

Adarn Johnston

NSW
31 Aug. 03

The Productivity Commission,
Looked Bag 2,
Collins Street East,
Melbourne VIC 8003

Dear Commissioners,

Re: **Inquiry into first home ownership**

Introduction

My interest in this inquiry is particularly focused on its term of reference relating to mechanisms for making housing more affordable for lower income persons. As the documentation in the appendix to this submission will show, I have had a long-standing involvement and interest in the development of housing policy. Therefore, the fact that such questions are being addressed on a national level is most welcome.

As the appendix demonstrates, there has been a range of initiatives and reviews being conducted at the state level. However, I doubt that there has been any consideration given to coordinating the various inquiries and conference resolutions. This is the frustration of living in a federation. My first recommendation then, is that the Commonwealth Government takes full responsibility for housing.

Tied Grants

I see two possible vehicles for achieving this end. The first is for the Commonwealth to tie more of the grants that it gives the States, directing that the monies be spent on specific housing projects. The advantage of this initiative is that one level of government (the Commonwealth) assumes the ascendancy in this policy area. An obvious disadvantage however, is the political cost of such a strategy; the States would no doubt fight any plans for the national government to pursue housing policy on a national level. State and local governments would lose a degree of power over urban development, prestige, not to mention revenue sources such as stamp duty and land tax. Nonetheless, another advantage of the Commonwealth exercising its discretion to tie State grants is that the second tier of government can be compelled, to a certain degree, to follow national policies and priorities.

The Inter-State Commission or a like body

The second possibility is to use the Commonwealth's trade and commerce powers. While these are somewhat limited, giving the Inter-State Commission a legislative mandate to try and harmonise state and local government charges in relation to housing (at least in cases of interstate property exchange) would be a place to begin. This could possibly be achieved through the combined use of Section 101 (establishing the Commission) and Section 117 of the Constitution. My argument would be the complicated and often contradictory regulations, taxes and charges

surrounding housing within the different States and Territories could potentially be instruments of "discrimination" if someone wanted to exchange properties in different jurisdictions. Unfortunately, looking to sections such as Section 92, the constitutional Founding Fathers appear to have conceived trade in terms of movable objects which can be carried on railways, roads or by sea. Unfortunately, I was unable to find a clear power which could be related to housing. However, at least floating the possibility of using the interstate commission may turn better constitutional minds that mine to the question of Commonwealth jurisdiction over housing policy. Certainly, the development of the Australian federation has, since the overturning of the doctrine of the "immunity of instrumentalities" by the Engineers Case, seen the growth of federal authority at the general expense of the States.

The growth of federal authority has been overseen by both sides of politics, regardless of political ideology. For example, Nethercote observes:

"...(For) both practical and ideological reasons, arguing for the virtues of federalism has been a position which, for much of the past century, has not been popular in Australia even though, as an institutional structure, the federal system has proved extremely resilient. As a consequence, federalism in Australia has created a paradox. The structure of government is clearly federal; there is a strong national government with involvement in many areas of policy-making, but most government services are delivered by powerful State governments reflecting the views of six widely dispersed State political communities ... Yet the legitimation of this system through the acceptance of the desirability of federalism as a way of dispersing power between different spheres of government is largely absent from public debate. Federation has been a great success, but federalism remains an idea with limited public acceptance..."

(1)

Given this situation, it would be useful for the States to simply refer their powers over housing to the Commonwealth. As stated earlier however, this seems politically unlikely. This is why an administrative halfway house, such as the Inter-State commission could be a useful tool for handling state taxes and charges, as they relate to the housing market. This would also have the effect of changing the housing debate from a political question into an administrative one. Under these circumstances, progress could be made without the glare of publicity and the day-today contest that is parliamentary politics.

From politics to administration

A notable feature of late in Australian public debate has been the dispute between the Commonwealth and the States over the fate of state taxes, in particular stamp duty, now that the GST has been implemented. While the abolition of stamp duty would certainly help the cause of housing affordability, such political focus on the question does not seem to have gone any way to resolving this issue.

Therefore, finding an administrative forum to progress a variety of issues in relation to housing is vital. Assuming this, we can then move on to proposals such as those contained in the appendix to this submission. In brief, I propose by means of a variety of legal and taxation mechanisms, to encourage people to pool their resources to purchase housing. My focus (due to my background) was on people with disabilities

and their housing needs, as I perceive them. I will not repeat my proposal for specialist disability corporations, where persons pooled their financial resources to achieve secure housing outcomes; these are explained in the documents contained in the appendix.

