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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 DARWIN ON TUESDAY, 27 MAY 2003, AT 9.32 AM

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. I'm the presiding commissioner on this inquiry and my associate commissioner on my left is Cate McKenzie. I think everybody is comfortably ensconced in their seats, so we've got a good spot for you to see the auslan interpreter. We're going to have three breaks today: a morning tea break about 10.30 for half an hour; a lunch break at 12.30 and afternoon tea at 3.00. If auslan sign is needed, we have to operate in 20-minute blocks of time with 10-minute rest intervals. We will finish our proceedings later I think by 5 pm at the latest. We need to stick fairly closely to this timetable. You're welcome to take a break and re-enter the room at any time if you need to. Our commission staff will assist you. We've got Paul sitting at the table here and we've got Kim sitting at the back with Joe.

On 5 February this year the government asked the commission to review the DDA and the Disability Discrimination Regulations 1996. The terms of reference for the inquiry ask us to examine the social impacts of the DDA on people with disabilities and on the community as a whole. Among other things, the commission is required to assess the costs and benefits of the DDA and its effectiveness in achieving its objectives. We've already talked informally to a range of organisations and individuals with an interest in these issues and submissions have come into the inquiry following the release of the issues paper in March. We're grateful for the valuable opinions and contributions we've heard from people during these informal discussions to date.

The purpose of this hearing is to provide an opportunity for interested parties to discuss their submissions and their views on the public record. Following the hearing in Darwin today, there will be hearings in all other Australian capital cities. We will then prepare a draft report for public comment which will be released in October this year and there will be another round of hearings after people have had the time to look at the draft report, probably in December, January and February. We would like to conduct all hearings in a reasonably informal matter but I remind participants that a full transcript is being taken. For this reason, and to assist people using the hearing loop, comments from the floor cannot be taken because they won't be heard by the microphones. If anyone in the audience does want to speak, I will be allowing some time at the end of the proceedings today for you to do so. If you think you'd like to take this opportunity, please identify yourself to a commission staff member before the end of afternoon tea.

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

Now, I'm going to invite the first participant to give her name and her organisation for the transcript.

MS SALTER: Good morning, I think quite a lot of you know me already. I'm Mary Salter, president and secretary of the Deafness Association for the Northern Territory for the past 14 or 15 years and I am almost profoundly deaf. I have no useful hearing in my ears but I do use - I can show it to you - a huge thing, because I've got some bone conductive hearing left and noise reverberates on my bone through a band over here and unfortunately it's mainly confined to vowels and I have to lip-read consonants on the lips, okay.

MRS OWENS: Yes, thank you very much. If you have trouble lip-reading or catching anything that we say, just ask us to repeat it.

MS SALTER: Yes, will do.

MRS OWENS: If you would like to, Mary - have you got any comments you'd like to make about your submission and then we can open it up for a discussion.

MS SALTER: Yes, certainly. I don't know, can you hear me quite well?

MRS OWENS: Very well.

MS SALTER: I've put my submission - I've done an introduction about my own hearing loss and I've done three headings, and they're Education, Discrimination in the Workplace, and Assisted Listening Devices at Public Venues. I don't know what you would like me to talk about. Any of the headings?

MRS OWENS: If you would like, what we could do is just run through each of the issues and just ask you - I'd like to clarify some of the points you've made and I'm sure Cate has some questions as well.

MS SALTER: Yes, okay.

MRS OWENS: Maybe we could just run through those.

MS SALTER: I'll just run through them.

MRS OWENS: The first one you raised was the issue of the Education Department closing a primary level special hearing unit.

MS SALTER: Yes.

MRS OWENS: You argue that the department was pursuing integration and discouraging signing. I'm wondering about that particular issue, whether there are other units in other schools that students have access to or does this mean that the students have no access to other facilities in other primary schools?

MS SALTER: No, to my knowledge there are a few itinerant teachers of the deaf. There has been, if you like, a formal approach against signing and pro lip-reading, probably due to the fact, I think, that these days we have the cochlear implant early on and this will enable children to have partial hearing. But I would point out that this partial hearing they get is not normal hearing. I had normal hearing until I was seven years old and this isn't normal hearing. We argue very, very strongly that there should be a special unit, even though the children have a cochlear implant and have a form of hearing which is not normal.

Everybody thinks, "Right, cochlear implant, they can hear." This is not so. It's a very mechanical tone. It's not like normal speech at all. They do not support. Certainly they need the ability to sign, to communicate with sign, and I'm sure - I wasn't born deaf. This is my point, I wasn't born deaf and I didn't go deaf until I was seven, so I was well able to hear and speak till then. I learnt to lip-read because in those days they didn't have hearing aids so I had to learn to lip-read. But it's a very, very different thing for children who are born deaf with no hearing. Lip-reading is almost impossible. I mean, it's like describing to a blind person what the colour yellow is. If you've got no hearing, it's impossible. Most people who are born deaf will be much more comfortable with signing, as Michelle is doing at the moment - and her sister - very, very much more comfortable with this.

This is one of the things that the Deafness Association certainly feels quite strongly about, that the primary school at Stuart Park is no longer working. They have closed it. These essential years are lost. This is the time when you're fast communicating. I'm an expert lip-reader which does help because I'm now profoundly deaf with the exception of bone conduction of hearing. So I combine that with the lip-reading I learnt when I was a child. But it's awfully difficult if you're born deaf to be able to lip-read.

MS McKENZIE: The itinerant teachers, are they not able to teach enough signing for the children who are in the mainstream primary education?

MS SALTER: Well, now you imagine what it's like. You probably have two or three children in this unit. The mainstream of course speak and you will only have occasional signing. Signing, as you will see with Michelle and her sister, is a total, continual exchange of information, very important. To abolish this must be a tremendous difficulty, a tremendous difficulty.

MRS OWENS: Can I ask, Mary, is there still signing available in some of the other primary schools in Darwin or outside Darwin or is it being removed altogether?

MS SALTER: You have what's called itinerant teachers of the deaf. Now, part of education of course is for children to communicate with each other and they used to have a unit for many, many years at Stuart Park Primary School where the rest of the pupils, the hearing pupils, were also taught to sign. Now, this is a tremendous difference, but they had a total communication program consisting, at the Stuart Park Primary School for the deaf, of both lip-reading, that I do, and signing. It was extremely successful. We shall probably have to do something about this through the DDA. Let me explain the history of the secondary school.

Until about three or four years ago, signing stopped at senior primary level and there was no secondary school unit available. There have been secondary units at normal schools, small classes of secondary units, for many years but this stopped altogether. So we applied under the DDA to the Northern Territory Anti-Discrimination Commission because we were informed, whether rightly or wrongly, I don't know, but we did have the information that this could act rather more quickly than going through the federal DDA, and indeed it did. We now have a secondary unit at Darwin High School which has functioned very well. But at the same time they closed the primary unit which doesn't seem to make a lot of sense to me because I should have thought that this is an ongoing program from primary to secondary level.

MRS OWENS: What does the secondary unit do?

MS SALTER: It has a special unit. I think there would possibly be about eight or nine children there and they take the children who were educated at the Stuart Park primary hearing unit and develop their education to tertiary level. They use a total communication program, that is they use - as I think nearly all Australian schools do - a system called signed English. I don't know if you understand the difference between signed English and auslan. Auslan is the language - and it is a language, a valid language - that Michelle and her sister are communicating with, but this is in no way based on English.

The Victorian Education Authority devised a method based on auslan which has nothing go do with English at all, it's a valid language on its own. They adapted it to sign English in a grammatical version so that the children should be literate in written English and thus able to go on to tertiary level to attain tertiary qualifications. There is some schism between people who use auslan - as Michelle and her sister do - and the system of signed English in schools, because signed English can't be considered as a valid language on its own, it's just based on auslan and it's a Creole, if you like, because it has adapted to English language in order that children should get through to tertiary level because they must be literate in English at a tertiary level. It's quite a big difference, as Michelle and her sister would be able to tell you.

MS McKENZIE: So at the secondary unit, are the other children at Darwin High also taught to sign?

MS SALTER: I don't know, because it has only been set up for two years. They certainly did at Stuart Park Primary School. All the pupils were taught to communicate with the primary unit which would have had about, I suppose, 10 children in it. The success rate was excellent. So if you like, now at primary level they're being deprived of the language.

MRS OWENS: Can I ask, Mary, coming back to the closure of the unit at Stuart Park, why did that happen? Was it because the unit was too small, was it because there was a move around from signing or was it because the parents wanted their children to be mainstreamed? What was the argument that was used?

MS SALTER: The argument was, I suppose, that things had changed because the cochlear implant - I mean, I was never told this formally but I should imagine that when the cochlear implant was invented, it was expected that the children should move into mainstream education, and there has for many, many years been a movement to close down the Stuart Park hearing impairment unit - many, many years, many years. We would protest - the Deafness Association of the Northern Territory - on every occasion and we were extremely fortunate in that the education minister who had originally overseen the unit, later on became the chief minister and he was a great supporter. Every year it was suggested that the primary unit should close and every year we made a protest through the very supportive, by this time, chief minister who admired the results of the signing unit and what it was doing. But, of course, he went elsewhere - and I'm not saying it coincided with the unit closing but we certainly lost a very strong advocate when he left. So that is the situation, and now they're all integrated. They don't have any special private units. They're all integrated.

MRS OWENS: Can I clarify something else. You said that there was action to introduce the second level deafness unit, and in your submission and I think in your comments before, you said it was done under the DDA - under the Disability Discrimination Act, but it wasn't. It would have been the Territory act.

MS SALTER: Yes. It's the same actually, isn't it?

MRS OWENS: No, there's a different act. There's the Disability Discrimination Act which is a Commonwealth act.

MS SALTER: Yes.

MRS OWENS: And then there's the Northern Territory Anti-Discrimination Act.

MS SALTER: I see, they are.

MRS OWENS: And they're different.

MS SALTER: I was just recommended to use Northern Territory Anti-Discrimination Act because it seemed to the commissioner at the time a much speedier way of settling things, and if you have a look at the speed with which this is carried out, the Northern Territory Anti-Discrimination Act carries some fairly heavy penalties for noncompliance. It's much faster than going through the DDA which usually takes two or three years - the federal DDA takes two or three years. May I ask you a question now?

MRS OWENS: Yes.

MS SALTER: Does every state have its own individual organisation like the Northern Territory?

MRS OWENS: Yes, and one of the things we're interested in is why people go through one system rather than the other. What are the advantages - - -

MS SALTER: Faster.

MRS OWENS: - - - of using the act, and others have been saying to us it's also just more accessible because you've got a commission here located in Darwin.

MS SALTER: Yes.

MRS OWENS: So there's the accessibility to the commission, it is faster.

MS SALTER: Yes.

MRS OWENS: I don't know whether you at the time made a decision to go one way or the other or whether you just knew about it, whether it was just that you knew that there was the local act and there was a lack of awareness.

MS SALTER: No, there's no lack of awareness really. I'm sorry, I thought that it still went under the DDA, but it would come under another act, the Anti-Discrimination Act.

MRS OWENS: Yes, Northern Territory Anti-Discrimination Act.

MS SALTER: Yes, we've always looked at it as the Disability Discrimination Act. We were only advised to do this because we knew the commissioner who is very sympathetic to our cause. We knew the Northern Territory commissioner who was very sympathetic, and suggested that we went through the Northern Territory process because it's much faster. I don't think that the fines are anything like - I don't know. I don't think that the state penalties are as high as the federal penalties. I think they're probably much smaller, but we thought we'd go under there because there was a very urgent need to maintain this program.

MRS OWENS: Did you get assistance? Did you get legal aid or did you have no need to do so?

MS SALTER: No, we didn't actually. They were very extremely sympathetic, the commissioners of the Northern Territory act. They were extremely understanding. Yes, we would have in the first instance approached Legal Aid who put us on to the Northern Territory Anti-Discrimination Act.

MS McKENZIE: But when you were talking to the commission, you didn't have to have a lawyer to help you.

MS SALTER: I'm just trying to think what we did. No, I think the mere intervention of the commission which had to interact of course with the Education Department was enough, and then there was a very traumatic event where one of the pupils actually of the secondary unit - had just gone through the secondary unit, and he committed suicide, but of course there was no - I mean, all communication was done without signing, and he was clearly suffering from this. I mean, I'm not saying that was the reason, but I should say it probably played a large part, and it kind of brought them back on their heels. I'm not saying that this is how it happened, but it was coincidental that they then established a unit at Darwin High School.

MRS OWENS: Can I please ask just another point of clarification: in your submission you also mentioned that you are presently joined with six other deaf people to take action under the DDA against various hotels.

MS SALTER: Yes.

MRS OWENS: And that is under the federal Disability Discrimination Act.

MS SALTER: Yes, that's under the federal, yes. It's because I attended - sorry, I intended a meeting of Deafness Forum at Macquarie University in Sydney, and the nearest hotel that had any kind of assisting devices, hearing loops, that sort of thing, was in the centre of Sydney and they'd already approached I think five hotels locally and they had no kind of lubes or assisting devices which are labelled here, and therefore Deafness Forum took action under the federal DDA and which they asked me to join because I have such a severe hearing loss.

MRS OWENS: Can you remember why the Deafness Forum chose the DDA? Was it because - were they interested in getting a national approach to this issue, not just in relation to Sydney hotels?

MS SALTER: Yes. Now, what they say is that they are perfectly prepared, if these hotels comply - your question was why did they go under the - no, what Deafness Forum said. It was very discriminatory because they got a meeting of deaf people from all over Australia, and it was discriminating not to have the required things like security warnings that people could hear, no flashing lights, no subtitled television, various aspects of that, and they are quite happy to withdraw this action if these five hotels then comply. It's, if you like, a raising awareness that hotels should have this. It's wrong that people shouldn't know there's a fire in the building, deaf people shouldn't know there's a fire alarm in the building. It's wrong that they shan't be able to follow television because it's not subtitled.

There's a whole list of breaches of the Disability Discrimination Act that these hotels were practising, and they need to take another look, because providing they comply, the action will be withdrawn.

MRS OWENS: Have you got any comments about the experience with using that act at this stage? Have you been close enough to the action, the complaints process? Were you directly involved in the conciliation, if there's been conciliation yet?

MS SALTER: No, I've been asked to join with the other deaf members. I'm a party to the action.

MRS OWENS: Yes.

MS SALTER: Yes. That's as far as it goes, but I'm fairly well aware of course of the things that - I wasn't so aware of the local differences, the state differences.

MRS OWENS: Yes.

MS SALTER: I am aware, but not to the extent of the state differences and the federal differences in the DDA. They're both very actionable. Sorry, is somebody asking a question?

MS McKENZIE: I was just going to ask you, so far all that's happened is the complaint has been lodged. Is that as far as it's gone so far?

MS SALTER: Yes. Under the Deafness Forum, they just lodged a complaint.

MS McKENZIE: Yes.

MS SALTER: It is public knowledge though.

MRS OWENS: We'll watch with interest how it progresses and see how it's going. Maybe by the time we get to our next round of hearings, you'll be able to tell us your perceptions about the process.

MS SALTER: Yes. I think the reason for it was that the whole convention was called because it's the 10th anniversary of the DDA, and it's not having the effect that it should have. It is quite wrong that deaf people should stay at hotels and have no way of being notified that there's a fire alarm or something like that, and it's wrong that they shouldn't have access to subtitled television that they can't understand what's going on. It is discriminatory.

MS McKENZIE: Can I ask you about employment because that was the other heading you mentioned.

MS SALTER: Yes. I've quoted an actual case of a young man, he's a signed English teacher, and a very, very able one; very intelligent young man. He went deaf when he was quite young, five or six, through a fairly frequent cause of deafness; that's over-prescribing of antibiotics. It can cause deafness, and he had quite a severe deafness. Because of this, he wears two prominent hearing aids. I mean, he's not like a woman who can disguise it with her hair; he's got two quite prominent hearing aids to make up for his severe degree of loss. He's been through the two - Stuart Park Primary School, and the then Sanderson High School deafness unit that they had some years ago, and has gone on to Casuarina College to do year 12, and he's really very successful, very intelligent.

He takes our signed English classes very, very successfully and he can't get a permanent job because there is a prejudice against deafness. I mean, he has been told the very fact that his hearing aids aren't invisible - they're quite powerful ones - prejudice. Just the fact he's deaf - and there is a prejudice against hearing loss when it comes to employment, but I mean, quite obviously since Darwin Airport have employed him on a part-time basis for seven years, he must be eminently employable, but now he's married, his wife is expecting a baby and he needs a full-time job, but he can't get one. There is a good deal of prejudice against hearing loss amongst employers.

MRS OWENS: Has he ever considered taking any sort of action under, say, the Northern Territory Anti-Discrimination Act or is it very hard for him to do that?

MS SALTER: No, not really. I mean, there's a certain amount of embarrassment amongst deaf people before taking action, you know. I don't think he's tried, and of course - I mean, we have had people who have tried, and then they've found that as soon as possible their employers will comply, but then get rid of them if their hearing loss is too great, you know, for some other reason. I don't know why there is this prejudice against hearing loss amongst employers, but there certainly is, and amongst other employees too.

MRS OWENS: I can't see why his hearing loss would prevent him doing all sorts of jobs out there.

MS SALTER: He's applying for jobs all the time and there is a prejudice against hearing loss. He doesn't have a good voice. Many people with a hearing loss don't have a good voice. I didn't go deaf until I was seven and I had a lot of speech training after that which is where I got this soppy voice, but I can't get rid of it because I can't hear other voices properly.

MRS OWENS: It's a lovely English voice; very well modulated.

MS SALTER: But sadly he comes from a non-English-speaking background and he has a heavy accent, and people with a hearing loss don't have good voices. That may be something to do with that. He's very intelligent, very hard working, and the very fact that he's been part-time employed at the airport for seven years shows something surely.

MS McKENZIE: The other question I wanted to ask you was are there any particular issues that you see that might arise with people living in more remote communities?

MS SALTER: Heck, yes. I've gone into some details about this and, yes, it is a very strong issue up here. Amongst the general population in America, it's estimated that one person in seven has a significant hearing loss. In fact there is an organisation in England calls themselves One In Seven. In the Territory it rises to one in three because half our indigenous children and a quarter of the adults have a significant hearing loss. It has an enormous effect on education. I mean, I as a deaf child know what this means. I mean, I had the first seven years. You know, everybody says the first seven years are the important ones, but if you've lost your hearing - I mean, there are many, many communities out there where every child has a perforated eardrum before they're a year old, so they've got it right from the word go.

It’s not properly recognised; it really isn’t, and what isn’t also recognised is the fact that it’s often fluctuating. On the rare occasions when they’re tested, their hearing might be sort of fairly okay, but with middle ear infection you have a great deal of fluctuating hearing loss, and I pointed out in my report that - I mean, I’ve had Aboriginal mothers come to me and say, "I know my child is deaf, but the assessor says, ’No, there’s no hearing loss,’ but I know they’re deaf," and I lend them the sort of apparatus that I’ve got, this body-worn aid, and they’ll go home and say he’ll say, "I’ve heard birds," or, "I’ve heard something like that for the first time," and then I’ll go and say to the educator, "Will you test him again because" - he says, "Oh, well, he must have a fluctuating hearing loss."

This is enormously important in their education. I mean, if this isn’t recognised, then they’re turning off at school because I can tell you it is very, very exhausting, lip-reading, and the children aren’t geared to doing this, and it’s not recognised by the teachers unfortunately. It should be more recognised. It’s a huge problem because, okay, they drop out of school and they’re not educated properly and then they don’t get a job and then you get the problems that come with boredom, like petrol sniffing, suicide, depression because they’re not working. It’s a very, very serious problem here.

MRS OWENS: Can I just follow on from that. You mentioned your own device, the body-worn aid; do the children in the indigenous communities get access to aids like that, in that there are programs that supply children that?

MS SALTER: Yes, there can be, and there are some pretty enterprising methods, if you like, of wearing them, because obviously this is fairly clumsy. I wear a headband and a large aid. It’s very, very clumsy, very apparent. Now, Australian Hearing, who serve them, manage to put a headband like this inside a cap, and instead of this large hearing aid I’ve got, they’ll have a small one on one side that reverberates to sound, because that’s what happens with middle ear infection, and that is one way. But of course, they’re very badly funded, and the other thing that is a real worry about this too is that a thing called a sound field system has been seen to work fairly well. It’s four posts - they’re not expensive - in the classroom which lift the ambient sound by about 15 per cent. Now, a lot of Aboriginal hearing loss isn’t profound like mine - it’s mild to moderate - enough to stop them following the lessons, unless the teacher is aware. But with the sound field system on each corner of the room, the ambient sound is lifted, and it’s much easier. Unfortunately, the state government isn’t providing these; it’s entirely provided by the federal or by Australian Hearing, and these sound field systems are limited, which is a great pity, because apparently they work very well. That is a great pity.

MRS OWENS: I think the other issue is the training of teachers to teach these young kids, and you mentioned the itinerant teachers in Darwin, but do we have the same sort of itinerant teachers that go out into those other communities?

MS SALTER: Very, very few, because - I mean, there's the travel involved. Can I quote one case? Will you allow me to quote one case?

MRS OWENS: Yes, go for it.

MS SALTER: A girl came of about 15 or 16. A solicitor rang me up in Darwin and said, "Look, we've got this girl coming in from an Aboriginal community out in Borroloola, and she is extremely" - what they called them was "deaf and dumb", which I found a nasty expression. I don't like "deaf and dumb" because I don't like the sound of that. "Can you get her a sign language interpreter within the next hour?" Well, of course, we couldn't, so I volunteered to go down, because I have a degree of basic signing, and I lip-read too. This girl was a very vivacious girl, and she was delighted to find somebody who could communicate with sign. She had an auntie with her, so we went into the solicitor's office, where they were doing a guardian ad litem because her parents couldn't look after her. They've got a drinking problem, so she got a guardian ad litem thing.

When the solicitor went out of the office to prepare, I thought, "I think this girl has got more hearing than we think," so I whipped off my own apparatus and tried it on her, and stood behind her and tested it, and I said, "Hello, hello," and she said, in this accent, "Hello." I thought her auntie was taking the mick, but it was the girl. She'd heard what I'd said, so I told the solicitor, I said, "Look, all she wants is a decent hearing aid." Anyway, she went back to Borroloola, and the mine manager there at Borroloola saw that she wore this hearing aid, and he was incensed by this, because this girl was 15 and not talking, and said, "Look, she has a degree of hearing, and got The Australian down" - The Australian newspaper reporter down, and I mean it really hit the fan then. She came to Darwin High School for decent education, and now she's at an Alice Springs school, but why did this intelligent, lovely girl have to get to 15 before this hearing loss was dealt with? It seemed wrong to me that it was such a simple thing to diagnose and it was a simple thing to help, so she'd done very well, actually.

