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TRANSCRIPT OF PROCEEDINGS

PRODUCTIVITY COMMISSION

INQUIRY INTO THE DISABILITY DISCRIMINATION ACT

MRS H.J. OWENS, Presiding Commissioner
MS C. MCKENZIE, Associate Commissioner

TRANSCRIPT OF PROCEEDINGS

AT BRISBANE ON FRIDAY, 30 MAY 2003, AT 9.05 AM

Continued from 29/05/03 in Brisbane

MRS OWENS: Good morning and welcome to the public hearing for the Productivity Commission Inquiry into the Disability Discrimination Act 1992, which we will refer to as the DDA. My name is Helen Owens and I'm the presiding commissioner on this inquiry. My associate commissioner is Cate McKenzie on my left. We haven't any hearing impaired people here at the moment so I won't have to say the next bit. We will be having three breaks today or maybe two, depending on when we finish. But we'll have a morning tea break around 10.30, a lunch break at 12.30 and then if need be, an afternoon tea break at 3 pm. But we may be finished by then. If Auslan signing is needed we will have to operate in 30-minute blocks. We will finish our proceedings mid afternoon.

On February 5 this year the government asked the commission to review the DDA and the disability discrimination regulations 1996. The terms of reference for the inquiry asked 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 those valuable contributions.

The purpose of this hearing is to provide an opportunity for interested parties to discuss their submissions and their views on the public record. Following the hearing in Brisbane today, we also met here yesterday, there will be hearings in other capital cities. We've already been to Darwin. 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 a time to look at the draft report. We like to conduct all the hearings in a reasonably informal manner despite the microphones, but I would remind you that there is a transcript being taken.

For this reason and to assist people using the hearing loop, comments from the floor can't 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 proceedings today for you to do so. If you think you would like to take up this opportunity identify yourself to one of our staff before the end of the proceedings today. Participants are not required to take an oath but are required under the Productivity Commission Act to be truthful in their remarks, Participants are welcome to comment on the issues raised in other submissions. The transcript will be made available on the commission's web site in word format following the hearings.

I am now inviting Rita Struthers to appear and I'd like you to give your name and the capacity in which you're appearing for the transcript.

MS STRUTHERS: My name is Rita Struthers and my capacity is as an individual.

MRS OWENS: Good, thank you, Rita, and thank you very much for your submission which both Cate and myself have read, and there's a lot of food for thought in your submission and you've quoted from an economist, Jack Frisch, and they've brought his work to our attention so thank you for that. I understand you just want to make a few key points and then we'll have a bit of a discussion about your submission.

MS STRUTHERS: The point that I firstly wanted to raise is that I've based my submission on the term of reference to look at the social impacts of the DDA in terms of the cost and benefits upon the community as a whole, as well as people with disabilities. My submission argues that the DDA and the development of its standards would benefit not only people with disabilities but also an ageing Australian population. The standards would assist an older but healthier population to remain active and included in their communities, to employment, voluntary work, support to families and others and participation in recreational and social activities, thereby lessening any fiscal burden. That's the premise I base my submission on.

MRS OWENS: Good, thank you. It's not just helping - you're looking at it a bit broadly. You're saying that really it's not just helping those with particular disabilities but, you know, frail aged if you like.

MS STRUTHERS: An ageing Australian population.

MRS OWENS: Yes, an ageing population. But I think there's probably broader social benefits as well. If you're talking about access to buildings and transport there's also other groups in the community that benefit from that access, you know, mothers with children in prams for example.

MS STRUTHERS: That's right, yes.

MRS OWENS: There are, you know, much broader ramifications from helping the disabled and we do have an ageing population. So every person in this room at some point may require access to infrastructure in our society.

MS STRUTHERS: Yes. I think some of the statistics looked at - at some stage, I think maybe 2030, we'd have quite a significant proportion of our population who will be over I think it's either 60 or 65. So it makes for a persuasive argument as to making your communities accessible and inclusive if you consider that in any planning and development of standards.

MRS OWENS: I think also if you look at the statistics by the time you get to about 2050 you've got the ageing baby boomers in the old, old category, the 85 and over category.

MS STRUTHERS: Yes.

MRS OWENS: And there is the potential in future for a lot of those people to stay in the community, possibly in their own homes, and that means that we really do need to be concentrating as a society on how we're going to facilitate that and part of that is being able to have accessible private premises as well as public premises, and I'm not sure if you've got views about that issue because, as I understand it, the standards aren't necessarily going to pick up the accessibility of private premises at this stage. But people may also need to have access to transport and we've got transport standards in place now after a long time, and hopefully by that time that will be a realisable objective. But have you got views about access to private homes?

MS STRUTHERS: Access to private homes. The only view that I would have would be that homes would be designed with the idea of universal access, or is it universal design, so that will be just part of the planning of homes generally. Apart from that, to be honest, that's not something that I've really considered in any depth.

MRS OWENS: I'm not sure whether anybody is really thinking that far ahead yet, but it may be the next cab off the rank. Once we've got a standard for public premises maybe people will need to think about that next challenge.

MS STRUTHERS: Yes, and I think some of the dilemmas for people with disabilities is that their options for accommodation or housing is basically public housing and if there were more universal design built into homes then people are going to have a range of accommodation in the private rental market that all of us have, but people with disabilities don't have as alternatives or those options.

MS McKENZIE: So you would think that not just buildings used by the public, but that public housing, housing built or contracted to be built by the Housing Commission or the Directors of Housing or whatever the equivalents are in each of the states and territories should also be accessible?

MS STRUTHERS: I think that would be a worthwhile extension to that principle, that universal design be extended to public housing as well as new homes that are built privately.

MS McKENZIE: So public housing at the moment wouldn't be deemed to be a public premises.

MS STRUTHERS: I'd say not because it's someone's home.

MS McKENZIE: Yes. There has been no suggestion that it would apply to any of

the homes.

MRS OWENS: I don't know a lot about the range of disabilities or people with disabilities that might be entering public housing now, but I would presume there would be an increasing proportion of those residents that may have a disability over time.

MS McKENZIE: And ones who are least able to afford modifying the premises to give them access if they have disabilities.

MS STRUTHERS: That's right.

MRS OWENS: We heard when we were in Darwin there was a young woman that came to the hearing there who's profoundly deaf, who needed certain modifications for fire alarms and so on, and the housing authority there was saying that she would have to pay for those modifications herself. It does raise the question of whose responsibility that should be and whether that is a fair thing to ask.

MS McKENZIE: I know that in Victoria the Department of Housing has got a whole section that looks at making public housing accessible for people with disabilities at the design stage. But certainly it has not been suggested to us in the Northern Territory there was a body like that. Do you know whether there's such a body in Queensland, whether they have a section devoted to that in their housing ministry or directorate or whatever it's called?

MS STRUTHERS: I'm not quite sure, I'm sorry.

MRS OWENS: We can probably follow up with the Housing Department here.

MS STRUTHERS: May I just respond to your comment about the person who had a hearing impairment in public housing?

MRS OWENS: Yes.

MS STRUTHERS: On the Gold Coast I'm aware of a situation where there is a gentleman with cerebral palsy who uses a wheelchair. He's in public housing and the fire regulations in public housing states that there only needs to be one exit for this person, and I understand that previous fire regulations used to require two. I'm not sure how old that regulation is. So in my previous role as an advocacy worker for people with disabilities I had been in liaison with the Department of Housing as to a second exit for this person, because for him to get out of his bed into his wheelchair, out through the front door which was his one and only exit, that was quite a big ask in terms of doing it swiftly.

MRS OWENS: Yes.

MS STRUTHERS: In the end the Department of Housing did put in a second exit at the back but they didn't put in a ramp and the second exit was mainly to improve the property or to give it some other feature, but the primary purpose wasn't for the safety of the tenant.

MRS OWENS: So what was the outcome of that?

MS STRUTHERS: I understand that advocacy is still involved. My previous employer is still involved in trying to look at ways of improving the access because it's a second exit but there's stairs.

MRS OWENS: Well, that's almost useless for him.

MS STRUTHERS: That's right.

MRS OWENS: You may not want to comment on this, but wouldn't a housing authority have some duty of care to its own tenants to ensure they will be in a safe environment?

MS STRUTHERS: That's right, they do. They fulfil that duty of care by providing the one exit which is all they're required to do.

MRS OWENS: But other people in those houses can have access to more than one exit. I mean, if it was somebody without a wheelchair living in that same house they would be able to use both exits. Now, he cannot use both exits so it seems somewhat unfair and dangerous.

MS STRUTHERS: Yes. But they're meeting fire regulations. The Department of Housing were very clear: they didn't have to provide an alternate exit for anybody, whether they were a person in a wheelchair, who uses a wheelchair, or not.

MS McKENZIE: I mean, the exit would not only help the person in the wheelchair of course, an accessible exit. It would also help, you know, frail aged people who simply because of some other walking disability are not going to be able to manage the stairs.

MS STRUTHERS: See, these are really minimum requirements for people.

MRS OWENS: There was no thought of making some complaint, whether to an ombudsman - I don't know whether it would come under your anti-discrimination legislation here.

MS STRUTHERS: No.

MRS OWENS: It's an interesting case.

MS STRUTHERS: Yes. No, there wasn't at the time. We were just trying to negotiate with the Department of Housing and then I left the position and then it was taken over by another advocacy worker.

MRS OWENS: Have you ever been directly involved with an issue that has led to a complaint? You talk about the complaints system in your submission and just very briefly you talk about that. You say it would be of little use with its attendant costs if the complainant's only option is to pursue the issue through the Federal Court. You haven't had any direct - - -

MS STRUTHERS: No, I haven't. The point that I wanted to stress there was that if a complaint is made under the Queensland Anti-Discrimination Act people have access to a tribunal. But if a complaint - my understanding of the Disability Discrimination Act is that there's an attempt to resolve the issue. But if the complainant wants to take the matter to the next stage it's actually a case of going to court and many complainants just wouldn't have the financial resources to do that.

MRS OWENS: Many, many people are raising this issue with us, which is probably not any surprise to you.

MS McKENZIE: It's fair to say it's of great concern to lots of people.

MRS OWENS: Have you got other views on the progress of the standard development for access to public premises? I know I'm backtracking a little bit. It's still there being worked on and I think there is some expectation that we're nearing the end. But have you had any involvement through your current role at the council?

MS STRUTHERS: As to the development of the standards for public access for buildings? No. Interestingly enough myself and the other council worker Jim McCafferty are going to a presentation given by Kevin Cocks who was the complainant in Cocks v the State of Queensland and that will be QUT. He's actually giving that presentation to a group of law students who other doing discrimination and equal opportunity law. One of the questions I'd like to ask Mr Cocks is that what needs to happen to progress the other standards, given that his case made a significant impact on the Building Code and the way that public access is considered for people with disabilities. So that's the only way I could respond to your question, yes.

MRS OWENS: Well, ask him that question and ask him what he thinks about access to private housing as well.

MS STRUTHERS: I'll do that.

MRS OWENS: To see whether he thinks there's any potential and maybe draw our inquiry to his attention.

MS McKENZIE: Yes, if he'd like to make a submission you might mention that he could do so.

MRS OWENS: Or we could meet with him, because he sounds like a very fascinating person.

MS STRUTHERS: He is, he has been very much involved with the Public Transport Standards I understand, or had some input there and Kevin Cocks is the director of Queensland Advocacy Incorporated and they undertake legal advocacy for people with disabilities. So certainly I'll pass that on.

MRS OWENS: Thank you. We might try and track him down ourselves at some stage. What does he do when he's not getting major changes in the society? Do you know what he does as his day job?

MS STRUTHERS: He's the director of - - -

MRS OWENS: He is the director of Advocacy Queensland.

MS STRUTHERS: Yes.

MRS OWENS: Have you got other questions?

MS McKENZIE: No. They're all the questions - I've asked you as you've gone along - I hope you don't mind - but they're all the ones I need to ask.

MRS OWENS: I've just been told that Brian Cocks is making a submission. He was to come yesterday but cancelled so - - -

MS McKENZIE: Good, very good.

MS STRUTHERS: Is this Kevin Cocks?

MS McKENZIE: This is Kevin Cocks.

MRS OWENS: Yes, you've got Brian Cocks.

MS McKENZIE: Mr Cocks. That's great; then I'm very happy.

MRS OWENS: We're fine.

MS McKENZIE: That's tremendous.

MRS OWENS: Yes, you've also referred to the Jack Frisch study which I mentioned I think earlier that we have read or we've got a copy of it. He says we should be looking at the benefits of accessible communities and has had an attempt at trying to measure such benefits. So we certainly will be looking at those broader benefits. We, as economists, don't look just narrowly at benefits and costs; we do take a broad perspective. It's not always easy to measure the benefits, it's often much easier to measure the costs of something, but we do do our best to try and at least acknowledge those broader benefits.

MS McKENZIE: Also, one has to say that our terms of reference don't just ask us to look at economic matters. That and the whole Productivity Commission Act also recognises that there are things such as access and equity issues which need to be taken into account.

MS STRUTHERS: Yes. I particularly like Jack Frisch's concepts in that they do try and identify what the benefits are for the community in terms of accessible buildings, accessible transport but also too how to - he does some measurements as to the benefits of having people with disabilities employed and what that would contribute to the national income, not to mention all the other issues such as quality of life, making a contribution to society. I particularly liked his concepts and that's why I based a lot of my submission on his economic concepts.

MS McKENZIE: Yes, thank you for that. Thank you very much.

MRS OWENS: Thanks for appearing. Anything else you'd like to say?

MS STRUTHERS: May I just raise a couple of points.

MRS OWENS: Certainly.

MS STRUTHERS: I'm awaiting endorsement from the Gold Coast City Council as to a second submission and my role at the Gold Coast City Council is a community development officer with a focus on disability. My working unit is the social planning and community development unit and we have a short submission that we would like to submit but, as I was saying, I am awaiting endorsement from council for that submission.

MRS OWENS: You're very welcome to and we applaud the council for considering making one. We've only had one so far from council so it would be very

interesting for us to get more submissions so we see the perspective of local government in this.

MS STRUTHERS: Yes. May I raise two quick points about the council submission.

MRS OWENS: Yes.

MS STRUTHERS: In that the council submission will look at the particular demographics of Gold Coast city in that we do have an older aged profile than the rest of Queensland and Australia. We have a smaller labour force base, partly due because of our older population. The labour force that we have, there's high levels of unemployment and high levels of part-time employment. One of the concepts I discuss in my individual submission is the aged dependency ratio, so that issue will be particularly relevant for the city of Gold Coast. Then my last point would be the Disability Discrimination Act and the development of its standards would be of particular relevance to municipal councils in their specific role in integrated planning. They're all the comments I'd like to make.

MRS OWENS: Good, thank you.

MS McKENZIE: Thank you very much indeed.

