



**TRANSCRIPT
OF PROCEEDINGS**

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PRODUCTIVITY COMMISSION

INQUIRY INTO THE DISABILITY DISCRIMINATION ACT 1992

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

TRANSCRIPT OF PROCEEDINGS

AT HOBART ON THURSDAY, 5 JUNE 2003, AT 9.10 AM

Continued from 4/6/03

MRS OWENS: Welcome to the second day of the Hobart public hearings of the Productivity Commission's inquiry into the Disability Discrimination Act (1992) which we will refer to as the DDA. My name is Helen Owens and I'm the presiding commissioner on this inquiry and my associate commissioner is Cate McKenzie. We will be having a few breaks today. We will be having morning tea at about 10.30 and lunch at about 12.30 and we will be finishing in the afternoon. You are welcome to take a break and re-enter at any time if you need to.

On 5 February this year the government asked the commission to review the DDA and the Disability Discrimination Regulations (1996). The terms of reference of the inquiry are 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 have already talked informally to a range of organisations, including yours; as well as individuals with an interest in these issues. Submissions have been coming into the inquiry following the release of the issues paper in March. We are grateful for the valuable opinions we have heard from people during these informal discussions. The purpose of this hearing is to provide an opportunity for interested parties to discuss their submissions and their views on the public record.

We have already had hearings in Darwin and Brisbane and in Hobart yesterday. Following the hearings here today there will be hearings in all other Australian capital cities. We will then prepare a draft report for public comment which we will release in October this year and there will be another round of hearings after interested parties have time to look at the draft report probably towards the end of this year and early next year.

We like to conduct all our hearings in a reasonably informal manner and 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 you want to speak, we will be allowing some time at the end of the proceedings for you to do so. If you think you would like to take up this opportunity, please identify yourself to the commission staff. Participants are not required to take an oath but are required under the Productivity Commission Act to be truthful in their remarks. Participants are welcome to comment on the issues raised in any other submissions. The transcript will be available on the commission's web site in Word format following the hearings.

I am now going to invite our first participant today, the Association for Children with a Disability (Tasmania) Inc. Welcome to the hearings and thank you very much for your submission which we have both read and I also would like to

take this opportunity to thank you for talking to us I think since early April, so thank you for that. I would now like to ask each of you to give your name and your positions with the association for the transcript.

MR CHICK: Thanks, Helen. My name is Leon Chick and I'm the vice-president of ACD.

MRS OWENS: Thank you.

MS TIMMS: My name is Pamela Timms and I'm the administrative officer of ACD.

MRS OWENS: Good, thank you. Leon, you said you would like to make a few opening comments, thank you.

MR CHICK: Thanks, Helen. Just by way of background, the Association for Children with a Disability (Tasmania) Inc, or ACD, is a statewide organisation which provides advocacy, information and support services to families of children with a disability. ACD caters for all types of disability and has been operating since December 1997. ACD has approximately 110 members, largely comprising of parents, carers, families and parent support organisations; and those organisations support at least an additional 100-plus members.

Membership also includes schools, education support services, government, non-government, disability service providers and a few politicians. The guiding principles to which we are committed are the choice of access to and equity of all services for all Tasmanian children with disability, irrespective of the disability or where they live.

I suppose the biggest issue that we have with the way the services are provided to the children that we represent is the lack of planning that goes on from governments. In planning, we're talking about being proactive. Generally they tend to be reactive and only look at responding to issues when families are in crisis. This is an ineffective and inefficient way of meeting the needs of the families and the needs of the children and it's a waste of the precious resources which we find very scant.

The main issues that we discussed previously in our meeting and we feel that need to be highlighted to the inquiry cover areas like respite for children with disability. The example of things in Tasmania with respite is that in the north-west of the state, families have virtually no respite. Respite centres are only open on a weekend so if the family wants to have a crisis, they have a crisis at the weekend; you don't have it mid-week. There is limited access to a centre during the week but

that is a centre which houses adults, predominantly, so it's inappropriate for children to be in that setting.

