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TRANSCRIPT OF PROCEEDINGS

PRODUCTIVITY COMMISSION

INQUIRY INTO DISABILITY DISCRIMINATION ACT

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

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY ON MONDAY, 14 JULY 2003, AT 9.41 AM

Continued from 3/7/03

MRS OWENS: We will start. Good morning, and welcome to the public hearing for the Productivity Commission inquiry into the Disability Discrimination Act 1992, which we will refer to as the DDA. My name is Helen Owens and I'm the presiding commissioner, and on my left is my associate commissioner, Cate McKenzie.

The hearing will have breaks for morning tea, lunch and afternoon tea. We will need to stick fairly closely to the timetable. You're welcome to take a break and re-enter at any time if you need to. Our commission staff will assist you with anything you might need during the course of the day.

On 5 February this year, the government asked the commission to review the DDA and the Disability Discrimination Regulations 1996. The terms of reference for the inquiry ask us to examine the social impacts of the DDA on people with disabilities and on the community as a whole. Among other things, the commission is required to assess the costs and benefits of the DDA and its effectiveness in achieving its objectives.

We have already talked informally to a range of organisations and individuals with an interest in these issues, and submissions have been coming into the inquiry following the release of the issues paper in March. We're grateful for the valuable contributions we have had to date. The purpose of this hearing is to provide an opportunity for interested parties to discuss their submissions and their views on the public record. We will be holding a hearing in Melbourne following the hearings in Sydney this week, and we have already held hearings in the other Australian capital cities. We will then prepare a draft report for public comment which we will release in October this year, and there will be another round of hearings after interested parties have had time to look at the draft report.

We like to conduct these hearings in a reasonably informal manner, 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 anyone in the audience does want to speak, I will be allowing some time at the end of the proceedings for you to do so. If you think you'd like to take up this opportunity during the day, 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 first participant this morning, the Disability Council of New South Wales, to appear. Welcome to you all. Could I ask you each to give your

name and your position with the council for the transcript.

MR BUCHANAN: Good morning. Andrew Buchanan, chairperson of the Disability Council of New South Wales.

MR BYRNE: Kevin Byrne, executive officer of the council.

MR HARRISON: And Joe Harrison, the research officer.

MRS OWENS: Thank you. I understand that you would like to make a short introduction on your submission for us, so I will hand over.

MR BUCHANAN: Thank you, commissioner.

MS McKENZIE: Can I just stop you and say we're a bit more informal than that. Cate and Helen is fine, as long as you're happy that we call you by your first names as well.

MR BUCHANAN: Absolutely. We're all New South Welshmen, so we appreciate the informality. Thank you very much indeed - except when it comes to football.

MRS OWENS: Of course when we go to Melbourne it will be "commissioner", only, because they're very formal in Melbourne.

MR BUCHANAN: I just wonder perhaps whether in an opening statement - I feel very conscious, I suppose, from the Disability Council's point of view, that it's important when we're discussing this issue particularly, which is dear to our heart - and we're preaching to the converted to a certain extent - that we don't wish to appear defensive, because I think it's very easy when you are discussing any particular issue about disability and as a disabled person that you can be perceived in a general sense as being defensive, so I just reiterate that, and I suppose in a sense that when you ask not to be treated in a defensive manner you automatically then react in a defensive manner, if you understand what I'm discussing.

I think the other thing is that when we're looking at this whole issue and in terms of our submission that in some way there is a bit of a myth in the general community and perhaps in relation to the DDA that disability is treated with a sameness, and I think it's important to highlight perhaps that there is, as with every other sector in the community and in society, some form of diversity that applies to all people with a disability, and that they should be recognised and appreciated and valued, and that the diversity is really highlighted.

The third aspect is how do you objectively define or interpret discrimination

for people with a disability, and I suppose the operative word is "objectively" define, and to interpret. What I would be keen to do, if we may, is just to look at some of the salient points in the executive summary. As you know, the general thrust - you would expect those recommendations to be there in a summary, but I suppose one of the more important is the equity of access and the social participation which are really central to the whole area of citizenship in terms of what all governments may aim for in an ideal world. That is to ensure that there is a social, attitudinal in particular, architectural, medical, political and economic environment that make us all contributors to a society rather than detractors.

The other perhaps is that the council feels, as you have outlined and seen, that the DDA's greatest impediments stem from it being a complaints-based system, with the onus of proof being placed on the complainant. A further problem of the complaints basis of the legislation is the plethora of case law and the precedent, as the numerous individual cases that are successfully mediated cannot affect case law or set precedent, and the term "medical deficit" definition of disability, locating the disability. Rather, the impairment perhaps is important in terms of the summary to appreciate.

Coming back to the complaints process, this is currently so protracted that many people with a disability perhaps choose not to lodge a complaint because it's considered that it will take too long, and that's the feedback that we received quite overwhelmingly. An enforcement body should be established with the role of developing an audit tool across the board, and then the final, I think, is the plea to look at more detailed complex data on people with disabilities and the extent of discrimination that should be used to form the basis of a state of the nation report, really looking at the impact of disability not only at a social, but ecological and economic level, and this might well be used to inform public debate and policy.

So they are some of the key highlights, if we may, to summarise in terms of the executive summary. In terms of the objectivity, to define and to interpret discrimination, if we go to page 13 of our submission, I think it's important to highlight, as we have, that people with disabilities are denied the right of citizenship, the right to equal participation and the support to ensure that these rights are upheld, and that many are exempted from jury duty simply because of their disability, that either they can't get into the jury box, there is no hearing device for those who need a loop, as an example that you were outlining earlier, and that equity cannot be fully achieved for everybody in terms of that.

Page 14 I think highlights the equity of access again, the social participation which I referred to, the reality of the inequitable treatment that equates with the lived experience of people with a disability, and then the social benefit of legislation and the existence of legislation and the promotion of its objectives, et cetera. To page 17,

just highlighting, the people with epilepsy or cerebral palsy, just as one example, need to define themselves as having an intellectual disability in order to be covered by the act. So we're just trying to, in a sense, highlight that there are some issues that perhaps we could discuss or get your advice on and need addressing.

The granting of exemptions to coverage by the DDA has also compromised perhaps the integrity, the rationale that people with disabilities place an undue burden or hardship on the Australian community because our society does not have the necessary services, and that comes back in a sense to the sophistication of a community. In summary, the conclusion on page 30 I think highlights that the DDA has had a significant impact on the lives of people with disabilities over the last 10 years and will of course continue to do so, and that broader strategies need to be seriously considered to implement the DDA along with a further development of standards.

MRS OWENS: Thank you, Andrew, and thank you for your very rich submission. I think it covers a lot of ground and I think a lot of philosophical questions are raised too about citizenship and equity of access and so on, and a number of other submissions have taken a similar line to yours, which won't surprise you. I think there's a question of what this act is trying to do and the legal interpretation of an act, and I'm interested to know whether there's any examples internationally of acts that are based on what you've called - and others have called - the social model rather than the medical model, whether we have anything that you can point to that uses that approach and which can be interpreted clearly in law.

MR BUCHANAN: First, in terms of your complimentary comments, I think the complimentary comments should be directed to Joe and to Kevin and the secretariat team who have pulled all of that together, and I think the other aspect in terms of your comment is that perhaps we as a disability council, at least as one in the country, perhaps feel as though disability should be looked at holistically rather than individually, and maybe that's where I think the emphasis has become more on social rather than on medical. On the international sphere, Kevin is a worldwide traveller and perhaps would have more expertise in that way.

MR BYRNE: My experience, through reading rather than practical, is the Americans with Disabilities Act, where it's a more rights-based model legislation and requires service providers to actually provide for access, rather than the person with disability who feels aggrieved to take an action to achieve access to transport or access to buildings or the like.

MS McKENZIE: So it's in positive rather than negative form?

MR BYRNE: That's right, yes, and it's actually incumbent on the transport provider

to have accessible buses or trains or taxis or the like, rather than the person with a disability who wants to catch a bus to seek one out.

MRS OWENS: But the American act still defines disabilities, doesn't it? It still uses a medical definition of - - -

MS McKENZIE: It defines them in a different way, doesn't it, related to limitations?

MR BYRNE: I haven't got that level of detail in front of me, I'm sorry.

MR HARRISON: Yes, the American act does define people in terms of their limitations rather than their medical diagnoses, if you like. I suppose I'm coming from the fact that the social model can be looked at in two ways, what the Americans see as a rights-based model, or what the English would probably see as a universalist model that says we've all got disabilities of some kind. There no-one who's actually perfect and can do everything. And, if you like, people with disabilities sit at one end of a spectrum, and the people that I'm thinking of are very critical of the British model, the British act, which is very similar in terms of taking a very medical approach, but I'd probably be pushing the line that the fact that there isn't anything current that uses a social model doesn't mean that there shouldn't be.

MRS OWENS: Yes. It's just that we might be treading into new territory.

MR HARRISON: We would be. I can see from a legal perspective how that would be very difficult to quantify, if you like, for the judiciary, but it would be also a very good way of educating the judiciary about disability, because I think a lot of people's preconceived notions of disability impact very strongly on the decisions that are made, rather than the judiciary being as objective as they would like to see themselves as being.

MS McKENZIE: If you were going to move in the direction of that model, you'd obviously be looking at some kind of positive obligations.

MR HARRISON: Mm.

MS McKENZIE: And would you be looking at really trying to get service providers - in the broader sense, to get service providers to be more inclusive and to deal with people - not to impose limitations on people, irrespective in a way of whether we might call them in ordinary terms people with a disability, in the old-fashioned medical model, if you like.

MR BYRNE: Yes, absolutely.

MS McKENZIE: What I'm trying to work out is what kind of obligations - how would the legislation change? What would we put into it to make it change in the way you want it to change?

MR HARRISON: I think an acknowledgment that in fact, you know, if I'm using that English model again, the people with disabilities are those people defined - rather than define the person, define the fact that society is structured in such a way that it creates that disability. It creates the difficulty of the fact that society is structured where most shops and buildings are inaccessible to a wheelchair - acknowledge that it's the society that creates the disability by the way it is structured and perhaps something along those lines would be worthwhile putting into an act.

In terms of making it - I've heard the argument that bringing along the discriminators, if you like, by educating them and presenting the act the way it is, they would probably rebel if there is a sudden decision that, "You must comply with X." So I would see any changes to the act going along with very much an education of society, as to the differences in view as to how one defines disability. I think still the fact that I pointed out in the act that the suggestion of unjustifiable hardship is a caveat that wouldn't be acceptable in sex discrimination or race discrimination suggests that disability discrimination sits lower on the tree, if you like, it's not such a big issue, and I think that needs to be addressed as well as legislative change.

MRS OWENS: One of the suggestions - I think it was in the submission we got from the Physical Disability Council of New South Wales, who we are talking to tomorrow, I think it was in the submission - was that there should be an attempt made to define reasonable adjustment, and reasonable adjustment should be a positive requirement on everyone. I suppose it's the opposite of not having an unjustifiable hardship clause, but they were trying to come up with some positive suggestions as to how you could make this social model work within a legislative framework within an act. I don't know whether you've looked at that submission.

MR HARRISON: No.

MRS OWENS: But we will talk to them tomorrow about that idea. We're just trying to pin down how to move from - whether we should move from what we've got here or just tighten that act up as written, or move to a different sort of model and, if so, how do you actually write that into legislation. It's quite a challenge.

MR BYRNE: Yes, I think it comes to the basic design of a society, doesn't it? You know, if you start out by excluding people with disabilities from your planning and just using them as an add-on afterwards, you're always going to discriminate. You know, you're always going to have to make reasonable adjustments, you're always

going to have to define - try and fit them in. I think society should be working towards including all people with disabilities, because we are part of the community, always have been and always will be, regardless of advances in medical technologies or whatever.

There will always be people with physical disabilities, sensory disabilities, intellectual disabilities and the like. Society needs to be planning for them in their basic structures: information technologies, physical access, education programs, transport, you name it. If they start planning, as they do for light coming through a window or clean water coming through your tap, if they plan for inclusion of people with disabilities right at the start, then discrimination will eventually disappear.

MRS OWENS: So it just should be automatic.

MR BYRNE: It should be.

MR BUCHANAN: I think in the ideal world, but I think again, Helen, it's interesting that sometimes there is a contradiction, and I think when you are trying to get, or at least when we're trying to get, an objective viewpoint from the disability sector, to be frank it is not really a united sector. It is not a cohesive or a strategically-driven sector. While in one sense I mentioned that we have to look at disability in its full diversity, and it's rather a myth to think that there is a sameness about it, sometimes when you're working on behalf of the disability sector you would in fact like there to be a simple answer or a central theme. But obviously there is not, and I can imagine from your point of view, and legislators, it's complex trying to define and home in on some of those key issues.

MRS OWENS: As I said, quite a number of submissions have raised the same points as you have. We will be talking to HREOC later today and we can raise this issue with HREOC, about this more refined approach, if you like, to promoting equity and ensuring that people with disabilities - using a citizenship model, we will raise this later and we will see what we can do, in terms of pinning it down. But there are other ideas that have been suggested to us, for example, making action plans compulsory. I can't remember whether your submission went as far as arguing that they should be compulsory for all organisations, including non-government organisations or not. What do you think about that sort of idea?

MR HARRISON: Talking on action plans, I raise the fact that not only are they not compulsory at the moment, some of the action plans I've read are so askew that it might be a role for either HREOC or another body to actually educate different departments on how to write an action plan. At the moment, until a complaint is used, I think they are not reviewed and some of the action plans I've read, other than the fact that they have spelt the word "disability" correctly, I'm not sure that they

have actually suggested any action which would be positive.

In terms of your suggestion on reasonable adjustment being defined, I would say that that was essential in the act, because at the moment the same - if I can think of one example, the same body that argued with John Moxon in Moxon v Westbus, Westbus argued firstly with him that it was not reasonable for him to assume a bus should be accessible, and argued against the case in terms of reasonable adjustment. But when the Paralympics came up Westbus bought a dozen accessible buses to get business, and I don't think if you had changes to that act - Westbus and others were education from day one about an inclusive society. You almost get a double take in that way.

MRS OWENS: But coming back to action plans, you wouldn't necessarily push for action plans being a requirement for, say, the private sector, large organisations, contractors with government or any other groups?

MR BYRNE: Action plans can have sort of an awareness-raising function, but a lot of action plans are done and ended themselves. They do the action plan and stick them in the drawer. There is no proper monitoring of the - - -

MS McKENZIE: Paper compliance was a term that was used before.

MR BYRNE: Yes, no real monitoring to make sure that what they actually plan to do they actually do. Come the end of the year or come the end of the three-year action plan they review it and find out all the things they haven't done, put in the new action plan and it goes back in the drawer, you know. Maybe I'm being cynical, but it appears to be the fact of the matter.

MS McKENZIE: If they were monitored, if they were reviewed when they were lodged to see if they meant anything in particular, and if they were monitored regularly, would there be a place for them, do you think?

MR BUCHANAN: I think there is a place for them in that context, and I think that is probably a very astute point. I mean, maybe it's the terminology that we use, and I think probably "action plans" just tends to act as a deterrent, or puts people off. I mean, if indeed it's used as a performance measure and if indeed you can encourage management at a broad level to accept and introduce, in terms of the corporate sector, then perhaps it has benefit. It's one of those general issues that in theory sounds fabulous, but in reality it's a little tired and has become burnt out.

It's the same thing - last week we were talking at the national social policy conference and we were asked about affirmative action - you know, in a general sense in terms of disability. Again, you sometimes wonder has that gone too far - do

you know what I mean - in terms of the sector. Is it bandied around too much and have we lost that perspective? I think sometimes with action plans perhaps we have.

MRS OWENS: There is always a danger, isn't there, with compulsion, that will actually get people's backs up, or organisations' backs up, which ends up - possibly could have the totally wrong effect - because what you're trying to do is get society seeing disability and people with disabilities in an inclusive way. What this is doing is saying, "This could cause trouble for us. We've got to sit down, we've got to do a plan. We're a small business. We want to just get on with the job of running our business, and here we are being required to sit down, write this plan and get it checked by HREOC - you know, all this bureaucratic nonsense." That's the sort of argument that could be run and it could backfire, couldn't it?

MR BUCHANAN: I think it does, and I think it's the manner in how we do it that is the key. I would prefer it if we actually took a more subtle, softer approach, and a persuasive approach in terms of both government and the private sector.

MS McKENZIE: It can't all just be done by education and persuasion though surely. I mean, there must be some form of sanction or remedy, otherwise exactly the same thing may happen. People may just step back and think they have to do nothing.

MR BUCHANAN: I suppose if it's actually tied to your performance, perhaps that's the key to it - you know, in terms of review.

MR BYRNE: If you look at the occupational health and safety regulations as an example, a number of years ago people accepted there were workplace injuries and that occurred. It wasn't until the occupational health and safety regulations became much, much stronger with huge penalties associated, and a level of responsibility applying throughout your business, that people started to take notice. It was hurting their pocket. Now people are bending over backwards to meet those regulations. Maybe something like that, something along that line with disability, I don't know.

MRS OWENS: There is a difference, isn't there, and you hit the nail on the head. With OHS regulations and workers compensation, it actually does hit the hip pocket nerve, because if there is an injured worker it's going to have an impact (a) on that worker not being available, maybe off work for a while, potentially the workers compensation premiums going up at a later date. So that actually does reflect back on the organisation in terms of its financial wellbeing, but with employing, say, a person with a disability, or not employing them, the linkage is less direct.

MS McKENZIE: It's not just that. There are also great penalties, very, very high ones. That may be another factor. But the interesting thing about the OH and S

legislation is that it imposes positive obligations, and very general ones at that.

MR HARRISON: Yes, it does impose - I mean, going along with the fact that the act, at least in New South Wales, has been strengthened recently, the OH and S Act, there has also been a fairly strong television campaign about responsibilities to OH and S. While I would agree with you, Cate, that you can't do everything with education and the soft approach, I think the two hand in hand can. One of the recommendations we made was that perhaps an audit of people with disabilities might inform a state of the nation report, or reports to parliament on a regular basis about where we are heading, in terms of dealing with disability discrimination.

Perhaps action plans, particularly if they were monitored and were, if you like, worthwhile action plans and directed somewhere, might also inform that state of the nation report. At the moment I would think there are very few employers that would see it as meeting a social obligation to employ people with disabilities or making adjustments to their functioning in the workplace. I don't know that education has no role in ensuring there would be more people who would be looking at that perspective. I think disability just needs to get into the public arena and public debate.

MRS OWENS: Coming back to this idea of a state of the nation report, I mean we are facing this issue in the inquiry. We are trying to get information to monitor what has happened in terms of the effectiveness of the act in reducing discrimination, among other things, and we're facing this exact problem of how to get information about this, but we do have, for example, Australian Bureau of Statistics surveys from time to time. HREOC has just done their 10-year report on the operation of the act. You're saying we need to do a lot more than that. You're saying we need to focus the attention on what's happening with discrimination more directly and more regularly? Is that what you're arguing?

MR HARRISON: I would argue that the focus on discrimination is one thing. In terms of statistics that are available through ABS, I only last week attempted for one of the state government bodies to get them some demographics on who people with disabilities are, where they were, whether they were in employment, whether they were in mainstream education or whether they were getting supported employment. I couldn't. And from my knowledge of the ABS statistics, particularly the earlier ABS statistics, and to some extent the first set of ABS statistics on disability - I've got a number of disabilities, if you like, or impairments that don't affect me so much in functioning in the society, though they do have some minor effects - I didn't fit as a person with a disability under the ABS statistics.

I've got a friend who now functions in a wheelchair, but didn't at the time, who's got polio, and she didn't fit under their statistics either, so I think getting

statistics on where people are in the demographics of people with disabilities is a much harder thing than just saying, "Let's turn to the ABS" or to whatever current body. I think it's difficult to actually get a quantifiable measure, and that's really what ABS is about. But I also think the process itself needs a lot more work.

MRS OWENS: Does anybody else want to make any other comments on that?

MR BUCHANAN: I suppose it's one of those areas where you can - you know, I'm just conscious of giving a glib response, but I think sometimes that the ABS or other statistics and figures in relation to this are fairly vague, and I think if we're going to take this seriously we should really have some thorough documentation, both looking at qualitative and quantitative research, to sort of once and for all determine what is the real situation in terms of where we're going.

MRS OWENS: It would have been really useful back in 1992 to have had some good statistics, and then you could have then looked at what has happened since then in a really thorough way, and we really don't have that. That is something that, as I said, we're struggling with. The other thing we have in Australia is the report on government service provision, which does do a little bit in this area, of comparing government service provision across states, but again there are limits there as well.

Another issue you raised was that of training. You said that you thought that people with disabilities should be given extensive training to be able to progress in employment. Are you suggesting specific training, or why not just go back one step and try and improve access to educational opportunities before getting into employment, really to increase their job opportunities right across the employment spectrum. By thinking about just training people to do a particular job, it's not necessarily, is it, getting to the crux of the problem?

MR HARRISON: I think the intent of the working group within the Disability Council that put forward that particular recommendation was that people with disabilities are still behind the eight ball when looking for jobs, because of the lack of education, perhaps. I don't think they would have objected to our strengthening their chances of assisting them while they were being educated in open education rather than in segregated education, but the issue I suppose of a disability having a negative effect on a person's education, dropping out of school early because of a disability, not being able to attend as often as other students actually lower the final education standard in some instances, and, if you like, that training was intended as an added boost because of the vulnerability or the lowered expectations, too, I think, of people with disabilities.

MRS OWENS: So it's really a catch-up?

MR BYRNE: It is. It's an historic thing. I think probably future societies with inclusive education beginning now - and here in New South Wales it's getting better - the opportunities will be better for those students in the longer term. It's the current crop, if you like, of people with disabilities, who went through special education, had lower expectations for their employment opportunities, probably haven't pursued tertiary degrees and have gone into more like sheltered employment or supported employment or menial jobs or no jobs at all if access wasn't provided. It's those people that need to be encouraged to pursue a higher level, and it's more the thrust I think of the recommendation, but certainly, as you say, improving access to education across the broad spectrum to all sorts of opportunities is certainly the way to go.

MR BUCHANAN: It could well be that in terms of an organisation like the Spastic Centre, as an example, where we've had feedback, is that this current and the next generation, who have gone through a mainstream system will in fact be refocused and have a very different outlook, as Kevin was highlighting. In terms of employment, I've had some exposure to new apprenticeships and federal government initiatives of providing group training companies with an incentive to employ a person with a disability in terms of either a four-year traineeship and/or apprenticeship, and I think sometimes group training companies can pick those things up and really benefit the community by employing somebody who is perceived, as the federal government classify, as disadvantaged, or who otherwise wouldn't have that breakthrough.

