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TRANSCRIPT
OF PROCEEDINGS

PRODUCTIVITY COMMISSION

INQUIRY INTO DISABILITY DISCRIMINATION ACT

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

TRANSCRIPT OF PROCEEDINGS

AT ADELAIDE ON THURSDAY, 3 JULY 2003, AT 9.35 AM

Continued from 1/7/03 in Perth

MRS OWENS: Good morning. Welcome to the public hearing for the Productivity Commission inquiry into the Disability Discrimination Act 1992, which we will refer to as the DDA. My name is Helen Owens and I'm the presiding commissioner, and on my left is my associate commissioner, Cate McKenzie. The hearing will have breaks for morning tea, about 10.30, lunch and then afternoon tea, about 3.00. We'll need to stick fairly closely to the timetable. You are welcome to take a break and re-enter at any time if you need to.

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

We've already talked informally to a range of organisations and individuals with an interest in these issues, and submissions have been coming into the inquiry following the release of the issues paper in March. We're grateful for the valuable opinions we have heard from people during those informal discussions. The purpose of this hearing today is to provide an opportunity for interested parties to discuss their submissions and their views on the public record, and for us to ask questions.

We've already held hearings in Darwin, Brisbane, Hobart, Canberra and Perth, and following the hearing in Adelaide today, there will be hearings in the remaining capital cities. We will then prepare a draft report for public comment which we will release in October this year, and there will be another round of hearings after interested parties have had time to look at the draft report.

We like to conduct all hearings in a reasonably informal manner, but I remind participants that a full transcript is being taken. For this reason, and to assist people using the hearing loop, comments from the floor cannot be taken because they won't be heard by the microphones. If anyone in the audience does want to speak, I'll be allowing time at the end of the proceedings today for you to do so. If you would like to take up this opportunity, identify yourself to one of the commission staff.

Participants are not required to take an oath but are required under the Productivity Commission Act to be truthful in their remarks. Participants are welcome to comment the issues raised in other submissions. The transcript will be available on the commission's web site in Word format following the hearings.

Our first participant today is the Communication Project Group. Welcome. Please give your name and the position with the Communication Project Group for the transcript.

DR GUNN: I'm Cath Gunn, and I'm the deputy director of the Communication Project Group.

MRS OWENS: Thanks, Cath, and thanks for coming. I'm very pleased that you did take the trouble to come and talk to us. I think both of us would be very pleased if you could give us just a little bit more background on your group and what its role us, and then I think there are just a few questions we'd like to ask you about the relationship between your submission and our inquiry into the DDA.

DR GUNN: The Communication Project Group is a loose network of people which was set up around about the time of the International Literacy Year. We do three things. We provide low technology communication assistance to people in developing countries, we provide communication assistance to non-government smaller aid organisations and people doing independent voluntary work, who need help communicating in a local language. I provide communications boards for people, especially children in emergency refugee crisis settings in developing countries. For instance, during the Rwandan crisis, I was writing communication boards at the rate of knots. I've recently been writing boards for the United States Army doctors who were giving up some of their own time to work with local people in Iraq.

MS McKENZIE: And when you say communication boards, can you explain?

DR GUNN: Well, they are literally pieces of board with a piece of paper pasted to the top and they will have words, symbols in a dual language, so that all people need to do is point in order to communicate. It's about the lowest form of technology around, except for the lines in the sand, and we do use literally people writing with fingers in the sand as well.

MRS OWENS: So if you're doing the one for Rwanda, you would have to get a local to help you put the board together?

DR GUNN: I find somebody who speaks the local language, preferably somebody here in Australia, but that doesn't always work - and thank goodness for the Internet - and I work with them, so that we produce what is basically a small dictionary, I suppose, in two languages, but it's in board form, and then we use a lot of what we call Bliss symbols, which are a non-verbal international communication system, which is commonly known among people who work with augmentative and alternative communication.

MRS OWENS: Does this keep you really busy, doing this work? Is there always a challenge out there?

DR GUNN: Well, I don't get paid for it and it keeps me extremely busy. If there's an international crisis, I can work an 80-hour week. That's not uncommon.

MS McKENZIE: So is your most recent work in Iraq?

DR GUNN: The most recent work I've done, yes, is with a couple of Iraqi doctors who have helped me set up - I mean, I don't know the vocabulary sometimes in English. They're talking about things like necrotic tissue, and I'm thinking to myself, "Hey, wait a minute, what does this mean?"

MRS OWENS: How do we put that on a communication board?

DR GUNN: Well, it means dead tissue, dead skin and so on, so it wasn't as hard as all that, but I have to learn those things, so I have to work in a variety of languages all the time.

MS McKENZIE: And then those can be used by the people in the field?

DR GUNN: Yes, that's the idea. It's not terribly satisfactory in lots of ways, but it's certainly better than relying on interpreters all the time, partly because some people are afraid to use interpreters in highly political situations.

MRS OWENS: Because you don't know what they're interpreting.

DR GUNN: And the last thing we do, which is quite by accident, and the reason I'm here today, is that we do a certain amount of advocacy work here in Australia for people with communication impairments. I do things like provide - well, I provided a communication board for an indigenous child in a rural community who, as a result of that, is able to go to school and is doing extremely well there.

MS McKENZIE: That's a child, you mean, whose language is other than English?

DR GUNN: No, she has multiple medical problems and was born, among other things, without a larynx, so she has no speech, but they do speak English at home in that particular family.

MRS OWENS: So the boards could be used for people who have different languages or they can be used for people that have medical conditions?

DR GUNN: Yes.

MRS OWENS: We're interested in people with disabilities. In terms of the range of disabilities that the act covers - I mean, it virtually covers everything - which groups? Could you give us a feel for which sorts of groups who would have communication difficulty that you could deal with.

DR GUNN: It's a very wide range of groups: anything from severe intellectual impairment, where people might only have, at best, all their lives, perhaps a dozen words to communicate with, through to people - well, plenty of young men who have motorbike accidents and brain injuries as a result; people who are born with brain injury; people who have cerebrovascular accidents, strokes - - -

MRS OWENS: Yes.

DR GUNN: - - - people who do not speak English as a first language, who have been injured in some other way; people with mental illness. We do have a number of people that we've tried who, for one reason or other, simply won't communicate. Perhaps they're highly traumatised, something like that, and we try to get them to communicate through another medium so that they don't have to directly relate to an individual. I mean, it's an enormously wide range of people who have communication problems.

MS McKENZIE: What about autistic children, for example?

DR GUNN: We have tried it with several autistic children, particularly autistic children who also have other learning difficulties due to perhaps intellectual impairment, and it does seem to work up to a point, as long as they don't actually have to look at somebody. If they can point, yes, they might start to communicate, but, I mean, it's not a substitute for speech, whatever.

MS McKENZIE: No, but it enables some basic communication where there's none, otherwise there would be none.

DR GUNN: But you don't want to think that communication boards or even high-tech communication devices - and, I mean, there are also - I think most people in this room would be aware of the fact that - I mean, there are these very high-tech communication devices like Stephen Hawking uses. He is an absolutely fantastic user of one. The majority of people who use them still find that their communication is extremely limited. There is research to suggest - and not just by my group but Sue Ballenden at Macquarie University, now University of Sydney, did a piece of work - I think it's up on the Net, actually - - -

MRS OWENS: Is this the work you cite in your submission to us? You talk about different groups.

DR GUNN: No, that's not. That's work that we did. I'm talking about a very small study that Sue did, which we can then back up on something that we did, and Sue's saying that they looked at - I think it was only six people who were actually employed in the workforce who used AAC devices, and she was discovering that even in the work situation they are using about 11 per cent of the vocabulary of other people. Now, that drops to, on our study, 5 per cent of people living at home who are not going to work. They're using only 5 per cent of the vocab of the rest of their family.

MS McKENZIE: Because of the difficulty of using the devices or - - -

DR GUNN: Partly because of the difficulty of using the devices, partly probably because they are asked a lot more yes/no questions, and there is also of course a difference in IQ. People at home tend to have lower IQs. People in the workforce were accessing about 62 per cent of the topics that the rest of the workforce was accessing.

MRS OWENS: What do you mean by topics?

DR GUNN: Well, if they're talking about something like football or - - -

MRS OWENS: The tennis last night.

DR GUNN: Yes, the tennis last night, some television program that they've seen, something that happened on the way to work - the ordinary, general chitchat of the day - they're managing to get in on about half of it, and in a very limited fashion. People who are living at home, not going to work - that drops dramatically, down to about 26 per cent of the topics. As I say, that's because of the IQ differences and the greater number of yes/no questions.

MRS OWENS: So there's a real locking-out, isn't there, of some of these people from what the rest of society is doing and talking about?

DR GUNN: Yes. I mean, even the people who have fairly mild communication impairments are probably more impaired than people in the community realise. You take your Greek with the bad back: I know people sort of think, "Oh, yes, the old Greek with the bad back!" but for some of those people it really is a great problem. They come from Greek-speaking households, they are generally older people, they've generally had less education - some of them have only had two or three years of schooling - they're stuck at home, they probably don't read and write English terribly well, if they read and write English at all, so they suddenly start to become terribly dependent on other members of the family. They don't get out, they don't communicate with other people even in their community, some of them, and that leads to problems of mental illness because they get depressed.

MRS OWENS: So if those people had some problem that they wanted to take to the Human Rights and Equal Opportunity Commission, they would either have to rely on their family or friends to do it, or they wouldn't do it at all.

DR GUNN: The majority of them would not do it at all, no. Our baseline for being able to communicate was to be able to make a telephone call without any interference or assistance to a complete stranger without too much of a problem, and we say that's the minimum level you need in order to prevent people being abused.

MS McKENZIE: Yes, because otherwise you are just dependent from the start.

DR GUNN: Yes, and we would say that there would be at least a half a million Australians who cannot do that, who do not primarily present as vision or hearing-impaired.

MRS OWENS: And some of these people would be in institutions or group homes or - - -

DR GUNN: The other thing I should say is that that's people under the age of 64, because once you get over the age of 65 plus, I mean, you're looking at another set of problems altogether.

MS McKENZIE: But with deinstitutionalisation, many would not be in institutions. They might be in group homes, they might even be in some rental accommodation - - -

DR GUNN: That's a bigger problem still, yes.

MS McKENZIE: - - - boarding houses.

DR GUNN: Deinstitutionalisation has not helped people on the whole communicate with the community. It was intended to, but I think it has probably in many instances - where people actually have a communication problem, a severe communication impairment in particular, it has probably isolated them even further. It certainly wasn't intended to, but they just don't get out, and they don't mix with the range of people that they once mixed with in the institution. They don't have the daily activities, they don't have the outings that were organised and so on. They're mixing with a very small range of people, and some of them - I have noticed some of the people that I have worked with, their communication skills have dropped dramatically when they have moved into community housing.

MRS OWENS: So you have worked with some of these people?

DR GUNN: Yes, on a voluntary basis.

MS McKENZIE: I mean, you make the point in your submission that there's a real lack of advocacy for the people with severe communication impairments. One of the things about advocacy is, you need some communication to begin the advocacy process, if you like.

DR GUNN: Yes. I think that's probably the biggest problem of all. Because you can't communicate that you have a problem; you're stopped right there. There's no going forward, and people are totally unaware of the fact that a problem even exists.

MRS OWENS: So what's the answer?

DR GUNN: I think one of the answers is a lot more awareness. I would say that we need to move from a medical model of disability to a social model of disability for a start, so that we are aware that the consequences of a lot of disability are social consequences. I mean, if you can't access a building, for instance, well, I mean, it's a social consequence; you can't get in to talk to the people in that building if you need to see them face to face.

The issues of accommodation and access and transport and so on, I mean, they're all very obvious, but the issue of communication probably needs a lot more effort put into it, probably from government sources. At the moment there's nobody on the DDA's standards project, as far as I know, who is concerned with the area of communication; certainly nobody who is concerned with the area of AAC.

I mean, even the National Relay Service, which does a fantastic job, it really does, there are people there they cannot help because their communication skills are such that you need face-to-face interaction. I know somebody who communicates in both Greek and English using a 516 dual-language communication symbol board, but he does the whole thing by iCoding. Somebody like that, you just cannot - I mean, he will never be able to use a typewriter - a typewriter, that shows my age, doesn't it - a computer, a telephone or any of those things. I mean, it's all Peter can do to iCode. But he does manage to do it extremely well and extremely successfully in his own community, but it takes time.

That's the other problem with communication impairments of any sort; they take much more time. A doctor said to me recently, "Well, I'd like to talk to this particular individual on his own, but I just don't have the time to do it."

MS McKENZIE: The other concern is, of course, not just the time, but if this is a costed medical visit, if the doctor does give a time, the cost of course would be much greater for the communication-impaired person than it would be for the person who's not communication impaired and can communicate whatever is wrong in a very short time.

DR GUNN: But of course then that means the individual with a communication impairment does not have the privacy that somebody else has. I mean, there are legal complications, as you would be aware.

MRS OWENS: Yes. The definition of "disability" in the Disability Discrimination Act is actually very broad. As far as you're concerned, would it pick up these issues, or does something more explicit have to be inserted in the act, or a recognition of communication problems?

DR GUNN: I think we probably need a recognition of communication problems, because although it ought to pick it up, it doesn't. I mean, there is a lack of awareness in the community. I mean, there's even a lack of awareness among professionals, and certainly among public servants. One very senior public servant actually said to me, "Well, what are you worried about? If people can't communicate, they can't complain" and they're working in the area.

MRS OWENS: We might quote you on that one. I think that's a wonderful quote for our report.

DR GUNN: The other problem I think perhaps we ought to deal with, if we can, is that there is a tendency in the community of people who are trying to assist with this problem, to go towards the high-tech solutions.

MRS OWENS: You said that's not necessarily the answer.

DR GUNN: I don't think it is, because the research we've been doing indicates that people would prefer low-tech; it's easier to access, it doesn't break down, it provides a greater degree of privacy. I mean, that sounds very strange I know, but a lot of these high-tech devices, which actually have some sort of voice output, you cannot regulate the sound, so that everybody in the room can suddenly hear what this person has said to that person, and very often they would prefer to keep their comments to themselves.

MS McKENZIE: When you talk about low-tech, you're thinking of - can you give me examples?

DR GUNN: Low-tech would literally be paper and pencil, or some sort of printed board.

MS McKENZIE: The other thing is cost as well. The high-tech comes at a price.

DR GUNN: Yes, the high-tech comes at a great price. I mean, some of those devices are extremely expensive, and families simply cannot afford them.

MS McKENZIE: Have you got any examples of just how expensive?

DR GUNN: I'm not sure. Somebody there at the back of the room might be able to help more than I can. I think the cheapest ones come out at around about 3 and a half thousand dollars, and some of them can go up to sort of 30,000, some of the really expensive high-tech multi-voice can be - and they tend to come in from overseas, although we do have people here in South Australia producing some.

MS McKENZIE: Who pays for those?

DR GUNN: Very often it's the family.

MR DUGDALE: You were just asking about prices.

MRS OWENS: Yes. Can you come up, and we'll just get your name. Then we can do it formally. Just give your name for the transcript, because I think you might have some useful comments.

MR DUGDALE: Christopher Dugdale.

MRS OWENS: Thank you, Christopher.

MR DUGDALE: I was just going to contribute that I think it's almost impossible to own any kind of computer equipment for less than about 1500 to 2000 a year, unless you know a lot about using old things and things.

MS McKENZIE: Because you have to keep updating.

MR DUGDALE: I have worked a lot in the computer industry, so I think anything that's high-tech, it's going to cost a thousand or two a year, without even blinking.

MS McKENZIE: Each year?

MR DUGDALE: Overall, to be realistic, yes, because there's replacement costs, there's maintenance, there's new software, there's always things.

DR GUNN: These devices, especially with children, often get a lot of very very rough use. I mean, not that they intend it even, but kids will knock them off their wheelchair trays, for instance.

MRS OWENS: That was very useful.

MS McKENZIE: That's great.

MRS OWENS: I was going to just clarify something with the research you referred to in your submission. You said that that was done by you or your own organisation. Is there a paper?

DR GUNN: Not so far. I haven't had time to write it up.

MRS OWENS: It just looks very interesting. So if you do, I'd love to see a copy of it at some stage.

MS McKENZIE: So what you're telling us is the results that are coming out of your head?

DR GUNN: The results at the moment, yes. I mean, I had hoped that I would have time to actually start pulling some of the statistics out of the research, but I didn't want to put you to sleep.

MS McKENZIE: Well, no, I think it would keep us awake very seriously. If later you manage to have time to be able to write it up, it would be tremendous to send it to us.

MRS OWENS: It would be wonderful.

DR GUNN: One of the things I did pull out of the research was the fact that if people have a communication device in situ, then it can reduce the amount of time that people need from caregivers.

MRS OWENS: Yes.

DR GUNN: I mean, these were reports from people who were giving care, as well as people who were getting the care, and we are looking at anything up to five and three-quarter hours a week. Now, if that's paid caregiving, that's a big saving. The other thing was that people were saying that when they have some sort of simple communication device in place, then they're also more satisfied with the sort of caregiving they're getting; they find it much more useful and they're able to get on with it.

MRS OWENS: The other thing is, would it be fair to say, the lack of even low-tech solutions to these problems means that people with these severe communication impairments aren't able to participate in numbers of ways in our community? For example, it would be much harder, I would have thought, to participate in employment; it would be much harder to go and purchase goods and services. So there's a whole series of things.

DR GUNN: Well, they don't go shopping. One of the interesting things - in fact, one of the disturbing things I found - I asked about people going to vote and, yes, the majority of them did vote, but more than half of them - if I can find the relevant page - more than half of them really allowed somebody else to decide who they would vote for.

MRS OWENS: So they really - - -

DR GUNN: Yes. I mean, what's happening is that they are not actually doing the voting themselves. I think there were - this is off the top of my head and I'll tell you if I'm wrong later - I think there were 88 people in the group who actually had somebody go into the polling booth with them, and 53 of them said they allowed the other person to mark the ballot paper the way they wanted it to be marked, rather than the way the person with the impairment wanted it to be marked.

MRS OWENS: I presume out of the some of the others, by taking somebody else in with them, they're really losing privacy in terms of who they're voting for.

DR GUNN: Yes.

MRS OWENS: So even if they do mark it themselves, the other person is going to be able to see what they're doing.

DR GUNN: Yes. Several people suggested to me - and it may be an idea to take up with the Electoral Commission - is that rather than allow a relative to go in with them or a friend, there should be a designated person in a polling booth who is able to handle people who have some sort of problem marking the ballot paper, so that they can do it in complete privacy.

MRS OWENS: That's a very, very interesting point. We'll have a look at that issue.

DR GUNN: Of course, the other problem is that out in nursing homes and in group homes and so on, where people from the Electoral Commission visit so that people don't have to attend the polling booth, again there's that problem. A number of people who live in group homes said to me, "Oh, well, so-and-so who looks after us said we had to vote for" so that they're not really voting as they would intend.

MS OWENS: Could I just ask you, in your role with the Communication Project Group, you said you have met with or had dealings with a number of these people. Have you ever advocated on their behalf when they've had concerns like this?

DR GUNN: Yes, on a couple of occasions. I once went to court with somebody who had got themselves into a minor piece of strife, which was an interesting experience.

MS McKENZIE: Can I ask, was there no official court mechanism by which a person like this was able to communicate to the court? In other words, were you it?

DR GUNN: I was it, yes, and you have to be very careful. Young Gary had got himself into, as I said, a minor piece of strife. In the end he got a slap on the wrist and told, "Go away and don't mix with that company again." We were lucky the magistrate recognised, I think, what the real situation was.

MS McKENZIE: Did they give you the time you needed, because you've said that it does take more time?

DR GUNN: Yes. In this particular instance the magistrate was somebody I had met socially and he was very, very good indeed. He asked the questions directly of Gary, and Gary pointed to his communication board. I would ask Gary whether that was a satisfactory answer and then pass it back to the magistrate. I suppose something that might have been dealt with in 10 minutes took about 45.

MS McKENZIE: But the time was allowed.

DR GUNN: The time was allowed for that. There was a possibility that Gary would be fined or put on probation or something like that, so it was important. It was a criminal matter.

MS McKENZIE: The other time?

DR GUNN: Yes. I've appeared for somebody who went in front of the Administrative Appeals Tribunal and there it was more difficult because there was, I felt, a good deal of pressure just to get the matter out of the way. It wasn't a terribly satisfactory outcome really.

MRS OWENS: So the pressure was on time.

DR GUNN: The pressure was on time and I felt that the tribunal felt that this was something that could have been avoided if they had only gone away and talked about it, and of course that was the very thing this person couldn't do.

MS McKENZIE: That's right. That's really interesting.

MRS OWENS: Very interesting. I just had one more question. I was just going to ask you about the comment you made right at the end of your submission, and I'll quote. You say:

> It's submitted that with the best of intentions the DDA may actually have unintentionally contributed to the problem.

I think you're talking about the problem overall, and I was just wondering if you would like to expand on that comment.

DR GUNN: I think I'm trying to say that, because we have the DDA, we have a wide variety of groups with specialised interests, and some of them are very small. There's an obsessive compulsive neurosis disorder group. I haven't got the name quite right, but there's a little group like that, for instance. There's a little group that deals with emphysema, for instance, and masses and masses of little groups, and a lot of them have arisen because of the DDA. People have thought to themselves, "We've got that act. If we get ourselves together as a little group we can put some pressure on by using the act."

Unfortunately, for people with communication impairments, they haven't had that capacity to put themselves together and they wouldn't have the capacity to go as a group, although they should have, because so many of the other groups are edging them out and big organisations like Disability Action, for instance, don't always have the time to take on those problems, because they've got so many other people coming in and saying, "We have a problem and we want you to do X about it." Because these people are not being heard, then they're falling further and further behind.

MRS OWENS: So it's stacked against them at each level.

DR GUNN: It's stacked against them every way.

MS McKENZIE: I thought that was an extremely interesting discussion.

MRS OWENS: Yes.

MS McKENZIE: I do have one more question and that's - in general terms, you've talked about the position of people with communication impairments. Have you come across any direct instances that you would say are discriminatory - like, for example, being dismissed from employment because of this problem or not getting accommodation because of this problem?

DR GUNN: Most people who have communication impairments don't even get to first base when it comes to looking for employment. One of the big problems is that now that we have integration into the ordinary school system, the people who are coming up who are of employable age, have tended to be left at the back of the classroom because they're the good little kid who keeps quiet because they can't communicate, and it's the children who have behaviour problems and so on who are getting the attention.

I would think that you would find that most people with severe communication impairments, and I'm not talking here about people who are primarily vision or hearing impaired - they are different sorts of communication problems - but people who have severe communication impairments probably are not achieving what they should do in school because teachers simply do not have the time to spend with them and they don't have the know-how either. They're not trained to handle children with those sorts of difficulties and speech pathology is something that, if you get it at all, comes at the expense of the parents.

Once upon a time, if you were in a special school, you had a range of services. You had your speech pathology. You had your occupational therapy, your physiotherapy and so on. Now with children out in the ordinary school system, it's up to the parent to see that those things are provided and often at very great expense and the children are just falling further and further behind.

MRS OWENS: So you're really saying that deinstitutionalisation and integration, in some ways, have adversely affected this group of people.

DR GUNN: I think it had, and the problem is it has been done with the best intention in the world; the opposite should occur. I don't think anybody would advocate going back to the old ways, so to speak, but there is a case to be made, for instance, for more specialised units perhaps in the - - -

MRS OWENS: Mainstream schooling.

DR GUNN: Yes, mainstream schooling. I do note that there are better facilities in some of the fee-paying schools than there are in the state schools. Cabra College, for instance, here has a unit which works with Down syndrome students and has been doing a fantastic job.

MRS OWENS: What was the name of that college?

DR GUNN: Cabra.

MRS OWENS: We'll be talking later this afternoon, after lunch, to the Association of Independent Schools of South Australia.

MS McKENZIE: We'll ask them about that.

MRS OWENS: We'll ask them about it but they're raising with us the problems they face in terms of the resources that they have to put in and the difficulties that that creates for parents, especially in some of the less wealthy schools. Some of the schools don't have a lot of money and they don't get as much money from the government to provide services.

DR GUNN: And provision is extremely expensive.

MRS OWENS: You're saying really that the needs of these people are just not being met.

DR GUNN: They're not being met at all. I'm having parents of one of the local schools say to me, "I'm doing most of the teaching at home and he is doing most of the learning at home" or "She wasn't doing anything in maths until I started and looking to me for advice as to how to set about teaching them." They should be getting some help at school but they're not.

MS McKENZIE: Thank you for that.

MRS OWENS: I think you're doing a wonderful job, so congratulations.

MS McKENZIE: It's a tremendous and really interesting submission. It's an area that has not been touched, really, in other submissions. It's very helpful to us.

DR GUNN: Thank you very much for the opportunity.

MRS OWENS: We will now break and we resume at 11 am.

MRS OWENS: The next participant this morning is the Intellectual Disability Services Council Inc, South Australia. For the transcript could you each give your name and your position with the council?

MS BUTLER: Christine Butler, and I am the state development officer.

MRS OWENS: Thank you.

MR BRUGGEMANN: Richard Bruggemann, and I'm the chief executive officer.

MRS OWENS: Thank you, and thanks so much for coming.

MR BRUGGEMANN: It's a pleasure.

MRS OWENS: And thank you for the submission. If you would like to just introduce your submission and then we can have a chat.

MR BRUGGEMANN: Thank you very much and thank you for the opportunity to be here today. Perhaps a little bit of background: the Intellectual Disability Services Council is a body incorporated under the South Australian Health Commission Act in South Australia - that's an act that allows for organisations to be created - hospitals, health centres, and also our organisation. We were established in 1982 and our charter was to develop a new pattern of services for people with intellectual disability in South Australia.

When IDSC started we inherited, I guess, a system not dissimilar to what was in place in the mental health services and that is the concept of an almost self-contained village, so that within the mental health services - the mental health hospitals and IDSC Strathmont Centre - you had nearly every aspect of the Australian community replicated in those services and, interestingly, they had tailors, bootmakers, hairdressers, artisans - nearly every profession within the community was replicated on the staff of those organisations, and one of the key issues in IDSC's charter was that as far as possible we were to ensure that services for people with an intellectual disability were provided through those same organisations that provided those services for the rest of the community.

The 20-year journey has been a very interesting one when, on occasions, those directions have been embraced by other organisations and, on other occasions - and particularly at times when there is resource constraint - when there is a contracting back and people wanting us to take responsibility for sort of "our people", and so within the thinking of many organisations there is still a view that they serve the community and then those people who are marginal to their core activities are served by organisations like ours, and I still think there is some of that thinking within organisations in South Australia.

Notwithstanding from time to time the immense input of governments, starting with John Bannon in 1984, who got all of the government departments together to have a look at how they could ensure that the services that they provided were really accessible to people with an intellectual disability, our local state government in South Australia has recently again provided some significant leadership. Lea Stevens, who is the health minister, recently launched a document which was about access and equity to health services and it was interesting that in launching she said she really didn't want to launch it because it was 18 months old and it was out of date and that what she was really looking for was that it was not just the letter of that document that would be implemented: what she wanted to see was the spirit of that document inculcating health services in South Australia.

We thought that today one of the things we might do was to give some indication of some areas where that is still not occurring and, if we look, for example, at the health services, now driven by - allegedly driven - a very strong commitment by the government that all South Australian government services, health services, will make themselves accessible and open to people with disabilities, we still see many examples of where that is not happening at a practical level. For example, we have a number of people who live in Strathmont Centre, who traditionally had the support of the South Australian Dental Service and the Royal Adelaide Hospital for the provision of dental care, much of which has to be provided under general anaesthetic because of the nature of people's capacity to understand what's occurring.