MRS OWENS: We look forward to that submission.

MS McKENZIE: We do.

MRS OWENS: Because I think we really do need to get that perspective from local governments and I think particularly councils like your own where there is a high proportion of elderly people. You are confronting probably on a daily basis some of these issues and we are interested in the impact of the Commonwealth act, the federal act, the Disability Discrimination Act, but I think there's a perspective that whatever happens in terms of the operation of that act could have a flow-on effect to the elderly. I think that is a really important point to be making. So, thank you.

MS STRUTHERS: Thank you.

MRS OWENS: We'll just break now for the next participant.

MRS OWENS: We'll now resume. Cyril Dennison, welcome. Can you please repeat your name and the capacity in which you're appearing today for the transcript.

MR DENNISON: Good morning Helen and Cate. My name is Cyril Dennison. I appear as an individual but I'm also a father.

MRS OWENS: Thank you. We've read your submission and I think it raises some rather heartbreaking issues and as a parent I think having to deal with what you've had to go through I think would have been like one's worst nightmare because you've raised about three or four issues, any one of which would be enough to cause considerable stress. When you compound those I think I'm very grateful that you make the time to come and see us. There are difficulties because we're still trying to think through how some of these issues relate to the working of the Disability Discrimination Act as it's currently drafted. But we are in a situation of reviewing that legislation and looking at its coverage and what it can and can't do.

So to that extent I am interested in looking at this. There are gaps in the legislation or gaps in the system generally in Australia or within states. I think it's important for us to know what those gaps are and perhaps bring those to the attention of government. So would you like to tell us a little bit more about your issues.

MR DENNISON: Yes, I would. I think in my introduction there I think - and you've probably heard this many times before, I feel there is a need for national uniform legislation. So if something happens in one state and it's got to be addressed in a court hearing in another state, that all the rules are the same. The case in fact is that my daughter has had this terrible car accident and suffered severe head injuries in Victoria. Obviously because the accident has happened in Victoria it had to be heard under Victorian legislation, even though the case was heard in Queensland, which is fair enough. The point that I want to bring to the committee's attention here, the inquiry's attention, is I feel that people like my daughter are discriminated against under section 60 of the Transport Commission Act right from the word go.

In other words, as soon as they sustain this terrible injury they seem to be discriminated against. My daughter was assessed after over a year in hospital, having to require 96 hours of a carer per week. In fact it's 24 as far as we're concerned because we're on the job all the time. But the legislation in the state of Victoria is that the maximum amount of carer hours for a person like my daughter is only 40 hours a week. I mean, that's crazy. Who has got to pick up slack for the extra 56 hours - it's the family. My daughter is fortunate that we have a good family. But there has got to be hundreds of people out there who are in the same situation.

MS McKENZIE: Some of whom won't have families who can pick up the slack or have families where the parents are elderly parents and may have their own health problems.

MR DENNISON: That's right. If I can be a bit egotistical, in 1996 I had a beautiful thatch of auburn hair; I'm now pretty grey. That's the way things happen. I feel that section 60 discriminates against the accident victim, it discriminates against the family because it allows the state - that is the Transport Accident Commission of Victoria - and the other insurance companies who are responsible to get out of their legal obligations. My daughter was a 100 per cent innocent party. There must be other people like that but the state has legislated, no, they're only going to pay for 40 hours, whether it's the TAC paying or whether it's FAI or whatever.

MS McKENZIE: You say that's totally unrealistic given the extent - - -

MR DENNISON: Of course it is. I've had to give up my job to do what we could have been - having hired a carer to do. So it's had a double impact on our family.

MRS OWENS: Let me ask you, have you got any knowledge of say the act in Queensland? You say that most of the other states have got more generous provisions than that. They allow for 24-hour carers?

MR DENNISON: Depending on the assessments. In other words, they have got to be assessed for the OT for the plaintiff and the OT for the defendant and they say, "Right, we say it's 96," they say it's 100 hours and they settle at 98 and that's what the insurance policy would pay or the insurance company would pay if it was like my daughter a 100 per cent innocent party. The other point I was trying to make in this is that by having that underpayment in settlement of only 40 hours, I'm here looking after my daughter now until I kick over the traces, who's going to pick it up? The end result is that the Commonwealth government is going to have to pick up what the Victorian government negated in the beginning.

So it is an area that needs to be sorted out. The Commonwealth government at some stage are going to have to come out and pay a pension or come out to pay for a full-time carer.

MRS OWENS: So you're saying there's a bit of cost shifting eventually onto the family and then ultimately on the Commonwealth government.

MR DENNISON: Onto the government, that's right.

MS McKENZIE: I don't understand fully the system but I mean the first problem seems to me to be that they have assessed your daughter at much greater needs than the payment - than the ceiling for the payment. But you can't get any carer support payments to - - -

MR DENNISON: No, because what happened was that my daughter has had her

case settled in court and she's paid over a considerable amount of damages and of course out of that, you know, her carer fees, her transport, all the rest of it all have to come. But the thing is that the amount of money paid over isn't in proportion to the damages that she received in the accident. Of course I've made the point here that when our QC, the QC for the plaintiff asked the QC for the defendant, "Who's expected to pay the extra 56 unpaid carer hours," the QC for the defendant looked straight at me and said, "The State of Victoria expects Mr Dennison to continue to care for his daughter as he has in the past." That is just a cop-out on the legislation. It just shouldn't happen.

MS McKENZIE: So any carer expenses ultimately would come out of her damages?

MR DENNISON: Yes, that's right. I mean, they've paid over - if you don't mind I'll keep the amount confidential.

MS McKENZIE: Of course.

MR DENNISON: In the carer dollars it was 40 hours instead of 96 hours per week, so it's totally unsatisfactory. As I said, by that happening persons like my daughter have been discriminated against by not having equality and justice. In other words, of people can get it in other states of Australia, why not in Victoria. The next thing is it eventually will become a cost to, as I see it anyway, the public, the normal taxpayer. I think it's a matter that the Commonwealth should address the Victorian government.

MRS OWENS: Could I ask you, do you get any carer allowance through Centrelink?

MR DENNISON: No, she's not entitled to that. Because of the amount of her damages she's not entitled to anything. She's not allowed to make any claim on Centrelink or the Commonwealth government until the year 2055.

MRS OWENS: The other concern you raised was a concern about the investment of those moneys.

MR DENNISON: Moneys.

MRS OWENS: Yes.

MR DENNISON: I mean the situation that we have with my daughter, I've got an ongoing fight here with the public trustee and it astounds me that this sort of thing can happen because it's just the legal boys - you know, they have their job to do obviously but they're just making it downright difficult. I mean, it shouldn't be.

She's had a terrible accident, she's a 100 per cent innocent party. For God's sake, let us get on with our lives. We don't need the extra trauma that we're going through.

MS McKENZIE: Is it possible to make any other application, for example, to the court if you have any difficulties, or to the ombudsman perhaps?

MR DENNISON: I have made one successful claim to the Supreme Court and it's only part-heard in that I'm trying to take the trusteeship and administration duties off the public trustee. So that's as a matter of process. It's probably something that we shouldn't follow too closely.

MS McKENZIE: No, you can't deal with that matter.

MR DENNISON: But the question in relation to investment, I mean, they've just made a complete botch of it as far as I'm concerned. They have cost us for my daughter a lot of money. My daughter is fortunate in that she's got her family backing her and sort of standing in for where the cash flow is not coming.

MRS OWENS: Is it automatic that the state trustee assumes responsibility? Are there ever any instances where it goes to the family to assume responsibility for the - - -

MR DENNISON: In the state of Queensland I'm advised that it has always gone to the state when you're talking about these large volumes of money. It's always gone to the state, the public trustee. I can understand, I suppose, there would be some people out there who would want to take advantage of it but I know I object to my integrity being questioned or saying that I'm incompetent to manage those sort of funds but that's basically what the court has said, and the reverse has turned out to be true.

MRS OWENS: I suppose there's instances where there's concern that if the money was handed over to families that it may be dissipated in some way. I think you raised the question about why not have more competition - if you're not able to assume responsibility why not let you have choices to either put the money with a trustee in another state or other financial institutions.

MR DENNISON: Yes, well, that's part of my submission because the fees and charges of the public trustee in Queensland are astronomical. To manage her finances - \$33,000 for last year, I mean, that could have paid for a carer for 40 hours or something like that. It's crazy. What I've suggested in my thing is that there should be competition by way of - the courts have a selection of trustees to choose from and obviously I said there, I think the family should be given the first option. If the courts decide that they're not suitable, whether they doubt their honesty or integrity or capacity to manage the funds, then you have a selection of trustees to

choose from and there should be an option to move between trustees so that the family have the ability to control costs; in other words, you're not locked into a particular area.

I mean, you can transport your superannuation when you go from job to job, why can't a person with disabilities be able to move between trustees if they're not getting on well with them, or if the fees are too high they should be able to move it. But the main thing about that is that you have competition. The other thing I've mentioned is that maybe an approach should be made to CommSuper, the Commonwealth government super people to be able to become a trustee, and they have a low rate which will set the market, as it were, for the other trustees. Now, if they want to compete with it, fair enough; if not CommSuper gets the business. But they have to have it an annual rate, you know, 5 or 6 hundred dollars.

MRS OWENS: Can I ask a question - and this might be one that Cate can answer rather than you - if, say, instead of your daughter receiving that money through the Transport Accident Commission, it had come through some sort of private settlement in the courts, if you sued a party privately and got some money, you would be able to then have freedom of choice about how you allocated that money?

MR DENNISON: Not in Queensland.

MRS OWENS: Not in Queensland for any sort of circumstance?

MR DENNISON: No, when you're talking about substantial amounts of money, the state does it. It goes to the public trustee, end of story. That's what my legal advice was at the time, even though we challenged it. They wanted to sign my daughter over to the state and I wouldn't have it. I said, "No way in the world," and we retained the care, what have you.

MS McKENZIE: That transport accident money comes from the state or did it come from as court case - - -

MR DENNISON: No, well, you see, this is the crazy thing about it. The insurance company concerned was FAI. I mean, they were responsible to pay the money over. But any accident is handled by the Transport Accident Commission. They get their fingers in straightaway; whether it's to control the costs or what have you, I don't know. But, I mean, I think the way that everything happened was totally wrong. I mean we shouldn't have been interviewed by the TAC staff while my daughter was on her deathbed over here and they wanted you to sign a form in relation to my knowledge of the accident. I mean, that is disgraceful.

MS McKENZIE: If I'm right when I read your submission, you did contact the Human Rights Commission.

MR DENNISON: No, I haven't. Any arguments that - battles that I've fought have been with the public trustee here.

MS McKENZIE: Okay.

MR DENNISON: No, I suppose that could be an idea but, no. If I can just refer to fees and accountability, that's another thing. Accountability, I mean, here with the public trustee, if you ask for something you'll get it, but it doesn't come as an automatic thing. Like if you have hundreds of thousands of dollars tied up in a bank account you'd get your monthly statement, you'd know where you stand. That doesn't happen. I mean, I haven't even had an annual statement yet. I suppose they may take the view that it's my daughter who they are trustee over and that's their responsibility, end of story. It's not the way I see it.

MRS OWENS: It's not a very open system, is it?

MR DENNISON: I don't think so.

MS McKENZIE: Does Queensland have - and I'm not aware of this but probably it does, I don't know - a Guardianship Administration Tribunal?

MR DENNISON: Tribunal, yes. I think it's been about 18 months now that's been under way.

MS McKENZIE: So it's very new.

MR DENNISON: It's new, that's right.

MS McKENZIE: I wonder whether that would be of any help to you.

MR DENNISON: No, because - I'm not being difficult - I just don't want the government involved in our family. It should never have happened, as far as I'm concerned. The accident happened in Victoria. It was settled under that legislation. We should have been able to get on with our lives. You see, what I'd like this inquiry to understand is that when the accident happens and the settlement, it doesn't finish there, it just seems to go on and on. You have these social workers and you seem to be having to justify yourself to every Tom, Dick and Harry when it's really none of their business. I mean, I've raised my family the last 34 years, run our lives without any help or intervention of the government and all of a sudden, you're an idiot or you don't know and that's, you know, wrong.

MS McKENZIE: The only reason why I raised it - and this is perhaps not quite relevant to this inquiry - is I'm a member of a tribunal in Victoria and sit in that

guardianship - that administration jurisdiction. One of the things that - and probably I think you'd have to go to the Queensland one because you're in Queensland and it would be more sensible, but one of the things that the public advocate in Victoria does is not just to take the matters out of the family's hands, as far as guardianship or administration is concerned, but if there's a problem with a disabled person like your daughter in a respect like this, for example, there's some difficulties with administration of funds. Sometimes a public advocate will become involved and help to advocate on behalf of your daughter and try to get a better solution.

It may be that you might want to talk to the Queensland people to see whether they have that similar - it's a quite different - do you understand what I'm on about? It's quite a different function from jumping in and doing things. It's really an advocacy function. I know that the body is quite new in Queensland but it may be they may consider that kind of help also.

MR DENNISON: Okay. I hear what you say but in relation to, say, the adult guardian here in Brisbane, as far as I'm concerned it's the same but with a different set of spots. Right?

MS McKENZIE: Have a talk to them because certainly in Victoria it doesn't work like that. But I agree it's really difficult.

MR DENNISON: Another thing in relation to legislation, in other words we, being the carers of my daughter, are a service provider, if you want to look at in legal terms. I've tried to use the Trade Practices Act by way of competition to have finances supplied for various things and to be told in correspondence from the public trustee:

I refer to your correspondence concerning the Trade Practices Act to the official solicitor. He acknowledges that that legislation contains various provisions designed for consumer protection, but he advises that that legislation is not applicable to the trustee duties which are bound in state legislation and common law.

So we have a situation here where I'm having a problem with the state and I'm trying to use Commonwealth legislation to assist me and we're told it's no good.

MS McKENZIE: Yes. Bear in mind perhaps what I suggested. It may help. Certainly you face really difficult issues, and issues that are ongoing from your family's point of view. It's very hard.

MR DENNISON: Okay.

MRS OWENS: We come back to the act that we're reviewing at the moment - the

Disability Discrimination Act - and I think the problem we have with that act as it stands now is it probably doesn't cover these sorts of situations because we need to be able to show discrimination. You need the right comparator and it's usually discrimination in favour of people that don't have the same disability. I think that's right, isn't it? The comparator has to be - if somebody else up there was in a similar situation and getting a better deal, were able to control their own money and so on, then you could say there was some discrimination. But there's never ever going to be anybody in that same situation as your daughter.