MS McKENZIE: What about the whole question of affirmative action in relation to employment? Some of the submissions have raised possibilities for things like quota'ing, looking at perhaps having a target percentage of employees with disabilities. What's your view in relation to those matters?

MR BUCHANAN: Personal or corporate?

MS McKENZIE: Perhaps you'd better give me your corporate view for a start. The other one might take a long time.

MR HARRISON: The submission itself did actually suggest that we do some form of quota system and actually try and tie it to the percentage of people with disabilities that are existent in Australia. That might be a big ask, but I would actually think people are well under-represented in the employment sector, if you actually take the numbers of people with disabilities and the percentage who are of working age.

MR BYRNE: Yes. Certainly the incidence of unemployment of people with disabilities is far greater than that of the general community, so there needs to be some measure to try and improve that gap. That's of those people who are

employable. Obviously there are some people with disabilities where probably employment is not a real option, and one understands that, but with quotas one needs to be careful as well, and not just taking on a person with a disability because they have a disability. You need to be providing them with real opportunities and real jobs and career paths - not just, "Okay, we've got our 10 per cent of people with disabilities in our workforce. They can all sweep floors and empty garbage tins." That's not really what they're looking for. As I say, it's real career paths that have got to be tied to it.

MRS OWENS: What about the people who miss out on the jobs because a person with a disability has been favoured? Would they then complain that there has been some form of reverse discrimination against them?

MR BUCHANAN: They do, yes.

MR BYRNE: Yes, and with quotas overseas as well, people have chosen to take the penalty rather than the person with the disability as well, so the person with the disability misses out. There's got to be a balance, and I think it's the way you do it, and it comes with education, it comes with carrots and sticks and all sorts of things.

MRS OWENS: It comes back to this philosophy of how much do you force employers or others in society to take certain steps, rather than try and get the attitudinal change.

MR BYRNE: That's it.

MRS OWENS: There's a real dilemma, and this is a complex one, and we talked about this with some people in Adelaide. There was a woman in Adelaide who we spoke to, talked to us about the German experience with quotas, and I think she also raised - I think it was Manitoba - is that right, Cate?

MS McKENZIE: Yes.

MRS OWENS: Manitoba. There's a number of issues but there's the issue about what the workmates might feel about the person who got the job potentially because of their disability and whether they say, "Well, they wouldn't have got it otherwise," and that puts that person in quite a difficult situation, I could imagine.

MR BYRNE: It can do. I'd like to see the situation where Kevin Byrne turns up with my application and you turn up with your application and we've both got exactly the same qualifications and we're considered on our merits, not the fact that you get the job because I'm seen as a problem, if you know what I mean. You don't have a wheelchair to cope with and you don't have to worry about ramps and things.

They look at the real skills, but that doesn't happen today.

MRS OWENS: But what about turning it around so that we both turn up for the job and we've both got exactly the same qualifications, same level of experience, and there's really nothing to divide us? Would you go that extra step then and say to the employer, "Well, let's take the person with the wheelchair" - you know, have some form of positive discrimination.

MR BYRNE: I'd go back to a second interview and see who did best.

MRS OWENS: Because then I could say they discriminated against me because I'm a woman. I probably wouldn't. But there's quotas as an idea, and then there's this other idea instead of quotas of having people with equal merit, choosing the person with the disability to give them that opportunity, which is a slightly weaker version of your affirmative action proposal.

MR BUCHANAN: I would hope, Helen, that indeed anyone with a disability would not use that to their own advantage, and maybe when we were chatting Cate and I raised the thing, do you want a personal or a corporate response? I think sometimes, as Kevin said, in the ideal world you would hope that you could be judged on merit, but again I think in all reality that's not going to occur for quite a while, until there is a huge attitudinal change. Although there are some examples of companies - I mean, Mark Bagshaw talks of his experience at IBM as an example, and IBM's launch of their employment project last week I think is an admirable example of where it's being treated in more of a subtle manner, and perhaps leadership in that form - and I know certainly in my latter experience with the ABC that the employment of people with disability was being taken far more seriously and in a more sophisticated manner, and the word "sophistication" is a horrible word to use, but at least it's a far more healthy situation I think than it was.

MRS OWENS: Could there be other sorts of approaches, for example providing companies, employers, with some incentives to take people with disabilities and maybe train them or just give them the job?

MS McKENZIE: Or to see incentives to provide reasonable adjustments, perhaps some modifications made to the tax system.

MR HARRISON: I think the idea of incentives is a good one because I can remember from my own experience my employer being given an incentive to employ me as a person with a disability, and the day the money stopped, I lost my job.

From a personal perspective rather than council's, I would think that somebody monitoring those incentives - I notice Paul Jenkins will be speaking to you later in

your hearings and Paul is running a traineeship program for people with disabilities trying to fit into apprenticeships. One of the criteria is there must be a real job at the end of it. I think he's got problems. The real job at the end of it is fine but, if the person that's doing the apprenticeship doesn't make the grade, where do you go from there? Where does the employer go from there?

I think it doesn't need to be left with the employer. Perhaps some kind of conversation needs to be established with the employer throughout the term of that person's employment. In the same way some people currently, in finding new jobs, with disabilities may be supported for six months or 12 months within the time frame of their job to actually, if you like, get them up to speed or deal with issues relating to the disability as to why they're not being able to function within the job, then get the employer involved in that, if you like, three-way conversation.

MR BUCHANAN: It's really a community issue, isn't it? I was impressed with Peter Botsman's column that you may have seen in the Australian last Thursday, where he was talking about having to convince the community that to employ somebody with a disability - there are huge advantages, in terms of loyalty, reliability - all of those old-fashioned things that perhaps you and I know well. Maybe it's a community issue that needs to be exemplified and highlighted more and more.

MR HARRISON: You know that I'm always coming up with examples, but I'm just thinking of a - - -

MRS OWENS: We like examples.

MS McKENZIE: Yes, that's really helpful.

MR HARRISON: - - - young woman I heard about while doing some training a few months ago, where the employer said, "We couldn't employ a woman with a disability because of the costs involved in purchasing the special equipment. It would have cost us far too much." Getting some kind of tax incentive would have been good for them, but I was just amused because, given the fact that they decided that they couldn't afford the cost - which was something like $150 for appropriate technology - they readvertised in the Sydney Morning Herald and took two days of interviews with three people. I pointed out the cost to the business might have been greater than the $150.

MRS OWENS: Significantly, yes.

MR HARRISON: They hadn't thought of that.

MRS OWENS: Significantly greater, but they didn't measure those costs.

MR HARRISON: No, they didn't measure those costs.

MRS OWENS: Maybe they thought the other would create an undesirable precedent. I don't know what goes through people's heads sometimes, but it's often not rational thought.

MR HARRISON: Not necessarily.

MR BUCHANAN: I think there's a certain fear still in some sectors of employment with employers of employing somebody with a disability. I think we sometimes, when we are so close to it and sometimes subjectively view as though things have improved - and they certainly have improved, and there are certainly some benefits in the DDA, but I think in general terms there is still a degree of ignorance or fear within the community. Again, to use Joe's example, if you look at some of the arguments that Mark Bagshaw puts up in that whole disability - he quite convincingly looks at dollars and statistics and proves that, in fact, if you employed and embraced a person with a disability, for governments it would be far cheaper than what they are currently spending.

MR BYRNE: I note the time. Just on that element of fear, going back to lodging complaints against the DDA - this is an issue that we didn't highlight within our submission, unfortunately, but lodging a complaint and having the costs likely to fall back on the complainant - the current government requirements and so on - is a real deterrent to someone with a disability putting a complaint forward. I just needed to add that to our submission. The fear of having that huge cost of the case falling back on an individual stops people putting a complaint in. They walk away from it.

MS McKENZIE: This is why many of the submissions have suggested that a body or someone - perhaps HREOC - might have the power to initiate complaints.

MR BYRNE: Yes.

MS McKENZIE: There's also this matter of conciliated agreements that you raised. You raised the difficulty first about the solutions in those - not binding anyone except the parties to the conciliation.

MR BYRNE: That's right.

MS McKENZIE: Also the difficulty about confidential outcomes. Have you got any suggestions how that might be sorted out, changed, improved?

MR BYRNE: I don't know how one could tie it to case law, but forming some sort

of precedent - I've been involved in a number of discrimination cases, mainly regarding access, and a number of them required that the matter be kept confidential. You know, we weren't even allowed to put it in the press on one occasion that access had been provided to a major department store. We were angry about that, but they said they wouldn't do it if we made a press release, because that would make their image look poor. It doesn't encourage any other shopping centre to go ahead and provide access. They don't hear that or see that case. Somehow there's got to be some sort of linkage between a conciliated agreement, if that's going to be the way to go - - -

MS McKENZIE: And the store wouldn't even have been happy with a positive ad which said that, you know - - -

MR BYRNE: They wanted the promotion that they actually put the lift in - they actually provided the ramp off the street or the platform lift off the street - as their initiative rather than a matter of complaint from a number of people with disabilities.

MRS OWENS: They wanted a little bit of whitewashing.

MR HARRISON: A lot of whitewashing.

MR BYRNE: Black and white whitewashing.

MRS OWENS: But even that sort of publicity, even though it's only half of the story, would still set a bit of an example for other shopping centres. Here's a shopping centre that's done this. Forget about the fact that it was a complaint, but at least other shopping centres might say, "Maybe we should be thinking about that when we're planning our extensions or new shopping centres." I think one of the other submissions talks about - we're talking to an architect - I think it's tomorrow - about Lane Cove shopping centre - the Coles - and, you know, just a bit of publicity about what's wrong with these. When one of the shopping centre owners or the carpark owner or whatever does something right, it's quite good to get it out there, even if that's only part of the story, because the rest of the story would eventually come out, wouldn't it, of how that happened?

MR HARRISON: To be a cynic, I'm wondering how well you should advertise when things go wrong. I know from some conciliated complaints - and one, in particular, I'm thinking of. An agreement was reached. There was a little girl that couldn't access a place for her birthday at the age of five, so her mother took her case to HREOC and the agreement was that at the age of six she'd get a free birthday party from the body that had aggrieved her. At the age of six she went to the body and they still hadn't made it accessible and they said, "Go away." The mother decided that, as the girl's father was an architect, she'd visit every organisation she could and

bring as many cases to HREOC that she could. I'm just wondering about advertising things like that that are - that an agreement had been breached.

MR BUCHANAN: I think one of the great dilemmas in terms of media coverage is trying to find an appropriate responsible media outlet who will really expose an issue in a very objective way. You have the contrast, as an example, of ABC's Australian Story - which I think have done some very good programs, in terms of depicting disability - and attitudinal issues versus, as an example, a commercial sector where A Current Affair or 60 Minutes will tend to sensationalise and appeal to the weak aspects of we, as consumers, rather than being responsible.

MRS OWENS: That was your advertisement for the ABC.

MR BUCHANAN: No. I'm an ex-ABC priest now, Helen, but I think it's a real issue in terms of broadcasting, having sat on both sides of the fence, to know how sensitive you should be and how responsible you should be. Even the recent Four Corners program, in looking at the issue of those who are intellectually disabled and the aspect of sterilisation, was one program, I thought, that perhaps was bordering on being slightly sensational, but then that's another ball game altogether.

MRS OWENS: Yes. We won't get into all of that ball game today, because we'll run out of time, but there's a really interesting question there as well.

MS McKENZIE: The only other question I wanted to ask - perhaps it's dangerous for me to say the only other question, but another question I wanted to ask related to unjustifiable hardship. You suggested, I think, that - at least in the current form of its expression in the act - it should not be there, but that there should be some reasonable adjustment or reasonable accommodation reference instead. Do you want to talk a bit more about that?

MR HARRISON: The submission defined the fact that reasonable adjustment or reasonable accommodation wasn't defined and, in fact, it needs to be defined clearly, at least to give the community and business some idea as to what they're being asked. In terms of unjustifiable hardship, I think we firstly made the point that it was a caveat that wouldn't be accepted in any other form of discrimination, but then the fact that it's actually been carried through into the standards, even though it's been tightened, almost gives an out, "You will meet this standard unless you can demonstrate that you've got a justifiable reason not to meet the standard," and it weakens the standard into the guideline, from my perspective and perhaps from the perspective of the working group to which I worked when constructing the submission.

MR BYRNE: It's a virtual double dipping.

MR HARRISON: Yes, it is a form of double dipping, I think. You're actually saying, "Here's the standard and we've improved the act, so you must meet these standards. If you don't meet the standard, that's all right. You've still got the same back door." Admittedly, the back door has been closed a bit by the reconstruction of what HREOC would accept as unjustifiable hardship than it currently does under the act.

Thinking again of the Westbus v Moxon case, Westbus - prior to buying the dozen-odd buses to meet their desire to get a contract for the Olympics and the Paralympics - actually argued it was an unjustifiable hardship case to make their buses accessible. Part of their unjustifiable hardship case tried to paint John Moxon by saying, "You drive a car, therefore you don't need to be able to catch a bus, so you're not an aggrieved person." I mean, we're going a long way to how we define unjustifiable hardship and making some rather sweeping statements that I can't see fitting under what is or isn't unjustifiable.

MS McKENZIE: Our difficulty is we could talk for several days.

MR BUCHANAN: We're very pleased to, Cate.

MRS OWENS: The only other issue, I think - and then we'll close up - is you suggested that standards should be monitored and enforced and the real issue is who would do that. Would it be HREOC or some other body?

MR BYRNE: Somebody. We had an issue recently with the review or the development of the New South Wales Department of Transport's action plan. That question was asked there, because the accessible transport standards have just been introduced. The question was asked of the department as to how they would monitor those standards. We would see it as their go and, you know, they thought it might be HREOC and HREOC are saying, no, they don't have the resources to do it. The department indicated that they would, but we wonder what sort of commitment is there. Nobody is actually putting the stick to the monitoring of the standards. If they don't do it, who cares? We have some real concerns as to what's going to happen there and who's going to do it. Ideally, if HREOC or some other body was given sufficient resources to do that, I think that would be good, rather than leave it to the organisation itself to monitor itself.

MRS OWENS: We're getting a lot of suggestions about all the sorts of things that HREOC could do if HREOC had resources.

MR BYRNE: I can imagine.

MRS OWENS: Resources, for HREOC, has become quite a big issue in this inquiry, as has resources for other groups like advocacy organisations, you'd be interested to know, and - - -

MS McKENZIE: Various representative bodies involved with disabilities.

MRS OWENS: Yes, legal aid bodies and so on. Resources has become quite a significant issue, which won't surprise you. I think that's all I had to ask.

MS McKENZIE: That's all I had.

MRS OWENS: Are there any other issues you wanted to raise, on the transcript?

MR BUCHANAN: Only one, Helen, if I may, and that is - I think it refers to your earlier question about international experience and if you had any international examples. Would you care for us to provide a supplementary report, if indeed we did come up with any international examples? Would that be of value?

MRS OWENS: It would be. If you've got some material at your fingertips. I can see that Joe's sitting there thinking, "There's my next week's work." But if you've got anything at hand that you think would be useful. I mean, there are these big issues that we're looking at, and any international examples of how other approaches are working is always useful. As I said, we have got a bit of material. We have had another participant agree to give us some material on Germany and affirmative action in Germany, but anything else you may have would be gratefully received.

MR BUCHANAN: We do have some international contacts.

MRS OWENS: Thank you very much.

MR HARRISON: I think Joe's really thinking about how I reshuffle next week's work.

MRS OWENS: Well, thank you very much.

MS McKENZIE: Thanks very much.

MRS OWENS: We'll now break and resume at 11 o'clock.

MR BUCHANAN: Thanks for the opportunity.

MRS OWENS: The next participant this morning is David Cutlan. Could you please repeat your name and the capacity in which you're appearing, for the transcript.

MR CUTLAN: Yes. My name is David Cutlan. I'm an advocate for a person who was born with Williams syndrome and therefore has an intellectual impairment, so my interest arises as a result of that advocacy.

MRS OWENS: Thank you, and thank you for your submission. You have raised an issue that I think is an issue we were aware of but I don't think there's anybody else that's appeared before us that has come along to talk about this issue of wages for people in business services in sheltered workshops. So I'll hand over to you, David. Thank you for coming and I understand you'd like to make some introductory comments on your submission.

MR CUTLAN: Thanks, Helen. Just as an introduction to where I'm coming from, about three or four years ago I was invited to consider being an advocate for an intellectually disabled person through Citizen Advocacy Northside. As a result I was matched up with a gentleman who I'm now an advocate for. I'll refer to him if you like as my protégé.

My protégé actually was born with Williams syndrome and for obvious reasons was very much protected during his lifetime from discrimination by his primary carer, who was his mother. His father left the family home when my protégé was eight years of age. I mention this because I think it's important to have an understanding of the background of the manner in which my protégé was brought up and the fact that he was limited in the capacity - of learning the capacity to be independent for himself.

Since I've been his advocate I've noticed some absolutely remarkable developments and progress in his ability to make judgments in issues, to become independent. He's living independently. He can even travel on buses. He can go to functions on his own without assistance, handle money - fares, bus, train, taxis, et cetera. He can also use a computer as far as getting onto the Internet is concerned, so that's his level of ability and that's growing. His confidence is growing too.

My concern is that he works in a sheltered workshop and I'll mention the name. It's called the National House Group Packaging. He does packaging work. He gets a wage of approximately $3.50, although he tells me that that has been increased due to a recent assessment; but he can't tell me, because he doesn't know, how much he's earning. That's a concern of mine. The main concern I've got is that looking into the whole areas of the state and federal discrimination acts - that's the state Disabilities Act and the Disability Discrimination Act of the Commonwealth, plus the industrial

relations acts, state and Commonwealth and all relating issues, such as supported wage systems, looking at supported wage clauses in award wages - I find that my protégé in fact is not protected as far as his rights are concerned in the assessment of him to carry out his duties and therefore be assessed for the wage he should receive.

He is assessed but he's assessed in-house by the employer. This is a concern of mine because I believe that it really needs to be legislated that any assessment of an intellectually disabled or disabled person in any situation must be done by an arm's-length, independent, qualified, registered assessor, because of the risk of discrimination or even abuse against that person by paying them lower wages than they are entitled to. It's been suggested to me that if this was a mandatory situation, then a lot of disabled people may not actually gain employment. But I really strongly believe that that ought not to be the grounds upon which a wage should be determined, other than by a person's capacity to earn that income, whether it's in a sheltered workshop situation or not.

I've been in touch with the union that is interested and if you like was interested in the award wage under which my protégé would be employed. They told me that they have no - on the understanding that there's no agreement with this particular employer and the Industrial Relations Commission, either state or federal for other than award wages to be paid. I've done research, state and federal, on their registers and can find none. Yet I find that the actual agreement by - actually, there is one registered agreement. That's by another sheltered workshop, the New Horizons Enterprises, which I was told covers all their employees.

Yet the interesting thing is that it refers to New Horizons Enterprises and all staff members, and definition of staff member is, "A person employed by the company who is not in receipt of a government benefit due to any disability." Therefore, obviously, in my view that disqualifies anyone who is working for them who does have a disability to be covered under that enterprise agreement. So it seems that there is no protection even with that organisation.

As far as the National House Group Packaging is concerned - they're at Bantry Bay - I checked with the union. They told me the award would be the General Award, code 702, clause 5, supported wage, clause 34. Regular monthly reviews have to be carried out under this award. If not assessed, then full pay must apply. My protégé's mother advises me that no assessment has been carried out with her knowledge and no annual review done. I think at this stage it's important to recognise that a mother who has raised an intellectually disabled person would be very keen to make sure that person is gainfully occupied during the day so at least they can get some relief. Therefore, it would be very understandable for that parent or guardian to waive the rights of that individual to a rightful wage if it was possible.

It's possible under the New South Wales legislation, under section 125 of the Industrial Relations Act, by the guardian of that person simply signing a form waiving the right of that individual to receive the normal award wage. But that special wage permit that results - it's necessary for that to be subject to three months' assessment after the first three months, then an annual assessment afterwards by, if I can find it - I can't find it, but it is an independent assessor or a union representative and the employer. So that's what ought to be happening if that was used as a waiver for other than award wages. But I understand that National House Packaging don't make any other than internal assessments by the employers only. Therefore I believe there is a real hole in the requirement of sheltered workshops to protect the interests of the individual.

There have been cases put before the Industrial Relations Commissions, and there was one in April 2003 where the commission - I think it was the state commission - refused a special request for under-award wages to be granted. In that case, the rate was $1.70 per hour which was requested. That was refused because the fixed common wage gave rise to a serious disadvantage compared to the award. So the situation seems to be that there is a difference between state and Commonwealth legislations and the Commonwealth Disability Discrimination Act doesn't actually enforce activities by the states in their industrial relations legislation or requirements and I really believe the Commonwealth Disability Discrimination Act ought to override any other state or other legislation or regulations so that the individual is protected against discrimination or abuse by being paid lower than the award wages.

I understand that the Minister for Family and Community Services in I think December 2002 announced that the government would fund an independent wages assessment for the new wage assessment tool that has been developed for people with disabilities working in business services. Reading through this, which was an update of the new wages estimate tool, nowhere does it indicate that it's going to be a mandatory requirement either. The word "may" rather than "must" seems to be the norm.

I also got the assistance of a team of solicitors who gratefully offered their services free of charge to investigate some of these issues. They assisted me in finding the documentation which I'm referring to in the submission too. I think that basically covers the submission I want to make. I wonder whether there are any questions that you do ask? Well, I'd be happy to answer or clarify any matters that I've raised.

MRS OWENS: Good. Thank you, David. You have raised some very important issues. You did mention the Family and Community Services introducing a new arrangement and it sounding as if it was not going to be a mandatory arrangement. The briefing I've got here mentions that under the new system there are some key

elements. One is that:

> Wages would not be reduced because of incapacity to pay. Wages must be based on an award, order or industrial agreement. Where a pro rata wage is paid due to a disability, this must be determined through a transparent assessment tool or process and the external assessors using a standard wage assessment tool will determine pro rata wages for each individual.

I'm just wondering whether that's going to help with this issue that you mentioned about the assessments being done internally, or is it your understanding that all of those aspects of this arrangement would be not mandatory, would be voluntary?

MR CUTLAN: It's possible you may have more updated information than I have. As I said, this was in December 2002. Perhaps I can very quickly read the relevant things.

> FACS will contract a suitable agency to provide a national service network using qualified assessors by March next year.

That would be March this year.

> The new wage assessment tool for business services has been developed and trialled and is currently being refined with the final product due early next year. It will not be imposed on business services but many will want to adopt it.

That was a sentence that would concern me.

> The 2001 evaluation of the supported wage system and subsequent research established the need for a tool specifically tailored to the business services environment.

