them. I wouldn't have to explain to you, Cate - you know, wider passageways; it's great. I'd like to see maybe under the Commonwealth Disability Discrimination Act, the actual disability service standards coming up there as part of the act: if it breaches those standards it then becomes discrimination and needs action.

MRS OWENS: Did you have to battle for your house or was it something that was readily available through the Queensland system?

MS MADDISON: I had to wait five years and live next door to neighbours who hurled constant insults and food and rubbish and everything else and derogatory points about my children's disability, prior to getting that house.

MRS OWENS: It sounds like you could have had another complaint under the DDA on harassment.

MS MADDISON: Well, I didn't go to the DDA but at the time I was doing my masters and had enough on my plate, looking after kids, uni, and putting up with them. Anyhow they moved us.

MRS OWENS: Yes, so things are fine on that score. What about respite care?

MS MADDISON: Do I get respite care?

MRS OWENS: Yes.

MS MADDISON: I used to once upon a time; vaguely I remember it. No, it's not available. I could put a few rude comments in while the tape is not running.

MRS OWENS: You can put them in anyway.

MS MADDISON: We were able to access respite through an Endeavour Foundation facility which was great. It wasn't an institution, for want of a better word, it was a house - a home away from home - that would have six guests at any one time. But it was good. My son and daughter enjoyed going there and I absolutely adored having a weekend free. I felt like a human being. With a funding crisis - and certainly Queensland is probably the worst funded state in Australia - Endeavour closed that respite service. I live on the north side of Brisbane; there is no other area I can access. The only way I can get respite is by having a person come into my home who will then care for my son and daughter and then I have to leave the home. It costs a minimum of $130 for a 24-hour period.

MRS OWENS: That's a fairly large chunk of your disability - of your pension.

MS MADDISON: I left my pension three months ago and I am now working, but it is still - - -

MRS OWENS: It is still a sizeable chunk of anybody's income.

MS MADDISON: - - - not a sum that I can afford. Not only that but when they come into my home, then they effectively sleep in bed, eat my food and use my utilities while I vacate the premises and then of course I have to find somewhere where I can go. That is the only way I can get respite.

MRS OWENS: There is an issue also - I mean, I know this is not an inquiry about respite care but it has just informed me that there is also an issue as you get older. There's an issue of aging parents with children with disabilities as well.

MS MADDISON: That's me.

MRS OWENS: You're not as aged as some yet.

MS MADDISON: But I'm getting there.

MRS OWENS: Is that something that has occupied your mind?

MS MADDISON: It shatters me. I'm well aware that if I got hit by a bus today, that my children would be left bereft. I would like to see, certainly, everything in place, and I'm doing my damnedest to make sure that that is there. But I mean, they could conceivably be removed from their home, split up, sent millions of miles from each other. I was actually at a meeting around about this whole issue, and I did say at that meeting that I would like, when I die, to be able to stay dead and not to have to come back and haunt every bastard because they're not looking after my children property. Families fell about laughing but they knew what I meant. I mean, that's pretty much the state we're in, we're going to have to come back and haunt.

MS AUSTIN: That's a question of more than respite though, isn't it? It's a question of alternative accommodation and services to relieve those aging carers.

MRS OWENS: Yes.

MS MADDISON: But you see, this is where your discrimination comes in, in that if I was caring for my mother, my expected care time role would be a great deal less than my care role here. Secondly, that I would have access to respite in a centre - either in a hostel or in a nursing home - and not only would I have access to that respite but, as they are Commonwealth funded, my cost would be 25 to 28 dollars a day, so you have got an economic discrimination; you have got a discrimination about where you can have respite and how you have it, but also if I was caring for my mother I would be able to suggest that mother could go into that nursing home for six weeks and I could go overseas on a holiday.

As a carer of a person with a disability, I have got mine and Buckley's. I think the 12 years that I was (indistinct) carer at home and where I was told I could have 63 days of respite per year, I would have been lucky over that 12-year period to have had anything like 40 days of respite.

MS McKENZIE: In total?

MS MADDISON: In total. Again, that's that age disability discrimination in that 18 to 64 age group and it has got to wear on the person with the disability.

MS McKENZIE: Of course.

MS AUSTIN: I guess those are the sorts of things that don't get challenged under the DDA, but it is still discrimination that is there in the community.

MRS OWENS: Yes. It's a different form of discrimination but, nevertheless, what we're doing - we are hearing these stories. I mean, we are getting a lot of stories, some of which are relevant, directly relevant, to our inquiry, and the act is directly relevant to the situation, and others - it's a bit more border-line. What we will probably try to do is sweep a lot of those up and say, "By the way, there are these other issues that need to be thought about very carefully." We often do this in commission reports. We highlight the other issues.

MS MADDISON: We've got another one for you then.

MRS OWENS: Go for it.

MS MADDISON: If you're caring for a son and daughter with a disability and supports aren't in place for them, you know, ever, I have already - in informal discussions I said there's a high divorce rate in families where disability is present, so you get a lot of sole, single parents caring for kids and young adults with disabilities. If the supports aren't in place then you're going to effectively preclude the potentially only breadwinner from breadwinning because of the support needs of the person they are caring for, or they are going to be pegged on to part-time work.

That 46-year time frame that I keep talking about - in that period of time they have got not only loss of income, but they have got loss of future because you’ve got no superannuation, no long service, no ability to fund their old age. They're not entitled to workers compensation when their back gives out after they have been lifting their total dependent son in and out of his wheelchair and in and out of his bed for 35 years. There is not even any supports in place when, because your back has gone, your knee goes and you fall over and do your shoulder.

They whinged about having to fork out $4000 to put supports in place to accommodate mum after she'd had a shoulder operation, so there are all these issues in between times. Keep pegging people below poverty and you are going to get health issues. It's a cost shift between disability and health and it's going to keep swinging. You're going to end up with a lot of very sick carers who have been stressed over a period of time, so their aging process is probably going to be a lot rougher than their predecessors or people who aren't involved in that care industry. I would refer you to the Commonwealth State Disability - the AIHW inquiry, I think it was, on the CSTDA - and they had a consultation in Queensland, where it was identified that there was a 97-year-old woman, who was still caring for her 70-year-old son, who had continence needs and had had all his life. That's not an unusual story, but families - - -

MRS OWENS: She's obviously had to stay alive.

MS MADDISON: I mean this is what - yes. You can't afford to die.

MS McKENZIE: No. You don't have time to die or get sick.

MS MADDISON: I smoke and people say, "It’ll kill you" and I go, "Oh, respite at last."

MRS OWENS: I just had one other issue and that was, what would you do about the unjustifiable hardship clause in the Disability Discrimination Act?

MS MADDISON: I think I would be inclined to scrap it.

MRS OWENS: That is what came across.

MS McKENZIE: Came across in your submission.