Recently we've seen a significant drawback from the amount of support that could be provided to the point that we are now looking at people having very long waiting lists for treatment - are on very long waiting lists for treatment that is actually quite urgent. Similarly we have a number of clients who are depressed and where judgments have been made that they require ECT and that also requires an anaesthetic and again we have been given the run-around in the health system about where this would occur and people saying, "We don't have the sessions in our budget to do this" and where there is a never spoken but clear view that other people are probably more important than this group getting this treatment.

It's interesting to note that although there are policy settings that prevent those things from happening they still happen, and if we were to ask the question, "Why do they still happen?", in some instances it is because of the values of some clinicians basically making decisions about the relative worth of people and the worthwhileness of treating people. We've often had to go to bat for individual clients to try to rectify that situation, so - not recently, but certainly in our past - at 1 o'clock in the morning we've had to ring the hospital and put things in place so that people do get treatment when people have made judgments about, "Well, this person has got Down's syndrome. They've got this thing. It's probably best if we let them go."

This person will recover with the treatment that they need and that any other member of the community would get and they will recover to their former state, which was that they had a disability but they were still South Australian citizens who had a right to that sort of treatment. One of the things we could do of course is to apply the mechanisms under the DDA - which we largely haven't done but which we have, on occasions, discussed doing - and certainly if we found sort of people being just out-and-out recalcitrant about this, we would, but we actually haven't got to this point.

Often we have used these situations as a learning process for the hospital involved and for the staff who work in those hospitals. We also try to do this by ensuring that we provide an appropriate level of support to the hospital, so that might include putting some of our staff in there, even though, under the Medicare arrangements and the hospital resourcing arrangements in South Australia, they do have funding in their budgets to deal with those situations, so we have tried to go that extra distance and sometimes what I find is that when you go that extra distance people then assume that you undertake that responsibility that is, at the end of the day, their responsibility. Interestingly this has made us very nervous about one area of care - and that's palliative care - because, interestingly, a few years ago I was talking at a palliative care gathering and a doctor there was saying how he did palliative care assessments within a range of nursing homes and that that went very smoothly and he said, "The only place I have any difficulty is Strathmont Centre." My ears pricked up.

MRS OWENS: Excuse me. Just explain what Strathmont Centre is, as we're not from South Australia.

MR BRUGGEMANN: Sorry. My apologies. Strathmont Centre is a centre for people with an intellectual disability; like Kew Cottages, like similar services in - it's a state-run service for people with an intellectual disability.

MRS OWENS: So how many residents has it got?

MR BRUGGEMANN: It's down now to 250 and the government has just put money into reducing that to under 100 over the next two or three years.

MS McKENZIE: So there is a process of de-institutionalisation.

MR BRUGGEMANN: Yes, and it has come from a base of about 650. Interestingly, this chap said that the only place he had difficulties was at Strathmont

Centre because the staff there, instead of just automatically accepting that there should be a palliative care order - which is basically a no-treatment and just palliation - was sort of standing him up and arguing the toss about, "Well, this person is not in a sort of life-threatening situation. They're in a difficult health situation." They will recover and they will recover to be a very disabled person still - because that's what they were beforehand - but they will recover.

MS McKENZIE: Yes.

MR BRUGGEMANN: When I said, "Well, they're doing the right thing," it was actually interesting that he didn't actually realise the discrimination that he was putting in place, and we discussed it in some detail. We've been wary about palliative care, for example, being a mechanism whereby euthanasia is brought in under another name. I mean, many of the people for whom there might have been palliative care orders were not in terminal conditions. They were very sick, but they had a very good chance of recovery.

MRS OWENS: But if one compares it with any person without that particular disability - - -

MR BRUGGEMANN: Precisely, yes.

MRS OWENS: - - - palliative care wouldn't have been given. Treatment would have been given.

MR BRUGGEMANN: That's correct, yes. These are the subtleties that we are trying to deal with. We recently had a case - which Chris knows much more of the details about - where a mother didn't want her severely and multiply disabled young son to have a course of antibiotics, which was the first level of defence for a chest infection, and we actually went to the Guardianship Board and then we had to go to the District Court and, fortunately, in between that, the young man recovered of his own volition, without treatment, but again this was what we met in that process and, to a degree, this also included the mother: a view that, you know, some people might be better off if they weren't living. IDSC, through Strathmont Centre, has its own large health service and we sometimes say that we should actually bust that up and put it into the generic sector, but I suppose we are still uncertain about whether we could do that and ensure that our clients will be treated with the sort of vigour and determination that we treat them with in our own health centre.

I have mentioned all this as background about - that there is still discrimination. It occurs less at a systemic level than I think at the level of individual practitioners who bring their values into that domain and where in some instances the effects of that could be life-threatening; you know that you would not live if you had a palliative care order because, basically there are arrangements to assist you to die without pain, et cetera. I mean, what does this mean? How do we deal with this as a community over time? I think one part of it is education and a part of what our organisation has been involved in over the 20 years we have existed has been trying to educate organisations about inclusion and, to do that not in a way which is: this person needs this service. You provide that service; ergo you have to do it, but rather, this person needs this service. You do it for the rest of the community. How can we work with you to see how you can make your service accessible?" And it's interesting, in a number of domains this has worked very well. It's interesting that service clubs - for example the Kiwanis movement in South Australia - have been very inclusive of people with intellectual disability through that sort of working together arrangement.

MS McKENZIE: Sorry, what is the club?

MR BRUGGEMANN: The Kiwanis Club; they are like Rotary. And they have actually worked with IDSC to establish clubs for people with intellectual disabilities, and also to include people with intellectual disabilities in their mainstream clubs. So we've worked together. We don't take an ideological view; you know, "You have to do it, therefore we will thrash you if you don't." It's more "We believe that this is your responsibility and we will work with you to help you fulfil your responsibility to this set of clients."

MS McKENZIE: So you tend not to rely so much on the DDA and the complaints-based mechanism but to do it by cooperation and education and awareness?

MR BRUGGEMANN: Yes. And we think that an observation would be that that educative process - you know, we do it as an organisation. Many of the other disability organisations also do it, but it needs to be driven at all levels within our society. How do you influence doctors? Well, get to them early, before they are doctors, and talk to them in their undergraduate programs. So we try to be influential there as well; again, with varying degrees of success. That's a sort of a backdrop of where we are at in South Australia, or our perception of where we are at in South Australia.

In respect to the inclusion of people, I've used the health example. But as Chris and I were coming up here today we were talking about some issues within the correctional system, and again a view of: this person is in the correctional system. They have an intellectual disability. Is this the responsibility of the disability system or of the correctional system? And my view is that it's of the correctional system, and we need to work with them to ensure that those services can be as inclusive and as helpful to our clients as they hopefully are for other people in that system.

MRS OWENS: Can I just ask you? It sounds like you are doing a lot of very worthwhile things. Do you have sufficient resources to get out there? You can't be everywhere at once dealing with issues in the health system and correctional system, in terms of residential care, dealing with housing issues and so on.

MR BRUGGEMANN: Yes.

MRS OWENS: Do you struggle for resources?

MR BRUGGEMANN: Yes, as do most organisations. One of the things that occurs is that in the absence of a person having a well-planned, well-resourced accommodation or home, that it might require some support for them to live in that home, in the absence of that happening they are more likely to fall into either some health problem or some other problem with the police, et cetera. Yes, we'd like more resources, and we have a balancing act at the present time between dealing with emergencies and crises and trying to do the longer-term planning.

On the longer term side, yesterday I was up in Berri, one of our country towns on the River Murray, and there was a program that had been developed by the Education Department, by SHINE - which is the Sexual Health Information Networking and Education organisation, the old Family Planning Association in South Australia - and IDSC, to put in place some arrangements to help young people cope with relationships, and it was interesting that this program had been developed by SHINE and the Education Department. One of the outcomes was a video, and it was people with intellectual disabilities who starred in that video, and yet this was a resource for the community generally. So there was some sort of reverse integration almost.

In that process young people with intellectual disability worked with students from the Loxton High School, and it was a good experience for everyone because one of the things that we've done, with people with intellectual disability, has been to obviously separate them from the rest of the community. The people in South Australia, who were the most disabled, for many years lived in a nursing home called Rua Rua, which we closed in 1989. And part of the premise of having places like Rua Rua is really that these people are too disabled; it would be too frightening to our children to see these kids.

I mean, these are the people who are the most disabled in South Australia. And when we put people in houses in the community on one occasion it was neighbourhood kids who came into the house after school, and were inquisitive, and wanted to know what was happening and who these people were. In many ways it was the first time in the lives of these young disabled people that they had ever been the recipients of any spontaneous act of interest and friendship. And so I think that some of our myths are still driving a lot of the things that occur within our community, the myth that our children won't be able to cope with this.

Well, when kids with disabilities have gone into mainstream settings we actually find our kids don't do badly at it and that what we are actually doing is projecting our own values and fears, et cetera. We need to try to work in getting rid of that at a very early age, that we need to deal with that in the training program for professionals, and that people see that we are talking about inclusive communities.

Interestingly, recently we helped some parents run their own seminar about inclusion in South Australia, and they had a woman doctor, Dr Heather Raymond, who is the principal of the school in Canada, who came out and talked to that group. She doesn't talk about making her school inclusive of kids with disabilities, her school is just inclusive. And whether you are the child of parents who have got a drug problem or whether you are a native - an Aboriginal member of the community in Canada - or whether you are a kid with a disability, or whether you are very poor and your parents can't really afford to have you involved in school, she says, "Everyone comes to school." Everybody has a program and interestingly, everyone in the school has a job because you are not included until you are making a contribution.

One of the submissions that I've seen to your inquiry, recently, from the National Council on Intellectual Disability, is about perhaps less talking about disability discrimination and more about an inclusive society. That is, if you get it right for kids with disabilities you get it right for everyone. Get it right for everyone and you get it right for kids with disabilities, if you've got a commitment to there being inclusiveness within our community.

I think that one of the things where I think we could do much better - and whether this is a role that might be incorporated within the act or within the body that administers the act, whether we need to be doing more about that drive towards inclusiveness, and if we did that maybe the NCET submission is right, that we can do this other than through having a DDA. I don't know. I don't want to venture onto that territory. But it's an interesting concept.

MS McKENZIE: I think we need more women like the Canadian woman to come out here and run some of the schools.

MR BRUGGEMANN: She'd be very happy to. It was an eye-opener, and her commitment was "Every child in this school will be included in the mainstream life of the school." And as I said, it was interesting; she had the concept of, you know, when you are at school you get and you give and you give by having jobs; and everyone has jobs in the school. You might be a monitor, or you might do this or you might do that. But until you are giving back you are not really included.

MRS OWENS: Chris, do you want to add to that? We've got a few questions, but we thought you might have something else lined up.

MR BRUGGEMANN: I've held forth a bit, sorry.

MRS OWENS: No. That's good.

MS BUTLER: As we said in our submission, I think the DDA is one tool to achieve the sorts of things that IDSC is trying to achieve, but I think it's an important tool. It's in the background, and you've got something to fall back on if people aren't listening to what you are saying and aren't prepared to cooperate in the way that Richard has just talked about. So I think it is important, and even though we haven't as an organisation, used it, it's nice to know that it's there.

MRS OWENS: You've got a particular group in society, the intellectually disabled, who potentially would find this act incredibly difficult to use, unless they had organisations like yours to help them. Do you want to say something about that? There is this issue of the act relying on people making complaints, individuals making complaints. It's very difficult for some people in this situation to get to the point of being able to make a complaint unless they have assistance.

MS McKENZIE: Or even to understand that what might be happening to them might be discrimination.

MRS OWENS: That's right.

MR BRUGGEMANN: Yes.

MRS OWENS: And particularly hard if, say, they were in a home like the Strathmont Centre, where they are really relying on the staff, and their complaint would be - I'm not saying it would be at the Strathmont Centre but it could be in some institutions like that - against the treatment in that centre. So that makes it difficult. Or if they are in a group home.

MS McKENZIE: Or a teacher in a mainstream school, for example.

MRS OWENS: Or a teacher in a mainstream school. Do you want to comment on that, the difficulty of your constituents - the intellectually disabled - being able to avail themselves of this sort of legislation.

MS BUTLER: I'd have to say that I don't think they could, realistically, without a very strong advocate. Whether it's a role that IDSC, as an organisation, would ever wish to take up - although that's not possible at the moment. There are advocacy agencies and there are funded agencies that are even worse resourced than we are. So it's that whole issue again of "Where does that advocacy role belong?" And certainly IDSC has an advocacy role, but is it to deal with this? I don't think we've ever discussed it.

MR BRUGGEMANN: No. We did it a systems level. For example, I have recently taken up the issue of the anaesthetic services that we are not getting, with the head of the department who is responsible for that. So we certainly advocated that at that level. In South Australia there is - and I will have to refer to Chris on this - a group that actually can do legal representations in this field, that has been, I presume, funded by the Commonwealth government. Again, I'm not sure how many of our clients have accessed that; probably, I would suspect not many. As I have said, we have tried to deal with it at the systems level; dealing with the hospital about the inclusion of this group of people rather than at individual levels.

MS McKENZIE: But also you have dealt, from time to time, with individual's matters as well.

MR BRUGGEMANN: Yes. It's often the individual thing; for example, in this situation what we've found is that if you have guardianship of your son, under the State Guardianship Act you've actually got many more powers than people who might be, say, administering an enduring power of attorney. And in fact, in instances there could be significant conflicts, like; your son has been awarded $4 million in a motor accident, he is in hospital, you are his guardian, he is in this particular situation and you are the person who makes the decisions about whether he is treated or not. We've seen the potential for some of those things - again, which we're taking up at a systems level, having seen the problem with our department and with the Attorney-General's Department.

MS McKENZIE: What are you looking for as far as that's concerned?

MR BRUGGEMANN: We are not sure, but just that - - -

MS McKENZIE: So you see it as a problem.

MR BRUGGEMANN: Yes, it's a problem. I mean, in the particular case where the mother didn't want her son treated, this was a woman who had not seen her son a great deal. On the other side were a number of staff who worked with him very closely and when you realise we're talking about people with severe and multiple disability, no language, perhaps the only communication can be their facial expression, et cetera, and mum is the guardian and she’s saying, "Look, I don’t think his life is much chop and we won’t treat him," and our staff are saying, "No, he’s been through this before; he has recovered. He enjoys his life. You know, he gets a lot of joy out of his interactions within the house and his day programs, et cetera." Yet this was the argument we had to put to the District Court; that the decision should not be made by the mother in this situation because there were other people who knew him better. Maybe it should be that - - -

MS McKENZIE: Was that on appeal? Sorry to interrupt you. Is that how it works?

MR BRUGGEMANN: Yes, we appealed to the District Court.

MS McKENZIE: You appealed to the District Court, from this other tribunal, the Guardianship Tribunal.

MR BRUGGEMANN: Yes, and the whole thing is in limbo, because at the end of the day he recovered and mum agreed that he should have some treatment after all, so it was never tested. But again, if you drill down into this, some of it is about the attitudes - in this case, by mother - about the value of the life of a person with a disability and her making one set of judgments when the significant people in his life - the people who worked with him on a day-to-day basis, the Royal District Nursing Society nurse who saw him on a weekly basis - had a very different view of what his life was about and in my view an opinion that should be more honoured in that situation than the mother’s. It’s difficult stuff.

MS McKENZIE: Yes, it is.

MRS OWENS: Coming back to the DDA and the complaints process, just following on from where we were before, do you think it would be appropriate for advocacy - or other sorts of organisations to be able to put in a complaint on behalf of an individual, rather than just assist them with their complaint, rather than relying on the individual to be making the complaint in the first place?

MS BUTLER: I think it would be useful because I presume they could then make a complaint - like a class complaint; rather than hearing 20 or 100 matters you could hear one, if it was a common thread of discrimination.

MR BRUGGEMANN: Yes.

MRS OWENS: What about the resources that it would require? Coming back to resources - I seem to be stuck on resources today.

MS BUTLER: The organisation here is the Disability Discrimination Legal Service - they've got one in every state and territory - and I don't think that would have the resources to do it. But you also have to think about - if you put the resources in to allow that to happen, instead of hearing 100 cases you only have to hear one.

MRS OWENS: Yes.

MS BUTLER: So it would be a shift in the resources, perhaps.

MRS OWENS: What if it was your organisation that was going to - you raised the issue of dental services for people. You might want to put in a complaint against the funder which is probably the Health Department.

MR BRUGGEMANN: Yes.

MRS OWENS: I don't know whether you'd be able to do this.

MR BRUGGEMANN: Who we are funded by as well.

MRS OWENS: Yes. Potentially this complaint could go through the system and go the Federal Court or to the Federal Magistrates Service and potentially if you lost you, as a council, could be awarded costs against you.

MR BRUGGEMANN: Yes.

MRS OWENS: Would that act as a significant deterrent?

MR BRUGGEMANN: It may. We've never really contemplated that. With these, what we have tried to do - I don't know how well it would be received if there was one branch of the department - because we are, at the end of the day, a part of the Department of Human Services - sort of taking legal action against another part. What we're trying to do there is to resolve this by discussion within the organisation. I'm confident that we'll win this, because I think that if our minister knew that after her very genuine and impassioned stance on this - if she knew that this was happening and part of me sometimes says, "Well, maybe I should tell her," but the other part of me says, "No, you deal with your colleagues and you try and get this fixed up." But I don't think she'd be very thrilled to know that that was happening.

MRS OWENS: Suppose it was an issue relating to education or whatever - a different sort of issue, so you're not in this conflicted situation - and you saw that there was an issue that required addressing and you though it was worth putting in a complaint to the Human Rights and Equal Opportunity Commission on behalf, maybe, of a number of your clients, does the fact that this potentially could go right through a fairly legalistic process which potentially then could mean that you, as an organisation, could be awarded costs against you - would that cause problems?

MR BRUGGEMANN: It depends whether our insurers picked up the cost or not, but if it cost us a lot of money that would be money we wouldn't have for services.

MRS OWENS: Yes.

MR BRUGGEMANN: It would have to be something we'd take into account.

MS McKENZIE: Yes, you'd have to balance it.

MR BRUGGEMANN: Interestingly, in that area we have helped families, but it's been more to perhaps get together families who had similar issues. We involved the - in those days it was the Norwood Legal Service, wasn't it?

MS BUTLER: Yes.

MR BRUGGEMANN: That did this. So we would probably give families some advice. You know, we have lawyers that we can talk to and get advice and we would probably give people advice about how they could do it. The awarding of costs, I think, is a big reason why a lot of individuals and advocacy agencies would be fearful about taking things on and losing them. I presume that on the other side of the equation some quite significant resources can be arraigned against them. So, yes, I think it would be a consideration.

But we've supported people, getting people together, getting some lawyer who - we work with a few lawyers in South Australia; perhaps getting some informal advice and making sure people understood what the issues were, what the outcomes could be, what the risks might be - but we actually haven't joined ourselves in those things in the past. For the large bulk of things we would prefer to work with an organisation to try and change it and to get them to own the change, rather than to give them a thrashing through the legal system.

MS McKENZIE: And you'd rather do that before lodging a complaint.

MR BRUGGEMANN: Yes.

MRS OWENS: There is another issue that Cath raised this morning, and that's just the issue of communication, or the possible lack of communication skills with some of these people with intellectual disabilities, which means that it might be very difficult to identify that they've got a problem in the first place. The reason I talked about your resources initially is that you can't be everywhere at once. It's very difficult to actually - I'll presume in some instances - work out that there is a real problem.

MR BRUGGEMANN: Yes. For our client population, at the end of the day, that is the number 1 problem. As long as someone else is communicating your wishes, you are always, in a way, their prisoner. It's also interesting that over the years there have been a lot of false hopes held out to families about the capacity of their sons and daughters to communicate and so the whole area of augmentative communication has been just a minefield. People saying, "We can help you to communicate," and they often do it through holding the hand, and the hand writing messages - is it the hand that is holding the hand that is writing the messages, or the hand that - it's very , very difficult.

The lack of capacity - not just in areas of discrimination, just in - for example, if you live at Strathmont Centre, whether you want tea or coffee in the morning - how do you know that? How do you know the person's preferences when they've got no language? We've actually done - we've got a staff member who is actually doing some work on that at the present time, as part of her master's degree, trying to - it's a sort of an observation technique where people are given alternatives and there are observers trying to see which of those choices are more important.

MRS OWENS: What they like, yes.

MR BRUGGEMANN: Then there are observers watching the observers, to make sure that they are being objective about it. It's the number 1 issue and then, when you can't communicate your own wishes, other people do it for you. It might be an organisation like ours saying, "We're going to halve Strathmont Centre and you're going to live in the community." Or it will be your family saying, "We don't want that to happen." Knowing what it is that the people themselves want is immensely difficult.

MS McKENZIE: What about the question of deinstitutionalisation? It's a matter that has been raised again and again in submissions.

MR BRUGGEMANN: Yes. The approach that we've taken in South Australia, we have not - in South Australia the government here has not said, "We are going to close Strathmont Centre." Largely the approach has been that the future of Strathmont Centre is the future of the people who live there. What we did a few years ago was that we - sorry, what parent groups - the parents of people who live in institutions, what those groups often do is they decide they don't want their sons and daughters to live in the community and to make sure that that is sort of vouchsafed in the future planning, they don't want it for anyone else either. Like, "I don't want my daughter to go and I don't want your son to go, because if your son goes, then it's the thin edge of the wedge of the institution being closed."

The Strathmont Parents and Friends took this issue on board and they recognised that there were many families who wanted their sons and daughters to move, and many people in Strathmont who indicated that they wanted to move, and there were some who wanted to stay. What we said was, "Okay, over the next period of time, when you get the numbers at Strathmont down to about 300, through that process of - you know, if you want to stay you can stay - and when we get to that point then we're going to open this question again."

In many instances it is a lack of information. Families thinking that closing Strathmont and people moving into the community means that their son goes into a house and gets no support, when other parents can say, "No, it doesn't work like that. In fact, in the group home that my son is in, there is staff there around the clock," then people are more likely to say, "Oh, well, I understand now how it works." So when you say we are going to do X, like close an institution, what you often do is to galvanise the forces of opposition into a camp and that might be staff and families and individuals, who prevent that from happening.

What we've tried to do is to say, "We're going to talk to people, find out what they want and then make that happen." We've done it to date and we - Strathmont Centre has gone from 650 to 250 people and there's been no brouhaha about it in the papers over the years, there's been no scandals about it. I notice at the present time the drama in Victoria about Kew Cottages and all the stuff that's in the press there, and it's interesting that this is the first time that the government in South Australia has announced a major deinstitutionalisation program.

We see it as a bit of a mixed blessing. If what it does is to galvanise the forces who don't want it to occur, then that might be a bit counterproductive, but we're still continuing on trying to influence and show people how other things work and the benefits. The one thing that we can demonstrate is that it has significant benefits for the people who have moved out. It's been a very positive process. But we do things like - you can have an entrée back if it doesn't work for you; we encourage people to give it a go and 98 per cent of people, when they give it a go, believe that it's what they want.

MRS OWENS: Maybe it's timing that's important, and giving people choice and just, as you say, educating people to the benefits of the alternative approaches and not forcing the issue.

MR BRUGGEMANN: Yes.

MRS OWENS: Maybe that's the way to approach it. I come from Victoria so I watch the Kew issue with great interest.

MR BRUGGEMANN: Yes, just before I came in I was reading all of the letters to the paper about it. The other interesting thing is we keep a waiting list of people who require accommodation. That's getting to some fairly big numbers at the present time but, interestingly, less than 1 per cent of the people who are wanting accommodation are saying, "I want my accommodation to be on the Strathmont campus or at Minda." Minda is the large non-government institution in South Australia. Certainly, families now are seeing a different approach, but it would be wrong not to realise and be sympathetic to the investment that families who put their sons and daughters in Strathmont have made and, when you talk to those people, the anguish that accompanies that decision, the lack of anything else at the time, and that they thought they were doing the right thing and now tell them down the track, "You didn't do the right thing. You did the wrong thing" is just, I think, the wrong way to go, and we've tried not to do that.

MRS OWENS: For all the best intentions, they might feel that at this stage in their child's life - he may now be an adult - that they may not want to disrupt that life by moving them and, in some cases, that mightn't be the appropriate thing to do for some individuals.

MR BRUGGEMANN: It's very interesting. One of the reasons that I've been in this job for 20 years is that we just deal with such interesting people, and that's just the staff. At Strathmont Centre, there are people there who have got freedoms that you ask, "Well, would they have them if they lived in the community setting?" I think that if we approach de-institutionalisation as the implementation of a philosophy and getting some Wolfensberger ticks that we've done the right thing, then we're doing the wrong thing. If what we're doing is helping people to fulfil their destiny, then we're on a better track.

MS McKENZIE: Can I just raise a couple of other issues? The first relates to any comments you might want to make about people with intellectual disabilities and employment, and the other is any comments you might want to make about people with intellectual disabilities and the justice system.

MR BRUGGEMANN: Chris is full-bottle on the justice system and maybe if she does that first, then I'll talk about employment.

MS BUTLER: Our interaction with the justice system could take up the rest of your hearing time. Is there anything specifically that - - -

MS McKENZIE: No. It's easy I think if you raise issues - issues that you regard as key issues.

MS BUTLER: What I say is that we've been working very closely with corrections and now with police, going back to what Richard was saying about working with organisations at a systems level to develop MOUs, memorandum of understanding, with both the police and corrections to ensure that when our people do get caught up in those systems, we can have some input if it's going to be useful. Hopefully that will formalise the relationships with both of those bodies which we've got sort of informally and fairly ad hoc at the moment.

MRS OWENS: Have things improved at the time in terms of - - -

MS BUTLER: In terms of criminal justice issues?

MRS OWENS: The criminal justice system.

MS McKENZIE: You mentioned the diversionary programs.

MS BUTLER: Yes, we've got the diversionary court.

MS McKENZIE: That's to make sure, or to try to make sure, that those with intellectual disabilities don't go to prison.

MS BUTLER: Yes. It's for people with a whole range of issues, like minor drug addiction and alcohol; intellectual disability; mental illness. It's largely for minor offences but, yes, we haven't got any data to say that it's working for our client group. Some of our case workers say it doesn't work and others say it does. We've also go the situation of people going through what's called the Criminal Law Consolidation Act, section 269, not fit to plead, and that's causing some problems with the courts, with the reports being produced, and with the forensic facility. There's only one in South Australia which is called James Nash House and there's a huge range of issues bubbling up around that at the moment because the mental health system is saying people with disabilities shouldn't be coming into our forensic facility, but it's the only forensic facility that we have where people can be kept who need to be kept for their own safety or the safety of the community.

MS McKENZIE: And so there's no - - -

MS BUTLER: The criminal justice system takes up a lot of my time.

MS McKENZIE: It's not a facility specifically meant for people with intellectual disabilities.

MS BUTLER: Yes.

MR BRUGGEMANN: Yes, but it's been for all-comers in the past and we've actually noticed recently, if we're talking about areas where we were seeing some discrimination - we've actually been told that people with intellectual disabilities can't go there and it's more like, "It's not suitable for them" rather than, "They shouldn't be here." But the net result is that they won't be there. We've been very reluctant in South Australia to set up forensic group homes, as I understand they've got in other states, and a number of these section 269 people we've actually supported in their own flats with intensive support in the community, so far, touch wood, without dire consequences. In fact, in some instances - - -

MS McKENZIE: That's a court-approved mechanism.