Now, I'm not quite sure what's being referred to as the business service sector. Would that perhaps be the sheltered workshop sector? If so - - -

MS McKENZIE: Yes. My understanding is that's what it is.

MRS OWENS: It's not a very helpful title, we think.

MR CUTLAN: No, that's true, although sheltered workshop in itself, I suppose, implies something which is a bit discriminatory, too, so there's a caution there in

titles.

MRS OWENS: Indeed, but there must be something better that they can come up with. "Business services" doesn't have any meaning. It's such a generic word that it doesn't help.

MR CUTLAN: Actually I did overlook - there was so much I had to look into, but I thought it may be pertinent to refer to the documentation which I received, which is available publicly through ASIC, and that is the - well, the document submitted to ASIC by the Wheelchair and Disabled Associations of Australia.

I found it interesting that within that document it refers to a surplus for the year ended 2002 of $2.8 million, and also somewhere in I think a truncated version of this - I might be able to find it - yes, here we are - their gross revenue was $28,727 and their surplus 2,848,704 which is 11 per cent of their gross revenue, which, for an organisation which is perhaps a business services or sheltered workshop type organisation, those figures are quite comparable; in fact, probably better than the average private enterprise type organisation.

The interesting thing here is that - I think this is not exactly related, if you like, to the Disability Discrimination Act, but organisations that are affected under that act - they receive a government support of revenue of 12 per cent, and yet their surplus represents 11 per cent of their total revenue. In other words, if they hadn't received the government supported funding, they would only be down 1 per cent deficit on their total revenue, which indicates that they are a very profitable organisation. That's my reading of it anyway. I may be incorrect there.

So if sheltered workshops or organisations that run business services such as the Wheelchair and Disabled Association of Australia, which is the house with no steps, which runs the Bantry Bay National House Group packaging, can generate a surplus of nearly $3 million, then why ought they not come under exactly the same requirements than any other business that is also operating in the private competitive marketplace, as these people are, for their products and services?

MS McKENZIE: Can I just go back to asking a bit more about the departmental review and the document you're mentioning.

MR CUTLAN: Yes.

MS McKENZIE: You haven't actually seen any wage assessment tool that's been developed? I know you mentioned it's going to be developed, in effect, this year - by March, I think.

MR CUTLAN: Yes.

MS McKENZIE: You haven't seen any further information about the development of such a tool?

MR CUTLAN: No, I haven't seen the actual new wage assessment tool as yet.

MRS OWENS: I wonder if it exists. It should be out there, shouldn't it, if it was done by March?

MR CUTLAN: Something I must do is inquire into that.

MS McKENZIE: But even if it exists, it's not mandatory to adopt it.

MR CUTLAN: Yes, well, it appears not to be mandatory according to the update that I've got a copy of, that was brought out in December 2002.

MRS OWENS: We can check that, David. We'll have a look into that. Because the other bit of information I've got is that services have got until December 2004 to comply - but I don't know - comply with what, is the question.

MR CUTLAN: Yes.

MRS OWENS: So we'll have a look at that issue, because it may or may not resolve your problem.

MS McKENZIE: There's also mention in our briefing about the creation of a disability employment industry consultative council, I think it was called.

MRS OWENS: Yes.

MS McKENZIE: That was to be by June of this year. Have you heard any mention of that?

MR CUTLAN: I haven't. I forgot to bring a pen with me - isn't that stupid - but I would like to make notes of that afterwards.

MS McKENZIE: We'll give you a copy of transcript, and it will be on the Net. But you'll get a copy of the transcript in any case.

MR CUTLAN: That's good. I've found the Net very useful in doing my research too. It's amazing what information can be gathered through that means.

MRS OWENS: Indeed. You did mention, I think in your presentation, that Commonwealth DDA - the act can't enforce state industrial relations legislation.

MR CUTLAN: Well, I questioned whether they could or not.

MRS OWENS: I think they could override state legislation, because there's certainly exemptions in the Disability Discrimination Act, and in the case of New South Wales the exemptions relate to Mental Health Act 1990, the Mental Health Regulations 95 and Motor Traffic Regulations, and they're the only prescribed laws for New South Wales. I'm not a lawyer, but I would presume that the other acts would be subject to the Disability Discrimination Act.

MS McKENZIE: It's a somewhat difficult question, because you've first got to be satisfied there's an inconsistency, and that sometimes creates some problems.

MR CUTLAN: Yes.

MRS OWENS: Another point you did make was - I'll just see. I took a note about this. You made the point - I did write something about this - you shouldn't be using the potential that people would be, I think you said, possibly laid off, as a reason not to do the right thing. I probably precised that in a very poor way. But the issue is, if the wage rates for people in business services and sheltered workshops were to rise too close to award wages, whether the people running those workshops would then replace those people with severe disabilities with people with less severe disabilities - you know, borderline people - - -

MR CUTLAN: Yes.

MRS OWENS: - - - whether it means that your protégé might lose his job because of this.

MR CUTLAN: I don't have any concerns about that. I think the important thing is that the assessment is independent and by an accredited assessor. Because if that is the case, then I believe it is important to make sure that there are no grounds for dismissal on the basis that a person has been assessed to receive more money than they are actually apparently receiving.

After all, any employer has a responsibility to employ a person under the rate of pay that they are entitled to, and what I'm seeking to ensure is that any person - particularly the disabled person - receives their entitlement, and there ought not to be a consideration that because they have a disability their right of employment ought to be protected over and above their right to receive the correct remuneration.

So that Sheltered Workshops or Business Services ought to be made to base their pricing and their whole structure on the legal framework that exists, rather than alter it simply because they were underpaying a person in accordance to their capacity, and therefore have to adjust their wage rates and therefore their employment circumstances. So I have no concern if, for instance, my protégé went down to 10 per cent, as long as that assessment was made by an independent assessor.

MS McKENZIE: And reflected your protégé's capacity rather than some completely irrelevant factor.

MR CUTLAN: Yes. I assist a friend of mine who's got a small business, and I'm obviously helping him make judgments as far as employment of people is concerned too. He has to work according to the law, but as long as he works within the law, he can make whatever decisions that are to his advantage to his business. So a business service organisation, and their management I'm sure, would be making decisions which were in the best interests of economies for their organisation, which compete in the marketplace, rather than just the interests of the employees, who they seem to be representing to be supporting. So the independence is the important thing, not necessarily the actual outcome; as long as the outcome is a fair one according to independent assessment. That's the bottom line.

MS McKENZIE: But it's done externally, not by the employer, who you perhaps would be saying maybe has some conflict of interest in doing that assessment.

MR CUTLAN: Most definitely, I think. Because if they're offering their services of packaging to independent clients, and the price they offer is based upon their costs, and they can keep their costs down by paying their employees a certain amount. If they find they ought to be paying more, then they have to increase their price in the marketplace. Now, that ought not to be the basis upon which disabled people are employed. They ought to be paid what they deserve, not what the employer can afford.

MRS OWENS: If they increase the price in the marketplace, there may be potential for the business to become less competitive.

MR CUTLAN: That's true. But if that's the case, then that's a case for maybe additional funding from government, if the government sees that their activity is supporting people with disabilities to be employed. Therefore I believe the money ought not to come out of the employees' wages, but ought to come from additional support if that's necessary, and that could be a government activity.

MRS OWENS: So basically what you're saying is that these workshops, these

business services, are providing a worthwhile social benefit to the community more broadly, by keeping these people in productive work, and that there should be a role for the community more generally through the government to support those activities.

MR CUTLAN: I think there is the likelihood that there is a need for increased support funding by the government, if it's seen that the role these service organisations are carrying out is of benefit to people with disabilities. In other words, really, if the status quo is maintained, I believe the disabled people are subsidising out of their wages their ability to be employed, and I think that's a very very dangerous thing.

MRS OWENS: Can I just ask you - this is a more general question about your role as an advocate. You mentioned right at the beginning about the significant improvements you've seen in your protégé. Would you like to just tell us a little bit about how you've managed to achieve that. Have you personally taken your protégé out on buses and helped him to move into - you know, using computers and so on? Is that something you've done as an advocate?

MR CUTLAN: I don't think there's anything I've done practically; it's been an attitudinal thing. I have seen the potential of my protégé as being unlimited. Anything he believes he can do, he can do, and I've encouraged him to believe that too. I have genuinely complimented him and praised him when he has shown some new initiative, increased capacity, and you know - it's on the basis of love, a real love of a person which is - what is love, giving a person without any desire for return. This has been the richest experience for me, to see an individual develop as a result of my - without any desire for reward, giving that person the opportunity to grow as an individual. It's an intrinsic thing. It's an intangible thing. You can't legislate for that. It's an attitude towards my protégé and towards people in general, which I try to adopt, and the result is - - -

MS McKENZIE: It's also in changing his or her view - a person's view of themselves as well.

MR CUTLAN: I'm sorry?

MS McKENZIE: It's changing a person's view of themselves also.

MR CUTLAN: Absolutely, yes. I mean, I believe the basis of any success of any individual is their own genuine self-respect and self-esteem, and that wasn't very high when I first met my protégé. He has grown enormously. He has the competence to think he's okay. In fact, one of the things I did in his unit where he lives - he used to get upset and stressed about things and still does, of course; he's

human like everyone else. But I got some big A4 cards and I got the largest possible typeset - I think it was 72 point - and then doubled it - "That's okay" - and stuck it on the walls of his bedroom and the back of his computer, when his computer crashed - "That's okay, I can fix it." "That's okay, I don't have to be upset." "That's okay, I can deal with it." It is just simple things like that. Now I can say, "What do you say when things are going wrong?" He says, "Oh, that's okay." It is that way of dealing with people and you are using positive words - "Gee, that's fantastic." "Well done."

When he first went out to - the racetrack out at Eastern Creek, is it? He used to ask his mum to take him, or ask his dad to take him - who no longer lives there - and he asked me to take him. I wasn't going to bail him out on this one because I knew he could do it. The next day he rang me up and he said, "I went to the races." I said, "Terrific, how did you get there?" "I got the train to Emu Plains" or such-and-such, "and then I got a bus to such-and-such and then I got a taxi." I said, "Did you have enough money?" "Yes, I did." "What was it like?" "Oh, terrific." That's the first time he'd actually done it because I made him believe he could do it.

MS McKENZIE: I won't ask whether he had enough money to get back.

MR CUTLAN: He did.

MRS OWENS: Can I ask how old he is?

MR CUTLAN: He is 23. 24 now, I think.

MRS OWENS: Well done.

MS McKENZIE: Have you advocated for him, as far as raising matters with the employer, or even further than that, with - - -

MR CUTLAN: I haven't because I have been concerned that under legislative circumstances, I could be jeopardising his situation, and he loves working. I wouldn't like to take that away from him.

MRS OWENS: How did you get into this role? Can I ask you, David?

MR CUTLAN: A very good friend of mine whose name is Chris Taylor, from North Sydney Council - he is the Asian disability officer, North Sydney Council - asked me if I'd be interested and invited me to go along and meet Maggie Currier. That was in Northside and I did that, and after a period of time they asked me to meet up with my protégé and we had a cup of coffee in the Chatswood coffee shop and we related very well after a few meetings, but basically we became friends and that's the basis of the advocacy role - is just becoming friends. So I've got a new friend in my

life.

MRS OWENS: Did the other people working in his sheltered workshop also have advocates? Is this a common role?

MR CUTLAN: Very difficult to find an advocate for a person in that circumstances, so maybe - some may have but I know an awful lot don't have that advantage. There are different points of views about citizen advocacy. In fact, the state government department have just applied Citizen Advocacy Northside to take on direct advocacy and professional advocacy roles in addition to the citizen advocacy work they were doing because of the difficulty in getting volunteers in this area. I don't know whether I should say - you have to be a special person perhaps. I don't know. I suppose it's a matter of finding the person that does match the role. That's not an easy thing to do. So it is perhaps quite a gaping hole and unfulfilled need there for advocacy on a one-to-one basis.

MRS OWENS: Maybe it needs to be publicised more, that there are these opportunities for people to help.

MR CUTLAN: Yes.

MRS OWENS: I think what you're doing just sounds marvellous.

MR CUTLAN: I'm very privileged to have this role and - yes, I can see others see it as being marvellous and it is - it's marvellous for me as well for my protégé. There are challenges because I don't really have any legal standing - when it comes to challenges but I simply say with my protégé's permission that I'm his voice. I'm not speaking for myself, but I'm speaking for my protégé on any circumstances, therefore I have to think very carefully what is in his best interests all the time.

MRS OWENS: Thank you. It's a very good voice, too. He's very fortunate. Thank you, David, a very good submission.

MS McKENZIE: Thank you very much indeed.

MR CUTLAN: A pleasure.

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

MRS OWENS: The next participant this morning is Maxine Singer. Welcome. Could you say your name and the capacity in which you are appearing, for the transcript.

MS SINGER: Okay. Good morning, everyone. I'm Maxine Singer and I am appearing as an individual.

MRS OWENS: Maxine, do you want to introduce your submission, or are you happy just to have a discussion?

MS SINGER: Introduce it, okay. I put in the submission I was employed by the Department of Defence from 1990 to 1992 and this will tell you all the happenings from that and ever since then.

MRS OWENS: And you lost your position with the department on the basis of your health state at the time.

MS SINGER: That's right.

MRS OWENS: And you've had trouble trying to get a job since that time. You feel that your health has had an impact on the employer's decision to employ you?

MS SINGER: Yes, especially lately, since we've had occupational health and safety and, of course, the public liability - it has made a very big impression. One minute they want you to find work and get back to work, and the other side you've got public liability saying, "No, you can't have this. We're too scared of this." You see, I have epilepsy and of course they look at that word and they think, "Oh, no, she's going to fall downstairs. Oh, no, she's going to fall over this. She's going to jump on that and all this." But, of course, they know nothing about epilepsy, a lot of these people. That's why the association now is breaking their backs trying to educate people about it. You'd be surprised how many of them just don't want to know.

MS McKENZIE: So even though the association offers to provide that education, some people are not interested to take up the offer.

MS SINGER: That's right. "Oh, we know about it; we know what it is." Of course they don't. Epilepsy is a lot of things.

MRS OWENS: Is your particular epilepsy kept under control through a drug regime or not?

MS SINGER: I take drugs but lately I've had public - excuse me - vagus nerve

stimulation put in which works similar to a pacemaker, which is what this magnet is for.

MRS OWENS: It's a pity I can't show that on the transcript.

MS SINGER: Yes. My husband knows if I have what they call a complex partial seizure where I don't feel it, he only has to rub it over the vagus nerve stimulation and that will stop the seizure continuing.

MRS OWENS: So really we're not talking about an OHS - a real issue with OHS, but you have raised an important point which is that there is a bit of a clash of cultures between the Disability Discrimination Act and the Occupational Health and Safety Act.

MS SINGER: Yes.

MRS OWENS: And a bit of attention - - -

MS McKENZIE: What you're really talking about is the perception of employers or potential employers that it will be a problem and it will be an OHS issue.

MS SINGER: Yes, the insurance people won't have it either.

MRS OWENS: You weren't tempted to make a complaint at the time that you left employment about your treatment?

MS SINGER: Yes, well, I was because it was even social security, as they were then known, saying "This is discrimination," I said, "Well, can't anything be done about this?" Their answer was, "No, it's a government department." So in other words, everyone else - you can do it if it's anybody else, but you can't do it against a government department.

MRS OWENS: I don't think that's relevant at all.

MS SINGER: Not now.

MRS OWENS: I think you got a bit of a bum steer.

MS McKENZIE: That was incorrect advice.

MS SINGER: Not these days, but we're talking about 1992 now.

MS McKENZIE: So that was pre the act, because it came in in 1993; it started in

MS SINGER: That's right.

MS McKENZIE: Passed in 92.

MS SINGER: We didn't have unfair dismissal then. If you got bumped out, that's it. Too bad.

MRS OWENS: Have there been occasions since then when you've applied for jobs where you've felt that the main reason that you got rejected was because of your health?

MS SINGER: You can't say that, because they don't tell you why you don't get the jobs.

MRS OWENS: So you're not really in a position again to make a complaint if you felt like the process hadn't been working in your favour, because they're not telling you why; because they can do it subtly?

MS SINGER: They are always coming up with, "No, you're not - haven't got enough qualifications," or "There have been too many other people," being interviewed and "It was a hard decision, but sorry, you've been unsuccessful." But when you've had this - I mean, we're talking about the past 10, 11 years now, and trying and trying and trying again, you do tend to wonder. It really makes you - it really brings down your morality [sic] and your self-image. It's just - you feel like not trying any more.

MRS OWENS: You go along, I presume, to Centrelink. You get a disability support pension.

MS SINGER: Yes, that's right.

MRS OWENS: And so Centrelink presumably is meant to be helping you. You're meant to be getting some assistance with finding positions. What about retraining? Any suggestion of doing retraining?

MS SINGER: I have done a lot of courses. I've got my resume with me and I can show you.

MRS OWENS: The resume then, doesn't come up well on the transcript, but you are saying you have done a lot of courses.

MS SINGER: I have.

MS McKENZIE: In different fields?

MS SINGER: Yes, I was even assistant in nursing. I did careers education for women at TAFE and I'm going to start another one - try and find new skills and things - computer courses. I hate the computers now and what they do with them. And so it goes on, but what else can you do?

MS McKENZIE: It is a real - it's a problem that other people in submissions have raised with us. It is a real problem when - for an employer who actually wants to refuse someone on the basis of their disability, it is quite difficult for the person with the disability to show that that is why - if the employer simply won't tell you at all the reason.

MS SINGER: That's right.

MS McKENZIE: Or gives another reason which might superficially look understandable but in fact is not.

MS SINGER: I'll show you something - you were talking about Centrelink helping me. Recently I went and talked to them because I was going to see if I could speak to the vocational psychologist or somebody, just to find something else other than office work, right? But he sent me along to Nova Employment.

MRS OWENS: Which is a private employment agency.

MS SINGER: They were telling me they were government funded.

MRS OWENS: Yes.

MS SINGER: I suppose they're private now. When I was talking to them, "Oh, we have to be careful." He was asking me about when my last seizures were and what - - -

MS McKENZIE: Your last seizures?

MS SINGER: Yes, and what seizures I had and everything. I said, "If I'd know this, I would have brought my charts along with me that I show to my doctor." Then he says, "Well, I'm afraid we can't accept you because you have to be seizure free for two months."

MRS OWENS: Is this in their rules and regulations?

MS SINGER: That's what they said. "I have to refer you back to Centrelink."

MRS OWENS: I wonder if this is in the - was it Nova Employment Agency?

MS SINGER: Nova, yes.

MRS OWENS: I wonder if it's something in their rules or whether it's something in the Centrelink rules.

MS SINGER: I've no idea. I mean, before - - -

MRS OWENS: Well, there's a complaint.

MS SINGER: I've been with the CRS, I've been with Breakthrough, Care, and all the - trying to find work. Breakthrough has been the best because they do understand epilepsy and they do go ahead to the employers trying to explain what epilepsy is - or your type, anyway.

MS McKENZIE: But they also have trouble as far as acceptance by the employers is concerned, or understanding of that condition? Is that - - -

MS SINGER: Who, sorry?

MS McKENZIE: Do Breakthrough also have trouble convincing employers that this in fact is not a problem?

MS SINGER: Yes. This is the thing, you can't - for some employers you can't convince them. The only time I've found it easy is when I'm working with people who do understand the problem, who either have it in their family or have friends who have got it, so they know what it is. When my epilepsy started I was 23, in London, and my boss had to say, "Well, why did you have to have extra time off?" I burst into tears and told him and he said, "Maxine, you can fill the Albert Hall full of people and one in 10 will have epilepsy." It was either him or his wife that had the problem, but they were both members of the association in London. So that was the difference between working for people who do understand the problem and people who don't.

MRS OWENS: It doesn't necessarily affect your productivity. I can't understand why this caution - except through ignorance - that people are ignorant.

MS SINGER: I know. I can't understand this either, but it's just the way they've become so frightened of any of these health problems these days. They would rather

take someone on without any health problems. If you go for an interview with so many others, and they are fit and healthy - because nearly all the application forms today have, "Do you have any health problems?" but if you say no, and you have a seizure, "Why didn't you tell us?" you're out of a job anyway. You're wrong if you're honest and you're wrong if you're dishonest.

MRS OWENS: I mean in one way asking that question is not relevant for most jobs that you might go for, but in another way employers say, "Well, we need to ask those sorts of questions, so that if that person has got a problem then we can make adjustments in the workplace for them."

MS SINGER: Yes.

MRS OWENS: So there's a bit of a damned if you do and damned if you don't as far as the employer is concerned.

MS SINGER: Yes.

MRS OWENS: Because I suppose employers do need to know, in case there is an issue.

MS SINGER: Yes.

MRS OWENS: But it shouldn't be a factor necessarily in the employment decision. They would say, "Okay, you've got epilepsy. We just need to know that in case you have a seizure," and your fellow workers will know what to do if that happens.

MS SINGER: That's right, exactly.

MRS OWENS: Or it might just mean that you're not going to be at work one day when you have a seizure, but then you go the next day. Other people take time off work for all sorts - you know, the flu or whatever.

MS SINGER: Yes.

MRS OWENS: That doesn't mean to say that they're dismissed or can't get a job. Employers don't sort of take that into account in employment decisions.

MS SINGER: That's right. I mean, we do have to tell them. Plus, I mean I can only do part-time work now, and we still have to see doctors regularly.

MS McKENZIE: What about the question of insurance? You're really looking at - it's sort of WorkCover or workers compensation insurance you're talking about. Is

that right?

MS SINGER: Yes, this is what they're frightened of, because people have been suing for such silly things these days and it has come down on all of us. We are all getting kicked for it.

MRS OWENS: I'm still worried about this comment that the employment agency - that you attributed to them about, "Must be seizure-free for two months." Can I ask a more general question? That's about your dealings with Centrelink.

MS SINGER: Yes.

MRS OWENS: And Centrelink requiring you to continually update the forms that you need to provide relating to your condition. Do you have to keep going back, say, to the doctor to get forms filled in?

MS SINGER: They have recently sent me one of those forms to fill in. It has only been every couple of years, isn't it, or something - - -

MRS OWENS: A treating doctor's report?

MS SINGER: Yes, and then I had to fill it in and so did my GP have to fill it in.

MS McKENZIE: But that was - it wasn't a very frequent occurrence. How long was it since you filled in the last one like that?

MS SINGER: I can't remember.

MR SINGER: About six months I would say.

MS SINGER: Six months.

MRS OWENS: Does that become onerous for you or your doctor? Does your doctor say, "Why am I doing this again?"

MS SINGER: No.