In the north of the state families have to pay for respite. In the south of the state families have free access to the respite and in all of these three cases we're talking about a government-funded service. Whilst in the north of the state it is run by a private organisation, it is funded by the state government. Therefore you've got the same basic provider but with totally different criteria. Another aspect of that is that for children with mild to moderate disabilities there are very few suitable options for respite unless you go to, again, private organisations like community-based support, but there again you have to pay for that type of service.

MS McKENZIE: Presumably they're also quite pressurised because there would be a lot of demand for their service.

MS TIMMS: Yes, there is.

MR CHICK: Yes. There's a very high demand and there have been problems in the south of the state because there's a limited number of beds and there's been people occupying some of those beds that are actually waiting for group homes or permanent accommodation and whilst there have been vacancies in permanent accommodation, the transition from the temporary accommodation to the permanent accommodation, for some reason there have been hold-ups so that people are occupying the beds which is reducing the access that people have. That sort of leads on to the next issue which is the issue of group homes residential accommodation and various options.

MRS OWENS: Before we get on to that, let's stay with respite care for a minute. Have you brought these issues to the attention of the Tasmanian government?

MR CHICK: Yes. We have had meetings with the Minister for Health and Human Services who has responsibility for disability issues. We have met with the current minister and the previous minister and raised these issues. We are currently going through the budget process in Tasmania. We put in a detailed submission to the budget process as part of the public consultations, again highlighting these issues, but we don't seem to be getting much of a response and, as we have said, the north-west is what we consider a crisis area.

MRS OWENS: It has been an ongoing issue for quite some time.

MR CHICK: Yes.

MRS OWENS: Have you got any understanding of why there has been a reluctance

to deal with the issue? Is it a resource issue on the part of government or is it that there are other priorities that they're dealing with?

MR CHICK: One of the big arguments that we keep getting is the age-old bunfight, "Oh well, the federal government aren't giving us enough money," yet if you talk to federal politicians, "No, that's a state government responsibility", you sort of get this bunfight that, "Oh no, it's the others, not us. We're good guys." You know, we keep getting bounced around between - - -

MS McKENZIE: It's always someone else's responsibility.

MR CHICK: Yes. It's never our fault or our problem.

MS McKENZIE: Yes.

MR CHICK: Like at the moment you're probably aware of the ongoing saga with the CSTDA, the Commonwealth State and Territory Disability Agreement; that they keep extending that - the old agreement - rather than going into a new agreement. So that the state government keeps saying, "Well, we can't do anything until that's sorted out." All the time, families are out there saying, "Help".

MS McKENZIE: The problem is not going away.

MR CHICK: No, it's getting bigger. Typically, governments seem to be quite happy that if families are out there and can cope then, "We don't want to know about the issue." Hence, what we're saying is that they go into reactive mode once there's a crisis.

MRS OWENS: I don't know whether this is going to be an issue that's exclusive to Tasmania. I feel that it's probably something that is happening in the other states as well although you have been the first to bring this to our attention in relation to children. When we were in Darwin last week we heard about the issue of dealing with adults who need respite with elderly parents, for example, and it's a similar issue; but in this inquiry we have been given a very specific job to do which is to look at the Disability Discrimination Act and I'm not too sure how this particular issue fits into our terms of reference.

MS McKENZIE: Are there respite services for other people? You know, not children with a disability or children with a moderate or severe disability, but how does it compare with other respite services for other people?

MS TIMMS: In aged care there's respite services for them. Because I've got an aging parent I also know that system doesn't provide what people need either.

MS McKENZIE: So it's across the whole respite system.

MS TIMMS: Yes.

MRS OWENS: So in the context of this act it is not sort of discrimination per se, as discrimination, I think, is defined. Cate can probably correct me on this but I think what we are going to be doing with these sort of issues is I'm going to try and - we'll try and bring all these issues together and say that there are a range of issues that have been brought to our attention which to us seem quite serious and need to be addressed and they probably need to be addressed on a national basis, not just at a state level, because I think you've hit on something very important and I really feel for you.