MR DENNISON: You see, that's what I'm working on. I'm trying to create the precedent because they haven't looked after her funds as they should and so I want to take it off the government and handle it myself. So that's a process we're going through. The point I was trying to make earlier on, Helen, is that I feel right from the word go that that legislation is the starting point of the discrimination because once you say, "Okay, you're only going to get 40 hours of carer," and knowing full well that she's entitled to more, I mean, those people have got their history records. They know people who have suffered from the head injuries my daughter had that she's going to need a carer for many hours a week. So you're sort of being discriminated by that legislation right from the word go.

MS McKENZIE: Because of the ceiling.

MRS OWENS: Yes. One of the things the Productivity Commission has done both recently and about 10 years ago, we've reviewed workers compensation arrangements in Australia and compared all the different workers compensation arrangements and looked at the strengths and weaknesses of each regime, and we're doing that now. There's an ongoing inquiry at the moment on this issue. I did the inquiry a decade ago. There may be a case to - put a case to the Commonwealth government that perhaps it's time to review transport accident arrangements. There's no guarantee that the government will give us that reference but it would be quite interesting to be able to compare that Victorian legislation with legislation in other jurisdictions and do a bit of a compare and contrast and possibly even look at other jurisdictions internationally and say, "What are fair arrangements? Can it be made to work better?" - and make recommendations.

Now, the Commonwealth government doesn't have jurisdiction over transport accidents but I think just highlighting those differences could be very useful, very powerful. It doesn't help your particular issue but, you know, the only way you can deal with these things I think eventually is to stand back from them and look at them as a national issue and say, "Have we got fairness in the system?" I mean, you've got a situation where your daughter was injured in another state under different legislation and you're dealing with the Queensland trustee. I mean, it's all very messy and you're stuck right in the middle.

MR DENNISON: Well, you don't know the half of it. My daughter has actually worked for the attorney-generals in Canberra. So she had a car registered in Canberra, had the accident in Victoria and we brought her into Queensland.

MRS OWENS: The other person's car was registered in New South Wales, wasn't it?

MR DENNISON: That's right.

MS McKENZIE: The other thing we sometimes do in our reports too is if there are matters - and you've raised a matter of a ceiling which applies not just to your daughter but to all other people who are assessed as having care needs under that legislation and we may perhaps note in our report that these issues have been raised, even though they don't directly relate to the Disability Discrimination Act. I mean, already people in other submissions have raised questions about disability services, for example. So we may want to make a note that that issue has been raised also. But in your individual case, as I've said, you may think of having a talk to the public advocate equivalent in Queensland and just see what advocacy might do to help the situation.

MR DENNISON: Yes. Before I finish off I'd just like to say I think that competition would assist in this area. I think a legislated choice of trustees - in other words competition - and the option to move between trustees at no financial cost to the client would assist in achieving three things: the control of and saving of the excessive management fees and charges; also address the need imperative of the family to retain control of their own lives and not have any interference, perceived or otherwise, of the state, to be able to get on with their lives. Thank you.

MRS OWENS: Thank you very much for that.

MS McKENZIE: Thank you very much indeed for your submission. It's very helpful to us.

MRS OWENS: We'll note your concerns in our report. We'll just break for a minute.

MRS OWENS: We'll now resume. The next participant this morning is Mr Victor Camp. Could you please give your name and the capacity you're appearing today for the transcript.

MR CAMP: Victor Camp as a private individual.

MRS OWENS: Thank you very much. Can I call you Victor?

MR CAMP: Yes, certainly.

MRS OWENS: Thank you for appearing, and I understand you just want to run through a bit of background about yourself before we cover some of the issues.

MR CAMP: That's right, yes. Just to say that ever since I was a teenager I suffered from deafness and this did cause a lot of problems in employment because I was able to hear - people didn't realise I was deaf and if I told them they usually said, "Well, you can hear me all right," because I was close. So basically I sort of had to try and get over these problems. Often it led me to change a lot of jobs. In the 1950s a lot of unskilled jobs were virtually ten a penny. Every factory had vacancies. I was skipping from job to job because I just couldn't deal with the problem. Then I got a hearing aid and that made things marvellous and then I entered the insurance industry. But by the time I came to Australia I was beginning - I got back into the insurance industry here when I was about 30 but my hearing was beginning to deteriorate again.

One of the big problems of being hard of hearing is that you might miss words but your brain can work out, from what the other word you do hear, what's being said. But it's no good if you're trying to take down particulars from people. You can't get it right. Then they think you're stupid and they have a habit of speaking loud. It's the same when they often meet an ethnic person, because they think the ethnic person cannot understand they react as if that person is deaf and sometimes it can be very embarrassing. But anyway, I eventually got into the public service but after being an insurance agent I just couldn't adapt to being a messenger very easily, but unfortunately there was a clash because my predecessor, he'd been using - unknown to me - transport. He'd been using Commonwealth cars to go and do the messenger work, when I was doing it on foot. I was flat out in the heat going from place to place but I was being criticised because I wasn't doing the job properly. It was only later I found out that that was why, he was taking short cuts.

There was a sort of cultural problem. But anyway, I tried my hand in business but by the age of 54 I ended up on the disablement pension because I developed a back condition called spondylolisthesis. I decided that it might be a good idea to try and get some education. I'd already been involved in a group I founded myself called HOPE, to help older people gain employment. I always said to the older

people, it's not a matter of short-term training, it might be a matter of long-term training. That didn't go down too well, so I thought I'd follow my own philosophy, I will actually enrol. I went to TAFE, got into university, got the BA degree and then the question was, what to do then.

So I decided to enrol in adult education but unfortunately there was problems getting a place to do the practical work in TAFE. There was no compensation paid to any teacher under that particular graduate certificate. So I decided to cut that course - instead of taking a graduate diploma, I took the graduate certificate. Then I decided to go into secondary teaching, not because I really wanted to teach in schools but because I thought if I wanted to do a bit of tutoring I need to know what's going on in the schools. So I got the diploma but getting the diploma involved at that time - because they've changed it a bit now but it meant doing 10-week practical teaching. You enrol in a course in February and you're in the classroom by April. I thought with my deafness it might be a lot better if I went into a private school area rather than a state school because I thought the discipline problem in state schools might mean background noise, I wouldn't be able to hear.

What I didn't know was that if you do that - which I did - that means if you want to get a state rating you must do a practical test in a state school. Also what I didn't know was those teachers who give the actual training, they are not necessarily selected for any particular ability, they only usually want to do it for the money; they're paid extra. This in my opinion is the wrong way to do practical training for teachers. But anyway I got onto Education Queensland and I said, "Look, I've graduated, I'm now officially a teacher but I need to get a state rating." The top rating is S1. I unfortunately put T1 in that submission. S1 is the thing that they all want. If they can become an S1 it means they are top notch people. S2 not quite so good; S3 going down, and the worst place of all is a T4. You're virtually sort of a dog's dinner.

Well, I rang up Education Queensland to chase them up and they finally sent me over to Caboolture, a long way from Wavell Heights. When I arrived at the school there were two people there, a man and a woman. They didn't seem too keen to really give me much time. The room was dark so I could put on a visual - an overhead projector - and I had trouble hearing them. So they told me - I can't remember now if they told me personally or whether I found out later but anyway the upshot of it was that they rejected me completely. That meant I would have been banned from state education. By this time, despite my deafness, I got in my mind that maybe I could teach in classrooms because the kids at Nudgee, they were quite good kids and there was a lot more discipline there. That was right.

When I went over to TAFE, I did a bit of TAFE school - a TAFE place where they take grade 11 and 12. That went down well, but unfortunately I found out in the adult education there's an enormous demand for people to get into it because it's

much easier in a way than teaching in a state school. So basically I appealed to Education Queensland. I said, "Look, I didn't get a fair go." They gave me an interview with two ladies and they said, "Look, we'll make you a T4." Well, I didn't really understand much about it but I said, "How do I go about work? Won't they be sending for me when there's any work? I'm doing history and English." That was a disaster in a way because history is virtually not taught in state schools really. They've tucked it in with social science and geography.

I mean, you get kids today, they wouldn't even know - well, some of them wouldn't know Adolf Hitler. They don't know about any real history. So that meant the only thing I was really on offer for was English but unfortunately quite a lot of people have come into the education system with a BA. There's two ways in: one is to go straight into the education degree and spend about four years doing nothing but; or the other way is to come in with a BA and do the - well, it was one year and now it's two years. So basically I was just told that it was up to me to get my own work. I was only allowed as a T4 to do temporary work or work that would perhaps be a week or two but I could never be permanent. The idea was that if you could do 50 days' teaching and prove yourself, then you could be graded up to an S3. So the first thing had to be, where did I get the 50 days' work from. They said, "Go around the schools and ask to see the headmaster." I found that was impossible.

MS McKENZIE: Does every other temporary teacher classification have to do that?

MR CAMP: Well, it depends I think on exactly what their rating is. I've never been able to find out how many T4s there are. But officially Education Queensland sends around a list to all schools stating that these teachers are available as temporary teachers. But I think once the T4 is listed, very few schools are keen to hire them. I also found that a number of retired teachers get a lot of this temporary work. So basically I went around and it was rather humiliating, as I put in my submission. You have to more or less queue up. There's always students there. One place they charged me for a photocopy. But eventually I did get a bit of work and it didn't turn out too good, but there was a lot of background noise. One of the worst examples was a class - grade 11. They wasn't even in the blooming classroom. They wouldn't go in. They started saying, "Come on, chief, let's go swimming, we don't want to go and do lessons."

I got them in and they started throwing paper darts around and basically there was noise and hubbub and then they started chucking plastic bottles and I thought really I have not got control of this class. I didn't know where the telephone was and I couldn't even remember where the blooming office was because, you know, when you're new to the whole campus you don't know where you are. So I thought, I've just got to stick this out. But anyway, I did a bit of school marking for that compulsory testing and one of the guys said, "Look, you know, you're silly going

around the secondary schools. There's no work there," because he said, "What happens is, if one person's off because they're not all working all the time they can cover for each other. The work is in the primary schools. There's agencies. You'll get bags of work." Well, that worried me a bit because, I think as I put in the submission, I hadn't been in a primary school since 1949. So anyway, I followed his advice and I listed myself with agencies and I did get work but unfortunately the discipline problem was a darn sight worse. The kids were making a lot of noise. Other teachers would tell me to shut them up and then as soon as they went out it would start again.

Basically I was becoming a nervous wreck and I decided to get out of that area because I noticed some of the children - like, one child might say, "Give us a pen, will you?" And the other kid would get hold of it and he'd chuck it and I could see someone having their eye knocked out so I thought, "I'd better get out of this because I just can't control them." So really, by the time all this had happened well over one year had passed and I decided when I thought about it that education in Queensland had not given me a fair go because they were on the media saying they encouraged disabled people to become teachers and also they had been under criticism for the way they'd been dealing with some disabled children. I was at one school where the child was in a wheelchair and the teacher said to me, "He can't read or write, he swears and he's doing nothing here, but his parents forced him to come to this school. He should be looked after separately."

I thought, well, if that's going on obviously disabled teachers - whenever I reported for a day's work it was very off-the-cuff sort of system. You have to wait and then someone says, "Yeah, what do you want?" I'd say, "I've been booked today by the agency to come in and teach." "Yeah, that's right, you're in - where are we - 08.2. Now, here's some stuff for you. There's the school rules. We want you to do playground duty," and you think, crikey, you know, by the time you sort of find where you are it's almost time to start the lesson. Sometimes when the door was locked, sometimes they'd give me the wrong room. There was constant muck-ups. So basically I decided after thinking things over that I should lodge a complaint about discrimination. I did not think I had been treated fairly. Also, what concerned me - and not necessarily for myself alone, because I'm 65 now anyway - is that I do know that the federal government wants to get more disabled people into the workforce. I do know that some disabled people are studying at university and they get a lot of help. I mean, the help I got, as I think I've put in the submission, is I got a typewriter, I got a special chair, I got my own room.

MS McKENZIE: Yes, you said it was excellent.

MR CAMP: I felt basically it was and I thought this could be done a bit better for disabled people in the education field because I do feel that if people do get a degree as a disabled person they might want to try such an area. So I decided that it would

be reasonable I thought to complain and I wrote a letter to Human Rights. They took some time to react but eventually somebody rang me or I rang them.

MS McKENZIE: Do you remember how long?

MR CAMP: Quite a few weeks I think. I generally wasn't impressed right from the beginning because when I found the phone was engaged and then sometimes I think I left a message and no-one got back to me, but eventually I put my submission in. They wrote back and somebody rang and said, "Look, we can liaison with these people. Maybe we can get you some kind of job." I said, "Look, I cannot teach but I wouldn't mind teaching on a one-to-one because I'm doing some of that now, tutoring, and I also go down to Wavell Heights and I work in their reference centre on a one-to-one and it works very well. It can be very rewarding. I mean, I have never had a class of kids but the tuition I've done, it's sometimes rewarding to see how people can improve and such.

So basically I felt quite pleased and then Education Queensland later replied to my complaints. They said that I had been given work and they claimed more or less that they had found the work which of course wasn't true. They offered to mediate and then suddenly just after that I got a letter back to say the agents, the commission, had decided that there was no merit in my case and they terminated it. Well, I felt that - - -

MRS OWENS: Excuse me, did they explain why there was no merit?

MR CAMP: Well, one of the reasons they put down was the 12 month limit. I'd gone over 12 months before I complained. They felt that this was a major problem, according to the act. The act I think is supposed to say that if you've got discrimination against you you should apply within one year and I do feel that was unfair. Anyway, I went down - I was more angry with Human Rights because I didn't really expect to get much out of Education Queensland anyway, but I think what annoyed me at the time too was they were giving almost \$50,000 away to get rid of people out of the system and I thought, you know, if they've got all that kind of money to throw around, well, surely I'd be entitled to a bit because had I have been in - had I have been able to have handled the job I could have been earning \$1000 a week almost. As a temporary the money that I - some of the people do actually make a living virtually working in temporary places. I think it's gone up to 235 or 246 a day; three or four days a week that's - - -

MS McKENZIE: That's almost a thousand, that's right.

MR CAMP: The advantage is, if it's on a day-to-day, just here or there, you've got no homework or anything. Put it that way - basically, I sort of went through the welfare rights and I said, "Look, I'm not happy about the way the Human Rights

people work." Well, he said, "First, you went to the wrong people. You shouldn't have gone to Sydney." Well, I said I couldn't find any other Human Rights in the phone book. He said, "That's your first mistake and secondly, we get people like you doing a fair bit." He said, "They won't spend any money." He said, "You had an offer. They made an offer from Education Queensland to the Human Rights Commission to mediate." I said, "Yeah, and that's the bit that gets me. Why didn't they do it?" Well, he said, "To start with they probably thought your case was weak anyway" and he said, "They are not going to spend money sending someone all the way up here; hotel bills and so on, just for a weak case." So he says, "What they do, they chuck it out."