MRS OWENS: You've got a nice doctor?

MS SINGER: Yes.

MRS OWENS: Do you think you would need to continue to do that to stay on your disability support pension?

MS SINGER: I don't know. If they want me to, they want me to, that's it. I would like to get some part-time work and do something. I mean, talking about not understanding - I mean, as you have probably seen in my submission, I had a nice time when I went to Social Security after I lost my job at the Department of Defence. They looked at my dismissal paper, "This is just - you should be on a disability support pension." I had never even heard of a disability support pension before, "But you have to see our medical officers." After all the medical officers I had been seeing from the Department of Defence, I had to see their medical officer.

MRS OWENS: And go through it all again.

MS SINGER: Yes, and, "You're too fit for a disability support pension." So there I was: too fit for one and too sick for the other.

MRS OWENS: That's right. You mentioned that one in your submission. It's impossible.

MS SINGER: Yes.

MRS OWENS: Thank you for that. I think we've covered all the issues that we were going to cover.

MS SINGER: Malcolm wants me to tell you about TAFE recently. I was trying to tell the teacher about my vagus nerve stimulation. Just in case something happened, she knows what's happening, she doesn't have to be scared, but no, she didn't want to know it. Malcolm had to sit with me all the time and she didn't even want to know about - I was trying to show her just the pamphlets to teach her something, that she doesn't have to be scared, "No, I don't want to know that." I just walked out of the classroom and left her with it. You see, you can try to be - - -

MRS OWENS: That's just the individual, yes.

MS McKENZIE: But it shows what a need for education there is, as far as this is concerned.

MS SINGER: Yes.

MRS OWENS: There's a need for education of employers and people in - teachers or - I mean, we're not just talking about you with your epilepsy, but there's children going through schools that also have the same condition.

MS SINGER: That's right.

MRS OWENS: So it's something that just needs - the message needs to get across more generally, doesn't it?

MS SINGER: It does actually, yes.

MRS OWENS: The next time you have problems, when you feel like you do need - where you have been rejected for a job, and you know you were the right person, you could think about complaining under the Disability Discrimination Act.

MS SINGER: Right.

MRS OWENS: I'm not here to provide you with advice.

MS SINGER: Right.

MS McKENZIE: But it's an avenue. It's one avenue, if you want to address this problem.

MS SINGER: I can't complain about this any more, because it was too long ago.

MS McKENZIE: The difficulty with the first dismissal is that it happened before the act began, and Helen is right in that we can't offer advice on specific cases, but it might be worthwhile your ringing and talking to HREOC about these matters.

MS SINGER: Who?

MS McKENZIE: Human Rights and Equal Opportunity Commission.

MS SINGER: Yes.

MS McKENZIE: They are going to make a submission later today in fact.

MS SINGER: Right.

MS McKENZIE: You're welcome of course, as anyone else is, to stay and listen to it if you would like to.

MS SINGER: What time are they coming?

MS McKENZIE: 1.30. Straight after lunchtime.

MS SINGER: Okay.

MRS OWENS: The commission administers the Disability Discrimination Act. If you want to make a complaint it would take place through the commission, but you would have to have a situation where you felt fairly sure that you had some substance in the complaint.

MS McKENZIE: But there's no reason why you can't have a general discussion with them as well. I have no doubt that many people ring up and just make some inquiries.

MS SINGER: Right.

MS McKENZIE: But you will see some of their officials, who will come at 1.30 to make a submission to us.

MS SINGER: All right. Okay, well, thank you very much.

MS McKENZIE: Thank you for coming.

MRS OWENS: Thank you very much for your submission. We will now break and we will resume at 1.30.

(Luncheon adjournment)

MRS OWENS: The next participant this afternoon is the Human Rights and Equal Opportunity Commission. Welcome to our hearings. We have been looking forward to this afternoon to discuss a whole range of issues with you. For the transcript, would you like to each give your name and your position with the commission?

MR INNES: Graeme Innes, deputy disability discrimination commissioner.

MR MASON: David Mason, director of disability rights policy for the Human Rights and Equal Opportunity Commission.

MRS OWENS: Thanks, Graeme, and thanks, David. We're on first-name terms, as you can tell. I hope that is all right with you.

MR MASON: That's fine.

MRS OWENS: Is it Graeme who is going to lead us through some of the important points?

MR INNES: Yes, I think I might start.

MRS OWENS: Thank you.

MR INNES: Firstly, thanks for the opportunity to be here today. I'd like to start by apologising for Dr Sev Ozdowski, the acting disability discrimination commissioner, who is on leave at the moment. He is disappointed that he is not able to be here. He has certainly been closely monitoring the submission we have already put in and the submission yet to come in the progress of the inquiry. As we said in our initial submissions we consider this inquiry a valuable opportunity to assess the effectiveness of the DDA and examine possibilities for achieving the objects of the act more effectively.

Our overall assessment is that the act has contributed to significant progress in eliminating discrimination against people with disabilities in most of the areas of life it covers. This has included dealing with over 5000 complaints and providing redress through agreed resolutions in many cases. Costs don't appear to have been disproportionate to benefits being achieved. There are however areas - in particular employment - where broad progress in achieving the objects of the act is harder to identify. Consideration of additional mechanisms for achieving the objects of the DDA is justified. A second formal submission which discusses issues raised in other submissions so far should also be with the inquiry shortly.

We won't attempt to present our submissions here in detail. Reading out more than 50,000 words would probably take about eight hours and we don't think that is

the best use of the inquiry's time. We will try to give an overview of issues from our initial submission, as well as issues we see as emerging from other submissions. We would be happy to address any issues of particular interest to the inquiry in more detail either here or on a later occasion if you feel that that is helpful.

The first thing we want to talk about is economic and competition effects. Although there are many issues about the law to discuss we wanted to start with this area of cost and benefits and economic impacts, where we lawyers have less expertise because the point of the DDA is to make a difference in the real world, not just in legal theory. We agree with points made in submissions that costs of disability in Australian society are present already rather than being generated by the DDA, other than the specific and very limited costs of dealing with complaints, and that the major issue is how to distribute these costs appropriately and reduce their impact as far as possible, both on individuals and businesses.

To set against costs our submission notes that economic benefits which need to be considered may include reduced costs of separate or parallel service provision as mainstream services and facilities become more accessible and inclusive; increased labour market participation leading to reduced welfare dependence and increased competition in the labour market; improved skills formation and use; potential improvements in productivity through requirement for inclusion and accessibility providing incentives for innovation in methods of work and service delivery; improved useability of services and facilities for all members of the community through increased adoption of universal design approaches.

HREOC would support consideration in the context of this inquiry of appropriate incentives for increased accessibility and inclusion, whether at federal level - in particular taxation incentives, possibly comparable to research and development concessions - state level, including perhaps as part of regional development programs, or local level through the inclusion of incentives as part of accessible community initiatives.

Outside of the limited areas where support is currently provided for access and inclusion the cost of adjustments to accommodate disability requirements appear to fall either on particular employers, service providers and others with responsibilities under the DDA and equivalent legislation, or on people with disabilities and their families. To the extent possible in this inquiry we would support examination of means of addressing these impacts beyond the legal rules of the DDA itself.

In this respect we think we should note very extensive payments which have been made within the framework of competition policy to providers in some industries to offset adjustment costs in moving to more open market access for consumers. We would like to see possibilities examined in the course of this inquiry

for this approach to be applied to adjusting systems and facilities in our society to be more accessible and inclusive for people with disabilities in those areas where market, regulatory and legal processes alone may not be sufficient. There seem to be particular needs in this respect in employment and education.

Turning now to issues about the DDA itself, our submissions try to deal as far as we can with each of the issues raised in the issues paper. This is to a degree, I suppose, a list of the issues that the issues paper raises and a very brief summary of what our submission says. The statement then talks about particular areas under the act. I am happy to go through those and for you to stop us, if you want, on particular questions or, if you have got particular areas that you wanted to take us to, we are relaxed about doing that as well. I don't mind which way we proceed.

MS McKENZIE: Maybe it is best for you to go through your areas and we will stop you as we have got questions and, to the extent we need to add, we'll add afterwards.

MR INNES: Sure. As you will see, they're quite brief summaries, but the definition of disability - where, in brief, we think the existing definition works well - and that's, I would have thought, almost certainly where you might want to talk to us further - definitions of discrimination, where we think some revision of existing definitions would be useful - - -

MS McKENZIE: Can I stop you. Having said that - - -

MR INNES: I thought you might want to.

MS McKENZIE: Your submission is clear about what you see as far as the definition is concerned. The bit that bothers me - which has come up in a few of the submissions that have been made to us, particularly by people who suffer from multiple chemical sensitivity syndrome, and really what they are saying is that that disability - although it might be recognised overseas, there is great medical dispute about whether it's recognised as a condition here but that the symptoms are clear enough - they result in functional limitations of various kinds. I just worry about how someone with a syndrome of that kind falls within the definition of disability. I don't think it's just a question of, "Can I provide evidence that what I have falls within the definition?" I think there might be a problem where the medics are in dispute about whether this really is a condition or not, but there are clear functional limitations.

MR MASON: I might start on that one, commissioner. I think we do say in our initial submission - and certainly we pick it up in the second submission, which you will be getting shortly - that in that area it seems to us that the major problem isn't so

much the fit of the symptoms that people are describing with the definition of disability. It is the issue of people having evidence that they are actually experiencing what they say has happened to them, and that's not something that we think any amount of altering of the definition of disability would really assist with. If you had a line in there which specifically said, "Multiple chemical sensitivity is covered" people would still need to establish that it is happening to them and, if they can't, then the presence of the definition saying that it is covered isn't going to assist.

MS McKENZIE: No, but my point is a bit different and, that is, there may be cases where the doctors will agree that you are suffering various symptoms. They just can't say what it is that you have got.

MR MASON: Yes.

MS McKENZIE: My concern is that to fall within - there has to be medical opinions that you have certain things. Although the definition of disability is very broad - and it may be that the symptoms themselves are disabilities - that may really be the answer to my question - - -

MR MASON: I think that is the answer.

MR INNES: Yes.

MR MASON: I think if any of the symptoms of loss of consciousness at the extreme or loss of ability to perform various functional tasks can be established then the DDA isn't really concerned with going for what is the root medical cause of those symptoms. Frankly, we wouldn't see that as being the core problem in that area. It is the matter that some people - their experience is disputed basically.

MS McKENZIE: I completely understand that point, but as I said my point is a bit different and I have to say I still do have some concerns that the definition might not be quite broad enough to pick that up.

MRS OWENS: The other issue - which you will probably address in your follow-up submission - is the issue about behaviour resulting from disabilities, which has caused some degree of confusion as well. We may not want to get into that one now, but that is another one that people have raised - whether that should be explicitly recognised.

MR MASON: I think our position on that at the moment is that we are all a bit dependent on seeing what the High Court makes of it in the Purvis litigation. Before we embark on looking to see how we might clarify the definition in there we need to have the court's line on what problems there are.

MRS OWENS: Yes.

MS McKENZIE: Please continue. I'll do my best not to stop you another minute.

MR INNES: No, that's okay, because we expected to talk about definitional issues.

MR MASON: I suppose just one point to pick up on is that a number of submissions have argued that the DDA doesn't apply - sufficiently at any rate - a social model of disability and, in our view, if you look at the act overall, it does. The definition of disability is narrower than that, but the construction of the act as a whole, we would say, obviously doesn't treat disability as purely an individual medical deficit. The whole point of the act is to change the surrounding society - that has disabling consequences.

MR INNES: And at the time the definition was established - including a social or environmental model - was considered, but rejected because it risked leaving some instances of disability discrimination outside the coverage of the act. I guess the other point the submissions make is that the DDA considered as a whole, rather than in relation to the definition of disability, already does reflect a social or environmental model of disability; in particular the scheme of the act, providing for standards of general application rather than relying purely on discrimination complaints - is intended to move away from a focus on disability as difference towards universal design approaches and people don't have to prove their disability to get on a low-floor bus, for example. Once the low-floor bus is there you can get on it. They are probably the other key points we want to make about definition.

MR MASON: Yes.

MRS OWENS: I suppose in that context of social versus medical models, I think some people are saying that the act needs to be strengthened further. I think that will again come out during our discussion - that there is more that could be done to make it clear that it is about ensuring equity in the community, the rights of people as citizens and so on.

MR INNES: That may well be, but I don't know that it is in the definition. It might be in the objectives or it might be in - taking through the objectives to the detail of the legislation itself or in removing some of the exemption areas, or whatever, but I'm not sure that that is a definition - - -

MRS OWENS: No. That's what I said - we will probably come to that a bit later.

MR INNES: Sure. The next one was on definitions of discrimination, where we

think some revision of existing definitions would be useful to clarify the meanings of direct and indirect discrimination, as well as clarifying the application of the definitions of discrimination to carers and other associates and to specific disability services. I think there is certainly some of that in our first submission and there is certainly more in the second submission. Reasonable adjustment - which we think should be expressly recognised in the DDA rather than as a concept that we have had to develop.

MRS OWENS: How easy is it to come up with a definition of what's reasonable?

MR INNES: I'm sorry?

MRS OWENS: How easy is it in legislation to determine what is reasonable? Can you pin it down in legislation? I suppose in the same way as it is probably hard to pin down the word "unjustifiable".

MR INNES: That's what I was going to say.

MRS OWENS: Yes.

MR INNES: Courts interpret those sorts of terms all the time, and do so in regard to specific situations and circumstances. People might have some exceptions to this but, in general terms, things like unjustifiable hardship have been interpreted and fallen where we would have expected them to fall. I don't think we're concerned by using those sorts of concepts.

MS McKENZIE: The reasonable adjustment concept - you're looking at it as a positive duty, aren't you, if I read your submissions correctly?

MR INNES: Yes.

MS McKENZIE: Not just a defence.

MR INNES: No, as a positive obligation.

MS McKENZIE: Yes.

MR INNES: Correct.

MR MASON: That's right.

MS McKENZIE: In particular areas only? Certainly, in other submissions it's been raised, particularly in relation to employment and education. Not so much in

other areas.

MR MASON: If you look at the purpose of development of standards on accessible public transport and access to premises - are large-scale reasonable adjustment exercises, but not in a way that has to be approached on an individualised basis - a person coming along and saying, "Please adjust this bus" - because that's not a terribly workable idea, but I guess the way we see those standards is that they do set out in considerable detail, "Here's what a long list of reasonable adjustment issues in these social systems looks like."

Then there are other areas like, say, employment where it's much harder to give specifics of, "Here's what you have to do." There was a lot of discussion around this is the context of trying to produce standards on employment and that exercise didn't prosper because we couldn't get agreement of what prescriptive standards should look like. A number of sectors weren't terribly happy with non-prescriptive standards either, but on issues like transport it has been possible to be more specific.

I guess we would see reasonable adjustment as an important issue across all the areas covered by the act and, at the least, it would be useful to have a positive general duty of reasonable adjustment that applies across the board and then, where you can provide more specifics, you should. As I think we've said in some published papers before, it isn't that easy to design a building just by saying, "Provide reasonable access," or design a telecommunications system by saying, "Make it accessible." You need to know more than that. That's the point of standards development, and we would see that as the point of development of other mechanisms in terms of industry codes or whatever and their coordination with the act by various means.

MS McKENZIE: In a way, if you had such a duty - if such a duty was included in the DDA - the way then that the standards would operate, assuming that that amendment was made, would be really to flesh out that duty and perhaps even - a bit like the Building Code, you know, with the deemed to comply provision.

MR MASON: Yes. And, to some extent, vice versa as well, I think. Our second submission certainly makes the point that, if we can't get standards on employment in place, then at least a specific reasonable adjustment duty in the act would do some - actually it would do quite a lot - of the work that employment standards were intended or hoped to do.

MS McKENZIE: Do you foresee a problem, if a duty like that were included in the act, that it might be counterproductive; that employers might simply refuse to comply with it because they feel it's too onerous?

MR INNES: I suppose that's a question which you can take more broadly than just

in relation to reasonable adjustment. I guess there's a point - and it's going to be a different point for different employers - at which that's going to kick in. I think part of that changes as the community's view of disability develops and matures, and so the community recognises not only that perhaps its first assumption about people with disabilities - that there's a stack of things that they can't do - is not necessarily correct, but that their next assumption - if they actually get to the point of making this next assumption - that there's actually a real contribution that people with disabilities can make to the community is also not not correct.

I suppose at some point it's going to kick in, but I think that, in general, the community is not averse to reasonably accommodating people with disabilities and, in the same way as you'll have some views expressed that unjustifiable hardship doesn't go far enough, those same views will say that reasonable adjustment goes too far. Where that pendulum swings starts to become a problem - - -

MS McKENZIE: Should unjustifiable hardship still remain if such a duty were in the act?

MR INNES: If you have a duty like that in the act, probably where the line is drawn on that duty is where the unjustifiable hardship starts, so that the two are sort of a continual - - -

MS McKENZIE: Almost a continuum?

MR INNES: Yes.

MR MASON: Another part of the answer to that question, commissioner, would be that, again, as far as possible, if accessible and inclusive means of working and design of systems can be built in, you're not going to have people with disabilities presenting as an expensive and inconvenient problem. If the transport system becomes accessible, people don't have to then ask for special arrangements to be made. If the telecommunications system and facilities are accessible, again, you're not having to say, "I need this particular specialised, inconvenient, expensive and hard-to-identify accommodation." It's just part of the way things are done. You're never going to be able to reduce individualised adjustment needs to nothing, because people's needs and experiences are diverse, but you can certainly get quite a long way by adopting more universal design approaches and we think that is the point with standards in a number of areas.

MR INNES: Yes. If we get buildings built accessibly, then employers won't have to adjust buildings if a person - - -

MS McKENZIE: Yes. You had got up to reasonable adjustments before.

MR INNES: Yes.

MRS OWENS: We're almost down to the bottom of page 2.

MR INNES: Yes, that's right.

MS McKENZIE: Christmas is only a few months away.

MR INNES: Then we go on to areas covered by the DDA, where we think there are possibilities for expanded coverage, including in areas like occupational relationships and accessibility of products. I think that's mainly the second submission, isn't it?

MR MASON: Yes. There were some quite interesting ideas raised in a number of other people's submissions in that area. There was one which I had to admit we hadn't really thought about - at least for a very long time - which was people proposing, essentially, that as well as covering discrimination in defined areas of life the act ought to have some overarching coverage of discrimination. We've been talking internally about whether we could identify any complaints or attempted complaints that have come forward during the life of the act where a more general provision would have made a difference, and we hadn't really sorted out a view on that yet, but we think it's an interesting idea to think about at least.

MR INNES: We've sort of expanded a bit on that in the second submission. Then I talk about exemptions, where we think most of the exemptions are justifiable, but we agree with submissions recommending a review of the special measures section to avoid misunderstandings of its effect - and that's that ACT case of Vella, I think - possible inclusion in the prescribed laws provision of a limit of five years at a time, just as a review process.

MS McKENZIE: So the prescription would have a five-year expiry?

MR INNES: Yes, or might require a review - so that there's at least a conscious assessment of whether it should still continue to apply - made by an appropriate review body.

MS McKENZIE: I know in Victoria - and I assume that there's a similar process for the Commonwealth - that, of course, regulations have a defined life and you need to then remake them after a certain number of years.

MR MASON: It's not automatic in the Commonwealth.

MR INNES: No, but it's becoming more frequent in the regulations though, isn't it - a review period - and that's sort of what's driving that thought.

MRS OWENS: There's a more fundamental issue about prescribed laws - whether you have five-year expiry or not - and that is why you'd have them at all. We've got it down to only about five - some laws in New South Wales and some laws in South Australia, and the equivalent laws in other states aren't prescribed - and it really does raise a question in my mind as to why we've still got some special arrangements in some states at all. Why have that exemption?

MR MASON: As to why those particular laws, that's a good question, but overall we see the mechanism for prescribing laws as potentially a useful and sensible mechanism for coordinating the operation of the DDA with other areas of the law and for having other laws perform some of their share of the work of defining what a non-discriminatory society looks like and how you get there and what the limits of achievable non-discrimination at this point in the journey are.

I guess we would also say that it isn't productive for people with responsibilities under the act to have conflicting or apparently conflicting duties, because the response may well be to just do nothing, whereas if you've got a clear map that says, "Well, here's what you're required to do under this bit of legislation," and that's okay in terms of discrimination law, then you're more likely to get some reasonable outcomes, as long as there's been a process of review of that other law to make sure that it doesn't set up unjustifiable discrimination. If it has to go through a prescription process which is, to some degree at least, reviewable by having to clear the parliament, then that gives some scope for a better look at areas of discrimination in other laws than if the act just said nothing and people continued to either pay attention to the DDA or to the specific regulatory regime over to one side, but not to both at once.

MR INNES: An example might be, for instance, with assistance animals. Where state governments regulate, for instance, health and hygiene requirements for animals, there needs to be recognition within those health and hygiene regimes of the particular specific role which assistance animals play, but there may also need to be regulation of the role that such animals play.

If I can go away from my health and hygiene example for a minute and talk about public transport regulations, again, public transport regulations tend to regulate the travel of animals on public transport and, again, there would need to be some recognition of assistance animals and the need for them to travel on public transport, but there might be a need to regulate that travel. We've just released a discussion paper on this issue.

MR MASON: It's not out yet.

MR INNES: It's not out yet? Okay. We are just about to release - - -

MS McKENZIE: You're about to.

MR INNES: For instance, the issue of the size and/or ferocity and the amount of restraint of such assistance animals might need to be addressed. It may well be more appropriate to address that in a state regime and prescribe that law or that bit of the law for this purpose. I think there's some work for the provision to do, as David says, to clarify areas so that people don't get caught between two laws and then, as David said, just do nothing.

MS McKENZIE: It's also necessary, though, for it to be consistent - for all similar laws in states and territories. It would be a crazy situation if you had pretty much the same laws relating to, for example, regulation of restraint of assistance animals in different states, and some were prescribed and some were not.

MR INNES: Yes, and so there has got to be some work done to try to achieve that to the greatest extent possible in our federal system, and that's one of the purposes for us starting the discussion in this area, so that we do get broader coverage. But I'm not sure that it's appropriate for the DDA to - because there isn't that coverage of laws in all states to assume the responsibilities that those laws might carry. So, yes, there has got to be some negotiation around it, but I agree consistency is important.

We also commented on review of the exemptions regarding the Migration Act, saying that we think there is a need to review those, potentially to look at the breadth of coverage and either address that within migration regulations or within the DDA, because we are aware of issues where people with disabilities are discriminated against in terms of family members or individuals coming into Australia. Combat duties, police-keeping duties, domestic duties, disposition of land by will or gift - and we have got some comments on those in our second submission.