MR BRUGGEMANN: Yes. In terms of employment, this is one of the real problems in Australia at the present time, and I participated In a National Council on Intellectual Disability meeting recently about this. The whole employment services funded by the government are going to more rational arrangements in terms of both their funding and the support for individuals, and because this is moving towards norms that are available for the rest of the community like award based pays and things like that, one can only applaud the implementation of those standards. However, there are a number of individuals and a number of organisations that will not find it viable in that competitive environment. What we are seeing in South Australia is many people with the more severe levels of disability, dropping out of employment services and being replaced by the less disabled group.

In some ways now, if you see some of the employment services, and you looked at the eligibility criteria that we would use, there would be very few of their people who were there because they had an intellectual disability who are actually eligible for our services using the American Association of Mental Retardation Standard.

MS McKENZIE: You mean, in effect, those for whom the employment services cater, have milder disabilities?

MR BRUGGEMANN: Yes, and it's becoming more so. One of the things that the national council has - - -

MRS OWENS: Sorry. Why is that happening?

MR BRUGGEMANN: Because there are new standards in respect to what's expected of employment services. There is also a move towards award based employment and there are also the support levels that people will get in their employment, and all of those things coming together have actually meant that more disabled people are not able to be in the sort of new-style employment services. The state government - this is a function of the second CSTDA where the territory was divided up between the state governments - do accommodation and day programs and the Commonwealth does employment, and the line between employment and day programs is not a sharp line; it's a very blurry boundary.

My personal view, and this is the view also of the national council, is that we shouldn't stop the move towards the new standards, which are basically the community standards within the supported accommodation field, but there will be some services and some individuals who will not be able to achieve that. Rather than have them crash out of employment, those things probably need to be quarantined and for the government to have a really good look at how those people can be supported, because there's no doubt that those people see themselves involved in work; that they're doing something; they're making a contribution; they have the affiliations with other people that we have at our work, and they see themselves as working. Yet, in terms of productivity and the new standards, they don't make the grade.

My view would be, don't toss them out because of that. Acknowledge that there's this group of people that we might need to find something else for. Work with the state governments to try and find another way, which might be that these people can still work, but it might be that it's through community participation, through volunteering, et cetera, rather than letting them plunge into unemployment, which in many instances then means that there has to be an array of compensatory services put in place. You drop out of employment and you can't stay home by yourself during the day, and then there has to be some respite service, et cetera. I just believe that the standards that the government is wanting to put in place are important, but don't let there be casualties of that; recognise that there might be and then make some other arrangements for those people that might not fit into the new arrangements.

MRS OWENS: And use the resources that, otherwise for these other support services, they would have to put in place to keep them in jobs.

MS McKENZIE: That's fine. What about those on the borderline, those who, if they were given some support, would go into the able-to-be-employed category?

MR BRUGGEMANN: Yes, that's a good point. The thing that came out of the CSTDA, and I have to hang my head in shame because I was actually involved in those negotiations for the second CSTDA - CSDA as it was in those days - and the view that I had put is that there should be funding which followed individuals in a day program, into a day program/voluntary/work program or into work. But what has occurred is that you're either in a Commonwealth program and you get Commonwealth funding or you're in a state program and you get state funding, and of course, not that governments do it, but there's a potential for duck-shoving across the boundaries.

MS McKENZIE: We're very pleased to hear the government is going to do that.

MR BRUGGEMANN: I was being facetious.

MS McKENZIE: Unfortunately the transcript doesn't pick up the facetious nature unless we tell it.

MR BRUGGEMANN: Yes, okay. The vision that I had - and at the end of the day there was some support for it, but it was never going to get up because the Commonwealth actually wanted to be in charge of labour market programs, but the idea that I had is that there might be an amount of resource that was allocated to an individual, and our view should always be that we apply community norms. The norm is that we are responsible for our own welfare; we make our own way; we do as best we can, but if you can't do that, then there needs to be the safety net things in place, so we should be encouraging people with intellectual disability to work, to be in charge of their own destiny, et cetera.

Where that can't happen, if this money was flexible and could follow people into other programs and perhaps into a voluntary program or a training program and then back into employment, but now every time you come across the no-man's-land - it's sort of more a no-man's-land than a border - you give up your Commonwealth funding and you come into the state system, and then if you want to go in the other direction, you have to give up your state funding, et cetera. So to the extent that your review can thrash some people about that, we would be very supportive of it.

MRS OWENS: I love Commonwealth-state funding issues. They're always so interesting.

MS McKENZIE: They keep being raised.

MR BRUGGEMANN: Yes.

MRS OWENS: It happens in all sorts of contexts, not just this inquiry, I can assure you.

MS McKENZIE: That's all my questions. What you have said does raise some very interesting questions about how the whole question of unjustifiable hardship provisions work in the context of the DDA and employment, and these employment issues particularly, because what the DDA is really saying is if there's an unwillingness to take - and if it's a disabled person - it's the employer who is going to be looked to where discrimination is concerned unless the unjustifiable hardship defence comes in. How that fits with what you are saying about that there should be funding that perhaps the person could carry with them as they move into employment is a very interesting question - how that could link in to this set of provisions.

MR BRUGGEMANN: Yes. We are talking I think now about people with the more severe levels of disability. One of the things that I have found joyful has been the way in which many people with mild disabilities working at a place like Bedford and then they have gone on to work for the Charles Sturt Council as a gardener and they have been paid full tote odds - fantastic. Then you're getting money and money gives you power. You can determine your own destiny then and you can do the things that are important to you.

I think there has been a group of people for whom that has worked well, but what we're finding is that there's a group of people who are at the more disabled end of the spectrum, where that need to be in charge of your own destiny is still as important and your capacity to do it is reduced because you will need support for your life to do things, and what often happens in that process: many people in supporting you want to expropriate your capacity to make decisions about your life, and I think that is one of the things that I see.

It is almost like an unwritten contract: "We'll help you, but you do it our way. You live in our group home. You obey our rules. This is not your home. It's our home. You're here, but you have to obey the rules." Well, in my house, my rules are my rules - my wife's rules, sorry - but, yes, they're our rules.

MS McKENZIE: We're very happy that's in the transcript, as well.

MR BRUGGEMANN: It's almost like if you get a service then you have to be prepared to have someone take over some decision-making about your life and, within our services, we've seen that where - I've seen the result of it when I was doing some time on our after-hours system and I had a woman who had lived in Strathmont for many years ring and say, "I'm going out tonight. Should I wear a red dress or a blue dress?" Well, you know why ask me? I'm colour blind. It was actually about - for many years you actually had to ask permission about those things; other people made those decisions.

I mean, the disability standards I think have been very good in trying to change that stuff, but at the level of organisations we have to get it into the psyche of our people. Our job is to assist people to fulfil their destinies. It's not about them doing what we want them to do. It comes down again to the whole protection-freedom argument. Are we here to protect people and keep them safe or are we here to give them opportunities?

My view is we're about freedom and opportunities but that, from time to time, we need to have that safety net that you know, "We will go to the Guardianship Board and get an order if you're actually doing things that are dangerous to yourself or others, but we give you opportunities." The mind-set of the people who work in this field - and not only them, but doctors in hospitals, and teachers, et cetera - should be about helping people to fulfil their destinies, and I still don't see that that is what it is about in all areas within disability services.

MRS OWENS: So we still have a long way to go in changing community attitudes?

MR BRUGGEMANN: Yes, we do. We are trying to do that even in places like Strathmont, where we have now got codes of conduct and codes of practice for our staff which articulate into the national disability standards, which are just very practical things about knocking on people's doors and treating people with respect and a range of things like that, and against the backdrop of having some people that have worked in this field for generations - families that have worked in this field for generations, and people have worked in this field for 30 years - where, you know, in the old mental health hospitals, where it was a view that basically people were there to do what you told them and the mind-set we are trying to change is quite significant. If you went to Strathmont today you would actually find many staff very committed to trying to assist people to fulfil their destinies, but not all unfortunately.

MRS OWENS: Thank you. Did you have anything else to say, Chris?

MS BUTLER: I don't think so.

MRS OWENS: I think we got a few very brilliant quotes in there.

MS McKENZIE: A tremendous submission from both of you and just some really interesting issues raised.

MR BRUGGEMANN: Thank you.

MRS OWENS: Thank you very much.

MR BRUGGEMANN: Thank you for the opportunity.

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

MS OWENS: The next participant this afternoon is Disability Action Inc. For the transcript could you each give your name and your position with the organisation?

MR MORRELL: My name is David Morrell. I'm the systemic advocate, which means an advocate directed towards achieving social change rather than working for individuals with Disability Action Inc.

MS BAKER: I'm Monika Baker, also a systemic advocate for Disability Action Inc. Do you want me to continue?

MRS OWENS: Thank you. I was just going to say thank you for coming and we did have a visit back in March and talked to Gary Sawyer and Philip Beddle of your organisation and I have to say that that was a very useful and early visit for me and I am very pleased that you both could turn up and talk to us today and we're pleased that you have given us a submission and taken an interest in the inquiry, so thank you.

MR MORRELL: With something as important as the Disability Discrimination Act coming under the scrutiny of an influential body like the Productivity Commission we're not going to not be here.

MRS OWENS: I've never heard the Productivity Commission called "an intellectual body".

MR MORRELL: No, "influential".

MRS OWENS: "Influential", right, thank you. My hearing must be impaired. You wanted to make some comments?

MS BAKER: Yes. I would like to start, first of all, by thanking you for giving us the opportunity to speak to our submission and to highlight some additional points we would like to make. We are happy to submit what we're saying here in written form within a week after this meeting, if you need that.

MRS OWENS: We'll have a transcript.

MS McKENZIE: We'll have a transcript, so if you want to add anything that you have forgotten to mention here of course you can add another submission but, if it's on the transcript, that's just fine.

MS BAKER: That's what I thought, too. First of all I want to say a few words about Disability Action. We are an advocacy service for people with disabilities. We are managed by a board, which has many people with disabilities on it, and actually only people with disabilities have voting rights, so we are working for people with disabilities and with people with disabilities, and we are directed by people with disabilities. We are funded by FACS and we assist around 400 individual people with issues per year, as well as taking up systemic issues.

Currently we are the only organisation in South Australia which is funded to provide systemic advocacy on behalf of people with all disabilities. We have some advocacy organisations which are working on behalf of a particular kind of people with disabilities, a particular kind of disability, but we are responsible for everyone, including mental health. For us, disability discrimination and the processes and institutions that are in place to eliminate discrimination are operating better, so to say.

We would like to emphasise that the introduction of the DDA and the processes associated with it have brought advantages and less discrimination to people with disabilities. There is no doubt that it has brought economic advantage for some and overall increased economic participation of people with disabilities in tourism, recreation and sports and other sectors. The DDA must stay. We think that it could be improved, and we come to how it could be improved in the course of our presentation today.

We have had some experience in dealing with HREOC matters and a lot more experience in assisting services and the community to overcome their prejudices against people with disabilities. On a systemic level, for example, we are currently dealing with discrimination and vocational education because training organisations take someone and then refuse to provide the support necessary to enable students to access lectures and learning materials for example, and that happens with hearing impaired people, for example, and interpreter services, which unfortunately got cut - which is another issue - in the state.

We are also working on reducing the discrimination against employees in business services or sheltered workshops, who get the roughest deal in our country in terms of wages and working conditions. On both these issues we're working with a variety of strategies to achieve our goals, but the Disability Discrimination Act, action plans and, for example, the Disability Services Standards, which are part of the Disability Services Act, have certainly assisted us in our work to be more efficient. However, we are also dissatisfied with the progress we've made.

People are still barely surviving in run-down boarding houses. Participation of people with disabilities in employment is still only at about 22 per cent, with many more waiting for their chance, and people with severe disabilities have still not been freed from their greatest fear - to spend the rest of their life in a nursing home or in institutional care. Not all of these issues can be resolved through the DDA and

HREOC processes but, in order to make an inroad, HREOC could be used in more ways than it has been so far.

HREOC though, under-resourced as it is at the moment, is limited in its capacity to bring about change. The current attempts of wanting to water down HREOC's role by asking them to take on an increasing educational role rather than a compliance monitoring role will further damage HREOC's ability to follow through on areas of greatest discrimination, the kind of discrimination I think we all engage in and which we often call "commonsense".

This kind of discrimination, for example, puts laws into place which are exempted from the DDA; for example, the Social Security Administration Act, which breaches people who have no ability to avoid that breaching; for example, if people cannot read letters they get from Centrelink or a job network provider, they get their income supports with help, or if they cannot attend a meeting - as I have come across in the past - because they had an epileptic seizure and forgot that the meeting was on - they got breached, and yes, people with disabilities are still to be found on Newstart allowance, and not all of them are on disability support; for example, if someone was capable of working more than 30 hours per week at award wages they are not able to get back to the - onto disability support pension and are going through the unemployment processes. We have heard of people with severe hearing impairments who got breached because they refused to attend telemarketing training. The DDA exempts the Social Security Act from its provisions, which leads to governmentally-blest and legalised discrimination.

MR MORRELL: I'll perhaps interject and note at this point that South Australia has - I think it is - two acts and three sets of regulations which are exempted from the DDA. No other state in the whole of Australia has so many exemptions to major government laws and regulations. We can only take the view that the government of the day - who should arrange for those exemptions in collaboration with the federal attorney-general - didn't want them tested against the DDA - was running for protection.

MS BAKER: We believe that HREOC should take on more public inquiries per year and get the resources for more public inquiries because we think that systemic issues could be more effectively addressed through that process. We think that HREOC would probably need at least four more full-time case workers. That is a rough estimate as we are not in a position to really look at the workload of HREOC. Our organisation has not got the resources for example to undertake further studies and consultations in systemic matters; for example, how much people are discriminated against on the basis of the Social Security Act or other questions; for example, actually look into the working conditions and salaries and what can be done in business services from an outsider point of view to assess whether that is actually so impossible to get people to an adequate level of wages and salaries.

Disability Action also believes that organisations supporting people through a DDA complaint need to be better resourced. In South Australia it seems that a community legal centre staff which is responsible for DDA complaints, and assists them, is over-worked and the centre is under-resourced. I think at the moment it has got one person and the second person is currently on leave or something, and that produces a bottleneck and it increases the time a complaint has to wait for resolution in the long run because they don't go to HREOC before they have gone through the legal centre.

If HREOC could provide training to advocacy organisations - how to best work together and support clients through the process - more people may take up the complaints process. For us, discrimination in employment is a big issue, and it does not only concern people who are going through a job application process and are not chosen because of their disability. It is also hard to find evidence of discrimination in such cases. Discrimination, once a person is employed - for example, leaving people out for promotion and professional development, or dismissing people because they have been sick - is also common, but it is easier to prove, and most of these cases are dealt with through the Industrial Relations Act and the provisions that are in place with unions and Working Women's Centre and other issues. However, assisting people with intellectual disabilities or communication impairments - who work in sheltered workshops, for example, or who are locked up in settings and institutions to which we don't really have access necessarily, unless we get called by the person - is very difficult.

I am coming now to comparators. In this case there is a comparator; namely, people with disabilities in alternate employment can be compared to people with disabilities who work in sheltered employment, and the National Council of Intellectual Disabilities and the Disability Employment Advocacy Centre in Melbourne have put this case very nicely to the Australian Industrial Relations Commission in the safety net case, and I think a few of your submissions have referred to this whole area of discrimination, as well, so there is a comparator: people in alternate employment and people in sheltered employment, and we can say people in sheltered employment or business services are not treated to the same degree - or to the same level - in terms of wages and working conditions as people in alternate employment.

However it's still very difficult to fight the case for these people because we just heard, and I agree, that the funding situation is very difficult. The protection of people with profound disabilities in business services is at risk. I have heard personally, and I want to emphasise as Richard said before, I have heard personally of many people being pushed out of sheltered workshops now and people having to undergo aptitude tests in regards to how quickly can you screw four screws into a board and if you can do it quickly enough you get the job in a sheltered workshop for 50 cents or $2 an hour. People who I would call not severely or profoundly - with a severe or profound disability - have been rejected from working in sheltered workshops because they couldn't do it quick enough.

So there is certainly a case where business services are currently pushing out those who need more support because the Commonwealth is funding services and it wants business services to become entrepreneurial and profitable and people with severe disabilities are pushed into day care options which the state funds and there are not enough day care options available. There's not enough care in the state-funded programs. There's a huge waiting list of unmet needs so it is going to be quite disastrous in the future.

There is only one person, may I point out, on the committee, for example, which works out the conditions of the supported wage assessment tool which is connected to how much people will get paid in the future in sheltered workshops. The Commonwealth government is currently developing a new supported wage assessment tool to enable business services to keep on running and yet move people up according to section 9 of the Disability Services Standards, to a similar level as in the community.

This is a question, and I'm involved with an enterprise bargaining process for a big business service at the moment. The wage rates for the employees with disabilities are put on hold because the supported wage assessment tool hasn't been developed yet and brought through. So we have these standards. They are still getting left behind and discriminated against and there is really not much we, as an agency, can do to move that on - sorry to get off the thing. That's a thing of my passion.

MR MORRELL: It does make the point though of the difficulties that can arise when you try to move economic profit-making priorities into something that is meant to provide a social service, an alternative to the mainstream workforce.

MRS OWENS: It's an uncomfortable marriage, isn't it?

MR MORRELL: Very.

MRS OWENS: Of ideologies and concepts.

MR MORRELL: And the people who stand to lose probably have the barest conception of the conflict that's raging over their heads.

MS McKENZIE: The difficulty is that there is a failure, it seems, to have regard to the circumstances of the people who are wanting to use that service.

MS BAKER: To continue, the other issue is that they are not well-represented because unions, if you think about it - why would unions have an interest in representing workers with disabilities if they, at the same time, represent workers - staff in the same organisation, because there's a conflict of interest. The staff pay decent union fees and people with disabilities are not able to pay union fees and they cause a lot of work for the unions so they are not very desirable union members, I'm sorry to say.

I mean, there are some good unions. I don't want to bag everybody. But we have had great difficulties at times in getting the union involved in matters in regard to people with disabilities.

MS McKENZIE: The other thing perhaps is that unions might take the view that it is a resource question for them as well; that because their resources are perhaps relatively scarce they will look at trying to benefit the largest group of workers and it may well be that people with disabilities are not the largest group of their membership.

MS BAKER: Precisely, and it is very difficult and complex to resource those kind of issues in comparison with other issues that are straightforward and people know about. So it is a resource that requires more research and I agree with you and we are working together with the union movement here to change that and to actually come up with some productive work, for example, with regards to enterprise bargaining agreements and fair processes so that people are really informed of what they agree to in the process.

Okay, so I'll go back in regards to how our state legislation works with the DDA and go into that point. I want to mention that we are disappointed and we still have not included mental illness in our equal opportunity legislation. In general, people are not very aware about the difference in options they have with the two or three different legislations. The Equal Opportunity Act also does not legislate for compensation payments such as the Anti-Discrimination Act in Queensland does. We think that this is also a problem with HREOC conciliations. As long as they remain confidential and come as the result of a conciliation process, there will always remain an element of compromise between the people who are asked to rectify their discriminatory action and the people with disabilities who complain. Why should people with disabilities compromise when it comes to their rights to exercise their essential human rights?

Another problem with the confidentiality is the negotiation of compensation.

Complainants have no idea how much they can ask for, for example, for pain, hurt and humiliation in certain cases, because there's very rarely any publication of such payments through the conciliation process on the web site.

MS McKENZIE: But it would be possible perhaps to be able to publish non-identifying case studies at least showing the range of amounts that were awarded. That might at least be some help.

MR MORRELL: It would also encourage complainants to complain - to be able to recognise from having looked at some of the case studies - that, "Yes, that could be me," or respondents also to understand perhaps different ways that things could be conciliated. We really lose the educational value.

MS McKENZIE: Sometimes there's also an issue, I think, as well, about unrealistic expectations. I think there's a perfectly understandable tendency sometimes for people to look at the highest figure they've ever seen and say, "That could definitely be me."

MR MORRELL: Yes.

MS McKENZIE: But of course that isn't always the case. Sometimes there has to be recognition that circumstances differ and that that's not always a realistic expectation, but subject to that, I agree with you.

MRS OWENS: HREOC does provide some information about cases. At its 10th anniversary it had a very useful publication that set out a lot of the cases but there is an issue, isn't there, about compensation being used as the so-called solution when it may not necessarily get the person back their job. The issue at hand is really not resolved in some instances. The person will get money but that doesn't necessarily mean that they have really won in the sense that the basic complaint may still not be resolved.

MS BAKER: I think that compensation serves two purposes. One, an educational and deterring sort of purpose and the other is to actually rectify the pain, stress, suffering and humiliation people have experienced.

MR MORRELL: And most especially in those situations where the person, for example, simply can't get their job back.

MS BAKER: Yes. We have had a few cases, for example, where it was not done that people can go back and do what they weren't allowed to do in the first place because people felt so embarrassed and so upset about this that the relationship could not be resurrected and why should we expose people with disabilities to take that added stress on and go through a process or go into a situation that they don't feel comfortable with, after they have been attacked or denied access or whatever, or been made fun of.

So I think it has its place but I agree with the notion you put forward in terms that compensation is not all; no. It isn't all, absolutely not. It would be better to have - I actually say in the next point that I wish we had a different system and that would be - - -

MRS OWENS: Just before we go off compensation, you said that it helps provide some education and so on but we're not talking often about very large amounts and say it's an employment issue: the employer has to pay out say $15,000, in the scheme of things. It's probably not that much money for some employers. For some it would be a lot of money but for others they'd say, "Well, I've got rid of that. It was worth doing that because it has only cost me $15,000." It may not act as a deterrent to doing it again.

MR MORRELL: That is true of large organisations but most business organisations, in particular in Australia, are not large. There are far more small businesses than large ones.

MS BAKER: I think also - how do you say that - the act should fit the crime?

MS McKENZIE: The punishment should fit the crime, yes.

MS BAKER: If it is a huge organisation like a public - a big government organisation that repeatedly discriminates, then I think it will hurt them after a while if there are a few cases where they have to pay $15,000. Larger employers will tend to do it more often. Smaller employers won't do it that often.

MS McKENZIE: Because they have more employees.

MS BAKER: At some point someone will say, "Look, this is just madness. Why do we keep exposing ourselves to these kind of processes and costs?" because it's not just the cost of the compensation payment, as you know, it's a lot of resources and lawyers' fees and other costs involved in it. I think compensation has a place but overall what I think would be much better would be if we had a system which puts the burden of compliance on the community and that monitors compliance and automatically issues fines for non-compliance so that means it takes it away from the person with the disability who has to basically go through life and protest against discrimination at every corner, every minute of their lives, which is possibly exaggerated but very, very often.

MR MORRELL: No, it's not exaggerated. I've known people who could, quite literally, have complained of discrimination five times a day on most days of the week. Advocacy complaining could become a lifestyle.

MS BAKER: They are not fictitious claims of discrimination, they are actually true. So instead of putting the onus of pursuing these claims and going through the process on the person with a disability, if we had regulations and inclusive policies in society, we could make sure that these policies are confirmed. One of the big things in regards to employment that I think we should do is, for example, affirmative action. The DDA and HREOC will not overcome the discrimination in employment. That can only be overcome through affirmative action.

In Germany, where I come from, we have a regulation that every employer, above 20 employees, has to employ 10 per cent of his workforce from the pool of people with severe disabilities - profound disabilities, might be the right translation.

MRS OWENS: Every employer?

MS BAKER: Every employer who employs more than 20 employees has to employee 10 per cent of their work-force from a pool of people with disabilities.

MS McKENZIE: And the support for those is then to be - the cost of it - borne by the employer?

MS BAKER: No. The support services and systems are similar to what we have here so people with disabilities are supported at the workplace through government, but there is the provision that you have to look for people with disabilities if you want to employ more than 20 people on a regular basis. I think we can get to a level where we say there are about 20 per cent of people with disabilities in our society so if we don't want to go and say, "This is profound and this isn't profound," we just simply say, "Why don't we go up to a level of 20 per cent of people with disabilities?" and they have to show that they have a disability. That way we also overcome the issue of not wanting to disclose the disability and not being able to receive the right supports and fear of prejudice by the employer.

So it would just correct the system and turn it upside-down in some way, I think. I've got the feeling it would put the onus of compliance on the employer and the monitoring on the employer, not on people with disabilities to find evidence that they have been discriminated against.

MS McKENZIE: You think the reason why really that's justified is because the situation is not correctable in any other way or at least not at this time?

MS BAKER: Yes, I think so.

MR MORRELL: The Disability Discrimination Act has probably been least effective in protecting people's jobs once they're in employment and certainly ineffective in getting them through the employment application process. There has to be a method other than disability discrimination legislation, to make a real difference there. There could be the possibility, for example, if a satisfactory DDA standard on employment could be negotiated; that might help. But the only attempt at that died in about 1997, I think it was, when the government and community sector departments couldn't reach agreement, and that's been a dead duck ever since.

MRS OWENS: Some said that with the standard, it's much harder to develop a standard on employment; it's harder than, say, transport. With transport you can say, "Well, buses have got to have access in this way and this way." With employment, it's vaguer. Do you think you can overcome those problems? Some said that with, say, an appointment process, you could set up a standard where you go through certain steps and ask certain questions, and you could set up a standard that would work, whereas others said, "Oh, no, you'd better just have some more generic, general guidelines."

MR MORRELL: The question of what happens when you start to develop a standard is interesting. I was involved on the sidelines in the early days of developing the DDA standard on accessible transport. The main work on that was done by my then colleague Maurice Corcoran, who I see will be appearing here tomorrow.

MRS OWENS: Yes.

MR MORRELL: Transport appeared quite clear-cut at the start and then rapidly mushroomed out into a whole lot of other issues, that were about different modes of transport - the initial focus had just been on buses - different modes of transport, and all of the infrastructure associated with transport.

MS McKENZIE: Transport infrastructure, yes.

MR MORRELL: Employment, it can appear as though it might be vague and hard to get a handle on at first, but I suspect that with closer looking at the problem, it won't be so hard. A lot of the issues will be about the physical kinds of plant and infrastructure issues, similar to ones that have been already addressed in the transport standard, specifying paths of passage and heights and things of that nature.

Then there will be things about making accommodations in, for example, office environments. Again, they can be fairly straightforward - a different kind of desk, a different kind of computer equipment. Then, in perhaps a less tangible area, where you might be talking about how people make judgments, we need only to go back to the big body of work that was done, particularly in the mid to late 80s, on equal employment opportunities, where the key thrust there was to get people looking at what are the inherent requirements of the job; what does a person actually really need to do, and start from that point. If you run your interview assessment process any other way, then you'd be in breach of the standard.

Having started from that point of looking at the inherent requirements of the job, you would then be required by the standard to move on to looking at what are the practical accommodations that can be made. American research has shown that very many of those accommodations don't cost terribly much money, and you wouldn't run into the unjustifiable hardship defence terribly often or terribly quickly.

I haven't got the research at my fingertips, but I could certainly provide it to the commission if you're interested. The average cost of making an accommodation in the workplace was around $US500, I think. The Americans have also backed that up with quite a substantial database and practical assistance service, like a one-stop shop for solutions, for employers who are not familiar with how to go about making adjustments in their workplace. So again, if the problem is, "I don't know how to make that adjustment in my workplace," well, I'm sorry, the precedence committee or whatever it's called - I've forgotten it's name, but again I can find it - has the solution sitting there ready and waiting for you.

