



**TRANSCRIPT
OF PROCEEDINGS**

SPARK AND CANNON

Telephone:

Adelaide	(08) 8212 3699
Hobart	(03) 6224 2499
Melbourne	(03) 9670 6989
Perth	(08) 9325 4577
Sydney	(02) 9211 4077

PRODUCTIVITY COMMISSION

INQUIRY INTO DISABILITY DISCRIMINATION ACT

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

TRANSCRIPT OF PROCEEDINGS

AT CANBERRA ON WEDNESDAY, 4 FEBRUARY 2004, AT 9.28 AM

Continued from 29/1/04 in Melbourne

MRS OWENS: Welcome to the resumption of hearings 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'm the presiding commissioner on this inquiry. On my left is my associate commissioner, Cate McKenzie.

On 5 February last year, the government asked the commission to review the DDA and the Disability Discrimination Regulations 1996. The commission released a draft report in October last year. The purpose of this hearing is to provide an opportunity for interested parties in Canberra to discuss their submissions and to put their views about the commission's draft report on the public record. Telephone hearings were held in Melbourne last week. Hearings will be held in Hobart, Sydney, Melbourne and Brisbane over the next few weeks. When we've completed hearings in March, we will redraft the report and submit it to the government by the end of April. It is then up to the government to release and respond to the report.

We like to conduct all hearings in a reasonably informal manner, but I remind participants 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. If anybody in the audience does want to speak, I'll be allowing some time at the end of the proceedings today for you to do so. If you think you'd like to take up this opportunity, please identify yourself to a commission staff member. Participants are not required to take an oath, but are required under the Productivity Commission Act to be truthful in their remarks. Participants are welcome to comment on the issues raised in other submissions. The transcript will be available on the commission's web site in Word format following the hearings.

I now invite the Australian Association of Christian Schools to appear. Welcome. I'll let you sit down. For the benefit of the transcript, could you please state your name and the capacity in which you're appearing today.

MR CRIMMINS: My name is Peter Crimmings and I'm the executive officer of the Australian Association of Christian Schools.

MRS OWENS: Thank you, Peter. Is it all right to call you Peter?

MR CRIMMINS: Yes, it is.

MRS OWENS: Okay.

MS McKENZIE: We're Cate and Helen.

MRS OWENS: We'd like to thank you for coming and for your second submission to us, and we've both read your submission with interest. I wonder, would you like

to highlight any of the main points for us, or otherwise we can just go into discussing the submission with you?

MR CRIMMINS: Yes. There are a couple of points I'd like to make. Firstly, thank you for the opportunity to submit yet a second time and to have a hearing for a second time. The reason that I made a second submission is that there have been some significant developments in the education sector that impact directly on the Disability Discrimination Act, and in particular the introduction of the standards. Since the hearing in June last year, there was a ministerial council meeting, encompassing education, held in Perth. At that ministerial meeting, the draft disability standards for education were put before the ministers of the Commonwealth, states and territories of the country for their acceptance.

At the same meeting, the ministers of the states and territories declined to accept the Commonwealth's position with regard to the introduction of the standards into the legislation, on the grounds that the Commonwealth was not prepared to take responsibility for the costs that might be incurred by the various education authorities with the introduction of those standards.

The Commonwealth indicated at the same meeting - and I have the minutes of the meeting with me - that it would press ahead with the introduction of the legislation anyhow, and that the area in which they were prepared to provide some support - "make a contribution" were the words that they used - was in the area of professional development. Our concerns, therefore, are these: if the cost benefits perceived by government education authorities are such that they have concerns about the implications, particularly in terms of costs of the introduction of the standards, and the differential in terms of resources available to schools in the government and the non-government sector is as has been illustrated in both Senate inquiry reports and elsewhere, then the impact on the non-government sector - and particularly I can only speak for our schools - is going to be enormously significant.

Therefore, our concerns are these: we want to play our role in ensuring that students with disabilities who want an education in any of our schools are afforded that opportunity to the best of our ability, and that they are provided with the resources that the students without disabilities are provided with so that they can achieve the outcomes that are fair and equitable. At the moment that's impossible, and if the standards are introduced on the very evidence of education authorities at state and territory level, they are of a mind that it's impossible for them to do that without cost impacts. I have no argument whatsoever with the standards. I accept the standards. I think the standards should be introduced. I just think that it is a social responsibility of this country to resource all education authorities, both government and non-government, to a level in which they can ensure that those standards are operable and sustainable in schools.

MRS OWENS: Good. Thank you. You've raised a number of very important points, and I'll just go back and try and recap one of those issues that you've raised, and that is in relation to an issue that we've raised in our report, which is, who should pay and how much should be paid? That general question, "Who should pay," is out there, and I think in your submission you do acknowledge that schools are prepared to make a contribution.

MR CRIMMINS: That's right.

MRS OWENS: So there's, "Who should pay?" Then once it's decided that governments should have a role, "What's the level of resources from government?" Then once that has been decided it's, "Which level of government should be paying?" and you talked about the states versus the Commonwealth. The Commonwealth is prepared to put in for professional development, but not necessarily for other things. Then, once that question has been answered, there's the distribution of resources between government and non-government schools. So there's a whole range of quite difficult questions to tackle. I don't think it's impossible to tackle those. We looked at some of those issues and asked the question, "Who should pay?" and I think came to the conclusion it probably is a shared responsibility, but where the division lies is a difficult one.

We also suggested - and I think it's acknowledged in your submission that if there is going to be funding of government and non-government schools, which there should be - that the dollars should follow the students to a certain extent, but not all dollars. Some of the dollars for, say, infrastructure are one-off costs, and you need another approach. That's a long way of getting around to asking you is there anything else we could have said in our report which would clarify our views, or have we missed something that we should be saying?

MR CRIMMINS: I felt that the report, while identifying the issue of distribution of costs, didn't highlight the enormous disparity between the funds available to education authorities in the government sector vis-a-vis the non-government sector. I accept that a student with a disability, regardless of the disability, in a government school should receive, let us say, an additional \$20,000 in order that the necessary education services can be made available to that student. What I fail to understand is that if that same student was enrolled in a non-government school, the dollars that might be made available to it from both state and Commonwealth government authorities - these are the additional dollars - would be at best \$4000, for exactly the same student.

Now, to me, that's discriminatory, because you're simply discriminating against that student on the basis of the choice made by that student's parents of the school to

which they'll be sent. I don't think in our democracy that's sustainable. I do not think that people with disabilities should be discriminated against whether they decide to choose a health service from here, or a health service from there; if they decide to choose an education service from here, or an education service from there; employment from here or employment from there. I think that the legitimate costs that are needed, the extra legitimate costs that are needed to support that student should be the same across all sectors. The sector has a basic cost that it must meet itself - the non-government sector. It must meet that, and that's a partnership between the sector itself and governments, so parents and the school community must put in for that. That must be the same for disabled students and students without disabilities.

MRS OWENS: I think we did attempt to tackle the issue, and we had a section in our chapter 14 on funding issues for schools.

MR CRIMMINS: Yes.

MRS OWENS: I don't know whether you saw our appendix B that raised these issues.

MR CRIMMINS: I did. I've got that here.

MRS OWENS: I thought we had acknowledged the disparity in funding between the government and non-government sectors. Maybe we didn't give enough examples of that at the time, but I think that we had a finding that basically reflected what our understanding was, which was our draft finding 14.2, which acknowledged that, "Some inquiry participants expressed concern that current funding arrangements restrict education choice for school for students."

MR CRIMMINS: That's right.

MS McKENZIE: But the consequence we might not have followed through, which I want you to talk to me a bit more about, Peter, is what the result of not facing up to this cost issue might be. I'm not so sure that we dealt with that as fully as perhaps we might have, because as far as I can see, if the cost issue is not faced up to and, for example, there's no more cost-sharing than just professional development costs, then it might be that you might face a standard whose effectiveness is compromised, at least in the non-government school system, or schools at least some of whose viability might be compromised if they try to nevertheless fund the standard; or if they don't try, just may simply give rise to more numerous complaints under the DDA, and ultimately disadvantage to everyone concerned - students and schools alike. They're the things that occur to me immediately.

MR CRIMMINS: Cate, it's for that reason that I included with our second submission the letter from the school principal at William Carey Christian School in south-west Sydney, near Campbelltown. That school has, since 1991, as you know from the letter, been actively involved in educating students with disabilities. It has a policy of taking in about three students in each year level cohort that have a disability. Some of those students have very severe disabilities. Some of those students have mild disabilities. In that letter to the minister - and I got the clearance of the school principal to include that with our submission - he points out the consequences of excluding students with disabilities from the school, and also the consequences to the school of including those students and properly resourcing them. Now, let me just highlight a couple of those in each of those instances. The consequences of excluding them from the school are litigious.

If, for example, a parent approaches the school and says - and he cites a case in there - "We have approached this non-government school in our area and we have been refused enrolment. We are now approaching you because we have been told you take students with disabilities" - a known fact and they have a reputation for it, "and you are telling us you won't take our child. We're going to HREOC," the school is immediately faced with a public situation of discrimination which is very difficult to defend for the simple reason that it has a record of taking students with disabilities and a benchmark that it has imposed on itself as to what it thinks it can properly resource from its own resources. That's in the case of those that it does not enrol.

In the case of those that it does enrol, the consequences seem to be these: (1) it hasn't got the resources to fund the necessary support mechanisms for the child who might have a particular disability. You will recall the case study that's included with the letter, when the child had, along with the disability, severe behavioural problems that were in part, I would think, a consequence of the frustration brought about by the disability. The school was unable to secure the necessary support in order to provide that child with the necessary services and, in the end, the enrolment had to be terminated.

The consequences in the classroom were the teacher was attacked, and one of the teachers was injured in the long term, and there was severe stress and tension caused among other students whose learning patterns were changed, of course, as a result of that.

MS McKENZIE: And the teacher is distracted from the rest of the class also.

MR CRIMMINS: And cannot give the time, and the teacher actually refused to be involved in the process. So the whole social fabric of the school becomes fraught. It also means that the very thing that the school is trying to do - that is, make sure that its school represents the community and isn't just an enclave for those students who

don't have disabilities, or learning problems, or who don't come from disadvantaged families, or for bright students. We don't run selective schools. We run only schools where whoever comes along gets in.

In the long term, that principal makes it clear that he, in order to educate nearly 40 of those children, has no long service provisions for his staff. Every year he runs at a loss of a quarter of a million dollars alone. He does not think that, if the standards are introduced and it's even made more important for schools to be able to establish why they won't enrol students, or why they would refer them somewhere else, or why they would do whatever they do, the cost impost and the stresses and strains would be exacerbated.

However, he also makes it clear - as do our other schools - that they want to go on enrolling these students, that they want to go on enrolling more of them, and that they want to play their part. Our schools are still, on your data, enrolling only about half the proportion that government schools are enrolling, and we don't think that's fair. We should be playing a bigger part.

MS McKENZIE: In the context of what you're saying, even if we make our recommendation that "unjustifiable" or "hardship" be extended to all areas, including in education as well as pre enrolment, even if that recommendation were taken up, that wouldn't help your schools because that's really not what they want to do. That's not what they're about, nor is it really economically feasible for them to fight each case on the unjustifiable or hardship ground. It's just not going to work.

MR CRIMMINS: That's correct, Cate, because it would simply provide, in some cases, education authorities with an out and, in nearly every case, public authorities with an opportunity not to provide the funds. The principal of that school himself has a severely mentally handicapped son and a fully autistic daughter, so he's coming from a position of first-hand knowledge in the educational and home context of what it means.

MRS OWENS: As a parent.

MR CRIMMINS: So he has a real heart for the work. He's not a bleeding heart, he has a real heart for the work, and he has a realistic view of what needs to be provided educationally. You'll see that the extra costs he suggests that he needs - the extra resources he needs - are nothing like what might be asked for by some education authorities. It's only of the order of an extra 6 and a half thousand dollars a year, not an extra \$20,000 a year. He feels that, if he had that, he would be able to resource those children adequately. Now they have what, 12 or 13 years of day-on experience of doing it, and those resources are just not there - and they could take more children.

MRS OWENS: Can I come back to this standard. I'm still a bit puzzled as to why you think there's going to be additional costs on top of what's already required in the act now. Does the standard go further than the act?

MR CRIMMINS: No.

MRS OWENS: So why are they going to - - -

MR CRIMMINS: The standard tries to clarify the act.

MRS OWENS: Those costs should be imposed now, technically, without the standard.

MR CRIMMINS: Yes.

MRS OWENS: There are certain requirements on schools and other organisations to do certain things now, even without a standard. I'm just interested in why the costs should be that much greater post standard than before standard.

MS McKENZIE: Is it because it's your view that the standards make you do these provisions for every child, irrespective?

MR CRIMMINS: Yes. I think that the standards, if they're incorporated in legislation, are going to have the force of law. So once they have the force of law, what might be at the moment an acceptance by parents that, "No, we haven't got the resources to educate your son or daughter at our school," or, "No, we can't provide that extra supervision that's required on that excursion for your son or daughter because we haven't got the resources to do it," will become a litigious situation.

MRS OWENS: But it could become a litigious situation now.