That made a certain amount of sense to me because I thought the way they replied to get rid of me was very quick. The normal way it could drag for weeks, you know. So basically this really made me angry because I thought this is not good. These people are supposed to be taking up things for people and I thought, as I said, it's not for myself alone. There was a case I went through, a tutor; she was in a wheelchair. Poor woman was in a terrible state. She told me she wanted to get into a government job. She wanted to get a degree. She was having a hell of a problem going from Kedron all the way out to Lowood in a wheelchair. She was telling me how they wouldn't give her one of those mobile wheelchairs and she had to fight for it. I thought, well, if she ever gets into the state I am in she's going to suffer so I thought to myself, what can I do? I wrote letters to the Human Rights and they didn't reply. Once they terminate, if it's going, welfare rights - yes, once the case is terminated you've had it, you won't get a reply.

I thought even a shonky hire-purchase firm, even they will write you a letter back. So I went to the ombudsman and he said, "Sorry, we can't deal with it. It's out of our jurisdiction," so I finally got onto the attorney-general. After a lot of letters they finally wrote to Human Rights and I they got a letter back from Human Rights but they didn't really address what I was saying about the welfare rights and the - they just said it's not their policy to mediate unless it's part and parcel of the normal sort of court case because it would show biases. Well, I wrote back only the other day to say, look, if I had been the reasonable man on the Clapham omnibus or the Bondi tram, what I would have done, I would have picked up the phone, I would have rung myself and said, "Look, I'm sorry, your case is not really strong enough. You can't really prove that they were biased against you but they have offered to mediate. I will ring them and just see what we can do." They could have done that but no, they said, "No, it's the blanket policy that we don't do things like that."

MS McKENZIE: Did you know - when you rang them, when you first rang the Human Rights people, did you know about the - sorry, I'll ask one more time. Did you ring them first and then write to them, when you began? Did you - - -

MR CAMP: Yes, I rang them first and I had a lot of trouble then. They've got two

numbers; one's a free number. That blooming thing was engaged. The other one had a recorder on it and I think I left a name and address and no-one ever got back to me.

MS McKENZIE: So then you wrote. Is that - - -

MR CAMP: Yes. But in this letter, the final letter I got from Human Rights, they suggested if I'm too unhappy I should ring an officer and talk to them. So Monday morning I decided - I thought I would ring because I knew I was coming here. I rang through and I got through on the 13 number. I didn't ring that free number. I thought "That's hopeless; I'll ring the 13, I'll pay the fee." Somebody picked up the phone and I said, "Yes, I want to speak to" - named the officer. "Right." Just grunted more or less. He put the phone through and of course the recorded message comes on. It said, "I've been on holiday. I'll be back on the 26th." Well, it was the 26th, mid morning, and said, "I'll get back to you." So I left a message but, well, they haven't got back to me yet.

The point is now, if he'd really been on the ball - this is the kind of thing that annoys me - he could have said, "Look, I'll tell you, she's been away. She's got the recorder on. Do you want to leave a message for her or can I deal with it?" Private enterprise can do these things so basically what I do feel is that with the government determined I think now or later to get more and more people on disabled pension into the workforce the act must be strengthened whereby it can't be all done by post. I did make a point that when a lot of people complain, that not everybody has got skills. I mean, I have a young student I help sometimes. She writes brilliant essays, yet when she wants to write a letter she rings me and says, "Can you help me? I'm not sure. I haven't written many letters. How do you put it together," and I help her because, you know, I've written a few now.

Basically I think they should take it verbally because the other people that are responding are organisations. They've got lawyers and graduates and no lawyer would ever ask - if somebody walked in and said, "Look, I want to see you about a problem," I've never known a lawyer to say, "Yeah, well, I'm busy. Go home and put it in writing and I'll deal with it." He'll always say, "Come in," and he'll ask all kinds of questions - open questions, closed, you know; total questions and so on, because they know how hard it is to get things out of people. So really, what I'm trying to say is, the Human Rights Commission, in my opinion, is very, very disappointing. The act should be strengthened and they should get more verbal statements. Finally, they should have people on the actual ground level to investigate these things personally because you can't always get the culture of the job by finding out by post. You've got to actually go out and question these people and say, well - you know, you've got one in four ethnic, unskilled people who are unemployed. You've got an enormous number of mature age unemployed. What hope is there for a disabled person even if they get their qualifications, particularly if their disability is worsening.

It's not so bad if the disability is static. You know, we all know the story of Douglas Bader who lost two legs. With wonderful inspiration went back to flying in the war but he already knew how to fly and the disability never got worse. What if it's a disability that worsens? The person may be able to work at first but they may have problems. People are not willing to face that and say to somebody, look, "You've got problems." They try and work them out of the job. I mean, I was once in an insurance company where we had a lady agent - very unusual - and she wasn't performing but nobody had the guts to sack her. They just let her work herself out by not giving her any help. I've seen this - you know, this was a gender thing but I've seen this in the security business I was in. I mean, some of these jobs they sent out there was no lavatories, no lighting. I mean, sometimes they would send women there. I'm pretty sure it was being done to get rid of them. You've got this going on in all these cultures.

If you're really going to run this business of getting disabled people in the workforce you really need to get people out in the field who can see what's going on and question people because you can't do it by lengthy letters because, I mean, well, with this Human Rights, how they explain to me that I didn't get an answer, they said that an officer must have got the correspondence and not acted on it. Now, that's black-listing someone who's not there any more, but it was addressed to the person I was complaining about. Now, I don't believe that mail that was addressed to that person went somewhere else but I can't prove it. But if you had somebody on the job who went into that office you could question people and I think you'd find the truth. Basically they were in need I think to improve their communication; get the phone answered. When people are emotionally upset they are really often at the end of their sort of wits, they don't want to get some recorded message or somebody that just grunts and says, "Yeah, what do you want?"

They want someone to say, "Good morning, sir. How are you? How can we help you? What's the problem? Let's get into it." You get that, it can lift the enthusiasm of the person and it does - it would do the community good because if you saw more disabled people working, you'd think, well, if that chap - if he can work and he's lost his legs or something and he's in a wheelchair, then I should be able to get something. It might encourage more enthusiasm. I mean, the story of the man who lost his two arms and he writes with his feet and he actually pours his tea out and his bread and butter, all with his feet, he says, "People come up to me and say, 'I can't believe this' and they say 'It makes me feel so humble to see a man that's lost his arms doing all these things with just his feet. You give me inspiration.'" But today at the present moment I don't think it's easy for too many disabled people and that's why I've made the submission.

In my case, well, basically what I've finally done is join the Teachers' Union. They've submitted it to a solicitor. I have already been to Legal Aid and they more or less said, "You're as dead as a Dodo because you've got that 12 month limit." I

mean, I was even willing to go into the court myself and argue but they warned me and they said, "Look, the other mob - state government - they hire some lawyer and they want you to pay it back because they're cash strapped at the moment. They're after the money. I think they went after that Aboriginal chap about the Nigger Brown Pavilion. They're after the legal costs off him. They won't let it go any more so they said, "Really, you would be very, very - you need to have great caution before you come into court."

MS McKENZIE: Did you know about the 12 month limit when you wrote to - - -

MR CAMP: No, I had no idea of it and I do feel it's one of the most unfair things to ever have been done because it can often be years later before you know. I mean, I used to be an honorary bearer in the ambulance and I can see now that they wanted me out because I made a blunder. I couldn't hear too good in an accident. I wasn't too good on the bandaging, because I always believed, get the person to hospital, don't start bandaging people up. But at that time, in 1969, the culture was to make the dressings look good and they worked me out gradually by giving me all medical cases all the time and that would have meant that somebody was liaising with somebody else and it was a nasty shock to realise that. Yet I only realised it some years later when I thought out very carefully what was going on, and only when I was reading a novel where the author describes how someone else had this done to them. This goes on a lot in jobs.

Many years before that I worked in a hospital. There was a male nurse. They didn't like him and the same thing happened to him. He kept being given awful work and he finally realised they wanted him out and he quit. This goes on an awful lot and going to Human Rights, the way it is, by letters, is no good. You really need a sharp shooter to go out there and ask a few questions and then they can see the culture. You can see the job. You can interview the people and get to the truth. Really I think the government should make a definite effort to assist people to get work and then see that they don't have any problems later.

MRS OWENS: You've made some, I think very constructive suggestions, about how the commission could be improved and I've just been noting them down as you've been talking. You talk about strengthening the act and maybe that will involve having to review this idea of a 12-month limit. You talk about being able to make verbal statements, either over the phone or directly to somebody on the ground so - and improve communication. So I think others have raised with us some of the constraints the commission works on. They don't have many staff and some have said they don't really get enough money in their budget so that might explain some of it. So there is a budgetary issue as well.

MR CAMP: Well, you know, the welfare rights said that but my argument is that by doing that they're actually costing the government money because cases that could

perhaps have got compensation are being lost and these people are falling back on welfare. So, you know, they're pursuing a penny wise and pound foolish policy. But it's the kind of mentality they've got and I can't see it's going to be easy to change at all.

MS McKENZIE: The other question is whether there might not be consideration about whether there can be a mediation before the time limit question is decided.

MR CAMP: Yes, I do feel that mediation should have been followed up but it hasn't been and I don't suppose it will ever be any good now because Education Queensland probably realise that, you know, my case is weak. They didn't exactly put the truth in their submissions. They didn't find me any work really. It was all done on my own but the way they've said it, as if it was all done - you know, they're really trying to do their best to help. So I feel that the commission could do more things like that. It only involves picking up the telephone. Of course it's the cost of an interstate call but all those letters and filing and things could probably be cut down further.

MRS OWENS: I agree. I think the more you can get away from the paperwork and the red tape the better it is for everybody really.

MR CAMP: Well, I mean, there was one guy who was a manager. He said to me, "I want help, I haven't done letters for years. I've just been made a sales manager," and I gave him some instruction and all that but it turned out he never used the letters because he does everything by phone. That really is, what, with e-mails where the English is not so fussy, the formal letters are probably declining a lot. I think, if you've got a phone use it because it may cost a bit more in phone calls but it will probably cut down, as I say, all the clerical filing because each time they've got to put a reference and someone has to go and look out the letter and find out what was actually said and, you know, all that's labour time.

So I do feel if they could look at their act, and the act itself could be revamped a bit, I do feel that might be better for future disabled people because there's no doubt competitiveness is making it harder. I mean, years ago a lot of jobs were held for disabled people, like watchmen at factories. They used to do that meter reading. That used to be for people that couldn't be tradesmen any more, but those jobs have all been put under private contractors, they're running on a very tight competitive budget - you know, the global village and so on. There doesn't seem to be so much room for anybody to be willing to be more liberalised and that's making it harder.

MRS OWENS: Thank you. Cate, did you have any other questions?

MS McKENZIE: No. I've asked lots of questions as you've been making submissions. It's been a really good one. Thank you very much, it's very helpful.

MR CAMP: That's all right, pleasure.

MRS OWENS: Yes, thank you. We've kept you a bit longer than we said.

MR CAMP: That's all right.

MRS OWENS: We apologise for that. We'll now break and we will resume at 11 o'clock.

MRS OWENS: We'll resume. The next participant this morning is the Anti-Discrimination Commission, Queensland. Hello, welcome and could you both give your names and your positions with the commission for the transcript.

MS BOOTH: I'm Susan Booth and I'm the commissioner.

MS GRAHAM: Lyn Graham, and I've been working on research with the commission.

MRS OWENS: And, I understand, one of the authors of the excellent submission we've received.

MS GRAHAM: Yes.

MRS OWENS: Thank you both for coming and also I'd like to just say thank you for seeing us last time we were up in Brisbane. We had a good conversation that day and just treat this as an ongoing conversation really. Despite the microphones it is relatively informal, so thank you. Now, I understand you want to make some introductory comments.

MS BOOTH: Thanks, Helen and Cate. I suppose the first thing I want to say is that essentially what we've said in our submission we consider all to be important, but I did want to take this opportunity this morning to just highlight some of the points and in many ways reiterate some of them, so if you don't mind I'll do that - not because the other stuff isn't important but I guess from where we sit - and it's essentially taking into account our experience of what has worked well if that wasn't obvious from the submission. Some of the things we felt were happening in Queensland we think are good, and to the extent that that would assist you in your inquiry we have highlighted those. Again today I guess I'm also going to highlight some of the things that we're either feeling are very important from a human rights point of view or alternatively has worked well in the Queensland situation and we think are worth you considering in your recommendations in terms of any changes to the DDA. So I might start if that's okay.

MRS OWENS: Yes, please.

MS BOOTH: The first one I wanted to highlight directly from the submission was the definition of disability. There was some discussion in the paper about other definitions of disability and should they all be the same. I guess from a logical point of view the first thing people would say was, "Yes, of course." It's neat, it's tidy. If everybody's definition of disability, whether it's in the social security legislation or the federal act or the state act, it should all be the same. Well, we have a view that's slightly different from that, perhaps not quite as neat but certainly very workable. That's the first point we wanted to make about the definition of disability in the state

act; there's frankly never been a problem with it. The definition is broad and we commend the authors of that definition in the state act, very similar to the Commonwealth act.

Of course, as the point that has been made in the submission, is that many people with disabilities who may not qualify for the disability pension nevertheless face unfair discrimination every day because of their disability. There has absolutely never been a problem with the definition and I guess that's the first point I wanted to make about the definition.

MS McKENZIE: A number of the other submissions have said similar things and in particular they've said that the great thing about the DDA definitions is that it avoids fine legal technical distinctions, if you like - you know, that it doesn't finish up in a fight about whether something falls within or without it. It's broad enough to cope with most things.

MS BOOTH: I'd agree with that. The second thing I would say as well is that not only does it avoid those fine legal definitions but there's never been a problem of, say, a respondent in a case then going on to say it's too broad. So the other side of that is that it works from both the complainant's point of view and essentially from the respondent point of view as well. So that's the first point I wanted to make.

MRS OWENS: While we're on that point, we did have a participant yesterday - it was Sue Egan from the Physical Disability Council of Australia - I don't know if you know Sue.

MS BOOTH: I know the name.

MRS OWENS: In the council's submission they did question the definition and they said that it should be drawn from a more social model rather than a medical model. We couldn't quite pin down what that would actually mean in practice but I just thought I would draw that to your attention. So there was a bit of a discussion in that particular submission about the social versus medical model.

MS McKENZIE: I think the point that they were sort of making was - and in the end I think once you clarified it, it didn't really relate to the definition of disability, it was really about looking at inclusiveness rather than prohibition. It's really looking at - and ultimately I think that she clarified with us that looking at inclusiveness, looking at a society that accepts difference rather than relying on it for differential treatment she saw as a major objective of the act. I doubt whether anyone would argue with that.

MS BOOTH: Yes, and at the conclusion of my submissions today I'm going to be talking about some of those issues, highlighting some of those because I think I'd

certainly agree with that.