MS MADDISON: That's a clause where schools - actually schools have used it quite effectively in Queensland.

MRS OWENS: And employers can use it, too.

MS MADDISON: And employers, so - to make any modification to accommodate the needs of people with disability within their environment.

MRS OWENS: What happens though if you're a very small school with only a few pupils and struggling parents who - we heard this morning about Christian schools: some of them are quite small; they're not very wealthy schools, and a student comes along that needs very specific services, which could be quite costly.

MS MADDISON: I thought private schools could refuse admission.

MRS OWENS: They can on the basis of unjustifiable hardship but, apart from that, there's - I think they would have to take the child unless they can prove unjustifiable hardship.

MS AUSTIN: There must be a compromise way through this.

MS McKENZIE: To be fair, what the Association of Christian Schools said was that - and they themselves said that it clearly wasn't the perfect solution, but what they said they do is to explain that they just don't have the resources to provide for the absolutely appropriate care, but they will not refuse enrolment. They explain to the parents - or the parent of the child - that this is what their resources can afford to give this child. They're happy to accept the child, but that's the basis upon which the child will be educated and if - - -

MS MADDISON: So were parents with that or was that just a scenario that they put forward for you?

MS McKENZIE: No. What they said is that some parents accept that and the child goes to that school; others go looking for another school. The difficulty is of course that the parents will very probably have religious reasons for wanting to send their child to a Christian school, so that's another factor to add to the equation.

MS MADDISON: I mean, I have refused a respite centre because it wasn't suitable. It would have been dangerous for my son and daughter because of their vision impairment. There were lots and lots of steps and angles and uneven ground and they would have hurt themselves. I forewent respite, but I wasn't prepared to put them into a situation of danger. I guess I have come from the - I am a generation older than the parents that are coming through at the moment. Their expectations are different. Whilst I've not been an institutional parent, I have certainly grown up with - or sort of come along with - we were a very mobile family. We moved all over Australia. The first thing we did when we found out we were going was to locate the special schools and the facilities that we required and then we located ourselves around those areas, so we went looking for specifics.

MS AUSTIN: This was a situation where they demanded that the school accommodate them rather than them looking for suitable accommodation, wasn't it? I think I know the case.

MS McKENZIE: That wasn't made clear. That's all I can say.

MS AUSTIN: In which case you can argue on the hardship stuff, but if it's the case of being in a community like Canberra, there is a choice of schools, isn't there? It's a question of which one will be the most accommodating and meet the needs and where the compromises can be found.

MRS OWENS: There are trade-offs. There are always trade-offs.

MS AUSTIN: Yes. It's not an ideal world.

MS MADDISON: But I've found that family have to - if you have say a son who is a wheelchair user and you need to modify your bathroom to accommodate his needs - or they obviously can't move their wheelchair up a flight of stairs - it's up to the parents to make those modifications and pay for them. Do you know what I mean?

MRS OWENS: It's a very costly business having - - -

MS MADDISON: But the family can't say "hardship".

MRS OWENS: But do you think that we should be able to say, "We've got this child. This child has certain needs. We should get some community support to meet that child's needs, whether it be in the home, the school, or through the health system."

MS MADDISON: Absolutely. I mean, I believe that we should have a levy along the lines of the Medicare levy, that actually supports those - - -

MS AUSTIN: I think in New South Wales there are some grants available which you can apply for for those sorts of modifications. I don't know the details of them, but I do recall - - -

MS MADDISON: You've got to get one. I mean, that's like a lot of Commonwealth and state departments - they exist - you know, you've got home secure and home modification and home this, but you'll find that you go there and it's a nice office and there are nice people in the nice office, but they haven't got any funding to send anyone out to do home modifications or your home secure. It's name only - lip service - but I mean in an ideal world and here, disability would be acknowledged as something that can occur to anyone at any time.

MRS OWENS: Indeed.

MS MADDISON: That it's likely to occur to you as you age. Why wait until you're 65 to acknowledge that disability can occur? Why can't Australians accept that it's part of life and bite the bullet and pay a few more taxes to make sure that people with disabilities are properly supported from the time they are born - and their families?

MRS OWENS: Thank you for that. Have you got any other issues you would like to raise with us?

MS AUSTIN: No. I was just going to suggest that if this inquiry or the commission has the capacity to try and do some more research on some of those questions we've raised, we would be happy to help you.

MRS OWENS: Thank you very much.

MS AUSTIN: They're quite legitimate questions, I think, but we just don't have the resources to dig deeper ourselves.

MRS OWENS: No, but I think what you have said today and what we have covered has been very useful and we do understand very well your resource constraints, and time constraints, I think, but thank you for what you have done so far. I hope you can stay in touch and hear the rest of the inquiry.

MS MADDISON: If we have brought some issues to the forum you might find that there might be an action by carers over this 18 to 54 discrimination that occurs.

MRS OWENS: Okay. Thank you very much. We'll now break for a minute.

MS MADDISON: Thank you for your time.

MRS OWENS: Thanks a lot. Thank you for your submission.

MRS OWENS: The next participant this afternoon is the Australian Building Codes Board. Welcome to this inquiry and thank you both for coming and for the submission. I'd like you to both give your names and your positions with the board for the transcript.

MR DONALDSON: Thank you very much. My name is Ivan Donaldson. I'm executive director of the Australian Building Codes Board.

MRS OWENS: Thank you.

MR McDONALD: My name is Matthew McDonald. I'm a project manager with the Australian Building Codes Board.

MRS OWENS: Good, thank you. I understand - I think it's just Ivan - you want to make a few opening comments.

MR DONALDSON: Yes, I'd like to do that. First of all, I'd like to thank the commission, and you in particular, for inviting us to participate and I can appreciate why that might be necessary because you've clearly had a very strong response from the community about a whole range of issues, some of which bear very directly on the work that we're doing at the moment and there are some issues there that I hope we can provide some clarification on. I'll come to those in a moment but what I'd just like to perhaps say for the record is to understand the nature of this thing called the Australian Building Codes Board, what we are and what we do, because I think it's important to understand where we fit into the process here.

The Australian Building Codes Board, and I'll refer to it as the ABCB, it might be easier, or the board, interchangeably - the ABCB has only been in existence since 1994 and it is a product of a Commonwealth, state and territory government agreement to look at a more nationally consistent cost-effective way of delivering building regulations in Australia. It's only since the early 1990s that Australia has actually had a national Building Code that can deal with issues concerned with health and safety in the design and construction of buildings and it's only since 1996 that Australia has had what we call a performance-based Building Code. So that the regulations these days in Australia that affect design and construction of new buildings and the refurbishment of the existing buildings is delivered by the states and territories primarily but, as a technical source, they all use the single Building Code.