MR CRIMMINS: It could, but it hasn't been, from the number of complaints which you say are declining, and you cite a range of reasons for that. I'm concerned about two things. I would prefer there were no complaints because education authorities by and large were able to meet the necessary requirements. That's an unrealistic view in the long term, because that will never be the case; there will always be cases where people are discriminated against for one reason or another. However, the size of the complaint mechanism does indicate - certainly in the non-government sector - that decisions are being taken not because they want to discriminate against the child for some untoward reason but because they cannot resource what they need to do in order to educate that child properly. Wherever that's the situation, that's a tension.

In our case, we want to be able to resource it, because we think we have an absolute obligation to undertake their education in the mainstream, if that's what their parents want, and not refer the child somewhere else simply because it's more convenient for us or it would prove more comfortable for our educational environment. We don't want that. We don't want just comfortable educational environments, and we think our young people - both able-bodied and disabled - need to be learning side by side for our society to work properly.

MRS OWENS: I have to say that I was very pleased to get the William Carey Christian School letter as an attachment, because we've been asking for examples and case studies.

MR CRIMMINS: I know you have. That's why.

MRS OWENS: It was helpful. In that letter, he suggests that, currently, the school is taking two or three students in each class and then, presumably, as more come to the door they are being rejected. You're saying that you would prefer to have a situation where the resources are there and not to have to reject anybody coming through the door.

MR CRIMMINS: That's right.

MS McKENZIE: But your concern is that, under the standards, you may either actually be forced or feel you are forced to take all, irrespective.

MR CRIMMINS: We want to take the students. We can't, in fairness to them, do that in a way that would allow parents to make that choice and, therefore, we will have litigation.

MRS OWENS: Coming back to the act itself, I'm not sure currently whether, under the act, any school could virtually set a quota on two or three students - - -

MR CRIMMINS: Exactly.

MRS OWENS: - - - unless you were able to say, "Well, after student number 3, there's unjustifiable hardship."

MR CRIMMINS: And I think Warwick Wilkie implies that in his letter - that this is an arbitrary decision they have made in terms of what they feel they can resource, and there's no defence for it, other than an internal defence, such as described in that letter. If you were to actually say, "What difference is a fourth student going to make?" and then once the fourth student is in - - -

MS McKENZIE: If you have four, what difference is the fifth - - -

MR CRIMMINS: Exactly.

MS McKENZIE: The point is that, to decide that, at each stage you may well have litigation.

MR CRIMMINS: I have for you - and I'd like to hand this over to you - the response to his letter from the minister and which I received a copy of afterwards.

MRS OWENS: Thank you. So that's a tabled document.

MR CRIMMINS: That's right. It is.

MRS OWENS: That came on 11 November 2003. Is there anything you'd like to bring to our attention in this response?

MR CRIMMINS: Yes, there are a couple of things I'd like to bring to your attention in that letter. The minister says on page 2 of the letter that they conducted, in order to see what the impact of the standards would have, an investigation by Allen Consulting Group. They conducted an analysis based on qualitative and quantitative information supplied by education providers and other stakeholders. Well, we weren't asked to provide nor did we provide any qualitative or quantitative data, and I've checked with at least one other major non-government education provider and they didn't either. So I don't know what providers; I'm presuming that they were in the government sector. It then goes on in the same paragraph to say - the minister's letter:

It determined -

that is, Allen Consulting Group determined -

professional development to support the introduction of the standards as the only legitimate cost attributable to the standards over and above the costs of compliance with the DDA.

Now, to be fair to the minister, that's logical in the light of what you've already said, Helen, but the act as it now stands requires compliance. The standards don't require any more compliance. They just elaborate and explain the act. But the fact of the matter is they're going to have an impact. They're not going to be without an impact.

MRS OWENS: Yes.

MR CRIMMINS: The other thing I'd like to draw to your attention is right down the bottom of the minister's response - and he's referring to the Senate committee report - where he says in the second-last paragraph, second sentence:

The government's response -

or the response provided to the government by the department -

included material prepared by the department which identified a number of shortcomings with the methodology set out in appendix 6 of the Senate report.

That appendix 6 dealt with costs in the non-government sector for educating students with disabilities.

The funding analysis undertaken by DECS suggested that in 2004 the independent schools sector will receive total recurrent funding from all sources on par with the government sector.

Well, let me tell you that's not the case for our schools and it's demonstrably not the case for Warwick Wilkie's school, William Carey Christian School. He has given you the information and that information has been supplied to the minister and it's demonstrable that the costs that they are incurring are on average 6 and a half thousand dollars more than they have access to. They are simply taking that money from existing school resources by not putting money aside for long service leave provisions.

Now, at the end of the day they're going to run into problems with that because that school has been around for some time now and someone is going to put their hand up and want their long service leave payment, and under industrial regulations that has to be made available. That's going to have an impact on what they do in terms of enrolments.

MRS OWENS: Yes. We might follow up, if we haven't already, this DECS calculation and just check that out.

MR CRIMMINS: We want to do that, too. We have gone back to the minister since this letter and explained to him that we have severe concerns regarding that. There are members in the government who are aware of those concerns and know first-hand that the resources are just not there.

MRS OWENS: We've had a lot of material supplied to our inquiry, earlier on in

the inquiry, which are basically inconsistent with that conclusion from DECS, so we need to get to the bottom of it and find out exactly what assumptions they made, what schools were included, and so on. But we'll have a look at that.

MR CRIMMINS: Our position very clearly is: we have no argument with the act. We have no argument with the standards. We want to play our role in ensuring the students with disabilities can be educated in our schools. In order to comply with the act - simply that - the resources are not there. Some of those resources need to come from our schools and you can see they are doing that. More resources than are currently available need to be made available from government because there should not be, for the child with disability, the additional resources differential when that same child goes from a government school to a non-government school - or vice versa, which has also happened with us. I think I told you at the last hearing of a child that had to go back to the government school because the mother could no longer sustain her employment in order to provide the school with the resources for a teacher's aide.

MRS OWENS: While we're just talking about that, the case study you supplied on your submission, what happened to that child? Where did that child end up? You said that he left that school.

MR CRIMMINS: As far as I know - I spoke to Warwick yesterday - back to a government school. He went to a government school that was a specialist government school for those sorts of issues.

MRS OWENS: Did the parents of that child have concerns about that child being taken out of that school? "Taken out" are probably not the right words.

MR CRIMMINS: As far as I understand, they were not concerned about the government school. They just wanted what was - - -

MRS OWENS: They weren't exercising their choice.

MR CRIMMINS: That's right. They just wanted the choice and the choice was not sustainable at William Carey.

MRS OWENS: They didn't think to put in a complaint?

MR CRIMMINS: No. It's distressing because he, the principal, wanted to keep the child. It just became untenable.

MRS OWENS: It seems apparent, from what you say here, the class teacher refused to implement the program so the teachers were having problems. They really

needed a support person there.

MR CRIMMINS: That's right.

MRS OWENS: With the Allen Consulting conclusion that the only legitimate cost of the standard over the cost of the DDA was professional development - that may be so, but it does raise the question of all the other costs that may be incurred in actually just meeting the obligations under the act and who should pay for those. That is what hasn't been addressed, I think, through that conclusion.

MR CRIMMINS: That's perfectly correct. The minister is quite right in saying we haven't got anything additional to the act with the standards. The standards simply explain and elaborate on the act. The only thing that the standards could be visited on in terms of costs are professional development for staff in schools, so that they know what it means to comply and that they know how they might go about doing that. Now, he has acknowledged that and therefore the Commonwealth are prepared to play a role. Regardless of what the costs are in the non-government sector, we don't think that it's a purely Commonwealth responsibility. We think it's a Commonwealth responsibility, it's a state/territory responsibility and it's a parental/school responsibility, in terms of our schools. We think everyone should share in those costs.

MS McKENZIE: But also in a way you're saying, if I'm understanding it correctly, that there is some other cost impact from the standards that has to be taken into account. It may be difficult to quantify.

MR CRIMMINS: Yes, indeed.

MS McKENZIE: That cost impact, if I understand you correctly, seems to have to do with the consequences of having a changed regulatory environment and, in your view, with a very specific set of standards. If I'm right, the concern is that, first, it's going to be harder to reach negotiated resolutions with the parents of potential students.

MR CRIMMINS: Correct.

MS McKENZIE: The school may well feel more pressured to take students because the standard is there and because otherwise there will be litigation.

MR CRIMMINS: Correct.

MS McKENZIE: Even though they may not be able to resource those standards, the school will feel less able to impose quotas and it may be harder for the school,

because it will mean litigation, to try unjustifiable hardship as a defence to all these difficulties.

MR CRIMMINS: Particularly the one about the school unable to sustain quotas. It's the schools that we have, that are now absolutely committed to educating students with disabilities, that are likely to have the biggest consequences. The others could legitimately say, "Well, we're not doing that. We haven't got the resources. We haven't got the infrastructure. We haven't got this. We haven't got that." The others can't say that because they're saying, "We've done those things. We've made the modifications." They might be physical modifications to the building. "We've employed extra staff in support capacities," et cetera. Then the argument arises, why three not four? Why five not 10? Why 40 not 60?

MRS OWENS: I still don't know whether it's legitimate to impose quotas now under the act.

MR CRIMMINS: I agree. We've got a problem. If HREOC pursued us, our only argument would be, "We honestly haven't got the resources."

MRS OWENS: That's an unjustifiable hardship defence.

MR CRIMMINS: Yes, and that's the defence. Now, that might be legally a defence. That's hardly a sufficient explanation for the student or the student's parents. So we're legally off the hook. So what? What about the moral obligation? What about our society obligation?

MRS OWENS: We've recommended in our report that the unjustifiable hardship defence be extended to all areas covered by the DDA. That includes post-enrolment situations which aren't covered now. We had argued that because post-enrolment wasn't covered now there may be a tendency for organisations, schools, employers or whatever, not to take on that person in whatever context in the first place, because they don't want to get to that situation of not being able to fall back on that defence once, say, the child is in a school or once the employer has employed that person. So it's a deterrent up-front from taking the person on. Would extending that defence help with your schools?

MR CRIMMINS: It would have helped, particularly in that case study that's provided in that letter. At the time that that child was enrolled, I don't think it was anticipated by the school authorities, and that would be the school community because that would have been a corporate decision. Warwick wouldn't have taken that decision on his own as principal. He would have consulted with the necessary support staff. Then, because of developments that occurred with regard to behavioural problems and physical attacks, the student was terminated at the school.

Now, you quite rightly in your report point out that the current legislation does not protect someone. Having enrolled the student, you sustain the enrolment. Under the act, it could be argued, without any defence being mounted, you are obliged to sustain the enrolment, regardless.

MRS OWENS: So there is a bit of a risk, isn't there, that the parents - - -

MR CRIMMINS: There is a risk.

MRS OWENS: That's why I asked the question about the parents: were they going to complain about this?

MR CRIMMINS: No, they didn't pursue that.

MRS OWENS: Technically they could have - - -

MR CRIMMINS: They could.

MRS OWENS: - - - and the school wouldn't have had anything to fall back on.

MR CRIMMINS: Not a thing.

MRS OWENS: It is interesting that the school took the risk in the first place, of taking that child in. As I said, there's an assumption that some schools might say, "Oh, no. We're not going to take that child. If they prove difficult later it will just all be too hard and we'll be stuck with the situation where we have to keep that child." This particular school made a different decision, I suppose based on humanitarian, social, other objectives, which I think are very worthwhile objectives. So that really goes against what are our expectations, in a way.

MR CRIMMINS: And they thought they had the resources and the wherewithal to sustain that enrolment. I think he points out in his letter, too, that there are instances - and there have been several across the years - where parents have enrolled students in the school - students with disabilities - where either the parent hasn't known the extent of the disability because they didn't want to know it or they just medically hadn't had it diagnosed, or in some cases, where they decided to play down the extent of the disability and it was only when the school did its own diagnostic testing, did its own analysis and did its own observations, that the extent of the disability and the resources needed in order to ensure proper education were identified.

So there are issues about that and sometimes, for the good of the student, you need to have an opportunity to refer them to a more appropriate educational

environment. That might be somewhere else, another school - a specialist school.

MRS OWENS: Well, extending the unjustifiable hardship defence actually helps with that situation where you don't know about the disability ex ante or the child develops certain behavioural characteristics after enrolment. It would help with that situation.

MR CRIMMINS: That's right.

MS McKENZIE: Except that in theory it would, in practice you would have to be willing to do the thing necessary, exclude the child if that was what had to be done, and run the defence.

MR CRIMMINS: That's what you'd have to do, yes.

MS McKENZIE: That, for the reputation of the school and given what you've said about it - that particular school's commitments - might be a difficult thing to do.

MR CRIMMINS: They are known in their community as being a school that has its doors open for students with disabilities and runs a very successful unit of support, so that those students can be mainstreamed and those students go on and become an integral part of the society in which they live. Now, they want to do more, not less. So his letter is all about the cost benefits. The benefits are enormous and the costs are identified. They want to provide those benefits to yet more students, but please be aware of the costs.

MRS OWENS: Very well said. I think we've both exhausted our questions. I think it's been a very very interesting discussion once again, so I'd like to thank you for coming. Is there anything else you wanted to raise with us, Peter?

MR CRIMMINS: No. Just thank you for the opportunity and I look forward to your final report.

MRS OWENS: The next participant this morning is the Australian Chamber of Commerce and Industry. Welcome to this inquiry. Would you like to give your name and the position with ACCI for the transcript.