So an employment standard and a variety of assisted mechanisms are entirely feasible, and I think would have a huge impact on the participation of people with disabilities as productive workers, in reducing their drain on the social security system and also in increasing their role as consumers, with all of the impacts that that has on other people and their capacity to work.

MRS OWENS: Would the employment standard also include clauses on affirmative action? Are these mutually exclusive, or do you bring the two together?

MR MORRELL: The Disability Discrimination Act doesn't make any provision for affirmative action. Therefore, anything like that couldn't be actually in a standard made under the Disability Discrimination Act.

MS McKENZIE: Because it's not elaborating on provisions in the act.

MR MORRELL: No.

MRS OWENS: But we're reviewing the act; I mean, at the moment we're reviewing the act. We might make recommendations that the act change. I'm not saying we'll make a recommendation on affirmative action, because we need to think this issue through. But you don't necessarily need to take the act as a given when you're going through your thought processes on the standard; it's a matter of how would you bring a policy on affirmative action together with a process to develop an employment standard. Does the standard embrace affirmative action, or does affirmative action get embraced in the legislation, or do you do both?

MR MORRELL: Yes. I think I have a clear answer for that. In the case of standards, particularly for example the work that's now being done on access to premises, and I think to some extent in the transport standard, they frequently call up and make reference to other legislation. So I'd suggest that an employment standard would do that; it would call up separate but complementary legislation that should be in place to ensure affirmative action, and you would probably take your model for that legislation from the - I think there's a federal Affirmative Action Act for women, isn't there?

MRS OWENS: Yes.

MR MORRELL: Yes. So I think I'd use that as a starting point and then call it up - and have that as complementary legislation, and call it up in a standard, just in terms of not breaking any more new ground than it's absolutely necessary to break.

MRS OWENS: Yes. I was going to come back to Germany for a minute, because I thought what you said was very interesting. What happens to the other employees without disabilities? Do they complain if they apply for a job and they get tipped out because the person who wins, who may not be as qualified as them, gets the job because the employer has got to meet this quota?

MS BAKER: I don't think it works like that. I think it works on merit still, and qualifications. It's very much like our affirmative action policy we have at Disability Action. So if someone applies for a job at Disability Action, we take people with disabilities and without disabilities.

MS McKENZIE: So where merit is equal, you'll meet your quota?

MS BAKER: And where merit is equal, we take the person with disabilities, and that is where it's legislated in Germany as well. So no-one can complain. I think that is the way our affirmative legislation in regards to women is working too. I'm not quite sure; I should really read up on it, but it's something like that.

MR MORRELL: That in itself is a fairly weak version of affirmative action. It doesn't actually give positive points for having a disability, let's say, in this case, and because it insists that first of all people must have equal merit and then will take the person with the disability, it doesn't recognise the historical antecedent to the person ever getting to that job interview, which is that they've already had to face a lot of discrimination in the education system and in the transport services to get to where they're going, and all that kind of stuff.

But if we could at least get the level of affirmative action in Australia - and I'm talking in the context of the present political climate - if we could at least get the level of affirmative action where people were taken as - if it was a matter of equal merit then the person with the disability gets the job - that would at least be helpful.

MRS OWENS: That would be a start.

MS BAKER: Also don't forget, the other provision is that you actually have to employ 10 per cent of people with disabilities, and that gets actually checked - you know, whether employers are doing it or not. So no matter how, there has to be a certain amount of people with disabilities working in the organisation, it doesn't matter on what level.

MS McKENZIE: So is there an inspectorate who goes around inspecting?

MS BAKER: I can't really tell you exactly how that works, but I believe it has to do with - - -

MS McKENZIE: There is some monitoring?

MS BAKER: Yes, there is some monitoring. It's similar to how we report about the number of women in executive positions.

MS McKENZIE: Okay. So the report is on the employer?

MS BAKER: Yes. The onus is on the employer to report on it and to ensure that the level is kept.

MR MORRELL: If the commission is interested in following that idea up particularly - and I can see that you're lighting up on it a bit - - -

MRS OWENS: We are.

MR MORRELL: Would it be more appropriate for your people to follow it up, or for Monika, who perhaps speaks German and so on, to undertake to provide some further information to the commission?

MS McKENZIE: If you would like to make an extra submission, we would welcome it.

MS BAKER: Okay.

MS McKENZIE: Or if you'd like to send us a list of references.

MS BAKER: Yes. I'll see what I can get together.

MRS OWENS: I still have just a bit of a problem. Suppose you've got in Germany an employer who wants to have 100 staff, and so that means he or she, the employer, has to have 10 people with a disability. Okay, he's got a certain number of staff now, and he's just employing that last person. He has two people go for the job, and one person has a disability and the other one doesn't. Technically he has really got to take the - he's got nine people with disabilities at the moment, and the person with disabilities actually isn't as well qualified as the person without, and he's got the 1 per cent to pick up still.

MR MORRELL: Yes.

MRS OWENS: Is he going to take the person with the disability who is not as well qualified?

MS BAKER: I'm not sure about those border cases; I can't tell you. What I've heard, in rumours circulating through Germany, from people with disabilities, is that a lot of people pretend they have a disability, to get the job.

MR MORRELL: There has to be a mechanism clearly, which is something Monika could look at.

MS BAKER: I'm pretty sure there are some employers who are using it one way or the other, and that there is an option to abuse the system. But I believe still that it is much better and more effective, in getting people with disabilities into workplaces, to turn it around that way, to kind of come from the compulsive kind of, "You have to employ people with disabilities, you can't get away from it" stand, rather than from, "Oh, if you're nice and employ someone with a disability, we give you some support."

We're running the Employer and Employee of the Year Awards here in South Australia, and we honour and recognise people who have employed people with disabilities, but I still think there could be - we hardly get any media. I mean, it's not taken up by the community as something that you can get enthusiastic about and spread out all over the newspaper; it's not as famous as the Prime Minister's Awards. But I think, you know, why should we actually recognise employers that employ people with disabilities? They're part of our community.

MRS OWENS: But you might be able to do that without necessarily going the German route and having a quota, where you will get into these borderline issues which could be a bit tricky, or where people say, "I've got a disability" to get the job, or the employer says, "Let's say you've got a disability, because I've got my quota, and I know you've had a little bit of trouble with your health; we'll put you down as being part of the 10 per cent." I'm sure it's subject to abuse, as soon as you've got something called a quota.

MR MORRELL: There was a similar scheme in the Canadian province of Manitoba, where they required 6 per cent, and that was indeed a problem they had. Some people had - they had what could only laughably be called disabilities.

MS BAKER: However, it's been an issue. I'm really happy to go and have a look exactly how it works in Germany, because it's been running for many years now and, yes, it had some problems. But if they can resolve those problems, then I'm sure to a degree at least - it's the same with tax people, it's the same with people avoiding paying tax; it's the same with defrauding the social security system.

MS McKENZIE: It ought not to lead to dodging the system at all.

MS BAKER: It's human nature, and I don't think we can avoid that in the long run. I just want - - -

MRS OWENS: We would appreciate it, if you've got any information on the system; that would be wonderful.

MS BAKER: Yes.

MS McKENZIE: You might want to deal with your other issues. Did you have other issues you wanted to raise?

MS BAKER: Yes. I just wanted to add one important thing about comparators, and I think David has a whole list of things to say.

MR MORRELL: We'll check how we're going for time when Monika finishes, I think.

MS McKENZIE: But certainly, yes, mention them.

MRS OWENS: You raised the issue of comparators in the submission, and I wanted to ask you about that. So, yes.

MS McKENZIE: Do you want to add anything to it?

MS BAKER: Yes. We've got a little example. What we're saying is that comparators don't work always. Because, for example, if you look at people who are in institutionalised care or need special assistance that nobody else needs, so there is not a comparator in terms of an able-bodied person, you can't say, "Well, this person should get the same service like that person" because that person doesn't get that service and doesn't need it. So where are the standards which we come into? On the one hand we can't use comparators in all cases. On the other hand, we could use comparators, and we have this example about the transport concessions.

MR MORRELL: It might appear that there's no comparator, because only people with disabilities use the transport subsidy scheme and get subsidised taxi service; but in reality there is a comparator, as Monika is going to go on and demonstrate.

MS BAKER: Yes. For example, it costs the state government around $90 to subsidise passengers on the train line to Belair from town for 7.5 kilometres - a cost for 7.5 kilometres. For the state government to subsidise a person on a bus it costs them $21 or $25 per person. But at the same time they subsidise a person with a disability, with a mobility impairment, only with $7.50 for the Access Cab travel.

MR MORRELL: The reason we've chosen 7.5 kilometres as a figure was that is the average distance of an Access Cab journey.

MS BAKER: So you've got a state government which happily subsidises everyone in the state using public transport with $90 for 7.5 kilometres, or 21 for the bus, but they complain about the $7.50 for people with disabilities that cost them to put them in the Access Cabs.

MR MORRELL: Yes, and when you look at the service provided by comparison, the person in the Access Cab has 60 vouchers for six months; that's enough for one and a fraction round trips per week. If they happen also to need an accessible taxi, rather than being able to use a voucher in a normal one, they have a ridiculously long wait times and unreliable services quite often. So the amount of the subsidy provided is far less and the quality of the service is grossly inferior when compared to the kind of subsidised transport service that the state government provides to people who don't have disabilities. We are using that as an example of how, with a bit of creative thinking about comparators, we can probably actually run some very powerful and influential arguments that will have quite an impact on economic and social participation and on the distribution of resources.

MS McKENZIE: I have to say I think that's an interesting - it may be difficult legally to make that definition stick - - -

MR MORRELL: Probably, yes.

MS McKENZIE: You would know that.

MR MORRELL: We’re exploring it.

MS McKENZIE: It’s not just because of the comparator problem; it’s also because of the not materially different circumstances problem. It may be, however, that although that might not stick for direct discrimination, it might for indirect discrimination where the not materially different test doesn’t apply.

MR MORRELL: Our counter to the argument about not materially different is that we are talking about a group of people without disabilities being subsidised on public transport and we’re talking about a group of people with disabilities being subsidised in the taxi system precisely because they can’t use normal public transport. That might, at first, appear to be not materially different circumstances but in fact the whole rationale of the policy is that the taxi service becomes an extension of the public transport system, and we can show state policy documents that refer to the taxi service in that light, as being just an extension of the public transport system.

MS McKENZIE: There are a number of difficulties but certainly one way around some of them might be to look at some test which doesn’t involve a comparator, that just looks at - perhaps like the ACT does, unfavourable treatment.

MR MORRELL: Yes.

MS McKENZIE: But clearly not looking at a comparator, as the loss of that treatment is on the ground of disability.

MR MORRELL: Yes, and that’s another line that will need to be followed up. We’re still exploring the comparator line at this stage. But you are quite right, that is another line.

MS McKENZIE: You’re looking at it and trying to see whether the current situation can be - the current mechanisms can be used for complaining.

MR MORRELL: Yes.

MS McKENZIE: I’m looking at it from the point of view: how can we make the situation clear? I mean, all of us would acknowledge that it’s a very hard road to hoe and it may be that - and you want to deal with what you say is a clear inequity. It may well be that there is a better, clearer, simpler way that can be organised.

MR MORRELL: Yes.

MS BAKER: I actually have finished with my part, and David has still a few more points to make. Thank you for your time.

MS McKENZIE: It has been excellent, very helpful.

MR MORRELL: I've probably got about 12 minutes of material, if I just talk straight through.

MS McKENZIE: Sure.

MR MORRELL: I'm wondering how we're going for time.

MRS OWENS: Don't worry about it.

MS McKENZIE: Just go for it; don't worry about time.

MR MORRELL: And whether I am about to turn it into a submission.

MS McKENZIE: Don't worry about time.

MRS OWENS: As long as we're not holding you up.

MS BAKER: No, that is good.

MR MORRELL: I wanted to talk about the issues that you may have heard about before ad nauseam, but you're going to hear about them again - about the practicalities of making a complaint for an individual. Then I also wanted to share some reflections on some of the aspects of the act that aren't about individual complaints, such as standards, action plans and so on.

MRS OWENS: We might just let you go through it and we won't interrupt you.

MS McKENZIE: Yes, go for it. We'll do our best not to interrupt you.

MR MORRELL: If you're comfortable about the time, so am I; that's not the issue. I've turned my phone off so I have no idea what the time is. I thought we might be right on the border.

MRS OWENS: No, that's fine. It's 10 to 1 and our next participant is at 1.30 and if we get - like we seem to each day - about 10 minutes to go and grab a sandwich and - - -

MS McKENZIE: We've developed a great skill of eating very quickly.

MR MORRELL: Yes, I think all of us can relate to that. It wouldn't be the first time I've argued for a client around a sandwich. Okay. The DDA's effectiveness - and I'm sure you've heard it - is severely limited by the difficulties that individuals find in making complaints. We'd like to argue that more investment in services to help people make their complaints would actually lead to greater - of course it would lead to greater effectiveness of the services, but would also actually lead to greater efficiency in the utilisation.

There are so few resources that are dedicated to helping people to use the DDA that what resources there are don't provide anywhere near to a satisfactory or high quality of service. The services are running on the stretch, on the smell of an oily rag. More money invested in these services would mean not only more people assisted, but better quality assistance. More investment in that sense would be more efficient and more effective. It's hard to make a complaint if you need help to do so, because there aren't nearly enough legal aid or advocacy resources. Most of the community legal centres refer DDA work to our local DDA legal service. They just shove it off. Some of them will take it on, but a lot won't.

There are five advocacy services funded by the Department of Family and Community Services, one of which is Disability Action, but only one or two of those have got the skills and resources to help people with DDA complaints. I'd suggest only one of those really follows it all the way through, and that's the Disability Advocacy and Complaints Service. Disability Action tends to provide assistance at the start of the process, but we don't have the resources on staff to help people follow all the way through with a complaint. We tend to refer to the local DDA legal service. That legal service, for the whole state, for 330,000 people with disabilities in South Australia, has got two workers. It's never had more than two workers; often less than that - a good deal less than that in full-time equivalent terms. As we've just heard, one of those I think is currently on leave.

I meant to come back on that point about the five FACS funded advocacy services. The level of funding that we receive is enough to provide about two hours of a paid advocate's time to every person with a disability in South Australia once in 10 years. If you've got a complaint, we can give you two hours of our time; don't come back for 10 years. That's really the level of funding we're operating on.

Adelaide seems quite incapable of supporting a decent, organised pro bono legal aid scheme among its lawyers. Disability Action has several times lobbied and pushed for this to happen, but mostly coming back from the Law Society is the argument that there just aren't enough lawyers to support anything like say, the public interest law clearing house, or whatever it is properly called in Sydney - PILCH. That would be a wonderful thing if we could get it going here. The net result then is that a client might come to Disability Action or any of the other four advocacy services looking for some help to run a DDA complaint, or any other legal matter for that matter, and our advocates are forced to hunt high and low to find a lawyer who can assist them. It consumes a great deal of our time and reasonably often we're not successful and it provides a great impediment to the person actually running their legal matter, which could include DDA legal matters.

Moving on, before you even make a complaint, it can be very hard to find out where and how to complain. For starters, it can be hard to conceptualise that you've been discriminated against, because information about rights is not part of our mainstream media, not part of our culture, not taught very much in schools, not part of the cultural ethos. Until that's turned around there is an awful lot of people out there who are being done to the nines who actually won't conceptualise there is discrimination or anything they should be doing something about. They won't feel good about it, they know it doesn't feel right but they actually don't know what to do about it. Obviously I'm pointing to the need for more educational work, broad based in the schools there.

If you can get past that base then you find many people with disabilities are not well connected to community information sources. That's a general characteristic of people of a lower socioeconomic status. We've said earlier that many people with disabilities are not working or working in low-paid jobs. You find that many people with disabilities have low educational attainment because of all the educational discrimination that's gone on. They are also isolated by poverty and by inaccessible environments - for instance people with severe physical disabilities or with low or no vision - and by inaccessible systems - for example, people who are blind, deaf or illiterate. So you've got a population there of people who tend not to be as well connected to information resources.

Then you get disability advocacy and legal aid services who are already up to the eyeballs with work and are not about to go out and advertise too broadly and pull a lot more of it down onto their heads. We put our information out but we don't have the budgets and frankly, we don't have the inclination to put the information out terribly broadly because we know we'd only be making promises to people that we are not in a position resource-wise to keep. That kind of situation, where it can be hard to find your way to a place where you make a complaint and then hard to make the complaint, can lead to some pretty unfortunate events. I'm just going to invite Monica here to share a little story about somebody …

Continued in Transcript-in-Confidence

Note: Part of the July 3rd transcript for the Adelaide public hearings of the Disability Discrimination Act Inquiry has been treated as confidential, on the grounds that it may identify a person with a disability.

Continued from Transcript-in-Confidence

MS BAKER: He went to the Equal Opportunity Commission. Unfortunately, this person has a mild intellectual disability and also had a severe mental health illness reaction - mental illness reaction from the whole stress that came as a result of it. So there was some question in the Equal Opportunity Commissioner, for example, because the result of the action had to do with mental illness.

MS McKENZIE: So we are talking about HREOC, not about - - -

MS BAKER: No, we're talking about EOC. He went to the EOC.

MS McKENZIE: He went to - South Australia, okay.

MS BAKER: And then came to an advocacy agency to get assistance. But he had already put the complaint in and the problem was that the Equal Opportunity Commission wasn't clear whether they could deal with it, because it had consequences of mental illness and they don't deal with mental illness. It's not part of their thing, so there was this question and we couldn't withdraw and go to HREOC because you can't withdraw. So he was caught in between and the matter didn't really get a result favourably for him in the end.

MS McKENZIE: You can't withdraw?

MS BAKER: No, as far we heard, he couldn't withdraw.

MS McKENZIE: Under the South Australian act.

MS BAKER: At least he can't withdraw and go to HREOC then.

MR MORRELL: Yes, that is the story. You can't run an issue - - -

MS BAKER: You can withdraw and stop, but you can't go to HREOC then and try to get the matter up through the HREOC legislation.

MR MORRELL: The issue was basically that the guy had - initially it was physical problems that were presenting and on that basis he was advised to go to our state Equal Opportunity Commission, who didn't realise until some way into it that there were all these other issues involved. Basically a better funded, better resourced system would probably have caught that situation earlier and prevented it from happening in the way that it did.

MS McKENZIE: And that's a really unfortunate incident, too, of the interaction between the two pieces of legislation causing grief.

MR MORRELL: Absolutely, yes. I wanted to go on and make some comments about enforcement mechanisms. Based on our practical experience around Disability Action, we were kicking around this problem of how do you actually get to the point of an enforceable decision if conciliation fails, and you can't afford or don't dare take the risk of going into the Federal Court because despite earlier assurances the costs would not be awarded against people with disabilities, some costs have in fact been awarded against people with disabilities and the deterrent effect of the message out there is very powerful: don't go to the Federal Court.

We were thinking that actually it might be more efficient and make the whole system more accessible if there was some non-legal tribunal that perhaps had the power to make enforceable orders along the lines of an AAT or something like that, so you might have a three-stage process. Conciliation in HREOC - all right, that fails. Rather than going straight to the Federal Court, you're into a tribunal where lawyers are not involved, where the processes are much more informal, and if that fails, okay, you've still got the Federal Court as an option.

MS McKENZIE: Won't you still have a problem with orders, though? You know the difficulties about the judicial power - - -

MR MORRELL: The same constitutional issue that caused the matter - - -

MS McKENZIE: Yes. Won't you have the same problem with a tribunal if you want to have the same orders?

MR MORRELL: Yes.

MS BAKER: Why doesn't it cause trouble with the AAT, for example, with the Administrative Appeals Tribunal?

MS McKENZIE: Because what the AAT does is a bit different. It really is decisions and it deals with them on the basis of a rehearing, and my understanding is - but I can be corrected on this; I haven't looked at their legislation for a long time. But my understanding is that there's not the same provision about the binding nature of orders for example for compensation and so on. In other words, there wasn't an attempt as with the HREOC Act to try and turn these into orders of the Federal Court.

MR MORRELL: Okay, right. I think what we've got here is an idea that we floated and perhaps should have researched a little more thoroughly first, but the essential thing we were trying to achieve was something that would be cheaper to operate, more efficient therefore in terms of the use of legal resources. That would concentrate the very extensive resources of the Federal Court on the relatively few cases where they really need to be concentrated, and it would also be more affordable and less intimidating for people with disabilities, and while the solution that we've come up with may not have legs - and we acknowledge we should have researched it a little more thoroughly, we had to prepare this a bit on the sly - - -

MS McKENZIE: No, no, no, I'm not criticising you at all. I'm just raising questions here.

MR MORRELL: Yes, and the problem we're trying to solve needs to be solved.

MS McKENZIE: Absolutely.

MR MORRELL: The Federal Court can make enforceable orders but it's almost like saying that you can get your enforceable order if you can make your way past the guard dog. There's such a deterrent effect there, the fear of the costs being awarded, and of course the difficulty of getting legal aid or anything like it in first place. Give us a break!

I wanted to move on and finish with some comments about some of the social change strategies of things that are not connected directly with individual complaints. The DDA is weak in that it relies on the individual complaint mechanisms with all of their defects that we've been talking about, and you've no doubt heard (indistinct) about, but the DDA has some other really good uses. Obviously there's the general educative work of HREOC, which we think should continue, although HREOC shouldn't be blunted by being encouraged to move away from the sharp end and only focus on education.

HREOC also puts out its advisory notes, and then, one level up from there, the standards, the first one of which we've finally finally got - the action plans, which can encourage organisations to reflect on their work and seek to have best practice and manage their risks about discrimination; the public inquiries - and these all fit together into a package, the total effect of which can be quite significant and valuable. First of all, the educational work and the combined effect of all the other measures, as I've mentioned, has now got the notion pretty well on the table, that there is such a thing as discrimination against people with disabilities, and it's not something that should be done. It's at least something where there's a question that can be raised, rather than something that people would look blankly at you about, as they might have done 20 years ago.

HREOC's inquiries into large-scale discrimination issues have put a lot of information about particular discrimination issues into the public record, where it can be used for all kinds of other activities by determined advocates, as well as by HREOC in making policy recommendations. That's immensely valuable. Organisations like ours would love to be able to do that kind of work. We can look at the way in which you're conducting your inquiry here and say, "We wish we had the resources of the Productivity Commission or even a HREOC to do that sort of work." We don't. So it's immensely valuable to have an organisation like HREOC or the Productivity Commission doing these inquiries.

HREOC's advisory notes on discrimination provide more detailed information which organisations can choose to act on or not - it's entirely voluntary - to reduce their business risks and to give them a market edge, and the Disability Discrimination Act action plans provide a more methodical way of going about that for the organisations which choose to undertake them, but so far that's only a tiny minority of the organisations in the whole country that have done anything like that, but the DDA action plans provide a brilliant way for organisations to integrate, reducing disability discrimination into their normal strategic and business planning cycles. We think that's a great tool, and there needs to be a lot more resources put into getting disability discrimination issues considered as part of mainstream strategic and business planning, which a DDA action plan can do.

The DDA standards will eventually provide much more certainty to businesses and governments and potential complainants about what counts as disability discrimination in particular areas. They don't stop anyone from running a DDA complaint but they make it more likely that - having looked at a standard and still decided to run a complaint, it's more likely that you're going to win it, and it also means that you're less likely to even need to run the complaint in the first place, because hopefully all kinds of organisations looking to manage their business risks and give themselves a commercial edge will have looked at the standard and moved to implement it.

So standards have tremendous potential for making more efficient use of legal resources, meaning there's less need to use them, and also for making more efficient use of business resources by simply giving business and, for that matter, government more potential to plan more rationally and effectively, and over time for a managed process of DDA compliance. But, that said, the act is yet to realise anything like its full potential in terms of DDA standards or, for that matter, actions plans. We've only got one standard. That's the one on accessible transport, after about eight years of intense work, and I was involved in an advisory role in a good deal of that.

We've also still got the education standard as the next one that we might get one day or some day. One on access to premises again might occur sometime in the next few years. Employment, as we've heard, need to be revived. It's a dead duck. I myself was on the DDA standards project, which is a national organisation that has been involved in coordinating input from people with disabilities into the standards development processes of the Attorney-General's Department. My role there was to coordinate input on a standard which was a subset of the DDA standard on access to Commonwealth laws and programs. It was felt that most other areas of access to laws and programs would be picked up in the other standards.

The one that wouldn't be picked up was access that was impeded by information and communication issues. That was my role, to develop discussion papers, encourage the attorneys-general to do work on those issues, and they have just in the last year declined and said, "No, we're not going to do that. There are other more pressing matters." And this, at the start, as we're getting more advanced in the information economy, the information age, the attorney-general has decided to drop work in that area. I mean, excuse me. What kind of timing is that?

MRS OWENS: Can I ask you, David, whether the attorney-general gave any reason for deciding to drop that?

MR MORRELL: Yes, other standards were regarded as being nearer to completion and within their resource base. They decided to make a resource allocation decision and focus them on the completion and early implementation of the transport standard and work on the access to premises and education standards. I would have thought that, with even a modest amount of resourcing, they would have been well capable of doing development work on other standards areas, such as employment and information communications, and other aspects of law and programs. It's really not a high resourcing requirement to develop those kinds of standards.

MS McKENZIE: Some of the submissions have mentioned the requirement that information technology purchased or put in place by Commonwealth government departments - tell me if I'm wording this too broadly - has to accessible.

MR MORRELL: Yes. What's happened there has been - and I was going to mention this - there's actually been a surprisingly powerful and unexpected impact of one of the HREOC advisory notes or guidelines. I wouldn't count on this phenomenon to recur terribly often but it is an interesting story. HREOC put out an advisory note on access to web sites and in that they recommended that some

American standards put out by the World Wide Web consortium on access to web site content should be adopted as the best practice to be followed in Australia, so this still only as the status of an advisory note, but what then happened was that the various Commonwealth agencies and to some extent state ones followed that advisory note, decided to implement the W3C guidelines as their standard for their web site access - all still entirely voluntary.

Then what happened in June of 1999 was that the momentum gathered strength sufficiently that it was brought up in a thing called the OnLine Council, which was a council of the state, territory and Commonwealth ministers responsible for information and communications type issues. Principally the responsibility of that council was to drive the development of the information economy in a national coordinated way. The OnLine Council decided that actually they would adopt the HREOC advisory note with its incorporated recommendation of the W3C standard, and that they would go on from there to recommend to adopt a policy at the state and Commonwealth levels that also VIT hardware should be accessible, but principally the focus has been on web site access, and then that's translated through - for example, there's been a lot of work done by NOIE, the National Office for the Information Economy, and DCITA, the Department of Communications Information Technology and the Arts at the Commonwealth level, and here at our state level it's been very very patchy implementation of that policy that was adopted by the OnLine Council,

Even though it's a pretty high-level thing, part of the COAG framework, the implementation here in South Australia has been very patchy, and I can cite you a symbolic but illustrative example. Our own state parliament web site is not accessible, even though there's been a COAG level commitment that all of the government web sites should be accessible. So interesting story: advisory note, calling up overseas document, ends up at the COAG level, which means a quite strong policy commitment would just be fairly strongly acted on at the Commonwealth level but very patchily acted on at the state levels, and I wouldn't count on that mechanism to work again.

MS McKENZIE: Happening again.

MR MORRELL: No. We need a standard.

MRS OWENS: So what you're really saying is that wasn't a bad outcome from that process.