MRS OWENS: I'm very pleased, Mary, you told us the story. Cate, have you got any other questions?

MS McKENZIE: No, I've asked mine. As things have gone along I've asked my questions.

MS SALTER: Okay.

MS McKENZIE: Thank you.

MRS OWENS: Well, thank you very much for that. I think that was a very interesting discussion, and you raised I think some very, very important issues for us, so thank you for coming along. You heard us quite well?

MS SALTER: Yes, very well.

MRS OWENS: Great.

MS SALTER: You really ought to join my lip-reading class.

MRS OWENS: I think it's all my speech lessons I had when I was a child.

MS SALTER: I'm sure it is.

MRS OWENS: It didn't help my accent, but it helped my lips. Okay, thanks very much.

MS McKENZIE: Thank you very much.

MS SALTER: Thank you very much.

MRS OWENS: We're just going to break for about 10 minutes and resume just before 25 past, to give the auslan interpreter a break.

MRS OWENS: The next participants today are from the Darwin Community Legal Centre. Could you each give your name and your position with the legal service for the transcript.

MS MORTON: Wendy Morton, from Darwin Community Legal Service. I work as the disability discrimination advocate.

MR TRANTHEM: Ian Tranthem, I'm principal solicitor with Darwin Community Legal Service and part of my job description there is solicitor, disability rights.

MRS OWENS: I think that Wendy wanted to make a few opening comments about the submission. We've now got your earlier submission and then revised submission this morning. I've only had a very brief look at the new sections of that submission, so maybe when we come back later, we'll talk about those in a bit more detail, but I'll hand over to you, Wendy.

MS MORTON: I just wanted to briefly give an outline of the service that we provide. Darwin Community Legal Service gets I think around about $60,000 from the Attorney-General's Department to work in disability discrimination. That funds a part-time advocate, a part-time solicitor. It's a pretty small amount of money to work in somewhere like the Northern Territory where it's a huge expansive area. We rarely are able to get out of Darwin, so in terms of working in remote areas or even working in areas like Alice Springs or Tennant Creek, it's fairly limited, although I know there's a lot of stories from those areas just wanting to be heard.

It would be good today I guess if we can sort of put a particular focus on the Northern Territory and that remoteness and the issues that arise from that. Just briefly, in our organisation, we try and provide everyone who contacts us with at least initial legal advice about their case. We have a focus on education and law reform. We support some people who follow through their complaint; it may be assisting them with their complaints, it may be assisting them in conciliation meetings or doing everything for them. So we try and work with people, to support them to be able to go through the process themselves.

MRS OWENS: Good, thank you for that. I think you've raised some very, very interesting issues for us in your submission and you also mentioned the need to focus on the issues in relation to the Northern Territory of remoteness and so on, and I think that one of the reasons we decided to start our hearings here in the Northern Territory was because we've got some very special issues up here in relation to rural, remote communities, indigenous communities and so on, so we're very interested in teasing some of those issues out as we go around.

Perhaps we could start with the first issue that you raised in your submission relating to definitions. We had asked in our issues paper about whether it would be appropriate to have an alternative definition, given that the definition in the Disability Discrimination Act is a fairly broad definition. You, I think, are really arguing that you need broad definitions to avoid legal arguments. I wonder, do you want to comment on that?

MR TRANTHEM: That's correct. To the extent we wanted to make comment about these matters, we fairly much adopt the submission of the Disability Rights Network which our centre is part of, and I understand they will be making submissions later in the hearings about this. But really we would make the point that the Social Security Act and the State and Territory Workers Compensation legislation definitions really operate on a medical model involving impairment tables and an inability or ability to work and that the preoccupation there is to allocate benefits on a sort of hierarchy of need. The DDA correctly in our view focuses on discrimination arising out of a disability, rather than setting parameters about the degree or the nature of the particular disability, so it's the consequences of a disability, rather than any sort of exploration of the disability itself, and we say that's correct. Definitions of disability used for different purposes are appropriate, and expansion of the definition by any means - and we make no comment about how that might be expanded - but anything which will go towards avoiding technical arguments or technical legalistic arguments, seeking to isolate a disability from its consequences would be encouraged.

MS McKENZIE: And also presumably people falling through the cracks; in other words, people that have disabilities that don't quite fit - - -

MR TRANTHEM: A model of disability.

MS McKENZIE: Yes.

MR TRANTHEM: Yes, quite correct, Cate. So we adopt the Disability Rights Network submissions in respect of that. So far as comments on the definitions of direct and indirect discrimination, again we adopt the comments of the Disability Rights Network submissions, where they talk about shifting onuses of proof, the doubling of defences and the consequences of a successful section 11 unjustifiable hardship defence. We note that fortunately the High Court has shown an inclination to give the inherent requirements of the job defence a restricted operation, quite correctly on our view.

MS McKENZIE: So do you think the unjustifiable hardship defence should be removed, apart from questions of onus but - - -

MR TRANTHEM: I wouldn't go so far as to say it should be removed, but I do have some comments a bit later, particularly about unjustifiable hardship. We certainly feel reasonably comfortable with the interpretation the courts have given of inherent requirements, and I refer to X v the Commonwealth, where the court has basically said that - it has come forward with a restricted definition of inherent requirements or a restricted reading of it, on the basis that it will prevent self-definition by employers of what the requirements of employment are, and which if taken at face value would permit them to escape the high requirements of the act. The court has said to allow the requirements to extend to whatever an employer declares to be necessary or convenient or efficient for its operation would be basically to take any of the teeth out of the act, and we're quite comfortable with that sort of assessment. So it's given a very narrow reading now in terms of its legal implications, we say quite correctly.

The other point we would want to make is about reasonable adjustment and unjustifiable hardship. On our view, it's got the capacity to become a once and for all defence, and if you ignore the temporal aspect of hardship, then it can actually become a mechanism whereby discrimination is sanctioned, and it's something that the Disability Rights Network has explored to a certain extent in their submissions, but we go a little bit further and say that temporary exemption is really an appropriate mechanism to deal with this, rather than some absolute once and for all defence on the basis of unjustifiable hardship, that what might be hard or unjustifiable hardship now, at this point in time, if looked at over a longer period of time, can be managed so that it doesn't become unjustifiable hardship. This is the temporal element that we're talking about here. We say rather than a point-in-time determination by a court of unjustifiable hardship going on to sanction discrimination effectively, we say that a better way to do that is to operate by way of temporary exemptions and action plans. Give an organisation a period of time in which to address the behaviour that's complained of, not that, "It's unjustifiable hardship now and therefore we can continue to discriminate."

MS McKENZIE: How would that fit with the complaints mechanism? You make a complaint and say it doesn't get conciliated, so you go to a hearing and the unjustifiable hardship defence is run and you get to a point where whoever is hearing - forget for the minute about whether it's good to have a court here or whatever - but whoever is hearing the matter decides that the defence gets made out, but that's only based on the circumstances at the time, that really is, in a way, the way a hearing has got to be run. It's got to be on what the circumstances are at the time.

MR TRANTHEM: Yes.

MS McKENZIE: Now, at that point, you'll just determine the case and say, "Well, the defence is made out at that time."

MR TRANTHEM: Yes.

MS McKENZIE: But the difficulty I suppose is that doesn't mean that if circumstances change - budgets might change, costs might change, all kinds of things might change, so that if you ran the same complaint again later, the result might be different.

MR TRANTHEM: That's very much our point, Cate, that the complainant is then in the position that the unjustifiable hardship defence is made out - - -

MS McKENZIE: Until you try again.

MR TRANTHEM: - - - until you try again. We say that making an unjustifiable hardship defence, then subject to temporary exemptions or actions plans, it takes away any hope for resolution of the complaint by a complete defence. What would be the point of committing cost and resources to running an unjustifiable hardship defence if you knew the only possible result of that was to in effect have to comply over a period of time - put an action plan in place, be granted a temporary exemption by the commission - that there was no absolute win involved from this? If that was made clear, I think you might see a fall-off in litigation and people tending to commit resources to actually attempting to comply with the act rather than defeat it.

MS McKENZIE: Maybe also would you think that the orders that can be made at the end of a case could be perhaps expanded, not just a temporary exemption question, or maybe orders that require disability action plans?

MR TRANTHEM: Yes. I'm thinking in terms of something that ends up in the Federal Magistrates Court, that orders could be made that it's referred back to the commission for temporary exemption for an action plan, so on and so forth.

MS McKENZIE: That's an order that can't be made at the moment.

MR TRANTHEM: That's correct. So I think that whole area is actually worth exploring in terms of what it says about disability discrimination and in terms of shifting the focus perhaps from the possibility of defeating the objects of the act to moving it more towards compliance. If you take away the prize, if you like, of a complete win and a complete defeat of the act, then people I guess are made to look at complying with the act as an end result, rather than hold out the hope to them that this can be defeated.

MRS OWENS: Can I just follow that through a little further. If there was an order that - you're talking about HREOC - say you have to put in place an action plan, would HREOC then have the power to then monitor what happens in terms of complying with that order and an ongoing monitoring role as well?

MR TRANTHEM: As they do, I understand, with action plans. Like, you will get a temporary exemption based on an action plan, and I'm aware of, say, subtitling of television programs. Channel 9 up here, as I understand, has been given a temporary exemption of five years - one year, okay, so they have been given a period of time, a temporal arrangement, in which they will comply.

MRS OWENS: What happens if they don't? Is there some sort of penalty?

MR TRANTHEM: No, I wouldn't like to say without going back and looking at that.

MRS OWENS: I suppose we can check up on that.

MR TRANTHEM: I'd only be surmising without being sure, I'm afraid.

MS McKENZIE: It would be better if there were orders that could be made, if they were wide enough, that could actually require the commission to monitor, and of course then, if you didn't comply with the action plan or didn't do your proper reporting for monitoring, you'd be actually breaching the court order.

MR TRANTHEM: Or renegotiating the action plan or whatever the outcome might need to be, yes, I think so.

MRS OWENS: So you could make it quite strong. I don't know quite how strong the commission's powers are now, but you could strengthen it through the court system and say, "This needs to be done or else."

MR TRANTHEM: That particularly ties in with one of the other issues that's raised further in the paper which is should HREOC or the commission have the ability to initiate complaints, and if you coupled that with a mechanism like that, allowing the commission to actually instigate and participate in complaints beyond the level that it does so at the moment, it might be able to work quite well.

MS McKENZIE: Is there a conflict problem, do you reckon, or a difficulty if the commission does the lot, initiates the complaint, monitors whatever orders the court makes, does conciliation and so on? Do you reckon there's perceived conflict there?

MR TRANTHEM: Mr Fels doesn't seem to have too much of a problem with that at the ACCC. I think, without being flippant about it, those sort of internal conflicts can be managed. I think the ACCC is probably an example of that - - -

MS McKENZIE: You make sure you've got different branches or something.

MR TRANTHEM: - - - where they will initiate complaints and prosecutions and have ongoing monitoring roles and all sorts of things. I think it's a fairly holistic sort of stance that the commission needs to make about these sort of things. It is there ultimately to be protective of rights, to advise government on policy, to intervene. I mean, that's quite clear from the objects, it's a fairly broad, brief - - -

MS MORTON: Can I just add, with the issue of the conflicts, my understanding is presently that HREOC does in a sense have - you know, there's an education role. There's a role for commissioners to be commenting on issues of the day anyway, conducting the inquiry, so I think it's just a further step. Just in that area of whether they should be able to initiate complaints, I see that as a way it can provide protection for a lot of individuals who don't feel able to make complaints. So if we were using an example of a remote community, for example, where people are really unaware often of their rights, or in a small town like Darwin where there's often only one service provider, these kinds of issues, so if you wanted to make a complaint against them, you have still got to continue working with that service provider - you know, so that there's not a lot of protection for individuals in a small place for making complaints and the repercussions of that - and whilst the act in a sense outlaws the repercussions, the reality being that individuals feel really vulnerable, yes, repercussions happen, so if HREOC can initiate complaints you could provide some of that protection for individuals; HREOC or organisations, if they could initiate complaints. An example of - - -

MRS OWENS: Can I just clarify, if HREOC can initiate complaints, what's the benefit of that over HREOC just initiating an inquiry as it can do now? What are the benefits of going through a complaints process vis-a-vis the inquiry process it undertakes now?

MR TRANTHEM: From my experience, which is not as broad as it could be, certainly on one occasion when we've tried to encourage HREOC or one of the commissioners to assume the inquiry function, they were reluctant to do so and I think it may actually have been a resources issue for them. Certainly that complaint ended up - it was initially made by way of seeking the commissioners to look into a race based complaint and it eventually was referred to the commission as an individual complaint which resulted in some problems down the track in terms of getting it to the Federal Court.

MRS OWENS: But couldn't the commission also be reluctant to initiate a race based complaint in the same way as it might be reluctant to initiate an inquiry? It mightn't solve that problem.

MS MORTON: I was just wondering, and I would have to check on whether - I mean, there may be more power in terms of a complaint. The outcome of that may - - -

MRS OWENS: There is. That's my understanding.

MS MORTON: Yes. So I would have thought an inquiry would assist making recommendations - - -

MRS OWENS: Yes, that's quite right.

MS MORTON: - - - whereas a complaint would have a more powerful effect. Can I just give another example of that in terms of organisations being able to initiate complaints, an example of a parent who came to us who had a child at school who had fairly severe physical and intellectual disabilities. There was a problem with after-school care which the school sort of indirectly had some involvement in but doesn't totally run. The child had been excluded from the after-school care and the parent was really upset about the whole attitude but the child still went to school there during the day and she was actually fairly happy with the schooling during the day. She was really reluctant to make a complaint because of the vulnerability of her child then during the day at school.

An organisation had been assisting the child in integration and had been supporting them to hopefully access the after-school care; wanted to make the complaint on their behalf but, yes, there was no way for them to do that. So, I mean, the parent didn't want that responsibility of making the complaint so nothing in a sense will happen in that issue. I would have seen it as a really big advantage if the organisation could have made that complaint.

MRS OWENS: We may need to break now for about five minutes to give the auslan interpreter a break so we will resume in five minutes' time.

MRS OWENS: We will now resume proceedings. One of the questions I wanted to raise was this matter of behaviour or characteristics of disability. Do you want to make a comment on that difficulty that has arisen with the act?

MR TRENTHAM: I would have to say that I personally have quite an interest in mental health issues and that's certainly an area where there is perhaps some kind of blurring between disability and behaviour or those sort of issues. I have to confess that I don't know that I've thought that through particularly well in terms of the Disability Discrimination Act but I would say we would be broadly supportive of expanding the act to include behaviours that arise out of disability. Behaviours on their own may be a much more difficult sort of issue.

MRS OWENS: Can I just raise - I think you are relying in your submission or at least the Disability Rights Network submission that behavioural characteristics caused by disabilities should be included in the definition but would that potentially cause some problems if you've got one individual that's got a disability and another person who hasn't got a disability but has similar behavioural characteristics? Now, one of those individuals is going to be in some ways protected by the act and the other one isn't. Would that cause some sort of problem or wouldn't that ever arise? I'm not sure whether it arises or not as a case.

MR TRANTHEM: At the expense of sort of trying to think on my feet, it's hard to imagine aberrant sort of behaviours, if you like, arising out of anything other than a disability. I mean, I find it hard to think of an example unless - - -

MRS OWENS: I suppose there's the example, maybe, of somebody who is violent; one person may be violent because of the condition and another may be violent because they've gone out to the pub and drunk too much, whether excessive drinking on one night at the pub would be defined as a disability or not. Maybe it could be if they're an alcoholic.

MR TRANTHEM: It can be, it cannot be.

MRS OWENS: Yes, so there may be examples of that there.

MR TRANTHEM: Yes, you start getting into some - - -

MRS OWENS: But it's an interesting question.

MR TRANTHEM: Sure. I mean, we would always support the act being cast as broadly as it possibly can be, given the objects of the act which I think are quite - I've got some comment about that.

MS McKENZIE: How do you see the advantages and the disadvantages of using the NT act - which I'll call it for short - or the DDA?

MS MORTON: I think I heard earlier you mention the fact that there is not an office. I mean, a lot of people choose, I think, to use the Northern Territory Act because you can see somebody face to face more immediately and I think just the reality that there's an office here makes it seem like it's so much more personal and quicker and whatever. I'm not sure that that's always the case but I think it gives that perception. A lot of people, I think, sometimes make decisions on the fact of (1) the time limits. So the Northern Territory Act, there's only a six-month time limit for making a complaint. So some people's choice will be using the DDA because of the extended time limit.

MS McKENZIE: And there's no capacity to extend that time limit under the Northern Territory Act, or they don't do it?

MS MORTON: I don't think it happens very often but there is that capacity to do it but - - -

MS McKENZIE: It doesn't happen.

MS MORTON: Yes, not very often, I don't think. I think actually when people come in to see us and we give them the range of options that they have and go through the processes of the Northern Territory Act compared to the processes of HREOC, people have an immediate fear when you start talking about Federal Magistrates Court and the realities being that it's more likely that you'll need to have a solicitor there with you, and when you're talking about the Northern Territory, that's often a fairly limited - you know, they're fairly limited in their supply so I think that's a big barrier for people.

MS McKENZIE: Are the procedures just - they're much more formal. Is that the real problem?

MS MORTON: Yes. There's also one - in the Northern Territory Act it talks about the failure to accommodate a special need and often people's complaint can fit under that category and that's not in the federal act.

MRS OWENS: Wendy, is there also a perception that going through the federal system would be more costly?

MS MORTON: Certainly.

MRS OWENS: Because of the - using the Federal Magistrates Service?

MS MORTON: Yes. So there's the fear of losing and having costs awarded against you which - I mean, we always outline to people that it's a possibility. In the majority of cases it's not going to happen but it's also something that they need to think about and understand, and also if we're not able to access a solicitor pro bono for them when they're going through the Federal Court, then there's the possibility of having to pay for a solicitor.

MRS OWENS: How difficult is it to access solicitors on a pro bono basis in

Northern Territory?

MS MORTON: Pretty difficult. We have a small pool of people who will do some work for us. It was really highlighted recently in - it was actually a race discrimination matter but I see it really comparable to - you know, could it have been a disability discrimination matter, where we actually were able to access a barrister pro bono in Sydney but not able to get a firm of solicitors here in the Territory to take it on - I mean (1) there are so few solicitors here who have a knowledge of discrimination law to start with and then - I mean, the government contracts a lot of their work out and so our access to people is fairly slim often, and very large complaints are often against a government body or the council or whatever it may be and so we have pretty slim access to them.

MR TRANTHEM: Sure. It's really an issue of the size of the pond.

MS MORTON: I think probably Darwin has got a pretty high number of solicitors per head but in terms of those who have any knowledge or interest in discrimination law - - -

MR TRANTHEM: Then once you factor in potential conflict situations and stuff like that it, becomes very, very narrow. I wanted to make a few points, particularly in terms of the treatment of legal costs in discrimination matters in the Federal Magistrates Court and I guess I would want to the draw the commission's attention to a statement in their issues paper which says:

> Unless the court regards a case as frivolous or vexatious, complainants can usually expect to pay only their own costs, even if they lose the case.

Now, we don't agree that that necessarily accurately reflects the situation any longer. Certainly in 2001, perhaps even early 2002, that was the approach that the Federal Magistrates Court was taking in respect of cases such as Tadawan v State of South Australia. Late last year, about September, October, I believe, there was the case of Minns v State of New South Wales that went into the Federal Magistrates Court; the same magistrate that decided Tadawan, and the comments that attended the decision in that case - it was basically an argument about costs - were really quite worrying from the point of view of our service. They said that the case of Tadawan was decided very shortly after the commencement of legislation which saw discrimination matters being finally decided in the Federal Courts. I won't go into that. There was a whole lot of toing and froing about that:

> Before that time, preliminary determination of all anti-discrimination matters federally and the final determination in the states was made in non-cost tribunals.

So that complainants or applicants were never at risk of costs in these tribunals:

> There was a concern in the community that putting these matters into a costs arena might discourage potential applicants from bringing their claims. To the extent it may be considered a precedent for the imposition of costs in deserving cases, Tadawan should no longer be followed. The superior courts have now made it clear what the law should be in relation to applications in the anti-discrimination area in respect of costs; that if public interest is to be used to mitigate the usual order for costs, that is, that the winner gets their costs paid by the loser, then that public interest must go beyond mere precedent value.

What was particularly worrying is they said:

> Once some exclusively personal benefit is sought -

so we're talking here about compensation or damages of any kind that would be paid personally to the complainant -

> the prospects of the proceedings having their necessary quality of public interest is much diminished.

Now, we say that from our point of view, that has been a particularly sort of worrying development. It makes it much more difficult to advise clients about going via the federal legislation. It also, we say, tips the scales very strongly in favour of respondents; that the respondent or a recalcitrant respondent could go into the conciliation process with HREOC with no intention of getting any sort of outcome, and there's really no consequence to that, and then apply their resources to defending it in the Magistrates Court and the complainant then has the overlay that they're worried about if they lose, and given their ability to represent themselves in that forum - as we have spoken about pro bono solicitors, pro bono counsel - there's a very real possibility that the issues won't be got at and they can lose in that forum.

It moves from what is quite a sympathetic and informal forum into a very, very legalistic forum, you know, complicated Rules of Court, things like this, although I have to say the Federal Magistrates Court have tried to make it as informal as possible and they are not unlikely to refer it for court-ordered mediation even if it comes to them after having been attempted to be conciliated in the commission, but it's a very, very worrying development, and for somebody who wishes to pursue a complaint beyond conciliation - you know, the cost of running a couple of days' hearing in the Magistrates Court, $10,000 is not unrealistic, and that's what they are risking to continue with their complaint. I always have to advise them and so does

Wendy. It’s very, very worrying.

MS McKENZIE: So do you think there should be an amendment to deal with this matter, assuming that it’s possible to do such a thing to the DDA?