MS McKENZIE: Can I just ask one more question about the definition of disability and that is - and I just want to talk a little bit about the Victorian context for a second - - -

MS BOOTH: Sorry, Cate, I just didn't get those last words.

MS McKENZIE: I just want to talk about the Victorian context for a second where the definition is very broad and looks very like in many respects the Commonwealth definition. The only problem that has arisen, and it's been relatively rare, has been a question of when is a condition, when does it actually - or when does a - "condition" is probably the best way to describe it. When does a condition constitute something that is part of normal human life as distinct from becoming something that is characterisable as a disability? What I'm thinking of is there have been really two instances where it has been raised. One would not be a problem in Victoria any more because Victoria now has a ground of physical features discrimination.

MRS OWENS: Yes, that's the one I was thinking of.

MS McKENZIE: That had to do with fatness. Obviously in some cases fatness might be caused by some other condition so it could well be a disability but in one case there was a question of whether extreme fatness could itself be a disability. In another case there was a question raised as to whether someone's anxiety was simply the normal human anxiety that all of us feel at various times or whether it might amount to a disability. So it's a question of degree and there's - I mean, one of the good things about the Commonwealth definition is that it doesn't deal with degrees of disability but it's the line I'm wondering about.

MS BOOTH: It's certainly something that we are required to turn our minds to in accepting complaints and we've certainly had discussions along the lines in relation to, for example, smoking. Is smoking an addiction and therefore if it's an addiction it's a disability - and obesity, general obesity is in my view covered. I mean, there is a problem of medicalising what is in fact, yes, a human condition, but we've been able to accept those obesity complaints because of, as you say, the other things - there will be a diabetic component or something like that as well that clearly fits within the definition.

Other than sort of technical requirements, how far should we go? If you're asking that, I haven't given it much thought, I have to tell you, except to say at the state commission we take a very broad view and it is probably something that I will think a bit more about. There is no doubt that a broad human rights approach to the definition because it is a good, inclusive definition, gets an awful lot in - but, yes, I hear what you're saying about how far do you go.

MS McKENZIE: I haven't also thought of an answer yet but - - -

MS GRAHAM: I think it in some way goes to the limitations of this sort of legislation generally, doesn't it: that you have to be discriminated against on one of the grounds specified in the act in order to bring your complaint to the commission. So other things may occur to you and no matter how unfair they are, unless they fall within those grounds, the commission can't deal with it. I know that some approaches overseas - you know, they're taking a broader approach than that so they don't actually specify grounds in some anti-discrimination legislation at all. So the issue is whether the person has been treated unfairly because of something irrelevant to the situation.

MS McKENZIE: Yes.

MRS OWENS: There's another example, and that's excessively - very, very tall people in aircraft, not being able to fit in economy seats because there's not enough space between the rows. Would that come in under disability? Again, it's one of those grey areas.

MS McKENZIE: That's the problem. It depends what the cause of the tallness is. If it's - well, it might depend. If it's due to some medical condition, yes, probably it would because it would be characteristic then of whatever that condition was. But if it's just simply that you're unusually tall, because we all vary in height, then it may not fall within the definition. It may be something - I just simply raise it for thought because apart from that the definition seems to me to cover all the situations that might be needed to be covered by legislation like this.

MRS OWENS: Anything else?

MS BOOTH: So, yes, we're keen to certainly broaden it rather than narrow it. I mean, if it's broadened out that's fine if that happens. The second thing I wanted to talk about was gain the unjustifiable hardship. The reason I wanted to speak about that today was because I think there are a couple of quite neat cases that in Queensland demonstrate how well it works and that it is in fact what I've called economically responsible both in its intent and its practical effect in the implementation, at least in the Queensland situation. I guess it's one of our most famous disability cases and I've referred to it in the submission and that's *Cocks v State of Queensland*, the important access case at the convention centre where certainly the Queensland government believed prior to the handing down of the decision that there was absolutely no way the government would be required to put in a \$200,000 lift that was at the front of the building rather than at the back entrance; that no little anti-discrimination tribunal made up of a part-time member could possibly do that to the Queensland government - and of course they did and

that president has actually gone on to be a Supreme Court judge.

So we of course found that decision to be very useful because it has very much demonstrated that the unjustifiable hardship provision works because the president said at the time, "The Queensland government can afford this," and that was an important part of the decision. In a project that cost many millions, a \$200,000 lift wasn't a lot of money. That can be very much contrasted to a little family business in the Hutton decision. The Huttons run a B and B in Maleny and the history of the case was that the council - I think it was the Noosa Shire Council - - -

MS GRAHAM: Caloundra, I think. Was that the one?

MS BOOTH: No, I don't think it was a Caloundra - I can't remember. Anyway, a slightly north of Brisbane council would not tick off on the Hutton's plans unless they had achieved some sort of certificate or approval for their disability access. So they sought an opinion of the Anti-Discrimination Tribunal. Now, this is a very small show and a newly-built B and B in a very rural setting. The member in that circumstance, member Keim, noted that the circumstances of the Huttons meant that there was inadequate disability access in the plans but instead of requiring like a major rebuild settled on one of the rooms being completely accessible and then the dining room, so that the public facilities and one room - now, that seems to me to be a really good illustration of the unjustifiable hardship provisions - is that he took into account the financial circumstances of this little family business, made a decision that ensured their financial viability but also provided disability access. So I just wanted to highlight that to you today because I think in Queensland at least I am confident that the unjustifiable hardship provision does provide, if you like, an opportunity for a member to take into account economic factors. That's it.

MRS OWENS: That's it? Thank you. You also, while we're on - - -

MS BOOTH: No, I've got some other points but - - -

MRS OWENS: Okay. No, I thought - yes, because you said you had - - -

MS BOOTH: That's also on unjustifiable hardship, yes.

MRS OWENS: While you're on unjustifiable hardship you did raise in your submission another point which you might be going to come to, in which case we can talk about it then - but you said that you didn't believe that the act significantly restricted competition. One of the arguments you gave there was because there was this unjustifiable hardship provision that provides firms with a safeguard. Are you going to pick up the competition issue under one of your other points you're going to make? It was early on in the submission, I think. I just wanted to say that - it's right down - pages - - -

MS BOOTH: It's page 4.

MRS OWENS: Yes, page 4.

MS BOOTH: Lyn might make some comments about it.

MS GRAHAM: I guess the point that we're making there is that the unjustifiable hardship provisions do take into account the financial circumstances of people in business so in that way they don't significantly restrict competition. Did you want clarification on that?

MRS OWENS: No, I thought it was a good point. What it would mean in practice is that smaller businesses then would be more able to show unjustifiable hardship than a larger business. So that really is helping to equalise the impact on small businesses?

MS McKENZIE: It may not be quite as simple as that because in every case unjustifiable hardship involves a balancing of circumstances so that if only the economic circumstances were taken into account that might be the case. It will be interesting to see what the commission's view might be, and perhaps if that were the only thing to take into account that may well be the case. But there will be other matters to take into account; say, for example, the nature of the premises, the nature of the consequences of whatever the particular situation or state of affairs is to the person who alleges discrimination.

MRS OWENS: The benefits to people.

MS GRAHAM: The benefits to the parties that's taken into account.

MS McKENZIE: Yes.

MS GRAHAM: I think we included some information there from overseas about studies that have been done there with small businesses that have shown that the unjustifiable - the reasonable adjustment provisions haven't disadvantage small business there and have meant actually substantial benefits for some business in opening up markets that they wouldn't otherwise have had, and in attracting different employees that they may not have had as well.

MS McKENZIE: Yes, thank you.

MS GRAHAM: Because obviously, I guess, when you're talking about physical access, other people may benefit from that, such as parents with prams and - - -

MS McKENZIE: Frail aged people.

MS GRAHAM: Yes.

MS McKENZIE: Good, thank you.

MS BOOTH: The next two points I wanted to talk about were if - provisions that the Queensland legislation has newly inserted into the act in the amendments that came in 31 March this year, and I think although neither of them specifically relate to disability, I think they have capacity to be useful across a number of areas, and while in Queensland, as I said, they don't relate to disability, I thought I would just highlight those. The first one is, who may complain. We in Queensland have a new section which basically allows a community organisation to complain in essentially the vilification area at the moment. So if - we've added to race and religious vilification, sexuality and transgender vilification. Now, in those areas in Queensland it is now possible for a community organisation representing, say, in the religious vilification, the Islamic Council of Queensland or the LGBT, a community-based organisation whose objects are designed to assist welfare of that particular group of people, can bring a complaint on behalf of the individual.

Now, anyone who has had any experience in this jurisdiction will say - people will tell you there they're discriminated against. (a) it is very difficult to bring a complaint - but emotionally, socially and financially - this gives the opportunity for the community organisation to bring that complaint and with all the - well, not all the resources, no community organisation has all resources - but more resources than the individual. It takes the onus off the individual, back onto the organisation. I think it's a really good provision and I certainly would hope one day in Queensland it applies much more broadly than just to the vilification provisions.

I think in the disability area it goes without saying that it's bad enough that the discrimination happens. But then to have to individually bring your complaint in an individual complaint-based process - and I said the last thing I'll be talking about today will be systemic discrimination and issues around that - but in the mean time until we've got that perfect world that looks broadly at issues I think this provision is a can do one that could be done now. It's been done in Queensland in the vilification area and I'd recommend it to the commission to consider as part of this inquiry. I've just got a copy here of that provision, if you're interested, because we didn't actually include it in our submission.

MS McKENZIE: Yes, thank you.

MRS OWENS: Can I ask when that was going in, in Queensland did you try and get it in for discrimination as well? Why was the bill just confined to vilification at the time?

MS BOOTH: There was a thought that in some ways - and you can actually think about disability in this way too - vilification is often of a group. It's a stereotyped view because of your religious beliefs or if you're vilified on the basis of your sexuality. It's often that you don't know the person but some abuse will be yelled out on the street. So it did have a group nature to it that, I guess, enabled us to convince parliament at the end of the day that it had - vilification was often in the nature of vilifying a group rather than an individual, though of course it can be an individual.

I think that when you think of an inaccessible building it again affects a group. It may be an individual who brings the complaint but it's inaccessible for everybody with that disability. So I think there is some neat connections back to bringing a complaint in this area. I mean, how it will play out in the tribunal we don't know yet because there's been no cases, and exactly whether some law will develop around it, I guess, as to who can bring a complaint and in which circumstances, are not clear. But I am very keen to move discrimination law really away from that individual base to the capacity for us, as a community, to deal with discrimination and this, to me, is a step in that direction.

MS McKENZIE: So it's an organisation can complain in relation to either a group or an individual. Is that right?

MS BOOTH: I believe so. It will be interesting to see what the tribunal members say, Cate, about that. But that's certainly - - -

MS McKENZIE: That's what it looks like.

MS BOOTH: - - - on a legislative basis what it looks like.

MS McKENZIE: Could I ask - and I have to say I've obviously read the Queensland Act but I don't know it well enough to be able to answer this question - are there any circumstances in which the commission may complain - - -

MS BOOTH: There are but it's extremely limited; I think on request of the minister or - there are a couple of other capacities but there's certainly no capacity like HREOC have had in the past. In fact it's never happened.

MS McKENZIE: It's never been used.

MS BOOTH: It's never been used, no.

MS McKENZIE: Do you think HREOC should have that sort of power reinstated?

MS BOOTH: Yes, we do, and we've actually said that in our submission.

MS McKENZIE: Yes. You're going to table that?

MS BOOTH: Yes, I will.

MS McKENZIE: Thank you.

MS BOOTH: The second provision I wanted to talk about along the same lines. Again, I guess it's a theme that hopefully will become a bit clearer from my submissions today. It's the notion of a community approach to all areas of discrimination, including disability, and that's cost provisions. Any individual complainant cannot help but turn their minds to the possibility of losing the case. In Queensland that generally means costs follow the event and they potentially can have a costs order of many thousands of dollars made against them. In the last lot of amendments that went through in 2003 we were able to put in some, I guess, brakes on that general legal rule, and - - -

MS McKENZIE: I'm sorry. Can we just break for a minute? Yes, sorry about that. That would be a fire alarm. But we'll go on. We're just wondering about whether there's a fire.

MS BOOTH: I just noticed the air conditioning has gone off and the next thing I heard were noises that sounded like fire engines, so - - -

MS McKENZIE: I think we might have a fire alarm. We'd like to know if it is going to be a problem rather than not know, for obvious reasons.

MS BOOTH: Yes.

MS McKENZIE: We'll resume and just see what happens. Carry on.

MS BOOTH: So I was talking about the costs orders and - I don't know whether we got the example.

MS McKENZIE: This is - you're relating this to Queensland - - -

MS BOOTH: Yes, this is another provision

MS McKENZIE: - - - or to the Commonwealth?

MS BOOTH: - - - that came in in 31 March this year and unfortunately the second page didn't get printed out. But I wanted to read it out to you. It specifically went in to address that situation where a person has brought a complaint on the basis of disability in relation to access. Now, that clearly has a public component to it. You

fix the accessible buses in Cairns for one person, you fix them for everybody. I think that was the thinking behind this particular issue. Now, the way it was drafted is reasonably general but I believe can be interpreted to take into account that public benefit component in the event that you lose your complaint. No, it's not discrimination for whatever technical reason but then when it comes to the question of costs, what was the purpose of bringing this complaint, was it to potentially improve that access situation? If that was the case then costs - the consideration as to whether each party should bear their own costs will now rely on section 213.

The example that's given of the operation of the section, just a couple of things that are useful is whether a party has reasonably believed there has been a contravention of the act, and the fact that that's a very useful provision. I may not be a lawyer. It looked and felt to me like discrimination and - but at the end of the day there was this technical reason why it wasn't. Or, for example, if the unjustifiable hardship at the end of the day said, for example, the bus company just couldn't afford it, it seems to me that that's when that point could be argued.

The example which is used a lot in Queensland legislation, and which we have certainly recommended, appear in the DDA as well. A tribunal may consider it not appropriate to order costs if the subject matter involves issues of particular complexity or, importantly, if the decision may establish important precedents in the interpretation or application of the act. So that's a new provision. I think, again, it's one that takes into account important issues about discrimination and I'd recommend it to the inquiry.

MRS OWENS: The other thing I'd say is if the provision is going to mention public interest I think it would need to carefully point out that it ought to apply where there's a public interest, even though the particular complainant may get personal advantage from the decision.

MS BOOTH: I agree.

MRS OWENS: Because there's a real difficulty where the public interest can be defined as no individual getting a personal benefit from the complaint.

MS BOOTH: Certainly I think that's a really important point to make.

MRS OWENS: You'll also be tabling that amendment - - -

MS BOOTH: Yes.

MRS OWENS: - - - with another page at some stage.