MR MORRELL: No, but it was - - -

MS McKENZIE: Unexpected.

MRS OWENS: But what would be more ideal would be to have the standard in place?

MR MORRELL: Yes. We can't rely on serendipity to solve our problems.

MRS OWENS: No. That's a nice quote there, too.

MR MORRELL: I'll wrap up in the next very few minutes. In fact I can pretty much - I'm just reading through to see what Monika may already have covered.

MRS OWENS: No, that's fine.

MR MORRELL: I think the rest of it has been pretty much covered by Monika. The main points that I was going to make were that the burden of complaints on individuals - and in particular this will be the case for monitoring the implementation of the standards, the first one of which we have. It's going to be very difficult to achieve a systematic monitoring of the standards with their very broad breadth of application. I mean, the transport standard applies to all forms of public transport which you could ever pay money to ride on in Australia, with a very very few exceptions, and it has a 20-year time frame to achieve the bulk of its implementation, and then a tail going out to 30 years. That's transport.

We will one day end up with education and access to premises, probably within the next five years. If we rely on individual complaints handling to monitor those, given the woeful state of the individual complaints mechanism with HREOC, it's not going to work. Monika alluded to the need to have some kind of body that could actually take a more proactive role in monitoring compliance with the DDA. That perhaps has been difficult while we haven't had standards, but the standards provide a much greater degree of specificity and I think that, in the light of the standards providing the extra specificity that makes a kind of monitoring mechanism more feasible, and in the light of the long time frame and great breadth of the standards, if we're going to have a standard, we need to have something like an ACCC or an Office of Consumer and Business Affairs or an extension of HREOC that actually has a proactive monitoring role and will go out and take action, like for example the American Department of Justice does, if a standard is not being met, and that obviously has a resource implication, but if I can go back to one of the things that happened during the transport standard.

We at one point in about 1999, I think, had the transport standard up to a fairly advanced point of development, and then it was knocked on the head and had to go back around for another major phase of redevelopment because there was some Crown Law advice, and there may have even been a High Court opinion, I'm not sure, but what it said was, "No, your so-called transport standard is not sufficiently specific. The very essence of the standard is that it should provide certainty, otherwise you can't really call it a standard." So the transport standard had to be redeveloped so that it actually provided that higher degree of certainty.

Well, I would extend that argument by saying first of all obviously if you have that high degree of certainty that we now have in the transport standard, and must therefore have in the other ones, monitoring becomes feasible, but also if you actually have a standard with a high degree of certainty on paper but don't monitor its implementation and leave it to complaints processes to enforce, you're still going to end up with a very ad hoc situation. You're not going to have the certainty that was the very reason we had to redevelop the standard in the first place.

So, yes, if we're going to have a standard and increasing numbers of them, we need a monitoring system that is proactive and doesn't rely on individual complaints handling, and that's all I've got to say.

MS McKENZIE: That was just excellent.

MRS OWENS: Thank you very much.

MS McKENZIE: Thank you for an excellent submission.

MRS OWENS: I think we could probably go on all day on your submission and all the issues you've raised, but I'd like to thank you for the thought processes and the ideas that you've come up with. I think that your idea about the tribunal - we'll have to investigate that and just see - - -

MR MORRELL: It's a problem, and we haven't got the solution yet.

MRS OWENS: But I just appreciate the fact that you've been trying to come up with some solutions for us because we're getting a lot of examples of all the concerns and all the problems, but we have to, at the end of the day, make recommendations about how to move forward. I'd also like to thank Monika for telling us about Germany, and if you could get more information about that, that would be appreciated.

MS McKENZIE: It's an excellent submission from you both, and very helpful to us.

MRS OWENS: Thank you. I wish we'd allocated more time for this discussion but maybe later on in the process we can talk to you again.

MR MORRELL: Feel free to come back to us.

MS BAKER: You're always welcome to visit us again.

MRS OWENS: Yes. Thank you.

MS BAKER: Thank you for listening.

MRS OWENS: We'll now break and resume at 1.35.

MRS OWENS: We will resume. The next participant this afternoon is the Association of Independent Schools of South Australia. Welcome, and I have to say we are having excellent participation from the Association of Independent Schools, the National Association and also in Western Australia. Earlier this week we talked to the Association and I addressed the Association meeting in Melbourne a few months ago. So I think we are very appreciative of the interest that you are taking in the inquiry. Could you each give your name and your position with the Association and your respective schools, where that's relevant, for the transcript.

MS BURNS: Libby Burns, Special Learning Needs Coordinator with the Association of Independent Schools.

MR LE DUFF: Gary Le Duff, the Executive Director of the Association of Independent Schools.

MR ELEY: Russell Eley, I'm the Deputy President of the Association, of the AIS, and principal of Kings Baptist Grammar School, which is in Wynn Vale, here in Adelaide.

MS MAYRHOFER: Adele Mayrhofer, principal of Suneden Special School, which is an independent school.

MRS OWENS: Thank you. You have some opening remarks you'd like to make for us?

MR LE DUFF: Yes, I do, on behalf of the Association of Independent Schools of South Australia. First of all, thank you for the opportunity to engage in further consultation on this significant legislation. We, as an organisation, actually consider there are considerable benefits in committing resources to these inquiries. In fact we also made a submission to the *Senate Inquiry into the Education of Students with Disabilities*. We think it's important to make this commitment because it is significant that the Independent school sector contributes to a debate on such an important area.

The education of students with disabilities is in fact a high priority policy area for the Association and its member school communities. It also, hopefully, will provide outcomes from the inquiry that will help us improve our programs, and also to provide advice to our schools. I have already introduced all of the colleagues that have come along today, and you will note that we do have a focus on people who are from schools or are heavily involved in providing advice to schools. And our written submission to the Productivity Commission does focus very much on the impact of the legislation on schools rather than the broad policy context.

The Association represents 91 schools across the state, with a total enrolment of 35,000 students. The Association provides quite a wide range of services. But in relation to students with disabilities we have a team of 2.6 effective full-time staff that provides services to the 91 schools that are members of our organisation. The submission was prepared in consultation with our member schools and also a wide range of school authorities that are affiliated with the member schools.

The social objectives of the DDA are in fact consistent with the ethos of individual schools, and school communities in our membership do consider that students with disabilities can contribute to the school community or make a positive contribution to the school community, and also that other students within the community can benefit in having students with disabilities within each school.

We have attempted, in our submission, to present a picture of the application of the DDA at the school community level, particularly through the case studies. The case studies in our particular submission are actual case studies; they are not ideal situations. Independent Schools provide choice for families from a wide range of social, cultural and economic backgrounds, and that is outlined in our submission. They are distributed widely across the metropolitan area and now, in country towns, we have about 25 schools within the rural areas of South Australia. And we see choice as a fundamental entitlement to families, not only of students without disabilities but for families who have children with disabilities.

In 2002 we had about 1300 students who fit the definition of disability, but we have about 4800 students who are defined as having a learning disability, many of whom would come under the DDA but don't come under the funding guidelines, which is a major challenge for schools. I just want to outline very quickly where we see the DDA having been effective, and then where we think there are some challenges in terms of improving that effectiveness.

From our point of view the DDA has acted as a change agent in enhancing inclusion of young people with disabilities in our schools, and within educational programs that those schools provide, both the formal curriculum and the extra-curricular activities. It has also raised the awareness of school communities to the needs of children and young people with disabilities. It has prompted governments, both Commonwealth and state, but in our case it's very important that we recognise the role of the Commonwealth in providing funds to the independent sector to establish public-funded programs for students with disabilities across all sectors. In fact the 2.6 staff that are in our office are in fact funded by the Commonwealth Targeted Programs. If we didn't have those funds we would then have to seek some other resource to provide that support service.

It has led to quite vast improvements in enrolment procedures and educational programs for children and young people with disabilities. It has led school authorities to allocate resources to professional development and advisory services for schools, and has ensured that children with disabilities are included in the life of school communities. It is very difficult and challenging to quantify the effectiveness and the impact of the DDA; nevertheless we think there is a range of limiting factors that have reduced the effectiveness of the legislation, one of which is variations in definitions, which we understand our national body has discussed with you. In particular we are concerned about the 4751 students who may be covered by the DDA, but the definitions of the Targeted Programs funding, for example, don't enable us to provide support to those students.

MRS OWENS: That is, the learning-difficulty students.

MR LE DUFF: Yes. With learning difficulties, yes. There are significant variations in the level of public funding across the three school sectors, and even for students with the same disability. And without going into detail, because our National Association had extensive conversations with you about that topic, we see that as a significant barrier to enhancing the effectiveness of the DDA. There are also significant variations in the abilities of schools and their communities to meet their commitments to children with disabilities because of resource limitations. You've only got to look at the variations in the size of schools across our sector, with around 40 per cent of schools having less than 300 students, and serving low to middle-income families.

There is a very significant need to extend professional development for school managers, for teachers and school assistants, and this particular point was emphasised by the recommendations of the senate inquiry that was recently held. We also believe that the complexities of the legislation have generated difficulties for schools, communities and the association, and has led to a great reliance on a legal, at times adversarial, approach to the resolution of issues.

The difficulties associated with determining unjustifiable hardship is an area that again I think our National body raised with you, but it's an area which creates considerable tension and concern for member schools. At times there is a potential conflict between different forms of legislation; the DDA, the occupational health, safety and welfare legislation in this state, and also the legal duty of care responsibilities for all staff and students in schools. And our submission does discuss the tensions that arise between various groups of parents in trying to meet the wider responsibilities as well as the needs of students with disabilities. Our case studies try to give you an application of those issues that we think are reducing the effectiveness of the DDA.

The final point I'd like to make is that we consider that HREOC and other agencies associated with supporting students with disabilities, or people with disabilities in the community, need to play a more proactive role in educating the community and organisations about the objectives of the legislation. We have also indicated that we don't believe the development of educational standards will necessarily add to the effectiveness. Our approach would be to provide a case-study approach, look at best practice and provide some guidelines, because of the individualistic nature of the relationship between schools and the individual complexities associated with students' disabilities. So thank you for giving me the time to make that, hopefully, brief overview of the submission.

MRS OWENS: Thank you. Do any of your colleagues want to add anything to that?

MS McKENZIE: Because you've got different areas of expertise perhaps that you want to talk about?

MR ELEY: I wonder whether it might be interesting for Adele to share a little bit about the Suneden Special School. I think it's another example of parent choice being made available in a particularly difficult area, and Adele would be able to share about that. I think you would actually find it quite interesting.

MRS OWENS: Would you like to say something now, Adele, or wait?

MS MAYRHOFER: Yes, I'm quite happy to.

MRS OWENS: Okay.

MS McKENZIE: That would be great.

MS MAYRHOFER: The profile of the students attending special schools in South Australia has changed significantly over the last 10 years. A direct consequence of the DDA has been to encourage many parents with children with disabilities, who may previously have been in special schools, to seek mainstream settings or special classes on a mainstream campus. It has also encouraged parents of students with severe to profound intellectual and multiple disabilities to seek an educational setting to realise the academic potential of their students, whilst placing emphasis on communication, socialisation, independence training and work skills.

10 years ago many of these students would probably have been in a more institutionalised health care setting, or at specialist schools such as the Autism School of South Australia. My school provides a specialist setting and accommodates children with a diverse range of disabilities. 20 per cent of them would have an intellectual and/or severe physical disability and are in wheelchairs;

they have got very high health care needs and require toileting and feeding and two of them have gastrostomy feeds. 40 per cent are severely autistic and the remaining students have an intellectual and many have a physical disability as well. 50 per cent of the students have no speech and a further 20 per cent have minimal speech.

Our staff/student ratio is extremely high, with some students with severe behavioural problems needing one-on-one for significant periods of time. In our school we would average 2.0 to 2.5 students per adult in the classrooms, and in addition we have got a speech therapist for four days a week; an occupational therapist, music therapist and an artist, who come one day a week each. We've also got a full-time assistant who just deals with toileting and feeding issues.

The complex and varied disabilities of the students requires specialist facilities such as sensory rooms, fitness centres, spa areas, and we constantly have to make adjustments to the school building to meet the individual needs of the clients, particularly as with autism. Recently we had to raise all the fences around the entire school. We've had to remove all the bark chips from everywhere in the school playground and replace it with a recycled rubber surface because we found that many of the autistic students were actually eating the bark chips. Recently we've had to replace all the airconditioners because again, with some of our autistic students, the noise from the old system was causing them great distress, so we've had to change it and put split systems in. We also have to provide hydraulic change tables, hoists, switch boxes, speech devices, et cetera, for children with multiple physical disabilities.

Being an independent school our funding comes from three main sources, but government funding is on a per capita basis and doesn't really take into account the level of disability, and on top of that we don't have any access to any government-funded transport or equipment. So consequently we rely very heavily on charity, especially to support us with our school buses. Without the Variety Club of South Australia we wouldn't be able to run our buses and therefore the children wouldn't be able to access our school. We also rely very heavily on donations to fund classroom equipment, and grants, via targeted programs and so on, in order for us to upgrade our facilities and to provide us with large pieces of equipment or to upgrade our IT resources.

Consequently, obviously funding is a major issue for us. And we would certainly be very forthright in saying that all children have a basic right to education no matter what their disability. But the provision for these students is very high; the financial need is very high for students with disabilities and therefore we require extra funding support in order to cope with some of the things we do need to buy.

MRS OWENS: Can I ask, do the parents of your school also pay fees?

MS MAYRHOFER: They do. Fees are very very small, because the large majority of our parents are single parents or have great financial difficulties themselves. I mean, we would have very few parents who could afford to pay more than we ask. In fact, we have quite a few that can't pay fees, so the school offers quite hefty fee reductions for a lot of students.

MRS OWENS: Have they got the choice of sending their children to a government special school?

MS MAYRHOFER: They have. Some parents have had their students in a government special school and have transferred to our school, because of the extra things that we're able to offer. Again, it's really trying to work within a budget.

MS McKENZIE: That's because your facilities and programs are regarded as being more suitable.

MS MAYRHOFER: Yes.

MRS OWENS: It must be enormously challenging having to deal with the wide breadth of disabilities and the different needs of the children. You said you have to make adjustments. If you get children with autism, that requires certain adjustments. It's an ongoing adaptive process.

MS MAYRHOFER: Yes, it is. We're constantly, as a staff, looking at how we can accommodate students and the adjustments we have to make within the school and extra things we may have to buy to accommodate students.

MRS OWENS: Have you gone to government when you've had special needs? Like, you said raising the fences. Have you tried to get government funding or not?

MS MAYRHOFER: No. We have tried to get government funding for transport, but haven't been successful.

MR LE DUFF: I think one of the elements of this is to what - there are funding programs - for example, the Block Grant Authority - but there are guidelines which actually limit the extent to which you can fund particular aspects of a renovated building or whatever. The state doesn't provide funding for any sort of major building modifications - we're reliant on the Commonwealth - but even there the guidelines restrict what you can spend that money on.

MRS OWENS: I should say I found your submission really useful, because you spelt out clearly - - -

MS McKENZIE: Where the funding comes from?

MRS OWENS: - - - the complexity of the funding arrangements. I had to sit down and really think about it, because it is quite complex. You've got this split responsibility for funding.

MR LE DUFF: Yes. I think the other element is that it's very hard to pick each school and then come up with a common set of figures, because each school's individualised funding could be so different from the school alongside, particularly in relation to the public funding, and also the fee levels just vary enormously. You've got varying capacities and yet two schools might be dealing with the same type of disability or a very similar type of disability.

MS McKENZIE: Just the way that the funding criteria operates finishes up with that result, but certainly the other thing the case studies illustrate very well is just how much is borne by the school community ultimately.

MR LE DUFF: Yes.

MRS OWENS: You did make the point, Garry, about standards; that you would prefer, rather than having standards, to have guidelines or case studies. Is your main objection to standards that it's hard to develop standards in education or is it the potential resource implications of having standards? We heard a lot about that when we talked to your National Association. What's the basis of your objection to standards?

MR LE DUFF: I think we would concur with our National body about the potential implications in terms of resourcing, but we're trying to work through what is the best way of helping schools and their communities adapt and be inclusive - as effective as they can to support these young children. I happen to sit on a number of national task forces and have seen this long debate about national standards. I think we've come to the conclusion that we don't see them adding very much to assist schools. I think schools would benefit by seeing how others are helping young people with disabilities. Also the disabilities are so individualistic, (although you can categorise them into perhaps broad categories), and so schools have virtually got to adapt infrastructure and educational programs on an individual basis.

We're not sure how you can have a common set of standards. The other thing about - the word "standards" implies some sort of benchmarks and, when you look at the standards, there actually isn't an indication. What is the minimum that you're required to meet? It's still just adding another document - that we've talked about in our submission - about unjustifiable hardship and so on. It's very hard to define, in a benchmark quantitative sense, what is the expectation on schools and how you would then have that uniform application. I know, in our development of the resource kit - which I think we sent you a copy - on the enrolment procedures, that's the sort of thing we think needs to be done and for agencies like HREOC to be more proactive in providing that sort of resource and going out into the community and talking to school communities.

At the moment we're spending a lot of time assisting schools, through our legal advisers and trying to make our way through the legislation, when I think we could probably do a better job with the assistance of HREOC and other agencies to develop resources and practical guides. Our focus is very much on asking the fundamental question: what will the standards do? What will that document do to actually help schools? We've come to the conclusion: not a lot. It will still leave schools in a sense of uncertainty, whereas I think in other areas - for example, in vocational education - there are examples of good practice in applying vocational educational schools, whether it be students with disabilities or without disabilities. Resourcing is one issue, but the other issue is what value addedness will they provide to help schools? We're not convinced that they will.

MS McKENZIE: You think that really you're left in similar uncertainty to what you're in currently with the unjustifiable hardship provision. Even with that, there's a tension between, you know, your philosophy of inclusiveness as far as mainstream is concerned and that exception.

MR LE DUFF: Yes.

MRS OWENS: The argument that's put for standards is that they are there really to reduce uncertainty, and reducing uncertainty is a good thing, but what you're saying is you can never really remove uncertainty when you have such a diverse range of needs.

MR LE DUFF: The documents, to us, aren't removing that uncertainty. Perhaps Libby might be able to talk more about it, because she's had some dealings with it.

MS BURNS: We still see that, because of the unjustifiable hardship. I mean, all the standards are doing is clarifying what's in the legislation. The unjustifiable hardship clause isn't removed, therefore, each case still has to be looked at on an individual basis. If it's a minimum standard, it's still not clear our schools can meet the resource requirements anyway, because of the nature and size of the schools, which Garry has described. I mean, they're very differently resourced and they have no means of accessing other funding, so there's an imposition on that school community and it often increases tensions in those school communities around the enrolment of students with disabilities.

I still think that, in fact, if the awareness is raised by the standards, we're going to be involved in even more cases where we're trying to support schools to comply with the act and we're not really going to move away from a model which is adversarial and which requires us to constantly get legal advice for a school, which - as we indicated in the case study about the changing nature of our work - probably has, over five years, shifted to be our major emphasis to support schools, to comply - which is what they want to do - and to meet the requirements of the families and the students, and that's of the whole school community.

MS McKENZIE: What can be done to fix this problem, do you think? I mean, obviously, it's not what the association would want and it's not what the schools would want, but the budget and effort goes into worrying about whether there's going to be a legal problem with this child or that child and in a way, I suppose, diverts you from what you really want to do, which is consider how this would help the child.

MR ELEY: I don't think there's one simple answer. One of the ways of removing uncertainty is to build confidence in the process. For example, Libby reviewed the case study of a student - I'll just call her A - and Libby would have been involved in assisting the school with that enrolment procedure when A started in reception. She's now in year 5. Because you're not doing that all the time, it's good to have someone who can help both the parents and the school work through finding the best arrangement for the student.

Perhaps one way of removing uncertainty is help in understanding what's available in the community; the environment, programs, teacher training, management of the student, organisation of the class. There are a lot of things that one can manipulate within a school, as in vary and as in individualise for a student, and it's probably getting the right mix of all of those. I think it's about expertise and confidence and especially having confidence that their legitimate concerns for their son or daughter are going to be met and the school having confidence to be able to do what it says that it's going to do.

Speaking as a principal, you always want to do what's best for kids, and there are times when one probably promises to deliver and you're not sure exactly what you're promising to deliver on, because further down the track the nature of the disability may have changed or, rather, the implications of it become more profound. That might be one way, but that's not going to solve all the issues. Building confidence and providing help for schools and families at that point of negotiation might be one way.

MRS OWENS: You did give an example in your case studies - and, again, I found the case studies terribly informative - depressing sometimes, in terms of all the things you have to do, and uplifting in another way, but I thought that whoever wrote those has given us a wealth of information. I think it was page 43. You were talking about a student with cerebral palsy enrolled at an independent school. This child had an intellectual disability and epilepsy, and the school undertook a number of steps to help the child and the cost was met by the school. There was Access Assistant Program, a Targeted program, capital was allocated to provide a computer but, at the end of all this, it says here, "At this point, the parents were dissatisfied with the perceived lack of support of the student from the school."

It looks like, no matter what you try to do, in some cases whatever you do is never going to really be enough. I wondered if anybody would like to comment? I don't know whether that's a common experience with parents, because I suppose some parents are always going to have high expectations regardless, but was this a case study that was indicative of what's happened at other schools, where schools have tried to do their very best with the resources they've got and still find the parents aren't happy?

MS BURNS: It's something that happens to a greater or lesser extent in lots of cases. What we perceive it as being is part of the parents' grief around the disability. It's also related to the fact that - so it almost doesn't matter what you do, you're not going to fix it for them.

MS McKENZIE: Never going to be enough.

MS BURNS: Parents often come to schools or to other agencies and hope that the problem is going to be fixed. We see that as part of that.

MRS OWENS: I'm just trying to think what would help schools in that situation. If it's not standards - you know, if you did have guidelines that you could point to and say, "Look, this is what the guidelines say and we've actually, in this case, gone beyond the guidelines. We've actually gone further than that," it could help.

MS BURNS: Often, when you get parents at school, they've come from five years of battling against the system and a system they don't understand - and it isn't explained to them - so they land at school and you're dealing with a great deal of anger and grief often. Then it starts off as not a good relationship, because their expectations can't be met, but you can't find a common ground around those expectations. I would say, although this is quite an extreme case, this is not uncommon, and what's distressing is to see the distress of the parents in this situation but it also then becomes the school's distress and they don't know what they can do to make things better.

MS McKENZIE: The difficulty about that is I don't know whether any guideline that you could - - -

MR ELEY: True.

MS McKENZIE: - - - point them to would help the situation because they're going to be distressed whatever you provide.

MS BURNS: Except maybe if families are supported better from birth or from when the diagnosis is being made.

MS McKENZIE: Yes, it's really a historical thing.

MS BURNS: Because so many families say to us, "They told me in hospital the child had cerebral palsy but then we had to go out and find all the support," and that, no, there isn't an agency or there isn't a support service that comes to you automatically.

MRS OWENS: That's a much bigger systemic issue.

MS BURNS: Absolutely, yes.

MR LE DUFF: One of the ridiculous things about funding is a lot of our schools have now got pre-schools, but the Targeted Program funds can't be used for pre-schools. We have got groups of young people where Libby and her team do provide support because those students are following on into the school, but it's an area which I think has been underrated in terms of the need for public funds for support of those young people in that early intervention stage and providing support to the families. In other words, you can have people on the same campus but their age differential, even though they may have a disability, actually prevents them from accessing funds and support.

I think one of the elements of parents and schooling - it doesn't matter whether it's the government or the non-government sector - is also just generally a greater awareness or part-awareness of what they see as their fundamental rights, and it's one of the elements that we've picked up in our submission about having a part-understanding of what they think are their rights and their entitlements, but not having a full understanding of the implications and trying to work those through.

MRS OWENS: You've got to also work it through with the other members of the school community and the other parents who may not be understanding them.

MR ELEY: I think that's why one of the recommendations spoke about a more proactive role in educating the wider communities because it's - the staff, parents, students are all part of the community and they often are unsure as well about what it means. One of the grating points sometimes is it's all about teacher time. In that example you just looked at, how I saw it, said that a teacher was spending 14 hours in planning and executing the plan, and that might be extreme, but I was just looking at my own school.

In one Year 7 class, right now there are three students who are supported with Targeted Program funding. One has ADD and epilepsy. One has Asperger's and another with a specific learning disability. Two are moderate and one mild, and they're all funded but, in addition, in that particular class, there is one ESL and three with a learning disability that are unfunded by the Commonwealth but are by the state. So that means out of a class of 28 you've actually got seven students who all demand special consideration for their organisation, planning, structure of the environment and the actual management of them within the learning task.

That's a big issue for the teacher, so that's why many teachers are having to do a fair bit in terms of their planning and then in-servicing. For example, one could do a day's in-service just on say Asperger's and then how are you going to put that into practice? There's a lot to be done. So there's a category of people involved who straightaway feel under pressure and that's the teacher.

MRS OWENS: Is this translating into extra hours that they're working?

MR ELEY: Mainly, yes.

MRS OWENS: They're putting in the extra hours.

MR ELEY: Yes.

MRS OWENS: Then you've got a duty of care to those teachers because there's an occupational health and safety issue, and you raise quite clearly the real tension, the difficulties that exist - - -

MR ELEY: But that's the way they're teaching. Let's say a parent of Joe Bloggs in that Year 7 says to the teacher, "Gee whiz, you haven't spent a lot of time with my little Johnny," so there the tension arises. So it's seen as a competition for resources, which is unfortunate, but if parents have perhaps a greater understanding of the nature of disability, and, working with disabilities is more important than the disability - and that's I suppose what the recommendation that HREOC and others should be playing an active role in educating the wider community - it might help take some of the sting out of this notion that we are competing with resources because that's an unfortunate way of approaching the problem.

MRS OWENS: You might not be able to answer this but have you got any suggestions about what sorts of education activities HREOC or others could implement that would get to the wider community in an effective way?

MR ELEY: No, I haven't thought of that, Helen. I probably ought to have since I support the recommendation. Garry?

MR LE DUFF: I would have thought that providing resources in the form of - like our enrolment procedures, whether it be online or whether it be offering consultancy services - fee for service, professional development, which is what we do now, and those people have considerable expertise, but to spread it away from just talking about particular court cases and giving - they might use those court cases to demonstrate how you might proceed as a result of the outcomes of the court case but not to be focused around the legalistic issues but to provide examples and some guidelines about how you would assist students with disabilities from the commencement of school and while they're in school. They either become deliverers or they provide the resources, and we do note that there is some assistance on the web site but I just wanted to know how many people know what is the role of HREOC in terms of its educative role. I don't think there would be very many of us - before I was involved with this preparation, I never saw them as an educator.

MRS OWENS: An educator.

MR LE DUFF: A source of educational materials and awareness-raising materials. Can I just raise one other point, because I don't want to give the impression - on page 44 there's a case study which deals with a young person who I think had a terminal illness and wanted to - his family wanted him to go on a school camp. I don't want to give the impression the Association goes around using lawyers to try and reject students. If you look at that case, there are a whole range of issues around duty of care: responsibilities of the teacher, responsibilities of the people who were running the camp and so on. Despite all of the complexities and tensions that we had to go through, it was still a great outcome. The young person did go on the camp.

MS McKENZIE: He did go on the camp, yes.

MR LE DUFF: But the amount of work that we had to go through to make the school feel as though they were relaxed to achieve that and in the end, even despite all the legal and industrial issues, the school went - the family provided a lot of support. Didn't they provide full-time nursing care and so on?

