Australian Government
Productivity Commission

PRODUCTIVITY COMMISSION

INQUIRY INTO ACCESS TO JUSTICE ARRANGEMENTS

DR WARREN MUNDY, Presiding Commissioner
MS ANGELA MacRAE, Commissioner

TRANSCRIPT OF PROCEEDINGS

AT BRISBANE ON WEDNESDAY, 18 JUNE 2014, AT 8.56 AM

Continued from 17/6/14 in Darwin

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DR MUNDY: Good morning, ladies and gentlemen. Welcome to the public hearings of the Productivity Commission's access to justice inquiry. My name is Dr Warren Mundy, and I'm the presiding commissioner on this inquiry. With me is Commissioner MacRae, and together we exercise the capacity of the commission with respect to this inquiry. Before going any further, I'd like to pay my respects to elders past and present of the Djirubal and Jagera peoples, the traditional owners of the land on which we meet today, and to the traditional owners, past and present, and elders of all indigenous nations which have continuously inhabited this continent for over 40,000 years.

The purpose of these hearings is to facilitate public scrutiny and discussions of the commission's draft report which was released in April 2014. We're keen to get feedback from people on the report, in particular the recommendations and the information request we have made so that we may draw upon that evidence as we complete the final report. We will provide the final report to the treasurer some time in September, and that report will be released in accordance with our Act within 25 parliamentary sitting days by way of tabling in both houses of the parliament. Whilst we like to conduct these hearings in a reasonably informal manner, I would like to remind participants of part 7 of the Productivity Commission Act which gives the commission certain powers to act in the case of participants who provide false information or refuse to provide information required by the commission.

As far as we are aware, these provisions have not been used since the Act was passed in 1998. As I said, we like to conduct these proceedings in a relatively informal manner, however to facilitate the transparency of our processes and also to facilitate the work of our staff back in Canberra, we do keep a full transcript, and that transcript will be placed on our web site in a few days time. Participants are not required to take an oath, but are of course required to be truthful, and we welcome comments from participants not only in relation to their own views, but those expressed by others.

That said, because of the way we take the transcript, it is not possible for people to make comments from the floor, but we will provide an opportunity at the end of the day's proceedings for any person who may wish to make a comment who wasn't scheduled to appear. I'm required under Commonwealth occupational health and safety legislation to advise you of the emergency evacuation procedures of this building. Staff will be on hand to assist you, and the intercom will direct you if an evacuation is necessary. In the event that we need to get ready, an evacuation alarm, which I'm told goes "beep, beep, beep," will be activated and the cause will be investigated. We are to remain calm and await further instructions.

In the event that the building needs to be evacuated, the alarm will go "whoop, whoop, whoop". At that point we are to exit the building via the fire exits. These are opposite the lifts or on the left of the terrace. The meeting point is located on the

corner of Turbot and North Quay, which I am told is go out, turn left and turn left again. Don't use lifts or return to your room.

Right. That's the end of the formal proceedings. Could I please ask the first participant, which is the Law Society of Queensland to come up, and they have. Could each of you, for the benefit of the transcript, just state your names and the capacity in which you appear?

MR BROWN (QLS): Yes. My name is Ian Brown. I am the president of Queensland Law Society.

MR REED (QLS): My name is Robert Reed. I am the chair of the Queensland Law Society access to justice and pro bono committee.

MS SHEARER (QLS): My name is Elizabeth Shearer. I am a counsellor of the Queensland Law Society and a member of the access to justice and pro bono committee.

DR MUNDY: Thank you. Mr Brown, would you like to make a brief opening statement? By "brief", we mean something less than five minutes. The record is currently held by the Australian Bar at three minutes without pausing.

MR BROWN (QLS): I'll speak quickly.

DR MUNDY: We thought it was quite surprising. They obviously went very fast.

MR BROWN (QLS): Thank you, Commissioner. Can I thank the commission for the opportunity for the Queensland Law Society to address the hearing today. The fundamental position of the Queensland Law Society is that everyone without exception should have access to legal services, and that access to justice is a fundamental right for all. Promoting access to justice is a constant feature of our advocacy and education to the profession, and we've undertaken some significant recent advocacy work including sustainable legal assistance for disadvantaged persons, a state election platform from 2012 which sets out general positions from QLS on access to justice, involvement with both state and federal reviews of legal assistance sector funding and advocating for Queensland to retain the right to access common law compensation schemes.

Today, together with my colleagues, we'll address the issues raised in the Law Society's submission. I'll discuss briefly the issues in relation to chapter 7 of the draft report as they relate to professional indemnity insurance. My colleague, Ms Shearer, will discuss chapter 19 and Mr Reed will discuss chapter 13. I'll make some brief comments in relation to the PI insurance issues raised in chapter 7. In 2009 the COAG taskforce confirmed there was no case for moving away from single

supply professional indemnity insurance arrangements. Reliance on the purely open commercial market in the United Kingdom has led to significant volatility in premiums, uncertainty of coverage with premiums of up to 47.5 per cent of fee income for some legal practitioners.

Current arrangements provide benefits with the universal coverage of all firms which, in our view, aid consumer protections. The policy available provides greater coverage than would usually be found in the commercial market, and there is a significant program of assisted risk management within legal firms. I'll now pass to my colleague Ms Shearer.

MS SHEARER (QLS): Thank you. I just wanted in opening remarks to talk a little about some of the aspects of the bridging the gap chapter, particularly around discrete task services and unbundling. Promoting the wider use of discrete task legal services has been a focus for our committee with the Queensland Law Society, and we welcome the recommendations of the draft report on those issues. Our committee has taken the approach that what's required is a relatively simple amendment to the Australian Solicitors Conduct Rules just to make clear that this is a legitimate way of practice, and then we see a role for professional associations, including ours, to work to overcome the barriers there are to delivering discrete task services by developing practice guides about how to do it, but equally as importantly when to do it, and then promoting this within the profession and within the public at large.

We don't see discrete task services as a complete solution to the access to justice gap, but we do see it as an important contribution the profession can make. It enhances pro bono efforts, because pro bono work is often done on a discrete task basis, but it also has the potential to establish a new service offering in the market that we think will, in appropriate cases, provide good value for money for people who can't afford other options, and another more visible form of legal work or practitioners. Rob?

MR REED (QLS): Yes. So my focus in relation to chapter 13 has been on the issue of costs awards for pro bono clients. So the access to justice and pro bono committee of the Queensland Law Society certainly agrees with the Productivity Commission recommendation that pro bono clients should be entitled to seek an award of costs. Our committee has been working with the litigation rules committee of the society and in consultation with the Bar Association of Queensland and the Court of Appeal Rules Committee to facilitate this. Our approach to the issue has been to firstly educate the profession on the need for properly worded costs agreements, and we think that is the way to address the issues that have come up in recent case law.

In particular we've done that through the society's recently published cost guide, and secondly we're working on preparing an appropriately worded template

cost agreement which, when completed, will be provided to all practitioners and relevant stakeholders as an agreed form of wording that will get across those issues. Our committee sees our work in this area as not only addressing the inequalities which we recognise can certainly arise for pro bono clients involved in litigation, but also complementing the other work that the society is undertaking in encouraging pro bono as one avenue - only one avenue of providing access to justice to those in need.

DR MUNDY: Thank you very much. Sorry, Mr Reed, I may have just misheard you as I was flipping through my notes, but did you indicate - and I'm not wanting to put words in your mouth, because I genuinely think I may have misheard you. What is the position about cost orders in favour of self-represented litigants?

MR REED (QLS): I hadn't comments on self-represented litigants. I had commented on pro bono.

DR MUNDY: Do you have a view about the merits of providing cost orders in favour of self-represented litigants?

MR REED (QLS): I think the society certainly supports the concept of providing costs awards in favour of self-represented litigants as well, yes.

DR MUNDY: Thank you.

MS SHEARER (QLS): One issue that arises from my work is that people aren't either self-represented or represented. They may be represented for various parts but not at court, and it's certainly my experience that some of my clients have taken my invoices along to the Federal Circuit Court and asked for costs orders, not necessarily successfully, but they've certainly been given an indication by the Court that it would be considered.

DR MUNDY: We might just stay on this. I mean, our initial concern about the general practice not to provide awards of costs to self-represented litigants has actually changed since the incentives in litigation but that's our primary concern. It wasn't about the equitous notions, and we probably made some observations along the way at some point that that period for yourself is not costless in an economic sense, because lawyers aren't doing something else when they're appearing in court. But we're quite interested to hear that. Ms Shearer, you just raised that question about the relationship between bundled services and costs orders. We don't need it now, but is there any recorded case material from the courts on the presentation of, essentially, unfunded - there's nothing?

MS SHEARER (QLS): I've not had a client who has got to that stage at the end where a cost order is made, but they've certainly been encouraged to produce my invoices along the way.

DR MUNDY: You indicated that they had not always been successful. What reason was given by a court - - -

MS SHEARER (QLS): Just that the matter hasn't got so - this is in family law matters in the Federal Circuit Court where typically a costs order is considered at the end of the whole stage of processes. So it's more that they haven't got to that stage.

DR MUNDY: Okay. So it's a jurisdiction also, isn't it, where the parties end up with their own costs anyway?

MS SHEARER (QLS): Yes. Costs are not routinely awarded. So it's not an example of a court in which costs are usually awarded.

DR MUNDY: Are there any matters of - sorry. Are there any matters that you're aware of where, other than in family law matters - sorry. In forum where it's usual the costs are awarded against the loser, are there any circumstances where the courts have put their minds to the question of unbundled costs? Or is your experience just in the family law area?

MS SHEARER (QLS): My work is in the Family Court and tribunals, but also the Magistrates Court in Queensland, but not in the higher courts where costs awards are more.

DR MUNDY: Given Mr Reed's previous comments, I presume that the position of the Queensland Law Society would be that if a person turns up with having sought some advice but ultimately isn't represented in court, that those costs should be dealt with in the normal matter, irrespective of whether the lawyer themselves had actually been on their feet.

MR REED (QLS): Well, there's certainly a strong argument for that in the sense that those are costs properly incurred in the conduct of the matter.

DR MUNDY: The mere fact that the person hasn't been physically represented in court by a lawyer should really not be either here nor there.

MR REED (QLS): Well, there's strong argument that it would be artificially entirely limited to that part of the process, because of course the process is a much longer one.

MS MacRAE: I was just interested in your comments about pro bono and cost awards. In some other jurisdictions we've heard that while it's possible to structure a costs award by carefully wording your agreement, but that is quite a pain and can be quite onerous and that they would prefer to see some other kind of reform so that that

requirement to get this carefully worded sort of agreement wouldn't be required. But it's your view, I think, if I hear you correctly, that you think you can come up with a sort of a template of the way you would structure a fees agreement that you feel would be robust in having an award presented, so you wouldn't need to make any other change for this jurisdiction at least.

MR REED (LSQ): The position that we've taken at this stage, certainly in relation to this jurisdiction and taking into account the guidelines that you can find in King v King, and also LM Investments, a recent decision of Justice Mullins. We think there's enough there that we can construct a template costs agreement that sets up an indemnity and then sets up adequate conditions subsequent that will allow a waiver of fees should the matter be unsuccessful, and then also limit the fees to the costs award should the costs award eventuate.

So we do feel at this point in time in this jurisdiction there is sufficient guideline, and I guess we're taking the pain. That's part of the point of what we're doing is we'll take the pain to consider the wording and create a template that we can then provide to all stakeholders to use with confidence.

MS MacRAE: Okay.

DR MUNDY: I guess my question is whilst I understand that what you're doing, would it be made easier and clearer - is there any way the parliament could help out in making it easier and clearer is my first question. My second question is, once you've completed this work, do you think it would be relatively - with this costs award document, costs agreement would be relatively transferable between jurisdictions.

MR BROWN (LSQ): I might answer that and say, I think we would be reluctant to see a legislative solution. It probably isn't necessary to have a legislative solution given the structure that we presently have in relation to legal costs in this jurisdiction at lease and an appropriately structured and worded client agreement, as Rob has alluded to, in terms of the general guidance we now have from the court, we think that an appropriately worded costs agreement that complies with the obligations under the Legal Profession Act can adequately deal with the situation.

DR MUNDY: And obviously by virtue of that answer, my second question about would the agreement readily travel obviously depends on the interaction with the legal services regulations of the jurisdiction concerned.

MR BROWN (LSQ): Yes, but - that's correct, and in many ways they're largely analogous across the jurisdictions in terms of the requirements to make costs disclosure, et cetera. So I would - and this is just an opinion without having looked at it in more detail, but I would think that it would be reasonably readily transferable.

DR MUNDY: So I guess, wrapping this bit of the discussion up, is that when you've finished your work, it shouldn't be too hard for people in other jurisdictions to take what you have done and tweak it to meet their circumstances and that would be a more timely way and possibly a more effective way than having to run these sorts of issues through the parliament and get them to fix it.

MR BROWN (LSQ): Subject to the legislative provisions that prevail in particular jurisdictions, and also subject to the relevant case law that might pertain in particular jurisdictions if there is decided case law that articulates a particular position must be taken, so subject to those riders.

DR MUNDY: Okay, thank you.

MS MacRAE: I understand that you've got pre-practising certificates for volunteers. Is that right? And I'm just wondering if you could tell me a little bit how long they have been operating and what the take up is like and whether you have experienced any problems with them. So if I just say, just to round it out a little bit, we did have a recommendation in the report about possibly making pre certificates available for, you know, recently retired people, people on career breaks, and some of the concerns we've had expressed around that are in relation to requirements for continuing education and for insurance, and so if you could talk about those things in particular in relation to how they're operating in Queensland, that would be great.

MR BROWN (LSQ): We might have to take that question on notice.

MS MacRAE: Okay.

MR BROWN (LSQ): Because I haven't come today armed with the relevant data in relation to the actual numbers of those who practice under a volunteer practising certificate and I think we would rather give you a much more fulsome picture of how that regime has worked and the uptake and, if we can, the sectors in which it's operated.

MS MacRAE: That would be very helpful.

DR MUNDY: Could we just perhaps ask you some questions in general though, because some of your sibling organisations in other jurisdictions have indicated to us that they have significant concerns around these sorts of certificates and they raise them in respect to three matters, continuing professional education, contributions to the fidelity fund, although I think perhaps these aren't matters, often matters in which fidelity fund issues particularly apply, and thirdly, indemnity insurance. Are you able, Mr Brown, just to give us a sense of how those issues are dealt with under these voluntary certificates in Queensland?

MR BROWN (LSQ): Well, certainly in relation to Community Legal Centres where people are undertaking purely voluntary legal work, Community Legal Centres operate under policies of indemnity insurance and anecdotally and certainly in my experience engaging in Community Legal Centre work, it's a generally fairly strict regime, well applied in terms of ensuring that people have practising certificates and ensuring that appropriate risk management is in place in relation to the way the schemes operate. So I'm not sure that that's a particular - that certainly isn't a particular concern from the Queensland Law Society's position.

You alluded to the issue of the fidelity fund. Well, as you said, it really isn't an environment in which there is exposure to the risk of fidelity fund issues arising. The issue of continuing legal education again is something that perhaps I would like to take on notice and come back to you, because what I think we would like to be able to do is to get some data if we can just on the engagement at that level by volunteer practising certificate holders so that we have a more fully informed view for you.

DR MUNDY: Okay. That's fine, thank you very much.

MS MacRAE: Could I just mention your work. You've mentioned there you worked with CLCs so I'm going to a different subject so if we need to come back let me know, but in your opening comments you talked about the work that you do in advocacy and we know that CLCs do quite a lot of work in advocacy. We also know that there's been some changes in the way the Commonwealth is funding CLCs to say that they shouldn't be using Commonwealth money at least to advocacy work. I just wonder to the extent to which you think you might be able to take up that role should CLCs become less able to do that work, and whether your role in advocacy, how similar your role in advocacy is to the role that CLCs play.

MR BROWN (LSQ): Well, the Queensland Law Society has 26, shortly 28 committees which essentially undertake a range of advocacy, policy development type work, as well as other activities. So our policy work is spread across a policy team of four lawyers and covers all of the activities that those committees undertake, so it's a vast array of policy work that's undertaken and well outside the scope of what would be undertaken by community legal centres. It's a difficult question to give a precise answer to - - -

MS MacRAE: Sure. I appreciate that.

MR BROWN (LSQ): - - - given that the breadth of Community Legal Centres and the activities that they undertake and community organisations and the activities they undertake as to the level of advocacy and in what areas they advocate and how the Law Society would fill the gap, but I suppose to answer the question, the Law

Society probably plays the most active advocacy role in the legal sector in Queensland already simply in terms of the breadth of the work that we undertake, the volume of work that we undertake, and the level of engagement that we have with government in relation to advocacy work.

DR MUNDY: So you're in - one of the things that has been put to us is that CLCs are in a reasonably unique position as much as - particularly working with people who experience some particular of disadvantage, or perhaps in a limited range of other matters such as environmental protection, that their casework is what actually facilitates and underpins their advocacy and law reform work. Now, in the absence of CLCs undertaking law reform work, and I think it's fair to say that the Commonwealth position is not that they shouldn't do it, but rather that they shouldn't use Commonwealth money to do, I think is probably an accurate statement of the Commonwealth's position. That access to the learnings from the casework, how would you see that information rising up to your committee? Would that mean that you would have to have a much stronger engagement with the casework of these organisations than you do today?

MR BROWN (LSQ): We already have a very close level of engagement in the sense that we have active involvement on our committees by representatives from various organisations. We undertake an active engagement in terms of engaging with Community Legal Centres already through the society. How that would actually impact in terms of the work the society does, again we would have to probably take that on notice and give that some consideration - - -

MS SHEARER (LSQ): Can I - - -

MR BROWN (LSQ): But I will have my colleague address it.

MS SHEARER (LSQ): I think it would be fair to say that there are a lot of issues on which CLCs provide really strong advocacy that wouldn't make their way up through the Law Society's policy committees because they're of very limited interest to people in private practice. It's just areas of work that we have nothing to do with. Some around consumer protection is more mainstream and something that we have a banking and finance committee that's comprised of people who act for banks and people who act for consumers, and that provides a process, but when you're thinking about something like the sort of advocacy that welfare rights or disability services provide, that really would struggle to find a home in the Law Society because it's not an issue that is of sufficient import to another - - -

DR MUNDY: It's not an issue with private practice.

MS SHEARER (LSQ): - - - private practitioners and I think that the real strength of Community Legal Centres advocacy work has been that close link with casework

and identifying issues and identifying solutions that are more systemic so that you don't have to keep doing 50 cases like this, you can get one legislative amendment and it's solved.

MS MacRAE: Yes, thank you.

DR MUNDY: We made an observation in chapter 10 about tribunals and I think it was - I'm prepared to fess up and say we should have been more careful about our drafting. Our concern here was that with what has been described to us by participants, CLCs in various forms, and indeed a number of presiding tribunal members about what they have referred to as creeping legalism, and what we're concerned with here, and as you would know, there are certain, at least, lists within tribunals which are set up essentially for people to representative themselves, so leave is required for people to appear and we absolutely understand why there are really legitimate cases in those tribunals, why leave should be given for people to be represented, particularly if they suffer some disadvantage.

I guess our real concern was, and what was put to us, was leave was being granted increasingly in circumstances which perhaps the design of the tribunal hadn't intended. So that's what we were trying to get up. But perhaps we can have just a more general discussion about self-representation and both in tribunals but also in the Magistrates Courts as well. I mean, one presiding magistrate has mentioned to us prior that he thinks that ordinary citizens should largely be able to go to a Magistrates Court and get their matters resolved without having - necessary to be represented in court.

I mean, we didn't quite explore issues with him, but do have a sense in which - and it also comes, I guess, to lay people appearing in certain types of tribunals, trade union officials historically have appeared and some planners in others. Do you have a general view about, you know, this whole tribunal space which certainly in Victoria VCAT is becoming a very legalistic and congested place, you've only got to go down there - do you have any views about how we can facilitate these things whilst ensuring people still have the safeguard of representation if they really do need it?

MR BROWN (LSQ): Well, I suppose what I can say about that is the society's overarching position is that people should be entitled to have legal representation in tribunals. Our primary concern is that even in a tribunal, relatively benign tribunal environment, there can be significant imbalances between parties who are appearing and it is - I note the comments, the anecdotal comments or the private comments made by a presiding magistrate. I think that the risk in relation to views that legal representation isn't required in most cases fails to, I think, address the subjective implications for individuals and the power imbalance that can occur that needs to be addressed.

It can be through a range of issues, it could be through age, infirmity, physical ability, race, language, a whole of different things. What I might do is invite my colleagues to make some commentary about that in terms of legal representation in tribunals and in the Magistrates Court.

MS SHEARER (LSQ): I think while ever you're in an adversarial process, there's no doubt that representation is of assistance, and whether it's representation in court on the day, or whether it's assistance with putting your case into a comprehensible way so that you can have something to present, I think while you're in an adversarial process where there's a tribunal that is saying, "You tell me what you say, you tell me what you say, and I'll make a decision," then representation is of great assistance in that process." The more inquisitorial the tribunal becomes, the less - and the more they structure the information they obtain and put processes in place to assist people to put their material forward in that way, the less need there is in a process sense for representation.

MR BROWN (LSQ): Could I just add also that despite - and knowing and understanding why various tribunals have been set up, including QCAT in Queensland, matters that come before QCAT would, in many instances be as complex, if not more complex than matters that from time to time go before the Magistrates' Court and - - -

DR MUNDY: I've run a few planning cases in another place, so I know how complex they can get.

MR BROWN (LSQ): And they can become complex. They can be seemingly not complex at the outset, and a particular individual may not really have the insight to understand exactly how complex a matter may potentially become and how prejudicial it may be for them, particularly at the outset, to not have legal representation. So it's a complex issue.

DR MUNDY: I guess places like QCAT, say in the planning list, you'll get people who will turn up there who aren't professional planners, in effect, and they're probably more used to their typical employers but sometimes their clients than plucking, you know, your average solicitor off the street, if you pardon the expression.

MR BROWN (LSQ): Yes.

DR MUNDY: They're experts in - and that's while the old industrial advocates and the industrial tribunals, that's what they did and they knew it. So you don't see a problem with people, suitably qualified people, whatever that means, appearing on behalf of others in what you might consider to be specialist lists, like the planning list?

MR BROWN (LSQ): That's another issue in relation to lay advocates.

DR MUNDY: Yes. Let's move on to lay advocates.

MR BROWN (LSQ): The society does have a strong concern in relation to the role of lay advocates and I think that can be articulated that the view of the society, and I'm fairly confident it's a view shared by the Law Council of Australia, is that advocacy work, and appearances in court should properly be undertaken by legal practitioners for a range of reasons in relation to firstly the training, the qualifications required to become a lawyer, secondly in relation to the fact that lawyers are highly regulated and therefore have a whole range of obligations both regulatory but also ethical, and professional obligations that are set out either in legislation or the common law and the obvious and overarching duty to the court that a legal practitioner has when appearing in court as an advocate.

There is the issue in relation to supervision of lay advocates by legal practitioners if, in fact, that is a way that is seen to address the issue, and there are all sorts of issues that go with that - and there's finally the issue in relation to professional indemnity insurance and issues that can arise in relation to having lay advocates appear without appropriate insurance.

DR MUNDY: But if I'm in the City of Brisbane and I've got a matter in the planning tribunal, you're not suggesting that senior planning officers employed by the City of Brisbane shouldn't be able to go act on behalf of - - -

MR BROWN (QLS): Well, there certainly may be some circumstances in which - - -

DR MUNDY: I'm trying to identify those circumstances.

MR BROWN (QLS): Yes. I think it's difficult to put a ruler across it and say, "Well, in this circumstance this is acceptable, in this circumstance this isn't acceptable." You'll probably end up, in that situation, with a patchwork of - - -

DR MUNDY: But the circumstance I just described is happening today.

MS SHEARER (QLS): But that's essentially self-representation. That's an employee of the entity appearing.

DR MUNDY: So that's self-representation, that's okay. But there are circumstances, I know, in other jurisdictions where professional planning practices, persons who are fellows of the relevant learned society, 20, 30 years' experience as professional planners, do act for private property developers. Is that an unacceptable

circumstance? And these are not people at any particular disadvantage, they're moderately-sized competent businesses, and they choose to have this person act on their behaviour because of their expertise in that particular forum, which has been developed for that purpose.

MR BROWN (QLS): And accepting that in the particular fora and the particular area, they have an area of expertise - - -

DR MUNDY: Yes, and I'm not suggesting they should turn up on appeal in the District Court or anything like that.

MR BROWN (QLS): Our concern, though, is that even in that environment it is a court environment. It is an environment in which, as a legal practitioner, the overarching duty is to the court, to the tribunal, to the administration of justice. Those are just duties that lay advocates don't have, don't recognise and haven't been schooled in their entire careers. There are also the issues in relation to professional indemnity insurance. So if a significant issue arises in the conduct of a matter, even at that level and even given the particular level of expertise, if it then becomes problematic down the path and becomes a matter which goes on appeal to higher courts, there are significant concerns in relation to the right of redress of the client should they be significantly impacted.

DR MUNDY: But having personally acquired the services of such a person as I described, the first thing I did was see what the professional indemnity insurance was like, and it looked like a firm of its size.

MS SHEARER (QLS): I think the issue is, is there really an access to justice benefit in that? Certainly I don't have anything to do with the Planning and Environment Court, but I do assist people with employment law matters. So to that extent, my competitors are people who aren't subject to the same degree of regulation and control as I am, and in my experience could easily charge a whole lot more than I do for the same service.

DR MUNDY: Presumably the consumer wouldn't use the service if they charged a whole lot more than you did.

MS SHEARER (QLS): Well, they don't necessarily know that at the outset.

DR MUNDY: What people know when they start down the path of advice is something that has concerned us particularly.

MS MacRAE: I just ask, just coming to the unbundling point, and I appreciate that your - or the discrete task offering us, as you describe it - that you support that, and you were saying that you think that there would be ideally an amendment to the

Solicitors' Conduct Rules. You refer to the American Bar Association rules in that regard. Can you just elaborate a little bit on whether there's something in those in particular that you would see as being - as what you would use to amend - is that the idea, that you would look at those rules and amend the - - -

DR MUNDY: It's on page 8. Is what you're suggesting that the Solicitors' Conduct Rules should reflect what is in the Bar Association - - -

MS SHEARER (QLS): Yes.

DR MUNDY: So a lawyer may limit the scope of representation if limitation is reasonable under the circumstances and the client gives informed consent?

MS SHEARER (QLS): Yes.

DR MUNDY: So basically, I come along here and say, "Look, I need this bit of family law advice. I'm pretty confident I can hop up on my own two feet down at the Circuit Court, but I'd really like you to give me - this is the issue I need resolved, and could you perhaps draw up the documents for me?" You then give me a bit of - you'd say, "Fine, Dr Mundy. Happy to help you out on that. I just need you to consent in writing that this is the scope of what you and I have agreed I'm going to do."

MS SHEARER (QLS): Yes.

DR MUNDY: Gee, that seems pretty straightforward.

MS SHEARER (QLS): It does.

MS MacRAE: And that would be sufficient, in your view, to cover off the concerns we've had - - -

MS SHEARER (QLS): I think that then makes it visible in the Australian Solicitors' Conduct Rules that this is a way of practising. I think there's then a role for other professional associations to flesh that out for our members and provide them with resources and stuff. But I think that's enough.

DR MUNDY: Because that's really what legal aid commissions do with duty solicitors and their 40 minute, free, go in. It's happening in the assisted sector all the time, it seems to us.

MS SHEARER (QLS): And I think it happens in private practice quite a lot more than we think.

DR MUNDY: Yes, I'm pretty sure that's true too. So the view of the Queensland Law Society is that that would be enough from - and then the rest of it's practice development for the - that's truly very helpful.

MS MacRAE: Sorry, now I'm returning back, so I've changed the subject and now I'm going to change it back again. Just coming back to pro bono, we've had some quite strong evidence from the jurisdictions where pro bono targets apply that they've been helpful, but I note that you would be opposed to it for this jurisdiction. I'm just wondering if you could expand a bit more on your views around pro bono targets and why they may not be a good thing for Queensland? Noting that they would be voluntary and aspirational, I think everyone is agreed that our position on that is correct as well, not a mandatory target.

MR BROWN (QLS): I think it would be fair to say at the outset that there is a divergence of view about this issue within the profession. The concern that we have at the Queensland Law Society is that the imposition of mandatory targets in relation to undertaking government work is to the disadvantage of smaller regional and rural firms, and given the spread of the practitioners across Queensland, and the fact that most firms in regional and rural Queensland are smaller firms, there are potentials for significant disadvantage in requiring those firms to on the one hand reach certain targets and its reporting requirements potentially, and undertaking and having free equal access to undertaking government tender work. So I think that's the general proposition that is of concern to the Queensland Law Society.

DR MUNDY: So what you're concerned about is Main Roads, or whatever it's called at the moment, is for the roads up around Cairns, there's three or four local firms, the contractors are probably going to be local, the issues are all essentially local, and local law firms aren't going to be able to compete, and also maybe major Brisbane and national firms mightn't be interested.

MR BROWN (QLS): And they may not be able to compete, not that they wouldn't be interested. They simply may not have the resources to accommodate undertaking the work, bearing in mind also that a lot of regional and rural firms, if not the vast majority of them, already undertake a significant amount of pro bono legal work. I can advise the commission that in our process of renewing practising certificates this year, for the first time we sought feedback from the profession in relation to the amount of pro bono work that is being undertaken, and on average it's just shy of 70 hours per practitioner that has been identified in terms of the amount of annual pro bono work that has been undertaken. Now, that doesn't include, is my understanding, the large law firms, so in fact the figure may be higher than that. So there's already a significant amount of - let's call it formal pro bono work - being undertaken by practitioners. On top of that, they're also doing a lot of pro bono work that probably doesn't fit the definition of pro bono.

DR MUNDY: I mean, one of the things that has been suggested to us about the large firm scheme, Commonwealth arrangements and so forth is that relatively little of the pro bono work that's being done is actually of an access to justice character, and it's perhaps providing what we might call transactional services to cultural institutions. The data that you just mentioned that you're collecting, is it of such a character that it would facilitate the identification of how much of that 70 hours a week being done by what I think you described as - they're non-metropolitan Brisbane firms - - -

MR BROWN (QLS): It's all of Queensland.