MR TRANTHEM: Yes, it should be - unless the situation is quite extraordinary. The courts have always got the power in terms of ordering costs for matters that are frivolously and vexatiously brought, these sort of things, so complaints that are just so far out there that they have no prospects of success or to deal with perhaps vexatious litigants, this sort of thing. But on our view, it should be at least that each party is going to wear their own costs. The prospect of the complainant being at risk for the other side’s costs is just - it’s abhorrent really, isn’t it?

MS McKENZIE: There’s one argument that’s been made to me occasionally which says, "That’s fine, except where a deserving complainant wins and spends quite a lot of money." Say they have to go to the Magistrates Court - which they would have to, for a hearing - spends quite a lot of money in costs before the Magistrates Court to actually get to the point of winning, and then they don’t see any of that money. They’ve got to pay - so in that sense, a rule that the winner doesn’t get costs operates against them.

MR TRANTHEM: Yes, I’m aware of that argument. It’s a very difficult one for complainants.

MS McKENZIE: But you think in the end that the balance would be in favour of a basically no costs ruling except for - - -

MR TRANTHEM: Yes, I do. I’m not sure that that’s the answer. What I’d be saying, I suppose, is it’s not the answer to turn anti-discrimination complaints into a costs jurisdiction where it’s just going to be a huge factor in terms of deciding whether to continue with a complaint or not. I mean, you do have that to a certain extent, say, in the local Anti-Discrimination Act here where a decision, perhaps a prima facie decision that’s made in the commission up here, needs to be appealed to the Local Court on a question of law or something like that. It’s not quite the high stakes jurisdiction that going to the Federal Magistrates Court is.

MS McKENZIE: And that’s appeal, isn’t it? It’s not - - -

MR TRANTHEM: Yes, it is an appeal from a decision, so that they can be finally determined within the commission under the terms of the NT legislation. The way it’s emerging in that costs jurisdiction is that I have to advise people there’s a big advantage, that you’re not going to be at risk of costs, that you’ll get a hearing and a determination before you need to be in a court.

MRS OWENS: So can I just clarify: with the Northern Territory act it's much more likely you'd get a determination before you even got to appeal stage in a court?

MR TRANTHEM: Yes, the commission here can conduct its own hearings into matters and make a determination. Then if the parties wish to pursue review of that decision in the commission at whatever stage it is - it might be a prima facie decision, it might be a decision after a hearing - then the court is the avenue to do that, but they can have a determination of the matter within the commission.

MRS OWENS: As I understand it, HREOC no longer has that power.

MR TRANTHEM: HREOC no longer has that function.

MRS OWENS: I'm not a lawyer but I gather that there were constitutional reasons that they have been withdrawn.

MR TRANTHEM: There were.

MRS OWENS: So why aren't there constitutional reasons why the local commissions are able to do this or - it's not a constitutional matter because it's federal.

MR TRANTHEM: That's right, yes. It was to do with Part III courts under the constitution - courts exercising - - -

MS McKENZIE: I'll leave it to you to try and explain it in simple terms.

MRS OWENS: Yes, well, I said I'm not a lawyer and I don't know if I need to understand all these things.

MR TRANTHEM: It was exercising the judicial power of the Commonwealth in that tribunals set up under the Commonwealth were not allowed to exercise the judicial power of the Commonwealth, only Part III courts were.

MRS OWENS: So if you go under HREOC, you have to go through a Federal Court system because it's a Commonwealth act. There's no way you could say, "We're going to HREOC," but you can then go off to a state or a Territory court.

MS MORTON: Can I just also say - I mean, it's I think really easy to be negative about a lot of that stuff with the Federal Court, or not even just negative but pointing out all the risks associated with it. But I guess another side of it is, say, with our local act and it's heard by the commissioner and then - I mean, big organisations with lots of money will just very easily then go and appeal that in the Local Court and go on and on, knowing that often the complainants don't have those resources to keep following it through the long-winded process that they can use, whereas I guess a real positive with the Federal Court is that it's much a stronger decision, once it's made, often than what we would consider the decision made by the commissioner here.   So I think there's a balance; there's positives in that process.

MR TRANTHEM: Also, I suppose from a practical point of view if you do have a client that you discuss costs with and they're prepared to say, "Yes, look, I think it's important enough to follow it through and I've got the capacity to sort of run a couple of days' hearing and possibly wear the costs" - I mean, it certainly puts the other side on notice that (a) you think you've got a really good case and (b) here is somebody prepared to sort of really take you on. Sometimes the very act of filing in the Federal Court can be a - - -

MRS OWENS: Very powerful.

MR TRANTHEM: - - - very powerful sort of tool to send it to conciliation again.

MRS OWENS: Roughly how many of your cases would go through the local system versus the federal system? Do you ever go through the DDA?

MS MORTON: We can.

MR TRANTHEM: We do.

MRS OWENS: What sort of cases would go in that direction?

MS MORTON: I guess there's the cases that have to go through there because they're a complaint against a Commonwealth body, so that would be a certain percentage - a high percentage of the ones who choose to go through the federal body.

MR TRANTHEM: That's not a choice, that's - - -

MRS OWENS: That's no choice.

MS MORTON: Yes. I'm trying to think of others that would use it; I guess the time factor as well, in that there's a 12-month time limit opposed to six months here. I guess there's been matters where there has been a really, really strong complaint and it's an issue that's maybe a really similar issue for other people around Australia.

MRS OWENS: With a national tinge.

MS MORTON: With a national focus.

MRS OWENS: Have you got any examples of that?

MS MORTON: A recent one against an educational body here in the Territory, it actually settled at conciliation but that was lodged with the DDA and was on behalf of a person with a sight impairment and the lack of resources available at the educational institution.

MS McKENZIE: So that had some implications for all kinds of educational institutions.

MS MORTON: Yes, definitely.

MRS OWENS: Yes. But if it settled at conciliation, does that message get out there to the rest of the world?

MS MORTON: Often not. I guess HREOC does report on cases - you know, taking out names of the complainants and respondents and amounts of money and whatever. But I guess an issue that we've long had in terms of both the Commonwealth and state act is that often there's such an emphasis on confidentiality that I think it takes away the educational and law reform - you know, the reform benefits of a lot of people's complaints.

MR TRANTHEM: Yes, the broader sort of edge benefit of having complaints discussed, talked about, that sort of thing. I think it's unfortunate that very often where there is a commercial settlement brokered that they always contain very strong confidentiality provisions or terms of the settlement agreement.

MS MORTON: I guess an example of a - there was a complaint made - it was in the local act but I don't think it would have been any different had it been federal - against an entertainment venue some years ago around access. Information got out one way or another to a whole range of people and all of those buildings in that street since have been built with good access. I think that especially for an organisation like ours which is very small, we have very few resources, we have to really choose the kinds of issues that we can put a lot of our resources into and at the end of the day, if that matter then settles at a conciliation, we've put a whole range of resources in for a case that's actually really maybe only impacted for one person, where if it had gone to hearing and become public, it may have impacted on a much broader number of people, which is what we're always looking for.

MR TRANTHEM: The organisation is effectively gagged from making any further mileage out of it in an educative sense.

MS MORTON: I mean, there's got to be cases where confidentiality is important but I think it's got to be far less than what is used now.

MS McKENZIE: It's hard, because there also surely have got to be cases where unless those confidentiality clauses are in - - -

MS MORTON: It wouldn't settle.

MS McKENZIE: - - - they wouldn't settle, and it's then that real tension between the interests of lots of people with disabilities and the interests of the particular person who has made the complaint who just wants their situation to be sorted out.

MR TRANTHEM: Yes.

MS MORTON: Yes, I think a lot of cases do settle just before the hearing starts or whatever because of that threat of it being public.

MR TRANTHEM: I think there is scope to explore this whole issue of confidentiality in a less than absolute sense; that, okay, the commercial in-confidence part of a settlement might have been how much the cheque was that changed hands, perhaps the naming of the organisation or the naming of the complainant or something like this, but as HREOC or the commission tends to report it, they might say something like, "A Commonwealth government department complaint about its behaviour in terms of vision-impaired people," or something like that. "The matter settled out of court with apologies, appropriate training," blah blah blah. That has an important sort of educative effect for other government departments who say, "Okay, who was that? What happened?"

MS McKENZIE: I wonder whether settlements couldn't provide - I wonder whether respondents might feel happier if they were permitted to - if they've introduced some practice that is going to be helpful to others if they were permitted actually to advertise that they had introduced the practice - never mind about whether it happened through a settlement. So in other words, they could actually get some points, some mileage, through having introduced the practice on the basis that it's important it's there.

MR TRANTHEM: That's correct.

MS MORTON: I think there is a tendency to always look towards it as being a negative for the respondent when there's no confidentiality clause, but we've had a few opportunities with people to actually make it a more positive process so there's been outcomes where, say, a public apology has been a part of the settlement but that public apology has been turned around so that it actually becomes appetising in a sense for that person about the fact that they're now - you know, whether it be accessible through a ramp or more understanding or whatever so actually - and we would be usually quite happy to support that and encourage that, that the advertising or whatever can be turned around as a positive thing as long as it's also positive for the person with the disability.

MR TRANTHEM: It's a rare outcome.

MS MORTON: Yes, it is. I'm not saying it happens.

MRS OWENS: But the potential is there.

MR TRANTHEM: Certainly.

MRS OWENS: You raised another issue - I don't know whether you want to cover it because we are running a bit late, but it's the issue of employment that you'd added into your revised submission. I wondered if there's anything you'd just want to comment on there or whether we can be left just to read it.

MS MORTON: Yes. I won't sort of dwell too much on what's already in there. I wanted to add an example of that and I guess it highlights some of the issues of being in a small town again and whatever, of an organisation that came to us, of a young person they were working with who'd been employed in a fast food outlet and the issues that were happening for him. He was being harassed really badly at work - like, he used to ride his bike to work and he'd go out at the end of his shift and the tyre had been taken off his bike or the seat had been taken off, and just constant everyday little things. When I say "little things", they were constant.

MR TRANTHEM: They would put his rollerblades under the chairs.

MS MORTON: Yes. He, because of his intellectual disability, sometimes reacted inappropriately to that, or the manager would see him reacting to it but the manager would never see the other young people who were doing the things to him. It became a real issue and the young person eventually resigned from the job and my understanding is that is not an isolated incident of young people. It's an employment area where there's a lot of young people and there are opportunities often for people with disabilities. There's a lot of inexperienced managers and young staff and so that often creates conflict.

For that person to make a complaint (1) there was a huge fear of making a complaint and then being - you know, that was I guess increasing the labelling as

"I'm different"; the fear of just word getting around, that makes you a troublemaker; and for the organisation, their unwillingness to really encourage the person to make a complaint because when they're placing people in employment, there's not a lot of opportunities here in this town, you know, in a small place, and I guess when I say it's a small place, emphasising that if you're in Katherine or Tennant Creek or Alice Springs or a remote community, it's even smaller. So it's just not a reality often for people to be able to make complaints about their workplaces.

MR TRANTHEM: That's not an isolated incident, particularly with youth and young adults when they're just embarking into the workforce, if you like. They may have disabilities that they're conscious of, that their peer group is conscious of and probably more than anything else they wanted to be treated like everybody else, so the barrier to actually making a complaint in that situation is just enormous so early in their working career, to be branded as a troublemaker, to draw attention to themselves in terms of further differences, things like that.

But what was particularly worrying, I suppose, is it's not an isolated incident that's come to our attention and that's why we put it in there and just flag it as perhaps an issue that the commission may be interested in instigating an inquiry into. I would see that very much in terms of its educative function, that perhaps these kinds of fast food outlets are places that are appropriately targeted by education and make it into a positive.

MRS OWENS: Yes, I think that possibly the way to address this sort of problem is through another mechanism rather than a complaints mechanism and education is one way to go. I note I've seen examples in Victoria of fast food outlets employing intellectually disabled kids and then making it into a real positive and there have been stories about it in the newspaper and so on.

MR TRANTHEM: Absolutely.

MRS OWENS: If they have that sort of attitude, then that feeds through to the other staff and I think there's a duty of care on the part of the managers to ensure that that sort of stuff doesn't happen, so you need the embarrassment effect as well. So it's a matter of how do you get to it in other ways that are more positive. Complaints processes aren't always the best way of dealing with those sorts of issues.

MR TRANTHEM: No.

MRS OWENS: Anyway, thank you for that. I think we are running late. There are heaps of other things we probably could have talked to you about.

MS McKENZIE: That's very helpful. Thank you very much indeed.

MRS OWENS: We'll now break and resume - again, we need another reasonable-sized break - maybe a quarter to 12.

MR TRANTHEM: Thank you for the opportunity of addressing the inquiry.

MRS OWENS: We'll now resume. The next participant this morning is the Disability Advisory Board. Could you please give your name and your position with the board for the transcript.

MR MAHONY: Yes. My name is Peter Mahony, member of the Northern Territory Disability Advisory Board.

MRS OWENS: Thank you, and your colleague, would you like to give your name and - - -

MR ELLIOTT: Sure.

MRS OWENS: - - - who's appearing as an individual.

MR ELLIOTT: My name is Matthew Elliott, I'm Peter Mahony's support worker and I'm appearing as an individual.

MRS OWENS: Thank you very much, and sorry for the very long wait because we are running a little behind time - significantly behind time now, and thank you for the submission which we received yesterday. I understand, Peter, that you'd like to run through a few key comments for us at the start.

MR MAHONY: Thanks, commissioner. I was just going to go through the submission, and I've got some comments already typed up and things that have already been said. I'll refer to those too, if that's okay.

MS McKENZIE: Yes, that's good.

MRS OWENS: You also mentioned in the break that you may want to say something that some of the other - what other people have said earlier.

MR MAHONY: That's correct.

MRS OWENS: As they occur to you, just raise them.

MS McKENZIE: Just do them whenever you like.

MR MAHONY: Thank you. On the definitional issues, I've stated there "broad definition". This really is a necessity for integration of the whole community, but it can have an effect on people with high support needs, and those living in rural and remote areas, and also a big effect in the Northern Territory on our Aboriginal community. That can be in the way of increased expenditure for them to - and it decreases their access to the community in the area of social integration. Whilst we state that the DDA needs to consider the social aspect of access in the lives of community members or people with disabilities in this case, there appears to be out there an assumption by some providers of goods and services that anyone is eligible or the eligibility for the disability support pension is quite easy, and therefore they only make available certain exemptions and discounts to, say, the age pension and not those ones of disability support services.

If I can just give an example there, there was a situation where a person - if you go to some places, suppliers of goods and services, they will make a discount for the age pension, but when you ask for a discount, you say, "I'm on a pension, disability support pension," they say things or refer to things like - anybody, you know, a lot of people are on that disability support pension. So it's too costly for them to provide that extended discount or exemption. Are there any comments on that?

MRS OWENS: I was wondering in your submission - I was trying to work out the point you were making - about the increased expenditure on these people decreases access to the community in the area of social integration. That point there, I couldn't quite understand what you were getting at.

MR MAHONY: Okay.

MRS OWENS: Are you saying that by having broad access to, say, the disability support pension - a lot of people are eligible - it means that people that have got real needs then miss out elsewhere?

MR MAHONY: Exactly. Their real needs are compounded on them to access to the community, and I guess this is in - their access to community and their support for daily living needs incur double costs in many areas - access to - - -

MS McKENZIE: So really, it's like not enough. Is that really what you're saying, that maybe more could be provided?

MRS OWENS: Or more differentiation.

MR MAHONY: More differentiation, and how do we prioritise that? I guess we need to look at what is the cost of a disability, and it can differ from people with physical, neurological, intellectual or sensory disabilities.

MS McKENZIE: The stuff you say about the discounts that are offered by suppliers, that's - I mean, that makes it really difficult because the people who are on age pensions can get those discounts, but people on disability support pension can't.

MR MAHONY: Yes, and this is even greater in the area of tourism, you know. If you have a disability and you want to go on holidays, it’s even greater because you’ve got two fares. There are no discounts.

MRS OWENS: So when you say "two fares", is that a fare for you and your carer?

MR MAHONY: And your support - and your care providers.

MRS OWENS: Support person.

MR MAHONY: That’s correct.

MS McKENZIE: And then there’s access problems as well, isn’t there, on - - -

MR MAHONY: On top of that, yes.

MS McKENZIE: Yes.

MR MAHONY: If you wanted to go into it, you’ve got air, accommodation, tourism, transport, meals, added wages, so it’s just compounding. It really is so. How you address it, I’m not quite sure, but it’s certainly there, and it’s something that needs to be highlighted.

MRS OWENS: The next point you made here was about workers compensation and superannuation.

MR MAHONY: Temporary exemptions, was that? Yes.

MRS OWENS: No, but before you got to temporary exemptions, you raised the issue of - you say:

> In relation to areas of activities covered, we feel workers compensation and superannuation should not be exempt.

MR MAHONY: The company, yes.

MRS OWENS: I’m not sure what your arguments are on workers compensation, but we have been hearing from others about superannuation from both sides, and I’d be interested in your views on that.

MR MAHONY: Yes. It’s difficult for me to comment on this because, as I say, this was made from the board. There was another member provided, and I was unable to contact this person to get the understanding or the correct interpretation of that. So if you like, commissioner, what I could do is ascertain what was meant in relation to workers compensation.

MS McKENZIE: You can put in a little extra submission to it. That would be all right.

MR MAHONY: I will do that. I was hoping that that person would be with me today, but he was unable to attend.

MRS OWENS: I have an interest in the issue of superannuation because our previous associate commissioner, John Paterson, he passed away early in the processes of this inquiry, and his widow raised this with us because for many years he could not get access to superannuation in New South Wales because of his disability.

MR MAHONY: Yes, I have heard that, and as is stated there, the law does favour the service provider. The individual does not have the resources to take on big brother. It's just too costly.

MRS OWENS: So we're interested to see whether there is still a problem, whether that problem has dissipated or whether there is still a real problem in relation to access to superannuation.

MR MAHONY: There is a problem. I'm just not sure on how large it is, and I'll ascertain that.

MRS OWENS: Thank you.

MS McKENZIE: If you put an extra submission to us and tell us about that, that would be great.

MR MAHONY: Okay.

MRS OWENS: Temporary exemptions I think was the next one.

MR MAHONY: That is correct. We believe that temporary exemptions should be granted under extreme circumstances only, as it's been mentioned here, about looking at the temporary exemption and looking at - as opposed to a time period, temporary should be lesser, and it should also have an outcome to look at, eventually the implementation of access for people with disabilities. Suppliers of goods and services constantly provide delaying tactics in meeting their legal requirements under the DDA, depriving people of their human rights in availability of access, and that's been a real concern.

As I've stated there, in considering the temporary exemption, HREOC should minimise this period, and I think there's a case currently under the DDA with Air North in the Northern Territory, and they're asking for a temporary exemption and they've applied for the five-year term. This can have a compounding effect on our indigenous community, and also on the tourism aspect of the Northern Territory. So whilst you were saying earlier, Cate, in respect of the current issues, often the current issues aren't looked at in a broader term; in other words, the benefit of the whole of the community, not just now, but in the future.

MS McKENZIE: Later, yes. The next thing you raised was about the reasonable adjustments and the justiciable issue.

MR MAHONY: That's correct. Yes, we believe that there is a need for a clearer definition of the reasonable adjustment. There does not appear to be any requirement within the act for reasonable adjustment. When I say, "There does not appear to be any requirement," there does not appear to be any clear definition within the act for reasonable adjustment, and in not doing this, they've provided a loophole for all providers and developers of goods and services - as I think, commissioner, you were saying earlier about the duty of care that providers have - and I think this is a very, very important fact.

If we're going to look at the providing of services to people with disabilities or to the whole of the community, not just the difficulties we have now, but let's look at the future so that the problems we're having now aren't - if we don't really resolve these difficulties now, then they're only going to compound and escalate until they become totally too costly to implement.

MS McKENZIE: Then you raised a real interesting one about employment. You spoke a little bit about harassment in the submission, but also you were raising this question about maybe providing incentives for employers to make them provide equality of opportunity and comply with the DDA.

MR MAHONY: Was that - - -

MS McKENZIE: Just before Request For Information.

MRS OWENS: You talked about that in the context of harassment and whether there should be some sort of financial incentives. I suppose the question is that if there was such a thing as financial incentives, who would provide those incentives?

MR MAHONY: Okay. I'm sorry, commissioner, I'm not - - -

MRS OWENS: That's all right.

MS McKENZIE: No, no worries.

MRS OWENS: It comes back to that issue we were talking about with the previous participant - the fast food outlet and the young person being harassed, and the employer having a duty of care to ensure that that sort of harassment doesn't take place.

MR MAHONY: That's correct, either directly or indirectly.

MRS OWENS: Yes.

MS McKENZIE: This is where we need to focus on that because in employment, it can be indirect where there's no real answer on why a person has not got the position when they do have all the criteria and experience academically and professionally for that position, yet they constantly miss out.

MRS OWENS: Yes. There's the question of actually getting the job and then there's the question of, if they get the job, making sure that they're not suffering from harassment from their co-workers.

MR MAHONY: That's correct.

MRS OWENS: So I think employers have got I think a duty of care to people once they're in those jobs, but they also need to have a broader understanding of the benefits of employing some people that they may not have considered as being appropriate for the job and giving them a go.

MR MAHONY: That's correct. Who provides those financial incentives is something that needs to be looked at. There needs to be some incentive in the initial stage. I don't believe that that would have to be there forever and a day because it would slowly decrease as the education awareness attitude is taken into account, and providers of goods and services, employment et cetera will eventually meet the whole of community approach.

MRS OWENS: I think apart from financial incentives, I think there's all sorts of other ways you can give employers a pat on the back for doing the right thing; through good publicity I think I mentioned to you in the break, through newspapers and photo opportunities.

MR MAHONY: Also the federal government has employer of the year awards.

MS McKENZIE: Yes.

MRS OWENS: That's right.

MR MAHONY: That needs to be more publicised.

MRS OWENS: Yes.

MR MAHONY: Request For Information, I think that's self-explanatory there. Whilst there has been reduction requests on a person's disability and other personal details in age, education, marital status, the exceptions are workers compensation and superannuation, and I'll address that if I may via an email at a later date with more detail on it.

MRS OWENS: I suppose apart from workers compensation insurance and superannuation, there's also general insurance where the insurers would say - they do what's called a risk rate, and they say, "Well, we need to get this information about people because otherwise we can't run our insurance business properly." So that's the argument we get from the insurance industry, "We need to be able to set our premiums and we have differential premiums for different members of society." So we need to ask information which some might consider to be quite intrusive to be able to do that or to deny insurance. It's not just risk rating for the purpose of setting premiums, it's also to say, "Well, we're going to insure that person and not that person."