MR MASON: Yes, just to note there that not all of those exemptions were ones that we picked up on and commented on in the initial submission. Yes, the exception for domestic duties in the employer's home we hadn't actually turned our minds to in writing the initial submission, so it was useful that other people picked that up. Likewise the one about the disposition of land.

MS McKENZIE: What have you said about the domestic duties one?

MR MASON: Just that we can't see what the reason for the exception is either. We can't see now and can't remember, as far as the drafting of the act goes, whether that

was just imported from some of the other legislation that the DDA was being modelled on at the time or whether there was some more substantive purpose for that limitation on the employment discrimination section.

MR INNES: From my recollection it's the former.

MRS OWENS: Once we've got your second submission, if anybody has got any recollections they might put in a submission and tell us if there was some good reason.

MR MASON: Yes. But, as I say, there are a number of the exceptions in the act where we think they have a sensible job to do, and then there are some like that where we can't see what the point of the specific exception is.

MS McKENZIE: Yes, I mean, for what it's worth we have a similar exception in Victoria, but it's in a general anti-discrimination act. Certainly part of the reason - it's mentioned in the parliamentary papers when the bill went in - part of the reason was the view taken - disability wasn't even referred to - the view taken that if someone is going to work in a person's home there may well be some requirements that the family have about what kind of person they have to work in their home. They might, for example, want - if it's a family whose first language is not English, they might want someone who speaks that first language and so on. That was the sort of thing that was being looked at, but certainly not disability.

MR INNES: Except that I would have thought that that could arguably be an inherent requirement.

MS McKENZIE: Well, perhaps, but I mean I think the view was taken, and this is my understanding, that it was better to make it clear than - - -

MR INNES: I think you're right, and that is my recollection, having worked in the state systems in New South Wales and Western Australia, where I think there are similar exemptions, and they were in the general law. It's not just a disability-related thing. My recollection, when the DDA was being drafted, was that those were just transported across from state to - - -

MS McKENZIE: Yes.

MR INNES: But we sort of think maybe that should be thought about.

MR MASON: While we don't agree with some submissions, that each and all of the exceptions in the act give people with disabilities a badge of second-class status or legitimise apartheid, as I think one submission put it, there are some of the

exceptions that do tend towards just a more stigmatising effect that badge people with disabilities as basically undesirable to have around. If there is not a good reason for an exception in the act, then just for that reason of stigmatisation alone that exception ought to go.

MR INNES: We next talk about unjustifiable hardship - I'll just keep doing this. When I come to a - - -

MS McKENZIE: No, it's fine. If there's a pause of more than three seconds - - -

MR INNES: That's right.

MRS OWENS: This one caused a lot of submissions that talked about unjustifiable hardship.

MR INNES: Yes.

MRS OWENS: We've got the whole range of views.

MR INNES: We think it's a necessary concept to balance competing rights and interests, but we would like to see it further defined by standards and other processes, and we've touched on those a little bit already, and which we would also like to see made less necessary to rely on through increased assistance in meeting costs of adjustments. So I suppose we're taking a middle view on that, but we think the legislation does need an unjustifiable hardship provision.

MRS OWENS: And this assistance would come from government? This is a role for the government?

MR MASON: Yes, I think that is what - - -

MR INNES: Probably I think that's right, yes.

MRS OWENS: What about the issue that some have raised about unjustifiable hardship clauses being acceptable in the act itself, but not in standards?

MR INNES: I think we addressed that in our second submission, but in brief you can't always, in the context of standards development, get every last situation definitively defined. Although the purpose of standards is to provide certainty you still often are going to need some level of flexibility, unless you settle for a very minimal set of obligations that really is the lowest common denominator approach that you can expect everyone always to be able to comply with. In the context of the public transport standards, the choice essentially was either have the standards as

they are, with 20 to 30-year time frames and an unjustifiable hardship clause, or have standards with perhaps a 60-year time frame - - -

MR MASON: Because you go to the lowest common denominator.

MR INNES: That's right. It was very clear that some elements of the bus industry and some aspects of rail access were not going to be able to be delivered absent huge injections of funding from somewhere within a 20-year time frame, and there was going to have to be some provision for a hardship clause just on those issues if, overall, a 20 to 30-year time frame was going to be able to be made to stick. I think similar issues arise in terms of need for flexibility, even more so in areas less susceptible of precise definition like employment or education. On the other hand our expectation in the access to premises area is that there won't be any work left for an unjustifiable hardship clause.

There may be something that looks a little bit like one for some really exceptional circumstances, but there won't be a general hardship let-out. The building code and the standard picking that up will say how things are meant to be and that's what will happen, or there might be a different regime for new buildings, as opposed to existing buildings. But in practical terms we don't think that it's fair to say that the presence of an unjustifiable hardship clause in a standard renders that standard lacking in content or effect. You know, the bulk of transport providers around the country are implementing the standards as they read on their face, or doing their best to, both in terms of what they are trying to do and in terms of how fast they are trying to do it.

There isn't, in practice, an effect of people sitting back and saying, "Yes, but we could always plead unjustifiable hardship, so we're not going to do anything." I think if you step away from the conceptual - the theory of unjustifiable hardship and actually go to where it has been interpreted, there aren't too many examples of where it has been interpreted in a way which would really seriously impact on people with disabilities. You know, in Scott v Telstra it was found that the decision to provide people who were deaf with TTYs was hard, but not unjustifiably hard. In Finney v Hills Grammar School there was an impost, a financial impost, on the school, but it was not viewed as an unjustifiably hard impost. In McGuire v SOCOG, you know, there was an expectation that SOCOG would alter its web site.

Even in Cooper v Coffs Harbour Cinemas, where there was a small business on tight financial constraints doing some fairly major renovations to cinemas, the agreement that came out of that decision recognised the unjustifiable hardship, but said, "Here is a way through it, and you need to do this over X period of years." So I don't think there are too many cases where the unjustifiable hardship has been used to seriously reduce the impact of the DDA, when you go to the practical case law.

MRS OWENS: While we're on unjustifiable hardship, was there any good reason for not specifically applying an unjustifiable hardship clause in education post-enrolment, or was that just an oversight?

MR INNES: We think it was an oversight, and that's why the proposal is to rectify it in the standard, because we just think it was a drafting error.

MS McKENZIE: And you think you could do that?

MR MASON: Yes.

MR INNES: Yes, we do.

MRS OWENS: Why not fix it in the legislation as well? I mean, we could recommend that.

MR INNES: That's an option, and the government may choose to do that, but it's the commission's view that the standard could do it on its own. If the government decides to take the safe course and amend the legislation, then so be it.

MR MASON: Certainly some people in the community that we have spoken to have taken the view that it's preferable to do it in the standard as part of a package, that in return for accepting an expansion of unjustifiable hardship that they will get better definition of rights across the board, whereas if you just amend the act to expand unjustifiable hardship by itself then people might say, "Well, what have we got out of that?" on the disability side of the equation.

MRS OWENS: Just looking a bit unbalanced.

MR INNES: Yes, and the representatives of the disability field, the DDA standards project, certainly used that as a trading item and have been prepared, as part of the negotiations, and they have been fairly public about it, to trade off the extension of unjustifiable hardship for greater definition in the education standard. But, as David said, we are concerned that one might happen without the other if the act was amended.

MR MASON: But, no, we don't think there was any in-principle decision when the act was going through that hardship ought only to apply at enrolment stage. It frankly - and you could argue, I think, that it would have been a counterproductive decision on principle if there had been one, because it gives an incentive for people to put up the fence, rather than admit the student and then have the student as then a member of whatever educational community you're talking about where adjustments

may be actually more likely to occur, firstly because people develop some sense of obligation to each other and secondly you know what some of the needs and possibilities might be better when you're actually dealing with someone that you know, rather than as an abstract object of fear, suspicion and all of that.

MR INNES: And when they did occur they would be more likely to be positive, because there would be more likely to be input from the person with the disability or their family. Harassment, where we think further definition may be useful and where submissions raise some interesting possibilities for broader coverage, particularly the Queensland Anti-Discrimination Commission's submission, where they have some experiencing of administering that sort of legislation. Requests for information, where we think the existing provision needs revision. There are some interesting comments on that in our second submission, flowing from other people that have flagged issues.

I think I mentioned earlier the objects of the DDA, and we think that the object of eliminating discrimination could be supplemented with a more positive equality object and where we note the equality before the law objective is not broadly matched by the substantive provisions of the act. I can't remember whether we talked about that or whether I made, or David just made, a brief reference to that.

MRS OWENS: You did make reference to it in your initial submission, and you said there had been some proposals at the time of the drafting of the act to go further - - -

MR INNES: Yes.

MRS OWENS: - - - and that those parts of the bill got taken out at some stage.

MR MASON: Yes. My recollection of the process was that the bill contained an equivalent of section 10 of the Racial Discrimination Act, which equalises otherwise unequal laws. But that was taken out because it was realised that to just have the DDA go through with that provision as it stood - or in precisely the same terms as the RDA provision - would risk knocking over all of the guardianship laws and all of the mental health laws and a number of other things, without having had any process of what should happen after that.

Now, it may have been better if there had been some sort of timetabled review process for considering the impact of such a provision, with a view to bringing one in down the track, with some appropriate exceptions to preserve those things that ought to be preserved. But that didn't happen. That provision just dropped off the table, and to a degree I think that left the "equality before the law" objective of the act as a bit of an orphan objective. Graeme, I don't know if you agree - - -

MR INNES: Yes, I agree with that.

MRS OWENS: Are you happy for it to remain an orphan, or would you like it to be adopted? Do you want something to happen in the act?

MR MASON: Well, I suppose following from that - from what David said - we think it would be worthwhile embarking on a process which considered those issues, because it would need to be done in a considered way. The reason for it being taken off the table I think at the time was a valid one. I guess what we're saying is now that we would like to see it put back on the table and some process developed to work through those fears.

MR INNES: The other point there though is that just having an equivalent of section 10 of the Racial Discrimination Act by itself isn't going to be enough to deliver equality before the law. That would take you to unequal provisions of laws, but doesn't do anything about inequality in the justice system, which is where probably more issues have been raised by people, including in submissions in this process.

I'm certainly not sure what mechanisms would be appropriate within the DDA to address those issues. I don't think it works conceptually to try and make discrimination by courts unlawful. Constitutionally, I'm not sure how you would do that within the sort of discrimination law that we have, since, amongst other things, judges are immune from civil suit. You know, it just doesn't hang. You would need to have - - -

MS McKENZIE: You would have to make perhaps the state liable, and then you've got another set of problems.

MR MASON: That's right.

MR INNES: Yes, there would be quite a few. So in other words, just slotting something straight into - another area into the existing model of discrimination law might make us all feel like we've done something about the issues, but it wouldn't necessarily be a terribly effective something.

MS McKENZIE: It's something that would have to be thought through, but there may be a possibility of looking at it as - access to justice as being a service provided. I mean, you're looking at - even like deemed service, provided by the Commonwealth - let's forget about state for the moment, because that's difficult.

MR INNES: We have had some complaints about aspects of the justice system.

MRS OWENS: Like getting access to courtrooms.

MR INNES: Yes, that's right, some of the access to premises aspects, certainly. In the corrections system there's been some complaints about physical access issues and also some access to some of the services provided in the course of the corrections system, in terms of education and so on; only a small number, but those have been there.

MS McKENZIE: That might be one way of addressing at least accessible venues and procedures.

MR INNES: Yes.

MR MASON: I think some of the proposals people have been putting forward for further development of action plans by government agencies might have more potential in this area actually.

MR INNES: And making the lodgment of those compulsory, either under this legislation or, as we mentioned, the way that two state governments have done, by making it a requirement of their disability services legislation. So there's a number of ways to drive that process.

MRS OWENS: We might come back to action plans, but while we're still talking about the objects of the act, you talk about having some sort of equality objective. Have you thought about what that would look like, in your second submission? Can you give me some ideas on that?

MR MASON: We haven't drafted one, no.

MS McKENZIE: No, we don't expect it, but just some sort of broad ideas of - - -

MRS OWENS: I'm just wondering about linking the equality objective to what I think you might come back to talking about a little bit later, affirmative action; what the implications of an equality objective have for your views on affirmative action. But we can come back to that.

MR MASON: I think the point we're making there is that in the end eliminating discrimination is itself only a means to an end as well, and the end is a more equal and inclusive and participatory society. Some of the things that prevent equality and participation people can readily conceive of as discrimination, and some of the things which the act still defines as discrimination are harder for people perhaps to get their heads around as being discriminatory.

It's not always obvious to people that just the way things are - the way buildings are, the way communication systems are, or whatever, involves discrimination, whereas if they think about it for a minute they might at least be able to see, "Oh, yes, but it does stop people having access" or "it stops participation, but there's no-one discriminating here. Where's the discriminator?" That's what we were talking about there, about something that just brings that element out, about what are we trying to achieve here, what sort of society are we trying to achieve.

MRS OWENS: It might help that indirect discrimination.

MR MASON: That's right, and also to make the point that it isn't a matter only of addressing discrete identifiable individual instances of discrimination, that we are talking about legislation here that does have very large-scale ambitions and objectives in terms of social change.

MR INNES: Effectiveness in achieving the objects of the legislation is the next thing we've talked about, where we note the lack of objective benchmarks in many areas, and relates to some comments or some discussion which took place this morning that I heard, but where we point to some evidence in the last 10 years of experience and take you to the report we've released, and I know you're aware of that.

Relationships between the DDA and other laws, where we think there are possibilities for use of the prescribed laws provision and standards development - we've probably covered that. Relations with state anti-discrimination regimes, where in brief we don't see overlapping jurisdiction as a major problem, except for some issues in relation to standards and exemptions, and that's basically where there aren't mechanisms in states and territories to deal with the introduction of standards. We have one, and a second one has been announced last Friday, and a third one is well under way.

So whilst that third one, the Access to Premises one, proposes a way forward in that regard, perhaps there needs to be a more developed mechanism in that respect, and we've raised that with the Commonwealth attorney-general and I think it's been on the discussion paper for SCAG, so it's not a new idea. In relation to exemptions - where I suppose we have a concern about the different exemption mechanisms - and the ORTA decision that we made is an example where different decisions get made in different jurisdictions - there were consultations in that process, but in the end there are independent administrative and judicial functions being performed, and you can't always guarantee that you'll get the same result.

MS McKENZIE: One of the submissions, to my recollection, made by the

Queensland Anti-Discrimination Commission was about the relationship between standards, and what the commission saw as benefits that had been achieved because of the Cox decision in Queensland, which they thought might finish up to be a bit higher than the standard that might eventually come in. Their concern was that ultimately if a premises standard came in that gave a slightly lower benefit, if you like, than they saw Cox as giving, then ultimately they would lose the higher ground represented by Cox.

MR INNES: The trade-off that's always there with standards is - I mean, that is, I suppose, a risk, although I have to say I don't see it as a high risk, because the disability sector is negotiating with the knowledge of those decisions, and is unlikely, unless really pressed, to negotiate away things that they've already achieved; so I don't think that's a high risk.

But the trade-off, what you get with standards, is clarity and certainty for everyone, but you also, I think, get a far more across-the-board application of what is the standard than you do when you're looking at complaint-based legislation, where someone has to lodge a complaint otherwise the unlawfulness can continue on for however long. I think when you balance those things - put those things in scales, it's pretty clear which way the weight falls, and it's in favour of standards.

MR MASON: On the detail of the Access to Premises Standard, certainly we, as well as the disability sector people, and the people all around the table, have been well aware of the principles coming out of the Cox case, and the need to, as far as possible, implement full equality of access, not just some access. The way that's shaping up at the moment, I feel quite confident in saying that we're not looking at a diminution of rights achieved within discrimination law in that case.

But I would like to emphasise, what Graeme is saying is that so many submissions make the point that it's burdensome on people to have to slog away through complaint processes to achieve access instance by instance. Well, the way to deal with that on access to premises is to have the mainstream building law regime do the work instead. That's what the standards process is for. At the end of the day people have to choose, do they want to put their money where their mouths are, really. If you want to not have to rely on DDA complaints, then you have to have mainstream regimes performing the work. There are other ways of doing that than standards, but on the Access to Premises one you're talking about the standards process.

Frankly, the same is true on public transport. People can have a theoretical right to complain about buses not being accessible now, and they can see where that gets them, or they can have a timetable process wherein the things are appearing on the streets. I mean, yes, the public transport standards have taken away some

complaint-based rights. That was the trade-off. In return, people actually getting accessible public transport instead of just getting to make the same complaint over and over again, with mixed results.

The community, not unanimously, but pretty broadly, took that decision. People who had some experience of success through the complaint process, as well as some experience of lack of success, leveraged the existing rights they had within discrimination law, into some rights of broader application and reality, and we supported and encouraged them in taking that decision, because we thought it was the right decision as well.

MR INNES: Disability standards is the next place where we go, where we support standards being able to be made in any of the areas covered by the DDA, without presupposing that standards will always be the best way forward on any particular issue. David has alluded to that. We think there are other ways of using the exemptions power and prescribing laws, and of getting industry to develop voluntary codes. The banking industry and the voluntary banking standards are the classic example of that. That was a much faster process than the DDA standards process has been.

It is our intention to encourage industries - not just the banking industry - to, in consultation with people with disabilities, develop such codes and then seek to give them some legal force by applying for exemptions based on them, or using the act in other ways, because we're persuaded that - for the same reasons as David has just set out - that provides a systemic solution to what are often systemic problems.

MRS OWENS: Is this the right time to ask you what you think about people's suggestions about greater enforcement of standards and a possible role for HREOC in enforcing standards?

MR INNES: I think we can talk about that. I mean, we have - I suppose there are two issues there, aren't there? The first is it's probably impossible for us to enforce standards with existing resources. You can see that line flows through our submission and, as you commented earlier this morning, resourcing and resources are an issue that's come up a lot before the inquiry. I'm not surprised by that. The other issue is that maybe there's some benefit in having these concepts mainstream, so that standards are enforced.

For instance transport standards are enforced by the government departments administering transport, building standards are enforced through the Building Code, so that you're actually not reinforcing the "disability is difference" aspect but rather reinforcing the universal design principles in society and having those chunks of society who are best qualified to judge on those issues carry them out, provided

obviously that it's appropriate and doesn't discriminate against people with disabilities.

MR MASON: I think that we're not averse to saying from time to time that we ought to have more resources and more power. We don't think that's the answer to everything in this area. If discrimination law is only administered and implemented by a specialist discrimination agency, then it's not being implemented. You can't achieve building access across Australia by having - and I think some submissions did go close to this - by saying that HREOC should be out inspecting ramp slopes. No. No, local government does that. Other agencies across Australia on the ground do that.

We ought to be there as the mechanism to make sure that other systems perform their part of the work, otherwise we'll have some tiny spots of elimination of discrimination here and there of what an agency our size and our location and expertise can do. We shouldn't be the primary regulator of disability access in the telecommunications system. The telecommunications regulators should be doing that in the telecommunications. When I say that, I don't necessarily mean just pure regulation. That includes all the self-regulation and co-regulation mechanisms that are around. The same is true for transport, that rather than us or any specialist discrimination agency taking the primary role, it should be there as back-up and to ensure that other systems do their part of the work.

Transport departments should be incorporating and are incorporating compliance with the transport standards in the contracts they have with private operators. There could, you know, be improved transparency in those processes perhaps but to say that there should be a super-regulator of disability access issues and it should be us just misconceives the nature of effective regulation.

MR INNES: The other point I'd make, Cate, to go back to the question that you raised earlier, is I can't think of anything that would be more likely to get people's backs up than for the Human Rights Commission to be telling local government how they should be dealing with ramp slopes or bus operators what they should be doing in terms of accessibility of buses. It's far more likely to be acceptable if it's made part of the mainstream web of community activity and just built into that fabric.

MRS OWENS: Just think of all the other skills you'd have to develop, Graeme. You'd have to go out and be retrained I think.

MR MASON: We do our best as it is.

MR INNES: I mean, we're not into riding our jobs for life, though.

MS McKENZIE: Several lives at that rate.

MR INNES: Yes. Both have a view of getting to a beach somewhere at some stage and relaxing a bit.

MRS OWENS: Don't we all?

MR MASON: But more seriously, a lot of the work that we're doing at the moment is on access issues, broadly described, physical access and communications access, and we've been concentrating on that because we can see effective prospects for achieving progress by getting better specifications of what access means and how it should be implemented, put into legislative form and into the jobs of other agencies. But we're very well aware that there are many more issues of discrimination than that which are harder to get to. You know, we would like to be in a position where we're through some of those agendas on access to premises, transport and preferably communications access as well.

Our job on those is, we hope - at some point will be largely done, so that we can focus more attention on issues that are harder to turn into systems and standards: all of the issues that people have raised about the experience of people with intellectual disabilities and the justice system or a whole range of issues about people in institutional accommodation and related situations like that. If we're off inspecting ramp slopes, we're not doing that.

MRS OWENS: We're not suggesting you should do that, I have to say, but just while you touched on the transport departments and including the aspects of the standards in their contractual arrangements, does HREOC talk to the transport departments and educate the departments about the standards and so on?

MR MASON: We've certainly been talking with them but I think if anyone is reading the transcript they might find it a bit patronising for us to say that we're educating the transport departments about the standards, because the transport sector largely wrote the standards. You know, we participated but they did emerge from processes between transport regulators, transport providers and transport consumers. That was the way that process went. And the access to premises process is similar, I think it's fair to say.

MR INNES: I agree with that but there is an Accessible Public Transport National Advisory Committee, which has been established since the standards were passed last October. I mean, we are only talking about standards that came into effect last October, but I have to say as far as the public transport providers are concerned, they came into effect a long time before that because they've been being implemented since well before last October when they actually came into law. So industry has, in

general, adopted these processes. Of course, there are exceptions to that but, you know, in general in lots of places we're hitting the five-year compliance level now, less than nine months after the standards were enacted. But there is the APTNAC which meets regularly and of which we are a member which is addressing issues in terms of the implementation of the standards and that's an educative process for all of us in terms of working on standards implementation and working on those issues.

MRS OWENS: Thank you.

MR INNES: If we're done on standards for the minute - no doubt we'll come back to them.

MRS OWENS: We could have talked about standards all day, Graeme.

MS McKENZIE: But we'll talk about action plans. Is that what we're doing next?

MR INNES: Yes, where we'd support consideration of mandatory action plan requirements at least for government. We can see some advantages in that.

MS McKENZIE: And government-funded agencies, procurers or purchasers?