There are virtually no technical variations from that national code with the notable exception of when that's needed for the purpose of dealing with the geographic or a climatic circumstance. So that in circumstances, for example, where cyclones are a problem, naturally the Building Code deals with that in those areas. In snow-loading countries we obviously deal with that too for practical reasons but the key point here is that Australia has a national Building Code and that is a common practice in the western world and it's all about delivering health and safety in buildings for people to protect them against things like fire and to ensure their buildings are structurally sound and that the amenities that are provided for in those buildings provide for a healthy environment.

So our focus is life safety. It's a framework that is national in its application and, for the purposes of people with disabilities, the code already does contain a wide range of provisions which focus on things like mobility access, facilities for people with hearing impairment and people with vision impairment. There are provisions in the Building Code already, and have been for some years.

Turning to the issues that I noted, in some of the submissions that we've had an opportunity to look at - and I appreciate there may be others but there were a number of points that I just wanted to flag before we get into your questions and perhaps other issues that we hadn't picked up on - the first thing, I guess there's a context that needs to be put on the table, and that is that when it comes to health, safety and amenity issues affecting people with disabilities, at the moment in Australia there are two primary sources of legal requirement: one is the DDA, which is your focus, because we understand very clearly that it is discriminatory - against a person with a disability to discriminate against them in certain buildings in Australia and that's in the DDA; and in addition to that we have state laws which set minimum requirements for facilities and design advice which bears on the same subject.

So what we've got is state laws doing one thing and federal law doing another and the fundamental difference is that the federal law is a post-construction complaints environment and the state law, the Building Code, is a preconstruction design and construction code so it wouldn't be surprising, and I guess it's coming across a little in some of the submissions, that there is some confusion out there about what people's rights are, what their obligations are and what actually they ought to do.

Back in the year 2000 the Commonwealth government amended the DDA to make a provision for a standard to be written which would enable greater clarity to be brought forward for access to premises that the public has a right to access and that change to the act opened the way for a standard to deal with that uncertainty issue and the Commonwealth and the states and territories agreed that the most sensible way to do that was to use the pre-existing Building Code environment because the reality of building approvals in Australia is that you're dealing with something like anything between 30 and 50 billion dollars' worth of activity in any one year, which is about 10 per cent of the building environment and you are dealing with building approvals which happen at all sorts of levels in the community, very much at the local level because they're about your house or your factory or your hospital or whatever.

I don't want to be held to this number but I saw some ABS data this morning that said there were 364,000 building approvals in Australia in the most recent year. Now, that doesn't mean that there were 364,000 buildings built but it means that it underpins, I guess, the fact that there is a lot of activity out in the marketplace which is already subject to compliance because you've got a Building Code and a compliance infrastructure which is sitting in place there which approves buildings to meet the Building Code. So it seemed sensible therefore to use that infrastructure and that pre-existing Building Code technical documentation to inform the development of a DDA standard and hence we are now in a process of trying to align the Building Code with the requirements of the DDA by injecting the Building Code as it will be changed as part of the disability standard for access to premises.

In doing that, and we really started this current process in early 2001, we originally set some target dates. We made those public and we've been around the country actively engaging with people and, through some formal processes, with governments and representatives of the community and industry to sort of target, this year really when we look like we could put forward recommendations, but it soon became very clear to us that there were two things that were very important, not just the outcome in terms of improving access for people with disabilities to public buildings, but also in ensuring that in doing that we were able to engage in an effective consultation process in a way that was as inclusive as we could make it and took account of a great deal of complexity, because I can assure you that this is an area of considerable complexity and some significant differences of opinion over issues, so I guess we traded off an early perhaps - how could I portray this - - -

MRS OWENS: Resolution?

MR DONALDSON: A set of proposals perhaps might - thoroughly thought through, traded that off for something which we felt would be better worked through, better understood and involved - engaged the community and particularly people with disabilities in a much more effective way, and we're in that process and I guess our 2003 is really now 2004. So I now come therefore to some of the comments that I've seen in our look at the submissions and I see criticism about being too slow in coming up with an outcome and we can talk about that.

I guess I see issues about how the certification community, the people that actually approve buildings, councils and private certifies, how they are really going to be able to do their job in an effective way, how we deal with unjustifiable hardship as an issue and what it is we are or are not doing in relation to accessible housing. They were some of the issues that seemed to me to be of some concern to people who had made submissions to you today and I'm happy to talk about those things but there may well be more. So with those preliminary remarks and you've now got our submission unfortunately only yesterday but it is on the table and we stand ready to answer any questions now and, if there are other issues that emerge after this day, we will be happy to try and work with you through your inquiry to assist in this area.

MRS OWENS: Thank you very much and I think we were just very pleased to get a submission from you, so I think I can speak for Kate - - -

MS McKENZIE: Yes, it's very good..

MRS OWENS: - - - we are very grateful. It is an issue that has been raised as we've gone around. Another issue to add to the list has come from a couple of the states, one of which is Queensland and I think the other is Tasmania, from the anti-discrimination commissioners in each state saying that the Building Codes in their own states or the standards that apply in those states are actually stronger and that moving to the Australian Building Code would be moving in the wrong direction. It's the lowest common denominator and they would like to stick with what they've got in their own states and I was just wondering if this sort of feedback has come to you in your consultation rounds and how you've addressed it.

MR DONALDSON: Two things: I am surprised at that comment because in the two states that you refer to, the mandatory requirements in respect of disability access are the Building Code of Australia and that's promulgated in both cases in their planning and building laws.

MS McKENZIE: Sorry to interrupt you, Ivan, but can I explain - I think just to clarify a little bit what Helen was saying - the standards they are talking about were not the BCA but the standards that had been implemented because of decisions under the relevant anti-discrimination legislation in each of those states and there was a feeling - it's probably best if I talk about Queensland as an example. In Queensland some years back there was a complaint brought by a person called Cox in relation to the convention centre.

MR DONALDSON: Yes, I'm familiar with that.

MS McKENZIE: Yes, and that case resulted in certain modifications being made so that there was disabled access in the front of the centre and there was a feeling on the part of the Queensland Anti-Discrimination Commission that this case had established a higher standard than the BCA and that their concern was that, if ultimately the BCA was embodied in a standard under the federal DDA, then because of the way inconsistency of laws works that standard would be the standard and what they regarded as a higher standard would then not be there any more basically.

MR DONALDSON: Yes, two key points there. That case was a direct product of the environment we do have now, which is about the post-construction complaints environment, and the consequence of that was in respect of a project - that particular facility, and therefore has no application other than - there's nothing in the law that says somebody has to follow it. If they don't follow it they may be exposed to a complaint by somebody - they may be - but there's nothing automatic about that, I would have thought. It may well inform people but it doesn't translate into legislation.