DR MUNDY: Are you able to identify that regionally?

MR BROWN (QLS): We probably will be able to drill down into the data and do that. I'd have to take that on notice.

DR MUNDY: No. I don't want you going to too much trouble. Particularly if you could identify - I don't know how you've collected the data, but whether you could identify that which is of an access to justice character.

MR BROWN (QLS): We would not be able to do that. The data that we've collected is fairly broad.

DR MUNDY: So it could be representing someone in the Magistrates Court, it could be doing a lease for the local golf club to put another hole on the golf course?

MR BROWN (QLS): It could be anything, and certainly in terms of - but can I say anecdotally in terms of regional and rural practitioners, a lot of that will be access to justice work in the regions.

DR MUNDY: I suspect you're probably right. The difficulty we have is getting a handle on, getting any traction on that data.

MR BROWN (QLS): Well, this is certainly the first year we've done it, and the feedback has been pretty positive, and the response - the take up in terms of responses from the profession, I think it was something in the order of 30 per cent, I stand to be corrected on that, gave feedback. So next year I suspect we'll look at a little more sophisticated process to have more meaningful data.

MS MacRAE: So to the extent you've got that data available now, is it of a form that might be helpful to us, and can we access it?

MR BROWN (QLS): Well, we can certainly come back to you in relation to the nature of the - - -

DR MUNDY: That's if you can get whoever in the office is handling it, to give someone a call rather than do it by - a phone call might find the nuggets or decide that we're tilling barren soil.

MR BROWN (QLS): Certainly.

DR MUNDY: All right. Look, we are out of time. Thank you very much for your submission and the time you've taken to come and speak to us today. We appreciate it.

MR BROWN (QLS): Thank you. I appreciate the time.

DR MUNDY: Could we please have Christopher and Deborah Jenkinson? For the benefit of the transcript, could you both please state your names and the capacities in which you appear today?

MR JENKINSON: Christopher Jenkinson. I'm here in regard to trying to present some areas which don't seem to be catered for with the current system. I seek some sort of means from the federal government to override problems when an individual in Australia is being affected by another state and nothing can be done about it.

MS JENKINSON: Deborah Jenkinson. I'm here also in that same means. I'm concerned from a lay person's point of view that's been through a situation where an elderly person has been abused and governments in two states see fit not to support that person or to reinstate their actual rights and liberties when they have capacity.

DR MUNDY: Thank you. Before I ask you to make an opening statement, I'm sure our staff have advised you that we're not in a position to retry or reconsider matters and make recommendations about individual cases. I should also advise you that whilst these proceedings occur under the auspices of our Act, unlike a parliamentary inquiry, there is no protection of defamation in these proceedings for any persons other than Commissioner MacRae and I. So I just want to let you know that because I know that sometimes people seem to think that we're parliament, and sadly we're not. So with that, would you like to make a brief opening statement, and then we can ask you some questions?

MR JENKINSON: Okay. Well, the submission that I presented covers most of the things in general form. I kept specific for those same reasons, but everything that I've said, I support and there's documentation for. The problem we have is that as a general problem is that there's a part of society, some of the most vulnerable and disenfranchised are those elderly that are either disabled or are deemed to be disabled through a guardianship tribunal where they have their rights and liberties taken from them, taken over by the crown or the state, and they also control their finances in doing so. What happens when the state fails in its duty to protect those people after it takes their rights away? In the situation which I have presented, the state offices are the abusers.

There appears to be no possible means to have it addressed. If you go - in the situation of my mother, she lives in Queensland, the abuse comes across the boarder. Queensland state government says they can't do anything about the state government of another state. If an offence occurs in the other state, then it has to be addressed in the other state. Now, under South Australian law, the crown is accountable for those offences. So where do you get it addressed? I've been to the District Court twice. Both times I had orders from the District Court to government officers. Both times all those orders, every order was just ignored, disobeyed.

Now, if it had been me or some other individual, then that would be contempt of court, I would assume. But it doesn't apply, and the court says that it can't do anything about it. Now, in the situation where you go to the federal government, the federal government says, "Look, we'd love to help, but we can't because we can't intervene in matters in another state." Well, an Australian citizen living wherever they live in Australia should be protected by the same laws everywhere, or the same quality of law. That won't happen when you have states with different legislation and some are weak, and some have got these big gaps in it that they can wiggle around and get through, but if the laws don't - if the laws of the state where the offence occurs are not being addressed, where does an individual go to protect a person that is being abused by those laws?

I've tried every avenue and the consistent part of what happens is that while I have the evidence and I've provided the evidence to the attorney-general of South Australia, all I get is, "Thank you, we'll look at it and get back to you." They don't get back to you. But when you raise an issue, what happens is that the issue is addressed before they even look at the evidence. They don't - you know, the consistent part of this has been they've never asked me for the documents, they never looked at the documents, and they already make a conclusion that the government office is not wrong.

In the case of an ombudsman, this was done and every - the issue - the ombudsman said no government department has done anything wrong. This was back in the early stages. Since that time, everything that I have raised has been proven to be right. Perjury, the contempt of court, the disobeying court orders, now fraud, et cetera. All those things are there, and to show the problem that people get is that when a government officer makes a report, to get that report changed when they make an error in that report is near impossible because they don't want to show that they were incompetent or lax in their investigation. They would prefer just to say, "We're not changing it."

It took me three years for one report that contaminated legal process. For three years I kept asking for that report to be fixed and the records to be corrected, and they didn't do it. Then a change in the head of the government office occurred and I presented the information to him, and he at least had the decency to write a five-page report to say that that earlier report should never be used again. But it already contaminates things, and the problem is that - what I'm trying to say is the problem is if the - if it was an individual person with the offence, then the government would help you. But when the government is at fault, where do you go to get help? What I'm doing now is - I don't want to do this. I'm sick of it. It's been 10 years and 25 hearings so far, and I've got another one on 7 July.

So what I discovered is there are systemic problems in South Australia that are

impacting on large numbers of people in the way that the guardianship board operates, the way they produce their transcripts, the way they now - you talk about statistics. They're trying to reduce the number of people going to appeals, so what they do is they don't provide any details for anyone to go to appeals. So they use ex tempores, which now they're like a pre-determined template that says, "The person has no capacity. We've looked at all the evidence before us and we've come to this conclusion."

The latest one was - for reasons they gave a couple of reasons and they were both wrong, but then they also said, "There could be other reasons." It's up to them if they feel it's appropriate that they should provide the other reasons. Now, we're talking about going to appeal in the District Court, which in our case costs me a thousand dollars roughly each time I go to South Australia and do that. Now, when you go to the District Court and you get orders that are in your favour and no-one does anything about it, then what is the purpose of an appeal process and why can it occur? As I said, my mother lives in Queensland. She doesn't live in South Australia any more, but South Australia is controlling - made the offences and - a recent situation was what I was saying about - they take away rights and liberties and control the assets.

I asked for my mother to be represented - have legal representation to oppose what they were doing to her in a recent situation in Queensland. The person that holds the funds said that they won't provide any funding for legal representation, yet they were using a crown solicitor from South Australia to push their case through in Queensland as a third attempt to get it through, and they actually got it through this time. But third attempt, they used a crown solicitor with all those resources on the basis that it was complex matter of fact and law, and they then said that my mother could have no - they would not provide any funding. We talk about free legal aid, et cetera. In the tribunal that it was in, they don't provide lawyers and they don't normally allow lawyers.

I questioned why the other party were using lawyers, and as I said, there's a little clause in the Act that says if you say that it's complex matters of law and fact and you're a government office then you can use your lawyer, but an individual then doesn't have equity in representation, and my mother had no legal representation. She has had no legal representation in any hearing except for in the District Court where you have a lawyer appointed at an appeal to represent the person. Now, the first case the lawyer was good and she read stuff and looked at stuff and supported my mother.

The second case we had the situation by example where I contacted that lawyer firm to try and get some advice before the hearing as to what the appeal process was, and I was told that the barrister would look at the two transcripts for $3000. The barrister had said, "Yes, there's complex matters of - there's three areas of law that's

been breached," and things like this. I said, "Well, I can't afford to do that." Because all the money is coming out of my pocket, so I don't get any refund for that sort of thing. So although I'm my mother's guardian, they just ignore that part of it. But then we went to the hearing and that actual - that barrister was appointed to represent my mother, luck of the draw what the court presented.

But what happened was that he didn't come to the hearing. He used a junior lawyer to go to the hearing, and that junior lawyer had told me previously that she didn't know much about guardianship board matters and that the other guy should do it. So she went there and she had the audacity in the hearing to say that - I understand it's legal process, but because she was not instructed by her client, she will remain silent. Now, how is that legal representation? My mother can't talk. She's had a stroke. So she can't represent herself, she can't put in an appeal by herself, I have to put - well, I don't have to. I can turn away now. But I put the appeal in, it's my cost. The whole system is wrong.

There's this little group of people, the elderly that can't look after themselves whether disability of whether they're just too frail or don't want the stress or whatever, because it is a stressful thing going to appeal. But there is this little group of people where you can't get support, and I tried everywhere for support, and one consistent issue is that you can get free legal advice on some matters that are simple like, you know, the tree is hanging over your fence or something, but you ask them about constitutional administrative law and the majority of normal lawyers don't know what - they don't practice in that anyway.

You go to the Legal Aid people and they say, "We're not here to give that sort of advice. You need to go to a normal lawyer." They say, "We're here for simple matters, 15 minutes." That's the general thing. So therefore what do you do? If you go to the government, they say go the free Legal Aid. Well, free Legal Aid is not there. If you happen to find someone that wants to do some help and it's a complex matter, they have to weigh up whether - if they're a single lawyer, whether they're going to use a large amount of their time, which is required for complex matters, on pro bono, or just say, "It's too difficult." That's what I've had - you know, they'd love to help, but it's going to take all their time and they've got to make a living.

If you go to a large legal firm then there's a conflict of interest in administrative law if you're taking it against the government, because - the number of people that do administrative law in Adelaide is very small. Most of them, their client is the government. So there's all these problems that are just there, and I feel the only solution - the only solution is through the Supreme Court to get some sort of relief, and what I'm trying to do is that the systemic problems that I've identified I believe impact on hundreds or thousands of other people in South Australia. If I turn my back on my mother, which - she's safe now. She's in Queensland, but she's 94.

If I turn my back on this when I have the evidence, then I'm turning my back on all those people, particularly between the period of 2006 and 2012 where my records show problems, and so I just turn my back on them and that's not - we're not comfortable with that. As I said, I feel that there must be some means for the federal government to be able to oversee a situation where, if a state is not abiding by its own laws, then where do you go to get someone to intervene for an Australian citizen? I hope I've made sense. I just don't know where to go.

The only avenue - I used to look at these people that sit on the corner with their placard and I used to think, "Crazies." But I understand what they're doing now. Some may be wrong with what they're doing, but I understand the frustration. The frustration when you have the evidence, it's their own government documents and no-one will look at it shows, as I said, fraud, perjury, contempt of court and a lot of other things and no-one does anything, what do you do? The only avenue - I tried looking at going to the Supreme Court. I asked a lawyer what would it take to take the government of South Australia on in the Supreme Court. They said, "More money than you've got because they've got deep pockets and they'll keep it going until you run out. Even if your case is going to win, they'll drag it on."

The other part of dragging on, you look at the need for access to justice, some of the state laws mean that if you don't address certain matters within a certain time, then they're never going to be able to be looked at. Criminal matters are fine, but the others you can't. Where you talk about ombudsmen - and I've got a good case for that, but I'm not going to go into that here, but I can give you the documents to show it - the approach is, if it's a government office - I don't know whether it makes any difference - but, "Have you known about the problem for more than 12 months, or is there another avenue that you can take to address the program? There is in either of those? Sorry, we can't help you." Now, that's not assistance, and as I said, something has to be done so it can be properly addressed.

In my submission I mentioned a case in 2006 under case law where the courts were upset by the Guardianship Board of South Australia, in that they delayed process so that by the time it gets to the court, the orders are extinct and the court can't do anything about it. Now, they're still doing that today, and this extempore things that they're attempting now, all that they're for is to reduce the statistics that say that X number went to appeal. The way the hearings are being carried out is atrocious, and when you don't have a judge in an establishment, like they're in the Guardianship Board, the president is just a lawyer, he's not a judge, and the decisions that that tribunal makes are more important than a number of other tribunals, they take away people's lives, and if they don't abide by proper process, then those people's lives, once they're taken away, they're never going to get them back, that's the way it works.

So I just feel that if you provide more benefits and more ability for these

tribunals to make decisions when there's no real way to challenge them or to put safeguards, then you're putting more people at risk, and that was one of the factors that I was concerned about. There's too much discretion throughout the law as it is, and that's fine if those people are using that wisely, but if they're misusing it, then something has to be done. As I said, I don't know, if you can tell me where I can go in the federal government to get this fixed, then I'll be happy.

The alternative I have at the moment is that I release the government documents on the web, and then I get prosecuted for releasing documents. But that I believe is the only way that I can actually get the public of South Australia to be aware of what is happening. But that risks my family's wellbeing and life when it shouldn't have to be. It shouldn't be us that is doing this. It should be them fixing the - they put the laws in place, they have an obligation to abide by those laws and to enforce them. They're not doing it.

MS JENKINSON: Transparency.

MR JENKINSON: Yes, transparency is the key. If you can get in whatever recommendations you make on whatever matter, you put an area where there's transparency in all those areas, so that will help build the quality of the services that are being provided and also allow people to get legal advice on them easily. In the case of South Australia, for example, a tribunal hearing, they record the hearing, they won't provide the DVDs even under Freedom of Information, they say in South Australia. They won't give you a transcript unless you take it to the District Court, so you have to apply to the District Court in advance, then under the court rules they are required to provide a reason statement and a transcript.

Now, what I found in the early stages was the transcript was not what I attended, not the hearing I attended. I subpoenaed information, the audio, and I asked the courts to hold that audio, and I asked the Guardianship Board of South Australia to hold that audio, and I wrote to the attorney-general saying that that audio should not be removed, and I also said I was concerned that the Guardianship Board would not abide by the court orders. In the end the audio was lost, the court orders were not abided by, and there's no ramifications to anybody.

In Queensland, in the earlier QCAT and GAT situation - which was really good, I thought; I think they've gone downhill a little bit since - but in those cases you could get hold of a CD of the recording for - I think it was around $60 or something at that stage. Now it's $300 per certain amount of time or whatever. If you want a transcript, it costs you $1200. So if you want to appeal a QCAT decision, you have to pay five hundred and something dollars to QCAT so that they will then themselves look at it again - it's not in another court, they themselves will look at it again. You require transcripts for lawyers, so if you had two hearings there's $2400 or more for transcripts before you even get started. It's making it so the process is

unchallengeable, and that's the way the system is. As I said, if it was a government office, then they're untouchable.

DR MUNDY: Mr Jenkinson, I'm going to have to draw you to a close there, because we only have about another five minutes for you, and I'm sure Commissioner MacRae has a few questions she'd like to ask you.

MS MacRAE: My goodness. I do feel very sorry for you. It sounds like you've been through hell and back. I guess from our point of view, I really do sympathise with you, and I'm sure you've tried to address - you know, looked at every possible avenue you could, and I think it's difficult for us to try and give you any - well, I think the sort of assistance you're seeking isn't the sort of assistance unfortunately we can provide you. So I'm very sorry about that, that there's going to be another forum you've come to and you're going to feel like, "I've spoken to another bunch of government people who aren't going to help me." It isn't because I lack sympathy for your position, it sounds like you really have had a terrible time.

From a systemic point of view, I guess the key issues that you've raised that are sort of germane to the areas of the law that we're looking at, access to Legal Aid, it seems like you've raised cases here where - why isn't there something available for people in your sort of position? So the rules around access to Legal Aid is an area I think that we can look at your case and maybe make some observations about that. In terms of the government departments or boards doing the wrong thing, we have tried to make some observations around internal review mechanisms, trying to make those transparent and ensuring that governments do themselves have first an internal review mechanism that works, and we did actually hear another case yesterday where there seemed to be a breakdown in internal review which would have been, I guess, a first port of call for you, which seems to have - - -

MR JENKINSON: I've found that self-review is inadequate. It just doesn't happen. They don't even ask for the evidence, and they make a decision. I'll give you an example of how - - -

DR MUNDY: And briefly, please, Mr Jenkinson, because we do have another witness at 10 past 10.

MR JENKINSON: Okay. But self-review is behind closed doors, one head saying to another, "We've got a problem. Can you ease my conscience and say you're doing something about it?" Then the evidence that I've got is that the email comes back, "Yes, we're looking at it, it's all in hand," and then the other guy writes back and says, "Thanks, I don't have to investigate." That's how things are happening behind - and people rely too much on what is claimed to be independent when it's not, when it happens to be a government office. If it's a council or something else, that's a different thing. But if it's a government office, when the problems are severe, and

what I've suggested in my submission, then they're not going to fix it, just bury it. That's the way it is.

Therefore, I'm not asking you to tell me where to go, I'm saying if there is a possibility that there is something in your recommendations that can fix - provide - overseen by the federal government over issues where particularly states are not abiding by their laws, then that - you know, maybe that's the best we can get at this stage. I don't know the answers. I've been everywhere, and each time you go to places, you become a complainant after the first few times because you don't accept that what they're telling you is correct when you know it is incorrect. You know, too much reliance on the verbals of what governments say they do, and too much reliance on at face value reports and decisions of government when you've got to look at whether there's a conflict of interest. But I don't know.

DR MUNDY: Well, thank you very much for your very detailed submission. We'll - I'm not - as Commissioner MacRae says, I'm not sure there's an awful lot we can do to alleviate the situation. The constitutional question you raised was debated in the 1890s as to whether the Commonwealth should have a capacity to compel the conduct of the states, and as we know the states remain solid. I'd have to be honest with you and say that if we were minded to make a recommendation to that effect, I very much doubt whether a majority of citizens in the majority of states would vote to support it or their governments would support it.

MR JENKINSON: Well, in 2010 the federal government offered the states the opportunity to put their public trustees under the federal Act. Now, that would have solved a large part of my problem, because with the financial information, the public trustee has no financial licence and has no overseeing in South Australia. The private trustees are under the federal Act and ASIC. I could have taken my stuff to ASIC and had it fixed. Now, there's an inequality - - -

DR MUNDY: There is the nub of your problem, Mr Jenkinson, is that the Commonwealth can only get these powers with the consent of the states. So I suspect, as you've learned, that won't be - - -

MR JENKINSON: Even at that stage they were offering a bit of money to try - as part of the deal, and that wasn't good enough.

DR MUNDY: We regularly advise on policies to get compliance from the states, and we're often disciplined. But look, thank you very much for your time here today.

MS JENKINSON: Could I just say something?

DR MUNDY: Yes, but very quickly.

MS MacRAE: Very quickly.

DR MUNDY: We do have others who have taken time to be here.

MS JENKINSON: Part of the problem I see is that the process is cyclic, and at the coal face if you could get legal representation for the person in the guardianship board so that person and the family can tell that legal representative the truth, the whole truth, nothing but the truth, the story that's happening, then those people can be represented in the guardianship board, and maybe the outcome wouldn't be negative on those people. As far as I'm concerned there's a whole stolen generation of elderly people out there that are having their rights and liberties taken away from them. By doing so, by having that legal representation, I would imagine that there would be a lot of people that wouldn't even need to go to appeals.

MR JENKINSON: The quality of the tribunals would be - the conduct of the tribunals would be higher. So - - -

DR MUNDY: Thank you very much.

MS JENKINSON: Thank you.

DR MUNDY: Could we please have Shearer Doyle Pty Ltd, please? Welcome back, Ms Shearer.

MS SHEARER (SD): Thank you.

DR MUNDY: Could you please again state your name and the capacity in which you appear?

MS SHEARER (SD): Yes. My name is Elizabeth Shearer and this time I'm here in my capacity of legal practitioner director of Shearer Doyle Pty Ltd which operates Affording Justice.

DR MUNDY: Would you like to make a brief introductory statement?

MS SHEARER (SD): Yes, I would. Just a bit of background about what Affording Justice is. We operate exclusively in what you've described as the retail sector of the legal services market. Our clients are individuals and small business in legal matters where sadly there is no pot of gold at the end of the legal rainbow to fund legal fees. So we deal with cases that are not about money, so children's cases in the Family Court's jurisdiction, domestic violence matters, or not directly about money, like employment matters, or about modest sums of money, so small - low value disputes. Consumer disputes, low value property settlements in the family jurisdiction, or often about large amounts of debt. So small business or consumer credit debt.

We provide three services; legal diagnosis; legal advice; and discrete legal task help, which is essentially discrete task services. We don't provide full representation in court, although we can through an associated practice if that's appropriate. We do provide representation at negotiation and in ADR processes, but as limited scope engagement, and we never go on the court record unless we're just filing consent orders in the Family Court. We do almost all our work on a fixed fee basis, and almost all our work falls below the $1500 threshold in Queensland for full cost disclosure. So we use a simply two page terms of service document to document our engagement with clients.

A lot of our work is relatively simple and straightforward, but some of it, particularly coaching and assisting people through contested children's matters in the family law is quite complex. We've been operating since the beginning of 2012 and we spent our first year as a virtual practice where we interacted with our clients only by telephone, Skype and email, but we established a physical presence with an office in the Brisbane CBD at the beginning of 2013, but because of our skew towards working virtually, we can assist people from any location, and in fact we've had a number of clients from rural and quite remote locations.

In some ways what we do is really no different to what small firms have always done, but we try to package it up in a way that it's visible to the client about what it is that they're getting so that it addresses the concerns people have about going to see a lawyer about, "I don't know how much this will cost and I don't know what's involved and what am I getting myself into?" So we try and make it an accessible product, I guess. We're still in the development phase, and our model is really only possible by keeping a really strong focus on very low overheads by a significant reliance on technology, and by recognition that we are firmly in the retail sector of the market and a level of comfort in charging fees that are appropriate to that sector.

I should say that limiting - doing this work limits our ability to engage in some of the access to justice work that law firms have traditionally done. For example, I can't afford to do legal aid work as well as charge the rates that I do, and I can't really afford to do any significant level of pro bono work either. The challenges we face, and a number of these are addressed in the draft report which I was very pleased to see, is a lack of recognition about discrete task, legal service and a sort of lack of legitimacy: is it really a proper way to provide high quality legal assistance? Is it too risky? All that sort of stuff. We're largely invisible to courts, and we're largely invisible in a lot of the access to justice discourse that's all about represented or self-represented and not about a lot of people who are represented for parts of the process.

There's a high regulatory burden on legal practices that impact on a small practice like us, and some of those burdens are things that our non-lawyer competitors don't face. I'd have to say there's a lack of clarity in the community about what legal services people should expect to be able to get for free and what they should have to pay for. So a large part of my staff's time is spent explaining to people, "No, we do have to charge fees if we're going to work for you." The sustainability and replicability of what we do should be assisted by some developments in the legal services landscape, particularly the significant supply we've got of newly qualified lawyers who are, you know - the sort of simple work we do is great for them to do.

A supply of experienced lawyers who are looking for other options apart from traditional legal practice and are willing to work virtually and flexibly. So I see that there's a labour supply for the sort of work we do. Continued improvements and reducing costs of technology will also assist this sort of practice, and I think also the incorporated legal practice structure where - which opens up ownership of practices to capital that perhaps doesn't expect the same level of return on investment as has been traditionally expected by owners of law firms. So that was all I wanted to say at the outset, and I'm happy to assist you in any way I can.

MS MacRAE: Well, I'm pleased you like some of the report and we certainly are

very interested in unbundled services and I guess innovative service delivery, which it sounds like you're at a bit of a cutting edge here, so that's great. I was interested to say that you're never on the court record, or almost never on the court record. One of the problems that we've heard discussed is that sometimes where a lawyer provides an unbundled service they don't want to be on the court record, but the court may insist and in fact drag a lawyer up and say, "Why didn't you provide service of X when you only provided service of T?" Is that an issue that you're conscious of or is it something that you feel confident won't arise and be a problem to you?

MS SHEARER (SD): We don't appear in the higher courts, or we don't assist people in the higher courts, by which I mean the District and Supreme Courts in Queensland and the Federal Court of Australia. So it's not so much an issue in the courts and tribunals in which we assist people. I think there are impediments in some court rules, where you're on the record and then it's very hard to get off. I think we gave an example of the Federal Circuit Court rules where it's relatively easy to get off the record once you're on.

In terms of the material that I draft for clients that they're going to take to court, it's often a matter of judgment about whether you're disclose in that material that it's drafted with the assistance of a lawyer and, you know, say who we are. So that it's apparent to the court or tribunal that the clients had assistance, and I particularly do that with people who I think are likely to be less eloquent when they get to court, and if the court has got quite a well drafted affidavit and then expects a certain standard of advocacy on the basis of that affidavit, I think it's important to disclose that. We're really in a grey area in terms of how court rules apply. So we just exercise judgment about whether that's going to be helpful or not.

DR MUNDY: But it's been suggested by some that these are not only issues about court rules and attendant issues about liability, but there are also ethical issues.

MS SHEARER (SD): There are ethical issues in that we can't represent that we're providing a greater level of assistance than we are. So that's always up front when we speak on behalf of people.

DR MUNDY: But presumably that's no different to anyone else who makes an offer of services and the normal requirements of the consumer protection law.

MS SHEARER (SD): Yes. I mean I think, for example, I couldn't write a letter of demand in which I said, "I hold instructions to commence court proceedings," when I clearly don't and that's not something I would ever do. So there are ethical parameters, but I don't find them oppressive.

DR MUNDY: Yes, but these really are no different to any other form of representation that someone might make - - -

MS SHEARER (SD): Not really.

DR MUNDY: In normal constitutional trade and commerce to which the Australian Consumer Law would otherwise apply.

MS SHEARER (SD): Yes, the Australian Consumer Law would apply in addition to our ethical obligations under the Solicitors' Conduct Rules.

MS MacRAE: I was also interested in your comments about having a higher regulatory burden than some of your competitors. Regulatory burdens are things the commission has been asked to look at on a very regular basis, and we appreciate how hard it is to reduce them. But do you have any suggestions around ways that we might be able to reduce that? Are there things that you're asked to do that you think are superfluous, I guess, to real requirements or - - -

MS SHEARER (SD): Well, as I said in my submissions, I've got concerns about the cost disclosure regime in that it produces a whole lot of documents that people will never read, and if that could be scaled in some way, I think that's appropriate. One of the things that troubles me as a legal practitioner is that I can't accept payment from a client until I've actually done the work, and so if they want to pay me and I want some security of payment, I've got to run a trust account, which seems an unnecessary burden for the affording justice style of practice. Any other person can make whatever contract they want with people about how their services and when their services will be paid for, but I can't. I think - - -

DR MUNDY: Can I just stop you there. I mean, it's always struck me as passingly strange, and particularly since we started this inquiry, is that many people have encouraged us to be mindful of the ethical obligations of lawyers, and in some sense they appear to have, at least for most people, to have a priori higher ethical obligations than any other citizen of the Commonwealth, yet they're the only people who we require to have a trust fund if they take payment in advance.

MS SHEARER (SD): In advance.

DR MUNDY: Builders do it all the time.

MS SHEARER (SD): I know.

DR MUNDY: I mean, do you have a sense of what the reaction of the profession might be - I'm not asking you to speak on behalf of the Queensland Law Society.

MS SHEARER (SD): No, I can't do that here.

DR MUNDY: But your view as someone who observes the profession, what would the reaction be if we were to recommend that there really was, in most cases, no good reason for this piece of regulation and the need to use trust funds in the way that we do? Would there be howls in the streets?

MS SHEARER (SD): Well, from what I know of my work with the Queensland Law Society, we have a focus towards less regulation in the profession. So I can't say what their attitude would be. But certainly consistently my view - - -

DR MUNDY: I'll ask the Law Council tomorrow.

MS SHEARER (SD): But, you know, different matter if you're taking someone's funds to settle a conveyance.

DR MUNDY: Yes, if I'm settling a house and I've got to hold the money in trust, that's fine. But - - -

MS SHEARER (SD): Yes, but where someone's got the money now, they want to pay me, I've got an interest in making sure they pay me. To run a trust account for that sort of - - -

DR MUNDY: It just strikes me as odd that these people, who we're supposed to acknowledge the ethical contribution of - - -

MS SHEARER (SD): Yes, and yet we have a higher - - -

DR MUNDY: Have higher fidelity requirements than builders.

MS SHEARER (SD): I don't know that it's a regulatory matter, but certainly I have a fiduciary obligation to my clients to do things that are in their interests, which mean that I have an entirely different approach to dealing with people with debt problems than lots of other people offering services to people in debt, and yet I'm subject to a higher degree of regulation about cost disclosure in that arena.

MS MacRAE: Just in relation to consumer ignorance of fees and what they might expect, and you mentioned in your opening statements about the problems you have about people expect to get quite a lot for free when that's not the case. I was interested in your submission that you weren't attracted to the idea of having a centralised sort of online resource that people would go to. One of the reasons that we'd recommended that was because we, like you I think, have a concern that people have no idea what to expect when they go to a lawyer about what things will cost.

So I think partly we've had a response to our recommendation that has sort of misunderstood what the intent of that would be and what it might look like. But

what we thought would be ideal would be to just give people an idea of the sort of ball park they might be entering. If they had a matter of a certain type, what could they reasonably expect within a range - you know, no point estimates as such. No individuals talked about, no individual lawyers identified.

But just what might be a reasonable cost if you were to go and ask a lawyer, you have a family law problem and you've got some typical sort of situations that might arise. If you have a case of this sort, what sort of costs might you be looking at? Because our sense is that people really do have absolutely no idea, and so the idea of the online resource would be to give them some notion of, "Okay, this is the sort of range I might expect. Now I might do a bit of a ring around or see what I can find."