MR BALZARY: Sure. It's Steven Balzary. I'm the director of employment, education and training with the Australian Chamber of Commerce and Industry.

MRS OWENS: Good, thank you, Steve, and thank you for the submission. I think we both appreciated coming to see you a little while ago. Your submission has given us food for thought, and you've made a number of important points which we will be now seeking to address in our final report, so we're very grateful for that, because I think I said at the time we came to see you that we needed to get some of the balancing arguments in place, and we'll endeavour to do that. But today what I think it would be useful to do would be to just run through some of the issues that you've raised, and I think some of the areas where you may have misunderstood what we said. I might just get some of that out of the way first and then we can go on to some other issues.

In your submission on page 2, you implied that we had recommended enforceable guidelines, mandatory codes of conduct and a positive duty, and I just wanted to make it clear that all we've done so far in all of those areas - we've asked for information on the feasibility of non-mandatory voluntary codes of conduct as an alternative to standards. We've recommended that frequently-asked questions be turned into guidelines that would be non-binding rather than enforceable, and we've asked for information on the employer duty on businesses, so we did no more - we didn't recommend that. We just said, "Here is an idea." We've basically floated it as an idea, and I just thought I'd make that clear. We weren't talking enforceable guidelines. We weren't talking about codes that would be mandatory, and it was just an idea that we have floated. That's the first point.

The other is that you've based your submission on the belief that this positive employer duty and some of our other recommendations relating to employment are motivated by our finding that labour force participation and employment rates of people with disabilities have not improved markedly, and you've argued that it's not the purpose of discrimination legislation to increase employment. We could probably debate that for the next 45 minutes, but I think the legislation originated out of the Ronalds report, which was devoted to employment issues, so it may not be a direct object but it certainly would be potentially an indirect impact.

As well as getting some broad data on things like labour force participation rates and unemployment rates and so on, we did get a number of qualitative reports, and a number of participants raised what they perceived to be employment discrimination with us, so there was a body of evidence that we were drawing on,

and some studies that had been done, so we basically brought together information from a range of sources on which to run our arguments. Now, what we may not have done adequately is acknowledge that there are other factors out there, although some of these studies that we did look at they basically standardised for people with different levels of education and so on, and then said, "Once you standardise for all these other things, what's left?"

MR BALZARY: That's right.

MRS OWENS: So some of those studies did that. But we will endeavour to make it clear in our final report that there is a range of things going on in employment, not just possible discrimination, so I'll just leave it at that point. I just wanted to make those preliminary remarks.

MS McKENZIE: The other thing I just want to add is that we may not have made it perhaps sufficiently clear just how many of the participants raised the question of employment discrimination. It was raised by quite a lot of them, and we might perhaps just look at making that a little bit clearer as well in our final report, just to explain how it is that we then dealt more with that issue. We did it on that basis.

MR BALZARY: Yes.

MRS OWENS: I think we will get a submission from HREOC, the Human Rights and Equal Opportunity Commission, which will argue the case that from its viewpoint there is what they perceive to be some discrimination. Now, it's very hard to pin that down, and you'd acknowledge that. It's very very difficult to say that what's happening in the labour market or in employment is because of something called discrimination, because there are other things, but you've argued that it's the other things that are important, but we could equally well say back to you, "Can you prove that there's no discrimination out there?" and it's very hard to prove that something is happening because of discrimination, but it's also I think equally hard to prove that there is no discrimination. Have you got any comments on that?

MR BALZARY: Perceptions and measuring perceptions is the bane of all interactions in society, so I guess our struggle in not wishing to differ is really when you're looking at introducing, rather than even recommending, but introducing measures that are quite interventionist. I guess what we were looking for in terms of across our membership was to say on balance you need pretty strong cases and case requirements to make that clear and, on balance, we just thought that although the report did touch on a number of qualitative examples and other things, we just really couldn't see I guess the clarity of what that meant and the complex nature of employment arrangements, particularly in terms of skill factors and skill gaps, which apply to a whole range of people in the labour market, whether they be youth or in

terms of particularly disadvantaged people in the labour market traditionally, and whether in fact there's just overt discrimination in terms of those requirements.

We'd acknowledge as well it's a difficult area to penetrate in terms of what the hard and fast facts are but, on the other hand, I think if there's still an element of doubt in terms of the complex nature of that, we've just got to be careful about intervention. So that would be the guts I think really, in terms of where we're coming from, and in addition to that, really the other point is that any intervention in the labour market has significant consequences on recruiting behaviour, so whatever we do, we've got to be very mindful that (1) we're very clear about what the outcome is and, secondly, it doesn't produce a negative arrangement or negative impact. We obviously have a view that the rights of individual workers need to be protected but it's got to be done in a sensible framework and one that can be actually done through relevant legal arrangements.

MRS OWENS: We did raise in our report some of the studies that had been done in the US about the American disability act that showed that there may have been a negative impact in the United States, sort of like a knee-jerk reaction from employers. I don't know if you're aware of that work.

MR BALZARY: Well, there's a range of examples, not only in this area, in other areas, where there's been fairly harsh measures of intervention done, and there usually is a reaction. Again, the extent of that reaction - there's a whole range of factors in terms of that, because in the end people are competing for employment and there has to be some arrangement where people can compete effectively, so part of that is what skills they bring in, rather than anything else, but arrangements about whether it be - some degrees of affirmative action in some countries have got consequences for other elements of the labour market but also the target group they've done.

There's mixed areas of success, just like other forms of intervention, so I don't think anywhere, including work we're involved in in the International Labour Organisation - and the OECD has been very conclusive in terms of the success of any of these active interventions. More so, it seems to more around providing people with the skills and capabilities to compete effectively, and making sure that there's arrangements within workplaces, and support for employers, to make sure those workplaces suit the needs of individuals that they choose to recruit.

MS McKENZIE: And is there evidence that you can point to which shows that?

MR BALZARY: The whole issue around this is very attitudinal. The whole issue around recruiting and employment is about people's perceptions, and I think, as Helen has indicated, that basically it's the complex range of things about why people

recruit anyone to any given organisation - not even to an organisation, but in terms of occupations, and whether in fact it be - I mean, some employers prefer older people rather than younger people, some prefer younger than older in certain positions, so it's a very complex thing, and I think any study that's been undertaken anywhere in the world hasn't quite come down to say basically, "These are the things we need in all occupational strands."

Our only work in that area has been in terms of some essential employability skills that really are around the aptitudes and the attitudes of individual workers that are recruited, so we've done that in a general arrangement, in terms of what the requirements are, but doing that specifically for each vacancy is very very difficult, and I guess even academics would acknowledge that around the world.

In terms of interventions, there's reports in terms of the success rates or otherwise of those, including retention, and there's issues around all of those, depending on the cultural factors as well and what the target group is. There seem to be huge variations across countries as well, in terms of some of the ILO arrangements. I know there was some work being done at the ILO to examine the area of disabilities, and they did do some cuts across countries - that was done last year or the year before - which has shown some of those sorts of issues that I've talked about, and there's no commonality even across those studies.

MRS OWENS: You made an interesting observation on page 7 - this is about retention rates in training - and you said:

Training retention rates and eventual employment outcomes for vocational students are also not good, with people with disabilities less likely to complete their training -

but you also said -

and less likely to get a job if they do finish.

So that last part of what you said there is they might end up having exactly the same skills because they had the same training but they're less likely to get the job. Is that because of discrimination or is it because of these other barriers, like infrastructure?

MR BALZARY: Well, it seems to be - and again it's a complex area - unfortunately I'm going to say that a lot, because in the end there's a whole multitude of factors. One of the things particularly in training that we've found is that a lot of training in terms of people participating in vocational education and training in particular, which I think that refers to, is a lot of people are actually employed while

they're undertaking training, whether they're doing a new apprenticeship or whether they're doing further study in other things. The people with disability cohort often aren't in employment, so immediately there is some degree of disadvantage from the outset, because whether you're in the labour market or using a new apprenticeship to get into a labour market, that's a disadvantage whether they're people with disability or not, and that's a very important disadvantage for individuals, so part of it is - I mean, it's the chicken and egg thing whether you get into the workforce or not.

MRS OWENS: So you're saying they've got to get into the workforce to get that training - - -

MS McKENZIE: They've got to get into the workforce to be trained to get into the workforce.

MR BALZARY: No, no, because people undertake VET here for different reasons. I mean, they could be moving industries, they could be moving up the ladder; they could be broadening their skill base to compete within the company; they could be starting a small business in their own right et cetera, so there's a whole range of reasons why. On the other hand, a new apprenticeship option is a pretty simple option because basically that is entry level employment and training.

I haven't got the latest statistics and terms of that, but I would have thought that, as a target priority, would be important in terms of people with disabilities, but again there seemed to be a lower proportion even undertaking that activity than elsewhere, which would indicate that there's a range of other sorts of barriers, which include infrastructure and access but also transport and other requirements, in terms of getting to and from work.

MS McKENZIE: So you mean a lower proportion of people with disabilities applying to get in, or do you mean being accepted?

MR BALZARY: Again, I'm not, I guess, the absolute expert on the vocational education training system, but certainly in terms of what we have found in terms of a range of areas, it is the stark fact that the cohort and the arrangements for the cohort of people with disabilities is quite different than everywhere else, which obviously then links to their employability at the end of that course.

MS McKENZIE: Hang on, because I don't understand.

MR BALZARY: Yes, sure.

MS McKENZIE: Does that mean that people with disabilities at that new apprenticeship point - which I assume is where you are just commencing training?

MR BALZARY: Yes.

MS McKENZIE: And you're doing it through employment basically - a combination of employment and training. Are people with disabilities then not actually putting their hands up to go into these apprenticeships, or are employers not taking them?

MR BALZARY: I'm not sure of the statistics on the non-acceptance or any confirmation rates. That would be a matter that you would need to talk to DEST about, really. I can give my view, but it's my view, as far as we're concerned, in terms of those rates. I would encourage you to talk to DEST because they run New Apprenticeships. I'm not trying to duck that, but I think it's an important question which you should be asking because my view would be that New Apprenticeships, in the end, are an opportunity for all people to enter the workforce at lower skill entry points.

MS McKENZIE: Yes.

MR BALZARY: I would have thought, in the end, if there are appropriate incentives for the individual employers to participate in, then that is certainly an avenue which is a major area of activity, and certainly I know that in terms of some of the New Apprenticeship centres - which my members operate - there is now a requirement in the new contracts of that to actually begin to service people with disabilities and there are KPIs around to do that. Now, that's only brand-new, so in the past none of that has even occurred for that target group.

MS McKENZIE: That requirement is in the contracts with whom?

MR BALZARY: Between DEST - the Department of Education, Science and Training - and New Apprenticeship centres. New Apprenticeship centres are basically there to promote to employers new apprenticeship opportunities, so that being a requirement means that employers are going to hear a lot more within the area of opportunities required around people with disabilities as one potential target group. I know that some of the states through some of the youth choice funding - I'm not getting into the complexities, but basically that's around provision of training .

It has now been linked to a range of target groups, including people with disabilities. That didn't happen before either. We would hope and expect that that sort of act of intervention in terms of any funding arrangements would have some penetration. But to put some context around it, in terms of a range of traditional trades areas, we are struggling to attract young people anyway, for a whole range of reasons - university pathways being more important than vocational pathways,

et cetera. The issue around attracting people to new apprenticeship opportunities is not necessarily an issue to do with any particular group; it seems to be Australia-wide.

MS McKENZIE: If we just jump forward for a second to the point where you've got someone who has completed training at a TAFE but without doing an apprenticeship - so they're not in employment when they apply - having completed their training at a TAFE, they apply for a job. Is it your feeling that at that point there are either less people with disabilities applying for jobs, having completed a TAFE course, than people without disabilities, or there are less people with disabilities being accepted at that point than people without disabilities?

MR BALZARY: I think that's difficult to determine. You would assume that a whole lot of those people would actually be trying to get a job and they would be competing in an open labour market. That means a whole range of employability skills then come into being. Just in terms of the straight facts though: if you're undertaking an institutional based VET course, you are much less likely to get employment than if you are doing it either when you are in a job or you're doing a new apprenticeship. That's just a fact.

MS McKENZIE: Yes, I can understand that, and that's one factor where, by preference, you take the person who is in employment when they finish their course.

MR BALZARY: Or you do a New Apprenticeship pathway. Yes, that's right.

MRS OWENS: But supposing you have two people; they both haven't been in employment when they have done their training; they both go for a job - it's a hypothetical.

MR BALZARY: Yes, sure.

MRS OWENS: They go for a job, the same job, and they have both got the same degree of training, same level of training, same number of years - - -

MS McKENZIE: Same skills, not with the same results.

MRS OWENS: - - - same skills, and the only thing that distinguishes them is the fact that one has a disability that may require the employer to make some adjustments to the workplace, so it is going to cost the employer. Which one is the employer going to pick up?

MR BALZARY: It depends. Even if it wasn't quite the same, some employers would choose the person with disabilities; others wouldn't. It's difficult to make

hypothetical examples all over the place. I think it's actually very difficult to do that and it may be that some employers would say, to minimise the impact on their workforce, that they would prefer the person who hasn't got a disability. There's no doubt that some employers would do that. It's not to say all would. It's unknown how many would. We know a range of employers would go the other way, as well.