Secondly, that comment assumes that the Building Code is a static document and that our process is not going to lead to some change in respect of the way in which we deal with various elements of the code. Our whole process is about improving access for people with disabilities, so it might not have been an unreasonable comment to make about the existing BCA and what that particular suggested ought to be done. In fact, we would acknowledge that the BCA does not comply with the DDA, that's the whole point; that's what we're doing here. Where we finish and what we put on the table in the way of recommendations that go forward to ministers will be in the public arena, and it is for the community and others to judge whether we've met the objective of aligning the BCA with the DDA. That case is well known to us. But as I say, throughout Australia that is case law and that still leaves us with some uncertainty about what might or might not happen.

MS McKENZIE: It does, but you would also agree you ignore case law at your peril, because it's all very well to say there's a single complaint and there's only one case, but clearly the risk is that there will be further complaints, and assuming that the case is then followed - you know, it's a most unfortunate situation. Obviously it would be better to deal with the matter, I would have thought, at the design and construction stage, clearly, than down the track. And really that's what you're saying as well; that's the whole point of doing what you're doing now.

MR DONALDSON: Now, Tasmania is something I'm surprised about too. Once again, as I say, the requirements in both states via the law is the Building Code, and the only thing that is required also by design and construction people, operators of buildings, is to have regard to their obligations under the DDA, so we have a situation there, that I was explaining in my preliminary remarks, where the industry and users of buildings are required to have regard to the DDA but also the Building Code, and potentially there is a mismatch. Our expectation, our hope, is that we will be able to significantly reduce that uncertainty by lifting the bar with respect to the Building Code and delivering it not from a project basis but delivering it across the whole of the public building environment in Australia.

From our perspective, philosophically we would argue that we can deliver a better outcome for the community if we can come up with equitable cost-effective solutions for all new buildings rather than to leave it to a case that was ground-breaking in its own impact but whose impact leaves us with the uncertainty that we've got, because any day there could be another complaint about another unsatisfactory situation in the building environment and we could find ourselves having another court case about another issue. That could happen, and it wouldn't surprise me if it did.

MS McKENZIE: Could I ask you some clarification type questions? I just want to actually understand properly how all this is going to work. I'm not asking in particular about the detail and I know that there is still further work to come; there is still some way down the track to go. The BCA currently applies to new buildings and refurbishment of existing buildings - new building work. Is that fair?

MR DONALDSON: Yes. Let me be a little bit more specific. It applies to all new buildings. It applies to, in simple terms, major refurbishments of existing buildings.

MS McKENZIE: Yes.

MR DONALDSON: The way it does is that state legislation triggers the BCA for new building work in existing buildings through state legislation, and it does it for a very good reason. If it's a major refurbishment - and that will be defined in legislation, we won't go into details, it's not in the Building Code, it's in the state law.

MS McKENZIE: Yes.

MR DONALDSON: Yes. It does it because the Building Code is about life safety, so if we're going to be seeing a building refurbished in a major way, then it's totally appropriate that in many cases current community expectations and standards of life safety and protection ought to be applied to those buildings. That's the principle that sits behind it. So the answer is, in simple terms, all new buildings and new building work on existing buildings is captured.

MS McKENZIE: To the extent that the code is to be changed and is to become part of a standard under the DDA, those provisions will apply only to public buildings?

MR DONALDSON: They will apply to buildings to which the public has a right of access. It's very important that we distinguish between - sometimes people think maybe public buildings are owned by government, and we've had people say that to us. That's not the case. It's buildings to which the public has a right of access.

MS McKENZIE: Irrespective of who owns them.

MR DONALDSON: Absolutely. It doesn't distinguish between a government-owned building and a privately-owned building. So we're talking about education facilities, we're talking about offices, we're talking about museums, libraries, the general run-of-the-mill - virtually every building out in Northbourne Avenue.

MS McKENZIE: Does the code then - looking at the extent to which it is to form part of the standard - only apply to buildings to which the public has a right of access but to new buildings of that kind or to major refurbishments of existing buildings of that kind?

MR DONALDSON: The Building Code applies to all buildings; residential buildings, et cetera.

MS McKENZIE: That's right, but remember we've just said that the Building Code only relates to new buildings and then where the states pick it up, if you like, for major refurbishment of existing buildings.

MR DONALDSON: Yes.

MS McKENZIE: So are the same limitations imported when we're now talking about disability access standards for buildings to which the public have access? In other words, are we still only just talking about new buildings and major refurbishment of existing buildings where the state legislation triggers the Building Code's operation?

MR DONALDSON: Yes. The DDA applies, as I understand it, to all buildings in the interaction of people in buildings as far as I know. I'm not an expert on the DDA and I wouldn't like to be quoted as one, but the BCA does not apply to existing building stock except when there is a change of use in that building or a refurbishment of that building that meets state law. To put it in context - - -

MS McKENZIE: The reason why I'm asking this question - let me explain - is because there is real confusion in the submissions made to us about what the new standard is going to apply to. There is real confusion about whether it is just public buildings, there is real confusion about what existing buildings the standard might apply to, and so on.

MR DONALDSON: Yes. I guess that's not surprising because this is a complex regulatory area but we have put out in the public arena over 12 months ago a very clear statement of what we are defining in terms of the scope of our work. That is in the public domain. I have repeated it in our submission so you will have an opportunity to see and hopefully can pick that up in your report, so the people who have come forward with their concerns about uncertainty about the scope of our work can get some clarification around that.

MS McKENZIE: So basically you're looking - as far as the standard is concerned - at buildings to which the public have access.

MR DONALDSON: That is what government has asked us to focus on, and that's what we're doing, yes.

MRS OWENS: But isn't there going to be a problem then? Say there are buildings to which the public have access, such as heritage buildings, where there may be difficulties for people with disabilities, but that means that the standard that is going to apply under the DDA is not going to apply to those buildings or to other existing buildings until an owner says, "I'm going to refurbish" and there is going to be a real disincentive to do so, or else to do it in incremental steps. I mean, you talk about major refurbishment. What is to stop somebody saying, "Okay, I'll do a small amount this year and in two years' time I'll do another bit and another bit", and each time that's just an incremental small change so it doesn't get picked up by the Building Code.

MR DONALDSON: I will just put this in context for you. The built environment are valued at about $800 billion in Australia. We're talking about activity which represents about 5 per cent of that per annum, so after 20 years, the built environment, if you like, is totally redone. We know that's not quite true, but we're talking about an instrument which is going to deal, over a relatively short period of time, with an overwhelming component of the built environment. So I need to say that first of all.

When we start moving into issues associated with is the Building Code triggered or not, that's a state law matter. Is the Building Code triggered or not is a state law matter. One of the issues we're looking at is to ensure that the trigger that applies in existing buildings is consistent across the country. That's one of the issues.

MS McKENZIE: That's another problem, isn't it? I understand.

MR DONALDSON: This is a problem and that's why we're dealing with it. I mean, we know it's a problem, and there are many problems, and that's why it is taking us so long to be able to resolve them, because unfortunately for all of us - or fortunately in some people's view - we live in a federation and building regulations under the constitution are not the responsibility of the Commonwealth except in some very specialised areas like airports.