The Singleton Model

Nonetheless, I would also like to draw to the Commission's attention a successful model for housing provision, which was presented as a going concern at the Changing Needs, Growing Markets forum. The Singleton Equity Housing Limited and Supported Housing Development Foundation seemed to optimise many of the elements I was looking for in the development of housing policy. I recommend that the Commission invite Professor Mike Berry and Dr Tony Dalton of RMIT University to give evidence regarding Singleton. While Singleton has developed a range of funding options in the provision of housing for disabled people, its first arrangement was a shared equity plan. This model:

1
involved the purchase or construction of a dwelling or multi unit property that was funded by a combination of:

- (a) government grant/equity injection;
- (b) resident/family equity contribution, made in the form of share capital and
- (c) mortgage loan.

The dwelling is owned by Singleton or (the foundation) and the resident has secure tenure in the property as long as his or her equity contribution remains. The resident or family investor is issued with shares in Singleton, commensurate with the relative value of his or her equity contribution. The resident does not have title of the individual dwelling but holds an investment proportionately valued against the property occupied and Singleton's net asset base. The claim can be subsequently be realised and the resident is able to recoup the initial investment plus an appropriate share of the capital appreciation by selling their shares..." (2)

Professor Berry and Dr Dalton correctly point out that this arrangement is not without financial risk of capital loss. However, all articles of property, or matters concerned with commerce generally, come with an element of risk. There should not prevent us experimenting with these financial vehicles, after proper research. Certainly, I am attracted to the Singleton concept because it addresses many of the financial and real property concerns I have, as a disabled man entering the 30th year of his life. The Berry and Dalton report also presents a compelling case study of an individual with a degenerative health condition, who approached the Singleton organisation looking for both financial security and certainty in supported living arrangements, as his need for care increased. The case study says:

John approached the Foundation and over a number of months of discussion an arrangement was agreed. John would sell his unit to the Foundation. The proceeds of the sale would go to discharging the mortgage and a minor amount held back by the Foundation for upgrades to the property and transaction costs. The remainder of the proceeds would accrue to John who, in turn, re-lent his realised equity at no interest to the Foundation to partly finance the purchase. In effect, John leveraged the deal by

providing the Foundation with a zero-interest loan. John also pays a rate equal to 5% of the Foundation's equity investment in the dwelling, which also covers his rates and insurance..." (3)

"John" now has a landlord who has assumed responsibility for day-to-day bills, property maintenance and the like. As his needs change, the Foundation will access the money that John has lent to it, in order to finance dwelling modifications and other support that the progress of his condition demands. As a tenant, "John" also qualifies for rent assistance and the disability pension. (4)

Conclusion

In conclusion, there are many innovative legal devices and taxation arrangements which could be employed to improve housing affordability for many Australians. The model presented in the documents contained in the appendix to this submission outline my attempt to harness various legal principles, which could be useful in ensuring that disabled persons will have access to both housing and support services. The assumption which should be clear from what I have said, is that this provision will increasingly be based around corporatist and "tiser-pays" principles. I have no difficulty with this, believing that taxation strategies and other legal methods (like the ones described in the appended documents) will go some way to ameliorating hardship.

The Singleton project provides a real-world example of how disabled people, using a combination of their resources and government subsidies, achieve secure housing outcomes. Equally, however, such models may be usefully adapted for others in our community.

Most importantly however, for any of these ideas to be fully developed, we must take housing policy beyond the realm of day-to-day politics. Assigning responsibility to an administrative body, such as the Inter-State Commission would achieve this end.

Yours sincerely,

Adam Johnston

END NOTES

1. Nethercote, JR (ed), *Liberalism and the Australian Federation*, The Federation Press, 2001, p. 287-288
2. Berry, Professor Mike and Dr Tony Dalton, *Housing People with Disabilities: The Contribution of Singleton Equity Housing Limited and Supported Housing Development Foundation -- A Report Prepared by Professor Mike Berry and Dr Tony Dalton, RMIT University, for Supported Housing Development Foundation*, February 2001, pp. 5-6 3. Ibid., p.9 4. See ibid

Appendix to Submission

Adam Johnston

NSW

2 October 2001

Ms Deborah Georgiou,
NSW Department of Housing,
Policy and Strategy,
GPO Box 3927,
Sydney NSW 2001

Dear Deborah,

Re: Expressions of Interest - Industry Development Forum

As I understood our recent conversation, the focus of the Forum at this stage is extremely "broad brush" and you are seeking submissions in order to define terms of reference. As such, please accept my comments below as very much preliminary remarks.

Nonetheless, I believe the Forum can usefully explore applications of a number of legal vehicles, to assist those with disabilities achieve financial and personal security. One of the key presumptions, as we discussed, was that this Forum is addressing the needs of those who are likely to earn their own income for all or part of a normal working life. This therefore, brings people into the field of assessable income for taxation purposes.