To me, it's really the issue of whether there is a significant financial disadvantage in a workforce. I think that's a major issue in terms of where the government fits in, because I think a part of having barriers is about how the government responds to easing the transition for people like that into the workplace. It seems to me to be very difficult to say, particularly to a small business, "You need to take those additional costs onto your workplace," in terms of taking an individual on." It's a huge challenge. If we make that some blunt instrument, quite often the option will be not to employ anyone, particularly if you're a small business. They just won't do it.

MRS OWENS: I suppose it's a matter of how employers weigh up the costs and the benefits. If you were being rational and you considered the benefits of both people - their skills are the same; similar sort of people, et cetera - you might still go for the person without the disability because you are going to say, "That's going to cost me less when I add all my costs together," because they may not weigh in the benefits properly or whatever. But you said if there are significant financial costs then there is a role for government, and that's one of the issues we have tried to grapple with in our report. Who should pay? How should the costs be allocated?

MR BALZARY: Sure.

MRS OWENS: You did say somewhere in your submission that we have stronger anti-discrimination legislation and government programs than other OECD countries, which implied to me that what you're saying is that the government programs are adequate.

MR BALZARY: There are lots of government programs, and I think the issue is that - and I think we said it in the submission - there's a huge lack of coordination in the programs. There is an absolute lack of understanding by employers, in particular, of those programs and, at the pointy end, it seems to be that there is no real connection between what that individual can say - that's in terms of the employer to say, "Well, that's how I defray some of my costs of those requirements." How do you do that at that point, particularly if an individual is fronting up in their own right to a workplace?

Where there is a broker or some of those sorts of people, then there may be some knowledge, but there is no understanding in terms of arranged programs at

state or Commonwealth level. I think there have been discussions through the work of this inquiry, where it has been very hard to get a handle on the programs that are available, even at national level, let alone state level, and if you are an employer and you're looking at just simply putting someone on for the productivity and to make money for your workplace, it seems to me that there are a whole lot of things which seem to be daunting. On top of that there are obviously issues of people being at risk and other things associated with it.

The difficulty I have with your scenario is not to say if that actually happens, but it's also about people's employment history. I mean, it's rare that you get two individuals who are exactly the same in their educational attainment, their employment history and their attributes for a particular job; it is quite rare. You can get people who are close but, in the end, it is an interesting scenario but it's one that I think is probably quite rare.

MRS OWENS: So judgment always has to enter the decision.

MR BALZARY: Judgment has got to come into it. There are a range of factors that people look at in terms of recruitment: recruitment practices around the skill and attributes people bring into the workplace; how they fit into the workplace in terms of that; potential areas for people to grow and take over more senior positions in some of the larger firms, et cetera.

MS McKENZIE: Is there not some danger though that there might be assumptions or stereotyping that a person with a disability might be less able to fit in with a workplace, less capable of being promoted later, and things of that kind?

MR BALZARY: One of the things we have said in our submission is the need for absolutely a public awareness campaign in terms of people with disabilities and their role in the workforce. I think it's really important. Certainly ACCI are very supportive of that - we've got that in our policy document - and wherever that can take place that would get down some misunderstandings and some views like that. I guess our view is to again do the promotion and the other beneficial roles - much more important; so knowledge and understanding of programs and what will happen there and what sort of forms of assistance would happen.

Then on top of that, better and better communicated employment and training services that are linked to the needs of employment and the needs of the individual and, thirdly, is obviously a promotional campaign that backs up fairly and squarely - particularly targeted to employers. You may need one for people with disabilities, too, in terms of employment opportunities and things like that, as well, but certainly for employers, from our end, about what the issues are and the whys and wherefores about recruiting people with disabilities across the range of groups, bearing in mind -

as you obviously know a lot better than I do, these groups are homogenous. They're quite disparate and they have their own needs in terms of their own rights, as well as individuals on top of that - as part of a group. It's a difficult thing to promote generally the issue around people with disabilities and the impact on the workplace.

MS McKENZIE: Yes. There is no doubt, no doubt at all, that education of everybody - of people with disabilities, of the employer groups and so on - is really important. The only thing that disability groups or people with disabilities might feel is that it's sad that this act has been with us for 10 years and this has been 10 years coming, although it's really valuable that now there's an initiative to try and improve matters in this area.

MR BALZARY: Yes, and we would say similar things: that, in the end, sometimes there's an impetus for these sorts of things and I think this is probably the time now where you have got a range of organisations across the country saying that in fact we do need to do something in this area, which I think has been a significant step forward even from our part.

MS McKENZIE: Yes.

MRS OWENS: And that has motivated the ACCI anti-discrimination policy that you mention in your submission and have talked to us about before.

MR BALZARY: That's right, in terms of the disability in our employment and training policy. Again, we haven't had one in the past and we've done that last year and taken that forward, and that is part of us promoting those sorts of arrangements through our constituency. In that policy it's quite clearly, we think, touching on some areas where there is still a range of problems; one is coordination and service delivery and all those sorts of things, as well.

MRS OWENS: What has the reaction been from your constituency?

MR BALZARY: There has been a fair degree of interest. Our cut has been that there's actually a lot of interest from a range of employers about what this means. There is a tremendous lack of understanding. There are concerns about issues which we've raised in some categories - workers compensation, OH and S, and other issues - and there are certainly issues about, "What does this mean for me? Will it be a rod for my own back in terms of participating?" - which is a negative thing, but I think by us putting this policy out has actually alleviated some of that. But unless we have those three sort of connected things which I spoke about earlier - I think that our policy is one stream but, without that activity, it won't be as strong as it could be.

MRS OWENS: You have placed a lot of emphasis on education - and your policy

and so on - in your submission, but you made a statement on page 9: "Effective education problem-solving and voluntary compliance can and must play a part - an important role - in the administration of this law," referring to the DDA or anti-discrimination law.

MR BALZARY: Yes.

MRS OWENS: I was a bit worried by that term "voluntary compliance" because I don't know if there is anything voluntary about complying with the law.

MR BALZARY: Well, that's true in the absolute legal context, I guess. What we are doing is seeing a balance about what compliance means and how that is measured, and there would be interventions about what we were talking about earlier, which is really how do you measure some of these issues. You know, what seems to be overt discrimination is obviously - most people would say that's just not satisfactory and there needs to be a process that that's done, if it can be measured and if it can be prosecuted through court or appropriate legal tribunals.

Obviously if it's legal there's evidence, and there has got to be evidence to make sure that's the case. I still think that in the end it will be much more out in the community in terms of doing this in a positive way with active holistic government servicing to make sure this happens, with incentives for individuals that are on welfare. Whether it be people with disabilities or others, there needs to be incentives to get back into the labour market with appropriate support measures to make sure those people can turn up to work at the same time as every one else can in terms of those sorts of arrangements, or perhaps we can have more flexible arrangements for some individuals where that workplace allows. It's not the case in certain areas if you've got to turn up at 5 o'clock in the morning and people have got issues with transportation. That's going to be difficult.

MS McKENZIE: I don't think anyone would dispute, as well, that there are many interconnected factors.

MR BALZARY: Yes.

MS McKENZIE: You're right, you can't look at just one in isolation.

MRS OWENS: I think you make it abundantly clear in your submission that you don't support the idea of having a positive duty on an employer, which was one of the things that we suggested. I don't know whether you want to comment further about that. It's consistent with everything else you have said today.

MS McKENZIE: Your view is it's owner regulation basically.

MR BALZARY: Well, you can have simplistic duties of care in terms of ratios. Our view would be, well, that has been interesting; it hasn't worked in a whole lot of other areas. It's very blunt in an area that - you've got to make sure that people are employed and you have got to encourage that, rather than actually discourage it. We have got similar views of unfair dismissals and a whole range of other areas, too. Other community groups have got different views on that as well, but in the end employment and recruitment policy is very susceptible to any intervention. That's a fact that everyone appreciates anywhere in the world.

In doing things that are intervention in that form, all we do is just suggest caution, particularly for those mainly recruiting in the economy - that is, small and medium-sized enterprises. Larger enterprises quite often have arrangements in terms of a whole range of equity groups and do a whole lot of things in those areas, but in the end the people that recruit most in the economy are small and medium-sized enterprises. How you regulate for those firms in particular is really important and impacts directly on the way they recruit and whether they recruit at all and how they recruit.

MS McKENZIE: Is your real concern that if there was too strict an obligation to remove discriminatory barriers, then the recruitment of people with disabilities would decrease.

MR BALZARY: It depends what you mean by remove discriminatory barriers. For me - and I've raised this elsewhere, which I will come to shortly - there's another issue in terms of what we need to do in parts of these areas. You can remove lots of barriers, but I think it's so complex that you would have to remove all barriers in terms of anything to do with people's skill levels. The biggest issue that we have in recruitment of people - and we've done all this through our surveys in the last 25 years - is those that are coming to the workforce with lack of suitably qualified candidates. That is the biggest one. It has nothing to do with anything else, but that's the biggest one.

In our view that's the biggest barrier and we have got to do everything to address that barrier. From there, there are a range of other barriers for particular groups and individuals. Some of it is everything from location, separation between where the jobs are as opposed to where they are located and they live. It could be that a lot of jobs are actually in Sydney, for example - Sydney CBD - and all the unemployed people actually live in the western suburbs. There are issues around transport for everyone, let alone people with disabilities, et cetera.

There is what I would classify as a whole range of labour market barriers there. You can talk about removing all the barriers, but there are some pretty significant

ones before you get to specialist ones for certain categories of individuals under the umbrella of people with disabilities. It's a big call. What I would like to say though - and I think we touched on this in some of the discussions we have had - my view would be looking at more flexibility under the Discrimination Act. I think that where an employer chooses to specialise, if you like, in terms of one category of individual - and this may be piloted rather than saying it's general, but I think we should look at giving this a go.

Where, for example, it may be people with sort of mobility issues and the workplace is modified by the employer, but also with government assistance, it may be that, if that person leaves, the employer can actually say, "Well, I would like to recruit someone with that sort of form of disability."

MRS OWENS: To get our money's worth out of the adjustments that had been made?

MR BALZARY: Well, I think so. I guess I'm trying to say, well, let's think a bit outside the square rather than sort of sticking to - we've got an instrument and it's all about enforcement and doing those things. Perhaps it's about encouraging people and making more sense economically in terms of what we're investing in a workplace by the employer and also by government, so it may be that that's one option. I guess that's something that we're kicking around. It may be that there are some other issues that float around that, and that's why I guess we're suggesting that perhaps they could be trialled rather than sort of introduced holus-bolus.

But things like that, it seems to me, may be worth a go, particularly in small to medium-sized firms. I'm not suggesting that, I've got to say, with large firms, because I think there's quite significantly different employment opportunities for those sorts of areas, but it may be something that the commission might be interested in looking at.

MRS OWENS: A bit of affirmative action for certain groups if there's already that desk there that's been adapted or whatever. But the problem is you might still run up against that skills problem you talked about before.

MR BALZARY: I think you've got to sort of address that anyway. It seems to me that's got to be done and it's a significant issue in this, but after you've got through that - I guess it's sort of leading back towards your scenario: you've got two people there, if the workplace has been modified, it seems to me - I mean, it may actually go the other way and you could say it's discriminating against the other individual, but if you've got in the end workplace modifications done, it may be that it's an easier way, and you say, "Well, fair enough, that person gets the cut because they're pretty close in terms of what their skills and capabilities are, so let's give the person a go."

MRS OWENS: Yes.

MR BALZARY: There are downsides, and we could probably have a debate about whether it's a good or bad proposal, and I hope in looking at the final report there's some things like that in there which are a bit, to me, outside the square in terms of looking at how people interact with the labour market and what sort of opportunities there are in innovative ways about that. Issues around potential for job sharing and group training type arrangements could be another example which I didn't put in the submission, where in fact there is clustering of employment opportunities with small business. So the person is employed by a group training company and they actually go to a number - two or three - and they're basically casuals in a number of firms, and they move around those firms, depending on the needs and requirements of what it is that they happen to be doing, and it's a good model.

It's used for apprentices all round the place, but it's not to say that couldn't be used for people who are older in the workplace that aren't linked - or it may be a possible scheme of those that have actually done vocational training and finished that; that group I think we talked about earlier that have finished an institutional qualification and it provides them an opportunity to do something in the workplace. That may be something that I think is probably cost-effective. It means that the actual employer is the so-called group training company, but in the end it provides a wealth of opportunities across small business.

A lot of my discussions obviously are around small and medium-sized business because I think that's where we've really got to make the inroads. It's very good to have a lot of large companies that are committed to this area, and we've got a range of them, but I still think that unless we penetrate, for any particular group in the economy, small to medium-sized enterprises, then you're limiting the opportunities, in particular in regional Australia and some of the larger provincial centres.

MS McKENZIE: Some care would have to be taken with that proposal because you couldn't have a situation where, for example, if people without disability presented themselves you would employ them, but if people with disability presented themselves you would tell them they are going to have to go and work with group training as casuals.

MR BALZARY: I agree with that.

MS McKENZIE: That would be obviously a disadvantageous situation, probably discriminatory.

MR BALZARY: But I think in this area, like a range of others, there is no one

answer. I think you need a range of interventions and government programs and other programs like that with employers, actively working, and with some employer flexibility to get this done, and it just seems to me that that's a possible model that you could do for some individuals.