State law is relevant and state laws are developed within their own jurisdictions and inevitably there will be, over time, differences. The trigger for existing buildings does differ to some extent between jurisdictions. We recognise that issue and we're working with the states to create a single trigger framework, so we move to that point. Okay, coming back to your issue now, the clash of values - the issue of heritage legislation, questions about, is this really a major refurbishment against the trigger or not, and therefore does the BCA and the standard apply?

Okay, we're dealing here with, inevitably, areas which do require judgment and we believe that the Building Code alone and its application to building and construction in the market is certainly essential but is not sufficient. We also require some mechanism to deal with those sorts of issues, because I think it goes to the heart of the issue of unjustifiable hardship because that's the qualifier in the DDA and that's an issue that will inevitably arise in a refurbishment where someone tries to play the game that you suggested of incrementally increasing it just because they might have an obligation under the DDA. I must say I find that a curious thing for someone to do because one would hope that if we're talking about starting from a point where you've got control over design, that the sort of solutions you can identify don't necessarily have to be talking about significant cost impacts. That's an issue and people can make judgments about that on a person and individual basis - company basis, so I am a little bit surprised that someone would go to the trouble of saying, "We want to market this building to a particular market and we need to do it because there is a demand. Why on earth are we going to take five years to do it just because we've got an obligation under the DDA?"

MRS OWENS: No, it was just a hypothetical.

MR DONALDSON: Yes, a proposition, of course. So how do we deal with that?

MRS OWENS: It's a proposition but not a probability.

MR DONALDSON: Yes, okay, it's a possibility and it comes into that grab bag of things about the clashes of values, the tension between a commercial imperative and somebody wanting to minimise their exposure to a legal obligation - all of that. Okay, what are we doing in that respect? I think we need to do something. What we have - in the last throes of negotiating and in fact have subjected it to a preliminary cost impact analysis and are about to go public on is a process that we want the states to pick up, which enables these issues to be addressed at the state level.

MS McKENZIE: You're looking at addressing them at the design stage, if you like?

MR DONALDSON: Yes, indeed - at the pre-approval stage.

MS McKENZIE: Yes, at approvals.

MR DONALDSON: Yes, we are. Remember that one of the real advantages that we have with using the BCA and state laws to deliver compliance to the DDA in relation to public buildings, is that we've already got in place people who actually certify building approvals. There are people employed by council, there are people in the private market that deliver certification services. Their job is to certify buildings as complying with the Building Code. So we've got a ready-made compliance environment here and we want to be able to use that.

When I say that the Building Code is essential but not sufficient, I would venture to say that there is an education challenge here for the industry, the certification industry and the community. It will take some time, I think, for people to fully appreciate their rights and obligations and to really deliver good outcomes. It will take time, so in recognising that and using the existing regulatory framework, it occurred to us that we needed, at least in an interim form, some mechanism to deal with those more difficult justifiable hardship issues, the incremental stuff that you talk about, heritage versus compliance with the BCA and so we've developed what we call a protocol; a process of dealing with, say, things that we would call alternative solutions, novel solutions that don't follow the recipe, but are trying to achieve the same outcome, because we work in a performance regulatory environment - or the hardship issue in relation to somebody who says, "I really don't think I can possibly meet the BCA in this refurbishment of my building because of X, Y and Z."

MS McKENZIE: What legal significance would that protocol have?

MR DONALDSON: That's a matter that states and the Commonwealth have to negotiate. This is my advice, this has not been resolved by governments - but my advice would be that it would not form part of the standard. It would be part of the building act administration frameworks of the individual states and territories. How they set up that particular mechanism within their own individual administrations is a little bit up to them, but we want to provide this mechanism so that there is some - it's not a court; it's a process of trying to mediate - resolve those issues.

MS McKENZIE: Some dispute resolution process - - -

MR DONALDSON: You could look at it like that, I guess. It would be administrative in its nature, yes, that's right. Matthew McDonald might like to add some works about that mechanism, because we see it as an important part of the package that we're working up.

MR McDONALD: Yes, as Ivan started to mention, it is a process. It's open to the states and territories to adopt, so we're not going to force them to sign on to this protocol, but it has been developed through our committees that are developing the premises standard, and in conjunction with the state and territory governments. What the process will do is put together a panel in each state which has certain levels of expertise - on the panel - and it has to have a majority of persons competent in access-related issues.

Therefore, when someone takes an application to a certifier or a local council for approval, and there is some element in the building that may not meet the strict "deemed to satisfy" or there may be a claim for unjustifiable hardship, the certifier does not have to make that decision all on his own, but he still can under most legislation. It gives him a different avenue, where he can go to this access panel, use their expertise and have a decision made that hopefully in future - if there was ever a complaint made about that decision - the applicant or the building owner, or the building developer, could show that he has used a process which has been agreed to by our building access policy committee and the state and government bodies.

So even though at this stage we don't think it will be recognised by the DDA, it's probably the best thing we can put in place for existing buildings, to recognise that there are existing buildings that may not be able to come up to the full level of compliance that we will be developing for brand new buildings.

MRS OWENS: But are you going to leave this as a voluntary measure for the states to adopt? Have you had any feedback in your offerings about this idea for the states?

MR DONALDSON: Yes, we have. We've worked this up with the state administrations and in most cases they already have in place administrative frameworks which can accommodate this without any legislative, or significant administrative change. It's the sort of thing that essentially fits in with the existing compliance framework. In some cases, however, there is a need for some legislative change to allow it to happen, so we can't direct the states to do this; that's not something we can do. But we certainly work with them so, to this point, the general framework that we've put together - certainly at officials level - has a significant measure of acceptance. Obviously all of these things we're working on do not have, at this point in time, government sign-off, and that's a case that we have to put once we've worked our way through with the community and with officials.

MS McKENZIE: How much of a concern has it been that there is a possibility - I don't know, it depends on how much of a possibility you think this might be - that you are a certifier and you're a bit doubtful about whether this particular alteration of an existing building is going to involve an unjustifiable hardship question; you send it off to your panel of experts and they say, "Okay, you don't have to - there is an unjustifiable hardship here. You don't have to comply with the access provisions." You follow that advice, do your alterations and later, afterwards, some person with a disability comes and makes a complaint and ultimately that complaint is upheld on the basis that the unjustifiable hardship defence doesn't apply. Have you thought about how to cope with that situation?

MR DONALDSON: Yes. As far as I understand, that's the right of anybody, to lodge a complaint. I would hope that the outcome that we're pursuing here will actually significantly reduce the number of instances when a complaint would be made, because people would feel that by and large the certainty created by the existence of the national standard through the BCA would minimise those. But inevitably, that right of complaint is not removed from anybody, nor should it be. That remains in place and that then becomes a matter in the normal course of events for the Human Rights Commission in their mediation role, as I understand it, or through the courts. But I don't see that as something that - I don't think it would be appropriate for the ABCB or the Building Code to try and address that, because I guess we would see what we're dealing with here is a time of transition, about community awareness, industry awareness and about rights and obligations.