MR MAHONY: Well, once again, this is discriminatory, and people require insurance. I mean, if I was in full-time employment I would require insurance to cover my time out. It's just trying to address the needs, and working out a process that can bring about benefits for both. So whilst you work at your different - look at your different scales of cost for insurance; you know, it may be on an age level and take that into account and fit disability in there.

MRS OWENS: Can I ask you, in your own case, if you so wanted to travel and to take out travel insurance, have you been knocked back for travel insurance?

MR MAHONY: No, because when I've travelled I've not applied for travel insurance myself; no, I haven't actually.

MRS OWENS: No.

MR MAHONY: But my support staff are insured throughout their employment. But travel insurance, I haven't been knocked back personally, no. I don't - - -

MRS OWENS: But you haven't applied - - -

MR MAHONY: I have on two occasions.

MRS OWENS: Yes.

MR MAHONY: That's when I have travelled overseas.

MRS OWENS: They've given you full insurance?

MR MAHONY: Full insurance, yes.

MRS OWENS: Your next section of your submission was about the problems that the Disability Discrimination Act seeks to address. You say you support the objectives of the legislation.

MR MAHONY: Yes.

MRS OWENS: You argue that from your viewpoint, the problems seem to have diminished in some areas and I was interested to get your views on where the improvements have occurred, from your perspective.

MR MAHONY: Okay. As I've said there, the delineation of responsibilities between the state and Territory governments and the Commonwealth government has exacerbated sanctions.

MRS OWENS: You mentioned the aids - - -

MS MAHONY: The aids for people with disabilities program, yes. The client group categories, they have changed significantly as well as the aids equipment provided.

MRS OWENS: Is that a good thing, do you think, or is that not always a good thing?

MS MAHONY: Well, it's not always a good thing and I give an example there. In some areas, some states' and Territory's provision of oxygen has risen by 1000 per cent, 1000 per cent consuming a very large proportion of the recurrent budget. It take precedence over items such as wheelchairs and other support needs, living aids for people with disabilities or much needed information and much needed equipment as well, and this is more compounding in an area like Northern Territory.

MRS OWENS: In our inquiry we haven't been asked to look at service provision as an issue but we're interested in pursuing areas where problems with service provision may have led to problems of discrimination. But I think when you raise issues like this, what we tend to do in these inquiries, where there are issues which to some extent are on one side but are interesting issues, we often draw those issues to the attention of the government in our report. So even though we may not address that particular issue directly, it's not to say that we will ignore it. But we may just say, "By the way, there are a range of other concerns in relation to services for people with a disability and there's this problem with Commonwealth and state and Territory delineation which is causing problems," so we can raise those sorts of issues.

MS McKENZIE: Sometimes the problem with service provision finishes up to be a problem of indirect discrimination. That can happen.

MR MAHONY: Exactly, and this goes back to what was mentioned earlier about the small town syndrome. You know, Darwin being a small town - well, if you can think how that would compound, say, on Bathurst Island or any of the Tiwi Islands, it's unbelievable. People sit back and they won't make a complaint for that reason. It's all about - and I'm speaking personality and my personal belief is - the squeaky wheel syndrome, and if you've got a good voice and you're strong enough, you can speak up. But then, as I've mentioned later in the complaints area there, it's very difficult. It's very intimidating and distressing, you know, to make a complaint - about whether it's under the DDA and you're going through the courts under the Northern Territory Anti-Discrimination Commission or under HREOC. I mean, I personally mightn't take it to someone because of that and I know I've had a really good case. But it's just too - (1) it gets very emotional. There's one that I did take on and it was horrible, absolutely horrible, and I vowed never to take another one on.

MS McKENZIE: Very distressing.

MR MAHONY: Very distressing, very intimidating to the area of what I believe was - it was just a bit of an assault really in the community and that happens, you know. It's very, very difficult - - -

MS McKENZIE: Yes.

MR MAHONY: - - -and this happens with service providers sometimes. Because you're so reliant on that service provision for your access to the community and your daily living needs, you can be deprived of those or you can have limited service made available to you. How do you address that? It's very difficult and I guess the only way is if advocates or rights groups like the Disability Rights Network - if they were better resourced, they could provide much more support for people with disabilities. If you look in the complaints approach, if you look at a representation so that the person can be taken away from that directly so they're not getting direct intimidation, they're not getting direct emotional distress, to me it's very, very important, not only for the individual with the disability but for their immediate family and support staff.

MRS OWENS: So if you had better resourced advocacy groups here in Darwin, you may have taken on other issues by handing over to them and saying, "This is the issue. Can you look after this for me?" Do you think you'd emotionally be able to disconnect from it?

MR MAHONY: I believe you can. I strongly believe you can. The thing is, I believe you bring about more of a unity. It was also, you know, looking at access issues and there was something you mentioned about a recreation area or an entertainment area, I think it was, up here, that it was made public, so it was looked at in a very positive way and it had a very positive compounding effect on the society. It's the same with people being able to have someone represent them and then they can feel stronger. Like, personally if I had to go to a government body and represent myself, after a period, I'd just go to pieces. It just becomes too difficult, so you pull away from it.

MS McKENZIE: What about the effectiveness of the DDA, because one of the things we're asking is how can it be measured? It is quite difficult to measure how effective it is and you were saying maybe looking at the exemptions and how many of those are granted or not granted and so on might be helpful.

MR MAHONY: Yes, that's eliminating discrimination, was it?

MS McKENZIE: Yes, it was under the effectiveness - - -

MR MAHONY: Of the DDA, you mean?

MS McKENZIE: To achieve the DDA's objectives, yes.

MRS OWENS: Yes.

MR MAHONY: Sorry, mate, did you want to say something?

MR ELLIOTT: I'd be going back. Is that okay?

MRS OWENS: Yes, Matthew just wanted to say something, Cate, and then we could come back to that.

MS McKENZIE: Sure. Why not?

MR ELLIOTT: I just wanted to mention - and I might be stating the obvious and I apologise for that if I am - but the indirect discrimination that comes about when a person with a disability, and in particular a severe disability, is attempting to bring a case forward spills into areas like - for instance, it's not really recognised by a lot of people how much effort the person with a severe disability goes through just to make it to the coffee shop or to a meeting or to a meeting with their lawyer. On top of that, when there's issues of harassment or issues of other discrimination by the service provider, depression coming in - and that's not just depression of the person with the disability, that can spill out on to the support workers and the family members, the anger and dismay that can come along with that can very quickly pull the case down and be a huge obstacle for a person trying to bring something forth. For a lot of people that have tried, the one single experience of that is enough to turn them off for life. That's all.

MS McKENZIE: No, that's great.

MRS OWENS: No, you've got to feel very strong to get into any of these processes and I think, just to compound that with - if you're feeling depressed about whatever the concern was in the first place, it's hard to get up in the morning and just get going, far less having to think about, "How am I going to structure my arguments? How am I going to go and see the advocacy group, the lawyer, go to the commission?" I can see that it could be incredibly difficult.

MR ELLIOTT: Yes.

MR MAHONY: And although you may be strong taking the issue on, the difficulty is later on, because you don't have those supports around you well, you can't withdraw from it directly and have an indirect approach but still sort of be there as a main input. You think of it later and, "What if I did go with that? What if I did this?" and particularly when you see other people that go through the same thing as you did and you think, "Jeez, if only I'd taken it on."

MRS OWENS: Yes, somebody needs to be there taking the lead but I am sure it could be quite difficult.

MS McKENZIE: It's hard for the leader, that's the trouble.

MRS OWENS: Yes, hard for the leader, the one that's paving the way for the others.

MR MAHONY: The only way I think that can come about in a positive manner - and I'll say continuously - is by having representation so that we can bring about this unity of the community to focus on the needs of people with disabilities and not just on an individual situation, on overall needs, and about there being choices for people with disabilities and their families.

I was saying in regards to the eliminating discrimination and the effectiveness of DDA in doing this, it could be measured by research into qualitative and quantitative enhancements, dual legislation, and by reduction in exemptions and reduction in reasonable hardships.

MS McKENZIE: Yes, you measure better.

MR MAHONY: Yes. If you also focus on the above - there was really improvements on goods and services that coincided with the introduction of the DDA standards - for example, within the transport and also the upcoming premises standards that are going to come in under the BCA. You could sort of get that measure at that time.

MS McKENZIE: As a benchmark.

MR MAHONY: I mean, the transport standards were introduced, what, 23 October last year or thereabouts. So you look at that benchmark now. But it's been so long in coming, whereas if I can just give an example on that standard - and I know I'm jumping the gun here - but in Canada in Vancouver they introduced the transport standards in 1981, which was the International Year of People with Disabilities and now they have total access to all transports, land, sea and air, both rail and road. It's safe and it's also not just accessible in a physical aspect but it's accessible in the fiscal - so it's financially accessible and attitudinal. If we can look at all those components that make it difficult to receive services - and whilst we focused here mainly on physical disabilities, we've got to understand - and this is something that the review of the disability - of the AS1428.1 through 10 is looking at, and they're looking at issues that affect more so this century - this century's disabilities, hearing and the sight impaired and also the intellectually - in other words, to give you one quick example, the captions, you know, if they're all in capital letters. So whilst they aren't so obvious to the average person, they are a very discriminatory form to that small number.

MRS OWENS: We may, Peter, just have a short break again for the auslan interpreter. Are you free to stay a bit longer?

MR MAHONY: Yes, I am. I would appreciate it too.

MRS OWENS: Okay, we'll have a break until 25 to 1; 10 minutes.

MRS OWENS: While we're talking about the transport standards, I was wondering, Peter, what, if any, impact that's had on the Northern Territory in terms of, say, your access to taxis, whether that's improving. I don't know whether you use the bus system but you may know others that do, and just whether it's becoming more accessible for people with disabilities to use the transport system here in Darwin.

MR MAHONY: There has been improvements in the provision of public transport. This improvement is mainly in the government subsidised services. There's been little improvement for accessible transports in the areas of tourism, as I've mentioned, and the private hire and courtesy vehicles. Taxis, private hire cars, minibuses and courtesy vehicles come under a separate category here in the Territory. They don't look at the overall - they come under commercial passenger vehicles, and their only focus on access in that area is taxis. Whilst there are a number of accessible taxis out there, accessing them can be difficult and the time to wait for people with disabilities can be very extended as opposed to the taxi standards, say, that anybody shouldn't have to wait more than 10 minutes. But in a lot of cases I think you wait a lot longer for people with disabilities, and also it may not turn up at all.

So it can be difficult, and also there's got to be a better use of the maximum utilisation of the resources you have there on accessible vehicles and what we don't have in the Territory is a community transport program. That can be a disadvantage to certain groups of people with disabilities, and also it's more compounding in the remote areas because if there was more affordable and accessible transport, people would have better access to their communities.

But just on public buses, and I said that there had been improvements for public transport, there's one thing that's not addressed and it's very close to me, I tell you, and that's the safe travel for people with disabilities. They desperately require this and it needs immediate attention. The reason I say that is because when we do travel on public transport, and the fact that there's no restraints for your mobility aids, be it a wheelchair, a walking frame or a walking-stick - and this goes across to children, you know, not with disabilities, but just children in strollers and that - if that stroller is folded up and not restrained, it become a bit of weapon. This is why I don't travel on the buses now. I've fallen out of them too many times. There's lack of driver training, and last August, one of my support workers, who's still on workers compensation, I had her injured and she's still on workers compensation. So it was a very difficult time and distressing time for her and for me to get that met, because they said, "No, that couldn't have happened," and this all gets back to there's no safe travel for people with disabilities.

MRS OWENS: So you don't need just the restraints, you're right, you need the driver training as well.

MR MAHONY: Yes, you need to cover the whole lot. This is why I was saying to you later about Canada, Vancouver, they have a better approach to that, and I think we can learn from those people.

MRS OWENS: Did they start off with - they did have these early standards, you said, back in the 1980s?

MR MAHONY: Did the Northern Territory?

MRS OWENS: No, in Canada, so - - -

MR MAHONY: Yes, 1981.

MRS OWENS: - - - it all has come about because of those standards being introduced.

MR MAHONY: Yes. They worked on accessible public transport way back then. They started slowly and just built - it's what the original draft standards for access to transport was focused on, but it's sort of diminished over time. So, yes, it is really difficult. I just want to get back to the other area once again, to safe travel. You bring these issues up. You can't - well, in my instance, I've continuously made complaints to the department, but unless you take them on through the system, the legal system, they don't get met, and even then, they don't get met.

MRS OWENS: They don't do anything much to sort of help the - - -

MR MAHONY: No, they don't. So whilst we have something like - I think it's about 52 per cent of our public buses are accessible, you know, for all types of disabilities, they're not safely accessible, so really you just can't use them.

MR ELLIOTT: Just on that issue of accessibility to buses, it's not just the restraints, it's the drop-off and access point to get on the bus. The transport department didn't go around to each of their bus stops and make sure that they were accessible by wheelchairs or walking frames and what have you, and so the wonderful thing of having half of our buses accessible because they can be lowered is lost because they didn't do anything with the bus stops themselves.

MRS OWENS: So the bus stops, they're lower, but they're not lowering at the right point or you don't have the appropriate ramps or - - -

MR ELLIOTT: That's right. Some of them haven't got concreted areas, they're not flat, there are holes, there's gravel, there's bumps on the gutter et cetera. Great idea, but pointless.

MRS OWENS: Yes, that's right. It's only gone halfway.

MR MAHONY: That's true, and with the standards they look at a percentage of increments of increasing access. That means that you've got to have, after the first five years, 5 per cent, and then you go to 10 per cent and all that. As I said, our public transport system, we have 52 per cent, so we're a bit ahead of the standards because it was taken on way back, you know, like in November 94, I think, with that South Australian case where the State Transport Department was taken on by three people with disabilities. So our government here adopted that, that any replacement vehicle be made accessible.

But once again, it's that total holistic access, and whilst Matt was just mentioning about you go to some places and they're not access - you know, out of the bus and that, I mean, you can even just go in town here to one area and to get off the bus, because there is no kerb or guttering, it's difficult. So if you can imagine if that was Litchfield or out in the bush a little bit, which is not that far out of town, but if you put public transport in the outer communities, the design of our transport is not appropriate to suit those communities. So you've got to look at the community overall and just see what the access is.

MRS OWENS: Is the government doing anything about these other issues, or is there some sort of transport plan to address these issues over time as far as you're aware?

MR MAHONY: No, I'm not aware of that. There's not any holistic approach. I mean, I haven't seen any improvements, either in this Territory or at a national level, where that's going to take place.

MRS OWENS: You made some more general points about disability standards. You said that they can become overly bureaucratic, costly to implement, monitor and evaluate and in many instances culturally inappropriate to remote communities. I just wonder if you'd like to say more about that. Does that mean you would argue in some other areas it may not be appropriate to develop standards but to use some alternative approach?

MR MAHONY: I think there's - once again, you get back to that increment of access. It can be costly initially, so that's costly to implement, but if you can sort of gradually introduce that access standard so that it's not immediately costly - - -

MRS OWENS: So like a gradual approach?

MR MAHONY: Very much so, yes, that gradual approach, and if the monitoring of it can coincide with it so it's happening simultaneously - you just sort of slowly increase your gradual increase of access, and you have the continual monitoring of it and you evaluate that, okay. But as I say, in remote communities it may just be - well, sorry, it's not "may", it is. The fact that the way the standards are introduced at the moment, it's not suitable for some of those remote areas. So if the process of developing standards was simplified and streamlined, it would be easy to implement and monitor, then we'd have a better approach to it.

MRS OWENS: Should there be sanctions for not meeting the standards as well, like a penalty?

MR MAHONY: Well, it's a difficult one, isn't it? I'm not sure on that one and I don't know that I sort of want to comment, I guess. One part of me says - personally, I think there should be a mandatory approach to access of goods and - particularly in transport, but goods and services in general and I think they've got to work hand in hand, otherwise you're going to have accessible vehicles going to inaccessible bus stops or venues as Matt mentioned earlier. But how would you impose a penalty? I'm not sure, but I just think if a service can't provide that service to suit the whole of the community, well, then, as I said earlier, it's going to continue down the track, and we're never going to have a holistic approach to access.

MRS OWENS: We heard yesterday that some of the government departments here are developing action plans and that there's going to be a government-wide action plan. I don't know if you know much about this process. We don't know very much about it ourselves. But I'm wondering whether those action plans will help to address these issues. I don't know if there's been a process that has involved you or your colleagues, but do you hold out much hope for those action plans?

MR MAHONY: I'm a bit of an optimist, so, yes, I - - -

MRS OWENS: Only a bit of a one though?

MR MAHONY: Yes, well, I am a bit too long in this caper, but yes, I'm still optimistic about that. It's something that we've been pushing for some time, a whole government approach, and it's starting to happen, and I've just been involved just last week with the Northern Territory Public Service group, so the employment area there, and they were saying that in 1998, the ABS, Australian Bureau of Stats, stated that in the Northern Territory, people between the age of 15 and 64 was 0.9 per cent of our population. That increased by .6 per cent in five years from 93 to 98. So to me, for such a small area, region, it's a large increase.

When they look at this, and with the public service area in the Territory, now that they're looking at this, I just think it's a great approach to come to the Disability Advisory Board of the government that advises the minister and ask their views initially, right up-front. You can resolve a lot of those potential problems prior to the implementation of the program. That goes back once again also to access, or the whole concept of the DDA. Its intent is about having a whole of access for people with disabilities and if we don't look at it on a holistic scale, well, then we're never ever going to get - you're always going to have someone applying for unjustifiable hardship, or on to "it's financially too difficult". I mean, we saw it with the transport standards that were firstly accepted in principle in 1996. It wasn't until October that they were implemented, in 2002. The biggest objection to that was the Bus and Coach Association. So there is a good example of it because they just - big brother are just built up against you and it's difficult to get what is much needed and can be of benefit to the whole of the community.

I think the thing is too is that you've got to look at the aspect - as I said, tourism is a big thing up here. It's a very large industry - if it's not the largest, it's the second - and we rely on it. The benefit to tourism companies and the overall economic approach to the Territory is just great. It's unbelievable, the advantages there, if they have access to the whole of the community, particularly in tourism, with people with disabilities. I think there was a paper put out in 93 from a person in Tasmania and they were saying that the amount of funds generated by people with disabilities in the area of transport in Australia was astronomical. It was about 3 million a year or something, and that's the approach you've got to take, a more beneficial overall - not just the need for access to people with disabilities, and a growing number of people with disabilities.

We've stated in our paper that it's gone from 18 per cent in I think around 96 to 19 per cent in 98 and now it's up around 19.6, 20 per cent, just under 20 per cent. So it's growing and will grow continually. But it's going to be even more so because we've got an ageing population. We need that, not just here in the Territory but overall, Australia-wide.

MR ELLIOTT: If I could just add to that.

MRS OWENS: Yes, Mr Elliott.

MR ELLIOTT: These issues also include I suppose what you could refer to as temporary disabilities experienced by able-bodied members of the community. A person breaks a leg and all of a sudden they have difficulties getting on a bus, and if the issues of access were addressed, all of a sudden those people who had temporary injuries of whatever kind they are can still get around, can still make it to work and make it to the doctor. So the benefits to the community are actually a lot more than what a lot of people would give them credit for.

MRS OWENS: Yes, I think the community probably isn't aware of any of these difficulties until they or one of their family members confront some of the same issues, either through a permanent disability or a temporary disability, and I suppose what will happen as the baby boomers go through the system over time is the baby boomers become advocates for change, which we've seen in many other areas. As they age, they're going to realise that they need to get access to services and access the transport and so on. But I don't know if we want to wait for all of us to get there just to see some of these things happen. I think we'll have to move on to the next participant, but I'd like to thank you both very, very much.

MR MAHONY: Commissioner, just before we go - - -

MRS OWENS: Yes.

MR MAHONY: - - - on access to public premises, could I just say in reference to what I've stated there in the submission - and this is what concerns me - I stated there the expectation of the upcoming public premises standards, I stated there for the introduction to public premises standards that it provide a stronger link in the building between the BCA and the Disability Discrimination Act and the Development Consent Authority, and we strongly believe here in the Northern Territory - we feel this very strongly - that it should also limit the provision of certificate of occupancy to developers that would not comply with the premises standards.

So we have situations up here where you've got people with disabilities that require, say, a lift; they go to an area, be it a studio or whatever it is, and whilst they say in their plans and they tell the Development Consent Authority that they're going to meet the requirements for people with disabilities, it comes about that they have a liftwell but no lift. The cost to people with disabilities is just enormous, because they've gone to this place, been told it's accessible and it's not. So that's something that should be addressed.

Just finally, if I could just say, in relation to complaints - I don't know whether I made my point on that confidentiality - but I think it should be in place even at a federal level, and I just think it would encourage complaints and awareness to the whole of the population.

MRS OWENS: So you there should be some publicity about the outcomes?

MR MAHONY: Very much so, because I think that publicity can be, if it's depersonalised, a positive effect in the future, and it can bring about unity so that we're just part of the community. We're not just seen as a person in a wheelchair or a person with a sight or a hearing problem or whatever it is. We're just accepted. I don't know whether it will come about, but one can only hope. But thank you, thank you for the opportunity.

MS McKENZIE: Thank you both very much.

MRS OWENS: Thank you very much. Yes, you can only hope if you keep plugging away there. Okay, thank you. We'll just break for five minutes and we'll talk to our next participant.

MRS OWENS: The next participant this afternoon is Mr Bruce Young-Smith. Would you like to just repeat your name and the capacity in which you're appearing here today for the transcript.

MR YOUNG-SMITH: Yes, my name is Bruce Young-Smith, and I'm appearing on my own behalf.

MRS OWENS: Thank you very much, and thank you for your submission, which we've both read. We've received it, read it. I think we understand some of the issues, but I understand you'll make a few opening remarks, and then we'll have a little discussion about it.

MR YOUNG-SMITH: Yes. I'd just like to talk about the points under 2.2 out of the inquiry's paper. The first one was with regard to the first comment I made with regard to insufficient dollars being backed up to support the DDA. In my opinion, the main problem is in the inability of the initial system to remain a priority; in other words, for DDA stuff to remain a priority, and for funds to stay up with the inflation. From what I understand, there was initially reasonable dollar support, but the implementation and allocations at that time did not provide for longevity of the program.