Sure, people might be outside the range and I might have to ask them about why they would be charging differently and if they want to say they can offer me a better service or a higher level and they're outside the range, I might be prepared to accept that. That was the idea of the online resource. So I'm just wondering; (1) whether your comments in your submission kind of misunderstood what we were looking for there and what it might look like, (2) whether you think it would be possible to have a resource of that sort, and now I've described it in a bit more detail whether you think it would be helpful or not.

MS SHEARER (SD): I think such a resource would provide information where the ranges were so broad as to be meaningless, and I think it's far better to focus on having people understand what the cost drivers are of their matter. So within one legal firm the estimate for a matter to interim hearing stage in the Federal Circuit Court could range between $5000 and $30,000 depending on what issues are in dispute, and that's on the same charging basis, because the scope of the work is so unknown because it's dependent on not only the issues of fact and law, but also, well, what's the attitude of the other party, and what's the attitude of their solicitor and how much is it actually going to take until we get to that stage. I mean, I think you can do - and we fix the fees for stages of matters, so to an extent if you added up what all of those were, you could say, well, this is a range for a whole matter, but I think any ranges that would emerge from that process would be so broad as to not be very helpful because I don't think it's helpful to know it's going to cost me between 5000 and 30,000.

DR MUNDY: See, that appears in stark contrast with the chief justice of Western Australia whose view is that if you can cost the construction of a 35-storey office building, you should be able to construct a cost at the start of the litigation.

MS SHEARER (SD): See, you don't know whether it's a 35-storey office building or a five-storey office. I mean, you can give people worst-case estimates, but they're not helpful either.

DR MUNDY: But with great respect, I've been involved in a few infrastructure projects, and the ranges that the people get and the constructor bears the risk.

MS SHEARER (SD): Yes, they will also have clauses to manage - - -

DR MUNDY: Yes. It just seems to me that, I mean, lawyers are best placed to work these matters out, and ordinary citizens just have no idea, and they will often come to you in circumstances where there is some stress.

MS SHEARER (SD): Absolutely.

DR MUNDY: So they're not going to say, "Well, look, it's not as if, you know, I'm going to retain the services of an architect who is going to build my dream home, where I'm probably feeling quite positive about the experience," at least at the start, maybe not at the end, but at least at the start I'm in the position - of a mind where I can say, "Well, look, go and talk to half a dozen architects," whereas if I've been served my initial response is to probably go to one where I get on with it. So I think it's - and therefore the question in our mind is how do we arm consumers with some reasonable knowledge ex ante where the likelihood of a normal economic search process is much less likely than it would be in the retention of any other professional services.

MS SHEARER (SD): I mean, I think the cost range that we give clients when we're entering into the cost disclosure thing is an estimate of a range for that matter based on what we know at that time, and I don't have any problem with that, but when you're talking about aggregating that up across a whole range of legal issues, I mean, if you were really targeted about the ones that you wanted to include but say, for example, because it's a process people are commonly involved in, property settlement in the Federal Circuit Court, there are so many variables, what's the complexities of factual issues; what's the property pool' what's the attitude of the person on the other side; are you going to have - what judge have you got and what sort of docket do they run, because one of - I mean, I agree the docket system is very useful, but it also allows the development of quite different processes with different requirements, and so there are so many variables that rather than come up with a figure - a range that's so broad as to be meaningless, I think it's better people understand what those variables are and to have good conversations about that. I think lawyers can get a whole lot better at talking to clients about costs.

MS MacRAE: I think we probably agree about that. Can I just then take you to your - in your business you use fixed fees a lot.

MS SHEARER (SD): Mostly.

MS MacRAE: I'm just wondering if you could talk to me a bit about the reaction that you have from clients about that, you know, whether they like them or not, and whether you feel that it's more practical - are you able to use fixed fees because of the nature of the work you do, and is it much more - or is it much easier to use fixed fees for particular kinds of work, and given that most of what you're saying is relatively low-cost work, that that fixed fee is a much easier sort of service to provide than an hourly rate for something that may be more complicated.

MS SHEARER (SD): I set the fixed fee with how many hours I think are in the job in the same way that a, you know, plumber giving a quote does, but I give fixed fees for stages and in open ended things, for example, somebody is wanting to start negotiation for a property settlement, we will agree on a fixed fee for this amount on the basis that we do this much work and then we re-evaluate. So the fixed fees, yes, I wouldn't purport to give someone a fixed fee for taking a case from here to there because so many things change as you go, but we'd say this, give an estimate across the board and then fix the fees as we go stage to stage.

DR MUNDY: So in a matter you might say, "Look, to get to this stage it's going to cost you X dollars and then we'll have a discussion when we get there but, look, we'll have a discussion about how much more work I need to do but, you know, it's going to be of the order of X bucks an hour once we get there. Is that - - -

MS SHEARER (SD): Yes. So I'd say I set my estimates with reference to the number of hours on this hourly rate and, you know - - -

DR MUNDY: Yes. And you're prepared to commit, and sometimes on the fixed lumps you spend more time and sometimes you spend less.

MS SHEARER (SD): Mostly I spend more.

DR MUNDY: But definitely, yes, I used to be in private consulting practice and I think I understand.

MS SHEARER (SD): I rarely spend less.

DR MUNDY: Yes, that's right. Okay.

MS MacRAE: We have probably already discussed it, particularly with the earlier discussion we had with the Law Society, but are there any other regulatory barriers to offering unbundled services that you're aware of. We talked about some of these issues earlier when you were here with the Law Society, but are there any other barriers that you're aware of that prevent you from - - -

MS SHEARER (SD): I don't see them as regulatory so much as cultural barriers

within the culture of what legal practice is, but I mean, I have worked more than half of my career in legal aid setting where discrete task work is basically the way it is done, so I see no issue with translating that to private practice.

MS MacRAE: Okay.

DR MUNDY: You mentioned in your introduction that you have a number of clients who are small businesses.

MS SHEARER (SD): Yes.

DR MUNDY: What's the character of the disputes that they have? Are they tenancy type - - -

MS SHEARER (SD): Getting paid.

DR MUNDY: Okay. So they're debt collection.

MS SHEARER (SD): Mostly getting paid, having claims made against them, sometimes they have got themselves in a whole lot of debt and we're just trying to negotiate some resolution.

DR MUNDY: The reason why I ask is that the commission from a previous matter made recommendations about small business commissioners - I was the presiding commissioner - and we note that Queensland along with Tasmania and the Northern Territory and the ACT do not have a small business commission. Is it your view that it's the absence of that Small Business Commissioner is generating more work for you than would be the case if there was a Small Business Commissioner there?

MS SHEARER (SD): I don't know that I can comment on that.

DR MUNDY: Because you don't run a small business - - -

MS SHEARER (SD): I don't have a clear view of what the Small Business Commissioner would do.

DR MUNDY: That's okay. Do you have any views given your practice about the access to justice issues that particularly face small businesses - and I'm not fussed whether they happen to be incorporated or they're sole traders with five employees, but just generally, because it is an issue that we're quite interested in and we haven't had much evidence on.

MS SHEARER (SD): I mean, my clients are people who feel like they're spending their own money on legal fees. So they're relatively small businesses. I think they

often face - well, none of the free legal assistance services is available to them with the exception of whatever is put through the Small Business Commissioners in other states. So they - you know, their only option is advice from private practice or whatever their industry association offers and puts them on to. So I think there is a gap there. I think there are - I mean, I will often assist people with stuff in QCAT which is not the sort of work that other practices assisting small businesses tend to do too much and, in fact, I get referrals from other legal practices because it's in no-one's interest to be, you know, putting what would be the original expectation of legal fees on matters that are really very small and where the assistance that the client requires, you know, can be tailored.

I think the other area though where there's a significant problem is people getting claims against them for quite unmeritorious debt claims and it's very hard for small businesses in those circumstances to get any help that's proportionate to the amount of the value that's involved. I had one - - -

DR MUNDY: What sort of matters in QCAT do you find? Are they small claims type matters?

MS SHEARER (SD): Yes. Stuff in the small claims. Sometimes I assist people with matters in the employment registration, blue card, working with children sort of - sometimes guardianship, but most of what I do is the consumer and debt stuff. The QCAT jurisdiction, unlike in other places, is not just every claim under 25,000, it's only particular types of claims. So there are ones that fall through the gaps and end up in the Magistrates' Court.

DR MUNDY: Okay. Thank you very much for your time.

MS MacRAE: Thank you.

DR MUNDY: These hearings are adjourned now until 11 o'clock.

DR MUNDY: We'll reconvene these hearings. Could you please - I'll start again. Could you please state your name and the capacity in which you appear for the benefit of the transcript?

MR REILLY (LAQ): My name is Anthony Reilly. I'm the chief executive officer of Legal Aid Queensland.

DR MUNDY: Mr Reilly, would you like to make a brief opening statement? By briefly, I mean not much more than five minutes.

MR REILLY (LAQ): Sure. First of I'll I'd just like to begin by commending the Productivity Commission on the draft report. Chapter 20, titled The Legal Assistance Landscape, I think provided an excellent summary of that landscape, and given what is a complex sector, I think it was a really good piece of work. Secondly, chapter 21, Reforming Legal Assistance Services I think raised a lot of really important issues. Thank you for bringing those to the fore. Legal Aid Queensland didn't provide a separate written submission for two reasons; first of all because I thought the report, in a sense, was so good and had explored things that need to be explored; but secondly, the National Legal Aid submission I thought was very good, and we're very content with a lot of the views put forward there and the way they were articulated, and of course we contributed to that.

So by way of introduction I'll just whip through a couple of things, and they're things that you might want to ask me about anyway during the 45 minutes. First of all, at page 663 you make the observation that Australia is a relatively low funding nation of legal assistance services. I think that's - my understanding is that that's still true, despite cuts in other jurisdictions. I think what I'd like to put on the table right up front is that we have a very good system in Australia. It's world's best practice. We have the Legal Aid Commission as this big bureaucratic hub, if you like, at the centre of it all.

We have localised CLCs around that, and we have a really good specialist capacity on the outsource, and they're very important. We work closely with the outsourcing, and I'd like to put on the record how important that partnership is. I'm not sure if it's possible to bring that out in the report, but I think it might be useful to note that we do have a good sector in Australia, and I think the fundamental design's pretty good in terms of its combination of elements. Another point I'd just like to make is that we are a relatively low funding nation, so the question is, well, how do we manage to provide what I think is a good suite of legal assistance services within that low funding? I think one of the secrets is that the government has given to legal aid boards at a state level the job of managing within that funding envelope.

Those boards have a unique combination of skills; professional skills, both

legal profession, but other skills that enable them to work through all the complex issues in their local circumstances and come up with solutions that meet local needs, and I think that's really important, and I would hope that recommendations about future funding agreements and so on acknowledge the variables that sometimes boards have to juggle in order to achieve an outcome that gets the job done within funding, and that agreements that say, "Do this, do this, do this," aren't sometimes as sensitive as boards can be to managing some of those local issues.

I've made a few notes here on cost drivers for grants of aid, but I'm happy to defer that to questions if you want to ask me questions about that, but I'll just say the way in which I approach cost drivers for grants of aid is that it's about volume times unit cost, with administrative overhead added on top, and each time you play with one of those variables, you're pushing the equation out and we have to make adjustments elsewhere to manage within a funding envelope. So I'm happy to talk about some of that in a minute.

The second thing I'd just like to get on the record is that firstly at page 574 it's stated that the focus of Legal Aid Commissions is providing legal assistance for disadvantaged Australians, and of course it is, and it's absolutely our focus, but another focus that probably isn't acknowledged as much is that we actually help the legal system to simply function, and I'll give you two examples of that.

Duty lawyer schemes that operate in local courts, particularly for criminal law matters, they're very high throughput courts, high volumes. They couldn't get through their workload without the Legal Aid duty lawyers, and if you've ever had the, I guess pleasure is a word to use, of seeing one of those things in action, the throughput is very quick and the duty lawyer is an essential part, along with police prosecutors and the magistrates in getting the job done each day. So it's not just about a sort of a right goal of access to justice, it's actually just about keeping the system going, and Legal Aid Commissions fulfil that role and are asked by government to do, and it's one of the things we do.

In the context of civil law, a really important type of that service is the appointments of independent children's lawyers and my consultations with the judiciary, they always say, "Can you please help us by looking after those appointments," because they need those appointments to get through the complex matters they do. So there's a whole range of ways in which Legal Aid Commissions actually just help keep the justice system functioning, and that's an important part of what we do, as long as the access to justice thing.

I think contributes to my next point, which is while there are four legal assistance providers in Australia, there is a qualitative difference between what Legal Aid Commissions do and what the other three commissions do, and it's simply because of the size of Legal Aid Commissions and the infrastructure that they bring

to service delivery. So, for example, the infrastructure that Legal Aid Queensland brings, we have an extensive, constantly updated legal information web site which attracts over a million hits per year. We have a statewide call centre which includes a legal helpline that operates nonstop five days per week.

We have 13 regional offices, including in most of the low socioeconomic areas in south-east Queensland and up and down the coast and out west, and each of those has within them a core of lawyers, customer service officers, and also family dispute resolution facilities, and that's all over the state, and that offers a whole lot of opportunities for growing or expanding services. We have large in-house practices of very experienced lawyers who, through being employed lawyers, can take on the more complex, messy matters that sometimes the private law firms can't take on within legal aid fee rates, and can I say thank you very much for acknowledging the efficiency and other benefits of the mixed service delivery model in which we have employed lawyers and private lawyers. It was a really welcome thing because it is a really good system and it really helps balance up costs in getting the job done.

Another thing we have is we have a network of around 350 private law firms available for legally aided work across the state, and that gives us incredible reach around the state. Then we have a grants processing infrastructure, including sophisticated bespoke IT business systems, and that grants processing infrastructure enables us to process about 100,000 grants of aid per year, and push through $55 million per year into private law firms who are small businesses, and it's a big, complex operation.

Around all this service delivery we have a very mature bureaucracy that can ensure that we are accountable within government framework. So we're accountable in the same way government departments are, but can also ensure that we have really good policies and processes to drive high quality consistent services across the state, and I think in that sense Legal Aid Commissions are qualitatively different to the other players, and I think a reflection of that is the role that Legal Aid Commissions play in supporting and coordinating the sector as a whole.

For example, here in Queensland some of the things we do include we provide secretariat support for the Queensland Legal Assistance Forum, and that includes maintaining the Queensland Legal Assistance Forum web site which includes a whole list of all the publications across the state. We manage the regional legal assistance forum programs for the whole sector. We administer community legal centre service delivery agreements and step in to help out when problems arise, and we also support ATSILS through grants of aid for disbursements.

Those are the main points I wanted to make. There were just three little things I just wanted to focus on, if I could just take one more minute of your time before answering questions. They're three little very specific things. Firstly, at page 616

you refer to community legal centres leveraging off Legal Aid Commissions more for information resources. I agree with that entirely.

This is our community legal education strategy, and the direction we put in there includes we collaborate with other service providers to reduce duplication, and we leverage existing resources to achieve the greatest reach and optimal outcomes. The way we drive this strategy is through an overarching community legal education forum that CLCs and Legal Aid Commissions participate in, and the ATSILS. We also have a CLE collaboration fund in which we provide smaller grants to CLCs to undertake community legal education activities. But we'll only fund things if they don't duplicate what's already out there, and in fact we say no to things that do duplicate. So that strategy is available for the commission if you're interested.

The second thing is - I didn't have the page reference, but you request information about the benefits from meeting civil legal needs of disadvantaged Australians and the amount of unmet need. If I could give you two examples. From 2010 to 2013 Legal Aid Queensland led the flood and cyclone legal help response. It's something I'm very proud of. It was nice to be able to help the community out in a very difficult time. But at page 15 of our report, and I have a copy of that here which will be on the Web soon, we recovered more than $15 million in insurance payments for clients that I don't think they would have otherwise got, and it was probably an investment of around a million dollars. It's hard to really accurately cost it all, and I think that's really good value for money. It shows the value of civil law services.

The other - in terms of unmet need, we opened up employment law advice clinics in February using some of the additional Commonwealth money we received in June last year, and in three to four months we had provided a thousand legal advices in employment law, and for me that shows that flow through of work, it was just snap. The moment we turned that opportunity for advice on, the work just flowed in and I was really - I thought, "Wow, you know, there is some need out there." Finally I've got some information about the civil litigation legal assistance scheme that I think you're interested in in the report, and we're very fortunate to have a good scheme in Queensland. It's funded by the Public Trustee. So I can talk more about that too, if you like, and that's it from me.

DR MUNDY: Thanks for that. You said that the employment law program - presumably that's a program to assist workers who feel they've been in some sense hard done by.

MR REILLY (LAQ): Yes. So it's for financially disadvantaged low-paid workers who have been dismissed from their employment or otherwise mistreated in the workplace.

DR MUNDY: Yes, and you mentioned that it came from moneys that were made available in June - - -

MR REILLY (LAQ): - - - Yes.

DR MUNDY: - - - of last year. I think these moneys might be euphemistically referred to as the Dreyfus moneys. Have those moneys been discontinued or reprioritised?

MR REILLY (LAQ): yes. So in terms of our funding, we receive very good core funding from the Commonwealth here in Queensland, and we're very grateful for that, under the national partnership agreement, and so the Dreyfus moneys, as you say, were supposed to be two years of $3 million, and the second year of the $3 million won't be coming in, and what we were using that money for was to fund a whole lot of new - well primarily a whole lot of new civil law activity. So we set up a civil law regional network for the first time, which was really exciting for us, and also established - and through that civil law regional network of about - had about nine employees, we were able to set up a whole lot of new clinics, advice clinics, and unfortunately we're now going to have to end those, so that regional network won't continue. So what we all need to do now is regroup and think - - -

DR MUNDY: So that was in regional centres up and down the Queensland coast.

MR REILLY (LAQ): Yes. So we had put civil lawyers into centres such as Townsville, Mackay, Rocky, Toowoomba.

DR MUNDY: Where you would expect them to go, yes.

MR REILLY (LAQ): Yes, and possibly bulked up our Brisbane practice just to make sure we had a high bespoke sort of model. So what we'll have to do now, you know, through our planning and budgeting processes we'll have a look at look is civil law still the priority it was, and if it was how do we support that priority within our other funding which, as I said, is good funding. We get the Commonwealth funding under the - yes, it's good here in Queensland.

DR MUNDY: What sort of matters were people getting advice on in that civil law - - -

MR REILLY (LAQ): Okay. Well, because it was Commonwealth funded, we focused on Commonwealth civil law areas, and what's interesting is that due to law reform processes in recent years, a lot of civil law issues with financially disadvantaged people are now Commonwealth areas of law, so you've got consumer law, discrimination law which is state and Commonwealth, employment law which is now Commonwealth, and social security law. Those are the sorts of things we were

looking at, yes.

DR MUNDY: Yes.

MS MacRAE: Just quickly with the employment advice centre, so that will also be scaled back, do you think, as a result of that money?

MR REILLY (LAQ): Yes. Look what we'll probably do is try and maintain a core service, but access to it, we'll have to set up some gateways for people to get in to maintain it within capacity.

MS MacRAE: You said you'd had a thousand advices given. What time frame was that in?

MR REILLY (LAQ): I'll just get you the - January to May.

MS MacRAE: Wow.

DR MUNDY: So that's - - -

MS MacRAE: For five months.

DR MUNDY: January to - so that's four months, or 16 months?

MR REILLY (LAQ): Sorry. January to May 2014. So we really only got it up and running in January and - - -

DR MUNDY: So that's about a thousand in four months, so you could annualise that to - - -

MR REILLY (LAQ): 350 a month.

DR MUNDY: - - - 3000 a year so.

MR REILLY (LAQ): Yes, maybe, yes, and it would have built because number of - - -

DR MUNDY: Yes. People would have found out so, yes, okay.

MR REILLY (LAQ): So I was really surprised by that. People had told me there was demand out there. Scott McDougall from Caxton Legal Centre, and they run a little, small clinic, you know, another CLC that does a great job, he said there is demand out there, so when we opened it up, it really came in.

MS MacRAE: Will you find now that you've got quite a lot of sunk capital costs that you can't get back if you're going to have to close some of these centres - - -

MR REILLY (LAQ): No.

MS MacRAE: - - - that you've opened?

MR REILLY (LAQ): No, because we have that existing infrastructure, that's the thing, you can bolt on extras pretty easily.

MS MacRAE: Right, okay.

MR REILLY (LAQ): So it was about, you know, apart from the odd extra computer here or there, we already had a good IT infrastructure and network, and so it was just putting another desktop terminal - - -

DR MUNDY: So it's just really people.

MR REILLY (LAQ): It's people, yes. So, you know, we've got the call centre already, so all it means is you just change the business manual that governs their work and you add in a chapter about employment law so they know what to tell people about that and where to refer them to, and that's why I wanted to talk about that infrastructure issue because I think it's significant in terms of efficient service delivery that that infrastructure is sitting there and can be easily - - -

DR MUNDY: I mean - and we often head off down these paths and not sure we ever find very much, but at the risk of doing so again I'll go down. Is that infrastructure amendable to supporting say - you know, is there capacity within that infrastructure or with modest augmentation to provide support for CLCs, rather than them have all their little stand-alone bits? Is that something that would be possible?

MR REILLY (LAQ): Look that's a really interesting idea.

DR MUNDY: No-one ever tells me it's a really boring question.

MR REILLY (LAQ): Community legal centres are independent non-government organisations.

DR MUNDY: Yes, got that.

MR REILLY (LAQ): So community legal centres have probably got strong views about that sort of idea, but I think in a theoretical sense there probably is. Many years ago I had the privilege of travelling to Canada to have a look at indigenous health organisations in Canada, and they had a model of centralised hubs of

back-office support within the centres themselves, you know, focusing on actual service delivery, and that seemed to work. Apparently it worked pretty well, and I always remember seeing that, one reason being they had a giant tepee building that had the administrative hub. It was quite astonishing.

Anyway so look, yes, you'd have to look at models of whether that stuff does create efficiency. One of the problems of course, and I think governments sometimes find this of having a shared administrative entity, is that it gets to lowest common denominator support levels, and so what then the entities that rely on it do is tend to then start regrowing their own admin support to cater for their own special needs, and that can sometimes happen, and no doubt there's evaluations of all this sort of stuff.

DR MUNDY: Think it's fair to say that shared services haven't always delivered the outcomes which were expected of them.

MR REILLY (LAQ): Absolutely but, look, it's an interesting idea, but it would really cut into the fact that CLCs are proudly, and I think appropriately, independent community organisations, yes.

DR MUNDY: Yes. No. It's more an administrative cost issue in our minds rather than anything else.

MR REILLY (LAQ): But, look, once again the great thing about having the Productivity Commission look at this is your independence and your intelligence in looking at those sorts of things, and so it's great that, you know, your views can be brought to bear on it.

DR MUNDY: Whilst I guess we're interested and we've made some observations about - I mean one of the concerns that we've certainly expressed in the report is how can governments be assured that their legal assistance dollars however spent are going to the areas of greatest need, and one of the things we're keen to ensure is the avoidance of duplication, and I think we're probably getting to a place where we think the best people to avoid duplication are the people on the ground. So we're trying to explore some institutional models - - -

MR REILLY (LAQ): Okay.

DR MUNDY: - - - as to how that might be done, and I guess what we're interested in understanding a bit more, and we've heard from people, particularly in Western Australia and Victoria, about the organisational relationships between the Legal Aid Commission and the CLCs. So are you able to give us a bit of a flavour about how you work with them and cooperate with them?

MR REILLY (LAQ): Yes. In terms of formal structures, we have 1.5 to two officers, depending on how you count it, who provide administration of the CLC agreements, so that's a very formal function.

DR MUNDY: And they have an agreement with you, the Legal Aid Commission, or do you support their relationship with the Commonwealth?

MR REILLY (LAQ): Yes, so the funders are the state and Commonwealth governments.

DR MUNDY: So the Queensland Government funds the CLCs.

MR REILLY (LAQ): Yes.

DR MUNDY: Okay.

MR REILLY (LAQ): So it's a joint funding arrangement, and the sources of State Government funding are the LIPITAF, the solicitors trust account, and treasury money.

DR MUNDY: Yes.

MR REILLY (LAQ): So those moneys are provided by government. The Queensland Government now has a small unit in the Department of Justice that emerged out of a review of LIPITAF that was done a few years ago, and their function is really strategic program management, so as I understand it they have been responsible recently for designing what the accountabilities are in new agreements in terms of outputs and funding levels and so on, and then we administer them. So we're sort of a conduit and the funding flows through us to the CLCs. We're sort of a bank or a conduit, if you like. The money flows through and we have this administrative role. So there's that administrative role that we play.

But then to the side of that there's statewide - and there's lots of statewide and local formal and informal collaboration. The statewide collaboration occurs in things like the Queensland Legal Assistance Forum where we all get together and talk to each other where the government knows about what's happening, what the priorities should be and that sort of stuff. Then at a local level we have the regional legal assistance forums which are really good.

They often depend on the energy at the local level. But the ones where there is energy area really good and they do good stuff together. For example there's a south-west legal assistance forum that goes on these roadshows out to the schools out in the far west and talk to young people about legal issues. It's fantastic, and we fund that through our collaboration funds, and that's a really good example of where

there's a bit of energy locally good things can happen. But that sort of level of collaboration is really more of an information sharing and doing stuff together when you can. It's not a hard core program designed to avoid duplication.

DR MUNDY: And it's mostly in the legal education space?

MR REILLY (LAQ): No. Well, yes, it is at the moment, but also ensuring - we also have what we call an information and referral legal assistance forum where we're trying to workshop referral pathways throughout the sector and make sure that those referral pathways were sensible and working okay, and that was really well attended and seemed to go well. There was also information and referral, but can I just - I think those forms were really good, but in a sense, participation in them is consensual and it's not like those forums mandate service delivery or mandate avoidance of duplication. That stuff is really hard, and in my view should come through from good program design by funders.

MS MacRAE: So when you say you have an administrative role and you're a conduit for funds, can you just be a bit more specific? Do you play a role in determining who gets what? Does your board have a say?

MR REILLY (LAQ): No. Who gets what is determined in Queensland by the Department of Justice and Attorney-General, and then we administer the agreements in terms of making sure that accountabilities aren't under - you know, reporting arrangements and so on are done for the Department of Justice. So it's sort of a split function. It's only fairly recently this has emerged. But no, we don't - unlike Victoria, I think, which has a much stronger role, we don't have a role in saying where the money goes or in changing where the money goes. That's the government's responsibility.

MS MacRAE: Is that how you like it?

DR MUNDY: Would there be benefits from an alternative point of view you could describe to us?

MS MacRAE: Much more diplomatic way of putting it.

MR REILLY (LAQ): It depends on what the policy - it depends on the government's view on what they want from legal aid commissions. Do they want us addressing certain policy priorities? So for example, ensuring that criminal law and family law services are provided and the courts are supported. Do they want that from us? Or do they want us to be a program designer? They're very different things. At the moment we're a service delivery agency, and that's a big, difficult job, and it's plenty on its own. To ask us to step up from that into being a program designer is a big step up.

So I really welcome the fact that recently the Department of Justice in Queensland has established this unit to try and put some more focus on program design. I think that's a good thing. Whether that should be within government or legal aid commissions - look, we work very closely with government anyway, so it might be six of one, half a dozen of the other, really. As long as someone is doing it and there's rational planning of it happening.

DR MUNDY: We've heard as a result of budgetary constraints a number of legal aid commissions are having to make decisions about not providing assistance in certain types of matters, and the one which has received a degree of notoriety, particularly out of Victoria, has been the circumstance of - you know where I'm going with this - of women unrepresented in property only matters facing cross-examination from somebody, particularly a man, who may have assaulted them or otherwise - well, assaulted them or otherwise harmed them. Legal Aid Victoria have explained to us the circumstances of that arising, and they say that they assist that person up to the court door, but then they're on their own. What is the situation in Queensland for a similar person?

MR REILLY (LAQ): Well, there's a whole lot of variables in that. We apply the, for want of a better word, the national family law grant of aid guidelines. I think Victoria have made - changed those guidelines a bit for their local circumstances.

DR MUNDY: I think we ascertained that Tasmania has done the same thing.

MR REILLY (LAQ): So we still apply the national ones. So there's a means test to get through, a merits test to get through, and then the guidelines. If that property dispute is part of a substantial dispute, then - and the means and merits test is satisfied and various other things, then funding should be available. But the priority for family law funding is of course children, and so property matters need to have a connection to that. So - but at the end of the day, parties can get funding from a conference through to a hearing if they satisfy the various guidelines. So we don't exclude representation at hearing. There's no specific exclusion or cutting off, if you like, at the door of the court. Apart from merit having - - -

DR MUNDY: Yes.

MR REILLY (LAQ): We're actually going through a process at the moment of redesigning our family law grants of aid. Not the guidelines that underpin them, but the processes - sorry, the stages to make sure that those stages align better with court processes, and I can provide you with a copy of that paper as well, if you like. That's a really interesting process to go through.

DR MUNDY: That would be helpful.

MR REILLY (LAQ): Okay. It's actually - yes, it's a good paper. I'm quite proud of it. We should have it up on the web site.

MS MacRAE: Just in relation - we've also heard evidence from some CLCs, but it's also mentioned in the National Legal Aid submission, about the serious concerns about family dispute resolution occurring in family law matters without the benefits of parties having legal representation. So a more general concern. Do you have - are there areas, I suppose, of reform that you think would be helpful there?

MR REILLY (LAQ): Well, look, I don't see myself as an expert on family law resolution apart from saying the emphasis on early resolution and negotiated resolution is good. It's important. The fact that the government has legislated to say that you don't get into the court unless you've made a genuine attempt to resolve things through agreement is really good and needs to be maintained. Legal Aid Queensland has a very large lawyer-assisted family dispute resolution program. I think on a per capita basis we're the largest in the country. It's a really good program. It operates across the country. We get good outcomes, and I think your report quotes some of the good resolution outcomes of around the 70 to 80 per cent, somewhere similar.