MS McKENZIE: Yes, and also the way I would have seen such a proposal working is where really you're a small business, you've got as many full-time employees as you can possibly employ for the minute.

MR BALZARY: Yes.

MS McKENZIE: You've got room for casuals and you'd normally get them from someone like this, and you might have this proposal as a support, as a help.

MR BALZARY: That's right. One of the classic pathways into the large employing industries - that is particularly retail, hospitality and a couple of others - is through casuals. So you get into the casual market and then you get into the part-time market and then you get into the employment market. A whole range of people that we know in terms of our studies don't want to do that. They want to stay casuals. But those that do want to graduate into full-time employment, and I assume a lot of the disability group would, it's a classic entry point. So it may be part-time rather than casual. I'm not pushing the casual line. I'm just saying a flexible employment arrangement involving a range of employers may be one option of a range of options. I just think sometimes we look at direct employment all the time, and I think there are a range of employment options that we don't look at, including self-employment.

MRS OWENS: Steve, we've probably got about another five minutes with you, and I just wanted to go off on a slightly different tack. We've got an act at the moment where there are checks and balances, where it tries to balance the interests of different groups, including employers. There's unjustifiable hardship defences, inherent requirements of the job have to be met, and I think what we've been trying to grapple with is how we can make things more certain for employers.

Rather than employers going through a system where all of a sudden they have a complaint against them and that leads to uncertainty in terms of costs and what the outcome of the litigation is going to be, whether it goes to court, and all the hassles that are involved, we've been trying to think of how you can provide certainty for employers. So we're interested in this issue, and in other areas the potential has been there to introduce standards, and in employment it's been obvious that that's going to be the answer to our prayers, and that's why we've come up with this idea of voluntary codes as a possibility, where employers can actually take some control if they wanted to, getting better guidelines in place.

We've come up with the employer duty as another way of possibly doing it, but I just wonder are there any other ways that we could be thinking about that would make it easier for employers? Given that employers do have an obligation under the act to not discriminate, is there something that we could be thinking about to get that certainty in place?

MR BALZARY: Well, it's a difficult one, because the issue here is the huge diversity of the group we're talking about, which further complicates what's unjustifiable hardship. We've talked a lot about this and it's even one where we've sort of come to a point where we're not quite sure how you do it, which is unfortunate. There's nothing worse than sitting in an inquiry and someone says, "We don't know how to do it either." In the end, I think giving some examples of what they are for certain groups, probably the best things we think could be done as a stream in our view are some of the promotional materials, rather than necessarily connected directly to the act, because employers are very unclear, as we've been saying, of what some of their rights and obligations actually area, but also about some of the terms that are pretty loose, how they apply to perception.

This is the nub, I think, of why this inquiry is so difficult. Codes and standards and things like that: I basically agree that I don't think that's the way to go but, on the other hand, giving some clear sort of arrangements saying, "Well, these are the sorts of things that are important," and matching that with a kit are some of the ways you can get assistance. Packaging that for us would be much better than saying, "There's your standards. You've got to sign up to them, and this is what the clarity would be," because in the end how do you do that? Does an industry do it? And then do you say in the building and construction industry, most of the employment is on site, so that creates a whole series of people with a problem. But there's a whole range of other occupations within the building and construction industry that may be okay for a range of people with disabilities to work in - I'm talking about unjustifiable hardship - so you can't really apply that to an industry.

If you do it across occupations it's very difficult to do too; it may be easier but, again, how they apply and whether in fact you're doing that holus-bolus for the whole people with disabilities group, I think that's even difficult. When we were talking around our committee with this, we found it very hard to say, well, no-one can ever be a builders labourer. That seems to be odd, because that assumes a whole range of things. So even in traditional trades, which is probably easier I think to talk about unjustifiable hardship, it's quite difficult, rather than elsewhere. That was a struggle.

I mean, we're happy to have further dialogue with the commission and others

about how to put that together but we got to a point where it was very difficult for us to say, "This is how you do it or not," without getting into a lot of detail. In this area, I think it would have to be so structured and so detailed that in fact it would actually inhibit employment in one sector or another. That's the problem that I've got with it.

MS McKENZIE: Well, it's self-defeating because it's just overdetailed. It's not possible for it to be - - -

MR BALZARY: I think you're right. For it to be meaningful, it would have to be quite detailed, because otherwise you're still left with the same problem, and as soon as you do that, it becomes overprescriptive for certain areas, because it's got to do with the group we're talking about in terms of the diverse nature of the group, but also across the economy and across the size of employer. It's very hard.

MS McKENZIE: One of the things you recommend is that, if I'm right, anti-discrimination law be consolidated and simplified. Can you just tell me what was your thinking about that? What sort of simplification were you aiming at?

MR BALZARY: I guess we were looking from an employer's point of view about all discriminatory legislation right across and how it impacts at the coalface of the workplace. There are common threads, it seems to us. We haven't done this in terms of mapping right across all the different legislation, but it seems to us that if you could do something right across all the different forms, it would be useful to say in the end, "This is discrimination within the workplace and this is how the acts lie across in terms of your recruitment practices."

Now, we couldn't see anything that did that, and we thought from an individual employer's perspective that would be a really useful tool, because part of it is, I think, people are generally aware about what are the requirements in terms of discrimination terms - race, sex and disability and other things - but what that means and getting that in terms of what their requirements are under the acts, right across the board, is something that we'd like to - and we're comfortable working with individuals about getting that and making that clearer, across all the different forms of acts. So really it's about clarity again, simplicity, but also selling the message and promoting the message back out, in terms of the benefits of the range of clients that are covered by discrimination legislation.

MS McKENZIE: So it's really practical examples.

MR BALZARY: Yes, and also about saying, "This is generally it. These are your obligations and these are the requirements." I think it's sometimes better to start with the whole rather than the parts, then you can work down to the parts after that, because there will be different forms of interventions for the different groups, and we

accept that. But in terms of getting that in the mind-set right across the community, I think sometimes we deal with the different groups rather than deal with the general issue of discrimination and what it means.

MRS OWENS: I know you're meant to go, but there's just one other issue which follows on a little bit from the employer duty issue, and that is there has been a lack of clarity in terms of what the act actually requires organisations to do. There was a question mark as to whether organisations such as employers, firms, are meant to make reasonable adjustments for people with disabilities, once they come to the door, if you like. It has been found recently that it's not actually - Cate can probably explain this better than me - set out that way in the act, unlike other acts in other countries such as the UK.

One of the things we're grappling with is if we don't talk about an employer duty, we don't come up with that and move to clarify in the act whether that is something we should be clarifying - that there should be a requirement to make reasonable adjustment - and then if that's the case, how you put that into the act as a general provision - you provide general examples or have examples in different parts of the act. We're grappling with that issue which you may want to take on board. You may not think it's necessary to go that far at all.

MR BALZARY: No. Our view would be obviously anything that is a straight cost to employers about recruitment and heightens the cost of that will be inhibitive to employment. It doesn't matter what it is. So I think that's just a fact. I think we would need to be very careful of that. Defining clearly what you mean by what it is in terms of "reasonable" is important, too. If you're going to begin to clarify and sharpen what that means, we'll probably have further views on that, depending on your findings, because again it just depends on your philosophy of what we're trying to do here. I understand the act has to be clear, but on the other hand, if we've got some clarity in terms of the sorts of things we were talking about before, I think that would do that, and it would be sufficient in terms of saying, "These are your obligations. These are the requirements."

We've got a lot of programs out there that are targeted by governments to do this, and it seems to me that's connected. We talk on the programs on one side, and we talk about the act on the other side, and they're not working - to us anyway - together. If you've got programs and they're available and people are quite understanding of those, and that's going to meet some of the costs, I think there would be less of an issue in terms of what that requirement will be. But you may not then need the requirement in the act, because it's being done and it's quite clearly being seen to be part of the government's responsibility in the removal of one barrier for one group in terms of employment. That's a quite acceptable government intervention from our point of view.

MRS OWENS: Thank you. There's a whole range of other issues we could talk to you about, and you have raised many of them in your submission. I suppose the other big one is the impact on competition, and I know we just don't have time to do it now because you have to go, but that is the other big issue that probably has some direct effect on you and your members.

MR BALZARY: I think that's right. When I was talking about the costs of employment and things like that, obviously that's all linked to competition and people competing with each other, quite often with the same firms. If people are doing this now, and they may be doing it because they think it's the right thing to do and going over and beyond the Discrimination Act, some of those people are doing that because that's their form of putting back into the community - community participation. Other companies may be doing other things. What we're trying to do is encourage a company to do something that's in their direct financial interest - and I guess I'm talking over and above the Discrimination Act now - where they've got programs or particular initiatives that they want to take place. What we don't want to do is say, "Well, you've got to do everything for everyone." Our view is if people want to have programs and initiatives for people who are indigenous or people with disabilities or other things, they should be able to do that. If an employer at some point in time chooses not to do that, obviously they're complying with the act, but in the end they don't wish to do that and they may do that for a variety of reasons - they're starting up or they're changing or growing their business or there's a financial issue. That's going to happen as well. If there are forms of legislation in place that put costs on employers - and particularly certain employers, because others are seen to be not in an area where in fact there is a group of people - you know, it's got to do with location of people with disabilities as well, and their willingness to work, just like any other group. Some group has to take on a range of people to do with, sort of, blunt instruments, that will have an impact on the competitive arrangements, both within the region, in some cases statewide, and in some cases nationally and internationally.

MS McKENZIE: Arguably, this legislation has been in force for 10 years with the same prohibitions. Arguably it has been doing this for 10 years.

MR BALZARY: I'm not arguing in that case about the current arrangements. I'm saying that some of the things you've flagged in terms of the extra ones, that in fact that would be a consequence, and I think the impact on competition and costs is a major issue for all of these sorts of things. That's part of what we're talking about in terms of some of the barrier withdrawals, of infrastructure, and the government role in some of this is important because that offsets some of that. If that's not there, our concern would be great in some of these areas, because in fact you'd find that people would be very concerned. That's assuming that the common goal is to get more

people with disabilities in the workplace at a much greater rate than we've got now. So if you're going to do that, then I'd go back to a range of different interventions to do that, but be mindful of the size of the firm and their location and also their competitiveness within the region and across more generally.

MRS OWENS: I know you're looking at your watch. We did conclude in our report rather tentatively that we didn't have any evidence that there was any major impact on competition of the act as it stands at the moment, and I don't think there was anything in your submission that commented on that, or disagreed with it. Your members haven't been rushing to you saying, "Our competitive position has been adversely affected by the existence of this act"?

MR BALZARY: No. There has been nothing from my members, either positively or negatively, on that arrangement. We did ask it, but there was nothing coming back strongly saying what it was. Some of that, I think, is in fact people understanding part of what the act is and all those sorts of things as well. I think I've said that in previous submissions as well.

MRS OWENS: Thank you for that and sorry for holding you up for so long.

MS McKENZIE: Thank you very much.

MR BALZARY: That's all right.

MRS OWENS: We'll now adjourn for lunch and we will resume at 1.30.

(Luncheon adjournment)

MRS OWENS: The next participant this afternoon is the Australian Airports Association. Welcome to our hearings for the inquiry into the Disability Discrimination Act. I'd like to thank you very much for your two submissions and for the tabled document that you've just presented to us this afternoon. Could you each give your name and position with the association for the transcript.

MR KEECH: My name is Ken Keech, and I'm the chief executive officer of the Australian Airports Association.

MR SKEHILL: My name is Stephen Skehill. I am special counsel with Mallesons Stephen Jaques, and we are the solicitors to the Airports Association.

MRS OWENS: Thank you. I understand from our discussions before we started that you'd like to make a few introductory comments.

MR KEECH: Thank you for the opportunity to appear before you today and to expand upon our experience in the application of the disability standards for accessible public transport 2002 that have been made under the Disability Discrimination Act. We wish to stress at the outset that, as an association, we completely support the policy underlying both the act and the standards. We are very keen to ensure that, to the greatest extent practicable, people with disabilities are able to access and enjoy the services of our member airports. At the same time, however, we believe that this should be achieved without undue bureaucracy and in a manner that is both practical and recognises and takes into account the operational dynamics of the airport industry.

We have already provided you with copies of an exchange of correspondence between the association and the Department of Transport up to and including our last letter of 19 December 2003. We have since had a response to that letter and so, for completeness, I wish to table a copy of that reply in case members have not otherwise seen it. You now have a copy, I understand. This exchange of correspondence we think very clearly demonstrates that the current standards are inadequate; that they are being administered in an inefficient and unduly bureaucratic manner; and that insufficient regard has been had to the practical and economic issues that are central to operating an airport. This last point is to us particularly disappointing. The Attorney-General's Department can be forgiven for not being familiar with the dynamics of Australian airports, but the Department of Transport, of all people, should be both informed and keen to assist in this regard.

As you will see from the correspondence, our fundamental concern is with a conflict between the obligations imposed by the Commonwealth, through the attorney-general's standards, and the aviation safety requirements imposed by the Commonwealth Civil Aviation Safety Authority would be resolved. There are a

variety of possibilities discussed in the correspondence. Regulations could be made under the act giving precedence to one or the other and, because of the fundamental importance of safety, we say priority should be afforded to CASA's requirements. Applications for exemption can be made to the Human Rights and Equal Opportunity Commission, but this is an inherently unsatisfactory route, or equivalent access could be provided but, as noted, this is incapable of resolving all possible conflict and is fundamentally inconsistent with the economics of running airports in Australia.