The way the federal, state and local government funding works across the country means that allocations are continuously under review. When an agency or a program being funded has core business priorities that do not involve disabilities such as health and education, the disability support aspect is usually the first victim of funding re allocational cuts. This can be linked to the distinct minority status of persons with a disability; ie, contracted bureaucrats, whose continued tenure relies on dollar performance for their whole agency, are encouraged to assess where the least immediate repercussions due to funding cuts will occur, and persons with a disability often comprise that smallest sector.

Further, persons with a disability are often the least likely to be able to form lobby groups to address the resultant issues. Consequently, any funding for disability-linked purpose will quickly be eroded away by emerging policy requirements. I contend the best way to address this issue is the creation of disability agencies at all levels of government, as advocated by the advisory committee for the original DDA. Such organisations would have disability as their core business, and if society deemed funding cuts for such organisations be appropriate, so be it. But in such a case, it would be society that was demanding the cuts, not the contracted bureaucrats.

Agencies that produce services for the disabled could apply for appropriate funding to that disability agency, similar to how private sectors providers are currently funded by government. This would also provide ongoing audit of disability services, rather than the once-in-a-decade approach where things can get out of control. Assuming the Commonwealth and other states have similar audit processes to the NT, the proposed disability department's corporate outcomes would have a compliance audit every three years at a minimum. Other agencies, eg, health, education et cetera, as service providers, could also be audited, evaluated each time a dollar allocation is reviewed. A lot of the funding situations can be traced back to untied funding, from the federal level down to state level to whatever levels, to departments. That's pretty much what I'm saying.

With regard to the covert incidental discrimination that I was talking about, I believe the discrimination that is going on is more of a passive nature. To my way of thinking, the community expects that disabled people need to change to fit into the way everybody else does things. For instance, immigrants are expected to accept the Australian way of life, and we've seen that in the news recently ad nauseam with all sorts of things happening with regard to immigrants. The point is that the disabled people started here and have no other choice. The culture of the nation needs to move along the disability continuum; ie, active discrimination, passive discrimination, passive inclusion and active inclusion. I don't think we're all there yet, at the passive inclusion point, and very few have arrived at the active inclusion.

Most of the mainstream community doesn't have experience in being disabled. Even recent TV advertisements in the TV on disability focus on the feelings of the mainstream, rather than looking at the world from a disabled person's point of view. I don't know how it would work in marketing, but I believe it will make a big difference if the community could be made to see what it's like to walk a mile in my shoes; that is to say, my disabled daughter's or my disabled sister's shoes. How they do that, I don't know, but it's marketing it from a different aspect, as I say.

Now, my next aspect was disclosure of discrimination complaints, and I firmly believe it should be an offence against the act to require or even offer non-disclosure. Now, if that was taken right out of the picture, I think there possibly would be a lot more complaints come to light and be recorded. I was offered partial settlement by a government department if I entered a non-disclosure contract. To my point of view, wrong from two points: open government and morally reprehensible. There's many stories of persons that I'm acquainted with who have come up with the same thing. In my experience in this, I was aghast at initial contact from the government department against whom I'd lodged a discrimination complaint, and they made an offer of a partial limited acquiescence to my point of view based on me entering a non-disclosure agreement.

To my point of view, there is no halfway point in discrimination; either it exists or it doesn't. If I was wrong, the department should have denied my complaint outright, and the publication of the outcome could have been used to enable others to understand and adapt to the situation. The publication of one or two false claims would also make it easier to defend other claims of discrimination from the point of the department. On the other hand, if I was right, even partially, the publication of the outcome would likewise enable others to understand their own situation and act accordingly. By offering a partial resolution, and requiring non-disclosure, I feel the department was saying there was possibly discrimination going on, but it had to be kept quiet. Even if the offer was an economic move to contain potential costs, the non-disclosure hides the real situation from other disabled people in the public. It's against the principles of open government.

My next point was on various assessments, and how assessments seem to be applied. The logic of requiring a person to have multiple disabilities before a level of support is provided escapes me. It appears this is used by bureaucrats as a way of determining who misses out when funds are scarce. For example, in the NT, I've been given to understand by my experience it is impossible to obtain full ISA funding - that's inclusion support assistance - in schools unless one has a multiple disability, despite the fact that therapists declare that the full support is required to support needs required to cope with a single disability. As I said at a meeting a couple of weeks ago, the person has got to be doubly damned before they're damned. It's a bit crazy. By putting people into boxes, it goes against the individual assessment advocated by the DDA, and I believe the DDA should specifically preclude this type of assessment.

I just wanted to make those points, because they were ones that weren't brought up specifically in the inquiry that I could see, and I just want to make them. They were examples of the points that I've addressed you're now going through. Would you like me to comment on those?

MRS OWENS: Yes.

MS McKENZIE: What you could do is comment, and if we have a question, we can raise it as we go. I think that's a good way to structure it.

MRS OWENS: Yes, that's tremendous.

MR YOUNG-SMITH: Okay. The effectiveness of the DDA in eliminating discrimination, I initially said to use a number of complaints to the commission I believe is to miss a significant proportion of probably valid discrimination complaints. Most people would start their complaint with the organisation who they felt had caused the discrimination. The stonewalling one receives from most organisations is enough to make most give up on a complaint and goes little further. My mother and many acquaintances have also advised me they're in situations where they're concerned their child will bear the brunt of any waves that they make, as any action that does proceed takes a long time to go through the system. That was one aspect of it.

There was another aspect there of influences on promoting recognition and acceptance of the rights of people. One of the things that we were talking about was self-regulation, but I was just watching the TV on the weekend, and even international corporate CEOs agree with my disillusion with self-regulation. For instance, in Business Sunday last Sunday, IGA's Australian CEO said the only way to have large organisations accept change is more strong regulation. Maybe after the process is embedded in the culture, the legislation can be reduced, but that time is not yet upon us. We're a long way from it.

Under point 2.6, Regulation Standards and Other Instruments, I've said here standards should always have an out to allow for the individual who doesn't neatly fit into the boxes. There will always be bureaucrats who blindly follow process, and even the law is blind to everything other than the law. Such an out that I'm talking about here may be by an independent adjudication or other such process, but this should be legislated, such that individuals who do not meet specific written criteria, but by all other logic meet the standards, can still be assessed. So you have your points that you've got to meet this, this and this and this, and there may be very stringent requirements of access to it, but provide an out, and I'm looking there more from the point of view of a disabled person.

Should the DDA be amended to allow disability standards to include independent monitoring and enforcement arrangements? I believe the DDA should require disability standards to include independent monitoring and enforcement arrangements. A specific example is the NT's disability special education policy, where there was initially a separate committee for monitoring and implementing the policy, which was several steps removed from the special education area. Over the last several years, the monitoring and implementation is now undertaken from within the school services branch, or the special schools education branch, many would say to the detriment of the process. Just as a base example, the Productivity Commission is auspicating this inquiry, not the DDA or the Discrimination Commission. I thought it was interesting.

MRS OWENS: So would you say that any monitoring mechanism for standards - when you say "independent", you mean really external to HREOC, who are the people who help to do the preparation of the standards?

MR YOUNG-SMITH: Yes. What I'm saying is the monitoring shouldn't be done by the Department of Education or specifically by the people who are supposed to apply those standards.

MRS OWENS: Okay, so it's more the people who are trying to apply the thing, rather than the people who made it up.

MR YOUNG-SMITH: Yes, I'm not going that fine.

MS OWENS: Do you think that's going to be difficult to do, given the often covert nature of discrimination, where it makes it very difficult to detect what's actually going on, or whether the standards are being met? Do you think that's going to be very difficult?

MR YOUNG-SMITH: It makes it much less able to do it when the fox is in charge of the hen house.

MRS OWENS: So that's what you said, is it?

MR YOUNG-SMITH: Yes. It makes it much harder to do.

MRS OWENS: But it doesn't mean to say you don't attempt to do it, or have some monitoring of what's going on after the event.

MR YOUNG-SMITH: Well, I'm told monitoring is going on. I don't see - and I have complained about the processes through all levels of government, and stonewalls. Should there be a formal link between action plans and exemptions? Pretty much I definitely believe there should be an active one. They should be tied together and there should be penalties of some sort for noncompliance, because that's where you get the exemption in the first - and it should be only a specific time period for those exemptions to apply, and they probably shouldn't be renewed. There's always going to be the "what ifs?" As I've just said myself, you've got to allow the out, but it should be hard to get. If an organisation is allowed off the hook for whatever reason, whilst others are required to meet the full DDA, this should only be for sufficient time to enable the organisation to comply. If there's no formally legally binding link, the organisation can ignore the change with immunity, and that's why I say there definitely should be the tie, and penalties if you don't comply.

Could industry self-regulation play a greater role in managing disability discrimination? As indicated earlier under 2.3, even industry is not confident of industry being able to self-regulate in areas not aligned to current shareholders' positive outcomes. I include that - the shareholders, if you like, the Australian voters for the government departments and organisations. I don't know that I could come up with - I'm on pretty airy-fairy ground regarding the willingness and ability of people to meet complaints and so on. I haven't expanded too much on the first part of my 2.7, but with regard to is there sufficient publicity for complaints and outcomes, definitely I don't think so. The only thing one hears is the very big-dollar court cases, but these don't tend to move organisations to change practices, only to be more aware of the possible costs of doing business and risk management. That's what I've seen around the place.

Under 2.8, I believe the inquiry process that's been used could be marginally improved. I only just became aware of this inquiry a week and a half ago, the weekend before the 16th of whatever it was. But I've made the point here I assume that Centrelink knows the postal address of just about everybody in receipt of disability allowances and other disabilities. I'm sure that, given appropriate incentive, the entrepreneurs at Centrelink would be only too happy to assist. After all, not all disabled people can read newspapers, and many times carers are too busy to do so. I'm pretty much speaking from the point of a carer, and I just refuse to buy the local newspaper anyhow.

How has the term "unjustifiable hardship" been interpreted in education? The comments that I made there - I've just made a comment here when I was reading it last night. Upon reading this statement, it's not quite clear, even to me, and I apologise for this, I can only claim the lateness of the hour when I was drafting it. It's probably more relevant to the next part, but with regard to unjustifiable hardship, I personally have not heard it used in the NT context, but if I had, I'd find it difficult to accept those specific words of "we don't have money", but nobody has come up with "unjustifiable hardship". I personally haven't heard it. If I had have heard it, I would find it difficult to accept, given that I'm aware of significant education capital funds being spent on glass partitioning with the disability administration area of education, especially when one considers that glass partitioning is more than double the cost of standard plasterboard partitioning, the cost differential for one office alone being sufficient to fund an inclusion support assistant for six to nine months. That's just the differential, and its priorities are out the window.

What are the costs of reasonable adjustments in education, and who currently bears the costs and who should bear them and why? When I claimed for a daughter a certain level of support to be successfully integrated in the education system, I was told that I was requesting the level provided to people with multiple, including quadriplegic disabilities, and that my daughter wasn't that disabled. My daughter has spastic diplegia. She uses a walker and needs significant support in getting up and down out of the - thus, it wasn't reasonable that I should expect such a facility. At the time I recall thinking, "Yes, that's correct," but later I realised that education should be seeking to equate the disabled person's outcomes with an able-bodied person, not a severely disabled person. I do that all my life: I should have said this at that time, but I think about it as I walk out of the interview or whatever, meeting.

When education agencies claim lack of funds as the reason for not providing support recommended by their own therapists, it is the disabled student and their family that meets much of the shortfall. Some is met by the school and its parents' and citizens' association, but the disabled student pays in missing out on facilities, experiences and education, whilst the family needs to invest extra time and effort into their child's education, as well as dealing with the problems associated with the disability. I understand that part of the original recommendation that set up the DDA included a recommendation for a department of disability separate from other government departments. This should be done at all levels of government, and that's again who should bear the costs and why - that's relating to that, and I've made that point earlier.

How to different definitions of disability for different purposes influence the effectiveness of the DDA in relation to education? As I made in my written part of the submission, I understand that in Tasmania you almost have to argue to get your child into a special needs school. On the other hand, in metropolitan areas in the NT, one needs to fight and argue to have the child with a disability admitted to a mainstream school. I have a sad story here - it's not my story, and I hope you don't mind me putting it. I've kept out all the names and such. I know of this particular person and she's told me herself. I'm told of a case where a child with a multiple disability who started out in mainstream schooling was not given adequate support in the mainstream school. As a result, the child's behaviour at school deteriorated. The parents were advised that the extra attention that a special school offered, it would be appropriate to transfer the child to a special school for a couple of days a week for a term or so. The parents reluctantly agreed, believing that at last the child will get the extra support needed and this would make a better case for them to get the extra attention back in the mainstream school.

Unfortunately for the child, the parents determined later that the required support was not being provided at the special school either. During the negotiations to reverse the trend, they were advised that the child would be transferred to the special school full-time. As a result, the family had to leave NT because they just couldn't stand the way their child was being treated. What lessons can be learned from the process today of developing the education disability standards? When I learned of the development of the standards about a year ago, I think it was, I tried to access a copy. The best I could do was a draft that was a year old. While I accept that such a tome takes a while to develop and I do consider it should be widely available, the whole way along, it's processed to enable feedback to the authors.

The bit on carparks, I just thought it was very strange that the council had a one in 120 standard, and 20 per cent of the people have a disability. Okay, but there's a lot of difference there.

MRS OWENS: I don't know what happens up here but I know down in Melbourne where I live, you often see other cars parked in those disabled stops too which makes the situation more difficult.

MR YOUNG-SMITH: That was one of the advertisements that's just doing the rounds through here and I believe it might have been a council initiative, but it seemed to me to be more from the mainstream person's point of view - you know, "You shouldn't be parking in there because that person can't do it." As I say, if there is some way that marketing could get the public at large to walk a mile in the shoes of my daughter who has to push a walker, or the gentleman over here in his wheelchair and such, it's really hard. I do it all the time. The closest spot is the local shopping centre. I drive around until I can't see - because we've got a parking permit - a space in the mainstream parking area, let's call it, because I know the restricted number of disabled parks that are there; they're always chockers. So I try and leave them alone as much as I can and help when necessary - help my daughter do what she's got to do.

Another point I'd like to make here is with regard to 3.7, the Commonwealth government laws and programs. We're talking about the reasonableness test and the aspect that a lot of Commonwealth agencies are required to apply the DDA building facility standards and I don't think that's right. I'll come across that as we go through. It's a situation where the longer you put off doing something, the longer it takes and the more people miss out. It's happened in the case of my daughter's primary school. For several years in the early 90s, I watched a young girl wheelchair her way past my house on her way to that same school. I determined later she had multiple sclerosis. I was perplexed when my daughter then started attending the school in the year 2000 using her walker. I found there was no way to transfer between the various levels of the school unassisted unless one left the building and used the external paths. As you can imagine in a climate like this, especially in the wet season, it's not comfortable. Neither was there any way a person in a wheelchair or walker can reach the bubblers for a drink. One would have thought that this would have been addressed by the school administration years earlier.

I said earlier in my written pages there that when I went to talk to the teachers at the beginning of last year I was invited to talk to the teachers at the school about inclusion. They brought up the fact that this young girl had attended the school and "we got on well". Once again, my typical - I thought about it afterwards, I should have got right into them then and said, "Well, how come" - and I was waiting for them to get an invite. I was hoping I'd get an invite this year and actually that's probably why I didn't because I told the principal - I said, "Yes, I'd really like to come down," and I advertised the fact that I was available and I told her though that the words that I'd be using would be a lot different than the way I had previously commented.

MRS OWENS: Would you like to explain what you would have said?

MR YOUNG-SMITH: Yes, I would have liked to have put the acid right on these people and say, "How come you people let this young girl, who you got on so well with, walk out - if she was able to, go out into the rain in the wet season if she has to go and talk to the principal, or indeed go to the teachers' staffroom or go to the office or go to the library," because she went in year 5 and 6, and they're reasonably steep steps, they probably meet the building guidelines for stairs but there's a lot of them and they're pretty steep.

MRS OWENS: They may be better?

MR YOUNG-SMITH: Well, the building was built immediately close to Cyclone Tracey in 74 and it's on the high side of the hill. It looks very nice, it's all very open planning - da, da, da, da - and wheelchairs on a level can traverse through most of the areas, but get from one level to another, no can do. I've been talking about it. My daughter has been at the school now - when she went to the preschool part, it took about four to five weeks to get a tap that she could use. Now, it's May, we're at the end of May, a week ago the facilities were finally put in that she could access the bubbler.

Now, I've been telling them - because my son went through the school - my daughter is disabled and at that stage she was in a wheelchair, "She's coming." This is from three or four years ago, as soon as I found out about it, when she was two and a half and it's still not completed, and I'm concerned there hasn't been any - and as I said in my earlier statement, I haven't heard the unjustifiable hardship yet, but I'm waiting, because I saw them putting up this glass partition, "I can't afford it in my department. We haven't got the money to allocate to that." This is why I say a disability department, or somebody should be able to monitor exactly what goes on and how the disability dollar is spent, because I don't believe it's done wisely at this point in time. There's the other aspect too - because we're talking about changing buildings. I said here:

> The same problem is now being faced by my child. Unless I can get something done about it, it could be expected to be faced by the next mobility-challenged student.

This is the point that should be made:

> The sooner older buildings are required to be changed to comply with disability standards, the better. Given that many government buildings last centuries -

and down in New South Wales, there's lots of buildings that have been there for over 100, 200 years -

> it is too much to expect that the problem will be addressed by attrition in the older buildings. The longer these older buildings last without disability standards, the longer the culture of passive discrimination will linger in the Australian community.

Things just aren't out there in their face, and governments are ignoring it; why should private enterprise deal with it? Thank you.

MRS OWENS: Thank you very much. That was a very full discussion of your submission and I'm very pleased you sent us that submission because you raise some broader generic issues and I think we both probably enjoyed - well, "enjoy" is not the right word but I think we were educated by your very frank discussion about your own problems, your own daughter's problems.

MS McKENZIE: What you've added to it is really helpful.

MR YOUNG-SMITH: I just would like to apologise for the tardiness of my written application because I put the spellcheck through it on the weekend and nearly died.

MRS OWENS: No, that's okay, we read it.

MS McKENZIE: But the point is what you say, it doesn't matter about spelling mistakes - who cares.

MRS OWENS: You made some very, very good points. In fact in your comments as we were going through just then, you've actually answered quite a few of the questions I was going to ask you, but I'll ask Cate.

MS McKENZIE: I don't have any. I had lots at the beginning; you answered the whole lot.

MRS OWENS: I think as we go around I just hope that we get more people like you that are prepared to talk about their own experiences. I suppose the only gap that you left in my mind was did you ever try and take your daughter on public transport and whether you've had similar experiences to Peter.

MR YOUNG-SMITH: Some; not here. We did when she was very small and then she was using just a big pram, so it wasn't a major problem and it was a carry situation. That's when we went down to Sydney. That's the other aspect I pointed out in my paper here: one of the things that the gentleman here was alluding to earlier was about the tourist side of things. I don't know what came first, the chicken or the egg, with regard to disability facilities in caravan parks between here and let's call it Wollongong, Canberra. Out of the whole time - I've been down south twice with caravans and then we've gone from here - there's several ways you can go down to Brisbane and I've been down three of them and stayed in various caravan parks - down to Canberra, right up the east coast to Townsville, Port Douglas, and only in one place in the middle of the Mount Isa to Townsville Road - it starts with an "R", I can't remember the name of the place - it's the only place we found ablutions that were disability friendly.

On the last trip, my wife did her back, because my daughter is not a very typical cerebral palsy kid and she's several times the size of the normal population instead of being several times smaller, and my wife is only small, slipped in the shower and did the back. As I say, there was only one place amongst all those places. As I pointed out, disabled people - it's much easier if you have your own vehicle in another place to access, say Sydney or Canberra, and the way to do that is with a caravan - my wife found it was anyhow - to try and do it on the cheap. But the facilities just aren't there. I can imagine there would be a lot of people without it, with a disability, who just can't access that cheaper type of travel with or without a carer for that reason.

MRS OWENS: It was worth making that point. I'd like to thank you very much and I'm sorry for the delay in talking to you.

MR YOUNG-SMITH: Not a problem.

MRS OWENS: We will now break and resume at 10 to 2.

(Luncheon adjournment)

MRS OWENS: The next participant this afternoon is Robyn Lesley. I'm going to ask you just to repeat your name for the transcript and the capacity in which you're appearing before us today.

MS LESLEY: My name is Robyn Lesley. I'm a long-term resident of Darwin and the Northern Territory because I've also resided in remote areas of the Northern Territory. I'm here presenting a personal perspective which draws on my background and experience, and in that background, it's as a manager and policy developer within the Northern Territory government, an owner of businesses here in Darwin and therefore an employer, and as a Darwin City Council alderman for a quite significant time where we deal with the issue of the management of public space and public assets.

I suppose I've also come from a position of many years ago, in the 60s and 70s, where I was regarded somewhat as a radical in trying to introduce legislation like the anti-discrimination legislation, working particularly with disadvantaged groups, whether it be of a social nature, women's organisations and service providers. So I think I bring to the task a relatively good understanding of the dynamics of community living and particularly in Darwin over the last 30-odd years.

Darwin is a very good place to live because what it does, it's a relatively good area of inclusiveness, but in the context of this particular piece of legislation, like all capital cities with small resources and small population bases, it has difficulty in meeting the needs of all of the people within its boundaries. I'd have to say that also modern living in an economic environment has brought more and more pressures on particularly small business and medium businesses to stay profitable and provide a sort of developmental role and responsibilities to its employees.

I would like to actually try and focus on segments of people, rather than talk about disabilities, because in the end, after thinking about this over a long, long period of time, the whole issue of access and equity is not just about disabled people because there are permanent as well as disabled factors that impair people's ability to participate, that limit their skills, and it could be as simple as pregnancy, something that I've experienced all my life of overweightness, therefore not meeting various standards, to very serious access issues, particularly physical access issues like buildings that don't allow wheelchair access or public ablution facilities that don't provide facilities for particularly people in wheelchairs.

Then there's the issue - and the previous speaker touched partly on it - about the private space versus the public space and how that's managed. I think one of the things that I have a worry about is that I think that there is a general expectation that governments are about doing the things that private enterprise don't necessarily have the funds and capacity to do, and I am disappointed that even in the year 2003, there are public facilities, whether it be Northern Territory, Commonwealth or local, that don't allow access to all of its residents. When you then look at institutions or services which concentrate on attracting the mainstream of the population to their services - and I would talk about banks, insurance companies, places of entertainment et cetera, and I can think of my local bank which does not provide access to anybody in a wheelchair to its first floor mortgage area, so they deal with the issues by having a room downstairs to do interviews et cetera - that happens quite a lot. But the problem that I have about those sorts of barriers it that if they haven't got the funds at this stage to have the facility, whether it be a ramp or whether it be an elevator, what they generally don't do is provide the information to their customers that there are alternatives available.