A principle that maybe useful in dealing with such matters, is mutuality. At first instance, this would require a group of disabled people to form a corporation. With the current media focus on businesses collapsing (i.e. OneTel, National Textiles, Ansett) this may not be a popular suggestion. However, in my view, the corporate form still has much to recommend it and, can be modified prudently, so that the risks to shareholders' capital are minimised.

This can be achieved through the Articles of Association and Company Memorandum. In general terms, a corporation has the full entitlements of a legal person and is not limited in its capacity to act by either of the above-mentioned documents. The reason for this is that the notion of mutuality. If a group of disabled people were to set up a company, but specifically agree to limit firm's capacity, they could take advantage of the mutuality principle by contributing their income to the corporation. The tax exempt status of a corporation designed for mutual purposes has been given judicial recognition in the case of the *Bohemians Club v Acting Commission of Taxation*, where Griffith CJ said..

"...The [member's] contributions are, in substance, advances of capital for a common purpose, which are expected to be exhausted during the year for which they are paid ... If anything is left unexpended it is not income or profits, but savings, which the members may claim to have returned to them. The notion that such savings are taxable income is quite novel and quite inadmissible ... A man is not the source of his own income" (1)

There are of course, limits to the mutuality principle. This is why limiting the corporate personality of the firm I am proposing a group of disabled people would set up, is so important. Under section 162 (1) of the Corporations Law, a firm's memorandum can place "express (restrictions) (including a prohibition) upon the exercise of a corporate power" (2)

If we were to say that our corporation was not for profit, but that it was there to provide the goods and services which its member's required, like food, clothing and medical care, then it really begins to look like a mutual society. This happens as long as such provision are stated generally

in the memorandum and articles, avoiding the need to enter specific contracts with member's, regarding such services. The existence of individual contracts for loans, was one of the principal reasons why The Sydney Water Board Employees Credit Union was denied the status of a non-taxable mutual fund in 1973 (3)

In essence, what I am attempting to construct is a one-stop shop. In return for an individual's income, the corporation is charged with providing the goods and services that a member needs. Furthermore, the firm could also act as employment agent. If its members were also employees, then payments for services rendered would go to the company. Judicially, a view may be taken that it is necessary to pierce the corporate veil and look behind the payments. Therefore, individuals would become liable for income tax, having disposed of their income via the firm. However, this logic would run into certain difficulties if it were specifically stated in the company articles that a member's employment was to be negotiated by the firm, who would hold payment in trust. Therefore, an individual member need never know how much they are paid, but when all resources are pooled (making it difficult to determine who was paid what, particularly if individuals are not told), they will feel the benefits in goods and services provided. And while I acknowledge that this pushes the limits with regard to taxation and employment law, one recalls my early university days studying contract law. While the exact attribution escapes me, a noted case is remembered because of the judicial remark that "a peppercorn is adequate consideration". In other words, that the individual shareholder takes the peppercorn with the sure knowledge that it represents a commitment to the provision of services, by the firm.

Why, you might ask, would I go to such extent to protect finances from government, as much as anybody else? The answer is simply that, in my view, we are entering the end of the welfare state. Disabled people, as well as many others, may have to get used to the idea of do-it-yourself welfare. By this, I am referring to the type of structures like the one outlined above. For the last 10 or 20 years, academic and mass media commentary have increasingly focused on the financial limits of government. This is recognised across the political spectrum and is put quite succinctly by Mark Latham when he writes:

"...The fiscal crisis of the state is undermining the tax/transfer systems of social democracy. As the focus of taxation internationally has shifted from earnings to downstream questions of expenditure and savings, most governments are finding it harder to rely on tax progressivity as the basis of their redistributive functions ... During the long economic boom of the 1950s and 1960s it was assumed that universal services and entitlements could effectively supplement the standardised, basic wage ... In an open economy (we) are able to access the services through private income rather than public provision..." (4)

In short, governments are running out of money. Their ability to provide social services is eroding. Ultimately, I do not see government as being able or willing, to maintain social services in years to come. The conclusion to Latham's quoted remarks is, in my view, the way things will proceed; he uses the term private income, while I have used the term do-it-yourself welfare.

There is also more material coming from Latham that may suggest the model environment, in which our corporation would operate. On page 218 of his book *Civilising Global Capital*, Latham sets out what he calls a place management model. Where Latham has a case manager, I would place the corporation. Importantly, disabled people would run the corporation that would seek out service providers for the disabled, themselves, as the shareholders.