MS BURNS: They had to provide the care, yes.

MS McKENZIE: There was nursing care.

MR LE DUFF: I don't want to give the impression that we want to leave the public hearing today to say, "What we're doing here is we're going to lawyers to try and stop young people and their families from the school." It's simply that you're dealing with issues which impinge upon other people and in cases like this you simply have to know what the situation is in terms of responsibilities.

MRS OWENS: The issue of school camps has arisen in other contexts. We had a few forums last week in Victoria and we had a mother who came to a forum in Benalla and she had a child with autism and raised issues about the access of her child, not just through education, but also going on school camp and the need for special provisions and the reliance on her. She felt that more should be done. It's a matter of, if you've got enough support staff you can do this and take the children on camps but you've got the problem then that sometimes that can disrupt other kids. It depends on how far down that autism spectrum the child is. So you do need other children, and that all takes resources.

MR LE DUFF: But in another situation, a school was going through a redevelopment of new buildings and so on and the children had to get to a particular area, and the children pitched in and helped and we were a little worried about them injuring themselves, but they helped the young person with a disability. I think she had muscular dystrophy or whatever. So it's not always the case that there is a legal solution. There is a commitment within.

MR ELEY: There's a human solution.

MR LE DUFF: There are human solutions, not within a legal context, but I think it's an area where there is a degree of uncertainty about what particular directions people can take without some way incurring another penalty, but that's overridden in a lot of cases by the commitment and I think these case studies show that people are prepared to go through a lot of the processes to get to an outcome which is for the benefit of the young person.

MS McKENZIE: Yes.

MRS OWENS: Another question about the education standard. This relates to the education standard extending the application of unjustifiable hardship to the provision of education after the student is enrolled; whereas, at the moment it only applies up until enrolment. If you don't want that standard, do you want a specific amendment to the act to allow unjustifiable hardship to apply after enrolment?

MR LE DUFF: I think that's what we're implying in the submission.

MS BURNS: Yes. It would certainly be supportive I think of everyone involved because what we find is there are students who enrol with disabilities who there is no way you can gauge whether you're going to be able to continue to provide an educational program for them that's appropriate, but there's also a range of students now who have medical conditions or accidents that emerge as they go through school and we've had cases where significant support has had to be provided to students in quite distressing situations where it then becomes difficult to negotiate that support and puts additional stress on families. I think that's something that we didn't write about in our submission but a lot of the cost of all of this is happening for the families. The imposition is on the families; the imposition around school camps, the imposition around changing needs, it continues to distress the families all the way through school.

MRS OWENS: You're talking about the families of the child.

MS BURNS: Yes, that because of the way things are, I think that we're adding distress to families that should somehow be accommodated or dealt with and certainly if there are clear processes for people, that will be supportive of the schools and it will also be particularly supportive of families. I think at the moment we just get into quandaries now when students needs change.

MS McKENZIE: The one problem is that at its extreme if you applied the unjustifiable hardship exception to post-enrolment schooling, the extreme of course would be that you would exclude the child.

MS BURNS: That's the extreme but I actually don't think that's what schools are doing. I think schools have got a great commitment to students and our experience practically is that schools are doing their best to accommodate the child. I don't think extending the unjustifiable hardship clause automatically implies exclusion but I think it gives you some clear guidelines about how to manage the situation.

MS McKENZIE: How many adjustments or how much.

MS BURNS: Yes, how to manage the situation. Whereas, I think, without some clarification it leads to more distress.

MRS OWENS: Although some people have said that the unjustifiable hardship hasn't really been defined very clearly: what is unjustifiable hardship. So it may not give much of a guideline about how far you can go unless that is clarified in some way.

MS McKENZIE: The one thing it will do, that would be to permit you to take some account of the changes that occur post-enrolment whereas at the moment, of course, you only can look at enrolment.

MR ELEY: I think one of the things that we've noticed at schools is that certainly there's a huge difference between intervention at reception and, say, between years 6 and 7. I think there needs to be some account for that, because kids change and the impact of a disability often changes and it involves emotional maturation factors as well. I think that's particularly difficult.

MS McKENZIE: It's particularly difficult generally, I think, because as I said, the implication - if it were extended – would be the exclusion of a child after some, perhaps, even years of schooling and that would be, I would have thought - - -

MS McKENZIE: - - - a most difficult situation for the school to manage and of course devastating, I would have thought, both for the child and for the family.

MR ELEY: Yes. Perhaps the need starts to come for more specialised centres within schools - you know, island integration or integrated units. There are some around, both in government and in non-government and Catholic schools, and quite a few parents look to that as a good alternative; in other words, something focusing on skills for daily living and the life challenges that their particular son or daughter will have and looking for a unit to particularly address those, because the goals of education in years 8, 9, 10, 11 and 12 may not necessarily be on about those skills for daily living. Island integration, whilst it's not perhaps exactly the same as mainstream, is seen for many parents as quite a positive alternative. But there are not a lot of those units. Perhaps if there is greater choice and a greater number of units that may help the problem, Cate, that you were looking at. It's not about excluding; it's about trying to ensure that there are appropriate programs for young people that are going to meet the skills that they will need for daily living.

MS McKENZIE: Yes.

MR ELEY: This is particularly in the case of more profound, rather than mild and moderate - or perhaps moderate to more profound.

MS McKENZIE: Maybe there is a halfway house that perhaps while not permitting exclusion, it might permit transfer to a special unit or - - -

MR ELEY: Or the development of those units as a strategic initiative within a state. That may be another way of looking at the problem.

MRS OWENS: Let's assume you've got a parent who comes and says, "I want my child to be in your school. I'm prepared to pay the fees. I want them to go through as far as possible," and they come into the school and you find out about year 8 that they are really not going to - it's going to be a struggle for them. You say, "Okay, we would really recommend that they go into the specialist unit. We've got a specialist unit there." The parent says, "No, I want them to keep going," and that would require you to have all sorts of other services, just for that child. You could then say, "Unjustifiable hardship, but there is this other specialist unit and we've got this unit here which is probably better for your child anyway," so could you use it in that way? I am just trying to think - - -

MR ELEY: I hadn't thought it through that way, Helen.

MS McKENZIE: That's really what I suggested.

MR ELEY: Yes.

MS BURNS: The reality about what happens in those situations currently is - because it happens a lot, particularly with students with intellectual disability, that the enrolment does start to break down at year 8, or probably from year 6 onwards. Schools put in all sorts of arrangements to support students that we, out of Targeted Programs funding, fund a workplace learning program which helps students with intellectual disability and significant learning difficulties access a TAFE course and work experience. We also put funding in for a social skills program. Schools make lots of arrangements around those individual students. We never advise schools to talk about moving on.

The other arrangement we have with Adele sometimes, with a special school, is that we will have the students - we will talk to the parents about what the options are in terms of the education program and then often those students require life skills as well and we talk about - I don't know how many we've had in the last couple of years, but two or three students then do, as part of their mainstream school program, a day or so a week at Adele's school to get some very specific life skills. What our experience is - it's never a suggestion on the school's part that the student goes to the special school, but our experience at that age group is the student never finds a peer group in the mainstream school that they can relate to, but they do in the special school and they themselves make the choice to attend the special school full-time.

MR ELEY: Peer group is a very strong factor; finding a peer group.

MRS OWENS: I had one other question and that was I think in your submission you said that you were opposed to voluntary action plans. I think it was at page 45. Under 11.5 you say - this is in the context of uniform standards - it's almost like a throwaway line.

MR LE DUFF: Yes.

MRS OWENS: AISSA is opposed to voluntary action plans for similar reasons.

MR LE DUFF: There is partly that. I guess it's part of the compliance costs at the time. The reality is that schools put together the individualised educational programs and the sort of strategies that Libby was just talking about and Russell was talking about. I think what we're saying is a bit like the standards, there are a lot of resources that go into that - there are a lot of - when we're putting these plans together they go off somewhere else for someone else to check, so you're building up a whole compliance process.

MRS OWENS: Yes, and compliance costs.

MR LE DUFF: What we're saying is you've got - well, costs whether it be time or other sorts of resourcing implications. We've had a debate about students with disabilities for a long, long time and we're not seeing any - I don't think any radical change to the approach, particularly in terms of resourcing. I'm talking about school education; I'm not just talking about independent schools. I think what we're seeing is a strategy which says, "Add more administration and it will be resolved." It's part of the adversarial approach, that the way you solve problems is you develop standards and you have compliance processes. Our response to that is no, we need the resources at the point of delivery and we don't want to get tied up in a whole lot of compliance procedures which in fact draw resources away.

MRS OWENS: Which divert resources.

MR LE DUFF: When, in fact, the schools have to do these things; they have to do it - well, they don't have to, but we certainly strongly advise they have curriculum plans, for example.

MR ELEY: Student support plans.

MR LE DUFF: Student supports plans and so on. So it's not so much that we're opposed - we should have probably explained it a little more.

MRS OWENS: I just got right to the end, and the second-last sentence, and I thought, "Yes, hello."

MR LE DUFF: I think it's a general part of our approach to this, and it's the same with - at the moment we have national literacy and numeracy testing and so on, and unless you actually take those results and target the students that have got the difficulties identified through that testing, then you're not utilising, from our point of view, the educational benefits for that student. At the moment a lot of the testing is tied up - the outcomes are tied up in reporting. You know, every one gets hung up about the reporting. What we're saying is we want the resources at the point of delivery, not standing on compliance to some other authority.

MRS OWENS: I should just point out to you that there have been a lot of people who have come to these hearings and said that they like action plans and in fact would make them compulsory.

MR LE DUFF: Yes.

MRS OWENS: I just thought you should - - -

MR LE DUFF: Yes, we are very aware of that.

MRS OWENS: Yes, I just draw that to your attention. I think we've just about covered everything. There is such - - -

MS McKENZIE: Wealth of information in that submission.

MRS OWENS: Very, very detailed submission and as I said, and I think Cate agrees, having the case studies and having the details of the funding arrangements is very useful to us. Obviously a lot of the issues here revolve around issues of funding and resourcing. It is just going to help us, when we are thinking through these issues relating to standards and standard setting and so on - I think that having this material is very useful for us to draw on.

MR LE DUFF: Thank you for giving us the time to explain a little further.

MS McKENZIE: Thank you very much.

MRS OWENS: Yes, thank you. We will now break for a minute.

MRS OWENS: We will now resume. We have three participants appearing jointly now. Would you like to each give your name and the capacity in which you are appearing for the transcript.

MR TEASDALE: John Teasdale.

MRS OWENS: Thank you, and you are appearing as an individual.

MR TEASDALE: Yes.

MRS OWENS: Or as your company?

MR TEASDALE: I represent my company in this particular transaction, but my company can't get up here and speak; it's me that's speaking.

MRS OWENS: I'll just point out for the transcript that you have put in a submission which is submission number 166 under the name of John Dale Pty Ltd.

MR TEASDALE: Correct, yes. That is correct, yes.

MRS OWENS: Thank you.

MS RYAN: My name is Pauline Ryan. I'm Tony Borosewicz's partner.

MRS OWENS: Yes, thank you.

MR BOROSEWICZ: And, of course, I'm Tony Borosewicz.

MRS OWENS: And it's pronounced Borosewicz.

MR BOROSEWICZ: Yes.

MRS OWENS: Thank you for coming. I'd like to thank you for your submission relating to the bank, which you've argued is a case of indirect discrimination. I was wondering - you may all want to talk or - - -

MR TEASDALE: Yes.

MRS OWENS: I don't know, John, whether you'd like to introduce your submission.

MR TEASDALE: Fine.

MRS OWENS: I note you have more material there.

MR BOROSEWICZ: Actually, John has more knowledge of it than I have - as far as the paperwork and everything goes; just the basic mental knowledge of it. I think he’d be more worthy speaking than I would be.

MS McKENZIE: You might want to add anything you want after he has said whatever he wants to say.

MS RYAN: Yes.

MRS OWENS: Thank you, yes.

MR TEASDALE: Thanks very much for inviting me to come along. The matter that I’m involved is, as mortgagee of a property that is owned by the gentleman concerned, and we hold a mortgage over the property, that is a very small percentage of what the value of the property is. The gentleman concerned, evidently has had an account with the Commonwealth - with a bank and due to illness and a small debt accruing with the bank the bank decided in their wisdom to place the collection of the debt with a particular debt collection group, who I’ve been trying to come to terms with. They advised me that I would be required to give proof of debt to them in the estate of the bankrupt, who is the gentleman next door here.

That notice of proof of debt was issued on 11 March 2003. They asked me to give them the proof of debt, which I refused to do. They said that in effect - I asked the reason why they were pursuing this proof of debt from me. They said that they would be entitled to a commission on that debt that was outstanding on the mortgage, which I promptly told them that as far as I was concerned, they could forget about my proof of debt and they asked me to fax that through to them. I tried for approximately three weeks to fax it on their fax number that is on their heading. In the end I just gave it away and said, "I can’t get the fax to go through. I’ll just have to go to my member of parliament."

But when I was asked again by the trustee in bankruptcy why I hadn’t given my notice to them of refusing to prove debt, I said that I couldn’t get the fax to go through. The gentleman concerned said, "But that’s not our fax number." Even though it’s on the heading of - their heading here. So I assumed that the fax number on the heading is simply something that doesn’t involve bankruptcy. The delay in the bankruptcy meant that the bankrupt expenses would be accruing while this delay was going on, which is normally in circumstances when things are delayed, but I offered to pay this man’s debt out, or this bankrupt’s debt out at the time when I was told the debt was approximately $5000 and there was two and a half thousand dollars in fees.

But they refused to accept this and just said simply that they would have to make inquiries regarding other outstanding debts and I said, "Well, they've already gone ahead and made the person bankrupt, the mortgagor bankrupt, so how was he going to get out of the debt without his home being sold up?" If they stopped his right to exercise a mortgage to some other party, or to myself, how is he going to pay them out? So a legal understanding of that would be that they would have the right - if this wasn't paid up within a certain time - that they would exercise power of sale over his property which is his own personal home and the more I got into it the angrier I got. The whole issue comes back to the fact that the atmosphere between myself and the trustee in the bankruptcy became very, very - what you might call - - -

MS McKENZIE: Tense.

MR TEASDALE: - - - hostile, so in not proving debt - so they told me - then I was placing myself in a position where I could be financially embarrassed as far as collecting the debt, if I wished to collect it, but that's not the case. I wrote a note on the bottom of the notice where I was asked to prove it and I just put, "Please note. I do not wish to prove this company's claim against the mortgagee - mortgagor, rather - as the bankrupt's property at that address - we hold sufficient security over this property," and I'll sign it and I sent it back. Now, that fax did not go through until 17 June 03 - before I could get it through to them - at 3.14 pm. Our local member of parliament was absolutely appalled when she understood the situation and she asked the bank in a very stern letter that we or I would require further information regarding the amount of money - how it was arrived at by them. I have since been told by the trustee in bankruptcy that the debt has now been reduced $2000 - from the original $19,000, over $19,000, that they were claiming.

MRS OWENS: Did they give any explanation about why?

MR TEASDALE: No, no explanation why. Just to say the amount they were claiming was actually an estimated amount, and I wanted to know if the amount they were claiming at $19,330 was less than that amount what would happen to the balance and I wasn't given an answer.

MRS OWENS: Maybe the balance is an estimated amount, as well.

MR TEASDALE: The point comes back to one thing: how could anyone possibly in that time go from $5886 to $19,330.44?

MRS OWENS: That sounds very estimate.

MS McKENZIE: Yes.

MR TEASDALE: I have had previous experience with this particular bank and their actions have never been what I call anything but harsh and unconscionable.

MRS OWENS: Have you got any idea where the $19,334 - was it? I know it came down to 44 cents.

MS McKENZIE: 19,330.

MRS OWENS: 330 and - - -

MR TEASDALE: They say here the applicant creditor's costs of $2834. The estimated creditor's claims are $10,000. The estimated trustee's fees are 4950. That makes a total of $17,784, and a realisation charge of $1546.44.

MS McKENZIE: Have you tried approaching someone like the banking ombudsman about this matter?

MR TEASDALE: No. They said it wasn't within the banking ombudsman's jurisdiction because of the fact that it had now been placed in bankruptcy.

MS McKENZIE: So it's a matter for the court in that case.

MRS OWENS: Who told you that?

MR TEASDALE: That's what I was told by the bank.

MRS OWENS: Maybe you should ask the banking ombudsman.

MS McKENZIE: Ask the banking ombudsman and then perhaps it may also be a matter for the court.

MR TEASDALE: Everything seemed to happen after he was put into bankruptcy because, as I told the trustee, if he had known that we were the mortgagees - which he would have known because he sent a notice to us as mortgagees - we would pay the amount in three days - for what he said was the amount at that time - but he refused to accept that, and of course the gentleman next to me was placed into bankruptcy before any investigation was made.

MS McKENZIE: But it may be worthwhile speaking to the banking ombudsman to see whether in fact there might be a possibility of the matter being investigated that way. It also might be worthwhile talking to the registrars for the court.

MR TEASDALE: The unfortunate thing about it is that the gentleman is already in bankruptcy and they said to me if the bankruptcy was annulled by paying the $19,334.44, then - they gave me to understand that he would still be under the Bankruptcy Act for a further three years.

MRS OWENS: But I think there are provisions which permit the court to vary those times. It really would be worth your while having a chat to one of the registrars to look at the position.

MR TEASDALE: Yes, I have spoken to the official receiver in bankruptcy, which is the government official receiver, and they said in a case where it's a private trustee they couldn't give any information.

MRS OWENS: But what I am suggesting is that you might talk to one of the registrars of the Federal Court or the Magistrates Court, Federal Magistrates Court, to find out what applications you might be able to make to the court to help to resolve this problem.

MR TEASDALE: Are you allowed to proceed to that stage without a solicitor attending?

MRS OWENS: Yes. People go to the court unrepresented, but it would be worthwhile talking to the court first to see what applications you might make.

MR TEASDALE: And what delay would be in the - some of those cases take three years to come up before the court.

MRS OWENS: That I can't tell you.

MR TEASDALE: No.

MRS OWENS: You would have to talk to the court about that matter first.

MR TEASDALE: Yes, but unfortunately in this case it appeared to me that the whole thing from the trustee's side was, "We're going to get as much out of this as we can." That was my attitude.

MRS OWENS: I think there is an issue - going back one step - and that is an issue relating to the actions of the bank and their attempts to recover the debt in the first place. Was the bank aware of your condition at the time they did this?

MR BOROSEWICZ: I don't think they would have known.

MRS OWENS: Did you bring the difficulties you had to their attention? The submission we've got from Mr Teasdale mentions that you had been in hospital on many occasions during the term of the loan.

MR BOROSEWICZ: Yes.

MRS OWENS: Did you make that clear to the bank?

MS McKENZIE: Did you mention it to the bank?

MR BOROSEWICZ: No, I didn't. I think I did mention it at one stage to them and they really didn't want to hear any part of it at all.

MRS OWENS: So you did mention it?

MR BOROSEWICZ: Yes, I'm sure I did.

MS McKENZIE: It may be that that might be a matter to write to the banking ombudsman about because, if it happened during the loan, that may well be something the ombudsman can look at.

MR BOROSEWICZ: I've been unwell and disabled since 2001, so you know it's going back quite a few years.

MRS OWENS: If you brought that to the bank's attention - your health state - and they still proceeded, I think there may be an issue that you could possibly bring to the attention of either the Equal Opportunity Commission here in Adelaide - I'm not sure about the wording of their act on this issue - or maybe even the Human Rights and Equal Opportunity Commission - possibly HREOC - which is based in Sydney, and which is the national body - because there may be a case for indirect discrimination. I can't say that for sure, but there are two directions in which you could possibly go.

MR BOROSEWICZ: I can understand that, Helen, but how am I to know you know what is going on when I'm lying in a hospital bed with cancer - also I suffer from dementia - and I think these people know this - whether they have records of this or whatever that may be, but I really don't know. I don't know how they work. I don't know much at all about it, whereas Mr Teasdale has been acting basically for me, tracking down every little nook and cranny, so to speak.

MRS OWENS: I don't think you need this sort of experience at this stage, do you, and I am sure that - - -

MR BOROSEWICZ: It has caused me heaps of trauma. It has also caused my partner a lot of trauma. Now I've got to the stage where you know I'm on antidepressant tablets - you know, depression, sleeping tablets - and hell knows what else, and whereas I was in pretty good health a few years ago.

MS McKENZIE: It may be worthwhile pursuing some of those avenues.

MR BOROSEWICZ: What really got me was the fact that I kept on receiving notes from the trustee and always everything was estimated, estimated, estimated, which I spoke to him personally and he said, "Well, there's nothing really I can do about that at this stage. It's just an estimated cost," and that was basically it.

MS RYAN: And apparently if we don't pay it by the 7th of this month it goes up to $1001, so it's pretty heavy.

MS McKENZIE: It's worthwhile approaching some of those organisations we have mentioned to see what might be able to be done.

MS RYAN: Yes.

MR TEASDALE: But once the member of parliament was made aware of this, for some reason they came back $2000 in what they were demanding, but the fact that now the bankruptcy is current, how does he get out of bankruptcy, because the legal complications attached to bankruptcy would preclude him from exercising a mortgage to another party - even to ourselves. They have put a caveat on the title of his home also. They haven't notified me that the caveat is on the title, but they don't register caveats on titles unless it's specifically requested, and it won't show on his duplicate certificate.

MS McKENZIE: No, no.

MR TEASDALE: It's more or less a search of the register book itself - as you might call it - or the Lands Titles Office original document that would prove that - and give proof that there's a caveat on the title, which a lot of people would accept the face value of that until such time as they came to settle or did a search prior to settle - and then find a caveat is on it, so it's "buyer beware", as you might say.

MS McKENZIE: As I said, the best thing I think is to try and contact some of those organisations and see what can be done as far as this situation is concerned. I don't think it's a hopeless situation - let me put it that way. I think there are some applications that you might be able to make. The point I think in this instance is this particular bank - three clients previously have had a very similar situation through this bank, when they've been in very difficult circumstances, and the last one we had like in this situation was where a married couple were our clients. We got them into the bank as a very safe investment mortgage for the bank over their home.

The husband died. The wife missed one payment and halfway through another payment she got a notice from the bank to say that she had missed a payment on her bank interest; therefore the bank were going to place the home into the hands of a receiver, who would then proceed to sell the house under a power of sale, and that absolutely flattened the lady. Of all the problems she had with the death of her husband, a young family - - -

MRS OWENS: To come at that time, yes.

MR TEASDALE: The same bank and, believe you me, when this came along, as well, you know it starts to just make your blood boil. I don't say - it's probably not the only bank that does that but certainly it's harsh and unconscionable dealing with people. I can't believe, when they're making these billions of dollars profit, that they can go ahead and say, "Look, this gentleman's house is going to be sold if he doesn't come up with that money in that time." I mean, what sort of unscrupulous people are they? Are they people? I can't believe that they are people who have their - you know, you see on the advertising what wonderful things they do for people but why don't they print some of the dirty things they do to people as well? I mean, truth in advertising - but they certainly don't print or publish their bad dealings with people.

I think that even if you get on - I have tried to get on a talkback program. You can say about a bank but you can't say which bank. If you say, when they ask you, "Which bank?" and you say, "That's the bank," you're gone, because they know that the advertising is, "Which bank?" It's amazing how quickly they pick it up, and you've got a seven-second delay and you're out in three seconds. So there's no communication between you and the outside world. Everybody has got to say, "Yes, sir, No, sir, Three bags full, sir." I don't believe that that's fair but I suppose in all details in life there's always something that's not fair. People who do cop it don't have the right to raise it.

MS McKENZIE: Investigate the avenues that we've mentioned. I think that would be really worthwhile to do.

MRS OWENS: We have the South Australian Equal Opportunity Commission talking to us immediately after afternoon tea today and they may be very interested in this case, or HREOC, the Human Rights and Equal Opportunity Commission, the national body. That is another avenue. As Cate said, there is a banking ombudsman and I wouldn't necessarily accept if the bank says that's not appropriate, that that's not appropriate.

MS McKENZIE: Talk to the ombudsman.

MRS OWENS: I think you need to go the ombudsman direct.

MS McKENZIE: And also to the court, as far as the bankruptcy applications are concerned.

MR TEASDALE: Unfortunately, I've had dealings with the courts in respect of harsh and unjust actions and believe you me, I've got nowhere - absolutely nowhere. I've been involved with a recent one where an Adelaide finance broker - if you're not Adelaide people you may not know this - there's a finance broker in Adelaide that collapsed with a great amount of distress to the people who they invested money through and lost. The money was never traced - anything up to $70 million. The chappie pleaded insanity and was released from any further action.

Those poor beggars that lost their money, the indemnity fund was established many years ago. The Olsen government here closed that so they had no opportunity to go back to the indemnity fund, so they had to try and fight it out in court. In the end a couple of politicians came to the party and they gradually allowed the release of the money from the indemnity fund. When I started complaining about this chap three years before he was found out, I was told by one of the chappies that were involved in this investigation type of work - he said to me, "If you come in here complaining about that bloke any more" - he mentioned his name - he said, "I will sue the backside off you for harassment."

I just had to sit pat and watch this bloke take people's money. I knew what he was doing with it but nobody wanted to listen to me. Believe you me, it was pretty hard. But he never got any of my money and I just thought, you know, in effect, if the government allow that sort of thing to go on then - they're always complaining about people getting their life savings taken off them but if you can't complain about someone that's doing it - you're likely to get sued yourself for making those allegations against those people. But a man with $70 million or up to $70 million, you can't compete with him.

MS McKENZIE: I wouldn't assume just because there's one instance where you're not satisfied that the courts will never help. I still would investigate that as an avenue.

MR TEASDALE: Truly, I can say this. These finance brokers seem to be a hallowed group. This is quite apart from what - you know, discrimination. The fact is I went to court, I gave evidence against a finance broker. He handles millions of dollars of people's money. I went to court. I bowled him out as a liar on documentary evidence. The magistrate stood up and called him up to the bench. He said, "Mr So-and-so, is your evidence correct?" He put forward my evidence and he said, "Now, is your evidence correct, Mr So-and-so?" and he mumbled something.

He said, "Mr So-and-so, is your evidence correct?" and he admitted, he said, "No, your Honour." He said, "Is Mr Teasdale's statement correct?" and he said, "Yes."

The magistrate stood up and he said, "I want that put on record." He explained what it was, that this chappie's evidence was not correct and Mr Teasdale's evidence was correct. We went out of the court and I thought, "That's it. I've waited two months to get the judgment. He found in favour of that bloke that committed perjury." So I took it up through the parliament and it was struck out of the evidence. It had been edited out of the evidence. All that was left was just where he said "I think". Nothing else was there. I took it up with - I think it was ASIC. On the evidence that came out of the transcript, there was nothing in it.

MS McKENZIE: All I can say is that in this case - I mean, that's a case that concerns you but in this case I wouldn't sort of give up going to ask help from the courts, even so - even after what you told me. You should never sort of close off one avenue totally.

MR TEASDALE: I must admit that I was involved in a bankruptcy case many years ago too and I can tell you this much. They conducted a meeting of this bankrupt. To get the meeting held I had to go to Mr Warren Flavell, the Commonwealth ombudsman, to get the meeting held, let alone as a creditor. I had the right under the Bankruptcy Act to get the meeting held by giving the official receiver in bankruptcy - I had to give an indemnity to hold the meeting and a petition to hold it, which he refused to do and Mr Warren Flavell got the meeting held.