In this latter regard, while an airport could contractually seek to impose an obligation to provide equivalent service on aircraft operators using its infrastructure, this will not accommodate all non-RPT aircraft operations and, even then, will leave airport operators liable for any failure to provide that contracted out equivalent service because there is nothing in the standards that protects an airport operator if it enters into such an agreement.

We have put to the department a request for assurances that would give us some comfort that, if conflicts of this type do arise, they will be readily resolved. Unfortunately, the response we have received most recently is yet another bureaucratic buck-pass. We need to stress that our concern to get some certainty on this issue is not just for academic housekeeping or legal nicety; the concern runs far deeper. Member airports face immediate challenges to design and commit to construction of future infrastructure worth, potentially, millions and millions of dollars. As things stand, they face certainty not only about whether there may be any inconsistency between the standards and CASA requirements that will render that infrastructure noncompliant and, potentially, subject them to major cost remedy but also about whether or how any such inconsistency will be resolved.

This is a completely unacceptable position in which airports have been put. It is the government that imposes each of the standards and CASA obligations. It should, therefore, be mandatory for the government to ensure either that there is no inconsistency or to provide assurance that, in the event of that inconsistency arising, it will be speedily and predictably resolved.

On these issues, we are dismayed to see that the department that should have the concerns of airports at heart has left us high and dry. Therefore, we urge the commission to make recommendations to government that the assurances we have sought should be delivered - that is, that regulations will be made to allow CASA's safety requirements to prevail over the standards and that the standards will be amended to protect operators who can contractually transfer an obligation to provide equivalent service. Such a recommendation would, in our view, be entirely consistent with the statement made at page 140 of the commission's own issues paper, where it was said that governments should be held accountable to principles they espouse and the duties they impose on the rest of the community. Where

governments want to ensure actions taken under laws are free from challenge, they should be prescribed under section 47 as the DDA allows. With your forbearance, we now welcome any discussion on any of the issues that we have raised, after making those initial comments.

MS McKENZIE: The first question is: the CASA requirements are made under the civil aviation regulations. Is that how it works?

MR KEECH: That's correct, yes.

MS McKENZIE: So, it's the regulations that give power to make the requirements.

MR SKEHILL: They can be made, Cate, under a variety of legal mechanisms - either under regulations or civil aviation orders, or they could be imposed as licence conditions and so on. But however they are imposed, they're legally binding on the airport operator, and our concern is, if it should arise that one of these requirements is just simply inconsistent with the standards, how do we know what to do? That becomes very real now in particular airports that are thinking about major capital infrastructure expenditure. How do they design an airport to meet the standards in a way that will allow compliance with both standards and requirements in a very uncertain world? It's probably impossible, and we don't know any conflict will be resolved.

MS McKENZIE: The other thing to say is that temporary exemption is not a particularly satisfactory way of sorting this out because, if you want certainty, you want it from the beginning of the airport to the end of its life, not for three years or five years.

MR SKEHILL: That's exactly right. A temporary exemption for five years, when you have to apply on an airport-by-airport basis, when you can't predict the outcome, when it is only temporary, is inherently unsatisfactory when you're talking about infrastructure that's got a 25 or 30-year life, so you're exactly right.

MS McKENZIE: When I asked you where the requirements of CASA come from, you mentioned a variety of sources. Some of them, I would have thought - and I'll have to go back and look at section 47 again - would have been covered already in what you can make regulations about and what you can prescribe under section 47.

MR SKEHILL: Certainly.

MS McKENZIE: Section 47, to my recollection, is more looking at acts and subordinate legislation rather than things like licence conditions.

MR SKEHILL: You may be right. I haven't actually looked at it from that perspective, but there is certainly a mechanism in the act that - at least in the case of regulations, and it may go further - allows certainty to be given. We just can't get any assurance that that mechanism will be used, nor can we get assurance that, if we seek to comply with the standards by equivalent service and we seek to put that obligation on the airport user, that will be protected, and it clearly isn't under the law at present. As Ken said, I think we are left high and dry.

MS McKENZIE: You can't contractually devolve the airport operator's obligation to the standard.

MR SKEHILL: Yes.

MS McKENZIE: Although you could make contracts about what other operators have to do.

MR SKEHILL: We could. For example, an airport could say that, where it's not possible to put rest stops, it will be the obligation of the airport user - the airline - to provide equivalent access through wheelchair access, which a lot of airlines, as you'd know, already do. But, if an airline fails to do that, despite its contractual obligation with us, that leaves us in breach of the standards and in breach of the law. We can't contract out the obligation. Secondly, that's fine for airlines that are regularly using your premises, where you have an established relationship, but for many airports - and bear in mind there are 260 airports or something in Australia - their clientele is often transient, unexpected and just arrives. There's no way that they can have people sitting on the ground waiting with a wheelchair, or whatever other form of equivalent assistance might be provided, just against the odd chance that someone might drop in. So, there are very practical problems.

MS McKENZIE: I might just pursue this point and then ask you my next question. Given that the standard permits you, instead of meeting the very detailed specification, to do an alternative form of access, as long as it's equivalent in all those various respects - comfort, dignity, convenience and all that stuff - given that you're permitted to do that, how do you know what's equivalent?

MR SKEHILL: That's a very good question.

MRS OWENS: That's another area of uncertainty, isn't it?

MR SKEHILL: It's a bit of an imponderable. There would be people who would say it's not equivalent for me to be forced into a wheelchair and pushed across the tarmac when I want to walk and when I should be able to walk, albeit I might need rest stations. I think that we just have no certainty about what would be equivalents,

but I understand the difficulty of giving that certainty.

MS McKENZIE: You'd find out if there was a complaint.

MRS OWENS: But that's too late.

MR SKEHILL: That's right.

MS McKENZIE: It's just interesting. It's still not fully worked out but, in the draft premises standard, there's an attached protocol which tries to address - or at least in part tries to address - this very issue, and that's a mechanism where you can go to someone - a building authority, or whatever, in the state - to ask them, "Is this alternative solution to the detailed specs equivalent?" But there's no-one you can go to under the transport standard for a similar - - -

MR SKEHILL: No, I think that's right. You take your risk against a very uncertain proposition. Now, the odds of prosecution may be low, but that still doesn't fit with a corporate culture that seeks to be fully compliant with the law. To have that uncertainty is very uncomfortable.

MR KEECH: The other issue also is that in actual fact the Commonwealth owns the privatised airports and has leased them out for 99 years and they are the ultimate landlords, you might say, which adds another dimension to the complication, so state governments, as such, don't necessarily have any part to play in terms of giving the sort of approvals and comfort that we might seek.

MS McKENZIE: As they would in building more?

MR KEECH: Yes, in normal building codes.

MS McKENZIE: The other question - I am not trying to downplay this issue in any way - has it yet proved to be a real problem? Is there a real, on-the-ground, demonstrable conflict at the moment between CASA requirements and the standard.

MRS OWENS: There were some hypotheticals in that letter.

MS McKENZIE: You gave us a hypothetical.

MR SKEHILL: Yes. In a sense we don't know because airports that are sort of actively pursuing design at the moment are still struggling with working out what they have got to do. I can't point you to anything that is clearly unambiguously just undeniably in conflict at the moment. Now, there may be or there may be in the future because, of course, CASA requirements can change very readily and very

quickly.

MS McKENZIE: And there must be thousands of them presumably.

MR SKEHILL: Boxes and boxes and boxes. I can't point to a specific one and that, in a sense, means that it has been important to us just to get some certainty about a process for resolution when and if it arises, and that's what we have been unable to secure.

MR KEECH: From an operational point of view there are some airports that, frankly, if I were to be honest, would not fulfil the requirements. I mean, if you go to Adelaide at a busy time at the airport and want to fly on one of the commuter airlines to somewhere within the state of South Australia, you would have to walk, on some occasions, 120 metres, without any rest stations, et cetera - a lot of things - and even just here, I noticed this morning that where my aircraft was parked when I arrived that it was almost 100 metres from the terminal, so there are these sorts of issues that really give us some concern and which need to be taken into account. All we are asking is for some certainty - that's all.

The other thing is that we are not just talking about the major capital city airports and the implications for them. We're talking about rural and regional airports that do have passenger services that do have airport facilities, as such, that are commensurate with the requirements of the local community, and certainly there are some that are actually about to spend some money on redeveloping their terminal facilities and this air of uncertainty is not helping them in any way. Two that come to mind are Gove in the Northern Territory and Rockhampton in Queensland. They are about to undertake major, major infrastructure development worth millions of dollars.

MRS OWENS: Can I go back one step to the correspondence that you have had. You raised the potential solution of using section 47 in your correspondence of 19 December to the First Assistant Secretary of the Department of Transport and Regional Services. Have you had an opportunity since that time to actually discuss that proposal? I note that it wasn't raised - it wasn't acknowledged - in the letter we have had tabled today and I was wondering, did you get any opportunity to think through that proposal of prescribing regulations with the department?

MR SKEHILL: I don't think they have sought to discuss it with them, but I take their most recent letter of 27 January as saying, "No, we're not going to make regulations because", they say, "cannot at this time provide the assurances that you request", and one of the assurances we sought was that regulations would be made if a conflict did arise, so we have been given nothing.

MR KEECH: If I may say so, we have, over the past six months or so, had numerous telephone and personal conversations with people within the department and, as Stephen indicated, he also, on numerous occasions, has had similar discussions with people from within the department. I think that is fair to say, is it?

MR SKEHILL: I wouldn't say "numerous" - a couple, yes.

MR KEECH: Right.

MS McKENZIE: Ultimately, the only road that, for the moment, would seem to be available is the one you have already mentioned, which is not particularly satisfactory for applying for exemption.

MR SKEHILL: Yes, that's very unsatisfactory. It gives no certainty that to - to commit now to major expenditure if you can't identify an exact conflict, if you're thinking about the potential of a conflict arising after you have committed and you don't know how it is going to be resolved. It's a known business risk that can be factored in that you will have to comply with CASA obligations - safety obligations - and airports must bear that risk, but to try and factor in another unquantifiable risk that there may be a conflicting standard that may require major modification of an airport to comply with both or where compliance with both may be impossible is just not good economics.

MS McKENZIE: It's very difficult. I can understand a view which might say, "Well, it may not be sensible to give some sort of complete blanket exemption to every requirement of CASA, so it would always prevail over the standard, because some of those requirements might, frankly, be not really related to safety but be some kind of minor operational requirement, which could easily be accommodated. You might be able to comply with both.

MR SKEHILL: If you can comply with both we don't have a problem.

MS McKENZIE: You haven't got a problem. It's only where there's a direct conflict.

MR SKEHILL: I mean, by its nature, the CASA requirement will be safety related. That's what they have power to make regulations and orders about.

MS McKENZIE: It's only safety basically.

MR SKEHILL: That's their concern.

MRS OWENS: And you would say all those safety requirements should override

anything that is in the Disability Discrimination Act. That should be the priority.

MR KEECH: If there is conflict.

MR SKEHILL: If there is conflict. We're not saying that an equivalent service shouldn't be provided, but then we've got a problem about who provides that equivalent service.

MRS OWENS: And what "equivalent" means.

MR SKEHILL: Yes.

MS McKENZIE: And how to determine it.

MR SKEHILL: Yes. We just want to stress that this is not opposition to the act or the standards and the policy that it reflects - totally support it. It, I think, just provides a very useful example for the commission of the way in which policy translates or doesn't translate into reality in this environment.

MS McKENZIE: We're obviously concerned with process aspects of the DDA. What you do about conflicting laws in this area is one matter that we've raised and, yes, we've raised the question of prescription of laws and, really, you have been seeking that process to occur and it seems to be relatively slow and perhaps a difficult process.

MR SKEHILL: We've been seeking less than that. We've been seeking just simply an assurance that that process will be followed and we can't get that. We're told, "Well, there's going to be a review in 2006 and you can participate in that." It's not very helpful.

MRS OWENS: But that's a review of the standards.

MS McKENZIE: Yes.

MR SKEHILL: Yes.

MRS OWENS: That's not looking at this more fundamental question which is really underpinning the standards.

MR SKEHILL: No.

MRS OWENS: I mean, there is the fundamental question of what could or should be prescribed in the act.

MR SKEHILL: Yes, that's right.

MS McKENZIE: The second question is what mechanism should there be perhaps comparable to that which the protocol that's proposed shows that the premises that's concerned - what mechanism should there be where you've got to do something equivalent to the specifics of the standard to tell you whether that something equivalent is going to be appropriate. It's going to meet the standard.

MR SKEHILL: Yes, exactly right, so we just find ourselves in a position of considerable uncertainty. We can't, as an association, give guidance to member airports and they're left in a position where they are wanting to make major capital investment and really don't know how to justify - or know that they can justify - the investment they are talking about.

MRS OWENS: Which is sizeable, obviously.

MR SKEHILL: Yes.

MS McKENZIE: I have to say that I find the question of the responsibility of the airport operator versus the airline a bit more difficult because, again, there might be a view that an airport operator shouldn't be able to in effect contractually opt out of or devolve responsibility under the standard. After all, it might be thought in the choice to place an obligation on the airport operator might have been a critical one to the standard. It might have been felt that the airport operator was ultimately in the best position to look after compliance, even though they might have some contracts which require airlines to help. It might have been thought perhaps that it wouldn't have been sensible to devolve that responsibility to airlines.