In my view, this is a vital distinction. As a one-time recipient of sponsorship from the Federal Government's Commonwealth Rehabilitation Service during my studies, I often felt less like a client and more like a vassal. It was not unusual for me to put a proposed program of study to the Government, only to have it completely reorganised. One year in particular, my case manager practically insisted that units of study were unapproved and would need to be reviewed; this happened 24 hours before I was to formally enrol at the University. I felt particularly helpless in this situation and it served to underline the disparity of power in the contractual relationship

between myself and the government. Therefore, my reliance on the private corporation to provide policy outcomes is in part a reaction to the extremely negative experience of public case management.

Returning to Latham's diagram, where he constructs a "place manager" I would put a federation of specialist disability corporations. Where individuals had come together to form firms, these entities could establish a loose alliance at the national level. This would be to lobby service providers in particular, to provide better deals for consumers. As would be obvious throughout my discussion, I see only but the most minor role for central government.

Part of the reason for this, is that there is no shortage of evidence to indicate governments (despite what they might say) can be extremely amateurish in the management of resources. This is demonstrated, in large part, through my experiences in lobbying for freedom of information access to documents pertaining to the Continence Aides Assistance Scheme (CAAS). As explained to the Productivity Commission, documents revealed that:

"...For an arrangement that was supposed to represent value for money, it was surprising that pricing policies were not initially specified (by the Government). If the new (national) contractor had little lead-time to make necessary arrangements, this situation tended to undermine the very claim of efficiency and value for money. Further, if the contractor hadn't the resources in the first instance (how could) the new arrangements really (represent) an improvement ... Finally, one (had) to question the astuteness of a (Government) Department that concedes a failure to obtain appropriate legal and commercial contract advice" (5)

I am a recipient of **CAAS supplies and when** an order went missing for over a month, one began to make numerous concerned inquiries. Given that the supplies are of such an important personal and medical nature for many people, it is surprising that bureaucratic outsourcing should be a process with so many holes in it. The need to outsource again serves to underline the limited capacity of government discussed earlier, while the managerial flaws leaves one to speculate on the adequacy of public sector management.

This is again why we must consider doing more things for ourselves, with our own resources. It is also why I ultimately said to the Productivity Commission that the Government should get out of CAAS contracting and leave individual recipients to select their own providers (6)

On the question of housing, I think two points need to be made. Firstly, in my own situation it is very important to me that I am able to remain in the family home, hopefully for the entirety of my life. The asset, or the part of which I stand to inherit, may need to be borrowed against in late life, to finance services required by me. Therefore, an important issue is the security of title.

Perhaps, a useful legal vehicle in this instance would be an entail. This is a device used to:

... settle or limit the succession to real property (which interferes) with...the ordinary rules pertaining to devolution by inheritance..." (7)

The purpose of my entail would be to ensure that creditors could not resume my property until my death. In exchange, they would become the heirs to the property. Two distinct advantages of the set up would be that, as heir's apparent, creditors would gain nothing until I die, but they necessarily would have an interest in the proper maintenance of the asset during my life.

Equally, should official policy not end up endorsing all of my taxation or corporate proposals outlined above, a compromise may be reached. This might involve the Government accepting a percentage reduction in income tax charged to disabled persons, in exchange for the State becoming an heir apparent to property upon death. While I appreciate that this already takes place to a certain extent, in cases where a person has failed to leave a will (or where an heir cannot be found), this further use of the entail should be examined in greater depth.

This is because something we must achieve is a situation where taking paid employment is more financially rewarding than remaining on social services. I do not believe this has been accomplished yet, as there is still a raft of medical and other concessions available to social security recipients, which must act as a certain disincentive, if paid employment means loss of these. Yet, as I emphasised earlier, with reference to Latham, the government's ability to provide such services is increasingly limited. Furthermore, in my view, much of what remains will eventually disappear, which brought me to my do-it-yourself welfare concept.

In essence, what I am proposing with the entail is a virtual death duty. Some are implacably opposed to this concept, but it does not concern me greatly. Firstly, it does not seem likely in my opinion, that I will have living heirs who will have legal claim over an estate. While acknowledging that this will not be the experience of all disabled people, it would seem reasonable to suggest that such will be the case for the majority. Therefore, if upon my death, my estate (including my share in the specialist disability corporation) goes to paying creditors including government, why should this be of much concern?

Finally, in relation to housing, we should try to address the needs of those who may not have the good fortune to have a family home in which to reside permanently. In this context, recent comments by the former Prime Minister Paul Keating may be useful. On the 27th September 2001, the *Sydney Morning Herald* reported Mr Keating having made a speech in Parramatta about architecture and town planning. The report indicated that he had said, amongst other things:

The Australian tyranny of mowing the lawn each weekend has become a kind of purgatory for (my) parents' generation. The alternative was to create better developments that offered common green spaces where somebody else did the mowing..."
(8)

Ensuring that somebody else did the mowing is an important consideration for many elderly and disabled people. Meanwhile, Mr Keating and others should be pressed to explain further what they are envisaging by "alternative development". This is another area where the Forum could do a great deal of positive work.