MR INNES: Well, we also talk about regulation - is it 503? - the US regulation which relates to procurement and the advantages of that sort of regulation in terms of this area. You might do that through an action plan regime or you might do it through some other regime similar to the US regime, but certainly the Americans have made it patently clear that the way to change, to address the issue of access to products and those sorts of things is for government contracts to require it, because they're just such a big buyer. In some respects, whether we did that or not here, it's going to flow through anyway because of our market size as compared to the US market size.

MR MASON: Just as a point that hangs off that one, we think that there's an important point in a number of areas where access is covered by requirements overseas that we should be having parallel access requirements here to make sure that we don't get substandard equipment or systems dumped on us. Discrimination law as an anti-dumping regime is something that probably hasn't had a lot of discussion but we think that's quite a substantial point in some areas like, say, telecommunications.

MR INNES: Yes.

MRS OWENS: That's a good point. We haven't even thought about that one.

MS McKENZIE: No. That's one that hasn't been raised.

MRS OWENS: But with action plans, I mean, there's been quite a few people have said not just that they be mandatory but that HREOC - there's more roles for HREOC here - should be helping agencies, organisations, with how to write their plans and then should be monitoring those plans and possibly linking those plans to - I think you already do this, to decisions about whether they - in the context of conciliation, so do you want to do more on action plans?

MR INNES: Look, action plans in terms of a factor for unjustifiable hardship has always been there. There haven't been many cases where it's been a factor although it may be that there have been more conciliated complaints where that's been a factor. I'm not in a position to comment on that.

MRS OWENS: What about temporary exemptions? Is there any link there?

MR INNES: I was going to come to that because in terms of educating organisations and assisting them on how to write action plans, we actually do quite a bit of that on an informal basis. We've released publications and there's material on our web site which does provide information on the development of action plans. We will often look at organisations' action plans and give feedback but with more resources we could do more of that. We think there is a role for the development of action plans and then using the temporary exemption power to give the action plans more force and we've been encouraging industries, mainly at the level of industry organisations rather than individual organisations, to consider that. So far we haven't had any applications for exemptions which seek to put forward their action plan as the exemption regime.

MR MASON: Outside of transport.

MR INNES: Yes, sorry, outside of transport, yes. But that may well be something that occurs, but we certainly see that as one of a number of mechanisms that we could be using more broadly, or that organisations could be using more broadly, I should say.

MR MASON: In terms of monitoring of action plans, obviously to have us performing - you know, if you had even all government agencies having to provide action plans, let alone if you had larger private sector organisations as well, we would have to be resourced along the lines of the affirmative action agency to do even - I hope I'm not offending anyone here - even what was assessed as a reasonably minimal job of assessing the reports that they were getting in.

But I thought there were some quite interesting points in a couple of

submissions which tallied with our own ideas, that there is substantial possibility for monitoring and accountability of action plans now, in terms of community monitoring. The reason that we publish action plans when we receive them, whenever we can by means of putting them on our web site, is precisely for community accountability, so that people can see what service providers have said they're going to do and then can form their own views on whether they're doing it or not.

To make the same point as earlier, we don't think that more money and more power for us is the only way forward in this issue; that there are more possibilities for disability organisations to take up some of the running than they have. It's saying that's easy for us to say, in some ways - we have professional staff paid for the purpose in a way that lots of organisations don't, so I'm not seeking to be unfair to people or minimise the difficulties that a lot of organisations face. But, at the same time, some submissions from the disability sector organisations make the same point, that they have some of the running to do as well.

MS McKENZIE: There are also other methods they raise as well, inclusion in annual reports where that's relevant, inclusion in performance measures where, for example, that might be relevant for local government and things like that.

MR INNES: We encourage organisations to, if you like, mainstream their action plan - so have an action plan but make it part of your annual report process, or your key performance indicators process. That's certainly one of the threads that runs through all of our educational material.

MS McKENZIE: Where those matters are dealt with by legislation, if it's not made clear already in the legislation, it might be desirable to amend the legislation to make it clear. That's one of the things that should be included.

MR INNES: Sure.

MRS OWENS: There are action plans and action plans. We've got quite a nice one, I think, attached to the submission from the Leichhardt Council, who we are talking to next, and it looks to me - as an outsider - quite a good document and very thorough. It was done back in 1996 - or 97, was it? I'll be asking whether they have updated it at some stage and what has happened. We've also heard from others that there can be a degree of paper compliance. If you're a member of the community and you monitor, say, another local government that hasn't done such a good job with their action plan and say, "We're from an advocacy organisation and we don't think this plan is worth the paper it's written on," there's not really a great deal that they can do. I suppose they can vote the councillors out but the officers - there is not a lot they can do, is there?

MR MASON: Except that the purpose of an action plan is to eliminate discrimination. If there is still some discrimination around that isn't being eliminated or even being seriously addressed, then there is the possibility of the complaint process - not about the inadequacy of the action plan per se, but about the underlying discrimination; that people might choose their targets on an informed basis. That's another way around of looking at what we say about the action plan process; that a good action plan which is being implemented in good faith reduces the risk that organisations face, of having complaints made against them and succeeding. In general, the disability community is amazingly accommodating and forgiving if they think people are trying and their patience is often close to endless.

MR INNES: Absolutely.

MR MASON: But, on the other hand, if people think or can see some evidence that they're being conned, then that might lead them to take a different attitude.

MRS OWENS: So when you say mandatory at least for government, you mean all levels of government - just to clarify - state, local, as well as Commonwealth government?

MR MASON: Yes. But again, to pick up on what Graeme said, we wouldn't see that as only being something that could be achieved via the DDA and with all the reporting and monitoring centring on us. We think that the models of state government taking responsibility for their own operations is, as long as we have a federal system, quite a good idea.

MRS OWENS: We've got the model in Western Australia.

MR INNES: Yes, and it's working very effectively, in my view. I think that the requirement in the DSA for lodging of action plans has been quite a vehicle for change in Western Australia.

MRS OWENS: We were quite impressed with their model.

MS McKENZIE: That's what we've heard, indeed.

MR MASON: It's not something that has to be legislative, either. You could have policy settings, whereby agency CEOs don't get their performance bonuses unless they've got a disability action plan with the following five key areas addressed in it, just by a government decision.

MR INNES: In the same way as other key areas are set down for governments and

CEOs to report on.

MRS OWENS: Yes.

MR INNES: South Australia has gone more that track with the policy, cabinet level decision. I don't know that we've got much more to say on action plans, unless you - - -

MRS OWENS: No, just keep moving.

MR INNES: Industry self-regulation, where we see potential for industry codes and procedures to take a greater role in achieving the objects of the DDA. I think we've commented on that a bit, but we would like to see a great deal more of that occurring and to see industry organisations doing that and then maybe using the exemption powers to gain some more protection. We haven't seen much of that. It's certainly an area we're thinking we might put some more resources into in the next little while.

MRS OWENS: Any ideas about where you go next? We talked about banking - - -

MR INNES: Sorry, about where?

MRS OWENS: Which other industry sectors this model could work well in.

MR MASON: We did get a discussion paper out last week on telecommunications and that's obviously an area of immense importance. There's a lot of knowledge on the issues within the industry as well as some consultative structures with experts in the disability sector there. It seems like the sort of industry that's got such a sophisticated range of mechanisms that it is hard to understand why the DDA or DDA complaints should have to be the principal mode of delivering on access issues. I'm not saying that on all issues the DDA is the main current thing in practice. I don't want to be disrespectful to all the people that are working in the industry, either, but that's clearly one where a more developed regime on disability access issues and some coordination of that regime with the DDA would, we think, be possible.

MS McKENZIE: Can I just go one step back for a second and ask: the range of discussions with the banking industry, which led to various changes, was that also backed by an exemption to recognise - - -

MR INNES: No, it hasn't been, although there's nothing to prevent that occurring, but at this stage, no, it's just a voluntary industry - - -

MS McKENZIE: Voluntary instrument?

MR MASON: Yes, but they were aware - when developing their industry code - that was one of the potential outcomes, that if particular banks or the banking sector more broadly felt they needed harder-edged legal protection for acting in accordance with the code they developed, then they could come and ask for that.

MR INNES: But to this point, no, that hasn't happened.

MR MASON: This might be jumping a little bit ahead, since I don't think they've got their written submission in yet, but it was interesting to see the comments that the Australian Chamber of Commerce and Industry made in the hearings in Canberra about their preference for in-house or local complaint resolution - privilege; I think that I'm presenting what they said correctly there - rather than matters having to come to an external agency like HREOC. It will be interesting to see how their thinking in that area develops, because you don't need legislative change to give effect to that sort of model if an industry body or an enterprise or group of enterprises came up with processes of their own that they think can deliver better outcomes in terms of achieving the objects of the act than we can. Then we'd love to talk to them.

MRS OWENS: The other example is the Investment and Financial Services Association's memorandum of understanding, which is another model again.

MR INNES: Yes, that's right.

MR MASON: That is a process towards further outcomes and that's still ongoing, but down the track, in terms of the policies and procedures that come out of that, it may be that that industry will want to look for some legal recognition of what they come up with - or they may not. They may take just a more sort of risk management approach if they think they've got a model that's working well, that will - amongst other things - if they've got complaint processes that they think will resolve matters appropriately, then they can just rely on those, including relying on the power that the president of HREOC has to terminate dealing with a complaint if it has already been adequately dealt with.

MS McKENZIE: Yes, there are - of course, there - - -

MR MASON: We're not saying everyone has to apply for an exemption, in other words. There are degrees of legal certainty that people may feel they need and they may feel happier with less than that.

MS McKENZIE: Yes, there are some points of qualification as well, I suppose; that the internal mechanisms, if they're established, have to be seen to be capable of

delivering a fair resolution.

MR MASON: That's right.

MR INNES: Absolutely, and that would be part of any review process which occurred prior to the granting of an exemption.

MS McKENZIE: Yes. Clearly also they would be part of the decision as to whether or not a matter has been dealt with in some other forum process.

MR INNES: Correct.

MR MASON: Yes, that's right. I suppose the only reason that we keep floating the exemption process in this area is to see whether people need some incentive to get them over the line into doing more of the work themselves and that was part of the way that things happened with transport providers; that South Australian and Western Australian authorities both wanted a period of protection while they engaged with the issues, to start with, and got on with their action plan processes. Once they were down the track a bit with that, then they decided that they didn't need the same degree of legal protection any more, because they were confident of the way that they were heading and they felt that they'd won some of the confidence of the disability sector in what they were doing as well.

MR INNES: Helen, to go back to a question you asked a few questions ago in terms of in what areas industry self-regulation might occur, our equivalent organisation in the UK have done quite a bit of work in the last 12 months or so on reducing guides for various service industries, which we think could easily be adapted to the Australian context and used as a sort of template for the development of these sorts of things, and we have been looking at whether we might embark on some more energetic activity in that area but it's very much in the formative stages, so we haven't nailed down particular areas that we might focus on.

MS McKENZIE: So they are a some sort of self-regulatory code.

MR INNES: They are guides for the service areas, but it wouldn't be difficult to turn them into a self-regulatory code. For instance, local government might be one area that we decided to go into in that respect.

MRS OWENS: That looks interesting. Maybe we'll come back to you on that and have a look at those.

MR INNES: Sure. We then go on to complaint processes, where we acknowledge concerns and limitations that have been set out in some of the submissions, but where

we think that many submissions underestimate the effect that complaints can have and have had in some cases. There are some very clear demonstrations of that probably right at the end of the spectrum: things like Scott v Telstra, Maguire v SOCOG, just to pick two - Finney v The Hills Grammar School - where an individual complaint has caused a major change. Also, the initial transport complaints which led to the exemptions that David has already talked about and then - you know, provided the momentum for the development of the transport standards.

MRS OWENS: We've had a huge response on this whole issue of complaints processes and the difficulties for individuals putting in complaints and the stress that's involved, potential costs, particularly if the complaint was to go right through to either the Federal Magistrates Service or the Federal Court. You've probably been reading the submissions and the transcript where this has been raised.

MR INNES: We have, yes.

MRS OWENS: And it's just coming up again and again and again. To me that indicates a real issue - but that is those people who are actually aware of their rights to do this in the first place, and I'd like to come back to that issue.

MS McKENZIE: That's another issue that's been raised many times.

MRS OWENS: But it really is this issue about relying on individuals to run these complaints which potentially could have much broader community-wide benefit and for some individuals it's extremely difficult. There are some individuals where it's almost impossible for them to even get to first base. I mean, consider somebody that is going through some mental trauma or somebody that's got an intellectual disability, for example. So people have come up with these solutions that HREOC go back to be able to initiate complaints, or that other organisations or advocacy groups should be able to initiate complaints on their behalf. So we're getting a lot of those sort of ideas.

MR MASON: If we could talk a bit about that: certainly we're interested in the continued examination of restoring a self-start complaint power, which previously was in the act and got taken out, although it never had been used. That said, I think we have to acknowledge that there are some serious issues to deal with there, at least at the level of perceptions about whether HREOC being both a mediator and a complainant is going to undermine people's confidence. I know that our complaints section has some strong concerns that would need to be addressed in that context, although from the policy perspective I guess it is fair to say Graeme and I personally both think that it would be a useful capacity to have.

It still leaves you with issues of how are we going to find out about issues if

people don't bring them to us somehow - whether it is as a formal complaint or however. It comes back to: how broad can the reach of one relatively small agency be? How are we going to know that someone's rights as a person with an intellectual disability in institutional accommodation aren't being respected if we have a complaint power any better than we do now, unless people bring forward those issues? We wouldn't see it as the answer to everything, in other words.

We think that the limitations and demands of complaint processes are the major reason why the act contains more systemic mechanisms in terms of standards, particularly to reduce the need for people to have to take all the running themselves. We have been a bit concerned about some of the emphasis that is coming out in submissions; that a number of organisations seem to go pretty close to saying that all you can have is individuals complaining on their own behalf. Given the amount of energy and time that we - and everyone in HREOC - put into trying to provide education and information on the processes available under the act, that's a fairly major concern because organisations and advocates can lodge complaints on behalf of people aggrieved by discrimination, whether that's on behalf of an individual or whether it's on behalf of a group of individuals or a class. A number of better known complaints under the act have been of that sort: Scott v Telstra also included Disabled Peoples International Australia v Telstra. There was a representative organisation in there alongside Mr Scott. There are quite a few.

MRS OWENS: But Mr Scott still had to be there.

MR MASON: He started off, but someone could have lodged a complaint purely on his behalf - and in fact they could have lodged it without asking him. The complaint would have had to have been discontinued if, and only if, the decision-maker at the time thought that the person on whose behalf the complaint was being made didn't want it made. You don't have to be positively satisfied that the representative has instructions and authority to act. It's the other way around: you go ahead, unless it appears that the person or people on whose behalf the complaint is being made don't want it to go ahead.

These issues were thought of when we were putting the act together and, not to minimise again the difficulties that underresourced organisations face, but some submissions really seem to be arguing for powers to be put into the act - which are already there - or for additional powers to make complaints to be put in when ones that are already there would seem reasonably equally applicable. I'm not saying that to be dismissive. Clearly we have some hard thinking to do about how can we ensure that people are accurately aware of the capacities that they have. I don't say it's hard thinking it, because we have been doing quite a lot for quite a long time in the area. But obviously that isn't being as effective as we would like, judging by some of the submissions we have seen.

MR INNES: But some of the matters where there have been public inquiries - for instance, the caption movies matters - have been complaints brought or which have involved peak organisations in the disability field effectively running complaints on behalf of their constituents. Sure, there have been some individual complainants in there as well, but peaks have been running those and running them very effectively.

MR MASON: I suppose the only other thing I'd like to say on the complaints area at the moment is we recognise that costs issues are a real concern for a lot of people, but we think it's useful to emphasise that you're talking about a rather small minority of cases that get to the stage of going to the courts where that becomes an issue. Far more complaints are resolved at conciliation stage where costs aren't an issue - than those that get to court. We would be concerned if people were being deterred from at least trying and embarking on the process because of what might happen down the track when they can always decide, "Well, the Federal Court is not for me because of those risks," but at least give it a go. The survey work we have done thus far doesn't show that the conciliation rate has gone down since the change to the costs jurisdiction for hearings in the Federal Court. We're still getting as good or better results than we had before.

MS McKENZIE: Or that the number of complaints lodged is dropping,

MR INNES: No, it hasn't.

MR MASON: I don't think it's - - -

MS McKENZIE: Very recent. I realise you may not have the figure.

MR MASON: I think people can be misled by looking at complaint numbers. Some agencies in the area have perhaps been guilty in the past of presenting complaint numbers to tell whatever story they want to - "Complaint numbers are going up; this proves there's more discrimination out there, or it proves that we're doing a better job at getting the message out." You can present numbers in a number of ways. That's what I'm saying.

MRS OWENS: Even with your conciliation rates - that doesn't necessarily tell us very much either because they might have been going to be much higher at this point; you don't know the counter factual.

MR MASON: You don't know what the input are.

MR INNES: You have to be careful to not draw conclusions, that's right.

MR MASON: Sure, yes, that's true.

MR INNES: I get concerned at the costs issue. Whilst it can't be dismissed it gets taken right out of proportion, particularly once a complaint is terminated it's up to the individual to initiate proceedings in the Federal Court, so you've got absolute ultimate control about whether you take the risk of costs.

MS McKENZIE: It can't be ignored though because it is a second very real step that you might want to - - -

MR MASON: No.

MR INNES: No. I'm not suggesting that it should be ignored. I just think it needs to be viewed in proportion.

MS McKENZIE: It has got to be put into perspective.

MR INNES: Yes, in perspective. That's what I'm trying to say, yes.

MRS OWENS: Some have also argued - and maybe this doesn't come under this although we are talking about complaints - but some argue that, say, the complaint is against a government department. They can wheel out the big guns even in the conciliation process and have solicitors there - the Australian Government Solicitor or whatever - and they're relying on either going on their own or maybe getting some legal advice. There are resource limitations for legal aid organisations as well, so there is a bit of an imbalance.

MR INNES: There is an imbalance, but there are also funded disability discrimination legal services throughout Australia and the role of those organisations is to act in these sorts of matters.

MRS OWENS: But aren't they underresourced?

MS McKENZIE: They all tell us that they are underresourced.

MRS OWENS: Yes. Sometimes they only have one or two people working there.

MR INNES: That's right.

MR MASON: They're small. If you put them together they have got more people than we have - that is one perspective.

MS McKENZIE: I don't know whether that helps. That's probably not the right

comparator.

MR MASON: No, probably not.

MS McKENZIE: It was a good try, though.

MR MASON: They do have limited resources, but they are there.

MR INNES: As we have said, we don't dismiss the concerns about the difficulty of pursuing complaints. We just think that - - -

MRS OWENS: You're thinking that it is overstated?

MR INNES: Yes.

MR MASON: We would be concerned if people formed an impression that the situation was so hopeless that it wasn't worth even trying because - - -

MR INNES: That's patently not the case because there is success after success.

MR MASON: - - - quite often people do get successful results and often with all sorts of personal stress that goes with it. Maurice Corcoran - we talked about that in his presentation in Adelaide.

MRS OWENS: Yes.

MR MASON: Maurice is a very experienced activist and advocate. I am sure he was telling the truth nonetheless when he talked about how stressful the process of going through the South Australian transport complaints was, but they won and they won on a big scale, too.

MRS OWENS: But he's a special individual that had the strength to get through that process. There are other people who would be far more vulnerable. I'm not suggesting he wasn't, but supposing you've got some terminal illness and you've been discriminated against - it's incredibly difficult going through it.

MR MASON: Sure.

MRS OWENS: We had another example in Adelaide with a woman who has metastatic breast cancer and who has gone through a process and has gone through you and I think it is now going to court. But it's enormously difficult for people to do that.

MR INNES: It is, and hence the need for things like advocacy organisations and support groups and lodging complaints jointly, and disability discrimination legal services - all those sorts of things. We don't for a minute suggest that they don't need to be there.

MR MASON: And as far as possible again for things to be dealt with so that it never comes to that because any legal process is going to be, in some senses, costly and difficult. It is fair to say that our processes are very much at the user-friendly end of the spectrum, but it is still a legal process of sorts and that is always going to be demanding on people. That's why obviously you want things dealt with as far as possible beforehand on a systems basis, so that it doesn't have to be a matter of individuals - - -

MR INNES: That's why there are other mechanisms in the act as well as the complaints mechanism - standards, exemptions, action plans, et cetera.

MS McKENZIE: Can I raise the matter about conciliation, as well: a number of the submissions have said it would be great if some of these currently confidential resolutions could become public, partly for use, if you like, almost as a future precedent and partly to show how successful in fact some solutions have been, particularly ones that have some systemic flavour.

MR MASON: Our colleague from complaint handling is actually here and we might ask - - -

MR INNES: He's actually here. I wonder whether we should ask him to the table?

MR MASON: Our view is that the number of complaints where the result has been completely confidential has been very small. I mean by that, ones where it's settled on terms not disclosed, including not disclosed to us. Where we're aware of what the settlement was and where it has any broader implications at all we do publish summaries at some level of what went on. If it's a matter of a money amount then we would tend to publish those on the conciliation register on site.

If it's a matter of systemic outcome then we publish those. We identify them and it's very encouraging to see people recommending that we should publish summaries of complaints and not only in the 10-year publication or annual reports. We do. We have. I have personally spent weeks going through suitcases full of files to squeeze those summaries out, precisely because often an individual matter will have more general applications and we think it is good for people to know about them. Maybe we need to think about other ways that we can get that information out there, but short of letterboxing everyone in Australia, I'm not sure exactly what more we could do than the sorts of publication that we are doing now.

MS McKENZIE: Basically what you are telling us is that enough information is published already as far as those conciliated resolutions are concerned.

MR MASON: I think the trick is getting public attention for it. Success stories in disability tend to not make mainstream newspaper headlines. Our former commissioner, Elizabeth Hastings, was fond of saying that the only way that someone with a disability can get attention in Australia is if they're being burnt to death or winning a Paralympic gold medal, preferably both at once.

MS McKENZIE: That's right.

MR INNES: We know how valuable and how much in demand that information is. That's why we published that 10-year guide in the form we did and we have had a lot of positive feedback since we did that. But that's not the only vehicle in which it is available. David is right - it's hard to get that information out there.

MRS OWENS: I suppose there is the prospect - I think somebody suggested this at one of our hearings as well - that some of that information could be targeted. If there was a case in a particular industry, that industry could be targeted to say - because people running small businesses aren't going to sit down and look at your web site. Maybe there is some way of getting the material out: "This has happened in this sort of company and maybe you had better think about this." Again, it takes resources. It is just yet another idea of something else to fill up your day so you can't go to the beach.