So one of the strong elements of my submission would be that people who are dealing with the public or who are dealing with complaints from people with disabilities are not adequately trained to deal with minimising the frustration and sometimes the hurt by being treated as ghosts, not real people. I think that there's not enough of the thinking through of the standards that people overall would expect, that is, information, specific management plans, even though that's what's available within the legislation. At the end of the day, organisations, public and private, do not focus enough on problem solving on the issue of access. What they do tend to concentrate on however is the physical changes of things, wheelchair access, door widths, ablution facilities, which is all about prescriptions of construction things. I'm not suggesting that they aren't necessary, but what I'm saying is that people opt out after the consideration of those matters, partly because they don't understand the act and the issues of trying to define reasonableness, as well as problem solving for access.

I'll just talk about a little story that demonstrates a situation which I've faced as an employer quite recently. I have a business which would come into the category of leisure. It's a laser game within a maze. It has a very specific construction requirement and I'm currently renting it from somebody; the construction of the premises was originally as a nightclub and it's been altered for my purposes prior to my leasing it. But it didn't meet all of my needs and it's been, for the last eight years, running down from the point of view of image projection because of the Building Board's approach to how you go about change in my particular industry. My particular industry isn't even recognised in the planning area, so it's a real anomaly.

I determined earlier this year that I had to give it a facelift with painting and I also wanted to provide within the space a couple of partitions so that there was some privacy for some of the young kids having parties, so it gave them their own space to be within. I went to somebody who drew up the plans and they told me that as soon as I wanted to alter any of the partitions, there was a requirement that I had to provide disabled toilets and also a disabled entrance ramp. One of the entrances which used to be the main entrance to the original use of the building actually was on a level playing field and the door was wide, so in fact that provided wheelchair access. The difficulty was that that access went straight into the maze, not into the reception area which was at the other end of the building. In between that initial entrance and getting through to the reception area, you had to go through two doors which were standard-width doors, 900 millimetres wide.

Now, because we have a lot of schools using our facility, to be frank, until two months ago, I hadn't even thought about the issue of someone needing wheelchair access because the difficulty of the maze is that to put somebody in a wheelchair in the maze would have created safety issues for the other parties in the maze because it's a hide and go seek type of game, where people would in fact have been falling all over each other. So while somebody with a wheelchair disability didn't use the maze, I had absolutely no problem about allowing them to participate in the socialisation before, during and after the games as part of the group. I didn't see that there was a problem in gaining entrance through the initial wheelchair access area until somebody turned up - the first person in a wheelchair to visit our premises in eight years turned up - and they had a wheelchair which was motorised and didn't fit through the 900-millimetre width opening. So I then had to face the issue of, "What do I do?" Because of the limitations internally, I then made the decision that I would put a double-door entrance carved out of the side entrance and put a wheelchair ramp and then obviously the disabled toilets. I converted two toilets into one disabled toilet.

Why am I telling you the story? I'm telling you the story because what started off to be a $10,500 job has turned into $35,000. The issue of the impact on my business is that I made the choice to do that, not on the basis of increasing my sales, but purely and simply as a public relations exercise. I didn't want to isolate any child, or adult for that matter, from participating in a group environment, but I did recognise there would be basically no financial return on it.

The issue in dealing with building certifiers, the building branch and the planning people was quite horrendous. There was no mention at all about discretionary factors. There was no mention about how to solve the problem. I had to come up with the ideas and the best solutions. While I tried very hard to put myself in the position of either a parent of a child in that situation or the adult themselves, I know that I'll never be able to do it, other than try and be as empathetic as I can, so the issue for me was the specialist advice to people who are wanting to do the right thing is limited, and it's addressed predominantly in a tick-box approach, rather than a human issue, and a design issue. So the reason I talked about access and equity not always being just about disabled people is because in dealing with the public, you recognise that there are all shapes and sizes, all levels of skills, all levels of ability to participate and therefore ability to access.

I actually have now come to almost the conclusion that having back in the 60s, 70s and early 80s fought so hard about specific legislation for discrimination in the disabilities area, I almost feel that the way in which people approach the legislation isolates people and themselves. It causes fragmentation in problem solving. It gives people, particularly people like building certifiers, an authority to administer that sort of area without - they do it on the basis of, "This is the maximum effect that the legislation wants to affect." If it hasn't got a construction outcome, they don't even want to address it. So I suppose what I'm saying is that I'm just trying to give some recognition to conflict between people who have good intentions about getting access, that that they don't always have the right range of resources to help them make the best decisions.

I have spent the last couple of days ringing around to businesspeople, asking them about their experiences, really to try and get an idea of whether my experience was unusual, and the difficulty that I had is nobody wants to talk about it because nobody wants to be seen to be talking against the legislation and the principles of access and equity, because everybody supports the principles, everybody. So I think that we've got to try and get - well, I would like to think that what we could do is talk about best practice in things like door widths. Why would you have a building code about a door width which is going to not allow access to, say, a wheelchair? It should be a standard specification. The issue of disabled toilets; there is nothing that says a disabled toilet is only available for disabled people. It should be seen broadly in the context of the resources available to meet the needs of the public, which includes disabled people.

The issue about the aged and the ageing, people with diabetes, people with dementia, people with asthma, nobody even really thinks through what the issues of physical design are to meet the needs of those groups of people, and quite often there's legislation or even public policy which contradicts the outcomes or the desirable outcomes for people with particular disabilities like asthma. Up here in Darwin where every dry season at this time, we have a burn-off of the countryside, so asthmatics all around Darwin can't sleep at night and are using inhalers and all those sorts of things to try and deal with an environmental issue.

The aged are as incensed, I would have thought, and particularly the frail aged, about people not providing elevators or ramps for them to walk up as people in wheelchairs. It's not the wheelchair that's the problem, it's the lack of forethought in the design for all people getting access to areas. Even to places like Sydney Airport, when I came out of hospital a couple of years ago and was quite limited by my mobility, no signs anywhere about where there was an elevator, and walking around asking people and carrying bags and all of those sorts of stressors, just as a normal able-bodied person, I found it very stressful.

I find it very stressful in terms of trying to book an air fare from Darwin to Sydney and return; the last occasion - I'm going down south next week - it took me four months to negotiate through the system because I can't fit into an economy seat. In looking behind what the businesses like Ansett and Qantas et cetera do about the design issues, they look at statistics of what the average for the region is - that's the Asians and the Australians - and they design the seats to meet the mean or the average. They do not deal with anything outside of the average. I would have thought that that was an issue against the legislation, but apparently it's not because in the 10 years that I've been complaining about it, nothing has ever been done, other than the seats are diminishing in size, even to the extent of the space between one row of seats and the next. So it's all about a theoretical model, rather than dealing with the realities of human beings.

MRS OWENS: It's actually about fitting as many seats on the plane to maximise revenue return.

MS McKENZIE: Am I right in my understanding of what you're really saying, and that is that we should be looking more at problems in a much more generic way, not just the problem of disability but problems of the diverse ways we are?

MS LESLEY: I think you need two things. I think you need legislation for those people who won't come on board and you need a brick bat to give them some encouragement sometimes. However, in the broader sense, I think in saying, "These are the design specifications for the disabled," you actually don't address the generic standards of design to give the best outcomes for all people and the multitude of needs within the community, because one person in a wheelchair can have a different set of needs from another person in a wheelchair, and the same goes for the different sorts of disabilities.

So I think if you broaden the description of the complexity of needs and the designs to meet all of those needs, with the legislation perhaps picking up the more challenged issues where there is going to have to be public funding to compensate, maybe we will get a better result. I don't know. I'm only talking from personal opinion, but I would refer to my experience on council, where the elected members over a period of time have become very conscious about the disability requirements. So with things like parking requirements, we have not only increased the national standards based on the advice of our disabilities advisory committee, but we have recently put on a parking inspector specifically to police the disability bays, so that those people who are misusing them get slugged in the pocket where they're going to actually maybe modify their behaviour, and I think it's now $120 as opposed to $50 for a normal parking fine.

So when we're looking at planning applications, for instance, we're always asking questions about access. I think all of those things are appropriate for us to ask. I think we need to, within institutions, mainstream the consciousness about the needs and the design issues and the management issues that have to be faced up to, along with everything else. I mean, we've got people who have mainstream in the building area the fire regulations and occupational health and safety issues; this is nothing more than addressing those sorts of issues in amongst the package and getting the best result.

MS McKENZIE: But you wouldn't say in the end that legislation like the DDA should be abolished?

MS LESLEY: No, because there are always people who don't enter into the spirit of things and you need a method of encouraging them when they don't do it for themselves.

MS McKENZIE: But am I right, if I'm following through your argument, that you would say that in things like the disability standards for premises, for building, they should be rolled up into some general building standard which takes into account all sorts of generic things.

MS LESLEY: Exactly, yes. I think if people were talking about that, then maybe the issues beyond the issue of wheelchair access might then start to be discussed because I'm not even conscious that anybody talks about any other form of disability being addressed in the building codes.

MRS OWENS: Have you had direct experience in the Australian Building Code that potentially could become the basis for the building standard?

MS LESLEY: I have to say no. I have had to do, you know, compliance with Northern Territory building codes. I am familiar with the Australian Standards in terms of swimming pool fencing and those sorts of things but not the building code itself, no.

MRS OWENS: I'm just wondering how much - I am not an expert on building codes, Cate is - - -

MS McKENZIE: No, I'm not an expert.

MRS OWENS: - - - but I'm just wondering how much is picking up these more generic issues about diverse needs.

MS LESLEY: The reason I raised the door frame issue, and it's a bit like disabled toilets as well, why would you worry about having a particular door frame which is 20 mils wider to only be used when disabled gets used as the term? Why not adopt that as the general rule?

MRS OWENS: Yes, it beats me. I was looking at the doorways in the Melbourne Airport the other week for the disabled toilets and they didn't really look that wide to me.

MS LESLEY: My understanding from my recent experience is that the new and improved models of wheelchairs will not get through a standard 900-mil door.

MRS OWENS: I'm sure there is someone who can tell us about that.

MS McKENZIE: We'll ask about that.

MRS OWENS: Yes, that's right, because I was thinking those particular doorways didn't look like they would fit some of the newer wheelchairs through and I wondered what people do when they visit Melbourne Airport, and there's an awful lot of people visit that airport. Maybe they just go outside. I'm not sure what happens.

MS LESLEY: I think what has happened is a number of disabled toilets from my experience is that they have actually put wider sliding doors in the public environment but that's not all premises, and if we can't get it right in terms of a basic standard across the board, then people then have the choice of opting out and the whole issue of - I have no problems about inserting particular standards on new buildings, even though I recognise that the building industry is screaming about escalating costs and all that sort of stuff, but I have seen in Darwin, particularly with the proliferation of old buildings that are more than 10 years old, some of them more than 20 years old, the development of those buildings is stagnant because people aren't prepared to spend the money on doing anything to them.

I'm spending the money because I'm committed to the principles and my property owner refused to contribute in any sense so, you know, I'll wear the cost and in the end, that was my decision. I accept responsibility for that.

MRS OWENS: Have you got a secure lease on the building?

MS LESLEY: No, but there's a number of other issues associated with that. But there are a lot of old buildings all around Darwin which are just not being developed and they should be, and it is stifling economic development within the CBD particularly, and I think that there will be some significant changes.

MS McKENZIE: I wonder if there are any changes that can be made; for example, I’m thinking about as far as you’ve got a lease, you have made improvements to your premises that make them accessible and yet if your lease finishes, then the person who is going to benefit from those improvements is the owner because then that building will be accessible. Surely there must be some way of making an allowance for that. I mean, if it’s a retail lease, perhaps the law ought to deal with the allowances that have to be made where improvements like that have been made by the lessee at their cost.

MS LESLEY: But it doesn’t end up being their cost anyway because the cost of the lease then goes up according to the input. What I’ve been able to do is to negotiate an arrangement which suits me and them for the time being, and I know that they wouldn’t be able to get anybody else to rent the space anyway, so for the moment I’m dealing with it in a commercial environment and accepting the costs outside of that commercial environment as my own, and I’m happy to do that. But there’s another example of - if you like, what I’m talking now is about extremes of advice and outcomes that are negotiated.

Partly, one of the extremes was the issue of not being able to use - I was told I couldn’t use the front door through the maze as an access because the legislation says that there won’t be any discrimination of access through the main door. That has occurred in a number of designs that have come through for alfresco dining facilities here in Mitchell Street where one access which was offered was denied and significant design changes occurred to bring people through the main door. There was another example where Darwin City Council wanted to limit access to East Point, which is a park area, by putting a gate across to stop vehicles going into it. The reason they wanted to stop vehicles from going into it was the destruction after hours of wallabies, vandalism, and it was being used as a place where drugs were being sold. So what we wanted to do was put a gate on it that we could close around about 10 o’clock at night.

We had a complaint - and also the other issue was that it was to stop the vehicles but there were certain fishermen who used the facility until 11, 12 o’clock at night, and we wanted to allow them to walk out of the facility after the gates had closed to gain access to their cars. In a dispute the council dealt with, the person was very genuine - they used East Point often after hours - but they used their vehicle to drive to where they wanted to go and then they had limited mobility at the end of the area of East Point. What they said was that if their vehicle was denied access, even though there was a gate that they could get through because of their disability, they still couldn’t use it. So in the end, even though we offered to provide certain groups of people with keys to the gate so that they could access it after, we were forced to agree to a total ban of anybody, whether in a car or as a pedestrian accessing that area after hours.

MRS OWENS: So everybody ended up being worse off.

MS LESLEY: So that's an example.

MS McKENZIE: Except for the wallabies. Sorry, I'll - - -

MS LESLEY: I suppose what I'm really trying to say is that I've read the legislation and I would have thought that there was the ability within the legislation for a compromise to have been arrived at, but the party who was dealing with the complaint - and I'm not talking about the complainant, I'm talking about the person who was arbitrating - adopted the extreme position and it ended up with people's attitudes being very negative about trying to meet the needs of all people in the public. So I think that there are issues like - that's why I originally focused on the issue of training and getting people in a mainstream environment to understand better what the flexibilities within the act were.

MRS OWENS: What body dealt with that dispute? It wouldn't have been an anti-discrimination case, was it? Was it the local Northern Territory Anti-Discrimination Commission?

MS LESLEY: Yes.

MRS OWENS: We need to have a break now. I don't know, we might have completed - have you any other questions?

MS McKENZIE: No, I have asked those ones as you have been giving your submissions. It is a thoughtful and very interesting one.

MRS OWENS: Is there anything else you would like to raise? You have raised some issues that nobody else has raised with us yet. Hopefully when we go round the other states we'll hear more about these from - you have got a different perspective as a person who has made adjustments and borne the cost, not necessarily going to be deriving financial benefit, and I thought that was a very interesting case study for us.

MS LESLEY: Could I say that the negative thing that happened in relation to me was that - - -

MRS OWENS: Excuse me, we have to have a break for the auslan interpreter.

MS LESLEY: Yes, sorry.

MRS OWENS: So if we're going to keep going, we'll have a break and then we'll come back.

MS McKENZIE: Unless what you're going to say is two or three sentences - and I'm not trying to make it shorter, but unless what you're going to say is only going to be a few sentences long - - -

MS LESLEY: It is.

MRS OWENS: Okay. Is that all right if we just go another couple of minutes and then we're finished?

MS McKENZIE: Can you just - a couple of minutes?

MS LESLEY: When I discovered the particular situation of the child in the wheelchair, it didn't have as positive an outcome as I would have liked. The mother who was accompanying the child was very, very angry, very angry, and I got feedback from my staff and as a result of that situation that encouraged me to take the step that I did which is a commitment to fixing it, but the reason that I did it was to get a positive outcome for the business and within two days I had complaints being raised with elected members of council, about me and my business, and I had people talking very negatively about their experience.

Now, I think that there has got to be some recognition - there has got to be some way in which parties actually come together and talk to each other rather than condemning each other. There has got to be some way in which we get - we make the linkages back again. I see it at meetings all the time. You know, one interest is condemning another interest and half the time they're making their judgments on inadequate information and it's a big concern to me.

MRS OWENS: I think that's a very good place to stop. We'll now have a break for 10 minutes.

MS McKENZIE: Thank you very much.

MRS OWENS: We'll resume at 10 to.

MRS OWENS: We're now resumed. The next participant this afternoon is Mrs Jean Young-Smith. Mrs Young-Smith, would you like to repeat your name for the transcript and tell us in which capacity you're appearing here today; that really is whether you're appearing as a private individual.

MS YOUNG-SMITH: Yes, thank you. My name is Jean Young-Smith, Mrs Young-Smith, and today I am appearing as a parent. I have had a long background with organisations in various states and federally but I have been a bit out of action myself for the last couple of years so I've been very low key. Today I would like to just briefly run through a few things that have personally affected my daughter's life and in turn my life. I also have a grand-daughter, a five-year-old grand-daughter who is disabled, and I've seen discrimination as recent as her arrival in this wonderful world.

Firstly, could I start that I've had to go to Queensland from the Territory about five years ago because of my health and the surgery wasn't available here and I was longer down there than anticipated, having quite a lot of surgery. I arrived back last year. Can I just mention some of the anomalies that I encountered whilst in Queensland. I really feel it's one of the worst states in Australia for disabled people.

MRS OWENS: That would be lovely, because our next lot of hearings is in Queensland so this may give us useful material.

MS YOUNG-SMITH: Well, I had quite a torrid time. I was in and out of hospital all the time and I had to take my daughter down, she was pining. The staff told me that she was pining greatly and I took her down two years ago to Queensland. Although I was in crisis and even though, I should say, the federal government had come to the party to a degree with the unmet needs campaign for older parents with disabled offspring for funding, I wasn't getting anywhere. I needed to place my daughter because it was very difficult for me to care for her. I have a disability that's increasing. I have rheumatoid arthritis and I have had six total joint replacements done thus far and the heavy work and responsibility of caring for a severely disabled 36-year-old daughter has been very difficult for me.

So I approached the Queensland Disability Discrimination Service to see - I just felt it was a discriminatory act that the government wasn't funding the area that I was in, that I knew funding had come through from the feds. They wrote back to me and said that they weren't able to help me and I wasn't very impressed with that. They didn't go into any detail or try to sort of make an appointment for me to explain anything further, they just sort of left me. So I then approached the Queensland ombudsman who I found was exceedingly supportive for the next couple of years and it was, I know in my heart, his input, or that department's input, that I got funding. I got funding about five months or four months later, and I was very appreciative of that. Therefore my daughter was able to be placed. It was ongoing too. They were very supportive, the ombudsman's office.

There was a problem when my daughter - when I had to go into hospital, she had to go into respite care and there was none. She had to go into nursing homes with 80 and 90-year-old people with dementia, which is highly inappropriate and we know this for the last 20 years or so and it's still happening and it is discriminatory because it's in the Disability Services Act, let alone DDA policies and stuff, that they should have appropriate places for respite care to give their families a break. I mean, it's also cost effective. I can't understand why governments aren't fulfilling their responsibilities. I think that the governments, various governments and federal governments are the worst perpetrators, in my opinion, of ignoring DDA legislation because apart from the federal Commonwealth-State disability agreement, they all don't make it a priority to see that DDA laws are enacted; because lack of finance in many ways is the problem; it's not been able to be enacted.

Yet there's millions, millions of dollars put into sport and I can't see the justice in this, where people need the basics that every other Australian takes for granted is their right and these basics can be ignored for sport which is really a luxury. You know, it's different to the basics in life, to be able to survive in a decent manner. My daughter, before she was placed in Queensland, spent some time in a hostel of 17 people with the Endeavour Foundation and I will briefly try to fill you in on this because it's a long story and I don't want to make it a long story. It's just that she came home one weekend - she was there sort of semi-permanent because I was going in and out of hospital, but she didn't have the money for a full-time placement, the funding. She came home one weekend and I knew she was having little seizures, little flickers, you know, and when I took her back, "Would you please increase her night dosage to double, as is in the specialist's report, it's in her file. You don't have to take notice of me," which a lot of people don't take notice of parents' experience and background. They think they know best, and they don't. I said, "He said if she was doing any of this, to double it up."

I went home and I rang up the next day and I said, "How's Megan?" and this man said, very belittling, "Jean, there's nothing at all wrong with Megan, nothing wrong with her." I said, "Yes, there is." And do you know what, he was so emphatic, that I would never do it again, I would never do it again, but I gave in. I thought, "I must be wrong." Three days later they rang me to say she was in an ambulance on her way directly to hospital. She'd woken up in the morning all blood coming out of her mouth.

Now, these people did not have any first aid training apparently, because I thought the way they spoke that she was haemorrhaging from her stomach but in actual fact she'd chopped away about a quarter of her tongue. She had been fitting all night. I don't know why she's still alive actually. It was horrific. The nurse at the hospital said that she had never seen such ghastly tongue injuries, only in shocking head injuries in a road accident. There was nothing on the ambos' report, because I got a copy of it, to say that she was an epileptic. They didn't even tell the ambulance driver that she was an epileptic. It just said, "Intellectually disabled lady with blood coming from her mouth." I mean, there was nothing about her being an epileptic.

It was horrific, the injuries were shocking, and I nursed her - there was very little supports built in at that time either in Queensland - three months before her tongue receded. It was as black as the base of this microphone; it was black. Her tongue absolutely looked horrific and revolting and it was chopped to pieces and all this dead flesh, dead tissue was like - it was just absolutely - - -

MRS OWENS: Jean, can I ask you, while her tongue was in that state, what could she do about eating?

MS YOUNG-SMITH: That's it, that's it - nothing. In hospital she didn't get very - she was discriminated in hospital too. There wasn't the provision for her because you couldn't even get a glass or - her tongue was - it was just - so one of the nurses improvised and she got a hypodermic syringe and we filled it with water and pulled her mouth open just to get some water down. The thing was, she had to have a drip set up and with her disability, that did go in, but she pulled it out later on and so therefore it was double problems. But she had "nil by mouth" up on her bed and I used to go in as early as I could and sit by her bed for her needs, and this poor lady - my daughter is a young lady now and she likes to eat and I had to mash bananas and things sort of to try and get it down somehow, something down.