Under the Bankruptcy Act, if you're a secured creditor you only can vote on a resolution to pass the appointment of the chairman. The official receiver walked in and said, "I'm the official receiver, South Australia and Northern Territory. I'll chair the meeting." So I thought, "I'll oppose that," so I put up my hand and I said - I called him by his name and I said, "You haven't invited the secured creditors." He said, "No, I don't have to." But he went on and conducted the meeting and we got $3.7 million worth of people's money released back to them and I shut up. I didn't say anything.

About three months later there was an argument developed between him and I and I told him - I said, "That meeting that that money was released under was invalid." He said to me, "You knew that, did you?" and I said, "Yes." He tried to come back on a friendly basis and I said I wouldn't have anything to do with it. Three months after the meeting they applied to the Federal Court and had that meeting validated. How many people could do that? After the meeting was invalid, released 3.7 million, back to the Federal Court and had it validated.

MS McKENZIE: These are issues that might concern other forums, if you like, but this inquiry we have to look at the Disability Discrimination Act.

MR TEASDALE: I can understand that but in most of those circumstances where these sort of things happen, in that particular bankruptcy I was telling you about, I think there were three elderly people died of heart attacks through the shock of losing their life savings. Would that be a disability?

MS McKENZIE: A bit more than a disability if they died.

MR TEASDALE: That's what I say. That's what is going on. That's what is happening, you know. It's just unreal. Look at the people at the moment down at Glenelg with their flooded homes. Think of the disability they'd be going under.

MRS OWENS: It looks like they're going to have some sort of class action, I saw in the paper.

MR TEASDALE: If they passed the hat around, I think a lot of people would contribute to their legal fees to get them some justice, but without that, everyone would wash their hands and absolutely wipe it - - -

MRS OWENS: Like the insurance companies?

MR TEASDALE: Yes. Insurance companies are number 1, and banks at the same. The government is just not far behind them.

MRS OWENS: I think on that note, before you get to the Productivity Commission - no, I think on that note, if you're happy to end your submission at that point - can I thank all three of you for coming and speaking to us and also for your written submission, Mr Teasdale. Thank you very much.

MR TEASDALE: Thanks very much for having me. I can honestly say now I can sleep in the night because this issue has really made me lose a lot of sleep and I'll rest now that I've done what I can for people to get some sort of justice in the system.

MRS OWENS: Thank you very much indeed.

MS McKENZIE: Thank you very much.

MRS OWENS: We will break for 10 minutes.

MRS OWENS: We'll now resume. The next participant this afternoon is the South Australian Commissioner for Equal Opportunity. Thank you for coming. Would you like to give your name and your position with the commission.

MS MATTHEWS: Thank you, and thank you for the opportunity to talk to you. It's Linda Matthews, South Australian Commissioner for Equal Opportunity.

MRS OWENS: Thank you, and thank you for your submission which I just received earlier today, so I have to admit to having not read it as yet, but I will later. But I would appreciate if you could run through some of the key features. Cate has read it. So we will see what needs clarification as we go.

MS MATTHEWS: Sure. Thank you very much. As you will see from my submission, in South Australia regrettably we haven't had changes to the Equal Opportunity Act for many many years - indeed, the disability provision since 1984. So from being the first in the country to introduce anti-discrimination legislation, we're now way behind the times.

So the current government is proposing to amend the Equal Opportunity Act, but hasn't got to that yet. As a consequence of the act not covering a lot of matters that I consider very important, and in particular mental illness and access to premises, we do refer a lot of complaints to the federal disability discrimination - to use the DDA, and we refer them to the federal Human Rights and Equal Opportunity Commission.

What I'm talking about is not a lot of complaints, not a large volume, but I have talked about what we're actually seeing in those complaints. Because again we don't deal with mental illness, the bulk of our complaints tend to be - nor access issues - tend to be around the issue of physical disability in employment. We've run a number of cases around that issue.

Probably most notably last year - I might just talk about one of those - was a police officer who had lost the use of his arm in an accident, and we ran an indirect discrimination case in the tribunal to argue that he was precluded from becoming a commissioned officer on the basis of his disability, and that was manifested in the requirement that he had to - I've forgotten the exact terminology now.

MS McKENZIE: Perform all the duties of a police constable?

MS MATTHEWS: He had to be able to command and control, that was the - and there were a lot of discussions about his capacity to be able to do that with his disability. Unfortunately the case was lost, and it was subsequently appealed to the Supreme Court and it's been referred back there, so we're not quite sure what the outcome of that is going to be. So we are trying to test the law wherever we can, but we don't get as much opportunity. We haven't got, I think, the depth of experience that people who have been dealing with the DDA would have, the range of experience that other jurisdictions would have.

Most commonly though the complaints we're getting, as I've outlined in here, are around screening out in applications for employment on the basis of assumptions about future liability for injury, illness, and on the basis of past WorkCover claims, or trying to screen out in that respect. I've detailed that in some detail. I have also agreed with our interstate counterparts that there really are very significant moral and social arguments for the DDA, which I think have been well made out in other areas, and I think there are economic arguments as well that have been well described also, that we're in broad agreement with.

The complaints that we're dealing with in South Australia often occur with small business. The issues we deal with mostly are - although occasionally we do have the large organisations, like the police force that I was just talking about - but it's my observation that we're getting less and less complaints from larger organisations, who are much more likely to be dealing with these issues internally, taking them more seriously - either that or we're just not seeing them.

But in small business there's still a lot of angst around this issue. I spend a great deal of my time talking to them, saying, "Look, it is proportionate" and I'm usually explaining the DDA very often too, about the unjustifiable hardship requirements and the fact that the courts take into account the size of a business and the capacity of business to be able to make the accommodations. The comments that I get around that are even more extreme, and that is, "We don't think we should even be having to deal with these complaints, because it costs us money just to deal with them."

MS McKENZIE: So that means - are they really saying, "We should be able to do whatever we like to people with disabilities"?

MS MATTHEWS: I think they're saying there should be a small-business exemption.

MS McKENZIE: Which means they can do whatever they like as far as the present legislation.

MS MATTHEWS: Well, that's precisely what I say to them. I say, "So if you're a small business and you could be subjected to sexual harassment, and so it's an accident of where you happen to work" - and I naturally argue the fairness principle about this.

MS McKENZIE: Yes. So would you say - and I don't want to interrupt you - - -

MS MATTHEWS: No. Please do.

MS McKENZIE: Would you say that really education in this area is needed, and should HREOC be focusing on this area in particular?

MS MATTHEWS: I think it's the one area - I think there can actually never be too much education around this area. We obviously do what we can; we're a fairly small organisation. I mean, HREOC do do some education around it in a number of their inquiries and the kind of work they do, but I think there's more needed, because I think the message - as I've said in my submission - there's certainly broad agreement with the principles, but the devil is in the detail, it seems to me.

When it comes to it, actually a direct cost to a business, they feel it's kind of like the "not in my backyard" principle - "not if it costs me individually as a business" is what I am told quite a lot when I speak with small business. I've said they remain - many small businesses remain unconvinced about why they should have to be part of this what I think is a very important legislative regime to try and (1) redress some of the past disadvantages for people with disabilities, but also to accommodate in ways that are not costly, and that's what we talk about quite a lot when we're doing the training and education work that we do here.

I have also made some suggestions about research that's needed, and this has come out of the work that we have been doing in South Australia on the issue of age discrimination, which is often linked to disability discrimination, and trying to dispel some of the myths that are still around about - the same myths around older workers as are around workers with disabilities, that they're going to be problematic, too slow, require too much adjustment, or adjustment that's not going to be feasible. I think that's where we've been putting a lot of our work, because we think that that will have an effect for people with disabilities as well.

At the moment we're actually doing some work with our Victorian counterparts, and we have in the past with the Western Australian counterparts, to look at research. One of the projects we're currently supporting through Swinburne University in Victoria, the Business Work and Ageing Centre, is on doing an analysis of workers compensation claims for older workers, to try and, I suppose, drill down in a bit more detail around what the actual costs are and what the reasons are for - there's some evidence that there's some higher cost for older workers in particular industries, and what that might mean. So we're calling it "prolonging the lives of older workers" to try and dispel some of - to try and work out what is real and what is just stereotype, because I think there's a real mix of that.

MS McKENZIE: What's the timing of that study?

MS MATTHEWS: There has not been funding yet. WorkCover in South Australia are interested in supporting it, but in talking to the Business Work and Ageing people, my Victorian counterpart, Dr Sisely, we thought it might be better to go to the national Occupational Health and Safety Commission, because it's an issue that's going to affect all areas around Australia. So a submission is to go to them. I'm not sure where it's up to, but I think it's either about to or it has been submitted to them.

MRS OWENS: The commission is also doing an inquiry into workers compensation at the moment. Although this is slightly outside their terms of reference, it may be of interest to them as well, this sort of work.

MS MATTHEWS: Yes.

MS McKENZIE: So if there's some publication that we could look at eventually, that would be fantastic.

MS MATTHEWS: Well, it would be really good to have a report and some research on it.

MS McKENZIE: Because you talk to employers, both small and large - we had a submission from the Australian Chamber of Commerce and Industry, from ACCI. Their feeling really was that there is likely to be a labour market shortage, and that that would be a great mover for employers to begin to employ people with disabilities. They didn't speak specifically about older people. They felt that employers would begin to look outside the square, as far as the labour force was concerned, because of an impending labour shortage.

MS MATTHEWS: The research - and I've put that in here as well - just mention the work the federal treasury and other organisations are doing, predicting that future labour shortage. Look, that could well happen, but my view is, I don't think we can wait for that to happen. I actually think we have to be taking active steps still to eliminate the stereotypes about people with disabilities and older workers, because the way that often happens is, they're screened out of a whole range of benefits in work - particularly older workers I'm talking about now - where their competence is questioned, they're seen as too slow, unwilling to change, going to retire soon anyway, and so the same training benefits don't always accrue.

My concern is that if we don't actively intervene in this, we may find that some older workers will lose the currency of their skills, and then that will make them - it might be that some employers will put more time into training and perhaps look at their prejudices in some way, but I don't think you can just leave it to the market for that to happen. I think we just need to continue doing research in this area, to try and work that out.

The evidence we have seen in our work with older workers is that there are some people who do get worn out by physical work, but it has more to do with the length of time they've been working than their age, so it's essentially the age at which you start doing physical work. But given that's a lessening proportion of workers anyway, that far more work now is not of that kind - that's what I mean by looking at this in more detail, to try and narrow down where the areas are, where there might need to be, say, job redesign or some other positive measures to make a workplace more, I suppose, amenable to people who may have some limitations in aspects of their work. That, I think, will be very useful for people with disabilities, because it won't be seen as such a marginal kind of area.

MS McKENZIE: We've talked about one of the issues for the future that you raised. Two others that you raise are the question of genetic screening and also what I consider to be a really difficult question of labour hire firms and how they actually fit within the rubric of anti-discrimination legislation. Do you want to speak a little about those?

MS MATTHEWS: Yes. I have raised the issue of genetic testing. I do think that the DDA needs to be looked at - as, indeed, all the anti-discrimination legislation does - to ensure that people are not discriminated against; that there's not pressure put on workers to have to submit to genetic testing or employers gaining access to it. I know that the reports at the moment are saying that this will not be the case and that the DDA could be used for this issue, but I think we actually should put it beyond doubt.

MRS OWENS: You think that it needs to be explicitly stated in the legislation.

MS MATTHEWS: I do think it does. I do, because I think there are potential arguments that it's not covered. I haven't talked about this in the submission, but I do think the insurance industry needs to be looked at as well, in terms of the screening out of people able to get insurance. Particularly as people get older, that's going to be more of a problem - self-employed people and also at the moment there's a cut-off age around most of the country for people to be able to get workers compensation, which is 65. There are issues around that as well.

Naturally, insurance companies are trying to screen out as much risk as they can, but I believe that there is work that needs to be done on looking at the way that risk is calculated, because I think some of - and, I have to confess, I'm not very expert about it, but we get the complaints from people who've had, say, an illness -

even the most minor illness - and they cannot get insurance, because the insurance companies won't take any risk that that injury or illness might recur.

MS McKENZIE: We've actually got a participant coming tomorrow that has had this experience with insurance - trying to get travel insurance - and, because of her health state, which was metastatic breast cancer, they denied her access to travel insurance.

MRS OWENS: All travel insurance.

MS McKENZIE: All travel insurance, even luggage.

MS MATTHEWS: I've had those complaints, but there are exemptions - as you know - in the acts that make that very problematic. I can usually not take them up, because the exemptions apply. Particularly older people - again, older people travelling too - there are limitations.

MS McKENZIE: Do you think such exemptions should apply in the act?

MS MATTHEWS: I think they're too broadly drawn at the moment.

MS McKENZIE: There possibly should be exemptions - - -

MS MATTHEWS: Yes.

MS McKENZIE: - - - but there's that let-out clause, isn't there?

MS MATTHEWS: It's very difficult to take a disability discrimination claim nowadays, where insurance is - - -

MS McKENZIE: Is this the same in your act as well?

MS MATTHEWS: Yes, it is.

MS McKENZIE: If you were to revise your act, that would be something that you would definitely try and change?

MS MATTHEWS: Absolutely. I'll be feeding that in, but I'm not hopeful, I have to tell you.

MS McKENZIE: Have you got a form of words?

MS MATTHEWS: Pardon?

MS McKENZIE: Have you thought of a form of words?

MS MATTHEWS: I could actually have a look at that. We did do something on that a few years ago, so I shall have a look and - - -

MS McKENZIE: Thank you. That would be tremendous.

MRS OWENS: If you could point us in the right direction on that, it would be appreciated.

MS MATTHEWS: Yes, I can send that to you.

MS McKENZIE: Labour hire.

MS MATTHEWS: Labour hire? We are getting increasing numbers of complaints - and these are disability discrimination complaints - where people are employed initially through labour hire firms. I think what many employers are doing here is almost like a taste and try. They're employing people through labour hire firms. The labour hire firm is the employer and they are placed with an agency. We call them host employers. We've run a couple of cases of this nature where after a year or so the employer will decide that they will consider the person for permanent employment. They then undergo a medical screening test. If there's anything wrong, they're not employed. They're not taken on board.

MS McKENZIE: That's a medical screening test by the labour hire - - -

MS MATTHEWS: No, by the host employer.

MS McKENZIE: The host employer? Okay.

MS MATTHEWS: Yes. The host employer usually does the medical screening. Then the worker will lodge a complaint with us. Fortunately, I'm able to take up a complaint against both the labour hire company and the host company, and that's what I normally do.

MS McKENZIE: Because you've got your contract work section.

MS MATTHEWS: Yes. Then often we will find that issues of performance are raised, which I don't - it's hard to accept, when the person is being considered for employment and, indeed, is being sent for medical screening to consider them for permanent work and it does often smack of recent report, I think - of those kinds of those responses. I have written about this and I've talked about this publicly in South

Australia - about my concern for people in this situation.

MS McKENZIE: There are lots of legal issues around the status of both the labour hire firm and the host employer in these cases too - how the act operates. Without going into them in depth, I assume that you would want the act made clear so that it would pick up both.

MS MATTHEWS: I do, yes. I have quoted in my submission the work of Dr Richard Hall, who has outlined this. The other issue that companies will often claim is that they're breaching occupational health, safety and welfare legislation as well, so we do a lot of work with companies around that also to show that the discrimination laws do not contemplate employers breaching occupational health and safety requirements - that you can certainly fulfil the requirements under both pieces of legislation by testing the person against the particular work that they need to do.

Where that does get difficult, because labour hire companies have said this to me - that, "We're not prepared to do that, because we want to be able to put this person into different kinds of jobs. They might be going into this job in this particular company, but that job might change, and we need them to be able to move very quickly into another job."

MS McKENZIE: And they don't want to have to keep doing - - -

MS MATTHEWS: And they don't want to have to test again each time. That's what they say. Hence, the broad screening testing that they say they need to do. That is a difficult question, because one can't deny the environment in which the firms work, but still it's rare that there's - people are working within, I suppose, mostly a particular work environment, but there can be differences in some of the process work jobs about the amount of lifting, for example.

MS McKENZIE: Surely there could be tests that would at least accommodate the majority of their clients.

MS MATTHEWS: I think that's most likely to be the case, and that all they need - what I've said to them is, "Well, couldn't you devise a broad - for what is probably 80 or 90 per cent of it and then, if there really is some significant deviation around it, then just test on that particular issue." A case that we took to the tribunal very recently involved a woman, Ms Caroll - it's on the public record - who was in precisely this situation.

She had worked for the company for about 18 months, employed by a labour hire company. She was then considered for permanent work and she went for a medical test - to the doctor retained by the company - and it turned out that she had

had an operation on her wrists many years before. I think it was a ganglion. It was some kind of wrist operation, and the doctor said that he thought that, in order to be sure that she would not exacerbate that injury or have a problem with it in future, she should be rotated in her work. She was a rubber cutter. She worked for one of the factories, having to trim rubber. After that report - the medical report - she was not offered permanent employment, and she lodged an application for disability discrimination with us. The employers argued that they changed their mind about giving her a job because she was difficult and she'd got into fights with other workers and so on. I don't think she came across very well in the hearing, because she lost the case.

MS McKENZIE: Do you have any thoughts about the DDA's - you've got, if we might say, omnibus legislation, although I know that all grounds are not covered. You've got multiple grounds in the legislation anyway.

MS MATTHEWS: Yes, we've got seven grounds that we cover.

MS McKENZIE: Yes, that's right. The DDA is a single-ground legislation. Have you got any thoughts about the advantages or disadvantages of those two?

MS MATTHEWS: I think omnibus legislation works well for the states. I think it's not caused any great problems. I think there are real values in the federal area of keeping it separately. I think the main issue around having different pieces of legislation federally have been in the complaint handling area, and I think that has largely been overcome by the amendments that happened a couple of years ago. I think it was the HREOC Act - I'm not entirely sure - where there's a mechanism for dealing with complaints, where I think the powers are vested in the president around complaint handling, but still the specialist commissioners are retained.

I have heard the arguments for omnibus legislation. I'm not convinced by them federally, because I think that federally it is useful to have a particular focus on disability, on sex discrimination, on race discrimination, because the Human Rights Commission has really the capacity to do such broad work and I think without that - the national inquiries, the international work and some of the education work that they do - they are able to look at things in a depth that you simply can't do in a state.

Of course, we can't do that national perspective work either but the work that the Human Rights Commission does, particularly - well, in all of the areas but we're just talking about the disability area now - is enormously helpful to the states because we can tack on to that work and that makes a difference in the kinds of things that we do and they can drill into areas that - with omnibus legislation you're always - the down side of omnibus legislation is that you're always trying to work out those priorities about where you're going to put your time.

MS McKENZIE: You spread yourself thinly.

MS MATTHEWS: You do spread yourself thinly because you have to work out, "I haven't done enough for this particular group and I need to focus on that and I need to do something else. I think to keep - I would prefer to see a focus kept on the particular topic.

MS McKENZIE: What lessons do you think could be learnt for the DDA from your complaints in the conciliation process? I'm asking that question really because we have had a number of submissions that have raised various aspects of the complaints process under the DDA. One is that it is daunting and stressful and costly to complain, particularly for an individual, and of course the more severely impaired the person is and the more severe the disability, the more difficult it is. So there have been some suggestions that organisations and perhaps even HREOC should be able to initiate complaints.

The second matter that has been raised is a concern about the confidentiality of conciliations; that particularly with systemic matters, and perhaps others too, that there might be some benefit in being able to make public, not what goes on during conciliation, but the outcome. The third is the question of the courts - the Federal Court and the Federal Magistrates Court - and this question of costs. Are there any lessons to be learnt from your end, as far as that whole process is concerned?

MS MATTHEWS: I will talk about the confidentiality one first. We have the same provisions about - most of our complaints are settled confidentially. I might start at the beginning. There is no doubt that an individual complaints process is very limited. It does rely very much on - it absolutely relies on the individuals to bring complaints and the act is fairly clear - our act and the federal act - that the individuals must be promoting their own complaint. They've got to give you the information that you need to do. There's all those issues around bias as well. You have to be very careful not to look like you're actually - that you're biased in any way in dealing with a complaint.

I think it is particularly difficult for some people with a disability. For others, it's probably no different than bringing any other complaint. It is a limited remedy. But having said that I still think there's a lot of value in individual complaint processes. I'm still a believer in them. I think they can have some systemic effects, but it is awfully hit and miss. You would have to say it's very uneven in how it works. So I think there are real limits and there is value in having some wider powers to be able to inquire into systemic discrimination. HREOC has done that. The Human Rights Commission has done that in some cases. I don't have those powers so I haven't done it so I'm speaking very hypothetically.

I can talk more, obviously, about the conciliation process because our processes are very similar to those run by the federal commission. What I try to do, where possible, is to publicise the outcomes of the complaints; obviously protecting people's privacy and confidentiality. Sometimes it is a bit hard in a town like Adelaide - we're very small - so when I go on radio and talk about these complaints I have to be very careful because quite often people will know who we're talking about so it's tricky.

Increasingly, I'm trying to get permission where there has been a successful outcome to be able to publicise the complaint and not be so careful and circumspect about identifying details. You can still do it without naming names. You can still talk quite a lot about it and you can certainly use the complaints to talk about the principles. Having said that, it is still a limitation, obviously. It is not as good as having a case where you can actually talk about it in far more detail.

MS McKENZIE: Is permission being given, or at least sometimes?

MS MATTHEWS: Sometimes. We have some that will but it really very much depends on the nature of the complaint and how aggrieved people feel by the processes and I have to say that quite often respondents do feel very aggrieved by the processes and feel that they have been unfairly dragged into a complaint where they say the reason for the person being let go, dismissed or having some other action taken is not on one of the grounds contained in the act but it is to do far more with their poor performance and so on.

Quite often we find when we look at those cases that that has not been well-communicated to the person.

MRS OWENS: They weren't given adequate warnings.

MS MATTHEWS: They weren't given adequate warnings and they weren't given adequate notice or a chance to improve their performance. That is a very common issue.

MRS OWENS: When you do publicise, how do you do it? Do you put out publications or do you put it on your web site or what do you do?

MS MATTHEWS: We do some on web sites. We have a newsletter that we put out regularly where we describe those cases. I do quite a lot of media work so I talk about them. I talk to groups so I take a lot of opportunities to publicise them. One of the projects that we have done over the last couple of years to try and get the cases more widely known and the issues more widely known is a program that we have written, a web-based program, called Play by the Rules. It is aimed at clubs and associations in sporting and recreation areas. We have now turned it into a national product and we have got funding through the Australian Sports Commission to do it. It has a training component for coaches, umpires, players and other officials.

That has got a lot of examples that we have taken from our cases and we have got a whole range of things in that web site. I can send you information about that if you're interested because we actually did that - actually our Victorian counterparts produced a booklet that outlined some of the cases that apply in clubs and associations and so on. We went to our major sporting associations here in South Australia and they said, "Please don't do another booklet because we won't read it. We're up to our eyeballs with booklets and rules and those kinds of publications. All we do is just put them in the bin, essentially." So we thought, "We won't do that. We're not going to waste our time doing that."

So we started working with 12 of the key sporting and recreation associations here and eventually came up with this product. It took us a lot of work, I have to say. It was not an easy task. But we've made it into a national product so every state can use it for their own benefit. Some guiding principles about it: it had to be simple and accessible, not too long and it didn't cost anything. We thought if we can actually get some of these products working we might be able to get into small business because it's very difficult to get the message to small business and that's what we're trying to look at all the time.

They won't come to training mostly. They normally only want to deal with things when a crisis has happened and they hate what they see as the cost and the imposition on business in any event. But we thought if we can get it in - and that's another reason we did it with sporting and recreation clubs, because we thought that could be a really good way to actually get the message across in what is seen as a less punitive kind of way because - - -

MRS OWENS: It's quite a wide audience really, engaging in sport and recreation.

MS MATTHEWS: Yes.

MRS OWENS: I mean, these people are obviously going to work or they're going to schools or whatever.

MS MATTHEWS: Yes, exactly. That's right. In Australia sport tends to touch just about everybody, in clubs and associations as well. It has been very, very successful. We've had really positive feedback from overseas of people that have used it and said that it's a better product than ones that they're paying for. I guess that's because we're in a small state and because we have to try to be a little bit creative about how we get the message across and we're continuing to update that and we've just had an evaluation of that that I can actually send to you too, that talks about it in great detail and they actually did speak to a lot of people and they spoke to people interstate about it as well and what the next phases of this project might be.

We have tried to, in this move beyond the direct discrimination message - because we've still - and that's what I have, I suppose, tried to convey in my submission. People - businesses particularly - still think of this area as a problem. It worries them, it troubles them, they don't know what to expect, they don't know what to do. That's why we're trying to get these messages out about, like, it's good for business. Obviously all our other counterparts are doing that as well. But in Play by the Rules we're saying good practice - and we don't use the words "good practice" - we say Play by the Rules. If you do that, sport and recreation needs to be fun, safe and fair; and try and have those fairly simple messages but with a lot of information behind that with the examples.

So we say that the behaviour may not be unlawful but it's still unfair and it's a good idea to deal with it - bias and all the issues - bullying, bias and all the associated things. Because we say in this web site that if you don't have good processes and good ways of dealing with this then discrimination is going to be one of the outcomes that is very likely to be there.

MS McKENZIE: What you're trying to do is really look before the discrimination happens?

MS MATTHEWS: Ideally, because once you get a complaint, as anyone will know who has dealt with them, people feel they're on the back foot. It's hard to get good outcomes. Often the complainants feel they haven't got the justice that they think they should have because of the cost issue.

MS McKENZIE: Can I ask you about the cost issue? As you know, it's an issue - - -

MS MATTHEWS: We're a no-cost jurisdiction.

MS McKENZIE: You're a no-cost jurisdiction?

MS MATTHEWS: No cost. It costs nothing. There are no costs. The only circumstances in which costs can be awarded in the South Australian Equal Opportunity Tribunal is if the matter is declared vexatious, but apart from that - - -

MS McKENZIE: Obviously that's rare.

MS MATTHEWS: Extremely rare.

MRS OWENS: Just before we get off education and what you've just done there, which I think sounds really interesting, it comes back to - you said before we can't have too much education, in that you felt that HREOC could be doing more. They are struggling, like everybody, with limited resources.

MS MATTHEWS: It's a resource question, yes. I'm loathe to - I wouldn't want to criticise them.

MRS OWENS: No.

MS MATTHEWS: I know the difficulties they face.

MRS OWENS: I think everybody acknowledges that.

MS MATTHEWS: Yes.

MRS OWENS: It's just here is a useful model and I thought what you said about just publishing booklets isn't necessarily the way to go. Are there other ideas? If we were in an ideal world where there were more resources - I won't say infinite resources, but more resources - what sort of things do you think HREOC could do? Apart from maybe publicising more cases - they do publicise some now.

MS MATTHEWS: They do. Yes.

MRS OWENS: Maybe there are more that could be done. You ask people, I gather, on a regular basis, "Do you mind if we publicise this?" I don't know whether HREOC - we'll have to ask HREOC when we talk to them in Sydney about that.

MS MATTHEWS: Yes, if they do that. Because I'm not sure whether they do it - - -

MRS OWENS: But maybe there is more that could be done, or targeting the information about the cases to particular areas, like if they have a series of cases about educational institutions, get that information back out to the schools, or to education departments or whatever.