MR MASON: No, we're certainly interested in pursuing more possibilities for working with industry bodies. It's not something we haven't thought of and we've tried various avenues, some more successfully than others. In some industries, there's been more take-up than others but, as Graeme says, we're looking at having another go at a range of possibilities, in service provision areas particularly, recognising that information directly from us isn't always going to be the way to go. Through people's own networks is often more effective.

MR INNES: We regularly talk to industry and other similar bodies about complaint outcomes and complaint resources. I think that there's nothing like a successful complaint, with a solid damages award, to get people's attention and I think that the Maguire v SOCOG decision, since it came down, is the topic that I most get asked to speak about when I'm doing public presentations. You're right, there's a need to keep pushing the information out there.

The next point is information and education. We've probably talked about all of the things that are listed there, unless you've got further - - -

MRS OWENS: I'll just make a comment, and that is there are people out there that do know about the act and they do know about your commission and do know that they can make complaints, but there's an awful lot of people - we've been going around the countryside running disability forums and one of the questions we asked is, "Before we came along today, did you know about this act? Did you know that this process was available to you to make complaints?" and so on. Apart from one or two people each time, most people said no. There is a real challenge to get the word out there. This is often people with disabilities. We're not talking about employers or schools. There's another challenge there as well.

It's much broader than just letting people know about the outcome of conciliation. It's about letting people know that there is this act; that there's rights under this act. I think you did a wonderful job going around the countryside with the 10-year anniversary. How do we get to these people out in the community? These forums that we ran were in regional Victoria, and Cate can tell you about her trip to Alice Springs. There is an issue about a broader understanding.

MS McKENZIE: There are, I suppose, two issues: the one Helen has raised is the one really that was thrown up by the forums in Victoria and by some of the other people who've come and spoken at our hearings, and that one is just that they have no awareness that the act exists and have no idea that, when things happen to them which we would normally think were discriminatory things, they can make complaints under any piece of legislation.

The one that was thrown up in Alice Springs really concerned much more the remoteness of the communities and often questions of educational level and some of language - a whole series of compounding factors - plus the fact that often in remote communities there's little equipment. There are very few computers. They're used for purposes like medical purposes. They really can't be used for looking for other information. Post is difficult and services are difficult generally. That presents a quite different problem really for raising awareness of the act.

MR MASON: Some of these are issues that affect access to justice and government services much more broadly. How do you service a country this size and how do you reach everyone? If you can't get your issue into mainstream media discussion, then it's very difficult to see by what means you can reach pretty much everyone. The number of times that success stories on disability access and discrimination issues are going to make it into the papers and radios - we were certainly pleased with the amount of media coverage we got with the 10th anniversary exercise. We were pleased because we got some coverage, basically.

There have been a few successes in terms of high profile complaint outcomes,

as Graeme referred to, but you can't make the mainstream media be interested in your issue. You can't guarantee that. We do circulate information very regularly through disability networks, again recognising that doesn't mean that you're going to reach everyone through those because not everyone is connected to an organisation, but still we do put a lot of effort into providing the sector with details and up-to-date information on what we're doing.

The commissioner's report to the commission gets published on our web site every eight weeks and gets circulated to an opt-in mailing list that's got about 2000 individuals and organisations on it. If people want to know what we're doing and want to know what information we're providing about the act, there are those mechanisms there, recognising again that, yes, not everyone in the country is connected to high quality Internet access, but not everyone lives next door to an AGPS bookshop either and you do what you can. There are real issues about people in remote areas and how far you can effectively reach people. All I can say is that we put a lot of work into it, and we're always interested in more ideas about what more we can do.

MS McKENZIE: For what it's worth, the things that I took away with me from Alice Springs were how important radio was - many people may not have anything else, but somehow or other they do listen to radio, particularly the broadcaster Imparja - and also how important the grapevine was.

MR MASON: Yes.

MRS OWENS: We've had a bit of discussion in some of our other hearings about the potential for large-scale media campaigns - like the Quit campaign, Life Be In It and our AIDS campaigns - and I think we got mixed responses to that idea.

MR MASON: The first thing to say on those is that the scale of the task you're talking about - the comparison with things like the road safety campaigns is appropriate. That's the sort of resource you'd be looking at. There was a really good point made in one of the submissions on mental health issues - in terms not so much of when it's just of discrimination but of mental health issues more broadly - that community awareness and information was the equivalent for those issues of the provision of ramps and so on. I thought that was a really good comparison, because there's no way on earth that HREOC is ever going to have the resources to go and actually install a ramp everywhere that it's needed. There's no way on earth we're ever going to have the resources to deliver all of the community awareness and education on mental health issues, or on issues affecting any other particular disability grouping, to the scale that's needed.

That said, yes, more resources on information and awareness about disability

issues more generally, as well as about discrimination issues, would be a very useful thing. One of the things that we picked up - that is, one of the gaps in the scheme, and we've talked about this for a while now - is that we don't have in Australia accompanying the DDA the sort of package that the US government brought in when they introduced the legislation there, in terms of information provision on practical solutions to disability accommodation issues - the job of the accommodation network that they have there - and there's some more regional and local provision of advice on how to deal with particular adjustment and accommodation issues. There's really small bits and pieces of that sort of information here and provided often on a volunteer basis rather than any sort of coordinated government scheme. We certainly agree that more resources for information and awareness - and not just through us - would be a good thing.

MRS OWENS: Public inquiries?

MR INNES: Public inquiries? We think they've been an effective means for promoting awareness and compliance, while not being the appropriate or possible response to each and every issue. We could talk about some of the public inquiries that we've run, but you're probably aware of those. We've tried to run public inquiries where - what we need is systemic solutions to systemic problems, where the process can benefit from drawing in the relevant disability players - you know, the peak disability organisations - and the relevant industry players and trying to negotiate through a solution which addresses the problem - in the cases that we've run so far - on a national basis.

There's a paper which we wrote and delivered two or three years ago which sets out the basis on which we think we can conduct public inquiries, and it doesn't need amendment to the legislation. We've done so successfully on four or five occasions now.

MRS OWENS: How do you decide which areas to concentrate on, given your limited resources?

MR INNES: If we're talking about complaint based inquiries - which I sort of was, but I didn't actually make that completely clear - we have some criteria that are set out on the web site, which set out the basis on which we pick issues, but they're going to be systemic issues - issues sort of appropriate for the public rather than the private domain - which need systemic solutions. If I take the caption movies one for a minute, the original complaint was lodged by John Byrne against a cinema in Perth. That wasn't going to solve that problem, because the problem was about having the captions on the movies and all the cinema does is play the movies that it orders and gets.

MRS OWENS: Yes.

MR INNES: We look at those sorts of issues. We would like to have run more, but we've had to make decisions which are resource driven as well. Those are the ways that we try and focus. For other sorts of inquiries, the attorney can ask us to conduct inquiries and, obviously, we don't decide then. We just do what we're told. Also, we can initiate inquiries which aren't complaint based inquiries and, again, we try to find issues where drawing out and airing the issues and looking for ways forward will actually progress towards change, towards the elimination of discrimination. We try not to get into inquiries which just end up in a report, but we actually try and get outcomes.

The voluntary banking standards are an example of that, because they were an outcome of the inquiry that we conducted into electronic commerce for people with disabilities and older Australians. As a result of that inquiry, we negotiated with the banking sector and people with disabilities and the voluntary banking standards flowed from that. So we try and make them outcomes focused.

MR MASON: One of the key things about choosing whether to apply a public inquiry approach, in the context of a complaint is that the parties have to be prepared to come with you.

MR INNES: Yes. I'm sorry, I just assumed - - -

MR MASON: The complainant certainly has to, because otherwise you haven't got a complaint to inquire into. The respondent really needs to be prepared to cooperate in the process as well, because otherwise all you're doing is potentially damaging the prospects of resolving a complaint which you might have been able to resolve by the more standard means. We're always aware that there are two parts to this. To the extent that you're trying to achieve broad objects, you're also dealing with the individual rights that people have and you can't discount those in the pursuit of larger objectives either.

MS McKENZIE: Can I raise a question of cooperative arrangements between HREOC and the state commissions? You made some comment about that in your submission, but do you want to add to it? You could always answer the question by saying no.

MR MASON: I think we have said a bit about that in our initial submission. Ultimately, whether governments choose to enter into cooperative arrangements in this area is up to them, but our view is that to go back to having cooperative arrangements, either of the sort for handling federal complaints through state agencies that existed in some states or, for that matter, the arrangements which were

in place certainly in Queensland - I think that was probably the only one - of the reverse process, of the federal agency handling state complaints. We don't think that a move back to those arrangements would be justified at this point.

MS McKENZIE: I can see some mileage to be gained in informal arrangements which help to forward the education function.

MR MASON: Sure. There's certainly, we think, more potential for cooperation on education and information efforts. We do talk, you know, quite regularly to our state and territory sister agencies on those issues and on a range of other issues as well. The legal and complaints officers have got networks that, you know, talk to each other very regularly and meet reasonably regularly as well. There's a lot of information exchange that goes on at those levels. There has been a lot of discussion about potential for coordinated or joint activity in the information and education areas.

There has been some small-scale formal arrangements, I guess, in terms of payments of some of our state sisters to provide some of the shopfront facility for our information as well. But a lot of it does work informally. We all look at what each other are doing all the time and encourage each other to use or pinch or pick up whichever bits of each other's work are useful. I don't think any of us are operating in isolation from each other.

MR INNES: Two other things that I'd add to what David said: firstly there are regular meetings of state and Commonwealth commissions and we have, over the last few years, briefed state commissioners on various issues relevant to our area of the commission's work, the standards having been a major one for discussion over the last few years. They occur about every three or four months, I think, those meetings. Also the 10th anniversary forums that we ran around the country were co-hosted by the relevant equal opportunity authority in each state and territory, so there's quite a deal of information cooperation in that respect. What that did was drew in our lists of contacts and people for the state organisations and gave them a platform as well to talk about issues that are relevant to people with disabilities that they're dealing with. That was very effective, I think. We got very positive feedback from both the commissions and from individuals who participated, that we'd done that.

MRS OWENS: I think a link, a related issue, is the issue of your location. Again, that's been raised with us by quite a few people who have said that they've opted to use the state system because it's just more, at least geographically, accessible. That doesn't apply necessarily to people living in remote areas but I think there was some concern that you are based in Sydney and I think there's a 1300 number and an 1800 number which some people use but some people weren't aware of.

MR INNES: Yes.

MRS OWENS: So there is an issue just about where you're located and as far as we understand it, a number of people have said that your comparative advantage, really, is in dealing with Commonwealth government complaints because the state systems can't do so and to fill in the gaps such as in South Australia where the coverage of their act is narrower. So we're just interested in this issue of how you deal with this - the accessibility one. One option is for you to move to Canberra and just deal with the Commonwealth complaints.

MR MASON: It would be equally inaccessible to everyone there.

MRS OWENS: That mucks up the beach totally. But another option would be for you to have a presence in each state, have conciliators in each state.

MR INNES: Again, it might be worthwhile for Karen to make some comments. But I know that the complaints area make very strenuous efforts to ensure as much of a local presence as they can. Conciliators travel to conciliate complaints but also to do community awareness and community education activities and we have the 1800 number. We have the web site. We have the capacity for people to email complaints, lodge complaints electronically as well as by paper mail. So, again, within the resources that we have, we make our best efforts to address those issues.

I guess location is a factor which people may take into account in the lodging of complaints but I'm not sure how relevant it is really in the sense that if you can telephone or write to the person conciliating the complaint, and if the conciliation conference is held locally, I'm not sure how advantaged you are by there being a physical presence. So I wonder whether some of this is a perceptual issue as much as an issue in reality. I don't know whether David or Karen might want to add further to that.

MR MASON: I guess the experience has been that people do choose one or another jurisdiction for a variety of reasons. Some people may have a perception their state agency is more user friendly than we are because it's local. Some people in some states have at times had a very clear perception that we are far more user friendly than their state agency and sometimes that's been because of objective factors like comparative handling times where, contrary to the impression you might have got in a number of submissions, we generally do rather better in terms of getting to complaints and getting them dealt with than most of our sisters do. Sometimes it has been because of other issues of relationships. Sometimes local relationships are positive and encouraging and sometimes local communities might have less positive interactions than they do with us.

I think it's just one of the features of a situation where people have got a choice of places to go, that they'll make those choices for different reasons. Some people certainly seem to have a view that if it's a large-scale systemic or national issue, or issue with national implications, then they ought to come to us whether or not there's any legal difference in the available coverage and remedies. On the other hand, some people have some quite broad outcomes through using their state systems as well. We certainly wouldn't say that people always should come to us if they've got an issue that has broad implications. We're not claiming that.

To take up the point that you made, a presence in each capital city isn't a presence everywhere either. A couple of the state bodies have a couple of regional offices but unless you're a much more generalist part of the justice system, like the local courts, you can't be everywhere. If you want to have really local administration of anti-discrimination law around Australia, that's what you'd do. But if you want to have specialist administration, then it's not going to be physically everywhere. That wasn't a proposal from HREOC, by the way.

MRS OWENS: We were just thinking about Fitzroy Crossing for you, David.

MR INNES: The other factor is that what you have with HREOC is a commissioner and sort of a focused team on disability issues and what a number of our state organisations have is a need to cover a broad and disparate set of areas of discrimination and as a result we've probably got a lot more disability-specific resources available to people in terms of material, educational and other material that's available on our web site and in print, than a number of state - there's a whole lot of factors that people need to take into account in terms of assessing which agency they go to.

MS McKENZIE: What a number of submissions from the state commissions have said is exactly that; that because they have so many grounds to deal with, they have to spread themselves very thinly, comparatively speaking.

MR INNES: That's right. You know, we found that. That was one of the reasons we ran the 10th-anniversary forums together, because there was some real value in increasing the importance of disability issues in those state organisations. That's not a criticism of the state organisations. They've got a hard task to balance those.

MRS OWENS: Graeme, do you want to go back to your list, because we've almost finished the list?

MR INNES: That's just the list and then we get on to areas of the act.

MRS OWENS: You had future challenges.

MR INNES: We had future challenges.

MRS OWENS: New technologies.

MR INNES: Let's see.

MRS OWENS: Some of the other areas, we've sort of covered them really.

MR INNES: We have.

MS McKENZIE: A lot of the things we've dealt with, although not quite in the order that - - -

MR INNES: Yes, that's right, and that's fine. We've talked about procurement of material. That's quite an important issue. Then we go into particular areas of the act and they are probably another twice the thickness of notes on that than what I've already covered and we're not going to get to that this afternoon. We'd be happy to provide you with a second submission and to appear further if you wanted us to at a later stage.

MS McKENZIE: That's the most sensible way, I suspect, to deal with it. The sections on the changes to the act are - certainly the ones in the first submission are clearer but you're right. There needs to be another submission to flesh those out. That might be the easiest way.

MR INNES: We'll have that to you hopefully in the next week or so. I'd like to say this week but, you know. If there is a need for us to talk further, we're more than happy to do that.

MRS OWENS: Can I just put one thing on the agenda: it's an issue you've raised just really briefly on page 42 of your submission. You may not need to go into it now, but you talk about considering the role of parliament and government in scrutinising new laws and regulations for human rights impact and one possibility - I'm just quoting roughly from your submission - would be to have a human rights impact statement to cover the new legislative and regulatory proposals, comparable to RIS requirements.

Canadian government policy requires application of a disability lens, focusing on disability impact of all new policy and procurements. I was quite interested in just that throwaway line there. One other possibility would be to incorporate something like a human rights statement in the RIS itself. I haven't thought this

through but I just annotated that on my copy. I haven't thought it through but I'm just wondering about that as another approach.

MR INNES: Yes. The short answer is, yes, it would, I think.

MR MASON: Consistent with what we've said about mainstreaming, that's probably quite a good idea.

MRS OWENS: You're talking about mainstreaming. I think one of the issues you raised right at the beginning, which we never really came back to, was you were talking about competition using the same sort of model as competition policy. Again, another interesting issue that I'd like to explore further with you - again, I haven't thought about this issue - but we might like to come back and discuss that with you further or maybe tease that out in the second submission.

MS McKENZIE: Is there something about that in the second submission?

MR INNES: There is, in more detail than what we've said. On the Canadian lens stuff, I think there are some links on our web site to that.

MR MASON: Not specifically.

MR INNES: We might be able to get some more material on that, because one of the officers in our area actually worked in Canada for some time and we've got some good links into the Canadian commission, so if you're interested in that we could provide some more material.

MS McKENZIE: Yes, we would be.

MRS OWENS: The other issue we didn't discuss was that of affirmative action, which is another issue that's been raised in quite a few of the submissions. I think you were here this morning, Graeme, weren't you, when we had a brief discussion with the first participants on that?

MR INNES: Yes, I was.

MRS OWENS: I don't know whether HREOC has given that issue any consideration at all, or any detailed consideration.

MR MASON: I think a number of our state sister bodies pointed to employment equity provisions overseas, and we agree that some of those examples are worth a look. We're much less persuaded of the virtue of some of the European style quota approaches that a couple of other submissions have raised. We think that the branch

of affirmative action to think about is probably more the one familiar from other areas of Australian experience, in terms of reporting and policy development and those things, rather than hard-edged quotas, not least just on administrative grounds of what proportions are you going to talk about, just a raw number of people with a disability and, if so, how defined and how you ensure that you actually achieve anything for people experiencing greater degrees of disadvantage rather than people who - if you look at, say, the definitions of disability in the act, then because I'm sitting here wearing glasses, if someone is silly enough to discriminate against me because of it, then I'm in, but should I count towards a quota? I wouldn't have thought so.

MR INNES: We haven't seen too many examples or any examples of where quotas have worked. I was interested in your comments about information on some work in Germany. We're not across that so I suppose we'd be interested to hear more about that, but - - -

MRS OWENS: We've asked for a supplementary submission about that.

MR INNES: The UK system, which is the one that I'm aware of, I think patently hasn't worked. We'd be happy to hear different to that, or to hear other systems that have, but that's also why we've come to the view that David set out.

MS McKENZIE: My recollection about the submission about Germany was, in any case, that there were real problems with that also, that what people tended to do to fill their quota was pick the mildest forms of disability that they could - - -

MR INNES: Yes, that's right. That's what I understand occurs in the UK.

MS McKENZIE: Yes, exactly; that was unsuccessful for a similar reason.

MRS OWENS: I'm just going to quickly check and see if there was anything else, but I think that we've pretty well exhausted - we've run over a very broad landscape. There are many other questions we could ask, but you have I think picked up quite a few of the issues in this supplementary paper you gave us today.

MR INNES: Yes, and that's a summary, so that will be expanded on by the second submission.

MRS OWENS: Good, thank you. There will be plenty of other opportunities throughout the course of this inquiry to tease out some of these issues further, no doubt. I think we may have finished.

MS McKENZIE: It was a tremendous initial submission and really helpful for us

to have that extra information.

MRS OWENS: Is there anything else that we should have talked about?

MS McKENZIE: Is there something dreadful we've forgotten to mention?

MR INNES: I don't think so.

MR MASON: No, I'm sure we're going to have to continue to follow up as the inquiry goes forward. Having flagged a second submission on its way, I'm sure there will be a third one following.

MRS OWENS: There may be because when we put out our draft report you'll probably think we've done all sorts of things that you don't agree with.

MS McKENZIE: You'll want to respond.

MRS OWENS: And you may want to respond.

MR INNES: The parties may debate that stage as well, yes. I meant that we thought it was useful to give some responses to issues as people have been raising them.

MRS OWENS: Yes.

MR INNES: And obviously people are still coming in with submissions as well, and I suppose you could see it as a damning indictment, but we prefer to think that it shows a refreshing continued life in our thinking, or the act, that people are bringing forward things that we haven't thought about, or haven't thought about much in the last 10 years. So that's a useful process for us, too.

MR MASON: Yes, we value it.

MRS OWENS: I think you should be heartened by the number of people that are coming to our hearings and providing submissions.

MR MASON: We are.

MRS OWENS: Because they're taking an interest in this area.

MR MASON: Yes, we are very heartened by the number of submissions and the numbers of hearings - absolutely.

MRS OWENS: Okay, thank you very much.

MR MASON: A pleasure.

MRS OWENS: We'll break and resume a little later - 10 past 4.

MRS OWENS: The next participant this afternoon is Leichhardt Municipal Council. Welcome, and thank you for coming. I'm sorry we're running a little bit late. Could you each give your name and your position with the council for the transcript.

MR FITZPATRICK-BARR: My name is Justin Fitzpatrick-Barr. I'm acting assets manager at the moment. I'm responsible for installing and constructing a lot of the disability action plan and, as well, I'm active member on our disability committee and have been for the last three and a half years.

MS JOY: My name is Valerie Joy and I'm the aged and disability worker. I convene the access committee, the disability access committee of council.

MRS OWENS: Thank you. Thank you very much for your submission. As I said off transcript, it was really good to get a submission covering the issues that you've covered, and also to see a real live action plan. We look forward to having a talk about how that action plan is going. I'll hand over - I think it is to Valerie, is it, to just make a few introductory comments.

MS JOY: Thank you very much. Leichhardt Council was already very involved with access. We probably had the oldest access committee in New South Wales. However, it wasn't until something came along with teeth, like the Disability Discrimination Act, in 1992-93 that made it essential that public instrumentalities like councils should do something about it. However, we still actually weren't moving that fast.

I wasn't the disability worker at the time, but I was an employee of council, and I very well remember the time when this man brought a complaint against Leichhardt Council to HREOC that we had to produce an action plan to make our public buildings accessible. We had to do them within a particular time frame. I'll mention his name - it was Mark Bagshaw. He is a well-known person in disability and public life. That is the result - this document - which gives a plan in priority order of how we were going to make our buildings accessible.

I'll mention to this inquiry that the majority of our buildings were built in 1880 and thereabouts and the whole concept of access was not something that was really thought about, I would think, at all at that time. That was the beginning of it. We are really very grateful to the big stick of the complaint mechanism at that time from HREOC, and I understood that there was a threat that Leichhardt Council could be dismissed as a council, there was enough threat that everyone from the general manager - everyone had to cooperate and so that, I thought, was a very good thing.

MRS OWENS: Can I just ask: where was that threat or implied threat coming

from?

MS JOY: I understood that it was from HREOC, but I wasn't acting in this job at the time.

MS McKENZIE: Was there a conciliation? How did the complaint finish up? Do you know?

MS JOY: The conciliation was when Mark Bagshaw came back, after a year of this, and was satisfied that we were genuine in moving ahead with making our buildings accessible. We'd had a lot of expense. We had to put a lift into the council chambers - that was the big, big one - but we reorganised our customer service and basically just everything we owned and Mark Bagshaw was satisfied. It was just an informal meeting with staff that he withdrew his complaint at that point.