She would see everybody else getting their lunch and that, and then of course I was worried in case she'd put on a pooey, because this is part of the frustration. You know, she cannot speak.   She understands most things and she signs, but not a lot of people in that situation there or anywhere signs. It's Makaton signing she does, yes. It was very difficult; there was just no provision for her disability there. My eldest daughter is a registered nurse and she was nursing at Brisbane Hospital, night duty, and she would come straight up there to Redcliffe, which was quite a run after doing a night's work, and she would stay there till - I couldn't get there till lunchtime because of my arthritis and I'd be there till 10 o'clock at night. If she didn't have any family, this young woman, what would have happened to her, because the nurses had no expertise at all to care for her, for her disability. There was no neurologist at that hospital either. I had to wait days for him to come down from up Noosa or further up north. There was no neurology department at that hospital so the whole thing was just a whacko.

MRS OWENS: Can I ask then what happened to you in the meantime, because weren't you over there in Queensland to get your own surgery done?

MS YOUNG-SMITH: Yes, it was an horrific time.

MRS OWENS: Yes, a nightmare scenario.

MS YOUNG-SMITH: It was a nightmare physically and emotionally and no supports. It was a nightmare. Nobody can really understand how difficult. I'm a very strong personality and I guess that's how it got me through but when I brought Megan home, all my neighbours, Megan's - - -

MS McKENZIE: This is home here, in Queensland or - - -

MS YOUNG-SMITH: No, home to where I was living in Queensland. I was advised by everybody that saw Megan that it's my duty to take litigation against what happened to her. It was neglect, it was certainly neglect. They did not take any notice of her condition to alleviate her going into huge seizures, epilepsy seizures. It could have been all averted. I contacted the Legal Aid on her behalf, also the Queensland advocate's office, the straight-out advocacy service. I was on a telephone link-up, teleconference, with the Queensland parents of people with disabilities and Christine Douglas was there at the teleconference and it was at that time that I had just brought Megan home from hospital and they said it sounded just a nightmare - they also used that word - and that I should do something about it on Megan's behalf for her rights had been violated. I said, "I fully agree, but I'm just one person and I'm on my own and I have problems," and I just didn't see me being able to do anything against the powers that be, but I did manage to put in an application.

I'm still very angry about this. I don't get to anger easily but I just thought this was so unjust. My daughter has been disabled since birth. She has never been able to earn like an aged pensioner, which I am now. I have been able to amass a little house, a car, and other aged pensioners have been able to get caravans, boats and all these things, and yet you're only allowed to have an X amount of money in the bank. I think it's $700. You can be nearly a millionaire with assets but you're only allowed 700. Now, my daughter has a television set which I bought her. That's her assets. That's all she has in this world and she had $1200 in the bank which, in real terms, is peanuts, and yet she was knocked back Legal Aid because she had more than $700 in the bank.

I think that is a great injustice because she really needed representation for her rights being violated, and there was no way that I could help her, and I've worked so hard to get my own little place and I would have lost - I was thinking about putting my own house on the line to help her but I weakened out and I didn't and that was the story of the Legal Aid service, which I think that there should be some sort of litigation from the government, the federal government, with the young disabled people on the pension, especially born disabled, that they have more equal rights with aged pensioners and make an adjustment if they don't have property. Surely they could be allowed to have a little bit more in the bank than an aged pensioner who has sometimes nearly a million dollars in assets. It's very, very wrong, so she was denied her day in court.

MS McKENZIE: And also the requirements for legal aid, that seems a ridiculous requirement.

MS YOUNG-SMITH: I know. I would have thought that only - I was battling to keep my head above water level at that time too.

MS McKENZIE: Your first thought had to be caring for her.

MS YOUNG-SMITH: Exactly.

MS McKENZIE: Of course.

MS YOUNG-SMITH: And I was, because there were very few resources in the community then. The other thing too about young disabled people on the pension, they're discriminated in many ways that aged pensioners aren't discriminated. Now, since arriving back in Darwin I have joined - we have got a little club here. It's called the Casuarina Club and it's very reasonable to join, and I joined, but I thought, "Now, when Megan eventually gets a placement, it would be nice for her to belong to the club too," and she could perhaps take somebody for dinner there one night when I've carked it. You know, I won't always be around, but it's not as cheap for her because she's a disabled pensioner. She pays more but I get it cheaper because I'm an aged pensioner, and yet her needs are far greater than mine. As I said before, I have worked all my life and I've got a few assets around I could dispose of if I got that broke. She has got nothing and that's unfair for young disabled pensioners to be discriminated in that way, I think. I think it's grossly unfair.

In the Northern Territory newspaper the other week there was an editorial about pensioners, aged pensioners and people with the cards, you know, like she has. She has a pension card. They all get bulk-billed. That's not true. I get bulk-billed because I'm an aged pensioner but my daughter is out of pocket. She has to pay $35 every time she goes to the doctor. It gives me extra because I've got to go and waddle up there and pay because she can't do it. I have to do it for her. She gets 25 back from Medicare so she's out of pocket $10 every time she visits the doctor. Why is that? Why is that discrimination against her when she's a pensioner the same as I am, and yet she's much worse off than me because she can't even survive on her pension when she goes into care, because I've got to buy her clothing, and she has to pay.

In Queensland she had to pay the staff in the house their fares if she went out anywhere. She had to pay not only her own fares, she had to pay the staff's fares. I had to stop her going to the movies or anything like that because she had to pay for the staff's entrance as well as her own. She just hasn't got that sort of an income - or into the swimming pool when she would go to have her swimming lessons or therapy. She had to pay for the staff's entry as well as her own. So she's much worse off than an aged pensioner. I think any young disabled person in that set-up is much worse off than an aged pensioner.

MS McKENZIE: I can't understand why they're not treasured the same way.

MS YOUNG-SMITH: I can't understand it either.

MS McKENZIE: At least in the same way.

MS YOUNG-SMITH: Their needs are greater in many aspects because, as I said, when you get to an aged pension level, you've got a few assets you can rely on to sell if you get really stuck for money. You could sell your caravan, you could sell your car or your boat, but they've got nothing, these people. They start with nothing. They've got nothing. It's injustice, gross injustice. I feel very, very strong about that. I'm sorry.

MS McKENZIE: No, I'm really happy that you have explained it to us.

MS YOUNG-SMITH: In Queensland I waited 18 months for a dental service for my daughter. It was an incredible exercise. I went to three different areas and I was even asked to be the dentist and put the filling in. I did say that my daughter, ever since she has been young, has to have a general anaesthetic about every five years because her understanding is very high actually of the spoken word but in a hospital situation she just completely loses it, so in Darwin she has had anaesthetics, GA, and had her teeth done, but in Queensland they said there wouldn't be an anaesthetic just to have a tooth filled. I said, "It's not a case of that." They completely check her teeth, do any x-rays, and do any work, and clean them properly, which is a big deal.

It's a big lot of work done and that lasts her about five years. But they wouldn't buy into that and as I said, they even had me trying to - which was very difficult for me because I can't bend my wrists that much and I'm trying to put the filling in her teeth. I'm no dentist, I'm only a mother, but they even went to that level and then also because she was very difficult to attend to in a dental chair, as I have told them, they put in a filling without even cleaning the tooth or drilling it clean and I complained about this and I was told that it was a special sort of filling that had some sort of antiseptic in it and killed germs, but the whole thing was quite horrible, quite discriminatory. I don't think they would do that to anybody without a disability, I really don't, because people would go off their brain.

Anyhow, in the end, just prior to coming up, I had to write to the minister about this fiasco that was going on and they fossicked around and found some anaesthetist who they had decided yes, then they would, after 18 months, and I might tell you, it wore me out backwards and forwards, and Megan had to be for day surgery there at 7.00 in the morning. I couldn't go. My eldest daughter was on hand then. She went and a staff member had got into her house by this time, and had her there without breakfast, which is really difficult for a disabled person, and an intellectual disability too, to go without their brekkie. I had spoken to the doctor and I had given her Valium at 5.00 to calm her down and everything. Everything was geared for this big set-up and I believe - my daughter and the staff member told me that she was being wheeled into theatre - I can hardly believe this - and a dental nurse came along and said it had been cancelled because the anaesthetist was ill. Now, I would imagine that that lady wouldn't have left it till the last moment like that to report that she wouldn't be coming in to the hospital. It sounds very unethical to me.

MS McKENZIE: And apart from that, surely, even if that were to occur, they must have some alternative.

MS YOUNG-SMITH: Exactly, but this is true. So I just gave it away and in the meantime, Megan is suffering. I knew she was in pain and I came up, as I said, last year. I must say that the Darwin dental service has had its few negative things said about it from time to time in the paper but I found it extremely wonderful, far better than Queensland, and Megan only waited about eight weeks in toto, or nine weeks. They agreed straightaway she had to have a GA. Well, she lost that tooth, the tooth completely, which was unnecessary, and she had to have another one filled and they cleaned her teeth and checked them all out and that only took a much shorter period of time than Queensland, and Megan was the loser, because she lost a tooth.

MS McKENZIE: Yes.

MS YOUNG-SMITH: I hope I'm not being too long here. I'm nearly at the end.

MRS OWENS: I hope you're handling it all right there, Jean.

MS YOUNG-SMITH: I'm finding it rather emotional actually because it has gone on for such a long time and I had such high hopes of the DDA legislation, you know. I was involved with it in the submission and the community consultations here in Darwin and I also was a member of the Disability Discrimination Services Advisory

Committee during 94 and 95, but with all these things that's going on, and you've got this legislation, and this is still going on, there's something seriously wrong, isn't there? Where else do you go? You've got nowhere to go. It's just a - - -

MRS OWENS: Jean, can I ask you, have you at any stage tried to use the legislation yourself to - - -

MS YOUNG-SMITH: Yes, I did. I contacted them in Queensland.

MRS OWENS: This is when you went to the Legal Aid people?

MS YOUNG-SMITH: No, it was before that. At the actual Disability Discrimination Service, I felt they would be the likely ones.

MRS OWENS: This is the Queensland people though?

MS YOUNG-SMITH: Yes, Queensland.

MRS OWENS: Not the HREOC, not Human Rights, is it?

MS YOUNG-SMITH: No.

MRS OWENS: There's a service within the Queensland department. That's what I'm trying to clarify. Was this the Queensland Health Department Discrimination or Disability - - -

MS YOUNG-SMITH: No, it was the disability unit.

MRS OWENS: - - - Discrimination Unit or was it - there is a Queensland Anti-Discrimination Commission.

MS YOUNG-SMITH: No.

MRS OWENS: It wasn't that?

MS YOUNG-SMITH: No, most definitely not, because I'm well aware of the difference, having been involved over so many years.

MS McKENZIE: So, hang on, you contacted HREOC, was it, or you contacted - I'm still a bit confused.

MRS OWENS: Yes, I'm confused too. Was it the Human Rights and Equal Opportunity Commission which is the national body and then there's the - - -

MS YOUNG-SMITH: No, it wasn't them.

MRS OWENS: No. Then there's the Queensland Anti-Discrimination Commission and - - -

MS YOUNG-SMITH: No, this was specifically the Disability Discrimination Service.

MS MORTON: It's a Commonwealth-run - - -

MRS OWENS: Okay. So it was the legal service. So that was the legal service where you couldn't get the aid to fund it.

MS YOUNG-SMITH: That's right. Then I went to the ombudsman.

MRS OWENS: Then you went to the ombudsman so you didn't progress then to put in the complaint under either the Queensland act or the Commonwealth act.

MS YOUNG-SMITH: No. I know that the Queensland Parents of People With Disabilities have put in a submission to your review and I fully agree with what they have said in part, as parents and families and people associated with disabled people get too worn out. This is answering your question. I couldn't go any further. I had been here, there, and all these doors were just slammed and - or they weren't doors at all - you just were getting nowhere, and when I got support from the ombudsman, I stuck with it. It mightn't have been the most likely, but I did. The legal aid was a different matter; that was about her negligence.

MRS OWENS: Yes. So you didn't actually go to the Queensland Anti-Discrimination Commission, you went to the Disability Legal Service.

MS YOUNG-SMITH: Yes.

MRS OWENS: Okay. Now I understand. I just got bit confused.

MS YOUNG-SMITH: Right. I find that the bureaucratic maze is harder for disabled people than non-disabled people. For instance, Megan has been disabled since birth and both federal government and state governments overlap all the time, giving them so much extra work to prove that they're disabled, such as Megan has a taxi voucher book in Queensland. She did have one here in the Territory, but when I came back, instead of just being able to present the book - and perhaps in this day of the computer age, check back in the data that she has been a recipient of that - I had to go right from score 1 again and I had to go to the doctor and have it all filled in about Megan's disability and pages and pages of filling in to prove that she's disabled and to be able to get it back on the Northern Territory disability voucher.

I find that is quite wearisome and you get worn out as it is with your life with looking after a disabled person without all that extra, and I don't think governments make it any easier. I don't see that the non-disabled have to go - well, they don't have to if they're not disabled. Of course, people don't realise; I think that's why their attitudes haven't changed a great deal in some aspects. They just don't realise the extra load that these guys have to carry in their life, fighting attitudes of government. This unjustifiable - - -

MRS OWENS: I would just like to say that I have just finished another review for the Commonwealth government looking at red tape in general practice and there are some very familiar things that you're saying there. The GPs were complaining about all the paperwork that they had to do and the repetitive nature of a lot of it; having to answer the same questions about the same people, people like your daughter where obviously nothing was ever going to change but they had to keep on filling in forms saying, "Has this person got a disability?" and so on and there are some really very - - -

MS YOUNG-SMITH: Unnecessary.

MRS OWENS: - - - unnecessary crazy things that go on.

MS YOUNG-SMITH: But she's out of pocket. She had to pay $10 to the doctor to justify this overlapping mad bureaucracy.

MRS OWENS: She couldn't go to another doctor that just purely bulk-bills or is she used to this particular doctor?

MS YOUNG-SMITH: She possibly might, but I'm just flat out again keeping my head above water caring for the both of us at this time and I just couldn't run around the maze of who bulk-bills and who doesn't, and I just go to one I have found close by, yes. The interesting thing is - - -

MRS OWENS: There's a new government program that's being introduced to encourage doctors to bulk-bill people with health care cards so hopefully she'll get picked up. Her particular GP may get into that program because there will be financial incentives - - -

MS YOUNG-SMITH: Yes, I did note that.

MRS OWENS: - - - so I'm hoping that that might be the answer to your prayers on that one.

MS YOUNG-SMITH: Yes, that would be - - -

MRS OWENS: But it may not necessarily be. It depends on the general practitioner involved.

MS YOUNG-SMITH: That's right. But also at federal government level regarding that too, Cate, is the fact that Centrecare - and I resent this deeply, I resent this - - -

MRS OWENS: Centrelink?

MS YOUNG-SMITH: Centrelink, yes. It's hard for old ladies to catch up with all these new names.

MRS OWENS: It gets mentioned every other day so it's - - -

MS YOUNG-SMITH: And they have been sending out every few years a similar thing that you have to fill in and justify that you are still disabled. It doesn't matter that you're disabled since birth - and you can pick it up, Angelman syndrome on the link - on the centre - what is it?

MRS OWENS: The Internet?

MS YOUNG-SMITH: The Internet, that's right. Why put families to that - going through that all the time, and to go to the doctor too to fill it in again. I mean, this is unnecessary.

MRS OWENS: That's right, for disabilities that have been there since birth and are not going to change.

MS YOUNG-SMITH: That's right. I have written to them. I have vented my anger to Centrelink, told them this, and I said I find it insulting that I have to - and of course anything extra with my hands, I find very difficult to be redoing and redoing, you know, so - - -

MRS OWENS: Can I also say that in response to our report that the prime minister has set up a task force to look at these issues and this task force - there has been a person from his own department, an assistant secretary, who has been allocated to run it and to look at what all the different departments are doing to try and get rid of all this unnecessary repetition. I mean, I'm keeping my fingers crossed that there is a reasonably good outcome from this but what I will do is send this transcript of what you have been talking about to the task force so that they are aware of your frustration.

MS YOUNG-SMITH: Thank you. Nothing came out of my submission to them.

MRS OWENS: And Cate has said we should also send it to Centrelink. We'll take that on ourselves as well to make sure that they are aware that there are people out there that find this extremely burdensome.

MS YOUNG-SMITH: Thank you so much. That would be great. Talking about the community attitudes, just briefly, I would like to say, having been very involved with the Disability Services Act too prior to DDA, and it came up again that DDA has the need to educate communities and politicians, and because attitudes - there has been a bit of a change definitely but it has been this much for that much work, you know, and it's still a long way to go. Early in the piece in the 90s, the middle 90s, there were TV ads depicting various disabilities to make people more aware, and this was good.

I don't know if any of you people might remember, there was one very stunning one of a guy in a wheelchair going up a cliff face. Did anybody see that? It was really quite challenging and other people, like hearing-impaired people and intellectually handicapped people have had - you know, in that period - but it died. It died after about two years. You never see anything like that on television now. There was supposed to be money earmarked for this as an essential part in enacting this legislation for community acceptance because of the deinstitutionalisation programs and all those things. So I think that's not good when they haven't been able to fulfil that part of it which was an essential part.

MRS OWENS: We're going to have to take a break because of the auslan interpreter. You know, there needs to be a break every so many minutes.

MS YOUNG-SMITH: Yes, certainly.

MRS OWENS: But without wanting to hurry you at all, would you be able to be finished in a couple of minutes or do you want to say quite a lot more, so we'll have a break now?

MS YOUNG-SMITH: I did want to speak about the standards briefly. It's ironic - yes, I think if - - -

MRS McKENZIE: Perhaps we should have a break.

MRS OWENS: We will just have a five-minute break.

MS YOUNG-SMITH: I am winding up, believe it or not.

MRS OWENS: Can you wait around another five minutes?

MS YOUNG-SMITH: I sure can.

MRS OWENS: We'll have a break and we will resume at 20 to 4.

MS YOUNG-SMITH: Thank you.

MRS OWENS: We have now resumed. Yes, Jean.

MS YOUNG-SMITH: I would just like to bring your attention to the fact that I have been a member of the Disability Standards Review Panel since inception and I was reappointed in 2001 and yet there's been five years of no meetings. I mean, what is the point of reappointing people to a committee that never meets? This is a waste of taxpayers' money. I thought I'd like you to know that. I think the unjustifiable hardships regarding - - -

MRS OWENS: Jean, just before you go off that point, has anybody contacted you to say why you're not meeting or is just that there's no progress?

MS YOUNG-SMITH: No, it was the other way around. I hadn't heard and because I go through my file every now and again and I thought, "Gee, what's happening there?" I wrote to them and that constituted some input and would I be prepared to be reappointed for last year or the year before and I said, "Yes," for another five-year period or something. But I said, "Why hasn't there been any meetings and who is the chairperson now?" It's just all a laugh. It's a comedy. Really, it's pathetic.

MRS OWENS: So there's a panel that doesn't really do anything?

MS YOUNG-SMITH: No, but they get appointed, don't they? It would be nice if you got money.

MRS OWENS: Money? For being a member?

MS YOUNG-SMITH: Well, no - - -

MRS OWENS: But that would be an encouragement for them to sit to get their money's worth. But yes, keep going.

MS YOUNG-SMITH: It's not really the point. I'd like to just make a quick comment about the unjustifiable hardship regarding putting in commodities that disabled people need. I think that that should be struck out of the DDA. I think if they're not prepared to look after disabled people properly, they shouldn't be in the business of looking after them and I think that a lot of them dip out on that and I don't feel it's right. I just want to speak quickly about a couple of things here. I have got this little notice here and it came from Access in December and January last year that says:

> How would you like to earn $45 per week? Every week hundreds of people attend a protest outside the major Melbourne CBD store of the sportswear giant Nike, a protest against the exploitation of overseas workers by a profit-driven global corporation. But there are workers in Victoria being paid $45 for a 40-hour week with no leave entitlements, no right to superannuation, no access to unfair dismissal or other remedies. These are workers with disabilities and their employers seem immune to any demand for change and some of these employers are our largest charitable organisations.

Are you aware of that?

MS McKENZIE: Is that what they call a supported wage?

MS YOUNG-SMITH: Yes, because they're on a pension, I suppose, a lot of workshops have been doing this for years and apparently it hasn't changed much because I was appalled when I saw the date on this. How are they able to do this and get away with this? If these people are able to work a 40-hour week, they shouldn't be on the pension, they should be able to be out there in the community getting a decent wage and living like everybody else, even though they're disabled. Why is this happening?

Another thing here is about - this is the Northern Territory News last year and it's about Depo-Provera. My daughter was put on Depo-Provera in a Sydney institution many years ago and I told them I didn't want her on it, it was an unknown quantity. Then all these years later apparently they're finding out that it's very damaging to your heart and intellectually disabled women. I will just read it to you quickly:

> A hormone injection commonly given to suppress menstruation and prevent pregnancy in intellectually disabled women has been linked to an increased risk of heart disease. Medical director of the reproductive health services, Dr Terri Foran, said Depo-Provera was often given to

women with serious intellectual disabilities who had difficulty managing menstruation.

That shouldn't be happening. We're giving young, healthy women with an intellectual disability heart disease when they're doing that and I think that's very discriminating. Lastly, I think that - I'm not too sure on this - but I think the uniform building code differs state to state in Australia. I think there should be some meaningful legislation brought in that it all comes into the same code.

MRS OWENS: Again, Jean, I think there is work being done, albeit very slowly on a building standard which would be based on the Australian Building Code but it's been quite slow; I think they're getting close to finalisation now. So I think the concerns that some have got in some states is that it may end up being the lowest common denominator. Some states say, "Well, we have better provisions in our own code than the Australian Building Code so we would be going backwards." So I think they're still trying to resolve some of those issues.

MS YOUNG-SMITH: Okay.

MRS OWENS: But there has been work moving in that direction.

MS McKENZIE: How quick, whether it's work that's been very slow, perhaps unreasonably slow, is another question that we - - -

MRS OWENS: I think all the standard-setting work has been very slow, but I suppose it's a question of what needed to be done and how much consultation needed to be undertaken and so on. So yes, it's whether it's reasonable and - - -

MS McKENZIE: Then there are drafts.