MS MATTHEWS: I think that is a good idea - to do that. We have found in the - Play by the Rules and other areas where we talk about the cases, that the cases actually explain some of the issues better than you can do by talking about reasonable adjustment, unjustifiable hardship - those kind of terms businesses tell us they hate because they don't know what it means. How long is a piece of string? We know that so many of those things are contextual, as I've said before. It's very difficult to explain those concepts.

MS McKENZIE: So a concrete example - - -

MS MATTHEWS: Concrete examples - I just don't go and talk to groups now without talking about a case in which this happened, and I do try and tailor it as much as possible to the area. I do think targeting is important and invariably, whenever you do that, great discussions ensue about what was right about that, what was wrong with it, what should have happened, and what happened about this and - people want to engage in that kind of discussion.

MRS OWENS: And it gets them thinking.

MS MATTHEWS: It gets them thinking about it, but it's awfully - people do want to talk about it, too. That is the limit, of course, of Web-based products in any kind of other things. The more you can talk about it - so I take up any invitation to speak to groups and so on, but again, that's awfully - that is resource intensive. The media - naturally - to talk about the cases in the media whenever we can.

MRS OWENS: What about advertising campaigns?

MS MATTHEWS: We looked at that in days when money wasn't quite as tight as it is now. The advice we got about that is that again, unless you target, you can waste an awful lot of money. General messages are not particularly useful about that, because people can't get enough from them; from those general advertising campaigns. I know there has been lots and lots of research done about this, that I have to say I haven't looked at for quite a while, so I'm not knowledgable, but I'm told that they are pretty much a waste of money - very general messages and general campaigns.

MRS OWENS: Although I can recall in other areas being subject to - as a consumer - to advertising. In Victoria there used to be an advertising campaign "Life. Be In It." It was all about getting people off their backsides and to stop watching telly and get out there and do things. I still remember that and the characters. When I was a child the Electricity Commission in Victoria ran campaigns on Shocko - ie, you don't put things into power points and so on and you keep electrical appliances away from small children and I can still remember that. You can have a very powerful impact.

MS MATTHEWS: You can, but they're very specific campaigns and they are very specific messages. Again, it's some years since I've read this, but if you've got a simple behaviour change that you want people to do, then a message like "Drink drive and you're a bloody idiot" - those kinds of messages - can work, because it's quite a - it's not a complicated message. Discrimination is - as I said before, the devil is in the detail. It's how much is enough adjustment, for example, with disability? Look at the High Court at the moment which is grappling with the case of Purvis. As you'll know, that case is - you read the decisions and judges have difficulty with dealing with some of these concepts. Some of it is very straightforward. I think, as time had gone on, with the - particularly we'll talk about disability discrimination - it looks to me in some ways it's got more complex rather than less complex. I think that makes it really, really difficult to - what is the behaviour you want people to stop?

MRS OWENS: Maybe you turn it around the other way and you have positive messages, like "We're all equal. We've all got a right to be on this earth, regardless of race, creed, disability or whatever." Then if you start to put the messages around in that way, people really would have to start to think, "That person is the same as me. Why should I treat that person differently to somebody else?" I don't know; I'm not an advertising guru - if I was I'd be out earning lots of money.

MS MATTHEWS: If we knew about that, this would be - I'm sure there are components of it that you could do, but they are so costly - those campaigns; they're enormously costly. Even the smoking - smoking is a good one to look at. The researches, when people are looking at changing behaviour over a long period of time, the smoking ones - I read something recently about that which says that still most people are not likely to give up smoking. The main reasons that people give up smoking have got nothing to do with advertising campaigns; it's when they get their first heart attack. Then they think, "Right, that's it. I'll give it up." Or it costs them too much. It's not advertising. They're the kinds of - - -

MRS OWENS: What about "slip, slop, slap". That's worked.

MS MATTHEWS: Yes.

MRS OWENS: That's worked reasonably well, and "Buckle up your seat belt."

MS McKENZIE: These are taking very specific, very concrete issues, and they're very simple ones.

MS MATTHEWS: Yes. You've got to have a really simple message. You want some creative brains, more than mine is, I think, to be able to work out how you might - because the Supreme Court in the United States - I was reading yesterday about the latest issue around affirmative action, the race admissions and the complexity of that. What does "equal treatment" mean? It's the argument that we deal with in this area all the time, about equality and difference. You can't necessarily - we tell people, "You can't necessarily treat everyone the same." If people come with particular difficulties that might need more help and assistance.

MS McKENZIE: Or different help.

MS MATTHEWS: Or different help, that's right.

MS McKENZIE: Equal treatment doesn't mean the same treatment.

MS MATTHEWS: It doesn't mean the same treatment. Immediately you talk about that advertisers would, I suspect, just throw up their hands. It's too complicated, too sophisticated. I don't think it's that complicated, but a lot of people, when we talk about that issue in our training - and we do a lot of training around this - we get absolute resistance. I'd hate for this to be a public message because by and large the bulk of the population does not agree with special assistance; they don't like it. They do think people ought to be treated the same, irrespective of what might have happened to them in the past. Unless it's a very obvious reason why - they don't mind wheelchair accessibility and things like that because it's very obvious and it's concrete, but it's got to be like that, otherwise they don't think they should have special adjustments.

MRS OWENS: I just had one more issue, Linda, that I wouldn't mind raising with you very briefly. That relates to HREOC's location and its relationship with your commission. In the past there were, as I understand it - - -

MS MATTHEWS: Cooperative arrangements.

MRS OWENS: - - - cooperative arrangements.

MS MATTHEWS: Yes.

MRS OWENS: And now we have a situation where HREOC - I know you still talk and you cooperate, but it's probably in a more informal way.

MS MATTHEWS: Very much so and ad hoc.

MRS OWENS: One of the issues that has been raised with us is HREOC's location in Sydney not having a local presence, and in other states that has meant that a lot of complaints have been going through the local Equal Opportunity Commission or Anti-Discrimination Commission, rather than through HREOC. If people know about their rights at all - and that's another issue - they'll go to the state commission.

MS MATTHEWS: They'll go to the state commission.

MRS OWENS: I'm really interested in your views about whether you think that - having HREOC in Sydney does stop people going there. Now, it might be different for South Australia because of the limitations of your own act so we might be talking about a different situation, but do you think there would be any advantages in having a local presence for HREOC in South Australia?

MS MATTHEWS: I think so. I was very disappointed to lose the cooperative arrangements. I thought it was a really good system. Obviously it was particularly advantageous for us because I think for people to be able to go to one place in a state is actually really useful and really important, to do that. There is the issue of our legislation, but even leaving that aside, let's say we were pretty much harmonised with the federal legislation - and that may happen in the future, where we will be very similar and it won't make much of a difference - it probably becomes less important then, because people still get a remedy. If the legislation is very similar - because people don't differentiate - they don't care whether it's state of federal legislation.

MS McKENZIE: They just want help.

MS MATTHEWS: They just want help. So when people come to us we have a look at their complaint and work out - we'll take it if we can, but if we think there is a danger sometimes with the way our legislation is worked, we would refer them to the Human Rights Commission. Obviously for us it would be much better if they were here and could deal with it. That would certainly be my preference, to have a local presence, if they could - even if it wasn't with us doing cooperative arrangements. The Human Rights people do conduct - hold conciliation conferences in our premises, so that's good, at least there is some identification there with us with the Human Rights Commission.

I think, as I said before, I actually - the legislation is designed to work concurrently. That's not always easy, but it mostly can work okay. I guess I do take it from the point of view of the client mostly, about what is useful to them. Has that answered your question?

MRS OWENS: Yes, I think so.

MS MATTHEWS: Sufficiently. I'd like to see cooperative arrangements returned.

MRS OWENS: Yes.

MS MATTHEWS: If possible - but I don't think that's likely, to be honest.

MRS OWENS: Why not?

MS MATTHEWS: Because the Human Rights Commission didn't think it was working for them. I think they prefer to have more control of the processes.

MS McKENZIE: There may also be a funding issue now.

MS MATTHEWS: I think there is a funding issue. I think there is a funding issue now.

MRS OWENS: But we were interested in how the act is performing more generally than what is working for the Human Rights and Equal Opportunity Commission specifically, although the two things are interrelated.

MS MATTHEWS: Sure.

MRS OWENS: But to the extent that people - we have an act and people may not be availing themselves of that act, through lack of knowledge or geography, or whatever.

MS MATTHEWS: Or problems with the act itself.

MRS OWENS: Or problems with the act itself. There are a whole lot of issues there.

MS MATTHEWS: Sure.

MRS OWENS: What we're trying to do is tease those issues out and see if there are simple solutions, are there more complex solutions: what are the solutions? We are just exploring - by asking this question it doesn't mean to say we're necessarily recommending it.

MS MATTHEWS: No.

MRS OWENS: But we are just exploring all the options at this stage.

MS MATTHEWS: To see what's possible, yes.

MRS OWENS: Yes. Any other issues you want to raise with us?

MS MATTHEWS: I don't think so. I hope I have covered them sufficiently but I will have a look at the other issues that I mentioned to you and send those to you.

MRS OWENS: That would be great.

MS MATTHEWS: And if there is anything else you want to ask me to expand on I would be happy to do that, too.

MS McKENZIE: I have asked you all the questions I need to ask from the submission.

MS MATTHEWS: Okay.

MRS OWENS: I would like to see Play by the Rules at some stage.

MS MATTHEWS: Yes. We will, too. We'll send you that.

MRS OWENS: Thank you very much.

MS McKENZIE: Thank you very much. It's a really interesting submission. It's great.

MS MATTHEWS: Thank you.

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

MRS OWENS: The next participant this afternoon is the Multicultural Mental Health Access Program sometimes known as McMHAP. Is that right?

MR MOUTAKIS: Absolutely.

MRS OWENS: For the transcript could you please give your name and your position with the program?

MR MOUTAKIS: My name is Arthur Moutakis. I am the program manager for the Multicultural Mental Health Access Program.

MRS OWENS: Welcome to our hearings. I know you have come from another conference and we'll try not to hold you up too long. Thank you for your submission and we would be very happy if you could maybe just run us through some of the key issues.

MR MOUTAKIS: Sure. Essentially mental illness is a physical illness and, as such, must be treated as any other health condition, such as diabetes or asthma, and with mental illness it is often a matter of controlling the problem through a variety of different methods, as with any other illness. Obviously my area of interest is with multicultural mental health, of which 11.8 per cent of the Australian population is from a non-English-speaking background, and that's those who have arrived from a non-English-speaking background - it doesn't include the first generation. I've got those statistics. It's probably more than that. It's probably (indistinct) if you include the first generation, as well.

At present the mental health needs of the non-English-speaking background communities in South Australia have not been met and current mental health reforms (indistinct) the issue. However very little, if anything, has been done about it in any meaningful way. Our clients are regularly faced with funding; with finding appropriate accommodation, and those difficulties are further exacerbated by linguistic and cultural barriers. If a non-English-speaking person has a mental health issue other than a - with another disability, their access to mental health services and other services is severely limited.

The incidence of mental illness is significantly higher in non-English-speaking backgrounds as compared to English-speaking background. That has been supported by research. If you are from a non-English-speaking background and have a mental illness you are more likely to be involuntarily detained in a mental hospital than the general population in Australia, and that's consistent through other western societies, as well - UK, USA - those sorts of trends. Often at many appointments non-English-speaking background communities are not offered the services of an interpreter for a variety of services, which tends to compromise the quality of care that they are actually receiving by the very fact that it compromises communication.

MRS OWENS: Yes.

MR MOUTAKIS: Non-English-speaking background communities with mental health issues generally are less likely to receive talking therapies.

MS McKENZIE: That's like the group therapy discussions. Is that what you mean?

MR MOUTAKIS: Yes, and one-to-one counselling, and that sort of thing. They tend to miss out on that. Often their face-to-face contacts in the community are generally shorter in the general population. Non-English-speaking backgrounds are often excluded from quantitative studies, such as the national survey of mental health and wellbeing. They are less likely to receive treatment for their mental health problems, which affects their general wellbeing. Refugee claimants have even worse mental health status as a group separate from those who already have refugee status - where the refugee status has already been determined.

Utilisation of mainstream health and welfare and other services by non-English-speaking background people is extremely poor and this highlights an enormous access inequity issue in this minority group. Essentially my organisation is about reorientating mental health services, about providing culturally competent care to the population, and it's also about providing education, training and capacity building communities in order to advocate and receive higher standards of mental health services as does the rest of the population.

MS McKENZIE: So what sort of initiatives are you doing for that? You want to try and encourage the provision of culturally appropriate mental health services, so you are looking at - obviously delivered in various languages, for a start, I suppose. Is that one of the things?

MR MOUTAKIS: Yes, absolutely. I guess that we're hampered quite severely with the amount of funding that we have, and speaking - Ian Hickey, who had been around and done a survey - which is now the out-of-hospital, out-of-sight sort of report - had stated that South Australia itself - so I am talking about local issues here - is about 20 years behind New South Wales as far as mental health reforms are concerned. At this present time there wouldn't be a community - mental health service - in this state that would actually meet the national mental health standards, as we speak.

That has been acknowledged and there's a lot of work going towards meeting that particular need and the role that my organisation at this stage is playing is that through one of the many, I guess, programs we run - is through a quality improvement approach is that we're working with community mental health services and providing, I guess, consultancy, advocacy and assisting with policy development around a - towards meeting accreditation, which is the national mental health standards as far as providing culturally competent care to the communities and, through that, there is quite a bit of education and training component. My organisation is a very small non-government organisation which throughout the state, all small, non-government specialist agencies have been quite poorly funded and - - -

MRS OWENS: Where from? Where do you get your money?

MR MOUTAKIS: It's basically from the mental health programs services unit - DHS, Department of Human Services.

MRS OWENS: Okay, in South Australia?

MS McKENZIE: That's a state - - -

MR MOUTAKIS: State, yes.

MS McKENZIE: That limits what you can do.

MR MOUTAKIS: Absolutely.

MRS OWENS: How many staff have you got?

MR MOUTAKIS: We are the equivalent of 1.6 (indistinct) and at the moment our mandate is obviously to work with community mental health services, but you really can't do that in any comprehensive way, or real way. I'm supposed to be addressing the metropolitan, regional needs with that sort of funding base, you know, and that's certainly something that up till now we haven't had an enormous sort of a response from our state government counterparts, but I think the wheels of change are turning and hopefully there might be some scope to sort of improve that.

MS McKENZIE: There's obviously a real need for improvement as far as the NESB communities are concerned.

MR MOUTAKIS: Yes, absolutely. The best way to describe stigma in non-English-speaking background communities is "paralysing". Essentially they are one of the most difficult groups - probably next to indigenous - that are difficult to actually access by any service. We use a variety of different approaches, I guess, that assist us to do that, utilising existing non-English-speaking background community networks, et cetera but, because of the paralysing stigma, families tend to sort of hide, if you like, and hide their particular individual with a mental issue and it tends to isolate them further. It starts putting an enormous amount of - a person doesn't start getting any sort of care in a timely manner and what happens therefore is that the person inevitably gets to a point where the family aren't able to cope and we end up presenting at some sort of acute hospital facility. Generally what happens is also the average length of stay tends to be a lot longer as well.

MS McKENZIE: So you really want to catch this problem much earlier - much earlier.

MR MOUTAKIS: Absolutely, yes. The primary care services at the moment aren't able to meet the need and that is through the need to go beyond education, training and cultural awareness programs, but actually - you know, through a skills knowledge base of providing culturally competent care to the communities, so our service isn't about trying to extend and become a service provider. We're about trying to build others who should be - and have got the resources to provide the services, to improve their service, their quality of service, to our communities.

MRS OWENS: Arthur, have you ever come across any examples of people from non-English-speaking backgrounds with mental illnesses who have been discriminated against?

MR MOUTAKIS: The discrimination tends to be very indirect.

MRS OWENS: Did you say "direct" or "indirect"?

MR MOUTAKIS: Indirect. There have been cases that I've heard of - for example, people who have gone to their general practitioner and, because - yes, there is a telephone interpreting service available, and there are a lot of logistical issues in trying to sort of book the time for the telephone interpreter and then get - it's a bit like making the moon and the stars almost align when you're trying to plan some sort of GP (indistinct) and, generally speaking, what happens - - -

MS McKENZIE: That's a very good way of putting it.

MR MOUTAKIS: Generally speaking what happens is that the GP starts relying on families and friends to actually interpret and when you're dealing with really sensitive issues - mental health is one of them - you really need clear, absolutely clear, communication and, generally speaking, families and/or aren't really equipped to be able to translate literally what the doctor is saying and vice versa.

MS McKENZIE: And the person may not want them to either.

MRS OWENS: No.

MR MOUTAKIS: Absolutely. We tend to advocate on the position that the family should be the advocate but never the interpreter, and sometimes children are even involved, which is even a bigger issue. And also the other disincentive for other service providers is that government services have got access to funding for interpreters, whereas non-government organisations generally don't. When individuals are accessing those other services the services are reluctant to want to service these people because of the funding constraints. They just can't keep on going and be supported; it's just crazy. I think that particular issue needs to be addressed.

MRS OWENS: Some of these issues are broader systemic issues.

MR MOUTAKIS: Yes.

MRS OWENS: One of the issues we are looking at is how people use the Disability Discrimination Act; whether they know about it in the first place and how they use it. But in this case it would be, I presume, very difficult for one individual from a non-English speaking background, mentally ill, to even get to first base in terms of trying to even think about putting in a complaint; whether they know about the act or the South Australian act for that matter. Would you agree? Is it difficult to think of a situation where somebody in that situation would go down this track?

MR MOUTAKIS: I totally agree with what you are saying. It is very difficult. These are some of the most vulnerable and dis-empowered people of our community. They generally are fearful of the system and generally have no knowledge of what rights they actually have and what legislation is out there that actually protects them or is supposed to assist them. That is very very true. And I guess that's where other organisations that play an advocacy role - and there's one in South Australia - MALSA - which deals with advocacy and non-English speaking backgrounds and communities with disabilities. They play a major role in advocating those particular rights of individuals. But still, there are many who are, as I said, fearful, and because of the stigma with mental health, aren't going to come out and say, "Well, look, I have got a mental health issue and my doctor", or so and so, "is not providing me with an interpreter and I can't seem to get anywhere with this problem." They are just not going to do that.

MS McKENZIE: Even if they knew where to go.

MRS OWENS: And that there was maybe a remedy for that.

MR MOUTAKIS: Yes, absolutely.

MRS OWENS: It might undermine any relationship they did have with their doctor.

MS McKENZIE: With their doctor.

MRS OWENS: It could be totally undermined, couldn't it?

MR MOUTAKIS: Yes. And in fact there are a couple of divisions of general practice who did a needs analysis, and the top issues that have come out are mental health, and the most difficult group they found to work with was a non-English speaking background, so those two together.

MS McKENZIE: So it's compounded. You have got the compounding effect.

MR MOUTAKIS: Yes, absolutely. And the cost of interpreters also affects the ability to access talking therapy, it's like you are calling it behaviour therapy, group work, all that sort of thing.

MS McKENZIE: So if you go to one of those groups you have to pay for the interpreter?

MR MOUTAKIS: If you want one I guess in some instances that would be true.

MS McKENZIE: Because if you can't get any of the normal services - the hospitals don't provide free ones?

MR MOUTAKIS: Yes, the hospitals do, the government-funded ones do.

MS McKENZIE: But not the private hospitals.

MR MOUTAKIS: Not the private ones.

MS McKENZIE: So that could be really expensive.

MR MOUTAKIS: Absolutely.

MS McKENZIE: And maybe impossible, too.

MR MOUTAKIS: Yes. Like I said, in a scenario where you've got a group therapy situation a telephone interpreting service is totally inappropriate. It's better than nothing, but it's not the be-all and end-all as far as trying to meet these needs. I guess I'm speaking from the context of South Australia here, but some of these issues certainly are broader and do cover national problems, national issues. But when we are the network contact and I guess a member of the multicultural mental health Australia, which was named the Australian Trans-Cultural Mental Health Network, they certainly have been advocating for us to receive further support and funding in this state, to meet our needs here. But thus far we haven't had an enormous amount of success. Quite clearly I've had some local statistics that have indicated that the admission rates of people with a non-English speaking barrier are perhaps lower, but those that do get admitted are - - -

MS McKENZIE: More acute.

MR MOUTAKIS: - - - more acute and stay longer. Yes, there are huge systemic sorts of problems. And a lot of people - particularly in mental health there are lots of issues with mental health in this state; we are going through a whole transition period, from being reactive to being proactive about the mental health needs of the community, and going from a very medical sort of model to a primary care model. So hopefully that will all happen. But at this stage of the game we are certainly up against it and what doesn't help us as well is that often our communities are also excluded from a lot of the research studies that are done. For example, as I mentioned before, in the national survey of mental health and wellbeing people from a non-English speaking background were eliminated. And the researchers at the time will probably say, "Well, it was probably not to skew their data or in some way affect their data collection." But in doing that you've also discriminated and have not captured the - - -

MRS OWENS: A very important group in the community.

MS McKENZIE: Yes. That's right. And that means that no-one can deal with the problem.

MR MOUTAKIS: That's right, absolutely. And the statistics have shown that the prevalence of mental illness, let's say, in non-English speaking background communities, is much higher.

MS McKENZIE: Why is that? Is there anything to explain why that might be?

MR MOUTAKIS: Their services aren't culturally appropriate; they are not accessing those services; they are becoming much more acutely ill; they tend to - as I said, there's an enormous amount of stigma that causes the isolation.

MS McKENZIE: So it just gets worse and worse.

MR MOUTAKIS: Worse and worse, yes. It just spirals until it's a crisis situation they find themselves in. That's certainly a big issue. I guess that what's also compounding all this, and it's quite topical at the moment, is the refugee status with TPVs - temporary protection visas. They are certainly not coming out if they've got mental health issues, by the very fact that they are fearful that if they are branded with a mental health issue that they are going to be sent back, when in fact they've been through an enormous amount of torture and trauma already, before they even got here. And consequently they have certainly gone underground; they are a very very difficult group to access. There has already been one suicide in a town about a mile out of Adelaide, called Murray Bridge, where a lot of them are working in abattoirs and things, and I'm pleased to say that there is a project out there that's making some headway with that, but it really is quite frightening.

Apart from the TPV status, the other issue that I worry about is the fact that once the acknowledgment of mental illness being a disability is made, in our state it's not really fully acknowledged or addressed, certainly by funders for example, who actually discriminate against mental health programs specifically. For example, home community-care program. That deals with the young disabled and frail aged. Now, one of the biggest issues that has been categorically stated is that it will not be picking up mental health, specifically, on its own. And the only way that any sort of mental health is incorporated in any of those programs is that it goes under the banner of chronic and complex and therefore can be passed under that sort of label. But to actually call it anything in a particular mental health program will be turned down at this stage. There's an enormous amount of debate between different funding bodies, et cetera, which goes on forever. But at the end of the day it's still, in a sense, a level of discrimination in itself.

MRS OWENS: At the Commonwealth level there's a range of different acts. There's the Disability Discrimination Act, and then there are other acts that relate to sex and race, and there will be one related to age. Whereas at the state level they have what's called omnibus legislation, where it's all brought together. And in this situation it's probably not clear whether people are being discriminated against because of their - whether it's in relation to the disability or whether it's in relation to their non-English speaking background.

MS McKENZIE: Or both; more likely both.

MRS OWENS: It's probably both coming together, and the Disability Discrimination Act picks up the disability aspect. I suppose it picks up both, but it's whether there is an advantage having an act that covers everything in the one act or whether there are advantages of having separate acts. And some people think it should be one way and some think it should be another. There are pros and cons each way.

MR MOUTAKIS: I guess it's a difficult issue. Here we are, there is legislation in place about discriminating, about using interpreters et cetera, but to actually enact that - I don't know if there is a precedence ever set with that particular piece of legislation, and maybe that needs to happen; something like that needs to happen.

MRS OWENS: Somebody needs to bring a case. It's a catch-22. We come back to the problem with an individual in this situation; who is going to be the first one to do it, given the difficulty? And if they are already going through problems with their health it may just be too much to expect. That comes back to maybe advocacy organisations being able to initiate a complaint about these sorts of issues. That's one answer that has been suggested to us, that organisations be able to initiate complaints on behalf of a whole group of people that might be confronting the same issue. And from what you are saying this could be a general issue rather than just one or two people.

MR MOUTAKIS: No, it's quite a few, and the other thing is within this community, literacy is very very low, so it's also them having the recognition of the problem. So, yes, it is a complex area, no question. If our organisation can improve literacy, then get people to start advocating for themselves and actually expressing their rights, well, then I think we've done our job.

MRS OWENS: Thank you for that.

MS McKENZIE: That's fantastic. Thank you for raising those issues.

MRS OWENS: We spoke to Prof Hickey and Dr Grace Groom in Canberra last week about mental health issues more generally, and I think what you've done is round that out in a very nice way.

MS McKENZIE: At the NSB dimension, which they really didn't deal with. They were concentrating on the mental health part of it.

MR MOUTAKIS: Okay, yes.

MS McKENZIE: So it's really helpful for us.

MR MOUTAKIS: Lovely, okay. Wonderful.

MRS OWENS: Thank you.

MS McKENZIE: Thanks a lot.

MR MOUTAKIS: Thank you for the opportunity.

MRS OWENS: That concludes our scheduled proceedings today. Are there any other - Christopher, do you want to come up today or do you want to do something tomorrow?

MR DUGDALE: I'm quite happy to do my time slot tomorrow.

MS McKENZIE: Okay.

MRS OWENS: I usually just invite whoever is in the audience, and I don't think any of the staff want to come forward and say anything, or you can if you like.

MR DUGDALE: I'd like to point out that although the Life. Be In It Campaign is very famous, if everyone remembers it, our general health in Australia has gone down considerably over that time, the level of exercise is lower, the level of flexibility and all sorts of other standard tests is lower. Very expensive advertising campaigns don't necessarily get you anywhere at all. I just thought that was an excellent example of - yes, we know everyone remembers it but do you recall the facts, which are - the general health is way, way worse than it was. Everyone is fatter, things are not looking good in health regards, and things like mature onset diabetes is skyrocketing, our levels of activities in people who grew up with those campaigns is very low, and it's lower than the generation before them. Other than that, I'll save my remarks till tomorrow.

MR MOUTAKIS: Can I add something?

MRS OWENS: Yes.

MR MOUTAKIS: Just in regard to that comment, certainly the Quit program for example - I've done some work for them in the past, and certainly what's been happening is that the rate of people quitting is outstripping those that are taking it up, so those sort of shop campaigns and the money that's been spent there I think are effective in some instances, so don't write off - - -

MS McKENZIE: I sometimes wonder, though - when you talk on the (indistinct) it's a good expression. Sometimes I wonder - the longer they're run, I wonder whether their effectiveness drops. Sometimes I think that might be the case, but I don't know whether there's research about that.

MR MOUTAKIS: I think Quit has been changing its tactics quite a bit.

MS McKENZIE: They keep changing so that they still remain current and still have that effect, that impact.

MR MOUTAKIS: And relating it just quickly back to my mentor sort of work - of schizophrenics, there's a rate of 90 per cent this month, so that's an enormous problem, and there's actually a project that's looking at addressing that particular need.

MRS OWENS: That is another complicating factor, isn't it? Thank you for that. I didn't mean to distract everybody into talking about advertising campaigns today, but it was quite a useful discussion. Thank you very much for attending and I now adjourn the proceedings to tomorrow, 4 July at 9 o'clock.

AT 5.24 PM THE INQUIRY WAS ADJOURNED UNTIL
FRIDAY, 4 JULY 2003

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