We've actually - the grant of aid guidelines that require the substantive dispute to be in place before the conference is available to people, we've actually broadened that a little bit to try and get in before the substantive dispute is under way to try and resolve things before it gets to a substantive dispute. That seems to be going well as well. So the lawyer-assisted dispute resolution we think is really important. I guess the benefit of having lawyers in the room is that the risk of saying everyone should just mediate it without lawyers is that people - there are rights at stake. There are often - there can be differences in acknowledging those rights between the parties, and a lawyer helps to overcome those differences in knowledge and make sure that proper advice is given. But provided those sorts of issues are looked after, it's okay.

DR MUNDY: Is it really necessary that the person involved be a lawyer as opposed to - a lawyer as we would understand in Australia, as opposed to some other suitably trained and credentialled person who may be an expert in family law matters and understand the law of family law, but perhaps hasn't had to deal with a whole pile of issues and contract torts as part of their education? We're interested in this because there's such a scheme in Washington State in the US where you can effectively become a family law lawyer, but that's all you do. So you've still done all the stuff and problems and other stuff that lawyers don't do along the way.

MR REILLY (LAQ): There's a lot of stuff in family law that links into other area of law. Property law, for example, child protection, domestic violence, other things. I personally would be cautious about that. I think - in our system we say that - we try

and have these highly trained professionals called lawyers to help people resolve legal problems. If you want to create other classes of professionals - I think it's okay to use paralegals, for want of a better word, for lower level processing-type problems. But when you're into family law, you're into high order complex legal problems with significant issues at stake for parties. I think then maybe it is arguable you do need a fully trained lawyer to help with that rather than somebody who has done, say, a six week course or something.

DR MUNDY: No, we're talking about courses that take three years.

MR REILLY (LAQ): Okay.

DR MUNDY: We're not talking about a social worker who has done 15 hours of legal education.

MR REILLY (LAQ): Yes. Okay. Well, look, it's a matter for the Productivity Commission. All I would say is that significant legal issues are at stake. The parties are often vulnerable, and there are interconnected areas of law that flow out of family law. So it's just something to be approached on that basis.

DR MUNDY: Just before we leave the family law space, the NLA's submission suggests the creation of, I guess, a duty mediation service as opposed to a duty solicitor - a duty lawyer service.

MR REILLY (LAQ): Where was that one?

DR MUNDY: I don't know. Page 19 by the looks of things. I guess the question more broadly that we'd probably appreciate your views on is the extent to which - if mediation is, from what you said previously I think you agree, the most desirable way to deal with family law disputes. Should we be bringing our minds to funding through legal assistance services mediation as well as legal services? Do you have - well, (a) do you do that in Queensland, and (b) do you have any other views you'd like to share?

MR REILLY (LAQ): Well, family law mediation services are currently funded in the sense that our family law program includes - you have to go through the dispute resolution conference first. Also what people don't realise is that sometimes the court throughout the process will send people off to our mediations and say, "Right, before I list this for hearing, I need you guys to go and have one more crack to see if you can sort this out between you." They send them off to our mediation. So we'll fund that mediation. In terms of a duty mediation service, I can't recall the specifics of this and I can provide you with some further information if you like after the hearing, but we have tried to make sure that there are strong links between our existing duty lawyer service and access through it to mediations from that.

I can get some information about how we do that. But yes, look, the more mediation the better, and as long as - of course some of the cases that legal aid commissions provide grants of aid for involve very serious allegations of abuse and very serious violence of men against women, primarily. Of course mediation isn't the appropriate solution in those sorts of situations, so litigation is often very appropriate. But where possible, mediation is a good thing to try and get people to do.

MS MacRAE: Is that - we've heard little bit of evidence that sometimes that streaming that needs to occur to get people out of FDR when it's not appropriate doesn't always occur.

MR REILLY (LAQ): Well, we have a very through assessment process. So in addition to the application having to go through our grants of aid guidelines, then we have family conference organisers who put the information through another round of assessment to make sure that it's an appropriate matter for mediation, and then they invite the parties in. If it's not an appropriate matter for mediation then consideration gets given to funding it for litigation. So that's - look, it's a very professional service, and - you know, perhaps I should have brought along one of our experts to have a talk to you today.

DR MUNDY: That's fine. I'm about to go off the script. Yesterday we heard from your colleagues in Darwin, we get around a bit, and the challenges that they fund with having to pick up indigenous matters where there's significant conflicts of interest, either between - you know, the ATSILS has acted for the family before and it's representing one side, or a whole range of conflict-type questions which also relate to kinship groups within indigenous communities, particularly in remote areas. Are these areas of concern to you in those parts of Queensland where there are large indigenous populations?

MR REILLY (LAQ): Look, conflict is an issue across all areas of Legal Aid service delivery whenever you get into a smaller community, including smaller regional centres.

DR MUNDY: Can I just stop you? By "small" we mean - - -

MR REILLY (LAQ): Like - - -

DR MUNDY: Cairns small, or - - -

MR REILLY (LAQ): Bundaberg, for example. The office, they have - you know - the great thing we've got up our sleeve is that network of 350 private law firms. So if we can't - if our in-house lawyers are conflicted out by the fact that another in-house

lawyer at some stage has dealt with the problem, then we can contract out the work to a private law firm. We do that - we use that in all sorts of ways to manage conflicts from multi-head criminal trials through to family law matters and advices. So that's a good part of that mixed service delivery model, that it gives you that option to deal with conflicts. That's legal conflict.

DR MUNDY: Yes. That's what we're concerned with. Do you find a large number of matters coming to you from aboriginal legal services because it's their - the concern of legal aid in the NT is there's a large number of matters that come from the ATSILS to them. They don't come with funding attached, and it's created significant work. I'm trying to understand whether it's a significant burden on them because of the peculiarity of the Northern Territory, or is it a more general issue across the country?

MR REILLY (LAQ): I'd have to have a look at - I don't have the numbers in my head about the numbers that are referred across. In a sense anyone can access legal aid services. Large numbers of Aboriginal and Torres Strait Islander people do access legal aid services for criminal law, family law and other services, and we, for example, have an indigenous hotline. We work in partnership with the Aboriginal and Torres Strait Islander Legal Services to work together to support this important client group. In terms of clients coming across, one of the ways we managed that same criminal law is for higher court trials where a barrister and an expert report might be needed.

We fund those disbursements. So the ATSILS looks after the cost of the solicitor, which saves us money, and then we fund counsel for the trial and the report. So it's sort of a win-win. It works really well. I think we're the only state that does it that way, but in criminal law that works really well. We don't have - I'm not sure if we have a similar set up for - actually, I think we do, for family law as well. We can fund the disbursements, which we do for CLCs as well. That helps them out when they've got that problem. But look, our relationship with ATSILS is really positive, and I'm just really glad they're there, actually.

I did a map the other day of all the duty lawyer services they provide and marked them all in yellow across the state. They've got a big reach and they do a lot of the remote and regional stuff. It's really tough work. I did a tour of the Mornington Island Magistrates Court circuit with the ATSILS guys and the local magistrate about six months ago, and I was just amazed by what they managed to pull off up there.

MS MacRAE: Just in relation to the - you're talking about the strong relationship you had with private providers. We've heard in a number of other jurisdictions that in some cases they're having trouble attracting private firms to be involved in legal aid because of legal aid rates, and I'm wondering if you can talk a little bit about how

that's moved, and whether - in particular family law seemed to be an area they particularly talked about problems of juniorisation where, you know, less and less senior counsel were prepared to be involved at the sort of rates that legal aid are now currently having to pay.

MR REILLY (LAQ): We take our relationship with our law firms really seriously because legal aid service delivery can't happen without law firms. So we contract out 80 per cent of our legal representation services to private law firms, 20 per cent is done in house. So it's very important for us. We haven't - we've recently set up an industry reference group with representatives from the solicitor and barrister side of the profession to talk through these sorts of issues, and we did a presentation the other night about some of these sorts of things. Law firms are private - are businesses, and they have to make a profit. So they don't do legal aid work if it's going to make them go broke, because they'll go broke and they can't do it.

Our deputy CEO who spent a lot of time talking to law firms has been advised by law firms that they make about a 10 to 15 per cent profit margin. That doesn't apply to all law firms, and there's no doubt that many law firms do more hours than we pay for et cetera, but the fees we're paying seem to be sufficient for law firms to justify staying doing legal aid work. That's the first thing. In terms of supply, we have plentiful law firms who want to do legal aid work in south east Queensland and in most of the big regionals. Plentiful in south east Queensland, enough in most of the big regionals.

Where we've got challenges are central Queensland and the far west and north west. The problem in the far west in particular is there are - there are hardly any law firms any more. So that's the problem we've got there. But there are still significant population centres, and there's less law firms in Mount Isa than there used to be. In central Queensland, Rocky and Mackay we value everyone. But look, Queensland is a big decentralised state, and we value every single one of our regional law firms that do legal aid work. In terms of family law, yes, look, I think that because family law is more a mixed practice, you can get a lot of good private work if you like, whereas criminal law, my understanding is, for example, that about 70 per cent of higher court trials are legally aided. So Legal Aid is a really big player in that market, it's not so much in family law.

DR MUNDY: If you're going to be a criminal lawyer, you're not going to be a criminal lawyer if you don't do Legal Aid.

MR REILLY (LAQ): You can do it without Legal Aid, but you've got to have a really good client group of privately paying clients. So a lot of the family law firms, I think they do often ask themselves, "Why am I doing this, is it worth it?" and they really do run the ruler over it and really grateful they stay in the game. Is there juniorisation? I couldn't talk specifically about that, because it probably varies from

firm to firm. But junior lawyers have always done Legal Aid work, I did it when I was a young lawyer, supervised by my boss who kept an eye on me. But I think, yes, there probably is more tension between family law. That said, I think there are many families who enjoy doing things like independent children lawyer work and so on, and there is a sort of status involved with it. It's sort of like a very senior part of the profession and they enjoy giving something back and helping the kids out.

DR MUNDY: Your colleagues in Victoria made the observation to us that they didn't necessarily think it was necessarily the rate at which people were being paid but the amount of work that was being acknowledged the rate was being applied to, I think was more the concern.

MR REILLY (LAQ): In terms of grants of aid, so grants of aid, the total expenditure is volume times unit cost plus administrative overhead. In terms of unit cost, it's not just about the hourly rate. A lot of Legal Aid fees are capped fees or lump sum fees, if you like, and so it's the number of hours that are allowed, and sometimes those lump sum fees aren't even a product of an hourly rate times a number of hours, they're just an historical rate and everyone has kind of managed to survive within it and life goes on.

But in family law actually it is probably more hourly rate times hours. So for example, in Queensland we allow six hours per day when the matter is in court, some other states only allow five, and so while our hourly rate is a bit lower the total amount paid is actually okay. Another variable that affects the unit cost is whether you only fund a solicitor or you also fund the barrister, and there's differences across the jurisdictions about that, partly because there's different legal profession models in professionalism and stuff. So it's the hourly rate, the number of hours and whether you only fund a solicitor or you also add on a barrister to help a solicitor out. If you fund a barrister, that really helps the solicitor because that means they can share the workload and the barrister takes on the burden of getting ready for court and appearing in court. It's really helpful to the solicitor.

So in terms of volume, volume is the result of the gateways you put in like some means test and guidelines, and I just wanted to put on the record that if we have to operate within a limited funding envelope. If you increase volume through lifting the means test, then the Legal Aid Commission boards within a limited funding envelope have to make adjustments elsewhere. So they might have to change their guidelines to further narrow - or they might have to reduce the unit cost, or if unit cost is lifted we've got to drop the volume by increasing the means test. So it's like a steam engine with all these things popping out everywhere. That's why the boards are well positioned, because they're always sort of thinking, "Yes, well you know, we'll try this and try that."

MS MacRAE: It was a main reason I guess that - one of the reasons you're making

that is that you really value not having too much prescription in what you do so that they have those levers they can move as they see appropriate for what's - - -

MR REILLY (LAQ): Yes, but I'd like to say thanks to the Productivity Commission for raising the idea of having at least some boundaries. I think having a little bit of protection for civil law funding is really good, because that way the board can say, "Look, we want to invest some money in civil law and the government is saying we should, so we're going to put some money into it," and I think actually - I'll put on the record - and there are differences in Legal Aid Commissions about this, my view is that the demarcation between the Commonwealth and the state money is actually helpful in terms of managing our service delivery portfolio.

Because if you just put it all in one bucket, there is a risk that the expenditure on criminal law could just grow to dominate everything - it's so huge and it's sort of mandatory that you get out there and get involved, whereas family law and civil law are less mandatory, if you like, and so can suffer at the expense. So it's kind of nice having that boundary.

DR MUNDY: So as long as the Commonwealth says, "Commonwealth money for Commonwealth matters," you've got a reasonable certainty that your family law programs can be funded with a degree of safety?

MR REILLY (LAQ): And all those Commonwealth civil law programs as well, because a lot of the civil law is now Commonwealth, and even within that it would be nice to sort of say, you know, "Make sure you've got a little bit of money for the civil." Not everybody agrees with me on that, but my view is that it is helpful to have those boundaries, just in terms of managing stakeholder interests and so on.

DR MUNDY: I think we've probably come to the end of our time. We really do appreciate you coming and spending time with us.

MR REILLY (LAQ): Thank you. Thank you for the time.

DR MUNDY: If you could give those documents to Mr Raine as you leave, who's here, and also he'll provide you with an email address that you can send that other stuff to.

MR REILLY (LAQ): Thank you.

DR MUNDY: Thank you very much.

MS MacRAE: Thank you.

MR REILLY (LAQ): See you later.

DR MUNDY: Could we please have QPILCH? Could you please for the record state your names and the capacities in which you appear.

MR BUCHANAN (QPILCH): My name is Andrew Buchanan, I was the founding president of QPILCH and for my sins I'm still on the managing committee some 13 or 14 years later.

MR WOODYATT (QPILCH): I'm Tony Woodyatt, I'm the director of QPLICH.

DR MUNDY: Would one of you like to make a brief opening statement?

MR BUCHANAN (QPILCH): I'd just like to make a brief statement. You have our response to your draft and as you'll see we're often in large agreement with it. We just want to make just brief points about three areas. One is the issue raised in the draft report for competition for funding, which causes us as a small CLC some concern. Because what has happened over the last few years in Queensland is there's an awful lot of cooperation between the organisations.

So the LIPITAF review found there's not very much overlap and so forth, and the cooperation involved extends to Legal Aid. Anthony Reilly is on our committee and is a very active member of our committee. So we're really concerned about, you know, if there's competition for funding, and of course CLCs really don't have the resources to - - -

DR MUNDY: Mr Buchanan, can I just stop you there and allay your fears. We merely raised it as an option, not as a preference.

MR BUCHANAN (QPILCH): Okay. Well, we urge that it - - -

MS MacRAE: Fall off the list of options.

MR BUCHANAN (QPILCH): Yes.

DR MUNDY: Yes, you're not the first person who's misinterpreted that.

MR BUCHANAN (QPILCH): Rightio. Well, then the second thing is sort of in a way related to that, and that's just funding. We'd prefer CLC funding to remain separate from the big pool, because they are quite separate organisations to the Legal Aid Commissions. Legal Aid Commissions are a lot more muscly, as it were, when it comes to asking for funding, and funding also - CLCs need certainty of funding. LIPITAF now has granted us three years' worth of funding, which has made a big difference to the way we run QPILCH to employment prospects for the people there. It's made it a lot more settled.

So a way that funding could be handled that's long-term is better for CLCs, and the last sort of brief point I want to make is, one thing that QPILCH is having difficulties with is the red tape surrounding reporting and accountability. There are different organisations want different reporting and it actually is an expensive, difficult thing for a small CLC to do. Tony was telling me, we use MYOB, but the state government doesn't accept the reports that MYOB uses, so they have to be changed for that whereas all CLCs use MYOB reports, but no, that's not acceptable and so forth. So it's a bit of an expensive burden, even though we have to have accountability.

If it could be simplified it would be a good thing. But basically, those were our submissions. We'd just like to finish to really say it would be good when the findings are done if there could be some way that there's more involvement by the various bodies in the implementation of those decisions, rather than just leaving it to government. Things might actually get done then. Thank you.

DR MUNDY: Sadly, our act does not extend to that.

MR BUCHANAN (QPILCH): I know. Recommendations, anyway.

DR MUNDY: Yes. That's something we struggle with all the time. Could I bring you back to this issue about red tape, because we love a red tape fight. One of the things we were trying, or one of the things that we see is that - and it varies between jurisdictions, because it in part depends on whether you get state funding or not - is that what we were trying to do is to try and find an institutional framework whereby I guess the Commonwealth could provide it's resources in such a way to - within guidelines, not just a block of dough - and that organisations could report back to a state body for governance-type issues and the Commonwealth's concerns would primarily be about outcomes.

There were some attractions to this arrangement about making sure there's not duplication or overlap, and I guess our thinking was it's the people on the ground are more likely to be able to work that out than bureaucrats sitting in Canberra, particularly if there's funding sources coming from state jurisdictions as well. So we heard before from Queensland Legal Aid how they effectively act as a reporting mechanism and I think the Legal Aid Commission referred to it as a bank.

In Victoria there's a different model whereby the Legal Aid Commission makes the decisions about the Victorian government's money. I understand that decisions about the allocation of money in Queensland are made by the just the attorney-general's department and then Legal Aid Queensland administers it, and the Western Australians have a sort of collaborative sort of model which we quite haven't unbundled yet. Do you have any - because ideally I guess what you're saying, Mr Buchanan, is you'd like to report once.

MR BUCHANAN (QPILCH): That would be the best idea.

DR MUNDY: And in a form of reporting that is convenient and sensible for an organisation of your type.

MR BUCHANAN (QPILCH): Yes, and perfectly reasonably one which has put up flags. So whoever the supervising body is can go, "My God, that CLC or whatever, that body has gone through 80 per cent of its money in six months or less." Yes, one central reporting thing would make a big difference, and that I think then would also be acceptable to private donors too, because we have to present our accounts to people who donate substantial amounts of money. Not that we get all that much of it, sadly.

DR MUNDY: Presumably, a reasonable amount of time as well.

MR WOODYATT (QPILCH): Commissioner, we've actually prepared a submission which has gone to the state Justice Department and Australian Government Attorney-General's Department, which outlines clearly all our current reporting requirements and also some suggestions about how it could be improved, and where there is so much duplication and how as Andrew says, there are simple ways that - I mean, of course our program managers are very concerned about the proper use of public funds, and we totally support that. But for them even, it's a very difficult task to quickly get at whether, you know - in any organisation, not just community legal centres, but any organisation can go off the rails.

DR MUNDY: I even understand the ACCC overruns its budget from time to time.

MR WOODYATT (QPILCH): There could be very simple flags that could be put in place by a simple accounting system that would give the program managers the opportunity to quickly see if something was going awry.

DR MUNDY: Is that a document you're able to share with us on the public record?

MR WOODYATT (QPILCH): It is, yes, I've got two copies here.

DR MUNDY: If you could just give them to Mr Raine on your way out, that would be most helpful.

MR WOODYATT (QPILCH): Sure.

MS MacRAE: Can I just ask, it seems absolutely amazing that they don't accept MYOB. Do you have to reformat all your reports from MYOB to put it in a format they want? Is that the problem?

MR WOODYATT (QPILCH): That's right.

MS MacRAE: So they're not saying there's any problem with MYOB as such, it's just, "We don't like the format that that produces and we want something else.

MR WOODYATT (QPILCH): That's correct, yes.

MR BUCHANAN (QPILCH): Which unfortunately that means the auditor has to reconvert it back to see that we're not cheating the government.

MS MacRAE: Well, that's what I'm thinking, that the auditors would be totally comfortable with MYOB.

MR WOODYATT (QPILCH): But the Department of Communities in Queensland, where we used to get some funding from that, they had a system where you'd just get the MYOB reports and send them in.

DR MUNDY: Presumably because the Department of Communities is used to dealing with voluntary organisations and had already worked this one.

MR WOODYATT (QPILCH): That's right.

DR MUNDY: You know, I thought we'd dealt with this years ago.

MR WOODYATT (QPILCH): But we costed one year, I think the year before last, and our accountant said that the process of reconverting and making sure that the reports to government were the same as our reports to the management committee, so the management committee get the MYOB reports, cost about $1000 extra on our costs to our audit.

DR MUNDY: Does the Commonwealth accept - because I presume you get some form of Commonwealth funding, do you?

MR WOODYATT (QPILCH): A very small percentage.

DR MUNDY: Does the Commonwealth have a different reporting style again, or - - -

MR WOODYATT (QPILCH): Look, the reports are the same. But I understand that the reports - for example, that particular report is a Commonwealth requirement. So the states have just accepted that that's the way - so the program managers at Legal Aid do a very good job. They are required to collect the data in that format, and so it goes to both Commonwealth and the state. But it's apparently the

Commonwealth that requires that format.

DR MUNDY: Okay, thank you for that.

MS MacRAE: Unbelievable.

DR MUNDY: Commissioner, do you wish to proceed while I go and bang my head - - -

MS MacRAE: I think in your submission you talk about reviewing legislation to try and simplify the legislative language and develop new ways of laying out legislation. I must say, this is an area that we felt we hadn't really addressed enough in our draft and we're not quite sure how much more we're going to be able to say in our final. But I guess if you could just elaborate for us a bit on the value you'd see in that, what it might cost and what you see the benefits of that sort of approach might be, given that we do seem to have had quite a few failed attempts at simplifying legislation at the Commonwealth level at least and the problems that, and I guess when you go and talk to these people they say, "We try and use these simpler layouts and we are using plainer English." I guess the gap between what's said and what's done is a problem and how you'd address that.

MR WOODYATT (QPILCH): Sure. You know, what we're about as a community legal centre is that everything that should be available to the public that is the simplest format that they can understand it. I mean understanding the law should be the first thing that we make clear and accessible. Just as an example, in the early 90s there was a new - I worked at Caxton Legal Centre at the time and there was a new parliamentary - OPC, Office Parliamentary Counsel, who had been appointed and they went through a process of reviewing the way the laws were then presented, and this is sort of in the early days of computerisation.

So in the area that we've been working in, specialised in, it was mostly crime. We thought that there was a better way that the laws could be laid out that would make it more accessible. You know, just simple explanations, the intent of the legislation, more simple English in the actual terms. Separate penalty clauses and at the time at least, most of it was in this long stream. You know it was all sort of hard for lawyers to even access, let alone - and there are clear examples since then of where lawyers had trouble in understanding amendments and that sort of thing.

Anyway, we saw the new parliamentary council and said, "What about using computer systems, they're modern, it's coming in, make it different layout, make linking of sections," and he basically said at the time, "There is a standard for legislation in Australia. We can't unilaterally in Queensland change that approach, and so we're not going to. But we think your ideas are terrific. You know that would be a really great way and a simple way of laying it out. But we're not going to

change it."

So I note that - and I think we mentioned in our submission - that the parliamentary council's office in the UK is going through a review of how its legislation - and I suppose we were just seeing that as a useful precedent, and then also you would be aware that - I think it's Monash that's going through a review of time periods, and there are so many different time periods that for the layperson make it very hard to understand - you know, they've got 28 days in the Industrial Relations Commission, or 30 days here, or three months there, and there are so many different figures. That has occurred for reasons historically, but maybe there are ways that some of those time periods could be standardised, that everyone would have a clear idea of when they've got to act.

MS MacRAE: Would you then say you would look at sort of time pieces of legislation as the first things you would try and tackle, and from what the OPC has told you in Queensland previously, would you need all the states to agree that this is a new approach they would be prepared to take, or do you think there is opportunity to do some things unilaterally?

MR WOODYATT (QPILCH): Well, I can't answer that, but I assume all the parliamentary counsel from the states and Commonwealth get together at times and talk about these things. So I don't know what would be necessary. I imagine that states might be nervous about doing something unilaterally.

MR BUCHANAN (QPILCH): It would be good if something could be done. That legislation affects normal people who can't afford big litigation. You know, residential tenancies, even family law.

DR MUNDY: Well, we've quoted his Honour Kerr J, the president of the AAT, about legislative complexity, and I think it's fair to say that he wonders how he can understand the Social Security Act, so he doesn't know how disadvantaged people receiving benefit payments can possibly really understand what's - - -

MR BUCHANAN (QPILCH): And QPILCH's experience with its self-represented clinics is just so - even though the lawyers thought the standardised court rules in Queensland were quite simple, when you've got someone who's self-represented, they're like an opaque block in the road.

DR MUNDY: I think, coming to self-represented litigants, we had an interesting discussion earlier with the Law Society, who I think indicated that they could see merit in people who represent themselves being the beneficiaries of cost orders. Also they raise an interesting question, I think more broadly, about in circumstances where people are receiving some form of assistance other than representation in a court that those cost orders should have regard to whatever moneys they've spent on

advice prior to actually the physical appearance in the court. I guess a couple of questions: do you have a general view about cost orders in front of self-represented or pro bono litigants - we accept they are different, at least on some level - but also, where limited assistance is provided to a litigant, how those expenses that they incur should be reflected in cost orders.

MR WOODYATT (QPILCH): Well, if I can just quickly say, I think that - I mean, there's English precedent for costs being awarded to self-represented litigants in the very narrow circumstances where they can show that they have incurred costs, you know, not - obviously the whole purpose of costs orders is to - - -

DR MUNDY: So expert witness statements and - - -

MR WOODYATT (QPILCH): That's right.

DR MUNDY: I don't think there's much dispute around that.

MR WOODYATT (QPILCH): But costs to compensate them for their time.

DR MUNDY: We came to this issue primarily on the basis of the behaviour of litigants inasmuch as if you know that you're facing a self-represented litigant, and I'm sure most lawyers know when they do, then you know that the likelihood of an adverse costs order from you dragging it out - the economic consequences are much different, putting aside the ethical considerations of such behaviour. It did seem to us that there was a perversion of incentives, shall we say, when one is faced with - that's what we were trying to get at.

MR BUCHANAN (QPILCH): I concede that there is an argument for compensation for the effort if successful, in much the same way as they face the penalty if they're unsuccessful. Quantifying it, of course, is the other difficult thing, and as you raised, if they've had some partial support, there would have to be some form of body to sort of do a divvying-up, I would imagine, because otherwise whoever has provided the money for the partial support would want it all back first up.

DR MUNDY: But would it be sufficient to say, "Well, this matter has run for three days and the scale is X dollars a day for a solicitor, and therefore you're going to get X dollars a day?"

MR BUCHANAN (QPILCH): That would be a very simple solution. Maybe - - -

DR MUNDY: Putting aside the adequacy of scale.

MR BUCHANAN (QPILCH): Yes, leaving aside the adequacy of scale, and

people would argue that you weren't really a solicitor, but a self-represented litigant is taking their time and having to do a lot of - a lot of them that we see have to do a lot of research and a lot of preparation.

DR MUNDY: Perish the thought there may actually be professional people who choose to represent themselves whose hourly rates might be higher than your average suburban solicitor.

MR BUCHANAN (QPILCH): I think that's all most people could only afford to represent themselves, even some of those whose hourly rates are quite high. But I think there's quite a strong argument in favour of that. It always has the counterargument that a lot of self-represented litigants don't have many assets so they don't care about the result. But that's a different kettle of fish.

DR MUNDY: Yes, and it also comes back that if you're really concerned about the behaviour of litigants in court, that's why we have the people on the Bench. That's their job.

MR BUCHANAN (QPILCH): It would be an incentive for people to settle, on the other side of self-represented litigants, if they knew this person has got a good case - as you say, it could change litigation behaviour, they go, "Well, let's drag this out, let's get costs orders against them on interlocutory points," whereas if they know in the end they could have to pay them costs, there would be a much greater incentive to settle.

DR MUNDY: Thank you, Mr Buchanan.

MR WOODYATT (QPILCH): Can I just add, sorry, in relation to the pro bono representation, we think the law here is pretty settled, and so long as firms acting pro bono have a clear costs agreement in place that permits them to claim the funds from the unsuccessful party and not an uplift from the client, then that seems to be the accepted law, I think, here.

DR MUNDY: That's the law in Queensland.

MR WOODYATT (QPILCH): It is, yes.

DR MUNDY: And the incentive arguments that Mr Buchanan just outlined, presumably that lodging applies equally to pro bono as opposed to the conduct of the other parties. The mere fact that there are economic consequences in costs, that would model behaviour. Do you think there's any need - I mean, we've had a number of - we had the pro bono partners from Clayton Utz, Ashurst and Allens. We had submissions from the three of them, and one of the As was missing at the hearing, I can't quite remember which.

They indicated - I mean, we've raised the question of whether it was a genuinely open question about, in a pro bono settlement costs order, whether the money should go to the firm concerned, whether it should go to some sort of fund, and they suggested to us that certainly as far as the large firms were concerned, they'd probably just plough the money back into their pro bono practice anyway, so they would effectively be running an internal fund, if you like, for pro bono. Do you think there's any real need for government to interfere in that? I mean, part of the suggestion is, if someone acted pro bono for a CLC, then the CLC should get the dough. Or do you think we should just let these matters rest, and if pro bono lawyers are prepared to act pro bono and they're doing it for a CLC, they might give the money to the CLC anyway?

MR BUCHANAN (QPILCH): Well, I was a partner of Allens. I think it can be met because there is so little money recovered from pro bono matters, and it's not really an issue, and when we have had recoveries, the odd couple of occasions, people have donated money to people.

DR MUNDY: It has been suggested to us that the retention in some pro bono cases by junior members of the bar probably actually isn't a bad thing for struggling junior members of the bar, and it might encourage - whilst they might be paid that amount because of their self-employed nature, that may encourage them to do more pro bono work. Is that a reasonable proposition?

MR WOODYATT (QPILCH): Yes, I think that's true. I agree with that.

DR MUNDY: So QPILCH's general view is that we should leave the distribution of precious pro bono costs awards in favour of pro bono lawyers, and it would be a matter for them to sort out with the organisations that they provide pro bono support.

MR WOODYATT (QPILCH): Yes.

DR MUNDY: Okay. Thank you.

MS MacRAE: I'd just be interested - I think you've got good on-the-ground experience of legal health checks, and I'd just be interested in your views about how effective they are, whether you have had evaluations of those, and how important you think it is for people that might not be lawyers - how important it is do you think that non-legal workers should be trained in the use of these sort of tools, and how helpful that might be to the work you do and the people that you see.