MS YOUNG-SMITH: There are just a couple of other issues that I'd like to quickly remark on. One is the Paralympic ban on people with intellectual disabilities for the 2004 Olympics. I think that is an obscene discrimination against our guys and I don't feel that it should be just - I'm starting to get petitions going to send to the International Olympics Committee but we need the teeth of something like DDA to do this on the behalf of disabled people. Why should they be banned because evil men pretended they were intellectually disabled - the Spanish basketball team - and won a gold medal? Now, all of the guys in Australia are banned for the next Paralympics. Why are we just sitting down and allowing them to do this to our guys? They've got no rights. We have got no rights when they can do that and nobody stands up for them. God help them.

MS McKENZIE: You don't see swimming or running being banned from the

Olympics because some of the athletes tested positive to various drugs.

MS YOUNG-SMITH: Exactly. Now, if that's not discrimination of your rights, I'm Shirley Temple. The last thing I wanted to make a comment on and I feel very strongly about is my daughter in the middle 90s was in a program that was specially funded for severely disabled people to get work. Now, the government usually doesn't worry about severely disabled people. They want to get all the mild to moderately disabled people that can function into work and a lot of people with severe disabilities want to work but they don't get the supports.

This program was called the Accord Program and it was extremely successful for my daughter. She did a placement at Red Rooster stuffing chooks. It's a very unglamorous job but there were hundreds and hundreds of chickens that had to be cooked at Tower Road and they supplied all of the chickens for Casuarina shopping centre, one of the big Westfield-type shopping centres, so that there was a lot of work done there. Now, she was there five months and she had a support person. She had the Red Rooster uniform and she really - when she saw the ads come on telly - she was doing very well.

Part of this work program is chaining for people with her disability which means that the support worker will give her instructions of what she has to do, the support worker withdraws for an hour and comes back to see if that work has been followed through and done effectively and this takes time. So usually then you go into two hours' withdrawal and so on and so forth. After six months, the government changed and Mr Howard stopped that program, the funding was stopped. My point is we allow three years for an apprentice who isn't disabled to learn a trade and yet a young disabled person who wants to learn a job has to be better than a normal apprentice because they've got to do it in whatever time the funding is available - it might cut out any moment - in my daughter's case six months. It wasn't long enough for her to learn what she had to learn and that is discrimination. Do you agree?

There hasn't been any funding for that area of disability since and yet she was doing from very, very well from the people who worked with her, but she was denied that chance. Now she is doing voluntary work and she won't have any chance at making money that she needs. I don't think she would ever be able to work full-time but I have always pushed her to her limits. If she was able to work a part-time job she would at least have a better quality of life and that's where we all meet friends and do things is when you're going out to work, even if she worked part-time and she would have a little bit of money that she really does need to supplement her pension, as I spoke earlier of her financial difficulties. That, ladies and gentlemen, is my effort for today. Thank you so much for your time.

MS McKENZIE: Thank you very much for your submission.

MS YOUNG-SMITH: Thank you for listening.

MS McKENZIE: It was really helpful and you've raised many really good issues.

MRS OWENS: Yes, I would like to also thank you for what you've said today. It's been very powerful I think and I really admire you for bringing up many of those issues. As I said earlier, we are going to Queensland next - - -

MS YOUNG-SMITH: Good luck.

MRS OWENS: - - - so it will be useful to have that background - very, very useful. Thank you very much for appearing - - -

MS YOUNG-SMITH: My pleasure.

MRS OWENS: - - - and I hope you're not feeling too comfortable at this stage because it's been - - -

MS YOUNG-SMITH: No, I'm all lit up now. I'm raring to go now. I've got the old fire burning again.

MRS OWENS: Okay.

MS YOUNG-SMITH: Thanks very much.

MS McKENZIE: Thank you.

MRS OWENS: That now concludes the scheduled proceedings today and I would like to invite anybody else that may want to appear. Does Ian want to appear? We will just break for a minute.

MRS OWENS: We will now resume. The next participant is Debra Lovett, and I don't think we need you to say "Debra Lovett" into the microphone, because Michelle, Debra's sister, will be talking on her behalf. I'll now hand over to Debra to raise the points that she wishes to raise.

MS LOVETT: Okay, my name is Debbie Lovett. I was born deaf. It's hereditary in my family. I've got a qualification in bachelor of education in auslan. I studied at La Trobe University. I came to Darwin from Melbourne. I got my qualifications in Melbourne, and I came to Darwin about five years ago, but then I came to live here three years ago. I like the warm weather. Trying to find a job here has been very difficult. There's no deaf services for the deaf in Darwin. The deaf people that are here saw how resourceful I could be, and they started asking me for help, so I've got to help them a lot. I volunteer and I help them. It takes all my time. Sometimes they come to my place, and I don't really want it, because it's my privacy, and I'd like it to be separate. I need a separate place, but I'm happy for deaf people to come to me and ask for help, because hopefully that will lead me into getting a job.

I've been trying to set up a deaf club in Darwin, because deaf people need it to get access so we can talk, get out resources together. I've been trying to lobby, but it's very hard to get people to listen to me. It's very hard to try and get funding. Auslan is a natural language for deaf people. It's recognised in the education policy under the LOTE. I've been trying to get a job in Darwin, trying to get an auslan class going. I've got the qualifications to do that, but I seem to be rejected. They always give it to somebody else that doesn't have a qualification in signing. I've been involved in deaf communities all my life all around Australia, but the person who got the job over me is not involved in a deaf community, don't really know a lot about it, and they're teaching the wrong way.

The lady that was sitting here before, she was talking about the forms and proving you have a disability. I've had that experience myself. When I tried to get a TTY from Telstra, you need to get a form, you need to go to the doctor, you need to prove that you're deaf. You have to get it signed, you've got to post it, and post it back, and then your answer is, "Yes, you've got a TTY," but there's no flashing light to let you know that the phone is ringing. So then I tell them I need a flashing light. They send me out another form. I've got to go back to the doctor again, get another form signed to prove that I'm deaf again. This is a repetitive situation. When the flashing thing breaks down, I've got to ring them to tell them it's broken. They tell me to reapply, to get another doctor's certificate to prove that I need to get it fixed. My name is on the computer. You know that I'm deaf, but it's very difficult.

I live in a Housing Commission unit. In other states around Australia, the Housing Commission provides a door alarm to let people - a doorbell. But in Darwin, it's not provided. I asked the Housing Commission, "Could you provide me with a fire alarm and a door alarm?" and they said no. There's no policy in the Northern Territory to provide that. My Housing Commission has a fire alarm, and sometimes it goes off when I've burnt my toast or something, and it goes off. I have no idea that it's going off, and the people from next door come over and start waving at the windows, trying to scratch through the security door to get through, and break through the lock and come in, and then they tell me it's the fire alarm, and I've got to get the broom and stop it. Now I've got a damaged security door. I've got to try and fix that up.

Then I tell Housing Commission, "Can you put, like, a guard around the door handle to stop people from putting their hands in?" Do you know what I mean by that? Yes. I asked Housing Commission to provide me with one of those, because I've seen Housing Commission provide it to other people. So I should get one too, and Housing Commission tells me no, I've got to buy one myself. The alarm forces people to gain access into my house. I have to repair the security door myself. I can't get a guard on my door. I've got to lock all my doors, and then when somebody comes, I've got to find the keys to unlock the doors. My life is very difficult. I wanted to live an easy life, but housing make my life difficult.

So I went to see Housing again and asked them for a fire alarm, a flashing one. Housing say no, so we started writing things down on paper, and they wanted to keep the paper, and I didn't want them to keep the paper. Housing told me that they have to keep the notes, and I said, "No, you can't keep the notes, it's mine." We got into a wrestling match, and I felt really humiliated. I felt shame. I just couldn't get out of there quick enough. The result of that - so I never want to go back there again. I think Housing probably visit me next week or the week after, but I don't know how I'm going to face them.

I just want to make it a little bit clear about what Mary said earlier on, about auslan and signed English. Mary says signed English would lead deaf people to a better education, to a university degree at tertiary level. Auslan is what leads you to that, not signed English. That's all.

MRS OWENS: Thank you very much for that. I was wondering, Debra, whether you had ever thought about putting in a complaint relating to the treatment that you've received from the Housing Commission?

MS LOVETT: But I don't know what to do there. I've tried to talk with people. Where should I go? I've tried to organise - I want to go and see Legal Aid about it. I've already organised an appointment. We'll see from there what happens, what the process is then.

MS McKENZIE: That's a good thing to do.

MRS OWENS: I think there's a real safety issue, because other residents of Housing Commission flats or houses will be able to hear the alarms or whatever, and if Debra cannot hear the alarms, there's a problem, and I think that - I'm not an expert on this- but I would think that it's their duty to ensure that any resident has a safe environment in which to live. I'm also interested in the different approach adopted in Victoria, and possibly in other states, and why the approach in Darwin would be different. It's not really a question; it's just a comment.

MS McKENZIE: Debbie, can you tell me a little bit more about why you made the comment about auslan and signed English?

MS LOVETT: Signed English is very difficult. Signed English is not a language; it's the grammar that follows the English language. When you're talking about English, the written word, deaf children don't pick it up; it flows over their head. They just stare at it and it flows over their head. But auslan, we seem to pick that all up. We understand that. Auslan we can learn, but English, you learn very little.

MRS OWENS: Can I ask about the difficulty that you've had in getting a job up in Darwin. You mentioned that you went for a job to get a class going - I think it was an auslan class - but it went to somebody else without a qualification. You said you had a B Ed qualification from La Trobe, and that that person was not involved in the deaf community. Was that person a hearing impaired person?

MS LOVETT: Yes.

MRS OWENS: Was any reason given to you why you didn't get the job?

MS LOVETT: No reason. I have no idea why not; probably because I am of strong deaf culture.

MRS OWENS: So there are different groups among the hearing impaired and deaf community, and they get treated differently?

MS LOVETT: Hearing people and deaf people being different, you mean?

MRS OWENS: No, some people within the deaf community, being part of a subset of the deaf community, getting better treatment than others within the community.

MS LOVETT: Yes, sometimes that happens. It's more to do with people's attitudes, I guess.

MRS OWENS: When you say that this other person wasn't involved in the deaf community, what does that mean?

MS LOVETT: I mean, I am deaf. For example, in Brisbane or Queensland, if I arrive there, I'll go to the deaf club; I'll see deaf people. They have deaf social every Friday night or every Saturday we meet somewhere. That's where we communicate. We're all together, we're all speaking the same language. None of us are left out. With hearing impaired, they can pick up what hearing people are actually saying. Hearing people can hear to some degree, but deaf people like me can't hear; we're excluded. Hearing impaired people can fit into the hearing world; deaf people can't fit into the hearing world. Hearing impaired are much more accessible to things. People are more willing to give jobs to hearing impaired people, but deaf people are still over here in the corner, because nobody speaks our language. Maybe that's why I'm finding it difficult to find jobs. For me, I think an auslan class here - going to other person - I think it's because the other person could speak, and that's why they gave the job to him. That's what I feel; they didn't want me because I'm full deaf, and they have to write everything. I feel that's a discrimination.

MRS OWENS: I think that was very useful for us too. This is the first occasion we've had to talk to a deaf person in our hearings, and I'm sure we'll probably hear from many more as we travel around Australia, because I think some of the issues are quite special. But it does raise in my mind some broader issues about deaf people getting other jobs out there, not just as auslan interpreters, but just getting jobs that other people have access to, and the difficulties that there may be in doing so. We've heard of occasions where deaf people have gone for jobs, but have not had access in time to an auslan interpreter to be able to go to the job interview, and I was wondering whether Debra has any knowledge of those sort of experiences.

MS LOVETT: If the deaf apply for a job, they miss out generally, because they have to try and book the interpreter, and the interpreter says, "No, I'm too busy today or tomorrow." I'll be available next week; the job has gone. The deaf don't have a problem with the job; they're usually qualified for the job, but it's just too slow. The process is too slow. A lot of deaf people try and apply for the job straight themselves. Sometimes it's successful, but on the whole it's not.

MRS OWENS: What about, Debra, your experience when you were training at La Trobe? Were there any issues relating to tertiary education?

MS LOVETT: No. What do you mean, "issues"?

MRS OWENS: Well, in terms of getting access to facilities at the university for lectures.

MS LOVETT: La Trobe 1990, that's when the first class was set up for deaf adults.

That was the first time we could actually access university. I was one of the first students in there. They did a trial for two years to see if deaf people could actually do the class. We were all deaf. If we could do it, then it become an official course. If we flunked it, then the course couldn't go on. But we were all quite successful, so La Trobe continued on with the course.

MRS OWENS: And it's still running today?

MS LOVETT: Yes.

MRS OWENS: And what happens to those people that have gone through the course?

MS LOVETT: Some at the Deaf Society, at the Deaf Association, in deaf organisations in different states around Australia. I've come to Darwin and there's no services here for the deaf. It's been very interesting trying to set something up. When I go to other states and they say, "Do you live in Darwin? Wow, there's nothing there. How on earth could you live there?" I say, "Why not?"

MRS OWENS: Because it's warm.

MS LOVETT: Yes.

MRS OWENS: There are some good reasons.

MS McKENZIE: But warmth at work is also good to have.

MRS OWENS: Yes.

MS LOVETT: Yes, I agree.

MRS OWENS: Thank you very much.

MS McKENZIE: Thank you very much.

MS LOVETT: I have one more.

MRS OWENS: Good.

MS LOVETT: I have a problem with my sister.

MS McKENZIE: Everybody has a problem with their sister.

MS LOVETT: She's the only one auslan interpreter in Darwin. She's the only one. They have other ones, but they use half signed English. I can't really understand them. I have a bit of a problem, because a lot of government organisations won't accept her because I'm her sister. I say, "But I'm giving my permission to use my sister as an interpreter," but they still won't. So now I'm left without an interpreter.

MRS OWENS: So hopefully you'll stay in Darwin too.

MS McKENZIE: Hopefully we'll get more auslan interpreters.

MRS OWENS: Thank you very much, that was very helpful.

MS McKENZIE: Thank you, Debbie, thank you very much, and thank you, Michelle.

MRS OWENS: We'll now resume. The last two participants of this afternoon appeared earlier. We've got Mr Ian Tranthem and Ms Wendy Morton from the Darwin Community Legal Centre. Could you just repeat your names again for the transcript.

MS MORTON: Wendy Morton, disability discrimination advocate from Darwin Community Legal Service.

MR TRANTHEM: Ian Tranthem, principal solicitor, disability discrimination and Darwin Community Legal Service.

MRS OWENS: Thank you for coming back up and putting yourself through this again. I'll just hand over to you to tell us what you wanted to say.

MS MORTON: I just wanted to bring up a few issues from what other people have said. One of them - they're issues related to supported accommodation, or areas such as supported accommodation for people with intellectual disabilities. The discrimination act - Bruce Young-Smith mentioned it earlier, about people being compared - their needs being compared to other people with disabilities. That's a real barrier for people, say, living in supported accommodation to make a complaint, because there's nothing to compare it to. Bruce mentioned his daughter being compared to someone with more severe disabilities. It needs to be that people are compared to the everyday person without a disability in assessing their needs and what's discriminatory.

The other thing was that a lot of issues that people come to us with - and someone mentioned this earlier as well - is around funding. An example of a parent coming to us and wanting to access child care for their daughter with a disability, and being told that a certain amount of money had been put aside in a child care scheme for children with disabilities; that money had run out, and they would have to be on the waiting list, and had to stay on the waiting list until someone left the scheme, which was probably going to be four years, and they'd be at school by then. The difficulties in doing discrimination complaints when it's around funding is really, really difficult, but so many issues arise out of the lack of funding. So the current DDA doesn't really meet those needs.

People are clearly being discriminated against. If your child doesn't have a disability, there is no limit on child care, and if your child has a disability, there's only limited funding, and you've just got to go through obstacle after obstacle to actually get any kind of service. So it's clearly discriminatory. The DDA and the local act really don't cater for that kind of complaint, and I think there needs to be - it would be great if there were some kind of change where it could cater for those needs, because so many needs arise out of lack of funding. That's all I wanted to say.

MRS OWENS: Thank you.

MR TRANTHEM: Just carrying on from Wendy, some of the issues that have been raised here today - there was some talk about the amount of paperwork and red tape that's required of people by various government departments from people with disabilities, from parents of people with disabilities. We've done some work with a special school in Darwin, for example, where all of the students of that school have a disability of some kind. As soon as these children turn 16, they're no longer eligible to go to that school, and the nature of their benefits changes at 16 years old. So there's been a requirement in the past - still is, to my knowledge - where the parents of these children need to go and get more specialist reports, more treating doctors' reports, go through, in effect, a paper war to move these children from benefits that they were getting under 16, to benefits that they were getting once they turned 16.

Some of these children have got long-term disabilities - autism, for example - that is never ever going to change. Parents find this very, very distressing, going through this over and over and over again with various different arms of the government. People with disabilities have a lot of difficulty coping with those kind of things too, and we see it arising a lot in terms of Centrelink's reporting requirements, disability support pension reviewable every two years, treating doctors' reports required again, often another assessment by a Commonwealth Medical Officer.

We have a problem here with transient population, where people might come up for a disability support pension review, a two-yearly review. The medical records will be kept down south or go to a doctor who has never seen them before in the Northern Territory who will write, "Unknown, unknown, unknown." This will often trigger a trip to the Commonwealth Medical Officer who will also have absolutely no medical history of this person and A report will come out something like, "You look okay to me, sport. You'll be hearing from Centrelink." As a result, the DSP is revoked. It can take anything up to two years to move through Centrelink's appeal process to get that disability support pension reinstated at perhaps AAT level or something like that on the basis of, "This was revoked on little or no evidence." So they're very, very real problems for problems with people with disabilities great or small, through the whole range of disabilities.

The other thing that I wanted to mention too was Jean was talking earlier before about the parameters for legal aid for people with disabilities wanting to pursue any sort of legal action or wanting assistance with legal action. We've particularly found - and as I mentioned earlier I have some interest in the mental health area - women in particular, who have a history of mental illness have, for one reason or another, had their children taken away by the welfare authorities. It may not be abuse, it may simply be that the women is going through a period of time where her thinking is quite disorganised and she is unable to properly care for the children. These children are taken away by welfare. Very, very often while the children will have separate representation in a welfare hearing as to whether the Department of Community Services should continue to look after the children, access arrangements, all of these things come up for review, the children will often be represented. The Department of Family and Community Services will be represented and these women are flailing around trying to get legal aid, trying to get somebody to assist them.

They are starting off with a handicap in that they may be under treatment, their thinking may be disorganised to a degree and suddenly they're thrust into a very formal legal system which puts great value on very organised thinking. It's something that emerges as a real problem and they can go to legal aid. I had an instance of a woman recently who was wanting to challenge some access orders to her children. She had a history of mental illness, her doctors were all saying she was fine, "In fact we think it would be beneficial if she has more and continued access to her children." She went to ask Legal Aid whether she could get assistance from one of her lawyers. She was told she had too much money. She had a property settlement recently and she'd put - I think the sum was about $5000 - into a trust account for the children when she eventually got them back. She was told that if she wanted to put her best foot forward in the child welfare jurisdiction, then she probably should access that money and use it to pay a lawyer. So there is a lot of inequity going on in these areas.

MRS OWENS: Can I just ask you - I know it's a real issue you've raised, as did Jean Young-Smith which reflects on one of the objects of the Disability Discrimination Act which is about equality before the law and whether from your perspective, things have improved in that sense or have not changed at all or in fact got worse in terms of people getting access to legal aid.

MS MORTON: I think it's gotten worse in the sense of legal aid guidelines have become stricter and stricter and their funding shrinking and I think people do miss out. I mean, issues like the one that Jean was talking about that she went to Legal Aid, about how they're the first to fall by the wayside and people will be concentrating on crime and family law and the guidelines and the means testing becomes harder and harder, so I would say it's definitely gotten worse.

MS McKENZIE: How does it all work? I don't understand fully. For family law, is there any means of means testing?

MS MORTON: Yes.

MS McKENZIE: So there is even for family law and for crime as well?

MS MORTON: Yes. I mean, it's not only means tested but it's about the merits of the case as well.

MS McKENZIE: Yes. But presumably that would be a general criteria that would apply whatever the case was. What is it that makes Legal Aid regard - I don't know whether it's some condition attached to funding, what is it that makes crime and family law be somehow regarded as more important than a case brought by, say, a person with a disability?

MR TRANTHEM: Not having worked for Legal Aid, I don't know that I feel really qualified to answer that. But I do suspect, speaking as a lawyer, it's something to do with if a person is faced with the prospect of a loss of liberty, then that is something that should demand a priority in terms of legal representation. Family I can't necessarily speak for.

MS MORTON: I think it would be about - family is also about evening up, like balancing out. So one side - - -

MR TRANTHEM: Power and balance.

MS MORTON: Yes, the power and balance, so one side may have money and have access to a private solicitor and so - - -

MS McKENZIE: To be fair, they give you - - -

MS MORTON: Yes, so it's about trying even up the balance. Legal Aid operate, on my understanding, by very strict guidelines about what they can and can't do, so I don't think we're talking about individual commissions here choosing what they will and won't do. Again, I haven't worked at Legal Aid either.

MR TRANTHEM: This is subject to us standing on the outside of the legal aid system in fact. The other thing is our funding to our organisation certainly doesn't allow any great degree of representation at a court level.

MS McKENZIE: So yours is really pre-court?

MRS OWENS: I think that's the case with a lot of equivalent bodies in the other states. You tend to be cut off by the time you get to court.

MR TRANTHEM: Realistically we can give some preliminary advice and operate perhaps as a referral organisation.

MRS OWENS: Then you're hoping for a pro bono lawyer to turn up - - -

MR TRANTHEM: Yes, that's correct.

MRS OWENS: - - - and take it over.

MR TRANTHEM: Yes. We have spoken earlier today about the difficulties involved.

MRS OWENS: I think that was very useful to make those additional comments. Thank you very much.

MS MORTON: Thank you for the opportunity.

MR TRANTHEM: Thank you.

MRS OWENS: Ladies and gentlemen, that concludes today's proceedings. Thank you for attending. I am now going to adjourn the proceedings and the commission will be resuming in Brisbane on 29 May at 9.30 am. Thank you.

MS McKENZIE: Perhaps before we finish, I might just say that what happens after this is eventually we hope to hand down a draft report in October and then we'll have further hearings to listen to responses to that report. So it may well be we'll see you all again. Thank you.

AT 4.44 PM THE INQUIRY WAS ADJOURNED UNTIL
THURSDAY, 29 MAY 2003

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