I guess whilst that may be more problematic in the early years of these changes, one would hope that what we can do over time is create more confidence, more certainty and greater compliance so that the issue that you have raised becomes less of an issue over time. That would be my response to it.

MR McDONALD: Can I just add two small things to that. There is an article of the protocol that says if a complaint is lodged, and it's upheld, then there is a need for the building access policy committee, who develop protocol, to go back and have a look to see if it was a failing in the process.

MS McKENZIE: Yes.

MR McDONALD: If it is, obviously a change can be made, and if not, there is not a lot further we can do.

MRS OWENS: So there is a feedback loop from the complaint.

MR McDONALD: Yes. The other part of the protocol is that all decisions made by the panels are intended to be made public, so it's not a closed process and people can learn from decisions that are made.

MR DONALDSON: Yes, that's right. We see that as a really important contribution to education over time. You know, that it will help inform not only the certifiers who are out there hopefully in time being the people that do it themselves, but also the building industry and the community.

MRS OWENS: I presume, over time, with this protocol in place it would be harder and harder to prove unjustifiable hardship should not have - - -

MS McKENZIE: That's an interesting question, which is one of the reasons that was in my mind when I asked the original question, because there's no direct or expressed link between the protocol and the DDA or, for that matter - and it's not recognised in the standard, so theoretically at least there's a possibility that the protocol - the existence of the protocol - may have absolutely nothing to do with whether a justifiable hardship defence could be maintained later.

MRS OWENS: But presumably if they are looking at the cases and learning from those cases there would be feedback to the protocol.

MS McKENZIE: Yes. That is the other way around though, but the protocol won't influence the cases or, at least, perhaps not.

MRS OWENS: No. I wasn't suggesting that. I'm just wondering whether, over time, having the protocol will help also to bring the two things closer together.

MR DONALDSON: We actually see the protocol as a transition vehicle. I mean, you compare this to other standards. There is no compliance framework out there. We've actually got a compliance framework in place. Now, what one's view is about the quality or the performance of certifiers is a separate issue and it's something that needs to be addressed, particularly in relation to awareness and knowledge and case work dealing with disability issues, but there are 4000 people out there who will actually be in the business of delivering compliance with this standard in respect to the Building Code aspects of the standard. That's their job.

MRS OWENS: I was going to ask you about something else. I gather you charge people for copies of the Building Code standard.

MR DONALDSON: Yes, that's correct.

MRS OWENS: We, at the commission, have done an inquiry into cost recovery. I don't know if you participated or not.

MR DONALDSON: Yes, I am familiar with it.

MRS OWENS: It was last year or the year before and we developed some guidelines and I am just wondering in this case - I gather they're quite expensive to purchase.

MR DONALDSON: I could give you a run-down on that in detail.

MRS OWENS: Yes. I will ask the question and then you can give me a run-down.

MR DONALDSON: Okay.

MRS OWENS: I am just wondering what is the rationale for charging when what you are trying to do is to get people to comply with a Building Code and effectively not to break the law, so you're charging people to get access to a code, which in fact they should be - isn't there a public good element in having a Building Code out there that you want people to comply with?

MR DONALDSON: A couple of things.

MRS OWENS: Have you looked at our guidelines, by the way?

MR DONALDSON: Not only that; we are complying with your guidelines. I beg your pardon. The government's decision in relation to cost recovery is a matter that has certainly been brought to our attention and the ministry that we sit in in Canberra is the Department of Industry, Tourism and Resources, and the processes and the way in which we go about our business was the subject of review by both that department and the Department of Finance. My understanding is that we complied with the government's decision in relation to cost recovery.

I am afraid you will have to direct your question about the public good issue and the availability of the Building Code to government, because our primary objective in relation to the Building Code is to get it in the hands of the practitioners. It's a technical document actually. That's volume 1 of the Building Code. I beg your pardon. I am pointing to a very large document of 1000 pages which, in that particular format - which, I must say, we are about to change because, as you can see, it is rather unwieldy.

MRS OWENS: Yes.

MR DONALDSON: There are three of those that sit up like that.

MRS OWENS: I won't ask you to table those.

MR DONALDSON: Okay. If you were a building practitioner and you wanted to follow the Building Code, not only would you need the Building Code but you would also require over 100 Australian Standards. Australian Standards are produced by a commercial organisation called Standards Australia International and they don't provide even their reference mandatory standards free of charge to the community. They're not available in that respect.

However, as far as the Building Code is concerned I would have thought $33 access over the Internet and free access in all councils and libraries in Australia was not an unreasonable way of making it available for the public-good purpose and, when I recognise that government has charged us with, shall we say, $6 million worth of activity and they are only providing us with $2 million worth of public money, then I find myself having to fund the activities that I conduct in research, marketing, code review, public consultation, then a charge of $314, GST inclusive, for the hard copy version of the Building Code is not an unreasonable value proposition.

MS McKENZIE: This is without the incorporated standards?

MR DONALDSON: The standards are not my business. They're supplied by a private company to the community and they're the sort of documents that need to be used by people with significant professional expertise - they are quite complicated - but nonetheless you have made a valuable point - - -

MS McKENZIE: But they are part of the code - - -

MR DONALDSON: We don't own them.

MS McKENZIE: You don't own them, I know, but in a way you can't talk about the code and say that the standards are not your business.

MR DONALDSON: Yes, well, you talk about the code. I am responsible for the code, not standards.

MS McKENZIE: Yes.

MR DONALDSON: The code is available in a number of formats. It's available, as I say, for $33 for casual access via the Internet. It's available in CD-ROM form. It's available at a significantly lower price than the one I quoted there. We are about to renegotiate our commercial contracts with the people who actually have to produce that thing. We're going to change the format and my expectation is that the price of the Building Code is going to come down significantly, but I am coming to a punch line here because I think it is significant to this inquiry. In relation to disability access matters, the disability access BCA issues will become of course part of a disallowable instrument under the DEA. Hence they become legislation and I have already got agreement from my board that that element of the Building Code will be free to the community.

MRS OWENS: That's a start. That's excellent.

MS McKENZIE: I mean, I have to say that there are a few submissions that have been made to us already about which express concerns about that matter, although those submissions also expressed concerns about the incorporated standards and how expensive they were to obtain, and I assume that to the extent that the code incorporates standards relating to disability access matters, exactly the same will still apply - the standards organisations - - -

MR DONALDSON: Sorry. I'm not in any position to make any comment on that. That is a matter for the governments to deal with the relevant organisation. They are a commercial body and I don't think they are in the business of providing their commercial, intellectual property free of charge, but that is for them to say; not for me.