MS BOOTH: With another page. Yes, unfortunately - I might see if I can find a

photocopier here when I leave and I'll photocopy that second page for you.

MRS OWENS: That's fine.

MS BOOTH: The final thing I wanted to talk about - unless, Lyn, you wanted to make any comments?

MS GRAHAM: No.

MS BOOTH: I wanted to talk about - is the question of a positive duty to promote equality. Certainly in the future - and I'd like to see this commission really - I see this as a very important issue - is that if we are to move to a society that is truly going to eliminate discrimination then we need to move towards a positive discrimination - a systemic look at discriminatory practices throughout every aspect of our lives. There is, you know now, a number of good examples and we've raised them in our paper - is the Canadian situation and, of course in Britain, in the race area.

The positive and proactive approach to discrimination, in my view, is not only effective for people with disabilities, it's effective for workplaces and I would really encourage the commission to do the sort of research that frankly agencies like ours cannot do. If you did have the opportunity to look and research extensively one particular topic as part of your recommendations it seems to me systemic discrimination and looking at some of the best practice in the world to ensure less reliance on an individual-based discrimination approach and to a more proactive one would be something that I see very much fitting in with the national model of a disability discrimination unit and disability legislation.

State agencies, frankly, have very little capacity to do that sort of work. It's not that we're not committed to it but I guess it's one of the big advantages of a national disability discrimination unit.

MS McKENZIE: The best practice - what have you in mind? Are you thinking Canada, US and UK? Or are you thinking of other international models?

MS BOOTH: I don't know enough about the models other than I would like - other than understanding a little bit about the Canadian model that simply goes into a workplace, looks at practices, whether it's sex discrimination or race discrimination or disability discrimination. It looks at the employment practices, looks at the profile of the workplace and makes recommendations. One of the ideas that we had was something a bit like the EOWA in Australia, that is kind of like for the sex discrimination unit described as the proactive arm. What are the good things that you can do to ensure your workplace does not discriminate against people with disabilities? So it would be something along those lines.

I don't want to limit the inquiry, though, to sort of models that we've got, other than I want that sort of systemic approach to be considered. I frankly don't have a huge amount of knowledge about what's happening. I'm going to, over the next 12 months, get a lot more because it has becoming increasingly clear to me that I need to. But at the moment I don't have enough knowledge to do it. But I guess I'm hoping that maybe this commission may be able to write some fantastic research and I'd be very supportive of that.

MRS OWENS: Could I just ask you - Cate just asked about countries. I wonder if there's anything interesting going on in Scandinavia, where you always - every time I ever look at an issue, a social issue, I tend to find - you look at what's happening in Sweden and it always seems to be well ahead of the game or Denmark or whatever. Are you aware of anything happening in Scandinavia?

MS GRAHAM: No, I don't know about Scandinavia. But if you have a look at the Human Rights Commission's web site there's an excellent section under the disability discrimination unit which has international links. There was an International Disability Discrimination Law Symposium and there's a paper there that looks at all of the disability discrimination legislation worldwide and it points out that some countries, such as some European countries like Germany, for example, actually have quotas for employers to employ certain numbers of people with disabilities. But this is largely based on repatriation of injured soldiers. It dates from the second world war. It's not the progressive approach that the Canadians have taken. It's, you know, a more historical approach, I guess. But that's a good place to look. I can't remember what it said about Scandinavia though.

MRS OWENS: Well, the UK also had that sort of provision until they introduced their Disability Discrimination Act as well. But we will have a look at it because I think it would be incredibly interesting. But I think you said in your submission - correct me if I'm wrong - that we could look beyond just looking at employment, and look at other areas as well where you could think about a more positive approach. I suppose education would be an obvious - other important area that we could look at.

MS GRAHAM: Yes, I think employment would be a great place to start though because - - -

MRS OWENS: We might have our work cut out for us just there, yes.

MS GRAHAM: - - - it's certainly the area that people with disabilities identify as the one where they really have disability with discrimination.

MRS OWENS: And that's where a lot of the complaints are, isn't it?

MS GRAHAM: Yes.

MRS OWENS: That's the majority of complaints - in your commission as well?

MS BOOTH: Yes, yes. There's a lot - there's a significant proportion of that in the next section of physical access complaints.

MS GRAHAM: Yes, and I think HREOC have also identified the employment area as the one where they've been able to make least inroads. So having some sort of program in that area would be really welcome, I think.

MRS OWENS: Well, we've already got disability action plans although they're voluntary. This is going one step further or a couple of steps further than a disability action plan, isn't it?

MS GRAHAM: I think it's going considerably further than that. It's requiring employers to tell you what their plans are to be inclusive of - - -

MRS OWENS: And then policing it.

MS GRAHAM: Yes, in the way that's done for women in the workplace.

MRS OWENS: We'll certainly have a look at it. I think we have got some material about the Canadian approach.

MS McKENZIE: There's also a mention in one of the submissions about South Africa. It would be interesting to see - perhaps not in the disability field - what they have done in the race field.

MS GRAHAM: Yes.

MRS OWENS: So leave that one with us.

MS GRAHAM: That concludes the things I wanted to talk about.

MRS OWENS: Right. We'll come back to other issues. Before we go to your submission I think there was an issue that we discussed when we came to visit you and I just wanted to get something on the public record. When we had our meeting back in March we talked about the cooperative arrangements between the Commonwealth and the states. At the time there was a one-stop shop which I think you thought worked reasonably well and I think you argued that the Commonwealth pulled out for reasons unknown but possibly financial. What do you think about the idea of reintroducing a one-stop shop?

MS BOOTH: When you say reintroducing the one-stop shop, do you mean - I'm not quite sure whether you mean literally one piece of legislation to administer or two pieces of legislation.

MRS OWENS: No, still have two pieces of legislation but have a much closer administrative relationship. We heard before morning tea of the case where the gentleman involved worked through HREOC but had to do a lot of his interaction over the phone and in a fairly unsatisfactory way and suggested that it would have been very useful if HREOC had had offices on the ground in Queensland which they don't and if there is conciliation they have to send people up here. It would be a matter of maybe taking the HREOC complaint, doing the initial interaction with the parties involved, having the discussions, working out whether it's an appropriate complaint to go further, then passing it on to HREOC, I don't know - having a more rational administrative arrangement and working together maybe. I don't know how it worked in the past because I'm not really au fait with that.

MS BOOTH: Yes, I certainly wasn't around in the days when it worked before.

MS GRAHAM: I was though so I can tell you a bit about it if you like.

MS BOOTH: I might just say a couple of things before - certainly Lyn can comment. Obviously anything that provides a better service is something that I would be keen to support and a lack of a HREOC office in Brisbane means two things: it means that people who want to file their complaint under the federal legislation don't have a Brisbane office. Where they do have a choice it also means that many more complaints come under the state legislation and sometimes that can be a compromise where in fact it might be better under the federal legislation because there may be, on the nature of that complaint, a better complaint.

So with caution, I mean, obviously we would need to think about the nuts and bolts of the complaint but, yes, as it provided better service in something that I'm not opposed to at least in principle. I mean, the practicalities of it I might ask Lyn about.

MS GRAHAM: There was a Commonwealth state agreement here many years ago and it was really a Human Rights Commission office here but did the Anti-Discrimination Commission's work. So the argument then I guess arose because as Susan was saying, most of the complaints were actually lodged under the state legislation but it was a fifty-fifty cost-sharing arrangement. So you have a Commonwealth - - -

MS McKENZIE: Queensland wouldn't have been arguing though.

MS GRAHAM: Well, Queensland, I guess, was taking the perspective that the reason people were using the state legislation was that it was better than the

Commonwealth and if the Commonwealth fixed up their legislation then it might be more evenly distributed, so there is an argument in that way too. So those sort of arrangements tend to break down, I guess, because of arguments about the finances and who's getting the better deal.

MRS OWENS: But I think all those things could be resolved with a bit of commonsense because of the auslan interpreter. Can you let us know if you need a break because we're happy to have a five-minute break. Are you sure? Okay.

MS GRAHAM: As far as arrangements on the ground went it worked well, you know, from the point of view of the conciliators and the staff of the commission. I can't remember people finding it difficult actually administering both the Commonwealth and the state legislation.

MRS OWENS: Thank you for that. There is this issue of HREOC resources, limited resources. I think you've raised that in your submission too for education purposes. But there's also just the availability. To the extent that there are going to be some complaints that can only really go to HREOC if it's against a Commonwealth agency - and I think harassment complaints - - -

MS GRAHAM: Disability harassments are covered under the federal legislation.

MRS OWENS: Those people that want to make those complaints are at a bit of a disadvantage really, aren't they?

MS GRAHAM: Also if you work for the Commonwealth, you can only make a complaint under the federal act, if the complaint is in the employment area.

MS McKENZIE: I understand all the comments you've made in your submission about wanting the DDA to remain separate legislation, not to become some kind of omnibus legislation dealing with sex, race and disability discrimination, for example, but in Queensland you do have omnibus legislation. Do you have any comments to make about how you think that works? I mean, do you think it's caused you a particular difficulty and would it have been better to have separate acts, for example?

MS BOOTH: I can certainly talk about the difficulties, and the difficulties are the very ones we mention in the legislation. Having omnibus net legislation requires you to deal with 13 attributes fairly both in relation to your time and - well, basically in relation to the time of the commission and the amount of resources that goes into each area. The big advantage of having a separate piece of legislation is the focus and the expertise that develops through the disability unit, the policy people there, and more so I think than in the complaint area. I don't really think that I could say that a better service would be provided in relation to complaint handling but there is no doubt that the human rights promotion done by a disability discrimination

commissioner far outweighs the impact that an omnibus commissioner or president can have.

It is identifiable, it is symbolic and it gives a focus and funds to a specific area and I think it works very well in the Commonwealth. They're the problems with the state. The final part of your question was, would it be better in Queensland to have separate acts. From a financial point of view it would be impossible, I would think, given the sort of funding we get to run the lot. So at least while the units remain discrete federally I think there's also a better chance of them being properly funded, or at least better - maybe that's a bad choice of words.

MS McKENZIE: It's all relative.

MS GRAHAM: Yes, that's right. There is some discrete funding and, you know, I commend the people in the unit for the excellent work they have done in the decade, in the previous decade.

MRS OWENS: What about the role of HREOC? It has got a range of different roles and conciliator and educator, and there have been suggestions, and you have made the suggestion, that it could be a complainant as well. Is there some sort of potential conflict if it takes on too many responsibilities or can that be dealt with?

MS BOOTH: Certainly, I mean, I am mindful that HREOC has had some problems sometimes with confusing its roles and, you know, the Hardiman decision in the Federal Court. I know there was some criticism of advocating so I am aware of that sort of historic background. Having said that, on the whole I think it has worked okay. I mean, there have been individual problems but to separate them out, I think, probably would disadvantage human rights in Australia more than the disadvantages that come from, you know, perhaps overstepping the mark from time to time.

So, yes, I mean, we all need to be mindful that if we're wearing our advocate's hat that it's important that that's separate from the unbiased independent umpire role that we have, and they do require careful calls, certainly in the state jurisdiction and certainly given the criticism in HREOC, it does need to be worked through and carefully worked through, and I wouldn't under-estimate the challenges that that does throw up, but having said that, I think there are significant advantages.

MRS OWENS: What if HREOC was to take on some new responsibility which is to initiate complaints? Would you have to set up some sort of Chinese walls between that responsibility and its role as a conciliator?

MS BOOTH: Yes. I mean, you do have to be reasonably careful. I mean, in my own organisation the moment I've had something to do with a complaint as an issue. I have nothing further to do with it if it comes across my desk. That's it. It

immediately goes to somebody else in the organisation and file notes are taken and I'm very scrupulous to ensure that that independence is maintained within the organisation; to the extent if it was impossible within the organisation I would actually send the matter to HREOC or something like that, and that is something that we have, I think, done on one occasion. So, yes, I mean, again, if you're taking on, if you like, almost a fourth role of intervener or actually complainant, again, yes, I mean, it certainly adds another layer of complexity.

MS McKENZIE: Clearly if there were going to be conciliation in such a complaint there would have to be some independent mechanism for achieving it.

MS BOOTH: Yes.

MS GRAHAM: I think the roles of complaint handling and community education are actually really complimentary because I think that the information that the commission gets from the sort of complaints it gets very much informs the community education process. I don't see those as being problematic at all. I think it would be bad to separate those two functions.

MS McKENZIE: No. It seems to me also that the complaints will inform the education process. I have more difficulty, as I have just indicated where, if the commission is an initiator of complaints, obviously there has got to be something done about the conciliation for those complaints. There has got to be some independent mechanism because if the commission were to initiate a complaint clearly it would happen at the highest level. It's not going to be some junior officer so it's not easy to say, "Well, we'll just go up the line to some person who hasn't been involved."

MS GRAHAM: I guess given now that the complaint handling functions of HREOC are all centralised in the president, whereas before the individual commissioners used to perform that function, the possibility for separating those things is very much there now because before, you know, the disability discrimination commissioner would have been the one who accepted the complaint. All of those complaint-handling functions have now been centralised with the president.

MS McKENZIE: So it may be possible to require that conciliation be handled by - if the complaint is initiated by the president, for example, that conciliation be handled by another commissioner.

MS GRAHAM: Or vice versa might be more likely. The complaint might be initiated by the disability discrimination commissioner.

MS McKENZIE: And conciliated by the president.

MS GRAHAM: The president holds the complaint-handling functions now, and in fact ironically can delegate that complaint to anyone other than the other commissioners.

MS McKENZIE: Yes.

MRS OWENS: I'm sure there must be a way through it, through the issue. We'll talk to HREOC about the issues too. There was another issue about - you have suggested in your submission on page 16 that the concept of reasonable adjustment is not included in the DDA and you suggest that we could follow the UK example and try to define what that might mean, and spelt out what's in the section 6 of the UK Disability Discrimination Act 1995. We have had terrible trouble in Australia trying to work through on this issue in relation to the draft employment standards and I'm wondering if there are some major issues in Australia as to what the barriers are to trying to define reasonable adjustment in that context and how much hope we can hold out to move beyond employment standards to try to think of a way of bringing it into the act.

MS GRAHAM: I guess the main point that, I think, is important is that it's a non-exhaustive list and it is included.

MRS OWENS: Yes.

MS GRAHAM: Because then it's really by way almost of an example, isn't it, if it's a non-exhaustive list.

MS McKENZIE: Reasonable adjustments surely are going to vary from case to case.

MS GRAHAM: Yes.

MS McKENZIE: You can give examples for what some of them might be in particular cases.

MS GRAHAM: Yes. It's really there to assist people, isn't it, if it's a non-exhaustive list.

MS McKENZIE: And that really comes back to the suggestion you have made that in many situations in the act there should be examples included.

MS GRAHAM: Yes.