MR SKEHILL: I think that's a very valid question and I think the answer is a little complicated. I think it's fair to say that responsibility for the infrastructure can squarely be placed on the airport operator - the airport operator's job is the provide infrastructure for the use of airlines; so where we're talking about construction of taxiways and so on, that's a fair proposition, but where we are talking about equivalent service that needs to be provided because the infrastructure isn't there or can't be provided, the economics of an airport operator is such that it is the airline that is receiving people onto the premises that have been made available and putting them on aircraft and so on. They're the obvious person to provide the equivalent service and, in the course of major operators - like Qantas - they do so, but if they fail to do so, the airport operator would be left with a legal obligation and we can't protect ourselves just simply by contracting.

As I said earlier, if you take this in the context of a small regional airport run

by a local council with minimum facilities, probably operating at a loss, to say that it has to have someone with a wheelchair on duty during every opening hour that that airport could potentially receive a non-regular public transport operator - a plane just comes in - that airport is just gone well and truly out backwards in terms of costs to the local community. I think there's just a need for (a) more certainty and (b) flexibility.

MRS OWENS: The airline and the airport would both face a similar problem in that small airport.

MR SKEHILL: Yes, the airline might if it can't fly in with whatever equipment is necessary to provide the equivalent service, so we have a problem. What's the airport operator to do - prohibit arrivals by any aircraft that may be carrying a disabled person? That's the worst outcome.

MR KEECH: In the time permitting, perhaps I could explain to you the practicalities of what actually happens operationally at the airport.

MRS OWENS: We've got plenty of time.

MS McKENZIE: Please do.

MR KEECH: In a previous life, I was the general manager of Melbourne Airport and had responsibilities for Hobart, Launceston, Burnie and Wynyard.

MS McKENZIE: Is that all?

MR KEECH: Yes, for Ansett - I did say a previous life.

MS McKENZIE: Yes, I can understand why you might refer to that as a slightly stressful job.

MR KEECH: It was very stressful. The issue is complicated in terms of the privatised airports around Australia, because prior to privatisation the Commonwealth leased the domestic terminals to Ansett and Qantas for 30 years, which effectively meant that, at the major airports around Australia, the Qantas and Ansett terminals were really run as their own businesses. I'm simplifying this, but the airport operator, when the airports were privatised, had to take over the leases that were handed to them by the Commonwealth. The airlines - Qantas and Ansett - were totally responsible for all the operations that went on in those leased domestic terminals.

When there was a requirement for customer assist for anybody with a

disability, or a wheelchair was required on either inbound or outbound flights, the aircraft would communicate with the operations centre at Melbourne Airport and say, "We need two wheelchairs" - or whatever the case may be - "on flight such-and-such," et cetera. Then it was up to us at Ansett to ensure that the customer knew that there would be a wheelchair. At no time, operationally, did the airport owner become involved. It was very clearly our responsibility - our responsibility alone.

That is what happens today. Virgin, Qantas and any other carriers are responsible in their own terminals for the throughput of their passengers. Within the airlines there is already some very well practised and established procedures to ensure that passengers with whatever disability are, hopefully, adequately taken care of. I know that it was always the best intention with Ansett customer service to ensure that the expectations were fulfilled and, certainly, it had nothing whatsoever to do with the airport owner.

MRS OWENS: What about things like disabled toilets and so on? Were those the airline's responsibility as well?

MR KEECH: In the terminal?

MRS OWENS: Yes.

MR KEECH: In the terminal, Ansett, if you like, had to pay for the terminal toilets. Any refurbishment or upgrading was always Ansett's design and cost.

MRS OWENS: What about today?

MR KEECH: Today - and I'm talking about Melbourne, and I suspect that I'm correct in terms of the rest of the country - as far as Qantas is concerned, it is its responsibility in the terminals that it leases or has developed. I think you'll find that, in terms of where Virgin Blue has taken over the Ansett facilities as such at some of the airports, the airport owner has now taken back that responsibility. However, I do stand to be corrected on that.

MRS OWENS: It sounds like it's slightly messy in terms of who has responsibility for what.

MR SKEHILL: And that's the problem: the current regime doesn't give us the flexibility to reflect the operational realities. In the Ansett situation that Ken was talking about, it was clearly recognised that, as between the Commonwealth - the then owner - and Ansett, it was an Ansett responsibility. Now, if we applied the standards to that situation, it would be the Commonwealth's responsibility as owner,

and it would not be protected if Ansett failed to do what Ansett traditionally did. I don't think the Commonwealth would have accepted that responsibility at that time, but it's now forced upon us, and it doesn't allow us to ensure that equivalent service is provided by contracting it out. We can contract it out, but we remain personally liable. That's just not a good proposition.

MR KEECH: Going back for as long as I can remember, it has always, historically, been the responsibility of the service provider, which in this case is the airlines at the airports, to ensure that there are sufficient procedures in place to look after passengers with disabilities.

MS McKENZIE: That will apply to certain things but then, when you look at things like aprons, for example - just getting access into the plane - I would assume that some of that will be the responsibility of whoever actually owns the building.

MR SKEHILL: I think that's a very fair proposition, and that's where we just don't have the flexibility, as things stand, to look at the way the airport operates, draw distinctions between an infrastructure provider and an infrastructure user, and apportion responsibility in a way that fits with the business practice which, in the net result, can still deliver the outcome that the standards seek.

MS McKENZIE: Look at the person who is trying to complain because there's been a breach of the standard. If you had a system like you're proposing, it's going to be really difficult for them, first, to know who owned what bit of what, who operated what if there was some kind of shared responsibility or, if they're claiming that it's the whole access path through the airport that's a problem, bits of the path will be the responsibility of different people. You can see why it would be easier to place the obligation on one person, but at least I would have thought there might be something built into the standard to permit some sort of flexibility of approach as far as actually managing that operation.

MR SKEHILL: Yes, I readily accept that you would need to think that through and have an appropriate complaints procedure. You need to have a way of dealing with these issues and that doesn't in itself provide another inaccessibility problem for people with disabilities or the community generally. It's got to be dealt with, but I don't think the answer is just simply to lump it all on the airport operator holus-bolus. That's not the way airports operate.

MRS OWENS: It sounds like this really does need to be reviewed - is that what you're suggesting - before the standard review process takes place?

MR SKEHILL: Yes.

MRS OWENS: Do you think it's a stand-alone review that's needed?

MR SKEHILL: Well, we thought so, and we thought there were pretty easy ways of resolving it, but they've not been acceded to, we've been told and, if you can help us, we'd be extraordinarily grateful.

MRS OWENS: I think that issue of airline versus airport responsibility is a really tricky one, and I haven't thought it right through myself yet.

MR KEECH: Am I permitted to ask a question?

MRS OWENS: You can ask a question.

MR KEECH: Have the airlines expressed any views at all?

MS McKENZIE: Not to us, but they might now if we bring this discussion

MRS OWENS: After this submission goes onto the web site.

MS McKENZIE: We might bring it to their attention. In our report, when we were discussing prescription of laws, we were mainly concentrating on the state laws that were already exempted and said that there were no rhyme or reason as to why certain state laws were and other states didn't have equivalent laws prescribed under the act, and made a recommendation that the laws currently prescribed under section 47 of the Disability Discrimination Act should be delisted unless the relevant states request their retention. In the text - but this didn't get reflected in the recommendation - we said that we thought that the option for prescribing laws provided a useful mechanism for identifying when government considers other laws should take priority over the DDA. However, the currently prescribed laws should be reviewed.

I'm just trying to think through where we go with this. There may be something to be said for saying that the current list should be reviewed, and other areas, where there is obvious conflict, should be considered for prescription. We could take it beyond that and we could raise this particular issue, which I think is an important one.

MR SKEHILL: My attitude to that is, particularly where it is the Commonwealth that is imposing both obligations, that if one is inconsistent with the other the Commonwealth should tell people which one they've got to comply with. As I said to you, at the moment we can't point to any necessary inconsistency. All we're seeking is some certainty as to how that will be resolved if it arises, and we haven't got any assurance that the Commonwealth will use that mechanism, which we think is the right mechanism, to give us that uncertainty. I agree with you that the list of

what's prescribed at the moment appears to be very eclectic, and how it came about I've no idea.

MRS OWENS: But there are probably other laws and occupational health and safety regulations elsewhere and so on where this very same point is going to be relevant. Maybe there is potential to really consider all these areas where there is a clash or an inconsistency. If we're going to look at what the states are doing, we should perhaps be thinking about what's happening federally, where there are potential conflicts, or real conflicts now. How does that sound?

MR SKEHILL: Well, it sounds very rational.

MR KEECH: That adds another dimension to the inconsistency, because quite apart from those airports that are owned and leased by the Commonwealth, which have Commonwealth legislative requirements attached to them, around the country there are other airports that are either privately owned by individuals or owned by councils that are subject to various state occupational health and safety issues and state legislation with regard to what they must do to comply with certain regulations. That's all very well on the one hand but, when it comes down to aviation safety, that is controlled by the Commonwealth through the Civil Aviation Safety Authority. There is a lot of competing and pulling and pushing, if you like, in fulfilling all their statutory obligations.

MRS OWENS: We'll take this on board and try to work our way through it.

MR SKEHILL: We thought it provided something of a case study in how these things are impacting on businesses, big and small, and the burden is, potentially, significant.

MS McKENZIE: It's a very helpful case study.

MR KEECH: If it were considered in any way helpful with your assessment, I am sure that we could arrange for you to go onto an airport of varying size, if you like, just to have a bit of a look and experience and have things pointed out to you. That's an offer that's there, if you so wish.

MRS OWENS: Thank you. We'll think about that. We're getting a bit late in our process.

MR KEECH: Yes, I appreciate that but, nonetheless - - -

MRS OWENS: I think we understand the issues.

MR KEECH: Although, you're travelling through airports most of the time.

MRS OWENS: I live in airports.

MR KEECH: We thank you for your business.

MRS OWENS: I can't say it's a pleasure.

MS McKENZIE: But it does raise a very useful case study for us to look at, and these are questions which we've already raised in our report and which we can expand on helpfully, given your material.

MR KEECH: We'll commit whatever resources we can and that you think appropriate to assist you in any way.

MRS OWENS: Thank you both very much for attending. We will do what we can on this issue. It is a fundamental issue, because we're talking about safety and people's rights, and issues relating to both are important - you know, which takes precedent. There's an interesting community debate to be had, and there must be a way through this. I don't know whether we can be waiting for the five-year review of the transport standard to resolve it and whether or not that is the appropriate way to go, and I can't judge that at this stage.

MR KEECH: Thank you very much.

MRS OWENS: We'll break now and resume at 2.30.

MRS OWENS: The next participant this afternoon is Ildiko Auer. Could you repeat your name, and I'm sorry if I mispronounced it - repeat your name for the transcript?

MS AUER: Ildiko Auer.

MRS OWENS: Thank you. You're appearing here as an individual, not representing any group. Is that correct?

MS AUER: That's correct.

MRS OWENS: Thank you. Ildiko, you'd like to just make a few opening remarks to us?

MS AUER: I would like to say that when I read about the public hearing, the first thing I came across with that in my experience, which is about 25 years' experience of dealing with a young adult with disability, I believe that discrimination is very much alive and existing in the ACT, and I have come across a number of scenarios in the last 25 years which I had to deal with on my own because there is no organisation in the ACT who would take on and solve issues when it comes down to discriminating a young adult with disabilities.

MRS OWENS: In some states, and I presumed in the ACT, there are some disability advocacy groups.

MS AUER: There are.

MRS OWENS: You haven't come across any groups that have been able to help you?

MS AUER: I have, yes. I have approached People First when I had issues which relate to discrimination and the issues; they were not solved. Even though I had an advocate to represent my daughter and myself to try to rectify the problems, it never had a positive outcome.

MRS OWENS: We'd like to come back to that issue in a minute about what you tried to do and what the process was, but you may like to run through with us the experience you had with your daughter. You've given us a submission and tabled an article from the Chronicle from July 2002, but you might just like to run through that and we can ask you questions as you go, and then we could talk about your experience with this process in the ACT.

MS AUER: Yes. I thought I would just bring up a scenario which relates to the

article which was written by my eldest daughter, who also lives with me. She has written the article after the scenario occurred with Melanie, who is my disabled daughter. The article relates to an activity which my daughter really loves, and I certainly encouraged her in the last 25 years to participate in activities, which is physical activity, and I have certainly tried to focus on her physical ability since she was three years old, because I realise that her intellectual disability will be stopping her to get a job later on, and she won't be able to understand and she won't be able to express herself in later life.

So what I did is I focused on her physical ability, which means I have built up her strengths by doing various things, such as swimming, such as rock climbing; what she's doing now, horse riding. She walks a lot. She also rides a bike and I used to take her with me to play tennis, so I focused on her physical ability because I knew that she had the strength, and I built on that to make it possible for her to participate in so-called norm surroundings - if it's entering a club or swimming with a group or any activity where she can join in with the others.