MR WOODYATT (QPILCH): Look we're currently undertaking an evaluation of the legal health check with funds from Legal Aid's community legal education fund, and so hopefully we'll have that in the not too distant future. A few months off I

think. But we think they're a really effective tool, and they're particularly effective for caseworkers who support, you know, people with mental illness or homeless people or whatever, and we have a very strong training program for - so we have twice a year we train caseworkers in the homelessness area how to - you know, generally but includes a component on using the legal health check because once they're able to use it effectively, then it's a way of drawing in, you know, most effectively I think, from that much broader pool of people, you know, an understanding of what legal issues and how they can be assisted by us or by other appropriate services.

So we think it's a really good thing, and we've had - our mental health service has only been going now for just over a year, and we've had one training for caseworkers in that, and we've applied for funding to run that caseworker training up in mental health caseworkers up through the state because that's - particularly in regional Queensland mental health legal services particularly are in dire need, and so with those caseworkers knowing how to use them, then they can feed that into us and to QAI and other mental health services, we'll be able to better help people in those areas.

MS MacRAE: Sort of how many health checks do you have? How tailored are they to particular population types?

MR WOODYATT (QPILCH): Look we do tailor them, so we've really only got two, one for the homelessness area and one for mental health, and that's, you know, because you're dealing with different clients and, you know, different issues. It's about sort of drawing out because, you know, most people who are, you know, experiencing a mental health issue, that's virtually their primary focus clearly, and particularly if they've got appearances in the Mental Health Review Tribunal or whatever. So it's about getting beyond that particular issue that is dominating their life to often find issues that are underneath that that are causing stress and pressure.

MS MacRAE: Yes, and so the evaluation that you spoke about, is that doing both of those checks that you're doing, or you're just looking at the homeless?

MR WOODYATT (QPILCH): Look, it's just in the homelessness one.

MS MacRAE: Right, okay.

MR WOODYATT (QPILCH): Although I'm sure it will be useful for the mental health one as well.

MS MacRAE: Is it possible - will that be a public document when you get your results?

MR WOODYATT (QPILCH): Yes, yes.

MS MacRAE: Is that something you might be able to - I mean obviously the time frame will determine whether or not it will be in time for us - - -

MR WOODYATT (QPILCH): Yes, for sure. Everything we do is public.

MS MacRAE: Yes, okay. If you could keep us informed of that, that would be great.

DR MUNDY: We had a brief discussion with the Law Society about volunteer certificates for pro bono lawyers, and they've undertaken to go away and get some data for us as to, I guess, the relevant issue. I guess the issue that's been raised with us of concern around this sort of framework goes to, I think probably in decreasing order of importance, continuing professional development for these folk, public indemnity insurance, and then the last one is issues around fidelity issues and fidelity fund, although I think the Law Society agreed with us that fidelity fund issues are unlikely to be encountered certainly in a sensible pro bono type framework, so let's forget about that one. But the other two issues, are they matters that you think are properly dealt with, or the concerns may be overcooked?

MR BUCHANAN (QPILCH): I think really that they are overcooked. A lot of the volunteer lawyers, particularly the ones who are older lawyers, they've had a hell of a lot of experience. To make them sit through 10 points of training on the Trust Account Act and so forth like they do, I think it's well overcooked. Fair enough to have practising certificates for the young lawyers who are employed there, but for volunteers anything to encourage them to volunteer is helpful.

MR WOODYATT (QPILCH): In Queensland, you know, you can only use that volunteer certificate through a community legal centre, so we have a lot of volunteer practitioners who either career break or retired, and they're incredibly useful. They've got, you know, incredible experience and we - in any event through our normal structures there's everything that QPILCH produces is supervised by solicitors who are, you know, with current practising certificates who are doing all the training, who are experienced in what they're doing. So we've got no concerns about the current Queensland regime.

MR BUCHANAN (QPILCH): And the fidelity insurance, which all the CLCs have, covers volunteers so that's not an issue.

DR MUNDY: Yes, and the indemnity insurance.

MR BUCHANAN (QPILCH): And the indemnity insurance.

DR MUNDY: Yes. I think the concern has been well this is somehow a lesser class of lawyer and they don't have the same professional standards. I mean we did hear in New South Wales of one former Supreme Court judge in New South Wales who spends most of his time driving around in his four-wheel drive doing assistance work for Aboriginal communities, so I'm not sure whether judges deteriorate at a rapid rate or not but - - -

MR BUCHANAN (QPILCH): I must confess I don't have a practising certificate. I retired from law five years ago, but continued to be active in QPILCH. I'd have a volunteer - if there was a volunteer's practising certificate, I'd keep it up and keep up membership of the Law Society, but the thought of having to pay for continuing legal education with no return was one step too far.

DR MUNDY: Okay.

MS MacRAE: You talk I think in your submission about an example in the US where some jurisdictions actually recognise pro bono work for the purposes of continuing professional development, so I guess to some extent if we adopted that sort of arrangement, you solve your problem by saying well by undertaking this work you're undertaking that education, and that's how you get your 10 points.

MR BUCHANAN (QPILCH): Yes.

MS MacRAE: I guess it's another way of dealing with it, and presumably it works for them. Okay. Could I just ask - we haven't really asked much of anyone else in Queensland, and perhaps you're not the best people to ask, but do you have views about information for consumers, and particularly redress where things don't go well? Are consumers aware of the complaint mechanisms, and do you feel that they - or are you in a position to say whether or not they work very well?

MR WOODYATT (QPILCH): Sorry, which complaint - - -

MS MacRAE: If consumers are unhappy with the legal service that they have been provided with - - -

MR WOODYATT (QPILCH): I see. Sorry.

MS MacRAE: - - - are they able to - either in terms of costs or quality, how do those mechanisms work in Queensland?

MR BUCHANAN (QPILCH): It's part of the retainer letter that solicitors have to give clients, and I must say it's a very long letter. So while they are made aware of their rights, I don't know how many of them would actually read or understand it.

DR MUNDY: You seem to describe a situation that I think is often referred to as the mobile phone contract.

MR BUCHANAN (QPILCH): Yes.

DR MUNDY: Or the old product disclosure form. So the question is is it information or is it just data, your view would be that it's not particularly alive to informing people of their rights.

MR BUCHANAN (QPILCH): It's a personal opinion, but just from retainers letters, yes, they are. It's like sign here and return it. It's like, you know, they have read the terms and conditions. I suppose people - you could always send people to go back and look at it if they have an issue, but a lot of people probably wouldn't even remember that it's there. Once again something simple would have - - -

DR MUNDY: There are people who I think are obviously familiar with these documents, but in your view if they were people of, you know, limited education, perhaps suffering some form of disability, English wasn't their first language, would these be documents they would be likely to be able to understand?

MR BUCHANAN (QPILCH): Very unlikely I would say because they are quite convoluted.

MS MacRAE: I think the other issue you raised in your submission is the concern that people just don't really understand what the powers of the Legal Services Commission are so that they might think that they can apply for some sort of compensation from that body which, you know, is really not available. So what more do you think could be done to try and address some of those issues?

MR WOODYATT (QPILCH): Well, it's incredibly hard, I think, just, you know, generally getting information out in an accessible form that people can use, you know. I think the Legal Services Commission here has lots of, you know, relatively good information on its web site and we get quite a few complaints against lawyers at QPILCH which are, in fact, our first ever referral was a complaint against a firm that led to a District Court hearing that changed the rules, the way lawyers change costs, and we've got a fact sheet on our web site about the process, you know, it's not easy, it's not, you know.

MR BUCHANAN (QPILCH): A legal ombudsman could be a help that someone can go to first up before, because the legal information commissioner, it is quite formalistic thing, whereas if there was an informal route that people could take, the ordinary consumer, that might encourage them and that would also be a way of educating them on their general rights.

DR MUNDY: So much in the way that I can go to the banking ombudsman or telecommunications ombudsman.

MR BUCHANAN (QPILCH): Yes.

DR MUNDY: Of course Queensland have the notable exception of having relevant legal complaints body headed up by someone who wasn't a lawyer, I understand.

MR BUCHANAN (QPILCH): Yes. We have some interesting appointments in Queensland.

DR MUNDY: So we understand.

MS MacRAE: I mean, on a serious note, do you think there's real value in that? Because I mean, we do hear, and I guess our organisation in general would say that, you know, having a profession - whether people that are reviewing the profession are of the profession can at least in perception if not in reality create concerns about conflicts there so, you know, would it be a useful thing to have a requirement that some non-lay or non-legal professional people should be involved in any sort of complaints mechanism?

DR MUNDY: We see it very commonly now on medical and quasi medical registration bodies typically will have non-practitioners, they're typically lawyers.

MR BUCHANAN (QPILCH): I haven't really thought about it, but it could be helpful if you get, dare I say, a voice of reason.

MR WOODYATT (QPILCH): The old QLS, when the QLS ran the complaint process there was at least one lay person on that.

MR BUCHANAN (QPILCH): But that was a more formal sort of body rather than, you know, an initial one to go to.

DR MUNDY: Yes, and I mean, I think it's an interesting issue that it's often decided that there's a need to distinguish the ethical conduct type complaint from what we might call the commercial conduct complaint, although I think they sometimes look very much to be part of the same problem.

MR BUCHANAN (QPILCH): Yes.

DR MUNDY: We had an interesting discussion about the unbundling of services with the Law Society earlier on and I think they largely support our propositions with respect to bundling and then we had Ms Shearer here who actually runs an unbundled practice for a living and we found that very helpful. They suggested to us

that the adoption of a very simple rule within the rules of the American bar whereby the obligation is made clear about the extent of liability and a clear acknowledgment of an acceptance of that limitation, in their view would go a long way to facilitating the constraints that people see of unbundling. I note that in your response to the draft report you think the issue around insurers is in favour of a minimalist approach. I'm just trying to understand precisely. So you like the idea of unbundling because that's, I suspect, to some extent what you do for people.

MR BUCHANAN (QPILCH): It is, yes.

DR MUNDY: But I'm not quite sure where your view is on the insurance question.

MR WOODYATT (QPILCH): Look, it was more - earlier on when we started the service we had a reference group who was chaired by a former Supreme Court judge and a group of people who we were just starting up the service and we thought, well, perhaps we need some - you know, we're doing something that was unique at the time, I mean, it happened across the profession, but we were providing a service and potentially exposing our volunteers to something and so we thought, well, maybe it needs clear protections that would be, you know, legislative or through the rules some way that would ensure that volunteers and staff were, you know, because they didn't necessarily have the full picture and, you know, we're just doing steps in the process that that might help, but now I'm on a Law Society committee that's been looking at it, and the general consensus is that maybe, you know, taking some simple steps first and seeing how it goes and just making, as you say, adopting that US rule would be sufficient at least.

DR MUNDY: It does seem pretty simple to us.

MR WOODYATT (QPILCH): It does.

DR MUNDY: It does seem to do the trick.

MR WOODYATT (QPILCH): Yes.

MS MacRAE: I'll maybe just ask about limited licences. Again, I think you have appropriately interpreted our report as saying that we're not suggesting that completely unqualified people could just come in and represent people if they chose to, but rather that there might be people that have qualifications but in a narrower area of law than a general lawyer might have that might be able to represent in particular fields, and we know in Washington state they're looking at having lawyers - paralegals work in the family law area after some years of training, but not the full range that you would have if you were a general lawyer there. You spoke in your submission about the possibility of using this sort of qualified but not necessarily fully qualified lawyer in the area of tenancy disputes. Are there other areas that you

would see this would be appropriate, and how would you see it operating in the tenancy field?

MR WOODYATT (QPILCH): Look, I suppose we haven't really given enough - I mean, we saw a particular discrete area in tenancy since there's been defunding of tenancy services in Queensland and it is something that is relatively straightforward that, you know, that it may be useful to fill that gap and with appropriate supervision, so there's all those things that have to go with it, but how far you potentially extend that, I think you would have to take it on a case by case basis and see - well, is this something, you know, that would be an appropriate use, you know, to help fill gaps and that sort of thing. I wouldn't sort of suggest that across the board.

MS MacRAE: What sort of qualifications would you think someone might need to deal with tenancy disputes? Would you see them having to sort of do an academic qualification that would give them two years or something that would specialise in this area, or would they need to have other experience?

MR BUCHANAN (QPILCH): I would have thought a couple of years of study because - - -

MS MacRAE: Yes, okay.

MR BUCHANAN (QPILCH): But that is quite a discrete area of law. The trouble is when you get to other areas of the law, it can expand - - -

MS MacRAE: Yes, much broader. Yes.

MR BUCHANAN (QPILCH): Even - well, family is probably a bit more discrete, but even it's a lot more to tenancy disputes.

MS MacRAE: Yes.

DR MUNDY: What actually drew our minds is there's a scheme in Washington state where people become effectively family lawyers but nothing else, but the course is certainly more than two, it's three or four, plus a significant period of professional supervision after that. So what we're not talking about - and I think some have felt we might have been talking about six weeks of TAFE and off you go.

MR BUCHANAN (QPILCH): No.

DR MUNDY: We're actually talking about serious professional qualifications.

MS MacRAE: And then I think limiting their scope as well.

DR MUNDY: Yes.

MS MacRAE: So in Washington state, for example, you can't represent somebody in court but you can help them with their documentation and gathering evidence and all those sorts of things.

MR BUCHANAN (QPILCH): And interestingly as a practical point, and sort of a mirror image of that, is that a lot of law firms don't do family because it is such a speciality.

MS MacRAE: Yes.

DR MUNDY: Yes, and you see other areas - I mean, historically industrial matters were dealt with advocates of employers or of unions, you see a bit of it in planning matters where the planning matters are very discrete.

MR BUCHANAN (QPILCH): Yes.

MR WOODYATT (QPILCH): At least a couple of universities, I think, in Queensland have paralegal courses where, you know, it's a broader course, it doesn't necessarily, but it gives them an insight into a lot of those legal issues, you know, just fundamental legal issues that could be built on for specific areas. It's, you know, an important resource, I think. We use students heavily at QPILCH. It's a way we get - obviously again under close supervision, but it's a way that we get through a lot of our - you know, we have far more applications than the staff alone can deal with.

MS MacRAE: Perhaps just one last thing. Just in relation to tribunals, and again I think we probably weren't as clear in our draft as we could have been, but we see some value - our concern was that there might be what's been described to us as creeping legalism and more lawyers being in tribunals than might necessarily be absolutely necessary and I think it's fair to say in your submission that you support or views that there is value in keeping the extent of legal representation in tribunals to some extent in check, even though obviously vulnerable participants may need to be protected.

I understand that QCAT does still have quite a low rate of legal representation and I think it's fair to say VCAT started out that way and it's not that way any more and that's one of the reasons that we've made this sort of recommendation. Can you just give us a bit of an idea about how you see that impacting on proceedings, I guess in relation to what you would regard as fair outcomes for participants and cost and accessibility of QCAT as a result of that?

MR WOODYATT (QPILCH): Sure. We think - you know, we'd differ from the Law Society in this respect because we think that those proceedings need to be, you

know, not necessarily legalistic unless obviously they're areas where legal issues are important but that, you know, they need to be fast to get, you know, appropriate justice and we think QCAT is doing a good job in that regard and that where - and as far as I understand that where lawyers do apply because they think their clients need representation and so they seek leave of the tribunal, they get it in most cases I'm aware of, and I think the QCAT stats bear that out and you have probably heard that.

DR MUNDY: I guess the question that begs and the concern that we have is leave granted too readily. It's probably interesting to know how many they knock back as well. I guess coming back to you raised tenancy, I mean, one of the concerns that has been raised with us is that major real estate firms will probably deal with tenancy disputes in QCAT more regularly than your average tenant and, I mean, do you have a view - I mean, and the argument was put to us, I'd be interested in your view of it, is that sometimes to ensure that there is a quality between the parties, that it may well involve someone experiencing some form of disadvantage, English mightn't be their first language, say, appearing against someone who whilst isn't a lawyer is pretty well competent to perform in such a jurisdiction. So are those cases in your experience particularly common or are they easy to conceive of, you know, small property owners dealing with local council officials and planning matters is another one, are they common occurrences or - - -

MR WOODYATT (QPILCH): Look, I can't answer that for sure, but we run a self-representation in QCAT and whilst that's a self-representation service and obviously the whole jurisdiction is meant to be largely self-represented, we help people, particularly those who are vulnerable who may be in circumstances where the other side has, you know, a stronger position because - - -

DR MUNDY: An organisation which - - -

MR WOODYATT (QPILCH): That's right. We help a lot of people every year. I'm not sure if we said in our submission, but since the defunding of the tenancy advice services, the demand on our service for tenancy has increased, I think, from last year about 24 per cent to about 40 per cent this year and we set the service up to focus on the main areas of vulnerability, guardianship and administration, child protection, and discrimination and so, you know, we said we'd help out as best we could in tenancy. It's important, obviously a human right for people to have access to a home, and so we do what we can, but it's starting to dominate to a certain extent, that we need to monitor that, so we are changing our guidelines to make it the more serious cases that we'll assist with so that we can get some balance back. But, look, I can't answer your specific question, but I think - because we don't obviously - we don't see everyone, there's 30,000, most of them are in debt matters that we don't have any - I mean, we've done a couple for people who are really vulnerable and helped out, but basically we help out in that human rights jurisdiction.

MR BUCHANAN (QPILCH): It may be, to use something you said earlier, the person on the bench has to take that into account.

DR MUNDY: Yes. All right. Look, we've pretty much run out of time, so thank you very much for your submissions and your time for coming here today. These hearings are adjourned until half past 1.

(Luncheon adjournment)

DR MUNDY: Okay, we'll resume these proceedings. Could you please state your name and the capacity in which you appear?

MR BIRD: My name is Andrew Bird. I'm appearing as an individual. I do run a couple of businesses, but I just want to present a submission today.

DR MUNDY: Okay, Mr Bird. Could you perhaps make a brief opening statement for five minutes or so, and then we'll come to some questions?

MR BIRD: Thank you. Thank you for the opportunity to present at the hearing today. For the next five minutes I'll talk about my original submission and provide my intended future direction. I'll also provide some unique recommendations for your consideration. The majority of my original submission is on my business Access Point Law. I'll start by providing some highlights and thoughts about the future direction of this web site which can be accessed at www.accesspointlaw.com.au.

I'm pleased to announce that I have received positive feedback in relation to Access Point Law from the office of the Premier Queensland, the Queensland Attorney-General, and the Tasmanian Attorney-General. Unfortunately I have not received a grant pursuant to the Legal Profession Act. This outcome was not surprising, but nevertheless disappointing as financial assistance would help my current financial situation.

A lot of time has to date been invested in Access Point Law with little financial return. I strongly believe in the merits of Access Point Law as a concept. Free legal education is something that should be provided to the public. A listing of searches and a location gallery of important public institutions is also a valuable resource. At the moment I have reached 55 per cent coverage for free legal education on Queensland's statutory law.

If I cover another 91 Acts, I would have covered all the Queensland Acts I believe significantly affect Queenslanders. I intend to complete the flagged 91 Acts in the near future and will proceed to do so as quickly as I can. At the same time I will commit to maintaining the currency of all the summaries I have published. In the meantime I'd encourage lawyers and members of the public to contribute either by submitting original work, or by providing feedback. Your input will assist in the growth and sustainability of the web site.

After covering Queensland law, the next step would to expand to Commonwealth law. This, however, is not yet guaranteed as a course of action. Maybe another state would fund coverage prior to the Commonwealth, in which case I would proceed to kick start coverage of that state. If the Commonwealth law was

covered, it is possible that laws will be classified according to constitutional categories.

Prior to passing on to the topic of ebook publishing and the law, I wish to state that it would give me great pleasure if the art gallery for Access Point Law would continue to grow. If a drawing or artwork represents an Act of Parliament, I believe the law would be more treasured by the public, and indeed the Act would appear less frightening to those without legal training.

I also wish to state that Access Point Law provides an important function in providing the public with law assurance. This assurance will increase as many of our laws are codified. I believe there is a current push at the moment for contract law to be codified in this state. I believe in time that most common law will be codified, and once this happens that categorisation will provide the public and small business with peace of mind that they are compliant, or close to being fully compliant, with the law.

I will now move on to discuss ebook publishing and the law. I must admit that my ideas in this space are novel. Since my original submission I have tested my ideas and thinking and can now provide my conclusions as to beneficial future action. From my research I can report that defamation laws are a major blocker to a successful transition to an environment where disputes can be resolved with less formality. I do not support the current system where writing the truth can result in a defamation claim against you, with your only saving grace being a defence which is less than ideal in its operation.

It is my belief that the truth and freedom of speech should be championed. What does society have to lose? Generation Y and younger generations are exposed to mountains of information via social media and via this exposure their lives are becoming more and more open. They are becoming less bothered by what is written out there, as long as they can write back, and I believe is the general course for that action to happen. Why would the youth of today bother with a defamation claim? In my own personal experience as long as your friends and family know the truth, who cares what people think?

In closing on this point I submit to you that writing in all forms is to be encouraged. If nothing else, it is therapeutic to the writer. Society can only benefit from issues being vented. To aid venting I submit that civil defamation laws should perhaps be limited to only benefit those in society who are under a legal disability. Until the defamation laws are relaxed, I can only recommend the following three recommendations.

(1) An independent government body be set up for the purposes of receiving writing in all forms relating to disputes or anything. This body would help to

provide issue closure, which I referred to in my original submission. The writing submitted would be open to all members of the public. The writing submitted would be kept on a confidential basis and could be collected one time by the submitter. I would suggest it be known that submissions can be used for government research, and after a period of 100 years, for example, the writings could be open to the public by the public archives, libraries, museums, et cetera. It may be acceptable for the relevant body to be the Law Reform Commission.

Number 2, precedent ebooks be continued to be rolled out. I publish two today. One is called McKenzie Friends, full of material for Queensland, Australia, and the other is called The Truth as a Defence to Defamation, full of material for Queensland, Australia. Once published and placed next to any relevant Act of Parliament, a member of the public could be educated about the common law. Such ebooks will aid future law codification, for the time being allow access to the common law extracts that in my opinion could not be reasonably accessed by those in society without legal training.

Number 3, McKenzie friends be continued to be supported as a legal right. I've rolled out this common law concept on my web site safesailing.com.au. I published one ebook before-mentioned, and created a basic template for appointment of a McKenzie friend. It is my belief that without some form of public writing on a topic, common law rights are not really in existence. A member of the public would fear enforcing a right without some official writing or support. I encourage all common law rights to be converted to statutory law. In the meantime I believe governments should take it upon themselves to ensure all significant common law cases are published on a prominent web site accessible for free to the public. I submit that may be an easier task for a new law to be created.

If defamation laws are limited in operation, I believe the following could be a reality, that is ebooks serving as a means to issue resolution, as mentioned in my original submission. I have published an example template on the web site safesailing.com.au as to how this concept would work. This concludes my presentation on topic, but before asking some questions I wish to provide notification that my presentation will be published as an ebook on www.safesailing.com.au as per my original submission.

I also wish to take this opportunity to put it out there to the general public that I'm looking for employment as a solicitor. Please contact myself by email at andrew@safesailing.com.au if you have any opportunities available. I thank you again for the opportunity to present today. It's wonderful to have an audience. I now look forward to being questioned on my submissions. Please proceed when you're ready.

DR MUNDY: Mr Bird, I'm sure it wasn't in the mind of the parliament when it

enacted the Productivity Commission Act to provide a forum for people to solicit for employment.

MR BIRD: Okay, yes.

DR MUNDY: So I must tell you I find your behaviour in that regard both unique and inappropriate.

MR BIRD: Yes.

DR MUNDY: Unfortunately there are no provisions in our Act to bring action with respect to contempt. I also for the record, given you've raised the issue of defamation, indicate for the record that a number of years ago certain comments were published about me by News Limited and subsequently they withdrew all but one of those comments. I won't go into the reasons behind the withdrawal because that would breach confidentiality that I have with News Limited. Mr Bird, could you perhaps take us through the observations you made about McKenzie friends in a bit more detail?

MR BIRD: Okay. Basically on my web site I've actually got an ebook I've published on that topic. It's a precedent - - -

DR MUNDY: Mr Bird, I'd appreciate it if you could address our questions rather than use this as a forum to advertise ebooks that you have published.

MR BIRD: Okay.

DR MUNDY: Because, to be frank with you, a number of the submissions you have made to us and your comments today are of that character.

MR BIRD: Yes.

DR MUNDY: Again I don't think this commission was established for the purposes of providing advertising, and again your behaviour in this regard is entirely without precedent in my four and a bit years as a commissioner.

MR BIRD: Yes. So I done research on the topic McKenzie friends and I found some cases that are relevant. In the original report I saw that it wasn't really mentioned as something that happened in Queensland, but the cases support there's a right in Queensland for that, and so I guess I tried putting it out there that these cases exist, and I just wanted the public to be informed about that because it's surprising how many people don't know of a McKenzie friend, or laypersons assistance, the right to that, and even lawyers, I speak to them and they, a lot of them don't know unless they went to that - there was an oration at the Supreme Court couple of

months ago that Prof Dame Hazel attended. She gave some insights about the experience in the UK.

DR MUNDY: Sorry. You're referring to Prof Dame Hazel Genn.

MR BIRD: Genn, sorry, yes. She attended, done an oration. Basically it enlightened a lot of people about the concept. I did speak to people after the oration, and they were familiar with it, but some people, some solicitors even, they're not so familiar with the concept, and during legal training at the university I never came across the concept. So it's more one of those silent kind of a rights.

MS MacRAE: I think you've also done a fair amount of work in trying to summarise and simplify the law, and we have had some evidence from others to this inquiry that there's concerns around the complexity of the law itself. Do you see that there's ways that we could try and make the laws less complex, other than having someone separately go and have to try and summarise key points from the law? Do you see ways in which we could make the law simpler and more accessible for people in terms of the way laws are written, or the way that the language in law is expressed?

MR BIRD: Generally I see that the laws are being written a bit better in time because they've got kind of better definitions and things like that. It's all coming. If you look back to earlier Acts, they've got no reasons for the Acts and they're kind of very short and very complicated, very long paragraphs. I do see that the Acts are improving. The next thing I thought would be categorisation would help it again because some Acts could be combined and things happen in that space. Recently the Property and Motor Dealers Agents Act has now been split, and I do see that as positive action because the points are now separated and the public can understand it better.

I just think that - so I do appreciate that kind of action, so the law getting condensed and more points on topic together. I do note that in the federal space with the tax laws, I know years ago they tried making it more simple. Now, they've got two Acts, and so it's kind of - I guess it depends on the people who are involved and whether they've got kind of scope, or even some kind of freedom by the public to actually make things into something simpler, because it just tends that the more energies in a space, the more outcomes people expect, and tends to be more and more writing produced. So I'm kind of hopeful in that space that things will improve.

DR MUNDY: I mean a number of jurisdictions have had in place programs over time for language simplification and amalgamation of legislation. But do you see any risks in this, and I guess I'm particularly concerned about if regularly litigated, or even occasionally litigated statutes were to be subject to this sort of actions that you describe, then that may undermine the value of the precedentary law that underpins

the understanding of interpretation of those laws. Secondly, how much do you actually think this activity is going to cost, and is it the best use of the relatively scarce resources of parliamentary counsel who still have to produce the laws as the parliament enacts them?

MR BIRD: Okay. Could you just say the first question again, sorry?

DR MUNDY: Well, what's the effect on precedent if we're going to amalgamate all our laws, presumably change the language, and therefore precedents that have been relied on - for example, you might decide to rewrite the language in Part IV of the Competition Law and change what is understood by substantial lessening of competition.

MR BIRD: I always see that there's - there's always interaction between the statute law and precedent law. You read through some of the statutes and there's references to precedent law, and if you don't have the ability, legal training, or you don't have the knowledge of it beforehand, you kind of struggle to get anywhere with the Act. I do think that - I have seen some common law rights been espoused and Acts described. I think that's a beneficial action and I would encourage that to happen. It does take away the value of precedent law, but I kind of argue that advocacy in effect is arguing with things. Even if it's not precedent itself, it still could have a bearing on the court in its outcome, being argumentative in that way.

DR MUNDY: But precedent emerges from statutory interpretation, doesn't it? So the mere fact that we rewrite a statute doesn't alter the fact that we're going to do away with the need of precedent, but moreover if we rewrite statutes to make them more simple, then we create the risk of new precedentary law or the existing precedent being undermined, don't we?

MR BIRD: Yes. Where I was kind of going with my thoughts was that where a case is handed down, it's important perhaps the parliament should actually look to put that into the statute law itself, and that would actually improve the law, and maybe those reasons for the law being interpreted to that degree out in the court system would be mitigated, it would be lessened.

DR MUNDY: So something like the Mabo judgment?

MR BIRD: Yes. That could - sorry, the Native Title Act is there, they're still both in existence. Maybe the one could just now stand, and if there was any more cases on the Act, well, then the points that are raised and important, they could be fed into the Act for improvement. Eventually you might find there would be less precedent for an Act.

DR MUNDY: And my question about cost?

MR BIRD: There is costs. I do think that it's one of the most important things of society is the law. If you get it running more streamlined and people understand the cost, they would be justified.

DR MUNDY: Okay.

MS MacRAE: You talked about the importance of free legal education. I guess I'd just be interested to know how easy you think it is, given the much wider accessibility of electronic communication now and the Internet - how easy is it for people to find the legislation that might be most relevant to their dispute? And to what extent do you think we need - well, I guess how much of the issue around access to justice is about access to resources to help people, and how much is it access to resources for qualified people who can take on that role? So where do you draw that line?

MR BIRD: The first one - sorry. The Internet is kind of more - everyone is on the Internet at the moment, everyone knows how to do it. Well, the old generations are now being trained. It's kind of - I do like how it is at the moment. You can go on to the Queensland parliamentary web site and it's all there for you. Every jurisdiction I kind of know in Australia has got that in place. I know that some appear differently. I think Northern Territory is a little bit different in the way that you click on things. Some Acts have got links that are - the sections are separated by links. I do see that as a positive thing, but AustLII does that anyway.

So with AustLII in place and, like in Queensland, the PDFs, that's a good thing. You've got a bit of an option of how you want to look at things. I guess the current parliaments could actually present them in both formats, but that would double the work. I do think the way that AustLII and the parliament kind of run together. That's a good thing, and that's to be commended.