MRS OWENS: Was his complaint about access to a particular building, or was it related to - - -

MS JOY: Yes, to the council chambers. He was hoping to run for council. There were only steps and for a while they - if they saw Mark coming to the meeting, they would all set up quickly downstairs in the town hall and if they saw he wasn't arriving, they'd go back upstairs.

MRS OWENS: What happened if he arrived late?

MS JOY: Exactly. Exactly, yes. Councils - and I suppose anybody - don't really do something because it's socially just; they usually need a bit of a push.

MS McKENZIE: So did the original adoption of the plan, or the impetus to develop the plan - was there some unhappiness amongst council about the need to do that?

MS JOY: Very much. The general manager used to say to me thereafter, "I've never seen anybody walking up that ramp," and things like that. You know, "Why did we have to spend so much money in getting this all done?" That wasn't actually true. I'd seen a lot of people walking up that ramp.

MS McKENZIE: But did people eventually begin to accept and then feel proud about what had been achieved? Do you think that that attitude changed?

MS JOY: I don't know.

MR FITZPATRICK-BARR: I think what's been built in the town hall has actually

provided a service for a whole range of people. This particular person - I think my memory about that was a wheelchair - - -

MS JOY: Yes.

MR FITZPATRICK-BARR: But we also have members on the access committee who are aged and frail and find stairs difficult, so the action plan was the start of getting some things installed into the buildings, and as Valerie said, they were heritage buildings and they are very old and there is quite a large amount of money to be spent to install something like a lift. But what it has allowed for is complete access for anybody who even wants to attend, not necessarily to run for council, but just attend a council meeting.

I came on board in 1999 and it seemed that the action plan was well up and running and the story that I heard was that it was instigated by this particular person who really got the wheels in motion. Up until then there was an access committee, but it wasn't achieving its goals that it wanted to achieve, whereas the implementation of this action plan really spells it out in black and white. This is what we want to have done, these are the stages we'd like to do it in, the priorities and, from an asset manager's point of view, it really gives me a platform to work from in terms of budgeting. If there is funding made available we know then where to best utilise that money. I wasn't here when it all was initiated, but I came on board after it had started and I feel that it was something very valuable.

MS McKENZIE: Making buildings built in the 1880s accessible is not such an easy task. It's not like you're designing a modern building and can do it all fresh.

MS JOY: No.

MR FITZPATRICK-BARR: That's right. As an example, this particular lift in Leichhardt town hall was put in at a cost of around $380,000.

MS McKENZIE: Then?

MR FITZPATRICK-BARR: That's four or five years ago, yes. At that time that probably would have represented maybe 5 per cent of the total infrastructure budget for that year.

MRS OWENS: Was there some resistance from pockets of individuals about tampering with a heritage building? Did you run into those sort of problems?

MR FITZPATRICK-BARR: I wasn't there at the time.

MRS OWENS: It would be too hard, or you shouldn't do this because it's got heritage value.

MS JOY: Heritage is always brought up, but I haven't noticed it as much in this council as I have in previous - I've worked in local government a long time and it is sort of used like a stick, but I - - -

MRS OWENS: Or an excuse.

MS JOY: Or an excuse, and I do understand that this legislation is a stronger legislation than heritage. We've talked to groups of architects. Leichhardt Council has breakfasts with them and I spoke to them about the DDA and they are always very concerned about heritage, but I think we've also got a development control plan and if we hadn't had this, I don't think we could have led into this.

MRS OWENS: Do you want to describe what you're putting in, because - - -

MS JOY: A development control plan is telling other people how they're going to make their buildings accessible. I think if we hadn't had our own house in order or progressing towards that, we couldn't - well, maybe we could - - -

MS McKENZIE: Tell other people.

MS JOY: Maybe we could, but I don't think that we should be telling other people what to do.

MRS OWENS: No, you wouldn't have a lot of credibility, would you?

MS JOY: No. So I'm very grateful now because this was incorporated in 1998 and we're just updating it right now. Any buildings now - and there are a lot of change of use buildings, and this is in the private sector - having to comply now - "having to", which is beautiful.

MRS OWENS: You seem quite pleased.

MS JOY: Yes. The other point is that it is really expensive to do up an old building and people in the private sector have to do that, too. But some buildings are being built from scratch and it costs exactly the same amount, so it's really establishing a climate of access. It's a mental state that I hope people can get into, to start thinking access, so that it becomes something that's not even noticed; it's an environment that anyone can get around in; you don't have to ask permission - you know, "Will I be able to get in? Do I have to go in the side door?" It's just going to be quite straightforward eventually, if we keep going, as long as everything isn't

weakened at some point.

MRS OWENS: What would weaken it?

MS JOY: I'm a bit worried about HREOC and the lack of specialisation of the commissioners, because this came in when it was a stronger organisation, when there was a specific - Elizabeth Hastings was the commissioner for disability. I don't know all this, but it's just a sort of intuition that with fewer commissioners and not specialised, that we will not get people making this big push that is required to change to being an accessible organisation. I'm just talking of an intuition here, really.

MRS OWENS: The issue of specialisation of commissioners is not one that we will be looking at on this inquiry.

MS JOY: You're not addressing, no. Sure.

MRS OWENS: Because there's a bill before the House and we're not in a position to review that.

MS McKENZIE: More to the point, because it's - we've been asked to review the Disability Discrimination Act and we need to look at the complaints mechanism, because that's so closely related, but we haven't been asked to look at the Human Rights Commission Act as a whole.

MS JOY: No.

MS McKENZIE: And we'd need to because, of course, specialist commissioners relate not just to disability but to sex and race as well.

MS JOY: Sex, age, everything.

MS McKENZIE: And of course then there is the social justice commissioner.

MS JOY: Yes. I worry a little bit that it is complaint driven. There is an educative role, I believe, for HREOC and when do they fit it all in?

MRS OWENS: So you are worried about the resources that they've got?

MS JOY: The resources that they have. If they only depend on complaints, who is there educating people to make those complaints? You have to be very - and there is a bit of worry, too, which - I can't remember which year it came in, but at the time of Mark Bagshaw's complaint, he didn't have to pay anything. But I believe now if

you're appearing before a court, you may in fact end up having to wear the costs. I think that would be a disincentive to a person to carry through with a complaint.

MS McKENZIE: To go back to your plan, you've finished your stage 1 and 2 priorities already, haven't you?

MS JOY: Yes, basically.

MR FITZPATRICK-BARR: We've still got some priority 2s still outstanding.

MRS OWENS: Which ones are still to be done?

MR FITZPATRICK-BARR: There's about probably 12 pages of works to be undertaken. The funding that's made available each year by council - - -

MS McKENZIE: It's getting less?

MR FITZPATRICK-BARR: - - - it's limited in terms of what we can do, given the costs, given the heritage nature of our municipality. As time goes on, the actual funding is staying the same but the cost to get things done is increasing.

MS JOY: Is getting a lot higher.

MRS OWENS: So in the end what you can do becomes less.

MR FITZPATRICK-BARR: It does. It still gives me, from an asset manager's point of view, somewhere to work on. The fundings that I do get given, I can say, "What's still outstanding in that action plan? How about this year we do this, this and this," and likewise with Valerie. We've taken that to the disability committee, and they've reviewed it in terms of looking at the outstanding works still to be done, and they have made comment late last year on what they saw as priorities within those outstanding works. They've basically said the initial priorities are still the same priorities, so we're going to just keep going away with the priority 2s and then the last ones are the priority 3s.

MRS OWENS: To what extent is this action plan a live document? To what extent have you updated it? Have there been other priority 1s or 2s that have come along, that you've added later?

MS JOY: There are some things that aren't in there. But we're just working along - we haven't put them in the document, but we found one seniors centre wasn't - I don't know why - audited at the time. But we've got the sort of construct of the way to approach it - the toilets and the doorways and also things like hearing loops - so you

just include the same sort of framework. Even though it's not in there it doesn't matter. The budget that Justin has referred to is the same budget, even though it's not in here. But we haven't written another one.

MS McKENZIE: But you just follow it for other buildings when you discover them.

MS JOY: Yes, that's right, the same process. Do you want to talk about the Australian standard?

MR FITZPATRICK-BARR: The Australian standard for tactile paving is currently being reviewed. We're holding off on civil works, which - we tend to do a lot of the action plan stuff - infrastructure, civil works, out on the footpath and roadways and whatever, crossings. We do that through our civil infrastructure as opposed to our building infrastructure budgets. We're just holding back on the position of the tactile pavers and looking at possibly retrofitting existing crossings to be in line. I believe that standard is being reviewed at the moment.

MS McKENZIE: So when will that standard come out, do you think?

MS JOY: It's supposed to be this year, and it's going to be in line with the DDA. It's been very difficult for people like Justin to know how to work, because he's got the Building Code of Australia and this plan and he's had to try and reconcile the two.

Could I bring in one other factor here too. In the inner west of Sydney there are many councils - there's eight. What we are hoping to do is to get some sort of uniformity so that - say a person is visually handicapped, they can go to this council, go to that place, go to that place, and they'll know what the indicators mean, whereas it's been a bit of anybody's guess as to what people like Justin, like asset managers actually do put in to assist with access. That's certainly not in here, but that's the way we want them to work. When you do see Marrickville Council, that's going to be part of what we hope to achieve together.

MS McKENZIE: Like a consistency across all the works of all the councils - most councils?

MS JOY: We can only look at eight councils.

MR FITZPATRICK-BARR: We did an exercise in the middle of last year: one of our young engineers went out and took some photographs of different types of directional paving, tactile paving at intersections, and within six councils - say within a 20-kilometre radius of us, there were anything up to five or six different ways of

installing these directional and tactile pavers, and yet the standard states that they should be installed in a certain way. What we didn't want - to go down the path of starting to come up with our own system to retrofit existing. We thought we would try new - - -

MRS OWENS: You want some harmonisation.

MR FITZPATRICK-BARR: Yes, and uniformly right across all the councils. Hopefully, once the standard - which I think is being reviewed and hopefully will be completed by the end of this year - we'll speak with Marrickville Council in Ashfield who border on our council and make sure that we try and get some uniformity at least between us and them.

MRS OWENS: So you'll set up some sort of formal process? You could get all the eight councils together and try and work it out.

MS JOY: There is a committee, and it's been in abeyance for a year or so, but it's going to start meeting again. That is one of the things on the agenda.

MS McKENZIE: Do you want to talk a bit about AA housing?

MS JOY: I can't say very much about that. It is now compulsory, certainly in our own town plan, that 10 per cent of new housing is accessible. Whether it's not going to be affordable, because it's Leichhardt - I would like to say it was the three AAs, but - there's three AAs: accessible, affordable and - what's the other A? Nobody's going to tell me.

MS McKENZIE: Is it adaptable?

MS JOY: Adaptable. Thank you. Yes, so 10 per cent of new housing in our area is being built that way. So people can age in place or have a disability in place and not have to move. It's very expensive for people in private housing too, if they suddenly become disabled, to modify their own homes. That's the sort of thing that our access committee looks at. It's outside the terms of reference though of this inquiry, but we look at things like that and see if we can help in some practical way with people making development applications to put in ramps and other things in their own homes.

MR FITZPATRICK-BARR: Just on development applications; the current DDA Act gives this a little bit of clout. We're actually telling developers if they want to have approved plans by council they need to adhere to a lot of things. It's basically a tick-box format they've got to go through and meet all of the requirements and tick the boxes as they go through. I think the DDA Act actually gives that

credibility. Without the DDA Act I don't think our town planners could enforce something like this; we'd probably go to Land Environment Court and be thrown out.

MS McKENZIE: And developers do it?

MS JOY: Yes. They have to.

MR FITZPATRICK-BARR: All new development has to meet the DCP32, which is council's adopted development control - - -

MS JOY: We're submitting that, by the way.

MRS OWENS: That's a tabled document.

MS McKENZIE: Excellent, thank you. So the DDA is helping, and this is even without formal standards in this area of housing. So already, even without standards, you're saying that the DDA does give you some support?

MS JOY: Yes. It's not exact, but I see them as having a connection.

MR FITZPATRICK-BARR: Without the DDA I don't think our town planners could implement and make sure that developers do as we've chosen to do in this development control plan. It has been the instigation - it drove the development of this DCP 32 document.

MS JOY: We get complaints too - on a very little scale. If somebody says, "I can't get into this café," we might do an inspection and write to them and say, "This, this and this isn't within our code, our development control plan, and we give you 60 days to get that fixed up, and if you don't we'll take out an order." So have got some strength in local government to get people to comply.

MS McKENZIE: That order is basically under your planning legislation, is it?

MS JOY: Yes.

MR FITZPATRICK-BARR: Saying that as well, there is an unjustifiable hardship clause which allows provision to be made - if something is unjustifiable, particularly in an old area like ours, developers who are retrofitting in an existing building may say, "Look, it's unjustifiable to retrofit it to an extent that all I want to do is run a business activity on a second floor. The building is old. Why do I need to spend triple my budget to make it accessible?" There's been a couple of cases - - -

MS JOY: But we do say no.

MR FITZPATRICK-BARR: We have said no. There have been other cases - - -

MS JOY: Where we say yes.

MR FITZPATRICK-BAR: - - - where it's gone to the DDA disability committee, and we've allowed it to get through.

MS McKENZIE: That just depends on the circumstances, I presume.

MS JOY: Yes.

MR FITZPATRICK-BARR: And the cost of the work being undertaken. If it's only a relatively small development, a retrofit of an existing internal building, it would be unjustifiable to ask them to put in a $100,000 lift or something if they're only doing $20,000 worth of work.

MS McKENZIE: So you're looking at unjustifiable hardship through the planning process really?

MS JOY: Yes.

MR FITZPATRICK-BARR: Yes, and this allows for it - that clause.

MS JOY: Any development application that comes to council that has - the planners have been trained to pick up on access issues. If they see that there's something there it gets referred to our committee, and then we go and do an inspection and make a recommendation as to whether we think an unjustifiable hardship exists, or whether we should refuse the application.

MRS OWENS: Do you have issues relating to footpaths and the blocking of footpaths by, say, outdoor cafes or signs and so on?

MS JOY: Yes. That's another report we didn't bring. We didn't bring it.

MR FITZPATRICK-BARR: The strategic planning - department of strategic management, they've developed a footpath - is it footpath occupation policy?

MS JOY: Yes.

MR FITZPATRICK-BARR: Yes. Unfortunately it's in a different section to council. But they've gone through the process of coming up with again another document which spells out rights of passageway, minimum widths, things like that.

MS McKENZIE: And not encumbering the footpath, not sort of clogging it up with stuff.

MS JOY: Yes, that's right.

MR FITZPATRICK-BARR: In our area, footpath dining has become the latest fad. A lot of our members on our disability committee often have difficulty veering through all of the traffic around these restaurants. Now, the new footpath policies have allowed us to police it a lot more closely. It allows our rangers to actually impose fines. It allows us to take the footpath occupation licence off them. So it gives a little bit of clout to what we can and can't do. If a restaurant loses their footpath occupancy licence, in a lot of areas that could shut doors, because in the Leichhardt area it's - - -

MS McKENZIE: It's so critical.

MR FITZPATRICK-BARR: Yes. So it's a fairly strong policy. Was it adopted late last year?

MS JOY: Late last year. I'm sorry, we forgot to bring it.

MR FITZPATRICK-BARR: But, yes, that's definitely an issue in our area - access along footways.

MS McKENZIE: When you say that you can take their footpath licence off them, that's a licence you give under your by-laws or whatever, is it, or under the Local Government Act?

MS JOY: Yes. People pay so much per table per year.

MR FITZPATRICK-BARR: It's like a lease arrangement with our property section. They actually lease a certain area of footpath, providing they can show that they can maintain the minimum clearance widths.

MS McKENZIE: So the wheelchairs and other pedestrians with disabilities can negotiate their way along?

MR FITZPATRICK-BARR: That's it.

MS JOY: Yes. There's the minimum width.

MR FITZPATRICK-BARR: There has to be a direct line through. I know there

have been times where it's been brought to our attention that it may be not being addressed, and our compliance section, including our rangers, go out and speak to the particular restaurant owners and use that as strong support really, to say, "If we keep having repeated infringements by you guys, you'll lose your licence."

MRS OWENS: Could somebody like Mark Bagshaw now get around the municipality unimpeded with gutters and so on?

MS JOY: Yes.

MRS OWENS: Is that being taken care of now?

MR FITZPATRICK-BARR: Yes. In our civil infrastructure works program, as well, we get given an allocated amount which is quite substantial, for getting access from the footpath down onto the road at intersections. It's a kerb ramp program. We're concentrating on high-pedestrian, high-trafficable areas close to trip generators, such as business centres, schools, churches, hospitals, and we're concentrating on implementing the infrastructure there. We are still going through a full study or a full project called Pedestrian Access and Mobility Plan Project - PAMPP for short.

It's looking at that very thing - trip generators: what are the trip generators; identifying the most-used routes to get to these trip generators. Then there are full audits to be done on those routes to identify again an action plan similar to a DDA action plan and that will be done under our civil infrastructure works program, so it will form a basis of where we spend money to repair footpaths, putting kerb ramps, putting tactile paving, once we come up with a formalised layout for our directional paving and warning signal - - -

MS McKENZIE: And then you will do it in priority, according to amount of use.

MS JOY: Yes, one, two, three.

MR FITZPATRICK-BARR: Yes.

MRS OWENS: This is all consistent with the DDA, as well.

MR FITZPATRICK-BARR: The two will co-exist.

MRS OWENS: It is almost like a second DDA action plan really, covering these other areas.

MR FITZPATRICK-BARR: It is, yes.

MRS OWENS: Covering footpaths. Then disabled parking spots come into it as well.

MR FITZPATRICK-BARR: One good thing: the development control plan includes parking in there, so a minimum number of disabled parking spaces per number of available parking spaces.

MRS OWENS: Are those parking spaces policed, too, so that others don't park in them?

MS JOY: Interesting. We've just been looking at that in the access committee. The main offences take place in private shopping centres and we're negotiating first with one, as a pilot, to see how it works, for us to police the parking in disability parking spaces in just one shopping centre. It's a very big one. Then I am hoping we'll make a recommendation to council and we'll get a report back. The fines are now $152 and so we're hoping that it will be an educative thing for the public and then we'll move to other shopping centres and keep educating all the way round.

MRS OWENS: That does raise an issue of how much control you an have over those private shopping centres in general.

MS JOY: It has to be by negotiation with their management - - -

MRS OWENS: Yes.

MS JOY: - - - but there are precedents for it in other local government areas, so I have spoken to our manager of compliance and he's willing to see the manager of this shopping complex and that's going to happen quite soon. The Physical Disability Council of New South Wales put out a paper on parking and disability, which they may table for you. It came to our access committee and we've worked our way through the points on the problems that people with disability face with parking, so we're working on that.

I might just say that there are problems that the compliance people have, too, because the RTA doesn't have consistency in the sorts of permits they issue and apparently our compliance people at council tell me they have booked somebody because they had some little handwritten thing and then they've had a complaint that this was actually a legitimate parking approval by the RTA, so the Physical Disability Council put out a paper and said something big and coloured and easily - you couldn't sort of reproduce it - be taken on board, because it will make a big difference if our compliance people are sure of who to book. There has been a lot of rorting going on with people lending each other these things - so perhaps a

photograph on these. We're not the best people - the Physical Disability Council of New South Wales has put out this excellent paper on that.

MRS OWENS: Thank you. There are other issues with private shopping centres we've heard about in other states, such as in Perth, where there have been problems with policing - coming back to footpaths - what goes out on the footpath outside some shops. We saw some photos there, where the footpath had become really clogged outside a toy shop, for example, and I was unclear at that stage whether the council could have done anything about that because it was private land. Could you police that or, if it was a café in a private shopping complex would you be able to police that?

MR FITZPATRICK-BARR: Our footpath policy goes to the nth degree. It includes A-frames; newsagents put out A-frames in front of their shop, or chemists - - -

MRS OWENS: But does it cover space inside shopping centres on private land?

MS JOY: Inside a mall?

MR FITZPATRICK-BARR: Sorry. Inside a mall? No, I'm not aware - no. It's only council-owned land - footpaths on council-owned land.

MS McKENZIE: So that would have to be done by negotiation with the management?

MS JOY: Yes. I think we could be doing a lot better. A woman with actually no sight at all the other day was knocked over on the footpath as a car egressed from a private shopping centre, and so I have asked our manager of compliance to talk to the management about the signage as the cars come down this ramp, and lots and lots of warnings as they approach the footpath because somebody with no sight at all can't tell if a car is coming down. This woman was just doing a legitimate walk along the footpath and was knocked over. There's a lot of work to be done with private shopping centres and we have a new manager of compliance and he's willing to work along with the access committee in redressing some of that.

MRS OWENS: I think we have just about covered all our issues. I do get worried about these private shopping centres and what can be done because people still face the same problems within private shopping centres as they do on public footpaths.

MS McKENZIE: And although they may not be on land which is crown land or owned by the municipality, they are for public use. There is no question that that land is for public use.

MR FITZPATRICK-BARR: Yes, and I'm not too sure whether the DDA allows for the power for that to be enforced, but who would enforce it, I suppose. We, council, are limited with the powers we have to enforce such things.

MS McKENZIE: I don't know. I would have to look. It's an interesting question.

MS JOY: It's a very good question.

MR FITZPATRICK-BARR: Just on that, it may be from a resource point of view, as well. Resource-wise council rangers are fairly pushed to police our current municipality without then going internally into private land to police private land, as well.

MS McKENZIE: But if you talk about your stick approach it may be that if you at least had the power to do it owners might listen more when you ask them to do this or that as far as - - -

MR FITZPATRICK-BARR: Yes, and the DDA may give that power.

MS McKENZIE: Yes.

MS JOY: Perhaps you might like to hear if we have been successful with this one shopping centre and what the results are there?

MS McKENZIE: Yes. If you are happy to put in another submission - - -

MS JOY: Yes, if something happens.

MS McKENZIE: Yes. If something happens that would be a very nice case study and maybe an example for other shopping centres because it can really put it up in lights and say, "Look, this has been a very constructive arrangement. It's been very successful," and it might be useful for others, going all the way over to Perth.

MS JOY: Yes, sounds good.

MRS OWENS: Is there anything else you wanted to raise with us?

MS JOY: I think that's it.

MS McKENZIE: It's an excellent submission and really interesting information, as well, that you have given us today.

MRS OWENS: Yes, thank you.

MS JOY: Thank you very much for listening.

MRS OWENS: That concludes today's scheduled appearances. Our one other audience member - would you like to make any comments? No. We resume tomorrow morning, Tuesday, at 9 am. Thank you.

AT 5.06 PM THE INQUIRY WAS ADJOURNED UNTIL
TUESDAY, 15 JULY 2003

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