This article we wrote relates to a scenario which happened when Melanie went bushwalking. When I joined my daughter up, there was no objections to her being part of the group. I have gone to the walks myself on a number of occasions, just to make sure that she's able to keep up with the others and just behave in an acceptable manner. She has participated in the walks. Later on, I organised a support worker who also has taken her for a walk. However, once she turned up for the walk, she was refused, and I could not believe it. I certainly couldn't believe it because I didn't understand why she was turned away when she already participated in 23 walks within a period of two years. When she turned up with a support worker, she was simply told that she is not welcome to participate and she cannot walk with the group. I may point out that she was a financial member of the club.

I refer to my submission. The way I followed that up - I have attended the club's meeting. I went to the general meeting with my eldest daughter and we questioned the president of the club why the scenario occurred and why did they refuse Melanie to participate in a walk, and we didn't get an answer. First of all, when we got to the meeting they tried to make us not to talk, actually. They asked us not to bring up an issue because it's not on the agenda, so basically they tried to make us go away, but we didn't.

Unfortunately, whatever I try to do - we have published the article. We went to a meeting, we have written letters and we also submitted a form to the Discrimination Tribunal - - -

MRS OWENS: This is the ACT Anti-Discrimination Tribunal?

MS AUER: Yes. I have also approached People First to try to ask them to help us to solve the problem. Unfortunately none of these processes had any outcome at all.

MS McKENZIE: And you say that your daughter was refused renewal of her membership as well?

MS AUER: No. She was a financial member of the club when the refusal occurred, and her membership expired after that - but actually, yes, I remember that. She was told that her membership will not be renewed, yes.

MRS OWENS: Which is really denying her access to the club.

MS AUER: And that came from the coordinator of the board, whatever.

MS McKENZIE: What about the experience of the complaint process to the ACT tribunal?

MS AUER: Well, I don't know. I can't really comment on that experience because I just lodged a submission. I collected a statement from the support worker who actually was present at the discussion. It's in written form. It has been attached to the submitted form. I have filled in the form and it was submitted to the tribunal and I have never received not even an acknowledgment that my submission has been received.

MRS OWENS: It sounds like it's been lost in the system.

MS McKENZIE: I wonder has it been lost in the mail? Could that have been the case?

MS AUER: Well, it couldn't be the case because I have given it to a solicitor and his name is Mark O'Neill, and he lodged it himself, so it wasn't posted.

MRS OWENS: Did the solicitor follow up to find out what had happened?

MS AUER: No.

MS McKENZIE: But he actually lodged it himself?

MS AUER: He lodged it himself, yes.

MS McKENZIE: And that was in 2002?

MS AUER: That was in 2002, shortly after that scenario, but probably about two,

three weeks after that.

MS McKENZIE: Did you think of complaining - there's a Human Rights and Equal Opportunity Commission of the Commonwealth, which is the body that administers the Commonwealth Disability Discrimination Act. Did anyone discuss with you whether to complain to that organisation?

MS AUER: No. This is the only steps I've taken after this, and nothing else happened. I was just so disappointed that nobody really thought that the issue was important, and not even the advocate or - well, they didn't come up with any other solution, because the question I received was, "What sort of outcome do you want from your complaint?" I was told that there won't be a satisfactory outcome anyhow because what can they do? They didn't even say sorry.

MRS OWENS: Well, even that would be a reasonable outcome - just to have an apology, if that was appropriate.

MS AUER: But, see, when I went to the meeting, I came across all the people who actually participate in the walk and I just felt that enormous resentment, not only towards Melanie but also towards us, my eldest daughter and myself, that we actually came to complain.

MRS OWENS: So it would be very difficult for your daughter to go back to that club and walk with these other people.

MS AUER: Yes, that's what I'm trying to say. I wouldn't allow her to go back anyway.

MS McKENZIE: No, because you'd be unhappy for her.

MS AUER: Because the way people approached the issue, they were not prepared to discuss it, they were not prepared to work out a solution when we were there, and that's why we went - that we should come to an agreement. I mean, if they had said that shouldn't have happened - I mean, all I asked for is a discussion when I went along, and that was denied, and I just feel that this definitely - my daughter was discriminated and I just don't understand why, because the reason wasn't given. The reason given, as you can see in the article, was that she could not keep up. Well, that wasn't true because I have gone for the walk with her myself and Melanie is able to walk. When I look at the other people who participated in a walk, you're looking at the age group of over 40 to 70, so there's no way that she cannot keep up.

MS McKENZIE: So they're all mixed ages and abilities.

MS AUER: Yes, that's right, and this organisation, Walking For Pleasure, they do advertise regularly - I shouldn't have said that?

MRS OWENS: No, no.

MS McKENZIE: No, no, no. We just find it, from what you have told us, a rather amazing title.

MRS OWENS: It's a walking group for pleasure for a certain subgroup of the population.

MS AUER: Yes. They do advertise in the Chronicle and they do state that, "everybody welcome", with all sorts of abilities, and also I used to receive a newsletter where they stated, "If you can't keep up we will make allowances for people who walk slower. We make allowances for people who come with a walking stick, for example," so why should a young adult with disabilities be refused if she has better physical ability than any of those people in the group.

MS McKENZIE: Yes, we understand. It's a very sorry experience for you and for your daughter and, frankly, the members of the club miss out. They miss out on learning and understanding someone better.

MS AUER: When I look at the majority of people who attend these walks I sort of come across with a very conservative attitude and a very conservative age group of our society and these age groups - just my experience - will not accept people who differ in any way, and we talking about - well, unfortunately, over 40s and whatever.

MRS OWENS: It would be very interesting to understand how the complaints process bogged down. It seems as if something has gone wrong there because normally if you put in a complaint to an anti-discrimination commission, if they are not going to accept it they would write back with some reasons, I would presume, or refer you, if they felt it was inappropriate under the legislation in the ACT, to the Commonwealth body of the Human Rights and Equal Opportunity Commission, although I think the ACT act would cover the clubs. It probably does cover this. To my mind it sounds as if something badly has gone wrong, but we can refer your submission and transcript from today to them and perhaps they will get back to you with some explanation.

MS AUER: I often think about it and I just feel that whatever the outcome is going to be it's not going to change the facts. It's not going to change the fact that she has been denied from something she has a right to do - and she has a right to participate, and that's not going to change.

MRS OWENS: Although if the club was aware that there had been a complaint then it increases their awareness of their responsibilities under the act here in the ACT and there are certain responsibilities under the act that we're reviewing - the Commonwealth act, as well - and they might just be totally oblivious to the fact that they may be discriminating. They may just not have that awareness. It may not help your daughter get back into that particular club, but it may highlight the issue so that the club doesn't repeat that and other walking clubs in the ACT also would highlight it for those other clubs and maybe she could join another club.

MS AUER: Yes, I think that would be ideal because that's what I tried to do when I went to the meeting. I tried to make a point that discrimination has occurred, but my word wasn't really - nobody really listened to us. They just wanted to wait for us to finish what we had to say and go as quickly as possible, but I think if someone would point it out to specially the board members of the club, because I don't think that they know enough about it at all, or maybe they just don't want to know about it.

MRS OWENS: It may be just the lack of awareness and that is an issue about which we are interested in this inquiry, as well - this issue of awareness of just the general issue of discriminating against people with disabilities, and the other is the awareness of the coverage of the state, territory or Commonwealth act, and we have found while we have been going through this process that quite a lot of people don't know about these acts and don't understand what is appropriate and what's not. I may be being generous to the club, but there is an issue of awareness and it's a matter of finding multiple ways to increase that awareness; that comes through education or through people like yourself making complaints.

MS AUER: When you talk about awareness what do you mean? I mean, do they have to be familiar with the disability or they should be aware of how far they can go when they refuse someone?

MS McKENZIE: They also need to be aware that the law says, with some exceptions, that you cannot basically refuse someone membership of a club - or to participate in what the club does - simply because they have a disability. There are some exceptions to that, but they need to know that that's what discrimination legislation is all about.

MS AUER: Yes, well, I think that would be great, if someone would tell them that. That would be great because the way I look at it and the way we were treated by various members of the club, I don't think they want to know anybody else except their own particular conservative little age group, and they don't want to know anybody else. Beside that issue, we were talking about clubs, but it's just a general observation of mine that when we talk about the overall community, on numerous occasions I come across with comments when I park in the disabled parking area.

My daughter also has epilepsy, so when she has seizures - after that time she is unable to walk without someone aiding her, so there's a few occasions it happen that she come out of the seizure and I had to lead her. I had to help her to go to the car. Now, a few times when I get out of the car with my daughter I have comments from the general public, "How dare you park in there. How dare you use the disabled parking spot when there's nothing wrong with you."

MRS OWENS: Because they see it as something relating to having a physical disability that they can see. You've got to have a wheelchair or something there.

MS AUER: Yes, and I had that problem for the last - make it 22 years; that because of my daughter's physical appearance and the way she looks and the way she dresses, she doesn't look disabled at all. Unfortunately, when I need to get help and help her to get in the car that's when I get abused.

MS McKENZIE: There obviously is a great need for education. I mean, if we send the transcript to the equal opportunity commissioner, that might help to focus the sorts of education that she does.

MS AUER: I also had my disabled parking label revoked because of that - because the parking inspector saw us getting out of the car and he reported it to the commissioner and it was cancelled for quite some time till I - and I had to go through a process of getting a specialist's certificate just to prove that she has medical condition. For me it is a constant battle because all I do is, I have to ring people and I have to try to make them understand that there is disability beyond the physical appearance and because they just don't believe it; they don't believe it unless you present a piece of paper, which is signed by a specialist, that, "Yes, Melanie has epilepsy."

I have comments from public service people and people in charge, saying, "Well, if she has an epileptic seizure call a cab or call an ambulance," and I think it's unfair and it's coming from the urban services manager, who made that comment to me on the phone - that, "If that occurs, just call an ambulance." I have experienced abuse, foul language, and you name it, purely because of my daughter's appearance, and I think that's where - I don't know how we can educate people, but unfortunately I am quite negative on that issue; that I don't think our society will accept people with disabilities.

MRS OWENS: That's a very bleak picture of the future.

MS AUER: Well, I know, but I have to put it down to personal experience, particularly because I have spent a lot of time with my daughter after she finished studying and I have given up my public service position to stay at home after she

finished college, basically to set up activities and various outings for her and, because I dealt with service providers, government officials, and various other organisation who are involved in disability, my view strongly stands.

MS McKENZIE: It just shows that there is still a huge way to go. The submissions we have received from other people, some are very positive - and maybe it depends upon their own particular experience - but particularly from those dealing with mental illness, not just intellectual disability, they also say that the more invisible a disability is the less people understand it.

MS AUER: Yes, I believe this very strongly - that you can't educate everybody in our society - it's just impossible - and unfortunately we are also talking about - I talk about service providers, as well, because discrimination against young adults with disabilities can vary. You can abuse a person without - specially a person with intellectual disability. There's so many different ways you can abuse a person, and it does happen with support workers, just by, for example, turning up to collect my daughter in a totally filthy car, where empty bottles and leftovers and dirty shoes are lying around.

This is also an abuse against a young adult with disabilities because she doesn't understand why, she just accepts a person as they are, but I have come across with such an act which is, in my view, very appalling, because support workers - they also have a duty of care, and there are so many different ways where young adults are unfortunately abused in our society and it doesn't have to be a refusal to enter a club. It can be many different ways and nobody would notice it, and it happens. It happens every day.

MRS OWENS: Yes. Is your daughter in a position with her disability to tell you if she has had problems or would she not be aware that she is being abused?

MS AUER: When we talk about physical contact, yes, she does. She tells me if somebody touched her or the finger went up or somebody was swearing, she does, but I can see beyond all that. I can see when people - it's very simple. When they turn up late to collect her and there's no excuse given. She can just stand outside and wait for 15 minutes. That's nothing. Unfortunately there are some hidden issues, as well, in the ACT when it comes down to providing service with people with disabilities and it goes unnoticed.

MRS OWENS: Thank you very much for that. Could I just clarify with you for the purpose of the transcript: do you mind your daughter's name going onto the transcript or would you just prefer for her to be called your daughter?

MS AUER: Not at all.

MRS OWENS: You don't mind?

MS AUER: I don't mind.

MRS OWENS: Thank you for that and thank you very much, Ildiko, for coming today and sharing your story with us.

MS McKENZIE: Sharing personal issues like that is not always easy and we are really appreciative that you were able to talk to us. Thank you.

MS AUER: Thanks very much also for having me.

MRS OWENS: Thank you. This concludes today's scheduled proceedings. Does anybody else want to come forward and make any comments - our one audience member? No.

MS AUER: No more questions? I thought everybody was going to ask me questions.

MRS OWENS: That concludes the proceedings today. Thank you for attending. I am now adjourning the proceedings and we will be resuming the hearings in Hobart at 11 am on 11 February at the Corus Hotel. More details about the hearings in Hobart and other locations are available on the commission's web site. I would now like to close the proceedings today.

AT 3.06 PM THE INQUIRY WAS ADJOURNED UNTIL
WEDNESDAY, 11 FEBRUARY 2004

INDEX

	<u>Page</u>
AUSTRALIAN ASSOCIATION OF CHRISTIAN SCHOOLS: PETER CRIMMINS	2103-2117
AUSTRALIAN CHAMBER OF COMMERCE AND INDUSTRY: STEVEN BALZARY	2118-2137
AUSTRALIAN AIRPORTS ASSOCIATION: KEN KEECH STEPHEN SKEHILL	2138-2152
ILDIKO AUER	2153-2161