Yours sincerely,

Adam Johnston

1. Woeliner, Barkoczy and Murphy, 2000 *Taxation Law*, 1st edition, C. C. H. Australia, 1999, p. 663 2. Redmond, Paul, *Companies and Securities Law*, 2nd edition, The Law Book Company, 1992, p. 134 3. See Woellner et. al., op cit., p. 664 4. Latham, Mark, *Civilising Global Capital*, Allen & Unwin, 1998, p. 163 5. Adam Johnston's submission to the Productivity Commission during The Commission's inquiry into Cost Recovery, dated May 6th 2001 and received in the Commission on May 9th, p. 2 (Please note that I have attached a copy of this submission to this e-mail, but should it not be readable, a copy is obtainable from the Productivity Commission's website) 6. See Ibid., p. 4 7. Nolan, Joseph R. and Jacqueline M. Nolan-Haley, *Black's Law Dictionary*, 6th edition, West Publishing Company, 1990, p. 530 8. Dennis, Anthony and Vanessa Wilson, *Rebuild West As a Green and Pleasant Land*, Keating Urges, Sydney Morning Herald, 27/09/2001

Adam Johnston

' NSW

The Secretary,
Standing Committee on Social Issues,
Legislative Council,
NSW Parliament House,
Macquarie Street,
Sydney NSW 2000

Dear Sir,

Re: Inquiry into Community Housing

My interest in this inquiry comes partly from my status as a disabled person confined to a wheelchair. In this, one acknowledges that one may need the assistance of the government-funded housing sector, given the uncertainties of both employment and job security. As such, I draw the attention of the Committee to an upcoming Industry Development Forum on Housing and Support for Older People and People with a Disability.¹ It is to be convened jointly by the Department of Ageing, Disability & Home Care and Housing NSW. I will be a participant at the Forum, having responded to a newspaper advertisement calling for submissions/expressions of interest last year.

While the Development Forum is looking at persons able to make financial contributions to their housing and other support services, many of the written comment I contributed for the Forum (though my model for funding and development was not ultimately selected to go forward at the meeting) have relevance to your Terms of Reference.

One of my concerns, as will become apparent, is whether there will be much in the way of government-funded housing in the future. Public debate today, is replete with references to 'user-pays', "self-funding" and "out-sourcing". Therefore, the Committee should ask itself whether governments of any particular political persuasion will always see housing as a State responsibility. I think this is an open question, which the Committee acknowledges in Reference 1 (f) of the inquiry.

My point of difference with the Committee is my view that non-government provision will not only extend to "support services," but increasingly to housing as well. This is why I seek to outline how applications of a number of legal vehicles could assist those with disabilities² to achieve greater financial and personal security. Central to this is housing and, how this issue is managed.

"Mutual obligation" is a value underlying contemporary welfare policy. Given this, it is reasonable to assume that some people receiving government funding at some time, will nonetheless be encouraged to earn their own income for all or part of a normal working life. This therefore, brings people into the field of assessable income for taxation purposes.

A principle that maybe useful in dealing with such matters, is mutuality. At first instance, this would require a group of disabled people to form a corporation. With the current media focus on businesses collapsing (i.e. *OneTel*, National Textiles, Ansett) this may not be a popular suggestion. However, in my view, the corporate form still has much to recommend it and, can be modified prudently, so that the risks to shareholders' capital are minimised.

This can be achieved through the Articles of Association and Company Memorandum. In general terms, a corporation has the full entitlements of a legal person and is not limited in its capacity to act by either of the above-mentioned documents. The objective is make full use of the principle of

mutuality, while limiting opportunities for abuse of the corporate firm by providing that it will function strictly within the terms of its Article.

If a group of disabled people were to set up a company, but specifically agree to limit firm's capacity, they could take advantage of the mutuality principle by contributing their income to the corporation. The tax exempt status of a corporation designed for mutual purposes has been given judicial recognition in the case of the *Bohemians Club v Acting Commission of Taxation*, where Griffith CJ said:

"...The [member's] contributions are, in substance, advances of capital for a common purpose, which are expected to be exhausted during the year for which they are paid ... If anything is left unexpended it is not income or profits, but savings, which the members may claim to have returned to them. The notion that such savings are taxable income is quite novel and quite inadmissible ... A man is not the source of his own income... ..³