MRS OWENS: Why weren't there such examples included in the first place, do

you know?

MS GRAHAM: In the federal act?

MRS OWENS: Yes.

MS McKENZIE: There wasn't a drafting convention of the time. There were some examples around in legislation at that time but the use of examples has proliferated since then. Social Security is the best - one might not want quite so many examples as that but they're used much more now, and also in various jurisdictions they have amended their interpretation of legislation to make it clear exactly what the role of examples is; that they're not exhaustive; that they don't limit the generality of the provision of which they're an example and so on.

MS GRAHAM: I think it's part of the commitment to legislation being in plain English. It's complimentary to that.

MS McKENZIE: Also, that's right.

MRS OWENS: And you do think that that would help in terms of these cases if there were such examples.

MS GRAHAM: Yes. The examples are in the Queensland act and I think you will find them helpful.

MRS OWENS: Any other state acts as well or not in Victoria?

MS GRAHAM: I don't know.

MS McKENZIE: New South Wales is too old.

MRS OWENS: We'll have a look at that too. I thought it was a good suggestion. I'm just seeing if there's anything else. Have you got other questions, Cate?

MS McKENZIE: No. I should just say I haven't raised with you the question of including the provisions concerning awareness of discrimination and motive. The problems there are so well-known that I didn't consider it needed further discussion.

MS GRAHAM: Thank you.

MRS OWENS: There was one other issue before we finish. Have you got another couple of minutes?

MS GRAHAM: Yes.

MRS OWENS: I know we said we would finish with you about 12.00. It's just one issue relating to our discussion we had in March. Again, we were talking about standards at the time and you expressed some concern, Sue, that if the state act set higher standards than the disability standard, that that higher standard should prevail. I was wondering if you wanted to comment on that issue on the transcript. You don't have to.

MS BOOTH: It's an important issue both to the commission and to the sector in Queensland. We have had some very significant wins in Queensland. The case that I guess is testament to that is *Cocks v State of Queensland* which of course did comply with the building code provisions of the time and yet was considered by the sector to be a strong win for raising the awareness about disability access in many ways; not just the provision of the left, but it has had ramifications. The concern is that of course a disability standard by its very nature will be a compromise and because of that there is some concern that some of the gains we made in Queensland may be compromised when the standards are finally introduced.

I also am interested in exploring a bit further whether constitutionally the standards are a complete defence to the question of disability discrimination. I'm particularly interested in whether the 109 question about to the extent of the inconsistency would mean that where, for example, say the DDA standard Access to Premises requires a 900-metre door whether you can comply to both and there is no inconsistency if someone in a motorised - those bigger wheelchairs actually requires, for example, a metre-wide door access. Seems to me that it may be that you could comply with both requirements by having a wider door; they're not inconsistent.

Now, I know that is not a view that's held very widely and at the end of the day I will be seeking some legal advice and obviously will be complying with that. But I suppose I was happy to put on transcript that they're the issues, but I also need to put on transcript that at the end of the day, once that legal advice comes in, of course it will be the law and I'll be following the law. There will be no uncertainty in Queensland versus the other states. But I really had to put on transcript that you can understand from the sector's point of view in Queensland nobody wants to see those great gains that we have made potentially watered down by the standards. Having said that, I think the standards do provide some certainty.

MS McKENZIE: Again it's a balance. On the one hand, one can understand people saying, "Look, we have a standard. We now know what we have to do to comply with it."

MS BOOTH: Yes.

MS McKENZIE: "Why should we throw the whole matter up again for uncertainty

by saying if the states have a higher standard you comply with that?" On the other hand, it is a matter, I would have thought, given that this inquiry is looking at the legislation that one might consider dealing with in the DDA. I mean, there may need to be clarification of the effect of the standard.

MS BOOTH: Of course I'm very aware if the Commonwealth chooses to do that then that's the end of the story. I mean, if the Commonwealth opts to override state legislation completely then that's something that no doubt I would think would be something that will be at least considered.

MS McKENZIE: But that doesn't have to be of course the only legislative provision that could be made. It could be also possible to say - basically all I'm saying is that whatever one wants to say legislatively about the matter, there ought to be some clarification.

MS BOOTH: Yes. Can I just make one more point on this, because I know it has been a hot issue and it's a very important issue because we do need certainty but we also need, you know, to remember we do have a good piece of legislation which has worked well. Generally can I say there hasn't been a lot uncertainty in my opinion in the building sector around this and I don't think that - in Queensland we do try and see things fairly. There has not been an end of complete certainty so I suppose if there's a feeling that you've got to have a standard in order to make things certain we haven't had one in Queensland and things have been pretty certain so far. But I suppose I just conclude by saying I guess the inevitability of the standards debate is going to be sorted out very soon, isn't it, once they're in - - -

MS McKENZIE: Yes. That is a very interesting submission you've made though. They are clearly important issues to think about.

MS BOOTH: Thank you.

MRS OWENS: No, I thought it was a very thoughtful submission and you had some good references in there for us to follow up as well. So I'd like to thank Lyn for putting those in. Is there anything else that you wanted to say, Sue or Lyn?

MS BOOTH: No.

MS McKENZIE: Extensive, well thought out, it's a very helpful submission for us, thank you.

MRS OWENS: Thank you. We'll now break and we will be resuming at 1.30, thank you.

(Luncheon adjournment)

MRS OWENS: Okay, we'll now resume. The next participant this afternoon is the Telecommunications and Disability Consumer Representation called Tedicore. Could you please give your name and your position with the organisation for the transcript.

MS ASTBRINK: Thank you very much and thank you very much for inviting me to appear before the commission today. My name is Gunela Astbrink. I'm policy adviser with Tedicore which, as you know, stands for Telecommunication and Disability Consumer Representation. I can outline a little bit about the organisation and it is funded by the federal government from a Department of Communication Information Technology and the Arts under section 593 of the Telecommunications Act. It basically is to represent consumers with disabilities to achieve better access to and equity in telecommunications in Australia. We are managed by Blind Citizens Australia but it is a cross-disability project. We have a project advisory body comprising representatives of peak disability organisations in Australia and also Christopher Newell who is an expert in the field. Our work comprises regulatory work sitting on committees, working with ACIF which is the Australian Communications Industry Forum which is an industry-funded body developing codes and standards in telecommunications in Australia, and we also have involvement with Australian Communications Authority which is the government regulator in the area.

We work with the telecommunications carriers and carry service providers to ensure that they have a better idea on what people with disabilities need. For example, with Telstra there is a disability forum that is held twice yearly and also a consumer advisory group on the disability equipment program. So that just gives the flavour of some of the activities which Tedicore is involved with. We have year-to-year funding and have been in operation now for four and a half years.

MRS OWENS: Thank you. What's your own background?

MS ASTBINK: My background?

MRS OWENS: Yes.

MS ASTBINK: I have worked in the disability and IT and telecommunications area for the last 15 or 18 years in a variety of ways. In the information provision area; in research. I, for example, am also involved with a cooperative research centre on smart Internet technology where there is a disability component and so this is quite important and not as much taken up as I think it should be that mainstream research actually includes considerations of disability. I worked in Sweden for four years with a Telematics and Disability Centre and there were funds there to improve telecommunications for people with disabilities in Sweden and I coordinated a Nordic forum on telecommunication and disability as well as being involved with a

European commission on telecommunications and disability project called Cost 219 and I am still involved with that as an Australian member.

MRS OWENS: You sound superbly well qualified to talk about these issues.

MS ASTBINK: Thank you.

MRS OWENS: Yes, thank you for that. You wanted to raise some of the other issues in your submission, did you?

MS ASTBINK: Yes.

MRS OWENS: Can you choose some additional ones?

MS ASTBINK: Yes. I did discuss in my paper about the issues of public procurement policy and the importance of that and I can - well, I can outline a bit about that but it's in my paper so it may not be necessary to extend that.

MRS OWENS: No, that's fine. We have read your paper.

MS McKENZIE: We have read your paper. It's very clear.

MS ASTBINK: The other aspects that Tedicore is concerned about relates to consumer consultation in a variety of ways. One of them is in the development of disability action plans under the DDA. For example, Telstra and Optus have disability action plans and they involve consumers but if other carriage service providers are going to do that it's not taken for granted and there is one carriage service provider that Tedicore has had discussions with but it certainly doesn't mean that they would set up a consumer consultative process to achieve their disability action plan and - - -

MS McKENZIE: So Optus and Telstra have done this?

MS ASTBINK: Yes.

MS McKENZIE: They're committed to this area but not the other carriers.

MS ASTBINK: That's right. Yes, exactly.

MRS OWENS: Is there an intention for them to do a disability action plan, the other carrier?

MS ASTBINK: Tedicore has informed them and encouraged them and there has been some discussion, and certainly one carriage service provider is, I believe, in

progress but I don't have any particular information. And I feel that if there were powers under the DDA to ensure that as a natural part of the process of developing a disability action plan to include consumer consultation. I think that would be extremely valuable because the action plans are there to reduce discrimination and provide better access to products and services for people with a disability and so surely people with disabilities should be involved in that process of development.

MS McKENZIE: Should they be mandatory, do you think, so that all carriers would have to prepare one?

MS ASTBINK: I think that would be very helpful, yes, because it means that carriage service providers in particular - I'm talking about the smaller ones who may not have as much knowledge of disability as, say, Telstra and Optus do, would need to really focus in what they are offering to people with disabilities and basically ensure that what they are offering are not presenting any obstacles currently which I think there could be in the case of one particular carriage service provider at present so I think that having that on a mandatory basis would be very useful.

MRS OWENS: What about if they were mandatory, some form of enforcement? If they're mandatory should there be some way of enforcing what's happening under those plans?

MS ASTBINK: Yes, absolutely. I believe that there should be a body set up which can, well, assist organisations and companies in the development of disability action plans, but in a stronger sense actually ensure that their consumer consultation takes place, and they can evaluate the disability action plans, plus also monitoring them so that the particular activities and the time lines specified in the action plans are actually met.

MRS OWENS: Could that organisation be the Human Rights and Equal Opportunity Commission or should it be a stand-alone sort of body?

MS ASTBINK: I feel that it could be the commission, the Human Rights and Equal Opportunity Commission. As long as it's very clearly shown that it is maybe done in a type of a separate way so that there's no misunderstandings or concerns by organisations and corporations that there is some type of conflict of interest. So I think if there is a body such as that set up, the terms of reference need to be very clear and I think also the current legislation needs to be checked very carefully in relation to any issues because I believe there have been cases in the past with HREOC and the DDA where there were particular powers that HREOC had which were then taken away because it was felt that there were conflicts of interest or whatever. So if our new process is set up they need to be very clearly shown that this doesn't happen again.

MS McKENZIE: Yes. One of the things that you seem to be saying is a good thing in your submission is the voluntary consultations that the commission has entered into with industry-wide groups. For example, like the banking sector with the ATMs. You said, I think, that there is a draft report pending as far as telecommunications is concerned. Is that right? You're hoping that that might be an area the commission might inquire into.

MS ASTBINK: I'm sorry, could you repeat that question again?

MS McKENZIE: I'm asking you about the way in the past the commission has had discussions, voluntary discussions, with industry-wide groups. The banking industry is a good example concerning ATMs and so on.

MS ASTBINK: Yes.

MS McKENZIE: My understanding is that the commission is looking to, or perhaps has even begun to have some discussions of this kind as far as the telecommunications industry is concerned.

MS ASTBINK: Yes. Certainly from the accessible banking - well, there was an inquiry initiated as you said by HREOC as a consequence of the attorney-general's recommendation and from that developed an accessible e-commerce forum and the Australian Bankers Association played a very active role in developing voluntary standards in a number of areas; like ATMs, online banking, EFTPOS, and currently HREOC have commissioned a report into access to telecommunications in Australia and that is being finalised right now between HREOC and the consultant William Jolly. There are a number of recommendations, I believe, in that report which I think can have quite significant outcomes.

When it comes to voluntary standards in the area of telecommunications I'm not exactly sure if, under the DDA currently, that is possible for a start and so if that was to be contemplated there would need to be consideration of some amendments to the current DDA. Voluntary standards can be useful in that it means that industry would consider coming together to produce standards if they feel that they are not necessarily mandatory but that in a gesture of goodwill they can develop those, and over time various aspects could be adhered to.

Telecommunications is a difficult area in the sense of it's fast moving and the regulators themselves are finding it difficult to keep up with next generation networks when it comes to third generation mobile telephony, the convergence of Internet-based networks and the more traditional, what we call the public switched telecommunications network which we use on a daily basis. This is not only in Australia - that's internationally. So one has to be very careful, I think, in this area if one is developing voluntary standards, that they are not too narrow so that they

would preclude new activities, new networks and services, or too broad as to not have any impact as such.

I think when it was - when the voluntary guidelines in on-line banking came on it was a bit different because they related to web sites and interaction with web sites and so forth. Can I also suggest that one area of concern is actual Commonwealth government laws and programs in relation to the government on-line strategy. That is something that was set up by the government about three years ago and it covered a range of areas that government departments and agencies needed to adhere to when it came to web sites and other on-line services. One of the features in the strategy was to ensure accessibility of web sites for people with a disability and for people in rural and remote communities. So it was an interesting combination there, because it was stated that people in rural and remote communities often have slow connections and so they need to sometimes turn graphics off on web sites and that means that you have to make sure that it is still readable.

So there was a lot of work done by government departments and agencies to achieve what was required under the strategy and there was a monitoring process. It reached a certain level of compliance and I believe that that monitoring process is no longer as strongly in place because it was felt, well, it achieved that. But one of the problems is that of course on-line services and web sites are very dynamic and one of the things is, for example, when it comes to putting new documents onto web sites, an example is of course with PDF files, which are inaccessible for blind people - - -

MS McKENZIE: Some programs can convert them but you have to apply a conversion program and I mean, obviously it's preferable if possible to have documents not in PDF format so that you don't have to apply the conversion program.

MS ASTBRINK: Exactly, because it's an additional process so it's not what I would have called equal equity in access. While Adobe Acrobat have promised to improve accessibility and with the latest version, version 6, they say, yes, it is now possible, but it means that people who have, say, Windows 98, they can't access it because of incompatibility there. So, it's always playing catch-up and it means that for example when we had the Pan Pharmaceutical issue there was a listing of the particular recalled products from the Therapeutic Goods Administration. Now, they were placed on the web site only in PDF initially and that could have been a considerable cause of concern to people who couldn't access that site.

So it's an indication of the need to continue to monitor that on-line accessibility and to find ways of maybe the DDA having a stronger influence with the Commonwealth disability strategy and the government on-line strategy so that while I understand now the Commonwealth disability strategy really doesn't come under the DDA, in the way that, you know, other programs might, if there was a way

maybe to clarify that or to make some of the provisions in the Commonwealth disability strategy part of an evolving standard under the DDA on Commonwealth laws and programs, that could be very helpful because then there would be a different monitoring and regulatory approach.