MS McKENZIE: Yes.

MRS OWENS: There was another issue that was raised with us this morning by the Deafness Forum of Australia in relation to building standards, and that was that the focus tends to be on physical access rather than other aspects of building design, including ability via safety fire alarms, hearing loops, et cetera, et cetera. I wonder if you have any comments to make about that?

MR DONALDSON: I haven't had an opportunity to see what they've said. Hearing augmentation is one of the aspects of the Building Code already and we made amendments to the Building Code in 1999, I think, to change the provisions. Hearing augmentation is one of the elements of the scope of the issues we're looking at at the present time, as was the amendment we made to the Building Code in relation to Braille signage and tactile indicators, back in 2001. The Building Code doesn't deal with mobility issues alone. It deals with other issues that can be affected by the design and construction of a building.

I guess the main things are mobility, hearing and sight impairment issues. I guess another important thing we need to note is that perhaps the focus is a little bit limited if we think about these terms in terms of people with disabilities, because the reality is that many of the things we are doing here have a bearing on the wider community in terms of their use of buildings, and I think that that becomes more significant over time when you have a demographic in Australia which is telling us that you have got an aging population. Okay, people throw ladies and prams at you but, leave that to one side for a moment, there is a fundamental shift in the demographic make-up of the Australian population and that aging process, I think, has direct relevant to the sort of things we're looking at here in terms of access to buildings.

MS McKENZIE: I think that is absolutely correct and it is a point made in many, many of the submissions also.

MR DONALDSON: Is it?

MS McKENZIE: Yes, that these matters don't only relate to - and shouldn't be regarded as only relating to - people with disabilities.

MR DONALDSON: Yes.

MS McKENZIE: There is a much wider impact.

MR DONALDSON: If there is one message that I could sort of put on the table - and I try and convey this one when I can - it is that, we, historically, have focused on life safety as quite an appropriate thing to do from a building control point of view but, increasingly, because we have a Building Code that is a national document and we have changing community expectations and aspirations - for example, in the environmental area we see people saying to us that we should pay more attention to sustainability as a concept in a built environment and when we deal with controls and building design and construction - and I don't have any problem with that as a concept and we are exploring that, but it seems to me that the thing we need to recognise, both in regard to people who have special needs but also because of the changing nature of our community - that if you are going to talk about sustainability it ought to capture the relationship between people in the built environment, not just whether they have got a proper, energy-efficient heater in their lounge room; not just whether the air quality is appropriate - all those things are important but, for me, the concept of sustainability ought to be more encompassing and ought to pick up accessibility in a broader sense as part of its philosophical approach. I had to have that - sorry, I didn't mean to say that.

MS McKENZIE: No. That's a helpful statement.

MR DONALDSON: We get very worked up about these things back in the ABCB.

MRS OWENS: I can't remember if you raised this in your submission or not because, as I said, I read this quite late last night, but have you covered the issue of preparing a regulatory impact statement?

MR DONALDSON: What I would have said was that we are currently conducting a regulatory impact statement process. Where we are with that is, we have drafted some provisions - significant changes to the BCA - and they are currently with an independent consultant, working through a process against the ground rules that are required by the Office of Regulation Review; in fact the OOR has been party to the development of the terms of reference for that impact assessment, and what I also I think indicated in the submission - and if I haven't I would just say this - - -

MRS OWENS: You may have, as you say.

MR DONALDSON: It would be my intention to - - -

MS McKENZIE: You did mention it.

MR DONALDSON: Okay. It would be my intention to not only put that on the table in the next couple of months for your inquiry, but also to - the one we have done in relation to the protocol that deals with those existing building issues.

MRS OWENS: That would be very helpful.

MS McKENZIE: Very useful.

MR DONALDSON: They would be available to you hopefully in the next two months. That's my plan.

MRS OWENS: Has your drafting of the regulatory impact statement covered issues like the costs and benefits of - - -

MR DONALDSON: Yes, it has but, to be honest, I haven't actually got that document yet. We're in the last throes. Our expectation is the first draft will come to us in July - yes, in July.

MRS OWENS: So it's still in preparation?

MR DONALDSON: Yes - well advanced.

MRS OWENS: So some time during our processes we'll be able to have a look at what you've got.

MR DONALDSON: Absolutely. I don't know when the commission intends to go to its first draft - - -

MRS OWENS: The draft report will be October.

MR DONALDSON: No, before that.

MRS OWENS: We will be in drafting mode by July. We're in drafting mode now really but it will be - - -

MR DONALDSON: Sure, well, look, certainly before October. Well, it isn't just a question of my receiving a report and then putting a tick on it. Clearly my board needs to consider these things.

MRS OWENS: Of course.

MR DONALDSON: But that time frame seems a pretty reasonable one in terms of having it available certainly for the commission. It may be that it hasn't been to the state governments at that point and therefore I might have to plead temporary confidentiality but its intention is that it goes public but that's a timing issue.

MRS OWENS: I mean, if it's confidential at that point at least we will be able to understand what you are doing and then, if that confidentiality is lifted later, we can then say something about it for the final report.

MR DONALDSON: Yes - no, we will work as close as we can on that one.

MRS OWENS: I think I've just about covered everything I was going to ask too. Have you got any understanding of why this area was left out of the original DDA when it specified where the standards were going to be drafted?

MR DONALDSON: I don't have an insight into that. I probably know who does though. Maybe I could ask some questions and perhaps provide some input to your secretary about that issue.

MRS OWENS: That would be useful.

MR DONALDSON: I don't know.

MRS OWENS: Just to get a bit of background. It might have just been an oversight. You never know with these things because other areas got left out as well and we wonder about, like, clubs and so on - and we wonder about that too.

MR DONALDSON: Well, one thing I can say, there's certainly been a bit of a seachange in my sense of the building industry's response to this issue over time. There's now a very strong desire to see certainty and to work with this process to make it happen. The peak bodies in the building industry have been very positive in this and, let me tell you, they also would say to you that they're frustrated with the amount of time that we're taking to do the job too. In fact, as late as my last board meeting that point was drawn to my attention fairly forcefully, so I'm well aware of the need to get this thing moving but it is complex and we are doing the best we can to do that.

MRS OWENS: I suppose we're also interested in other areas like housing and public space, internal fit-outs and so on, which you're really not covering.

MR DONALDSON: Well, we are actually. In respect of housing, that issue of sustainability and adaptability and all that sort of issue is a matter that we are subjecting to some research. We've had representations made to us in the last six months or so, I guess, and along with a number of other industry and government bodies we published a guide to adaptable housing back in - when did we release that? - I think in March-April with a number of bodies like the Building Commission in Victoria about good practice in the home, about the way in which you deal with adaptability and those sort of issues.