There are of course, limits to the mutuality principle. This is why limiting the corporate personality of the firm I am proposing a group of disabled people would set up, is so important. Under section 162 (1) of the Corporations Law, a firm's memorandum can place "express (restrictions) (including a prohibition) upon the exercise of a corporate power"⁴

If we were to say that our corporation was not for profit, but that it was there to provide the goods and services which its member's required, like food, clothing and medical care, then it really begins to look like a mutual society. This happens as long as such provision are stated generally in the memorandum and articles, avoiding the need to enter specific contracts with member's, regarding such services. The existence of individual contracts for loans was one of the principal reasons why The Sydney Water Board Employees Credit Union was denied the status of a non-taxable mutual fund in 1973 .⁵

In essence, what I am attempting to construct is a one-stop shop. In return for an individual's income, the corporation is charged with providing the goods and services that a member needs. Furthermore, the firm could also act as employment agent. If its members were also employees, then payments for services rendered would go to the company. Judicially, a view may be taken that it is necessary to pierce the corporate veil and look behind the payments. Therefore, individuals would become liable for income tax, having disposed of their income via the firm. However, this logic would run into certain difficulties if it were specifically stated in the company articles that a member's employment was to be negotiated by the firm, who would hold payment in trust. Therefore, an individual member need never know how much they are paid, but when all resources are pooled (making it difficult to determine who was paid what, particularly if individuals are not told), they will feel the benefits in goods and services provided. And while I acknowledge that this pushes the limits with regard to taxation and employment law, one recalls my early university days studying contract law. While the exact attribution escapes me, a noted case is remembered because of the judicial remark that "a peppercorn is adequate consideration". In other words, that the individual shareholder takes the peppercorn with the sure knowledge that it represents a commitment to the provision of services, by the firm.

Why, you might ask, would I go to such extent to protect finances from government, as much as anybody else? The answer is simply that, in my view, we are entering the end of the welfare state. Disabled people, as well as many others, may have to get used to the idea of do-it-yourself welfare. By this, I am referring to the type of structures like the one outlined above. For the last 10 or 20 years, academic and mass media commentary have increasingly focused on the financial limits of government. This is recognised across the political spectrum and is put quite succinctly by Mark Latham when he writes:

"...The fiscal crisis of the state is undermining the tax/transfer systems of social democracy. As the focus of taxation internationally has shifted from earnings to downstream questions of expenditure and savings, most governments are finding it harder to rely on tax progressivity as the basis of their redistributive functions ... During the long economic boom of the 1950s and

1960s it was assumed that universal services and entitlements could effectively supplement the standardised, basic wage ... In an open economy (we) are able to access the services through private income rather than public provision..."⁶

In short, governments are running out of money. Their ability to provide social services is eroding. Ultimately, I do not see government as being able or willing, to maintain social services in years to come. The conclusion to Latham's quoted remarks is, in my view, the way things will eventuate. He uses the term private income, while I have used the term do-it-yourself welfare.

There is also more material coming from Latham that may suggest the model environment, in which our corporation would operate. On page 218 of his book *Civilising Global Capital*, Latham sets out what he calls a place management model. Where Latham has a case manager, I would place the corporation. Importantly, disabled people would run the corporation that would seek out service providers for the disabled, themselves, as the shareholders.

In my view, this is a vital distinction. As a one-time recipient of sponsorship from the Federal Government's Commonwealth Rehabilitation Service during my studies, I often felt less like a client and more like a vassal. It was not unusual for me to put a proposed program of study to the Government, only to have it completely reorganised. One year in particular, my case manager practically insisted that units of study were unapproved and would need to be reviewed, - this happened 24 hours before I was to formally enrol at the University. I felt particularly helpless in this situation and it served to underline the disparity of power in the contractual relationship between myself and the government. Therefore, my reliance on the private corporation to provide policy outcomes is in part a reaction to the extremely negative experience of public case management.

Returning to Latham's diagram, where he constructs a "place manager" I would put a federation of specialist disability corporations. Where individuals had come together to form firms, these entities could establish a loose alliance at the national level. This would be to lobby service providers in particular, to provide better deals for consumers. As would be obvious throughout my discussion, I see only but the most minor role for central government.

Part of the reason for this, is that there is no shortage of evidence to indicate governments (despite what they might say) can be extremely amateurish in the management of resources. This is demonstrated, in large part, through my experiences in lobbying for freedom of information access to documents pertaining to the Continence Aides Assistance Scheme (CAAS). As explained to the Productivity Commission, documents revealed that..

"...For an arrangement that was supposed to represent value for money, it was surprising that pricing policies were not initially specified (by the Government). If the new (national) contractor had little lead-time to make necessary arrangements, this situation tended to undermine the very claim of efficiency and value for money. Further, if the contractor hadn't the resources in the first instance (how could) the new arrangements really (represent) an improvement ... Finally, one (had) to question the astuteness of a (Government) Department that concedes a failure to obtain appropriate legal and commercial contract advice..."