I don't know whether presentation of the law on the parliament web sites could be improved, because if you start - I guess to some degree what I'm doing, categorising, it's not really - it would just be too much burden for the parliament to handle unless they have a lot more employees in that space. Even when the parliament is categorising, they categorise wrong and then people don't find information that they need. So that's problematic. I think that's answered that question. What was the next one again, sorry?

DR MUNDY: Could I just interrupt? The Commonwealth parliament doesn't publish common law statutes. It's published by the Commonwealth Attorney-General's Department, isn't it?

MR BIRD: ComLaw. I'm not sure.

DR MUNDY: ComLaw.gov.au I think you'll find is hosted by the Attorney-General's Department, not by the parliament.

MR BIRD: Okay. Sorry.

MS MacRAE: That's all right. I guess I was really just trying to get at - you saw value in free legal education. I was trying to just get at what - where you thought that would be best aimed and what level of education are you really thinking about. So I guess in terms of the education for people that may want to, or be required to represent themselves versus whether you'd be thinking that - I guess how much free legal education would you need, knowing that when things get very complicated, that you're likely to need assistance of some sort from a more qualified individual to help you in that space.

MR BIRD: Yes. Okay. There's a kind of bit of a dilemma that I kind of faced earlier on at my work. It's basically how much is enough? I kind of always thought that access - point of access is the best, whether it's a bit simplified entire level, but at least you kind of know you're on the right track. I think that's probably enough. Whether you can revise saying, "That's more relevant to every day life," and people think, "Well, that's useful to know," that's always good as well. But it gets to a point where the law is complicated and you need lawyers to perhaps get the best out of it for the person. I think with the - for example, I kind of looked at the Supreme Court Act and the use of PR and things like that.

The use of PR is massive. Whether you try explaining it to a normal person in the public, it would be just too much for them. At least if you tell them that all the rules are here, that's at least something that's good for them and gives them a lead in. Whether they need, after looking at it, somebody, well, then it's up to them to make that decision themselves. So I guess it's probably coming onto at least - if you can get enough people to give them empowerment to get to an outcome, that's the best outcome. Then they can make the decision whether they want legal advice or not.

DR MUNDY: Mr Bird, can I just ask you whether you've been recording your comments here today?

MR BIRD: I haven't been recording them, no.

DR MUNDY: Thank you. Look, I think that's about all we have for you. Just for your information, because you weren't here earlier, a transcript of these proceedings will be placed on our web site. I suspect it will be early next week at the rate at which they're being produced. But thank you for your submissions and the time you've taken to come and see us today.

MR BIRD: Thank you.

DR MUNDY: I suspect that there is someone here from the Queensland Bar. My only issue is would she like me to wait for her colleague to arrive? Well, we will adjourn until 2 o'clock or some earlier time when the Bar is ready for us. Thank you, Mr Bird.

DR MUNDY: When you're ready could you please state your names and the capacity in which you appear for the benefit of the transcript?

MR DIEHM (BAQ): Thank you. My name is Geoffrey Diehm, G-e-o-f-f-r-e-y D-i-e-h-m. I'm a Queen's Counsel, I'm vice president of the Bar Association of Queensland and appear in that capacity.

MS MARTIN (BAQ): And I'm Robyn Martin, R-o-b-y-n, Martin with an I. I'm the chief executive officer of the Bar Association of Queensland.

DR MUNDY: Would one of you like to make a brief opening statement and we'll move to questions? Mr Livesey QC was able to do this in about three minutes and 12 seconds. We were most impressed and observed he probably wasn't being paid by the hour on this occasion.

MR DIEHM (BAQ): Thank you. I'll see if I can beat that record. Thank you for the opportunity to address the commission with this very important work. We think that Queensland barristers, amongst no doubt other lawyers, have important perspectives that we appreciate are focused on some matters rather more so than necessarily all matters that are going to be within the consideration of the commission, and obviously our focus is really going to in the end by on matters that we deal with on a day to day basis.

There are some broader socioeconomic considerations, I suppose, that the commission has turned its mind to and will continue to do so, and we can offer some comment about some of those items, but perhaps aren't well placed to say things about other matters. We've appreciated the draft report, which obviously gives us something material to work from in terms of providing further responses. We note that the issues that are being considered here are of great complexity.

It's not novel that they're being considered in the way that this commission is. They've been considered in this state, nationally and internationally very many times before, and it seems that nobody yet has come up with any kind of perfect answer, and no doubt nobody expects that they will, that we just aim to see if we can make improvements. One of the realities that we think that needs to be grappled with is that very often times what might be expected to be an effective or meaningful change may in fact produce, at least in some cases if not in all cases, the exact opposite effect of what was intended, so that reforms can be introduced for instance to the litigation process and instead of making it cheaper and more accessible in fact increase barriers and in particular it can increase expense from time to time.

One example of that of course is case management. If you asked a large group of lawyers what they thought about case management you would get some

experiences that suggested that it just added to the cost, because there are a heap of extra hearings of an interlocutory nature that don't achieve very much but just add to the cost because of the preparation as well as the time spent in attending there. We expect that that is real, that observation, that that does happen.

We don't suggest, however, that that means that the sorts of considerations and opportunities that the commission has identified in the draft report aren't worth pursuing. It merely reflects a need to ensure that they're pursued, both in structure and in actual delivery, at a higher quality than may be the case on some other occasions, and the commission with respect has sought to address a number of those things with recommendations, for instance about cultural change, recommendations about judicial education, education for lawyers as well that would all help with respect to delivering better outcomes in those sorts of matters.

One of the other unintended consequences that might be thought to potentially arise from some of the ideas that are mooted in the draft report that has occurred to me is one that sees a potential reduction in barriers to access to justice by providing for more efficient and indeed more timely resolution of disputes through the litigation process. So case management, for instance, that results in strict time limits being developed and adhered to, that are intended to reduce the cost by in part perhaps reducing procrastination, making the parties get on with their litigation and having it dealt with quickly.

One of the problems that could arise in some cases - I don't suggest all, but in some cases where that is adopted - is that parties who are well resourced can be advantaged because when there's a short time frame, those with the greater resources are the ones who have the greater capacity to effectively manage the short time frame, and for many of the people who've faced barriers in terms of access to justice because of limited resources, it may merely exacerbate their disadvantage in that regard.

This goes back to the point that I was aiming to make, that we think it's important to bear in mind that every time there's a solution, the solutions may in fact give rise to problems in some perhaps, even if not all cases, and those potential outcomes need to be contemplated. We think there's much to commend in the draft report, with respect to various areas that have been contemplated and we'll be happy to make some additional comments specifically in the area of cultural change, court processes that have been mooted in section 11 in particular of the report, and issues about the complexity of law, including legislation that add to burdens, as well as some brief comment about something that we said in our written submission in response to the draft report about the role of organisations like ASIC and the ACCC in particular, because there may be some clarification that we can offer about what we were meaning to convey by that.

DR MUNDY: Thank you for that, Mr Diehm. Could I perhaps bring you to paragraph 38 of your submission to us. There is a claim made about a different agenda altogether. Would you like to inform the commission what the Bar Association of Queensland believes that agenda to be, or would you like to remove that statement from the record?

MR DIEHM (BAQ): If the statement is taken as implying that the commission had a different agenda altogether, it is not intended to convey that.

DR MUNDY: Okay, thank you. We don't need to pursue that any further.

MR DIEHM (BAQ): Thank you, and I apologise if that was thought that that may be what it meant.

DR MUNDY: Well, there is a general tone, particularly in that part of the submission to us which, if I can be frank, does actually tend to lead - - -

MR DIEHM (BAQ): I see, yes.

DR MUNDY: - - - in its rhetorical character to impugning both the intentions and the competence of the commission, and I'm sure that wasn't the intention.

MR DIEHM (BAQ): It's certainly not intended, no.

DR MUNDY: Perhaps in reflection, we would be happy to receive a more suitably drafted submission from the Bar, if that was within your resources to do so.

MR DIEHM (BAQ): Thank you, yes.

DR MUNDY: At the last point in 38, the last sentence says, "Abolition of court fees would actually be apt." Is it the position of the Queensland Bar that court fees should be abolished?

MR DIEHM (BAQ): We consider that in the ideal world they would be, yes.

DR MUNDY: We had the opportunity to hear from Chief Justice Martin of Western Australia on the Friday before last in Perth when he appeared before us, and he drew to our attention the Bell Resources case, and his Honour advised us that the cost to his court of that case was some $15 million. He also advised us - and for the sake of this discussion I'm sure the Chief Justice can be taken to be a credible witness - he advised us that his court recovered roughly in the order of $700,000. Now, that was a dispute between a pile of banks and a couple of insurers. Would it be the view of the Queensland Bar that that expenditure of $14 million, which was a private, commercial dispute, was an appropriate use of either that court's money or the

taxpayer of Western Australia's money more generally?

MR DIEHM (BAQ): Yes.

DR MUNDY: It was?

MR DIEHM (BAQ): Yes.

DR MUNDY: Can you explain why the chief justice, who has a view that it wasn't, might be in error? You haven't had the benefit of his argument, but perhaps you could explain to us why that $14 million was perhaps not better spent, let's say, expediting the processing of wills within the Supreme Court of Western Australia, or dealing with criminal appeals where people were being incarcerated but for the want of the resources of the court?

MR DIEHM (BAQ): Thank you, I'm happy to do so. A different point of view of course indicates no disrespect whatsoever to Chief Justice Martin, who's held in high regard, as I'm sure you are aware. Our association has a long association with his Honour, and a proud one at that, and the point of view that you have just articulated is again, with respect, obviously a respectable one too.

But the difficulty with it is, in our view, is that courts are not, as it were, service providers. They are an arm of government that are there as part of our institutions to resolve disputes between private citizens as well as disputes between the state and citizens, when those disputes are unable to be resolved otherwise between them.

When large corporations have private disputes between them, they are entitled, as it were, as part of the administration of justice to the same opportunities with respect to having their disputes resolved by the courts as what all other persons and companies are. That piece of litigation is obviously in many regards - never mind what the private interests of those concerned my be - regrettable and apart from consuming enormous amounts of court resources, it no doubt consumed enormous amounts of the parties' own resources along the way.

DR MUNDY: But they had a say in the matter.

MR DIEHM (BAQ): Well, they did have a say in the matter. But to deny them access to the courts unless they pay for that access at something approaching its true commercial cost is in our view to deny what the role of the courts in our society is, and that is to act as an arm of government would in determining the dispute between the parties and in our view it would be somewhat akin to suggesting that where a bank or a group of banks wished to convey points of view and to try and persuade politicians that a particular point of view should prevail and that therefore there

should be legislative reform in a certain area, with a view to suiting their own private interests no doubt when they make such representations, that they should have to pay something towards the costs of operating the parliament and the ministerial offices or that of their local members.

DR MUNDY: Which of course would constitute an offence unless it was mechanically done.

MR DIEHM (BAQ): Quite so.

DR MUNDY: You mention though that you said that disputes which were - I think your language, and correct me if I'm wrong - but "disputes unable to be resolved otherwise" I think was the phrase you used.

MR DIEHM (BAQ): Yes.

DR MUNDY: Of course, perhaps not in the Bell matter, but in a wide range of other disputes, parties do have a choice as to whether they use the courts. They could agree to have the matter privately arbitrated. Not all matters, I accept, and indeed in my professional experience in the aviation industry where I used to be involved in the development of access agreements for airlines to access airports, at least a tenth of the document was actually about how the parties were going to resolve disputes without the use of the courts.

MR DIEHM (BAQ): Yes.

DR MUNDY: I'm sure you're familiar with these sorts of agreements.

MR DIEHM (BAQ): Indeed.

DR MUNDY: So I guess the question is, in those matters - and I accept there are some matters, and the commission readily acknowledges in its report that there are matters that must go to court for the general establishment of precedent - and for other reasons, not perhaps commercial matters but where civil liberties and human rights are involved - but in those cases where there is a real and viable alternative to court - that is, some form of private arbitration of a matter - what's your view then, where the matter could be resolved elsewhere but the parties choose to go to court? Now, they may do that for any number of reasons, but as we know, they choose often to do these things privately, for any of number of legitimate reasons as well.

So I guess what I'm trying to get at, in those circumstances where there is a genuine alternative to a court based - and by that, it's either some mediated matter in the courts or by trial - does your view still hold, that the parties should have a choice between an arbitration which will cost them significant amounts of money, perhaps,

or in your world, free access to the courts, which isn't actually free because they must pay people like yourselves and those who instruct you?

MR DIEHM (BAQ): Yes, it does. Every piece of civil litigation that invokes the aid of the court to determine it involves a choice by at least one of the parties to have access to the courts. Every piece of civil litigation that there is could be resolved by another means.

DR MUNDY: I'm not sure there are child protection matters that fall into that category, but let's keep our focus on commercial matters.

MR DIEHM (BAQ): Well, commercial and a whole variety of other matters.

DR MUNDY: But there may well be some civil matters which have almost criminal characteristics.

MR DIEHM (BAQ): A regulatory-type regime. I accept that. So all of those other cases only go to a court for resolution because at least one of the parties will not agree to having the dispute resolved by some other means. So in that sense we think it's a complete answer.

DR MUNDY: So there is no case to be made that, given the availability of alternative dispute resolution for some of these matters, it's not appropriate public policy for the state to construct some form of incentive to encourage people to solve their disputes other than by court, or alternatively that it may well be appropriate, and we know that in fact the state does encourage people to resolve disputes other than by court, and the family law jurisdiction is replete with these sorts of examples, your contention would be - and I don't want to put words in your mouth - that court fees are not an appropriate form of public policy to encourage dispute outside of court?

MR DIEHM (BAQ): That's so.

DR MUNDY: Okay. Thank you. I just might finish on this court fees business before Commissioner MacRae asks you some questions. Given the reality that court fees exist, have existed for a long time and are likely to continue to exist, despite your advocacy, given that reality, how do you think court fees should be set? Given that they're going to be there, and the commission has made observations that fees may not be appropriate in certain matters, for example - - -

MR DIEHM (BAQ): Yes. I appreciate that.

DR MUNDY: And given that some commercial matters - in probably courts in which you don't regularly appear, but in the Magistrates Court there might be 10 or 20 thousand dollars at issue, and we talked about the Bell case where you see seven

figures - do you have any views about - given that these fees are going to be there and they're real, should the commercial building dispute in the Magistrates Court down the road for 50 grand be subject to the same sort of fees as massive intercommercial litigation, or is there some guide which you could provide us with around - given this evil is likely to persist, how should the evil be constructed and who should it be visited upon?

MR DIEHM (BAQ): You may recall that I said at the beginning of my comments in answer to your question that in an ideal world court fees would be abolished.

DR MUNDY: But we live in a world of sin, Mr Diehm.

MR DIEHM (BAQ): We most certainly do. The realities in terms of setting a quantum of a fee, I suspect, are really best addressed somewhat arbitrarily; that is, by fixing, for instance, as is done now, a hearing fee at a particular amount per day that is seen as some sort of cost recovery, even if the true cost varies from day to day and case to case.

DR MUNDY: And that's not an unreasonable proposition, there is a question of how much should be recovered in total, and that's a different issue. I don't think we probably actually disagree profoundly in that. But should the value of the matter be relevant to that? I mean, I think it's in the courts in South Australia, there's a sliding scale depending on both the length of time - it's a stage based thing, but also there's some reflection upon what's at issue. I'm thinking of disputes which are able to be characterised in a monetary sense.

MR DIEHM (BAQ): By adopting arbitrary figures that are very varied between court and court - that is, between jurisdiction and jurisdiction - I think that you'll do the best that you can do by that means. So the Magistrates Court will have a much lower fee, I suggest, than the Federal Court or the Supreme Court. The Family Court might see fit to adopt something in between, perhaps, because of the nature of the disputes. The difficulty with, I suspect, trying to adopt any kind of regime that is said to reflect the value of the dispute is that some claims, that is easily determined, others it's not. So a party may be seeking an injunction, for instance, and nothing more, to restrain particular conduct. How does one know what the value of that dispute is to the parties involved? It may be worth more than the Bell Resources case.

DR MUNDY: Indeed, and large environmental litigation has that character.

MR DIEHM (BAQ): Quite so. For that reason, about the only distinction we think can be made, which is probably what is happening in practice, is that distinction between jurisdiction, with an arbitrary presumption that things have a different value between - - -

DR MUNDY: And perhaps some recognition of the character of the litigant.

MR DIEHM (BAQ): Yes, as my suggestion about the Family Court, where larger sums of money may be involved, but in a different context - - -

DR MUNDY: And you may be a person making an appeal in the Federal Court, the consequence of the lack of success of that appeal is removal from the country. That's a profoundly different sort of matter.

MR DIEHM (BAQ): Quite so, yes.

MS MacRAE: I just wanted to take you up on your opening comments about court processes, because your written submission says very little about what we suggested there. But your opening comment appeared to me at least to suggest that some of what we're proposing might have the opposite effect of what we were suggesting. I guess I wanted to put it on the record that I think in all of our recommendations there, we weren't proposing that one size should fit all, and that while we were recommending that courts look at certain options, we certainly weren't saying that there would be hard and fast rules over which there would be no judicial discretion.

So I just wanted to make sure that you were comfortable with the style of recommendation in that chapter. I guess if there was something - you made some general comments about case management sometimes having the opposite effect to what was intended, but was there anything specific to our recommendations in that chapter where you felt that what we recommended might be of that sort, where there had been a recommendation, and you think, "Wow, if we did this - I can see why they're recommending it, but we're going to get the opposite outcome if that was to be adopted."

MR DIEHM (BAQ): Look, I think generally speaking not, in response to that last proposition. The written submission noted, I think, that we considered there was much to commend in the draft report, and so much of what's in the recommendations about that aspect of things meets with general approval from us. I'm in a position to add some comments about some particular matters. Can I also just clarify that that opening comment where I said that care needs to be taken because of the potential for, in some or all cases yet, a different outcome than what you might expect, I wasn't meaning by that that therefore recommendations shouldn't be pursued, but just a wariness, if you like, or a caution about what may yet be some consequences from those, and some of those, and hopefully more than not, can be addressed by exercises of individual discretion in the management of cases from time to time, and much of that is recognised by the commission in the draft report.

MS MacRAE: Yes.

DR MUNDY: Because we have had the opportunity to meet with a very large number of superior court presiding judges and others, and our sense is that they all think case management generally is a good idea.

MR DIEHM (BAQ): Yes.

DR MUNDY: We've been counselled that one may need to exercise some caution in particular regards if the court has - the Land and Environment Court Preston J makes an observation, and I'm sure he'd be happy for me to say this in public, about because of the nature of the way that court works, and because it has commissioners and judges sort of working through, and the smaller courts, but my sense of what you're now saying, Mr Diehm, is that we just need to be aware that sometimes case management comes a little unstuck, a bit like the old diary system working well became a bit unstuck.

MR DIEHM (BAQ): Yes. Yes, quite so, quite so. One observation that I might make - - -

DR MUNDY: Sorry, can I just finish that? And would your general view be that the management of those events which may not be common is a matter we really can leave for the judges to sort out?

MR DIEHM (BAQ): Yes. I mean there's a - - -

DR MUNDY: Rather than us trying to make policy to prevent them or to manage them.

MR DIEHM (BAQ): Absolutely, and one matter that has been raised in the draft report seeking further comment upon was a question about whether with discovery there should be a prescription of different regimes for discovery between different types of litigation, and to that I was going to say we think not because to think that the appropriate range of options out of the broad range of options considered by the commission that may be adopted from case to case for methods of dealing with disclosure can be quarantined by reference to a type of litigation, probably doesn't recognise that within different types of litigation there are different types of cases.

DR MUNDY: I think it's to be fair - I think this is a fair comment, that most people we have spoken to haven't thought as of today that discovery is the issue that it once was, and is not causing the problems that it once was.

MR DIEHM (BAQ): Yes.

DR MUNDY: So I don't think we need to - - -

MR DIEHM (BAQ): All right.

DR MUNDY: We probably won't detain you or probably the final report at any great length on that.

MR DIEHM (BAQ): Okay. Thank you. One of the matters though that I would speak against that was contained within the draft recommendation 11.1, and it is only one of the items within that recommendation, was the flagging of the abolition of pleadings. Now, I noted from the draft report that that recommendation has followed from comments that have been made in submissions or through more informal submissions about the unsatisfactory use of pleadings in litigation. I've got absolutely no doubt that there are many experienced lawyers who would share stories of cases where the pleadings have borne little resemblance, or have been very uninformative as to the issues being dealt with between the parties when a case actually comes to trial.

This is one of these perplexing problems that the commission has noted elsewhere in the report on more than one occasion, that a lot of these sorts of considerations and comments are being made with an absence of data to more definitively inform these sorts of comments, and so anecdotally it's pretty easy to come up with a statement to say, "Oh, pleadings are just hopeless and the expense that goes into them and the use that comes out of them," but I have a view, and I've canvassed this with some of my colleagues who have given me feedback about it, not just in preparation for today, but it's a topic that comes up from time to time because of another context that I'll mention.

Pleadings might be like democracy in that sense: not a very good alternative, but the best out of the lot of them, because there are many jurisdictions in which we practise in which there are no pleadings, and we do not like it, and we either construct pleadings in the absence of a formal requirement for them to exist, or we wish that we could because they do serve a useful purpose. They could be done better, there's no doubt about that, but like many other things that are considered by the commission in the report, just because something could be done better doesn't mean that you do away with it altogether.

So we would speak against that idea, speak in favour of better pleadings no doubt, and better use of them, and happily support the next recommendation there which is focusing on early identification of the real issues in dispute, which may in itself in case management identify the problems with the pleadings long before a matter gets to trial. But that is one point that we would urge reconsideration about, at least in terms of the way it's expressed at the moment as a more absolute statement.

One of the other comments I wanted to make was a consideration of

pre-litigation stage dispute resolution processes and how they may fit in with the litigated stage case management. I can give you some examples about this. In this state, and perhaps in others as well, in personal injury litigation there is a regime - under various different pieces of legislation there are regimes that require pre-court processes. That is, before you can commence proceedings for your claim for damages, you must serve a notice, and you must exchange documents, and there are opportunities for asking questions and particulars, and also getting expert reports for the claim, and then the parties are required to attend a settlement conference or mediation, and only if all of that fails, and offers which are exchanged aren't accepted, is the party entitled to commence proceedings - the claimant entitled to commence proceedings.

I pause to note that I wholly endorse a comment made by the commission in the draft report about the risk of pre-litigation processes merely front-loading the costs because this is an area of litigation I think where it was thought that these processes would reduce costs and it may well have had the opposite effect, particularly for cases that do go on to be litigated because all of the same costs that had the matter ready for trial before are incurred before the litigation commences, and then the parties start over again to an extent. Now much of that groundwork is done, but much isn't, and they end up replicating, or altering even, processes beyond there.

But aside from that issue, one of the other issues that arises out of that process is the impact that it would then have on case management, and we see that again in this state. The commission has made a number of comments about expert evidence, and has referred to the various regimes that exist for managing it under rules in different states, and we agree with everything that has been said I think in that area. But one of the problems happens with those sorts of cases, and it can happen in other cases as well, where the parties, or at least one of them, has already obtained the expert evidence that they propose to rely upon before the litigation has even commenced. So the opportunities for control then, and what you do about that when you are bringing it into a case management regime, become problematic.

DR MUNDY: Indeed the expert evidence may have been necessary to form a view whether to bring the litigation at all.

MR DIEHM (BAQ): Yes, quite so and - - -

DR MUNDY: Particularly in some sort of industrial defect matter or something.

MR DIEHM (BAQ): Yes. So in a range of commercial litigation very often perhaps it might be thought that when the litigation has actually commenced, absent any pre-court processes at all, one party, that is the plaintiff or applicant, will have obtained expert evidence, and the other one has 28 days to file a

defence and has done nothing. So those sorts of problems exist obviously from a practical point of view.

There are also contemplated by the commission with respect to these pre-litigation sorts of processes a range of different models that are in place, I suppose, in different jurisdictions that may require parties to have some kind of negotiation for instance before commencing proceedings, and all of those sorts of reforms have been introduced for plainly very good reason, and are useful. A thought that may arise from what the commission has set out in section 11 of the report is whether there is identified there a connection between the pre-litigation processes and then the post-litigation case management, and whether or not the commission might give some further consideration to identifying just what's intended in that regard because as I read through it I wasn't certain as to what that connection necessarily was meant to be.

DR MUNDY: Others have made that point to us. Just want to come to the question of contingency fees on litigation funding before we close.

MR DIEHM (BAQ): Yes.

DR MUNDY: But just at item 45, and I'm happy for you to take these on notice, Commissioner MacRae and I know a little bit about GST. The reason why we didn't bother to look at the impact on the cost of legal services due to GST is we have every confidence that the ACCC enforced the law at the time, and we don't see it would have gone up by anything very much different to 10 per cent. So we're not quite sure why you want us to devote resources to that, to the pursuit of that question, but if you've got some evidence that suggests that it was anything other than 10 per cent, we'd love to see it.

At 45(b) you go on to say that we don't identify and quantify the per capita trend of substantially increased funding for civil and litigation assistance by state and federal governments. Perhaps again you'd like to take on notice and advise us why you consider the material contained in figures 20.7, 20.8, 20.9, 20.10, 20.11 and 20.12 as not adequate because that is about all the data that is publicly available. It breaks it down by jurisdiction, type of service, type of provider, and so on. So perhaps you might reflect on that, and if you are minded to provide us with a substitute or replacement submission, you might think that is a matter that's been properly dealt with.

MR DIEHM (BAQ): Thank you.

DR MUNDY: Can I just finally bring you to an issue that has led to some commentary at least in The Australian and other media outlets about the views we've expressed about litigation funding, and by and large I think it's fair to say that our

view is litigation funding is something that can support access to civil justice.

MR DIEHM (BAQ): Yes.

DR MUNDY: And I don't think that's in dispute. The concern seems to be within the debate is a rise in what might be called securities class actions.

MR DIEHM (BAQ): Yes.

DR MUNDY: Of which we have been advised there might be three or four a year within Australia as a whole. I guess there's a couple of issues here, and it becomes also the question of contingency fees because when we look at litigation funding and contingency fees, from an economic perspective, and that's sadly what we are, other than who is providing the funding, they actually sort of look to work the same, putting aside an ethical question which actually cuts both ways. So I guess I'd be interested in your views about litigation funding and why, if you see this sort of IMF Bentham type - you know, the cases like the ANZ fees case for example - - -

MR DIEHM (BAQ): Yes.

DR MUNDY: - - - as undesirable or not. Any views that you might have on the relationship between contingency fee basis on one hand, and litigation funding on the other, and one other thing that you've raised with us, which I think we may bring our mind back to, and that's the question of the role of the economic regulators, and particularly you're referring to the ACCC and ASIC. I guess the question that would be asked is what is the relationship between ASIC and the fact that a litigation funder had to bring the ANZ fees case which was ultimately about a consumer protection issue and an interpretation of contract issue.

MR DIEHM (BAQ): Yes.

DR MUNDY: I know there's a bit in that, but tell us what you think, and we'll ask you some more questions.

MR DIEHM (BAQ): All right. I don't think that we would make any submission in a broad or general sense against litigation funding.

DR MUNDY: So as long as it's properly regulated and there's appropriate prudential standards and ethical - and all the stuff we've talked about basically.

MR DIEHM (BAQ): Yes, quite so, quite so, and on contingency fees, it's obviously a topic that's been considered widely, and you've had some very detailed submissions about it, and I don't think I can add anything to any of that.

DR MUNDY: Okay.

MR DIEHM (BAQ): The issue about the role of the regulators is something that we were intending to allude to by our written submission, and I mean I see, and perhaps I've misinterpreted it, but what I read in the draft report that spoke about the role of those particular organisations, ASIC and the ACCC, was a role shared by many other government and semi-government organisations that are listed in the report, from a point of view perhaps of an ombudsman type service, and that's desirable and is what it is, and we don't derogate from that, but of course there is a greater capacity for the regulators, either concurrently with or separately from, bringing regulatory proceedings to bring proceedings that seek recovery of losses for consumers as a class in particular, but perhaps even sometimes as individuals and - - -

DR MUNDY: But also other parties presumably in section 4 matters under the competition law where there's been unlawful conduct.

MR DIEHM (BAQ): Yes.

DR MUNDY: Cartel conduct if you like.

MR DIEHM (BAQ): Yes. Yes, those very sorts of examples. So what we were meaning to address is that, certainly from the point of view of an access to justice issue, that is an area where obviously a more expanded role being played by those sorts of regulators may help with respect to alleviating - - -

DR MUNDY: And presumably bodies like environmental protection authorities and public health - you know, food safety bodies.

MR DIEHM (BAQ): Yes, yes. A wide range of such bodies.

DR MUNDY: Not something we've thought about. We do an awful lot of work about regulators, but I think you make a reasonable point, Mr Diehm, and we should perhaps at least reflect upon that for a paragraph or two on the way. The last thing we want to do though is recycle 20 years of work.

MR DIEHM (BAQ): Yes, quite so.

DR MUNDY: Do you have any more?

MS MacRAE: Not on this one.

DR MUNDY: All right. Well, look, thank you very much - time. As I said, if the Queensland Bar Association is mindful and wish to put something further to us - - -

MR DIEHM (BAQ): We shall.

DR MUNDY: - - - or replace its current submission, we'd be more than happy to facilitate that.

MR DIEHM (BAQ): We will do that. Thank you.

DR MUNDY: Thank you.

MS MacRAE: Thank you.

DR MUNDY: These hearings are going to adjourn for approximately five minutes.

DR MUNDY: Could we have Mr Stuart Venn, please? Could you please state your name and the capacity in which you appear?

MR VENN: Thank you, Commissioners. My name is Stuart Bruce Venn. I appear as a trustee.