So we've been working with that but we've also called a forum together of industry and community groups back in April to explore the issue of accessibility and adaptability to try and understand better what it means and to put some hard data - and flesh out the concepts on the table so that regulators, educators, the community, have a better understanding of this issue and its relevance to the future of Australia and its building environment. So we are doing some work on that but it's quite separate to the work that we are doing in relation to the standard and we haven't been able to give that in the past the same priority but, now that we're in a position to sort of move forward on one of them, we can do a little bit more on the other and that's what we're doing.

MRS OWENS: Yes, it does raise really interesting questions as to whether there should actually be standards.

MR DONALDSON: Well, it does raise that question but it's not one I can answer for you.

MRS OWENS: No, I know you can't answer it but my previous colleague, Dr John Paterson, he was quite interested in this issue because he had a physical disability which meant that a lot of private houses he couldn't actually go into. He couldn't visit friends that were in multistorey houses that were up a number of steps and so on and he used to get quite angry about that issue and he said as the population is aging, what we've got is a lot of new townhouse development where they're multistoried townhouses, they're not really well designed for an aging population.

MR DONALDSON: Well, I guess there's one thing I can say. I don't know whether regulation at the end of the day is the solution to that but one thing I can say is it would be a mistake to think about the Building Code as lowest common denominator. That would be a mistake because the Building Code is about responding to community expectations. It's about acceptable minimum standards and I think as long as you keep that in your mind you recognise then that it's a living document, that it needs to respond to change. It isn't about saying, "Let's find the cheapest way of doing this crummy job," it is about saying, "What do we expect in terms of life safety for the community? What are we prepared to pay and what are we are going to put into regulation or into lifting awareness in the community?" You know, that to me is an important thing to remember about how this is a moving feast in response to the community; maybe not as quick as it should be but it tries to.

MRS OWENS: I think that's all you can hope for. I was wondering, Matthew, have you got anything else you'd like to add?

MR McDONALD: No, thank you.

MRS OWENS: I think that was very helpful - - -

MS McKENZIE: It's been a most helpful oral submission and the written submission was very helpful as well. Thank you both very much.

MR DONALDSON: Thanks for the opportunity.

MRS OWENS: Thanks to all who have appeared.

MS McKENZIE: Thank you.

MR DONALDSON: Yes, okay.

MRS OWENS: Now, I'm just going to break for a minute because we've got somebody who wants to come up and make a few comments.

MRS OWENS: The final participant today is from the National Capital Authority. Welcome. Would you like to give your name and your position with the authority for the transcript.

MR WALES: Yes, thank you. My name is Phillip Wales. I'm the director of executive governance at the National Capital Authority.

MRS OWENS: Thank you, and I understand, Phillip, that you'd just like to read a statement into the transcript and that you've also got a submission to table. Obviously we haven't read your submission but we'd be very happy if you wanted to read that statement.

MR WALES: Certainly. It's basically just a brief outline of our submission to the inquiry. It's in relation to Mr Oddy's submission. Mr Oddy was here at something like 11 am this morning, submission number 148. In Mr Oddy's submission he made a number of statements. The authority denies any unlawful or improper conduct by it or its members of staff. The authority considers that it reasonably accommodated Mr Oddy's disability during his employment. The authority does not accept the factual matters asserted by Mr Oddy and considers that this is not the appropriate forum to engage in any detail in this regard in rebuttal.

Workers compensation claims and disability discrimination claims have been dealt with in accordance with the relevant legislation governing determination of such matters. The authority in addition has provided a detailed submission to the Human Rights and Equal Opportunity Commission in response to Mr Oddy's complaints and participated in a private conciliation conducted by HREOC. There was nothing improper in the conduct of the conciliation by HREOC. There was no positive finding by HREOC that the claims had substance.

The real issue of why I'm here today is raising these procedural issues. The authority accidentally became aware of Mr Oddy's submission on the commission's web site quite by chance. We have no problem with being accountable; however, the authority is concerned that the named individuals can be the subject of publicly available allegations against them which could affect reputations and would not have the opportunity to respond because they were not aware of the allegations; concern that the inquiry is being used by any aggrieved persons to vent all allegations against individuals, particularly if the allegations are not of any direct relevance. We request that the commission review its procedures in this regard.

MRS OWENS: All I can say is that this is a situation I personally haven't come across before with the naming of individuals in submissions. It's not to say that it hasn't happened before but we are now reviewing the coverage of our act on this matter because there is uncertainty about confidentiality clauses. Participants can request their submissions to be kept on a confidential basis and there is provision in our act for us to have hearings in camera but there is a lack of certainty about what happens in a situation like we have just faced where individuals are named.

Having said that, I think that while we're clarifying our act we can at least look at our own procedures in-house and maybe try better to bring those sorts of submissions to people's attention when people are named so that you don't find it accidentally on the web site and I apologise that we didn't do that in this case.

MR WALES: Good, thank you.

MRS OWENS: What we said to Mr Oddy this morning was that this was not a complaints body, that we were interested in the processes and his experiences but we were not here to revisit the complaint as such and our interest was more in terms of improving the operation of the act. So that's the approach that have taken.

MR WALES: That's very good.

MRS OWENS: Hopefully we will be able to beef up our own processes within the commission but we are also going to seek legal advice on the wording in our act and, if need be, we will endeavour to have the wording changed to make it clearer.

MS McKENZIE: The other matter I'd add is that not only did we explain to Mr Oddy the various things that Helen has mentioned but also we tried to direct him to look at questions of process and particularly to see whether he could suggest any improvements in the process that he underwent that might affect people in the future. Really, we are looking at general matters concerning DDA, not specifics, but you will understand that it's often very difficult for individuals who have had certain experiences to disentangle those experiences and what they are recommending for the future.

MR WALES: Of course.

MS McKENZIE: That's a difficulty that I think is understandable and we wouldn't want an individual to become so confused that they felt they simply couldn't speak to the commission because they were going to get too muddled up with the distinction between process and what actually happened to them. So it's really a balancing act. We want to make sure in our processes that we are not unfair to anyone but equally we also want to make sure that people still feel that they can come and speak to us, and we are very happy, I have to say also, that your organisation has felt that they could come and speak to us also.

MR WALES: Fantastic.

MRS OWENS: We are now looking at how we handle that particular submission which, as you know, is on our web site and we will ensure that one of the staff comes back to you and tells you what action we can take under the act as it's currently written but, as I said, we are still clarifying that.

MR WALES: Okay.

MS McKENZIE: Thank you very much indeed.

MRS OWENS: Is that all you wanted to say?

MR WALES: Yes.

MS McKENZIE: Thank you very much.

MRS OWENS: Okay, I will now conclude today's proceedings and we will be resuming tomorrow morning at 9 am.

AT 5.27 PM THE INQUIRY WAS ADJOURNED UNTIL
FRIDAY, 20 JUNE 2003

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