I am a recipient of CAAS supplies and when an order went missing for over a month, one began to make numerous concerned inquiries. Given that the supplies are of such an important personal and medical nature for many people, it is surprising that bureaucratic outsourcing should be a process with so many holes in it. The need to outsource again serves to underline the limited capacity of government discussed earlier, while the managerial flaws leaves one to speculate on the adequacy of public sector management.

This is again why disabled people (and other government service recipients) must consider doing more things for ourselves, with our own resources. It is also why I ultimately said to the Productivity Commission that the Government should get out of CAAS contracting and leave

individual recipients to select their own providers.⁸ This is why one must also sound a cautionary note, regarding Reference 1(f).

Whenever government and non-government (read: private contractor) service providers meet, there is a danger that the one real loser in the arrangement, is the "client" both parties claim to be serving. This is because the client is a third party to the contract, but in order to receive service, must accept that provided by the government-selected contractor. If the good or service is not delivered (as in my CAAS example), the recipient "client" has limited redress, beyond direct complaint to the contractor, Ministerial letter or Freedom of Information (FOI) application.

The latter option is time-consuming and labour-intensive, but is the only alternative if the first two mechanisms leave one with more questions than answers. Further, FOI has its limitations, because governments and contractors can still maintain a certain degree of privity in commercial dealing by claiming that key parts of an agreement are "commercial in confidence". For the end-user of a good or service, this sends a message that I am not important enough to be considered a full legal party in our own affairs. Further, freedom to choose the services and/or service providers I want is extremely limited, or non-existent. This undermines notions of autonomy and freedom that are central to liberal society, as well as any idea that State assistance is there to lift people to a point where they can be active (and increasingly independent) participants in society. For these reasons, I am increasingly reluctant to have government act as my broker, in the receipt of goods and services.

Finally, I would advise the Committee to widen its notions of "community housing". This would allow the inclusion of those disabled an/or infirmed people who live with their families. In my own situation it is very important to me that I am able to remain in the family home, hopefully for the entirety of my life. The asset, or the part of which I stand to inherit, may need to be borrowed against in late life, to finance services required by me. Therefore, an important issue is the security of title.

Perhaps, a useful legal vehicle in this instance would be an entail. This is a device used to:

"...settle or limit the succession to real property (which interferes) with ... the ordinary rules pertaining to devolution by inheritance..."⁹

The purpose of my entail would be to ensure that creditors could not resume my property until my death. In exchange, they would become the heirs to the property. Two distinct advantages of the set up would be that, as heir's apparent, creditors would gain nothing until I die, but they necessarily would have an interest in the proper maintenance of the asset during my life.

Equally, should official policy not end up endorsing all of my taxation or corporate proposals outlined above, a compromise may be reached. This might involve the Government accepting a percentage reduction in income tax charged to disabled persons, in exchange for the State becoming an heir apparent to property upon death. While I appreciate that this already takes place to a certain extent, in cases where a person has failed to leave a will (or where an heir cannot be found), this further use of the entail should be examined in greater depth.

This is because something both politicians and welfare recipients must achieve is a situation where taking paid employment is more financially rewarding than remaining on social services. I do not believe this has been accomplished yet, as there is still a raft of medical and other concessions available to social security recipients, which must act as a certain disincentive, if paid employment means loss of these. Yet, as I emphasised earlier, with reference to Latham, the government's ability to provide such services is increasingly limited. Furthermore, in my view, much of what remains will eventually disappear. This is what brought me to my do-it-yourself welfare concept.

In essence, what I am proposing with the entail is a virtual death duty. Some are implacably opposed to this concept, but it does not concern me greatly. Firstly, I am not anticipating having

living heirs who will have legal claim over an estate; the burden of their care would be shouldered by others and I do not believe that this would be fair. While acknowledging that this will not be the opinion or eventual experience of all disabled people, it would seem reasonable to suggest that such may well be the case for a fair proportion. Therefore, if upon my death, my estate (including my share in the specialist disability corporation) goes to paying creditors including government, why should this be of much concern?

Finally, I acknowledge that there are many who will not be fortunate to have a family home in which to reside permanently. In this context, recent comments by the former Prime Minister Paul Keating may be useful. On the 27th September 2001, the *Sydney Morning Herald* reported Mr Keating having made a speech in Parramatta about architecture and town planning. The report indicated that he had said, amongst other things:

"... The Australian tyranny of mowing the lawn each weekend has become a kind of purgatory for (my) parents' generation. The alternative was to create better developments that offered common green spaces where somebody else did the mowing... .¹⁰

Ensuring that somebody else did the mowing is an important consideration for many elderly and disabled people. Meanwhile, Mr Keating and others should be pressed to explain further what they are envisaging by "alternative development". An explanation of what lies behind this idea (and its practical implementation) may prove useful in the field of community housing.