DR MUNDY: Okay. Mr Venn, before I ask you to make a brief opening statement, because you weren't here this morning, I should remind you that this commission is not able to investigate individual matters. We're concerned with public policy. Nor are we able to overturn or make recommendations for the reversal of any particular decision that any regulatory agency or court has made. I must also advise you that whilst our statute requires you to be truthful in the statements you make to us, you are not afforded any protection against defamation in participating in these proceedings. We are not a parliamentary committee, and any person aggrieved with what you might say can bring action against you for defamation.

MR VENN: Yes.

DR MUNDY: So I just want you to understand that because some people think we're like a parliamentary committee, but we don't afford that form of protection.

MR VENN: I've read the scope of the inquiry initially from the assistant treasury of the former government, and to be quite honest with you I'm thankful that you will even allow me to appear today because obviously it didn't really canvass complaints of actual cast studies. I think the relevance of the case study - - -

DR MUNDY: We're interested in - I just want to make sure - - -

MR VENN: - - - or even how the system is working - - -

DR MUNDY: I just want to make sure that you don't have any expectation that there's something we can do to resolve a matter.

MR VENN: No. It's simply when you don't receive access to justice, can I just say before I commence, you're always searching for closure.

DR MUNDY: Yes.

MR VENN: For me today I'm getting closure.

DR MUNDY: Okay.

MR VENN: Thank you.

DR MUNDY: Thank you. So if you would like to make a brief statement, and then we will move on to ask you some questions.

MR VENN: I believe that the format is that I have five minutes to give a background, and then 25 minutes of question and answer, so I've structured it around that.

DR MUNDY: And if you take eight minutes for an opening statement, that's fine too.

MR VENN: I do have a copy of what I'm going to say for you to follow - each to follow, if you'd like me to hand that up to you.

DR MUNDY: Look, just say what you want to say. That will be fine. We're paying attention.

MR VENN: Okay. Thank you, Commissioners, for the opportunity to appear today. I appear before you as a trustee, a person who employed hundreds of workers completing construction projects before I became financially incapacitated by wrong directly and indirectly in connection with the A New Tax System, ANTS. My business, my home and superannuation property has been taken by false pretences. Before the ANTS I remitted subcontractors' PPS taxes as required by the tax regime and did not have issues with the taxation authority before ANTS as I recall.

I hear in the previous session that both of you are familiar with GST, so I do welcome being before people that have an understanding of what is a very simple tax that was made into a nightmare. The evidence of unjust transaction I now disclose to you both is annexed to my statutory declaration dated 18 June 2014 now on the public record. I believe this commission of inquiry into access to justice gives effect to a right provided by law to a complainant. Others have chosen otherwise. Could I hand you up my statutory declaration?

DR MUNDY: Yes, if you wish. If you just give it to Mr Raine, he will make sure it enters the public record appropriately. One copy will be sufficient for us for the record.

MR VENN: Okay. I'll keep it here in case you need to look at it. Thank you. The two pages of evidence are a product of either an unknown person in connection with the Australian Government Taxation Office, or its own public official. In any case, that document's a shadow account of the truth surrounding five transactions somewhere hidden in the background. ASIC, as watchdog, are simply complicit. What I'm saying there is I've got two pages of evidence of a document owned, produced, authored, by a public official in the Taxation Office.

DR MUNDY: Okay. I'll want to review that document before I admit it to the public record because we won't allow documents that identify individuals, but we'll have to form a view of that.

MR VENN: It doesn't identify an individual.

DR MUNDY: Well, it's not a document that I've sighted, so I can't form that view.

MR VENN: So anyway.

DR MUNDY: But we will consider it and then make a decision, but we won't do it immediately.

MR VENN: There's the page 2. So what we have there is a document produced with a whole lot of blacked-out figures on page 1, referred in the statutory declaration. On page 2 is a scanned version of that and you can see that the blacked-out figures have been scanned. Because I had the original given to me by a public official, that document is electronic and able to be scanned. So unknown, I suppose, that the tax official gave me a document, it took me years to understand what happened that I eventually scanned and now found five hidden amounts that they were wanting to conceal from me in a tax assessment. This is the first time I have ever been able to speak to someone about this, despite representations and so forth to Mr D'Ascenzo and people appointed by him, no-one wants to know about it.

The significance of, in the third transaction on 28 February 2002, you can see how there was two blacked-out amounts in that period. Someone is double dipping. On the right-hand side you can see columns called GST On Cash and GST On Non-Cash. Well, at this time, I'd only been involved with GST for a couple of years because it only came in in 2000, but nowhere in the documents that were published or in any law books can I find the terms "GST on cash," and "GST on non-cash." I haven't been able to have anyone over this period of time explain that to me. I have my own thoughts on what that means and the consequences of it.

All of the figures in these documents, in page 1 that page 2 reveals the secrets, are total fallacious account of a financial transaction. They never happened. Well, that movement of money didn't happen as a result of me constructing something, paying out money and receiving money. Someone was doing this in the background. That's all I can say about that without labouring on the point that it's a total phoney document, a false account, shadow account, call it what you like, it's another account of the truth - it's a false account of the truth.

Acted on by the banking system, accountants, financial planners, lawyers and at least one other person, the five unjust transactions at page 1 that I've highlighted for you that were scanned, down in the third-last column, operated against me

without my consent, knowledge or permission. In all probability, through seven layers of accountability summarised below, (1) banking; (2) constructor; (3) accounting; (4) financial planner investment superannuation; lawyer (5); tax office (6); body corporate (7). So in access to justice me at point number 2, have got banking above me and 3, 4, 5, 6 and 7 is make up by tax office, lawyers, financial planners, accountants, and body corporate. To get access to justice to establish that of all those seven entities and I'm number 2, six duped me, well, it's pretty impossible, I put to you, without being too trite.

My submission to the Productivity Commission in November 2013 at page 1 included issues surrounding misuse of Commonwealth refunds, risky operation by banks' lawyers, not for value accounts, shadow accounts, not for profit entity invention, the diaspora of wealthy Australian professionals who do very well out of this sort of thing, a pattern followed of ill-gotten gains in the 80s and 90s, poor administration of government concerning rural assistance schemes and other health schemes, state of impecuniousness, pioneering restructure models by National Australia Bank Ltd arguably in complete disregard of trust, in all probability over many years unfortunately, double dip Commonwealth Bank, furtiveness, secrecy. These are all matters I raised in my initial submissions to you that I'm now thanking you today. Business models, lawyers and banks follow into the future.

I'm on page 2 of my background now. How Someone Breaks The GST Law, How It Works In Banking - that's heading - (a) breached relevant laws or duties imposed by law and did not give effect to a right provided by law to the complainant in relation to the subject matter of the complaint. I then have a table here of split loan, non-compliant with relevant laws, how it works. This is a case study that was before the Commissioner of Taxation and Hart, a Canberra person. Anyway, the lawyer summarised it in 2004, a couple of years after it seems like I was subjected to the same illegal operation.

Loan account 1 refinanced a taxpayer's home loan, and loan account number 2 funded an investment property. That's complex steps 1, 2 and 3. Complex steps 4 and 5, the terms of the agreement allow the taxpayer to repay principal on the home loan rapidly. Complex steps, points 6 and 7, while no principal or interest was repaid on loan account 2. 8, the interest on loan account 2 compounded. 9, 10 and 11, to complete the operation, and a deduction was claimed for interest and compound interest. So that's the loan system that followed that was found in 2004 by appeal by the Commissioner of Taxation to be illegal.

All of these numbers that were hidden in the Tax Office document were part of the scheme. My property was used as a loan account 1, refinanced to taxpayer's home loan. Well, I know that didn't happen, but I know someone might have replaced my home loan with their own debt and carried out an operation like this. (b) under this heading, how someone breaks the GST law, how it works in banking is

breached an applicable code of practice obviously. (c) did not meet standards of good faith and practice in the financial services industry, and (d) acted unfairly towards the complainant. So that's how someone breaks the GST law and how it works in banking. They're all principles, the (a), (b), (c) and (d) of an injustice of the law.

My case study, I was interested to hear recently - I think it was the very well respected, and I call him a friend - not that I've ever met him, but I've seen him enough on TV - Prof Fels, where he said he knew that a lot of things were going on out there - well, he knew that things were going on. But the essence of what he said was, it's just hard to prove. That's why the battle that regulators have - so my case study has got 10 points here. Mortgage number 705292225 constructed plus GST conditions added. GST conditions added are call GST gross-up provisions. Signature of trustee, me, obtained on page 1 and page 3. I have the document here if you would like to just see it so you can see what my signature is.

DR MUNDY: Mr Venn, you've gone well over the five minutes, and we do need to ask you some questions. So if you could bring your opening comments to a conclusion.

MR VENN: Okay. So if I can just go through this case study of how a person's signature is taken and used in a mortgage document. At point number 7, Australian Taxation Office forgery applied from 2001. Mortgagee retains GST on sales throughout 2002 and 2003. When I say that, you may well be aware from the senate inquiries that retention of GST by banks was in fact a loophole in the system. Australian Taxation Office engages an AGS lawyer for liquidation of the constructor, April 2003. Australian Taxation Office issues three Crimes Act notices to three banks, November 2003. There's the document from the Australian Taxation Office requisitioning three banks. This is requisitioning National Australia Bank to pay the Commonwealth $292,510.12. It gives a warning: if the debt or any part of the debt is not paid, offences under the Crimes Act 1914 shall apply. Are you interested to see that document?

DR MUNDY: Yes, sure.

MR VENN: I then go through just in the case study how three of those amounts added up to $877,530.36, three banks: National Australia Bank, Suncorp Metway, Bendigo Bank. What they did then was add my balance owing on a business account by the National Australia Bank of $8000. They issued a notice to resume all my property, take my superannuation of property, on the eve of me starting construction, on a time when, according to this false statement, the operation was under way. When you do all that and you take away what the actual home loan was and superannuation property was, with NAB and Macquarie Bank, you come up to a situation where what I believe was happening, and I proved, is an offshore banking

unit of $215,000 operated by CBA and Macquarie Bank.

I can finish. That's my background. There were a couple of other points, I wanted to hand up another statutory declaration, and I would like to provide you a copy of the Commonwealth Ombudsman summary of my complaint that was made in 2007, also for the public record.

DR MUNDY: Okay. We'll consider those documents as to whether we put them on the public record in accordance with our normal policy, because we do have procedures about how - we need to satisfy ourselves that no individuals are identified. That's something we have to do, out of fairness to others who aren't here. But we'll form that view and let you know what we decide in the next couple of days, when we get back to the office and we've had a chance to do so.

MR VENN: Yes. In that respect, I'm just saying that I've been around for a long time seeking justice, I've been through the ombudsman service, but the ombudsman gets a report, something to investigate, and then goes back into the Tax Office files and sees, at the end of the Tax Office report by a Devron Schwinn that was reporting back to the minister in 2006, that says, "No-one shall ever speak to Mr Venn again," the ombudsman is hamstrung.

DR MUNDY: Okay. I did ask you not to identify individuals, and you've just done so. I would ask you not to do that again. But we'll have a look at the material and form a view on it. Can I ask if and when you formally approached the Australian Taxation Office with respect to its dispute resolution processes, roughly? When did you do this?

MR VENN: It was in 2006. You would be aware, once the Australian Taxation Office put my company into bankruptcy in April 2003 by the AGS solicitor. I can't say anything. It wasn't until June 2006 that the liquidator resigned. By October 2006, I've gone to the Commissioner of Taxation Office, through the minister, Peter Dutton MP. So that's my attempt from there. After that, when it was concluded that the Tax Office made an error in the proof of debt delivered to the liquidator on 23 April 2003, but the Tax Office would not make any correction. I then became really concerned there is no access to justice. I then took the - sorry, I was trying to answer the chronology of my attempts to get - - -

DR MUNDY: You've answered the question that I wanted the answer to. You've obviously had some interactions with the banks which have been less than satisfactory. Have you raised the conduct of the banks with the banking ombudsman?

MR VENN: No, I spent three or four years of my life trying to get justice through the banking system and took an action against the Bendigo Bank. I was able to do

that even though the company was in liquidation because I'm a trustee of a property trust. I was just a builder, that was a sideline, but I'm a trustee of a property trust. I have all of the original documents, the secretarial notes, of two property trusts.

DR MUNDY: I was just interested as to whether you had raised the matter with the banking ombudsman.

MS MacRAE: I think the best thing would be to take these materials away and - - -

DR MUNDY: What we will do is we'll take these materials away and have a look at them and re-read the transcript. We may be in a position to at least write to the tax commissioner and draw his attention to the fact that these matters have been raised with us. There's little else we can do about the particulars of your matter, but that's the nature of the organisation that we are.

MR VENN: I just appreciate the chance of being able to talk to people. For me, I'm feeling I'm getting closure. I've said and done what I can. In preparation for today, I've read the draft report issue thus far by the commissioner. I've even had 700 or 800 pages printed. So I did want to come and appear here, not just to sort of think that maybe you will help me, but - and I went on to say, only a handful of submissions, it seems, have arisen from persons citing actual case study of injustice. I do appreciate the scope of the inquiry from the former assistant treasurer may not necessarily have canvassed these, otherwise most of the submissions are from groups seeking additional funding from government as a means to help various classifications of disadvantaged persons that arise one way or the other.

I like the work that's been done in the draft reports to this inquiry. I will try to be helpful to the inquiry. I then extracted (b) in the summary pages, unmet legal need, and I then saw your analysis of the different percentages and problems relating to insurance and banking service account at 17 per cent, instances of unmet legal need in the consumer category, two industry ombudsman and the financial ombudsman services and the credit ombudsman service provide avenues to address these disputes, however, with the telecommunications there are relatively few instances of ombudsman being used to resolve those problems. You then went on - the report then went on:

> Government problems, and the third most common problem associated with the unmet legal need in the government category related to tax assessments and tax debts. Australian Taxation Office offers the opportunity to review complaints about taxation assessments and decisions.

Well, they don't, in my case.

DR MUNDY: In your case, yes. We understand that.

MR VENN: And there's been plenty of evidence before senate inquiries that maybe there's something happening there from the model litigant that's a little bit, you know, not good. Failing that, the Commonwealth ombudsman can also hear some tax related disputes, been there, done that, and then they talk about the AAT. I then extracted - because I've read the transcript from the Canberra sittings that you've had, and that's why I'm saying I'm trying to be helpful and give you feedback and, Dr Mundy, you said in relation to one of the submitters, "You said you might come back to Outreach," well, I suppose I've outreached, and then you said:

> Perhaps start there. One of the things we were asked to do is to try and get a handle on unmet needs. Getting a handle on met needs is hard enough, but trying to know what isn't met is even harder. Do you have thoughts, irrespective of the measurement problem, and do you have any thoughts about the measurement problem and, in particular, observations being made about the law survey?

Well, are you to ask me that, or have I given you an idea as to what I think about that?

DR MUNDY: No, I mean, without having the benefit of the transcript before me but having a reasonable recollection of what I would have said, that would have been in the context of the way the law survey is constructed which is a phone base survey, so obviously it doesn't facilitate surveying people who don't have fixed line telephones, indigenous communities probably being one of the more notable. So we are interested in the matter. I mean, I think it does - the commission over recent years has received a substantial amount of work material and views about the Australian Tax Office in its behaviour and it covers a broad sweep.

So this is further to that stock of evidence and we do find the material that you and other individuals have given to us about very poor outcomes in getting their disputes resolved quite helpful. So we do appreciate your time to come and see us today and we will, once we've had a chance to reflect upon the material, see what, if anything else we might be able to do and how, you know - I think part of the challenge always is - and I do note that these matters have obviously dragged on for a long period of time and there have been a number of senate inquiries into the conduct of the ATO and some of the participants of those I am particularly close to, so I am aware of the very profound impact that poorly handled matters by the ATO have and still do have on people. So we do understand and we do appreciate the time that you have taken to come and see us. So we will - and if there's anything further that we would like to ask you once we've had a chance to look at the material we'll certainly get in contact.

MR VENN: Yes. Well, thank you for that. Can I just say a few things in terms of trying to be helpful, and I put it under the heading What Can You Do For Me. Anyway, please don't - you don't have the power to do it obviously, but anyway, these are what I think should happen overall. Stop land being seized from anyone when they are not present. That's what happened to me. A person, a lawyer gets up in court and says, "This person owes this amount of money, $155,000," and the court, without me present, without the documents being served, orders seizure of my property. Someone must stop that. It's endemic out there, it's happening to lost of people.

Point number 2, stop signatures of a person becoming a tool for forgeries. What happens when a person signs a home loan or something, they sign it, and then it goes off and gets stamped with something - another stamp appears on the document related to stamp duty for a different amount than the loan. Now, it could be said, "Well, you could have looked that up straight away after your loan started and then raised the question," but you don't know that that's the sort of procedure that goes on.

My next point is, stop accounts being used against any person that are not certified not true and correct by a director of the corporation who is alleging you owe them money. All that happens is there's an affidavit that this person owes this amount of money, and here's the bank account, it's not certified. It's not certified true and correct. If people had the onus, a director had the onus of certifying it true and correct, there would be a different outcome.

Point number 4 - sorry. Stop the hiding of money engaging in bogus offshore transactions. I've shown you five amounts hidden. There's offshore transactions of $215,000 offshore banking. You've got to stop it. It's ruining the economy, not just my economy. It's happening, it's widespread. Offshore banking units are widespread. Chicago, USA, I can take you to that document, $206,000, July 2002, just before I got a copy of this. So I just ask you, number 4, not just for me, a lot of other people out there have been hurt by the hiding of money, engaging in bogus offshore transactions.

Thank you. I do have my wife here with me who was going to read something out, but that's past. John Salmon is a banker from past experience that is able to make a witness statement from his experience, what it does to people when they're served an injustice.

DR MUNDY: I think, Mr Venn, I did advise you at the start of this discussion that we weren't in a position to revisit the decisions of others. I think from our view we've got the evidence that we need to do our job. As I've indicated, subject to reviewing the written material that you've given us, we'll place it - and you're obviously for it to be placed on the web site - we just need to apply our normal

processes, which we will do, and then we'll have a look to see whether there's anyone that we may be able to refer these matters to. I am mindful of time and that we do have other witnesses that we need to hear from. So again, thank you very much for your time and coming here today and these proceedings are adjourned until half past 3.

DR MUNDY: We'll resume these proceedings. Could I ask you, please, to state your name and the capacity in which you appear.

MR FARRELL (QAILS): My name is James Farrell. I'm the director of the Queensland Association of Independent Legal Services, the peak body for Queensland's network of 34 community legal centres.

DR MUNDY: Thanks, James, and thank you particularly for the support you have provided us to date in the course of this inquiry and your regular attendance. Did you want to make a brief opening statement, five minutes or so, and then we'll ask you some questions?

MR FARRELL (QAILS): I will keep it brief, thank you, commissioner, because I think our time would be better spent engaged in a bit of conversation, and I understand you've had conversations with some of my peers in other parts of the country over the last few weeks.

DR MUNDY: And hopefully we've clarified some misunderstandings.

MR FARRELL (QAILS): Terrific. I'm glad to hear that. Thank you for the work that you have put into the draft report. It's an outstanding report and generally one that legal assistance services are very supportive of much of the work that you've done there. I think one of the key pieces of work, and I know that you've seen this in supplementary submissions, including our fourth submission with other community legal centre peaks, was around the need for some measurement of the need and the cost of addressing that need, which at this stage I think is the large missing piece of the puzzle here, and I'm sure that I'm not - - -

DR MUNDY: So do we.

MR FARRELL (QAILS): - - - the first person that you've heard that from. Thank you.

DR MUNDY: Hopefully everyone in the office just heard that.

MR FARRELL (QAILS): So in that context while a number of the recommendations that have been made that apply specifically to legal assistance services address some of the efficiencies that can be made in the design and delivery of legal assistance services and legal assistance programs, I think it should be noted the extent to which organisations look for efficiencies in the way that they already operate, and we see that in community legal centres here in Queensland.

We had one late last year that was kicked out of its building because the

building became condemned. They're the kind of spaces in which we're operating, and the types of efficiency and the type of hand-to-mouth existence of community legal centres. So, like you, we work very hard to find efficiencies to ensure that we can provide as many direct legal services and community development services, including legal education, including systems advocacy that we can.

But ultimately the question I think that we should answer, and I don't know that I can provide you with answers for this, but certainly a large piece of the work that needs to be done is around trying to understand and quantify the legal need, and then work out what an effective response to that legal need looks like in terms of service delivery, and how it ought be resourced. I'm quite happy to leave my opening remarks there, Commissioners, because, as I said, I think our time would be far more usefully spent in a bit of a conversation.

DR MUNDY: Okay. Thanks, James. I guess the first question that I'd probably like to ask you - and we aren't seeing very many of your members. Bit different to other jurisdictions. That's not a criticism, it's just an observation. But I'm sure you're aware that the Commonwealth has recently reprioritised expenditure and that has led to I guess two things: a reduction in that expenditure; but also a move away from what might be described as advocacy and law reform to frontline services. So I guess my question comes in several parts.

The first is what's been the extent of those funding reductions in Queensland for your members, and can you illustrate the sort of outcomes that that funding activity has led to, and is it your view that that funding reduction or reprioritisation has in fact impacted only advocacy law reform type issues, or has it actually directly impacted the frontline delivery of services, and particularly to vulnerable or disadvantaged people?

MR FARRELL (QAILS): My short answer is yes it has had more - or deeper impacts than were intended, but I might take a bit of time to explain how Queensland - - -

DR MUNDY: Please do.

MR FARRELL (QAILS): How it applies, particularly in Queensland, and respond in part to the observation that you made that there aren't many of our members attending here, differently to other parts of the country. The geography in Queensland is such that with such a decentralised state we have far fewer - relatively to other major metropolitan cities, particularly Sydney and Melbourne, we have far fewer community legal centres in Queensland. I note an observation in other submissions talking about 10 or 12 community legal centres within 10 kilometres of the GPO in Sydney or Melbourne. It would be, I suspect, three or four in Queensland of those generalised community legal centres in the same - - -

DR MUNDY: What about the specialists?

MR FARRELL (QAILS): Most of those are based in Brisbane. There are some based in northern Queensland, and I'll give you the example of the North Queensland Women's Legal Service, or the Environmental Defender's Office in North Queensland, again reflecting the geography of Queensland, and a particular concern sometimes in non-metropolitan areas that where services are focused and resources are directed solely at Brisbane, people in the regions suffer.

You made some important observation in the draft report I think about the way in which people in regional, remote and rural areas have significant difficulties of accessing legal assistance, and particular types of legal problems from time to time, and we see that writ large here in Queensland, and so I would note that of my 34 members, half of them are outside what we would call the south-east corner of Queensland, reflecting that decentralisation.

DR MUNDY: So that's the Sunshine Coast down to the border.

MR FARRELL (QAILS): Effectively, yes, and as far west, I suppose we would probably say that Toowoomba is outside that.

DR MUNDY: Is outside, but Ipswich is in it.

MR FARRELL (QAILS): That's right.

DR MUNDY: Okay.

MR FARRELL (QAILS): So it was particularly disappointing I suppose that of the 11 centres that are going to have funding redirected from them, six of them are regional centres, three of them are in the outer suburban areas of Queensland, and two of them are statewide services, so - - -

DR MUNDY: The six in regional areas, could you just advise which they are?

MR FARRELL (QAILS): If I could take that on notice.

DR MUNDY: More than happy for you to take that on notice.

MR FARRELL (QAILS): My recollection is though, and I will check this, Sunshine Coast, Townsville, Cairns, Hervey Bay, the Aboriginal and Torres Strait Islander Women's Legal Service of North Queensland - - -

DR MUNDY: That would be based in Cairns or Townsville?

MR FARRELL (QAILS): Both.

DR MUNDY: Both.

MR FARRELL (QAILS): Mainly in Townsville, but with outreach into Cairns. And the sixth escapes me, and I apologise for that, but I will take that on notice and come back to you. So it is those regional centres that are hit by these things. To give you some examples of how the - because these were, if you like, additional funds provided under the previous government, it might be illustrative to talk about how those centres directed those funds because they haven't made decisions yet about what services are going to be cut.

But if I could give some examples, South-west Brisbane Community Legal Centre is in Inala, one of the more disadvantaged areas in Queensland - sorry, in the Brisbane area. They use their services to ensure that there were child protection duty services and youth justice services available for young people that are caught up in the criminal justice system. The Sunshine Coast Community Legal Centre used their funding to employ a specialist family lawyer because otherwise they had practically zero family law expertise on staff there. The Gold Coast Community Legal Service developed a duty lawyer service for domestic violence applications that assisted people with family law services, initiated another two or three outreach family law services through the Gold Coast and Scenic Rim local government areas. In Townsville I understand that the majority of the funding that was provided there was directed towards family law services, again increasing the need there.

So that's what the funding is being used for at the moment, and those organisations retain that funding until 30 June 2015, but what happens after that and what services are going to be cut are unclear at the moment. But I also flag that those services do very little, and often no, law reform or systemic advocacy work, and so the suggestion that it is law reform activities for which resources are being withdrawn does not reflect the activities of the organisation as they have existed til now, and as they have used their resources up until now. So I think that's - it's disappointing that there is a perception that there's all of this law reform activity happening in regional areas at the expense of frontline services, because that's not what CLCs are doing in Queensland.

DR MUNDY: And it appears from the evidence we have received nowhere else. Can I just - you mentioned the two statewide specialist services. I suspect one or both of those might be an environmental defender's office.

MR FARRELL (QAILS): So to clarify, this is a second round of funding in addition to - - -

DR MUNDY: Yes.

MR FARRELL (QAILS): There was an announcement in December withdrawing funding from environmental defender's offices. The statewide service is the Welfare Rights Centre which assists people with disputes with Centrelink, of whom there are many in the disadvantaged client groups that CLC focus with, and the - - -

DR MUNDY: They would be predominantly Commonwealth matters, if they're disputing with Centrelink.

MR FARRELL (QAILS): Predominantly that's right, but our State Government recognises the importance of that work and does provide some funding to that organisation. The other is Tenants Queensland. Queensland was fortunate up until about slightly less than two years ago. We had a network of tenancy advice and advocacy services. There were 29 offices around the state funded by the interest on residential tenancy bonds.

DR MUNDY: Yes. Bit like the solicitors trust account.

MR FARRELL (QAILS): Not dissimilar to, as we call it in Queensland, the LIPITAF, the Legal Practitioners Interest on Trust Account Fund.

DR MUNDY: Thank you for that. Someone was going to have to work out what that was. Thank you.

MR FARRELL (QAILS): But, yes, a similar design. My understanding is Queensland has more renters than any of the other states in Australia. It was a fantastic program. I think there's about 500,000 renting households and in the last full financial year in which that service operated, they provided assistance to 80,000 of those households to provide them with information and advice.

DR MUNDY: Was that 80,000 of those households? There weren't 80,000 matters, there were 80,000 households.

MR FARRELL (QAILS): That's my understanding of it, yes. But again I can seek clarification.

DR MUNDY: Yes. No. That would be helpful.

MR FARRELL (QAILS): I think that's a great model particularly - and something in the way that we think about how like paralegal or quasi-legal services can provide access to justice. I think that tenancy model is a terrific one, as is the model of financial counselling, which is in some ways paralegal type work undertaken by extremely skilled and knowledgeable people in areas where there are significant

issues, and I think one of your previous witnesses today spoke about the Law and Justice Foundation of New South Wales' findings about consumer law being the biggest - consumer and credit debt being the biggest area where people report having legal problems. Having highly skilled paralegal roles in some of those areas is a particularly beneficial service for the community we would say.

DR MUNDY: We'll come back to that just in a moment, but before leaving the funding issues we've been advised that it's likely if circumstances don't change that the EDOs in certainly the ACT and Tasmania will probably cease to function at all, or certainly in anything that vaguely looks like their current form. Are you able to advise us what the impact of the cuts of last year have had on - because I don't - - -

MR FARRELL (QAILS): They are members of mine, but I don't feel that I can - because there's so much uncertainty, I'm not sure where they're at today. So again - - -

DR MUNDY: Could you perhaps inquire of them - - -

MR FARRELL (QAILS): Certainly.

DR MUNDY: - - - if they wished either to make a submission to us very promptly, or if you could get back to us as part of your responses, that would be helpful. Okay. Beyond that - put me off my game now. We were coming back to paralegals and those sorts of questions. The circumstances you just seemed to have described are actually people who are skilled in a particular area for which a knowledge of a particular part of the law is essential for them to provide the services to their clients. Is that the sort of model that you've got in mind?

MR FARRELL (QAILS): Certainly, and that's - I mean to use those two very real examples in Queensland, generally speaking financial counsellors undertake a recognised qualification by a TAFE that provides them with the skills to advocate in terms of consumer problems that people have. Similarly the tenants' advocacy service, they receive significant training delivered by Tenants Queensland as the specialist CLC in the space which provided support to that network of offices, again recognised jointly with the Tenants Union of New South Wales as a registered training organisation.

So again formal qualifications with some rigour around them. I should say too our governing legislation for the profession recognises that where schemes - again I will come back to you with some information about this, but where schemes are funded by government or otherwise recognised in legislation, then it may be that people can offer these quasi-legal services while not lawyers because, as you know, there's generally a prohibition in engaging in legal practice unless you're a qualified lawyer, but there is a carve out for some of these types of programs, and I think that's

appropriate - - -

DR MUNDY: So that would recognise, in an historic context, provision of industrial advocacy services by recognised trade unions and their employer organisations.

MR FARRELL (QAILS): They are specifically mentioned in that section of the Act from my recollection.

DR MUNDY: They get a special tick. Do you see any other areas where this sort of model training might be useful to be extended? I'm thinking perhaps disability advocacy areas, or those sorts of matters.

MR FARRELL (QAILS): I think there's many, and where you can reflect a high volume - - -

DR MUNDY: Mental health might be another.

MR FARRELL (QAILS): Yes. Where you can reflect high volume users of a system that have difficulties navigating that system or understanding their rights. You mentioned mental health. I think that's a great example. In the Northern Territory there is a legislative requirement, as I understand, that people appearing before their equivalent Mental Health Review Tribunal have advocates appearing for them, and so as a result 100 per cent of people for whom compulsory treatment orders are made receive that level of advocacy. In Queensland there's no such expectation, and it's less than 2.3 per cent of people appearing before the Mental Health Review Tribunal who receive legal assistance and legal advocacy. To put that in context, there's somewhere north of 10,000 people who are having compulsory medical treatment applied to them against their wishes who do not understand the - or are not being provided with assistance to understand their legal rights or represent themselves before the - - -

DR MUNDY: So it may or may not be against their wishes, but they - - -

MR FARRELL (QAILS): The definition of coming before the tribunal is that it is against their wishes, otherwise you just go to the doctor and just get an injection or the treatment that you need.