MS McKENZIE: That's a very good point.

MRS OWENS: We'll have a look at that. Can I retrace our steps just a minute, when you're talking about the voluntary standards before, for telecommunications and the potential for them to be too narrow or too broad in flexibility, would that be partly overcome if you had voluntary guidelines rather than standards? Standards, you know, I suppose are more rigid: guidelines could be seen as a bit more flexible.

MS ASTBRINK: Yes, I think that I would be very interested in pursuing it but I just would want to add a cautionary note that it needs to be done very carefully.

MRS OWENS: And can I retrace our steps back further. When you were talking before about Optus and Telstra having disability action plans and consumer involvement in those processes, do you think that the outcome in terms of the quality of those plans was adequate? Are they good plans? Are you happy with those plans? Are those companies abiding by their own plans? Any comments you'd like to make?

MS ASTBRINK: Yes, well, Telstra was the first major corporation in Australia to develop a disability action plan and they publicised that quite widely. They I suppose were influenced - I mean, they may not say so but there's a famous case of complaint under the DDA, Scott v Telstra case, and that had a huge impact on the way disability equipment was provided to people with a disability in Australia. Do I need to go into that particular case?

MRS OWENS: No, we've got details of that.

MS ASTBRINK: So from - well, if I just go forward then into the Telstra disability action plan, they have involved consumers in consultation quite considerably. They are now onto their third action plan. The first one went through an internal quantitative evaluation and consumers were concerned that it didn't really reflect the qualitative procedures. I mean, it's one thing saying, "Yes, we've done it, but what quality of service level?" So Telstra listened and in the evaluation of the second disability action plan they employed a contractor, an outside consultant, to actually conduct surveys and questionnaires with people with a disability to get feedback on Telstra's action plan and from that a report was tabled. We were part of the reporting of that and consumers felt much more comfortable with that and we've also been part of the development of the third action plan.

There's a lot in there. There's a lot for Telstra to do and I think there's a lot of positives in there but I should also point out that there are some negatives and one area that has concerned many people recently is the closure of six Telstra aged and disability centres. These centres were set up in the 80s actually - they have been around for a long time - to provide information to people on a walk-in basis on equipment that Telstra had to offer and also some other general telephone equipment that people could purchase.

MRS OWENS: Are these around Australia, are they?

MS ASTBRINK: They are; one in each capital city, apart from the Territories. They also - some of the centres did home visits. Staff went out to talk to groups; groups as in seniors groups, exhibitions and so forth, to really get to a more grass-roots level on what was happening. Now, the issue with - why I'm raising this is that they were closed with no consultation at all and we were told as members of the Telstra disability forum a week before the closure and it was just stated, "This is what's happening." Out of those six positions there would be two positions made as disability liaison offices with a whole different structure. We believe that apart from some of the possible shortcomings with the new structure it was really the lack of consultation and we felt rather betrayed by that.

So, it's one thing having the disability action plan and going through those particular activities, according to time lines, but it's really, when it comes to other areas they can still do these things without that consultation. Now, I'm not sure how that could fit under the DDA and the action plans but I think it's really worth stating in relation to that consultative process.

MS McKENZIE: What about monitoring of their plans? How does that work? I mean, you've talked about the preparation of them and you've talked about the survey or the consultancy work which resulted in the preparation of the second plan and I assume the third as well, but what about ongoing monitoring after the plan has been prepared, not just monitoring of time lines, monitoring of generally how they are complying with the plan.

MS ASTBRINK: Yes, well, the plan is published and lodged with HREOC so it's a public document and the disability forum members would be able to question Telstra on particular aspects of, "How are you going with that?"

MS McKENZIE: But there's not a formal monitoring mechanism which operates?

MS ASTBRINK: I don't believe so. I can't point to a formal monitoring process, no. I think that's a very good point.

MS McKENZIE: What about the Optus plan? Does it - sorry, let me ask you one

more question about the Telstra one. You said that there was a second plan after this consultancy and now there's a third. What led to the third plan?

MS ASTBRINK: Well, the plans were developed with particular time lines so usually they go for two or three years so it was very specifically that, "We will achieve these particular outcomes in this period of time," so when that period of time was finished then it was appropriate to review what's been done and move forwards into a new plan. So that's quite positive, and because Telstra is such a large corporation there is so much to do. Sequentially a lot of things have been happening and as new technologies and services come on stream there's the possibility of including them in the action plan so I think that works quite well.

MRS OWENS: That will certainly pick up new developments in a way, won't it?

MS ASTBRINK: Yes, it does, yes.

MRS OWENS: When you said that they reviewed - you said you didn't think there was formal ongoing monitoring but Telstra must come back and say, "Well, this is what we've achieved."

MS McKENZIE: But at the end of the time.

MS ASTBRINK: At the end of that plan period, that's right, yes. And I mean, it doesn't mean that everything that the consumer may wish to have on the plan actually gets on the plan. I mean, that's a final say of Telstra but certainly they do take up a large percentage of what we have suggested.

MRS OWENS: At least they spoke to you.

MS ASTBRINK: Yes, and there has been an ongoing process within the Telstra disability forum to brainstorm some ideas and then to come back and input into a draft plan and so forth. So that process has certainly been in place.

MS McKENZIE: And it's not token consultation in the sense that the consultation does really result in a number of identifiable parts added to the plan which take account of matters that Telstra considers are worthwhile including in the plan that have arisen during the consultation phase, yes.

MS ASTBRINK: Yes.

MS McKENZIE: What about the Optus plan?

MS ASTBRINK: The Optus plan was also developed with considerable consumer consultation. It probably was done slightly differently in that I think consumers had

more input in a different way into the Optus plan. It was more of an inclusive process in some ways, as I understand it, and it's hard to explain but I think sometimes certainly with the earlier plans and Optus is now in its second plan, the way Optus started off its first plan was very much sitting around a table with particular consumer representatives and saying, "Okay, how are we going to do this?" So it was very much from a grass roots level and that proved to be a very productive and a positive process. They were a bit optimistic about the time lines though. They haven't really been able to achieve as much as they had suggested in the plan so there are some issues with that and I can't tell you about their evaluation process I'm afraid.

MRS OWENS: You mentioned in your submission that there had been some successful complaints under the DDA. You mentioned the one relating to interference to hearing aids from GSM mobile phones or you talked about that leading to the inquiries. Have there been other complaints on other issues that you have followed through personally? Have you got any comments about how HREOC has handled those complaints?

MS ASTBRINK: Well, I mean, as I mentioned the interference to hearing aids. The other complaint was height of pay phones which was an issue that people using wheelchairs and people with upper limb mobility limitations had real problems in reaching the functions of a pay phone and this had been an ongoing issue with Telstra for a number of years and so it was felt that really there wasn't any positive outcomes. So there was a complaint made then to HREOC and that was conciliated and it resulted in Telstra conducting research into the optimum height of pay phones.

But there are still a lot of concerns because the - it's difficult because there's no easy answer and it was felt that, well, there's always going to be some people who can't access the pay phone and it was a reasonably large percentage of people with a disability, so it was felt, well, there needed to be - well, I should say that it's been an ongoing negotiation now between Telstra and a particular disability organisation. It still hasn't I don't think been completely resolved. The height of pay phone issue is still a problem. I'm not saying that the HREOC program wasn't effective because it did reach a particular outcome in that Telstra conducted the research and so forth.

MS McKENZIE: It's just an inherently difficult issue, that's really the problem.

MS ASTBRINK: Yes, it's a difficult issue.

MRS OWENS: I suppose it's the question of there's the existing payphones and there's what you do about investing in new payphones and whether there are technologies out there that suit everybody. I don't know the answer to that, but there may be issues about trying to convert every payphone in the whole of Australia and if you put something down lower then there's going to be other people who can't

bend to use it, so I'm not quite sure. I can't picture what the solution is. But what's happening with the new phones that are going in?

MS ASTBRINK: Well, there are a number of new payphone designs, actually, coming on board because Telstra itself is looking into redesign of their payphones and there are a number of issues relating to vandalism, cleaning around the payphone sides and so forth and it's not really only the height of payphones, but it's payphones generally and accessibility that are a huge issue, because we've talked about the height of payphones, but for white cane users the Majestic style of payphone, which is mounted on a pedestal, means that a white cane user can't actually pick up that there is an obstacle until they more or less walk into it, because the actual payphone and its plastic or glass surround actually sticks out in front of a pedestal and also there's an issue about the volume control not being as variable. There needs to be more volume control than there is, there needs to be more TTY payphones, so there are a lot of issues with payphones and it's also an interesting issue because there are private payphone providers coming in now and, for example, Westfield Shopping Centres have taken up a contract with Tritel which is the other payphone provider in Australia and that means that the Telstra payphones have been removed and - - -

MS McKENZIE: And they don't have an action plan.

MS ASTBRINK: Tritel? Oh, no.

MS McKENZIE: It's a pity we can't reproduce that tone in the transcript.

MRS OWENS: But we do have a recording. Have you got any other comments about HREOC? We're just trying to talk to people about how HREOC is going with these sorts of issues and there have been suggestions made to us that HREOC should be able to initiate its own complaints. For example, when there's an issue that goes beyond an individual and you've got a more systemic issue, or where it's just an issue where individuals might be deterred from coming forward for other reasons, be it cost or something else, have you thought about that issue?

MS ASTBRINK: Yes, I think that's a very important issue and I think it would be very, very helpful for HREOC to initiate complaints that they feel are systemic issues, based on discussions with people in the community and I also believe that HREOC used to be able to do that, but because there was again felt to be that it wasn't possible because of HREOC's other hearing functions, I believe, at that stage, so if that's possible now for HREOC to initiate complaints I think that would be very, very beneficial. One of the aspects I've found is that there are people with a disability and disability organisations who are very well aware of discrimination in a particular area, but sometimes there may be misunderstandings about how the process works and there's concern about costs and time and energy and the angst of going through a complaint.

So I would strongly suggest that HREOC would be given the resources to provide a broader educative role about the complaint's process. I feel that's very, very important. Most people would definitely not bring a complaint to the commission unless they had a very significant grievance and there are people out there who have significant grievances, but still find there's a barrier. It's an unseen barrier when it comes to the process, but if there was support in the area of understanding more about the complaints process and being able to move out of the process if conciliation, for example, doesn't work then I think that certainly would help a lot. I should also point out that my dealings with the commission have always been very positive and they work very hard. I think they have fairly limited resources for what they do. So I would suggest that the Disability Rights Unit were offered more resources, in the terms of awareness raising, education, conducting inquiries and initiating complaints, so we do have a more equitable society.

Can I also add another cause of concern. I understand that there is a bill before parliament presently to change the role of commissioners, so rather than having specific commissioners in particular areas, like disability, there would be general commissioners. Now, I feel that there's been a lot of expertise built up by having a particular commissioner for a particular area and I would feel that that would be a great loss if there were general commissioners, rather than specific commissioners.

MS McKENZIE: There are terms of reference that we have which say that we're looking basically into the effectiveness of the Disability Discrimination Act. Now, I know that it could be argued that a reconstitution of the commission in some way might indirectly, in some way, affect the way in which the DDA might effectively operate, but the difficulty - the difficulty I have at the moment anyway is that the reconstitution of the commission involves not just the Disability Discrimination commissioner, but the commissioners responsible for the Sex Discrimination Act and the Race Discrimination Act and those acts, of course, are simply not referred to us; nor is, for that matter, the Human Rights and the Equal Opportunity Commission Act either. In a way we have to refer to it because it contains the complaints process but it's, I think, somewhat out of our terms of reference to look specifically at the commission, at least that's my feeling for the moment, but sometimes if we simply note that an issue keeps arising in submissions we may well note in our report that although it's slightly beyond our terms of reference that it has, in fact, arisen in many submissions.

MS ASTBRINK: Thank you.

MS McKENZIE: Do you want to add to that?

MRS OWENS: No, I think you said it very well. I only had one other question I was going to ask you and it was about your recommendation relating to wanting to

see increased DDA influence in the public procurement of accessible IT and telecommunications products and services, which I think is a lovely recommendation, but I'm wondering about private procurement, whether there should be an extension to thinking about the procurement by public companies of telecommunications products, whether we should be thinking beyond just public procurement.

MS ASTBRINK: I think that's a very good point and I suppose it depends very much on how hard or difficult it would be to actually enforce something like that. Whereas when it comes to public procurement, we have various legislative and regulatory processes, and I also suppose it's just looking at models internationally in the way that it's being done, say, for example, in the United States, that has had an impact. So I agree with you. I think it would be excellent if there was a mechanism to encourage or enforce private procurement of accessible IT and T equipment.

MS McKENZIE: The ISP industry, if you like, was it - and I just don't know the answer to it - was it part of the discussions that HREOC have had concerning accessible web sites and so on, because of course Internet service providers, there are lots and lots of them, some very huge, many overseas-based, and some very, very small indeed. But obviously they must also have a great part to play in the accessibility of web sites.

MS ASTBRINK: Yes. Certainly HREOC very early on provided advisory notes on Web accessibility, and this was done I believe before the Maguire v SOCOG case, and it referred to the international Web content accessibility guidelines by W3C. But when it comes to Australia, I believe also that HREOC had meeting with the Internet industry association, and that association developed a voluntary code when it came to accessible online services.

MS McKENZIE: Okay.

MRS OWENS: So that's another instance of a voluntary code.

MS McKENZIE: Yes. No, that answered all my questions. I've asked them as you went along, which is much easier to do.

MRS OWENS: Gunela, have you got any other comments? We did interrupt you a lot.

MS ASTBRINK: That's fine.

MRS OWENS: I don't know whether you covered everything you wanted to cover.

MS ASTBRINK: I have, actually, yes.

MS McKENZIE: We just had so many questions.

MRS OWENS: And you're the first person we've spoken to about telecommunications issues, so that's good. We were hoping that some of the telecommunications companies will put in submissions. I haven't received anything. As far as I know, we haven't received anything from Telstra yet, but I have asked them. So it would be very good if they did, because I think there is, you know, quite a positive story there, not in every respect, but there's some things that they might want to tell us. So thank you very much for that.

MS McKENZIE: Thank you very much indeed; a very helpful submission.

MS ASTBRINK: Thank you very much.

MRS OWENS: I'll now close today's proceedings. I don't think there's anyone else here to appear before us, unless the staff would like to.

MS McKENZIE: They do every day.

MRS OWENS: They do. We see enough of them. So I'd like to thank you for attending today. I'll now adjourn the proceedings and the commission will resume hearings in Hobart on Wednesday, 4 June. Thank you.

AT 2.25 PM THE INQUIRY WAS ADJOURNED UNTIL
WEDNESDAY, 4 JUNE 2003

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