Yours sincerely,

Adam Johnston

Monday, 21 January 2002

¹ See letter to Adam Johnston dated 3 January 2002, from Ethel McAlpine and Andrew Cappie-Wood, attached to this submission ² I use "disability" as an example, simply because it is the area in which I have the greatest knowledge and interest ' Woellner, Barkoczy and Murphy, 2000 *Taxation Law*, 1st edition, C. C. H. Australia, 1999, p. 663 ⁴ Redmond, Paul, *Companies and Securities Law*, 2nd edition, The Law Book Company, 1992, p. 134 ' See Woellner et. al., op cit., p. 664 ⁶ Latham, Mark, *Civilising Global Capital*, Allen & Unwin, 1998, p~ 163 ⁷ Adam Johnston's submission to the Productivity Commission during The Commission's inquiry into Cost Recovery, dated May 6th 2001 and received in the Commission on May 9th, p. 2 (Please note that I have attached a copy of my Productivity Commission submission to this one, but it is also obtainable from the Productivity Commission's website) 'See Ibid., p. 4 ⁹ Nolan, Joseph R. and Jacqueline M. Nolan-Haley, *Black's Law Dictionary*, 6th edition, West Publishing Company, 1990, p. 530 ⁰ Dennis, Anthony and Vanessa Wilson, *Rebuild West As a Green and Pleasant Land, Keating Urges*, Sydney Morning Herald, 27/09/2001

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Mr Andrew Humpherson MP
Member for Davidson
PO Box 209
LINDFIELD NSW 2070

Dear Mr Humpherson

1 refer again to your personal representations on behalf of Mr Adam Johnston of regarding initiatives discussed at the *Changing needs growing markets* industry development forum held earlier this year.

The Department of Housing recently introduced a range of initiatives to increase affordable housing levels through partnerships with the private sector.

The *Changing needs, growing markets* industry development forum, held in February 2002, explored a range of new products and services that focus on housing and support for older people and people with a disability who have some financial capacity to contribute to the cost of their housing and support needs. Jointly sponsored by the Department of Housing and the Department of Ageing, Disability and Home Care, the forum included discussion on new ways for people with a disability and their families to invest in housing and support partnerships by using a blend of private and public funds.

In early July 2002, 1 also announced that the NSW Government will be calling for indicative proposals from parties interested in Privately Financed Projects linked to the delivery, ownership and asset management of large-scale affordable and social housing infrastructure.

At this time 1 noted the importance of our suburbs having a mix of residents that reflects the broader community as well as the importance of low income workers not having to travel for long periods to get to work. While having a broader focus than the discussions at the industry development forum, ultimately these projects will deliver increased levels of affordable housing for those on low to moderate incomes as well as increased access to social housing stock.



30 AUG 2002

In addition, the Affordable Housing Service, which transferred from Planning NSW to the Department of Housing on 1 July 2002, is continuing to develop options for affordable housing in NSW in partnership with local government, private sector and not-for-profit organisations.

A draft report on the discussions at the *Changing needs, growing markets* forum is being considered by the host Departments for release to participants and external stakeholders.

The Department of Housing will continue to explore options for providing accessible social and affordable housing in NSW including how the outcomes of the industry development forum can be progressed in line with broader initiatives involving partnerships with the private sector.

Thank you for raising this matter with me.

Yours sincerely

Andrew RefshaEge MP

Deputy Premier

Minister for Planning

Minister for Aboriginal Affairs

Minister for Housing

LEGISLATIVE COUNCIL

STANDING COMMITTEE ON SOCIAL ISSUES

11 March 2003

Inquiry into Community Housing

I am writing to advise you of the progress of the Social Issues Committee's Inquiry into Community Housing.

While work had commenced on a discussion paper, due to its -very heavy workload, the Committee was unable to complete this paper before the termination of the parliamentary session on 3 February 2003. As a Standing Committee of the Legislative Council, the Social Issues Committee effectively ceased to operate from that date and is therefore unable to deliberate on or release the discussion paper or a final report.

In previous years when Parliament has resumed after an election, the Social Issues Committee has been re-established and former inquiries re-referred. We will contact all inquiry participants as soon as practicable after the resumption of Parliament to inform you of the status of the Community Housing Inquiry.

Thank you for your contribution to the inquiry to date.

Yours sincerely

Tony Davies
Director

Parliament House

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