DR MUNDY: Yes.

MR FARRELL (QAILS): So these are people who are receiving involuntary treatment that aren't getting that support. I understand you're hearing from QPILCH earlier today, or possibly tomorrow.

DR MUNDY: Yes, we did.

MR FARRELL (QAILS): They run a lay advocate program in that context that's providing some assistance. Another of our members, the Queensland Advocacy Inc has one and half or two lawyers doing work in mental health representation, and that is the extent of those services across Queensland which, as I mentioned before, is one of the more decentralised states in the Commonwealth. So certainly there could be the capacity for mental health advocates to provide more support in that space. I think issues like disputes with Centrelink might be another example where kind of building up from a paralegal to supervising lawyers to that kind of thing is a way that people can get independent advice about that kind of thing. So it is those matters where it's fairly strictly defined and where some specialisation is needed. I think it varies - - -

MS MacRAE: What sort of qualifications would your mental health advocates have?

MR FARRELL (QAILS): To answer your question indirectly, my understanding is that there's a certificate IV in community services advocacy, and there are modules of that that are designed for tenancy advocates. I suspect you could get a similar type of qualification in some of those - - -

MS MacRAE: Right. Okay.

MR FARRELL (QAILS): - - - other areas should that be appropriate.

DR MUNDY: Just before we move off this general area of non-lawyers helping out with legal need, we've identified a program which is operating I think in Centrelink at the moment about skilling up some of their frontline desk personnel who, when they're dealing with people who have experienced a number of difficulties with them, to give them some skills to recognise, "Hey, is there really a legal problem here," and we've heard that there's actually a search or program in South Australia for - a central course for - - -

MS MacRAE: Community workers.

DR MUNDY: - - - community workers legal knowledge in effect. So effectively both I think are trying to facilitate a better identification in improving referrals from other community workers into the community legal system so that people don't fall between the cracks, possibly as a substitute to co-location and other things. Are there any programs like that in place in Queensland?

MR FARRELL (QAILS): Can I answer your question with a question? Has QPILCH appeared before the commission yet, or is that happening - - -

DR MUNDY: Yes.

MS MacRAE: Yes, it has.

MR FARRELL (QAILS): Their homeless persons legal clinic - - -

DR MUNDY: Yes.

MR FARRELL (QAILS): - - - works fairly closely with the Department of Human Services, particularly around identifying some of those clients, and some of those referral pathways. Use of tools like the legal health check, and I know this is something of particular interest reflected in the commission's draft report, are the type of tool that can be used sometimes, rather than the more fully developed vocational education things that we've been speaking about.

The legal health checks I think are a fantastic resources. Part of the difficulty with that is training people how to use them properly. It becomes difficult, as does ensuring that there's a referral pathway at the back end. So you are recognising that somebody has consumer law issues, and they're in a particular regional area. Is there actually a consumer law service there? Well, in Queensland probably not because we have two centres in the state that have specialist consumer law programs. Unlike other states, we don't have a statewide consumer law service. So I think they're great tools but ensuring that there's training at the back end and appropriate services to whom clients can be - people with legal problems can be referred at the back end is vitally important to make sure that it's an effective tool.

MS MacRAE: Could I maybe just ask two questions? Going backwards a little bit, but there was just a couple of issues on the funding side that I just would like to get your comments on. One was when we were talking to the Northern Territory about the cuts to their funding, one of the CLCs there, I think, was talking to us about how they had just established a new program that they were going to be up and running, and they had just started it, they had got it running for about three or four months, and now the funding is going to be gone and they will have to - so they have invested in all this infrastructure, now the whole system is going to have to be unplugged, and they really lost all that sunk capital that they put into a program which they could see was very much in demand, but which now won't proceed, and I wonder if you had any examples of that, or whether that problem of sunk costs is going to be an issue for you with the withdrawal of funding.

Then second to that, QPILCH mentioned to us today how beneficial it had been that their funding has been moved recently to a three year funding commitment rather than a year on year commitment, and I'm wondering if you could comment on the vagaries or the certainty of funding and how that impacts on your services as

well, or the services of your members.

MR FARRELL (QAILS): It's hugely problematic, and this isn't only an issue that's happening with this funding announcement, and I should say we've had effectively 14 or 15 months' notice of this funding withdrawal, which is substantially more than has happened previously. My understanding is when the Environmental Defender's Office lost its state funding in Queensland, they were advised on about 6 or 7 July that funding had ceased six days earlier on 30 June.

So without any type of certainty about continuing funding, those challenges exist, and so where we seek to introduce innovative or new projects, we always need to recognise that there is the very high likelihood really that that funding will not continue, and that that service will need to be withdrawn at some stage, and when you're talking about the kinds of disadvantaged communities with whom community legal centres, legal aid commissions, Aboriginal and Torres Strait Islander services and family violence legal services work, to go into a community to build those relationships, for people to know that you're actually going to be at the Land Council on this day every month, or that you're going to be visiting the Centrelink office every Tuesday, or whatever the arrangement is, it takes a long period of time for people to even know that.

Then to suddenly cut that because funding has been cut, because although funders express some support for those kinds of things, it's difficult to sustain some of that funding, becomes hugely problematic. So it goes not only to, if you like, the sunk capital cost that you've referred to specifically, but in terms of raising the expectations of disadvantaged people who have had their expectations smashed by service providers and institutions for many years, often for their entire living memory, because of insufficient funding or short-term funding, becomes hugely problematic and hugely damaging for those community members.

MS MacRAE: Can I just ask you one more question if I'm - - -

DR MUNDY: No. Keep going.

MS MacRAE: Keep going. We asked the Law Council this morning - sorry, the Law Society - about the sort of advocacy work they do, and one of the suggestions we've had is that if the advocacy work of CLCs was to be reduced, that people like the law societies might be able to pick up that advocacy work. Their view was that - as long as I'm not - I don't think I'm verballing them - was to say that there's some elements of that advocacy work they may pick up, but there's a whole raft of it which they wouldn't because it's just not the sort of work that goes to private practitioners to see the sort of casework that you would deal with. Would you like to comment on that?

MR FARRELL (QAILS): For several years I was the manager and principal lawyer of the Homeless Persons' Legal Clinic in Melbourne, and so the types of legal issues that people experiencing homelessness experience aren't the kinds of things that for profit legal practices are exposed to. The extent to which people who are homeless engage with low-level criminal issues for which there is no legal aid available because it is kind of under the threshold of the types of more serious things that legal aid commissions are required to direct their resources to, if it wasn't for the safety net that is community legal centres and other legal assistance services, no-one would know about the types of impacts that those laws are having on disadvantaged people in the community.

I acknowledge the import advocacy work at the Law Society and contribute to that. Certainly I sit on the access to justice and pro bono committee which I understand was represented here today, and I think that's vitally important, but the extent to which we can take the lived experiences of highly disadvantaged people and speak to government and other decision-makers about those things, can be limited where we're relying on professional associations to do that work.

MS MacRAE: Thank you.

DR MUNDY: In its submission to us NACLC suggested that the minimum sort of scale to operate a CLC is probably sort of like about five people with a budget of somewhere around 600 grand a year. Can't remember the precise details, but I'm sure you're familiar with it. Can you give us a sense of how many CLCs in Queensland would not meet that benchmark?

MR FARRELL (QAILS): Can I take that question on notice?

DR MUNDY: Yes.

MR FARRELL (QAILS): Can I also disclose I'm the treasurer of the National Association of Community Legal Centres and contributed to - - -

DR MUNDY: Yes. We're just interested given - I mean we're not disputing the benchmark and it sort of seems - - -

MS MacRAE: Sounds about right.

DR MUNDY: - - - to make a bit of sense to us. We're just interested in getting a sense of how many CLCs in each jurisdiction fall below that, and is there any particular characterisation of them?

MR FARRELL (QAILS): QAILS doesn't have a particular view on the benchmarking, recognising that we are a member of the national association and

that's an appropriate benchmark for them to have adopted. There are a number of community legal - the mix of community legal centres in Queensland is quite different. To give you some extremes of that, I suppose, there's a three-day a week lawyer operating in Goondiwindi, which is essentially on the border, the southern border but towards the west of the state.

DR MUNDY: Just north of Moree.

MR FARRELL (QAILS): Yes. It actually does some outreach into New South Wales in a cooperative arrangement with the New South Wales Legal Aid Commission. There's a three-day a week lawyer there. QPILCH and Caxton Legal Centre would have, I imagine, somewhere above 25 or 30 staff each, and so it's quite a range. We also have a number of services, and it goes to the integration model, that the literature recommends in a lot of ways and that you've given some thought to clearly, where small services exist within essentially neighbourhood house. So the Goondiwindi one is an example. Nundah Community Legal Service is based in the Nundah neighbourhood centre, and that's essentially one lawyer working alongside social workers, domestic violence services, emergency relief, so it really goes to that kind of integrative model that - - -

DR MUNDY: So they're really part of the community welfare service.

MR FARRELL (QAILS): Absolutely.

DR MUNDY: But they have a CLC badge because it solves a pile of problems for them - - -

MR FARRELL (QAILS): Absolutely. Certainly in terms of the way that we're regulated, needing to have some level of separation is important. A similar type of service exists in Hervey Bay with the Taylor Street Community Legal Service being part of the Hervey Bay Neighbourhood Centre. So I think the historical development of CLCs in Queensland, and we talk about the historical development in terms of funding and where they are and those kind of things, but the history of it has been that where communities have identified the need for these services they have shot up, and often the neighbourhood centre as a hub for that community is an appropriate place for them to be based.

DR MUNDY: So the sort of issues that were of concern around scale and back office and, you know, who is going to see the client at the front desk sort of thing, in the sort of models you describe and are known to Hervey Bay, effectively their integration with other community service providers in a sense deal with that administrative type issue to some extent. They might share the same office manager and someone might - - -

MR FARRELL (QAILS): Absolutely.

DR MUNDY: - - - have to do their accounts and things like that.

MR FARRELL (QAILS): Absolutely. There can be some difficulties sometimes where, to give a practical example, and I'm not sure if this has arisen in any of our services, but where's there's a domestic violence service within the organisation that's assisting a victim of violence and the perpetrator of violence comes in to understand their legal rights and responsibilities, and so there are protocols or policies or practices in place in these places to deal with exactly those kind of things, but it does address those questions of efficiency of scale because they are, you know, not huge organisations but within the context of those communities - - -

DR MUNDY: They have got one kitchen and one tea room.

MR FARRELL (QAILS): Yes, that's right.

DR MUNDY: So the whole pool of that organisational-type issue.

MR FARRELL (QAILS): Quite right. So I think criticism of small community legal services is not warranted in those cases because in those communities it's an appropriate model with an economy of scale that is able to deliver the services that that community needs.

DR MUNDY: Yes. The scale issues that we were I think concerned about have been dealt with in a different way rather than a bigger legal service. We have been giving some thought to, you know, appropriate institutional models and it's - certainly in Victoria we know the Legal Aid Commission determines the distribution of the state's money. We've heard earlier today that there's a different model here, and I guess one of the things we're keen to investigate is, you know, institutional models - well, it seems to us that the people who are best place to actually made a decision about the distribution of resources on the basis of need are people as close to the needs as possible.

We're interested in models - we know that the Western Australians appear to almost have a periodic objective assessment of need and the CLCs there work collaboratively there with the Legal Aid Commission. I am just wondering if you have got any views, because one of the things is we're keen to just also get some red tape out of here and get outcome based performance going. Do you see any issues around institutional arrangements that perhaps put the CLC and the Legal Aid Commissions in the same realm - I'm not necessarily saying that the Legal Aid Commissions will be making the decisions as is the case in Victoria, although they seem reasonably happy with that. Do you have any views on these sorts of institutional models, which one seems to work better?

MR FARRELL (QAILS): In broad terms, we would agree that it's the people delivering the services that are best placed to identify where the need is and what resources should be directed to meet that need. The model in Queensland, just to - I'm sure others have made this point - the model in Queensland is the Queensland Legal Assistance Forum, or the QLAF, is consulted on general strategy and priorities. Those recommendations are taken to the LIPITAF committee which is made up, I think, of five senior officers of the Department of Justice and Attorney-General, senior officers of Treasury and the Premier and Cabinet, and they make recommendations to the attorney who ultimately makes the decision there.

That's quite new. That's really only been the last 12 months that that model has existed. Prior to that, well, it was before I moved into my role, and my sense is that there wasn't the same stage decisionmaking and ultimately there was greater discretion for the attorney-general around those decisions or he wasn't briefed in the same structured way. I think - and certainly QAILS' position as the LIPITAF fund was being reviewed last year was that an organisation like QLAF with representations of representatives of the state, the Commonwealth and the four branches, if you like, of legal assistance services ought have greater input into the decisionmaking and I think that's entirely appropriate given the expertise that those organisations have.

The difficulty sometimes though in all honesty is when - and I think others have made some observations, it certainly was in our joint submission with NACLC, around moving to competitive tendering, but where there's that competitive environment it breaks down trust and reduces the capacity for services to collaborate and I think ensuring that it's not competitive and that it is truly collaborative requires work. I think in Queensland with the QLAF - I should just disclose too, as the chair of the QLAF, I think QLAF is moving in that direction, where we're going there, but where those funding decisions come, it can create tension and they clearly need to be managed.

DR MUNDY: At the risk of repeating myself, there seems to have been a misapprehension that we recommended competitive tendering; we only said it was an option. We would say that, wouldn't we? I guess the more important question, and one of the appeals of competitive tendering is some assurance that funders can get value for moneys being achieved or outcomes are being - at least at the start of the process, going to be achieved at less cost.

So if we were to recommend this sort of collaborative model as something that should be maintained, how could both the Commonwealth and those states, relevant states, be assured that they're getting value for money, not only in a productive sense - and I think the smell of an oily rag is probably not a bad description of the business model, but how could governments also be assured that if funding allocations were

devolved that outcomes would still be achieved in accordance with Commonwealth policy objectives, which I'm sure you'll agree, the Commonwealth has every right to establish?

MR FARRELL (QAILS): Can I as a pedantic opening or initial response, I think the idea of outcomes in the legal assistance base is something that is particularly under developed. We talk about outputs in what we do. The number of duty lawyer services that we provide, the number of hits on web sites for Legal Aid Commissions, the number of advices and new cases that we open, there is - under current arrangements it is number of widgets, it's not social outcomes for people.

I think one of the great missing parts of what we talk about in legal assistance services is how did your intervention make someone's life better, and we're not doing that and we're not measuring that, and there's an aspiration in the national partnership agreement which binds the states and the Commonwealth but my understanding is in the three or four years of the existence of that agreement, there's not been much progress in that space.

DR MUNDY: I think your advocacy for us to come up with a funding model has somewhat been obstructed by precisely that problem.

MR FARRELL (QAILS): Yes, that's right, and it is the barrier - - -

DR MUNDY: How does the Commonwealth satisfy itself it's getting what it thinks it's paying for, or what it says it's paying for?

MR FARRELL (QAILS): I think it's quite - I mean, it is quite appropriate for governments to identify the priorities and the principles of the outcomes, of the social outcomes that it seeks to achieve in policy and in the allocation of resources. That doesn't necessarily mean dictating the number of widgets that small community organisations should be producing. So if we can get to a point where there are principles, priorities, particular - it might be geographic regions, there might be vulnerable client groups or it might be areas of law that ought be the priority in the way that these decisions are made, then it should be possible for service providers and funders and policy makers to co-design systems that identify the types of outcomes we're trying to achieve and what outputs are required to achieve those outcomes.

So coming back to me, it's a matter of sitting down and co-designing. So in our most recent submission when we talked about the ALAF having more of a role in identifying those national priorities and in co-design and conversations about this stuff because it is the services closest to the ground that can best suggest to government what kinds of things are required.

It may be sometimes that those suggestions are we need to see half as many clients because the clients that we're seeing have much more complex social issues, require far more intensive support, and so the kind of triage model that legal assistance services seem to be directed at where there's kind of telephone - a web site, telephone advice, face-to-face advice with a lawyer, and then ongoing casework in very much quite a sharp inverted triangle, you know, that might not be appropriate if it is particular client groups of particular types of legal issues that we're trying to assist people with. But we should have that conversation.

DR MUNDY: The current performance management framework, if I can call it that, you obviously don't think it's directed at outcomes. Is it in fact directed at how many widgets have been produced? Or is it even more directed at how the widgets are being produced?

MR FARRELL (QAILS): More the former, I suspect. I mean, where the only measure is a numerical output, it would make sense to focus on easier stats, or soft stats, if you like. So we could very easily set up particular services with a more sophisticated - with a person in the community with a more sophisticated understanding of their legal problem and the legal opportunities that are available to them, point them in the right direction, set them off on their way - - -

DR MUNDY: Tick.

MR FARRELL (QAILS): - - - never see them again, do a lot of stat. Or we can recognise that going out to a soup kitchen or homeless shelter every week to build a relationship with a client before you even start to talk about what their legal problems are, because they need to have that level of trust, you know, which one of those is going to create the greater social outcome for the more disadvantaged person? It's pretty self-evident, I think.

MS MacRAE: Can I just clarify something? The ALAF has Commonwealth and state officials as well as the - - -

MR FARRELL (QAILS): Not state officials is my understanding. Certainly our submissions suggested that if there was to be an increased role for them, then state and territory governments should be invited to participate in those conversations.

MS MacRAE: That's true - when you were talking about what happened specifically in Queensland, that it's only Commonwealth officials again that are involved in that?

MR FARRELL (QAILS): No. Both state and Commonwealth officials.

DR MUNDY: Because the Commonwealth puts money in so it turns up?

MR FARRELL (QAILS): Well, under the national partnership agreement there's a requirement for jurisdictional forums, because there was the existing infrastructure of these LAFs across the country. They were - my understanding is they need to do that twice a year. Our practice in Queensland has been to invite them to every meeting, and generally they attend by videoconference.

DR MUNDY: The regional forums that you spoke of within Queensland, does the Commonwealth ever attend those?

MR FARRELL (QAILS): Not to the best of my knowledge. They might be invited.

DR MUNDY: If they wanted to turn up out of curiosity it wouldn't be a problem?

MR FARRELL (QAILS): I can't imagine it would be a problem, but that would be a question for each of the regional LAFs, I suspect.

DR MUNDY: Fair enough. We did make some observations about eligibility criteria for the LAFs and CLCs. I think we again might have not expressed ourselves as well as we could have. A number of organisations similar to yourselves have indicated to us that whilst there is clearly some - well, you can construct absurd examples why it doesn't make sense, but as far as broad principles are concerned, a number of CLC representative bodies and CLCs have said themselves that that wouldn't be such a problem. Would you agree with that?

MR FARRELL (QAILS): I would agree with that. I think particularly as the resources don't meet the need, there is quite properly, in my view, a focus on the legal needs of disadvantaged groups within the community. I think that's a great example of the types of principles or priorities that legal assistance services - that it's appropriate for governments to create for legal assistance services.

DR MUNDY: Give you're - given the unusual level of decentralisation in Queensland, how do you think that regional character would need to be reflected in those principles? Or do you think it would be - I'm thinking here from the view of the Commonwealth and its funding, a process may well be that Queensland comes back and says, "Here's how we're going to give - given our peculiar regional characteristics, here's Commonwealth - here's how we think we're going to build those into the overlying principles. This is a peculiar issues for us. What do you think?" Then they could just turn around and say, "Yes, that's okay."

MR FARRELL (QAILS): I come back to my earlier point, the importance of the co-design or conversations around developing these policy priorities. So I'd be - I think it would be less helpful if the Commonwealth came down with, you know, a

list of, "These are the ten principles. You must implement these," and it's the first time that we see them. I would think that that would be a particularly - the danger there is that it fails to understand the evidence and experience of existing services and existing communities. I come back to that point around co-design and conversations and the importance of an ALAF, or something based on a ALAF as a suggested model for that.

MS MacRAE: You get the requirements of the remote or regional communities effectively reflected in those principles that your - the eligibility principles that you agree, and once you've done that then you don't need to think about them every time about how you adopt them.

MR FARRELL (QAILS): I think that's right. I think the reality though is those principles or priorities would be updated fairly regularly, changing priorities of government and emerging research around particular needs of particular communities.

DR MUNDY: Well, hopefully we could establish priorities that could be reasonably constant through time and - - -

MR FARRELL (QAILS): Again, it should be subject to a conversation between - - -

DR MUNDY: Yes, and how they're delivered again is probably the thing that needs to be dealt with. James, we're probably out of time, but thank you for coming along, and we look forward to that other material that I'm sure will be heading our way soon. You know where to find us.

MS MacRAE: Thank you.

DR MUNDY: Thanks, James.

DR MUNDY: Could we have our last participant for today, which is Maurice Doube and Roslyn Page, I sort of understand. My notes are not entirely clear. Roslyn Page. Thank you.

MS PAGE (AOBC): Good afternoon. I don't know why I'm here, because I've just listened to someone else and I don't know if he was a solicitor - - -

DR MUNDY: Before we start there's certain things we have to do. Could you state your name and the capacity in which you appear? It's just so the transcript can be made sense of by people who aren't here.

MS PAGE (AOBC): My name is Roslyn Page, I'm from Alpha One Business Consultancy which is my business. I'm here today with my personal assistant, which is Greg Page, also my husband, Maurice Doube who has decided not to come. He's my client. I'm here to inform and ask a few questions.

DR MUNDY: Well, we don't have a submission from you, so could you perhaps give us a brief opening statement of the issues that are of concern to you?

MS PAGE (AOBC): Let's see if they come under your - what we're here for. Editing of transcripts of court proceedings. Like, once you've been in court, my belief is it's taped, then it's typed up and then it's edited from that typed up transcript. Barristers becoming judges, redirections in court cases. Solicitors and barristers, how do people in how do people in general know if they're being represented correctly? The appeals court, how the edited version can really affect the appeals court, why a lot of them don't get through, and court positions where it can be very confusing to witnesses.

DR MUNDY: So your concern is that the act of transcribing court proceedings may lead to a written record being created which doesn't properly reflect what was actually said?

MS PAGE (AOBC): In actual fact, it can go the opposite way. 100 per cent the opposite way. Mr Doube came to me because in 94 he went through the court system. From that, I did many, many hours of reading searching through evidence that the government actually - it was a government department that did the investigation. When it did the investigation, it leaked information to unions, but they couldn't leak information to the actual company that's being investigated. There was actually fraud that took place by two employees. The company was never informed.

DR MUNDY: Ms Page, can I just briefly stop you there. You need to be aware that unlike a parliamentary inquiry, there is no protection of defamation for anything that is said here to us. It will be recorded and it will be made public. The only people who are protected from defamation in these proceedings are my

colleague and I.

MS PAGE (AOBC): Okay.

DR MUNDY: So you should just be aware of that, and you should also be aware that we have no power or capacity to investigate any matter.

MS PAGE (AOBC): One of the biggest questions, probably, that I'm here for is editing of transcripts. Reading through, listening to tapes, to my knowledge what happened in court, there was a tape, then it's typed up and then it's my understanding that the judges edits the transcript - has the power to edit. On doing that, he has put the word "without" changed it to "with". On doing that where someone said, "15, 16 months," when it was actually 15, 16 weeks, but none of the lawyers have picked it up and it's not true, he's actually taken that out of the edited transcript.

Then - the problem being there, that edited transcript comes to the appeals court, not the original transcript. When you have things changed like that, it is a problem where you're trying to have something overturned. In fact, it makes it impossible. So I have the proof in research that I've done, which doesn't mean it's gospel, but what I'm actually trying to say to you guys is how in the heavens does this happen? Why does it get through?

DR MUNDY: I certainly know that - I mean, we take transcripts in these proceedings. In days gone by in court there were originally people with shorthand notebooks and then there was stenographers, typewriters, and a very similar thing happens in the parliament with the Hansard, and I'm sure you'd agree that someone needs to proof these things because despite - we use, of course, the best transcription services in the land, but sometimes we have to edit them because people's names are misspelled or, you know, there are simple clerical errors.

MS PAGE (AOBC): I can understand - - -

DR MUNDY: But what you're saying is that you - there are circumstances where you believe that the intention of what was said has been deliberately manipulated.

MS PAGE (AOBC): When you buy the tapes, like you've bought the tapes of the proceedings of that court case, then you follow it through to the transcript and you can find things missing. No additives, but you'll find things missing. Like I said, using the word where its definitely happened, "without" and "with", that becomes majorly opposite.

DR MUNDY: Yes. Or negating the word. In the case that obviously you're aware of, what happened? Was anything done to try and draw this matter to the court's attention? Because it could, on its face - - -

MS PAGE (AOBC): There was few things come up in the re-address where the judge said that - the redirection and the judge said that he would do that, but then after the redirection finished he said he wasn't going to do the corrections the next day, so - my concern is that case has gone through, that case is over and done with. The whole idea today was to bring it to your attention and what can be put in place for this not to happen.

DR MUNDY: I think probably the best we can do is now that you've brought this matter to our attention is - may I ask, without naming the judge involved, which court this matter was in?

MS PAGE (AOBC): Toowoomba.

DR MUNDY: Was it in the District Court of Queensland?

MS PAGE (AOBC): It was actually a Commonwealth case.

DR MUNDY: So it was in the Federal Magistrates Court or the Federal Court?

MS PAGE (AOBC): That's the strange part about it. Apparently they take whatever court is available.

DR MUNDY: Okay. I suspect it was probably the Federal Court or Magistrates Court on circuit. We'll look into that. I guess the question in my mind is are there rules in place where someone who is aggrieved about the transcript rather than just talk to the judge who may be overseeing it, or is there need to be some? But we can - - -

MS PAGE (AOBC): There's - like, the case shouldn't have even went to court. There was evidence in where they call witness in and you give your statements. If you read through the statements, it's all there. You've just got to make connections. You've got to have the memory of who said what and where and how and whatever. But it was all there. Knowing that, it shouldn't have went through. It should have been pulled up by solicitors.

But unfortunately it wasn't. Then in the appeals court, once you've sort of got things through, to try and - on appeals court, to my knowledge, and I'm blind to your system, it doesn't put a lot of faith in me for your system, but it tells me in the appeals court, once you've got something through like that and it's changed, it changes the direction. It's very hard to overturn something in general in appeals court, but that just makes it so much harder.

DR MUNDY: Was the fact that the transcript was, for want of a better word,

inaccurate, known at the time that the matter went on appeal?

MS PAGE (AOBC): No. It's been picked up 20 years later.

DR MUNDY: So subsequent - so there wasn't a reasonable opportunity for somebody to say to the appeals court, "The transcript is wrong." So the revelation that the transcript was in error emerged well after the matter in the appeal court? Okay.

MR PAGE (AOBC): One of the things that concerns us is this happening on a regular basis.

MS PAGE (AOBC): Yes. Is it? The other thing - - -

MR PAGE (AOBC): Because the transcript is the only thing that's used under appeal. The tape is never looked at.

MS PAGE (AOBC): The amazing thing about this case, the edited transcript was put in place the very next day, because they asked for something to be - the tape to be played back. The first thing the judge could do was they would read it back. They wouldn't play the tape. It's already the edited version. So that's done pretty quick. That's basically overnight, which amazes me. I think there's something wrong, but like I said, I can give you the facts. I can give you the proof, because I have spent many hours on this particular case.

DR MUNDY: As I indicated to you, we're really not in the position to - - -

MS PAGE (AOBC): That's fine.

DR MUNDY: Particularly we're not in a position to re-investigated a matter that's been in court, because we may find ourselves in contempt.

MS PAGE (AOBC): That's fine. We're thinking about the future.

DR MUNDY: Well, we'll see what - we can have a look at what's in place to make sure these sorts of arrangements - these sorts of incidents don't occur.

MS PAGE (AOBC): One other thing. Can you tell me when it comes to government departments doing investigation, does it come in, what you're after today?

DR MUNDY: Yes.

MS PAGE (AOBC): Okay. What guarantees - - -

DR MUNDY: Or disputes with government departments.

MS PAGE (AOBC): Okay. What guarantee do we have in the future that they are handled correctly?

DR MUNDY: I can't give you any guarantees. That's not what I'm employed by the Commonwealth to do. I'm employed to make public policy advice. They're questions that you should probably properly direct to your members of parliament.

MS PAGE (AOBC): I have. I've already seen the federal member for our area. I brought up my concerns there.

DR MUNDY: I'm afraid that that's not something that we are able to do from here. Okay?

MS PAGE (AOBC): Okay.

DR MUNDY: Well, thank you very much for your time in coming along today. We will have a look at that issue, if only because it's timely so that we ensure that our transcripts aren't inadvertently used.

MS PAGE (AOBC): The other question was the positioning of the courts. I know that this particular court case was a little bit different because they were renovating courts and whatnot else, but a lot of the witnesses I have interviewed, like for instance they were for the public prosecution. When they walked into court, nerves and all the - imagine how they felt. They didn't know who was actually the public prosecution, they didn't know who was the defence counsel because the witness was not sitting next to the defence counsel, he was sitting over in a chair on his own sort of thing. I think it's actually called the dock or something like that.

DR MUNDY: Yes.

MS PAGE (AOBC): So that's another important thing, especially for the general public.

DR MUNDY: We understand the lack of awareness and knowledge that people have for court processes. It's been a constant theme. All right - - -

MS PAGE (AOBC): Please take on board the reason I'm here today. It's not for the past, it's for the future. That's the important thing. If it gets addressed and looked into and something done about it, then at least I haven't wasted my time. I feel as though I could waste your time, but I'm not worried about my time, I'm also concerned about your time.

DR MUNDY: Great. Thanks very much. These proceedings are adjourned until 8.50 tomorrow morning.

AT 4.31 PM THE INQUIRY WAS ADJOURNED UNTIL
THURSDAY, 19 JUNE 2014