MS TIMMS: Yes.

MR CHICK: I can give you another example, probably, to address Cate's issue that you just raised then. We have got a family in the north-west of the state. Both of the parents work. School holidays in September last year, you've got a two-week holiday period and you've got both parents working. This family has two children: one a regular garden variety child; both young teenagers, about 12, 13, around that area. For the child without a disability, that family could get a child care or holiday program placement for that child. Actually there are two or three options for that child to attend. For the child with the disability - and we're talking in this case severe autism - that child was only able to access one holiday program for one or two days per week. Therefore you've got two children in exactly the same circumstance not being able to access an equivalent amount of services.

MS McKENZIE: That might relate to that, yes.

MR CHICK: So that then starts bringing in the issue that we see, as it relates to this inquiry.

MRS OWENS: I think that probably does, that particular issue, because you are talking about one child, without a disability, getting access to services that the other one is being denied. And I think there would be an issue with that. The respite issue is a bit more borderline. It's very unfair, and I think inequitable, what is happening within the state and possibly across states; I don't know what's happening in the other states and we will have a look. But this particular one, you can see that this discrimination between certain groups in the community, and others that haven't got the disability.

MR CHICK: Yes.

MRS OWENS: So it probably does fit. Has that been brought to the attention, say of the Anti-Discrimination Commission hearing in Tasmania?

MR CHICK: I'm not aware that that particular instance has been brought up before the Tasmanian commission.

MRS OWENS: It may be worth taking that a bit further, if you wish.

MS TIMMS: But you can also bring it in as discrimination for parents, because they can't go on holidays because they can't access respite for their children. So that would be discrimination.

MS McKENZIE: Yes. That's another possibility.

MS TIMMS: Bring in the respite that way.

MRS OWENS: No, it's putting a lot of the burden back onto the parents, taking the parents for granted and saying, "Oh, it's your responsibility."

MS TIMMS: Yes.

MR CHICK: The other good argument that we get when people start sort of kicking and screaming and asking for things that they believe they need for their children is that I will say, "If we give that to you then Johnny over there is going to miss out, and his needs are greater than your needs or your child's needs." And that is a good argument that government services continually put up to families. It puts a guilt trip onto the families.

MS McKENZIE: As if somehow you have to have a hierarchy of severity of disability, that it's not the right of a disabled person to get these things.

MR CHICK: Yes. And it tends to be that way right across the system, that children who have got mild to moderate disabilities largely tend to get neglected, as far as services go, irrespective of their needs, and that probably links into an area of therapy services. For example, in the south of the state the government contracts provide therapy services for children with a disability. However, if a child's primary diagnosis is either an intellectual disability or developmental delay they are denied access to that service, even if they have got recommendations from private therapists that they need support. But if the child has a physical disability or autism spectrum disorder then they can access that service. And this is a personal case that I am aware of, because I've got a situation where I have a child with Down's syndrome who has been denied that service.

MRS OWENS: Have you been given any reasons why?

MR CHICK: The service provider says that it's part of their contract with the government that these children are not catered for. The government says, "We haven't got the funding to provide services for everybody." Now, I actually took this issue, when it first came up, to the Human Rights Commission, and under the DDA. However, the organisation that was providing the services at that time was sold off to someone else, so we had to sort of go back and look at starting the whole process again. Because of the time involved, and the emotional effort and strain that's involved - and this is one of the big issues with the DDA - to actually take an action under the DDA, for a family, is fairly daunting, both in time and the emotional effort. And when you have got so many other things going on it's just not feasible.

MS McKENZIE: So were you told that when this business - or whatever it was - was sold off that you would have to start again against the new - - -

MR CHICK: Yes. I was taking action against the service provider and that service provider was no longer in business.

MRS OWENS: That's a real interesting issue. If somebody goes out of business you no longer really have a case because the new service provider can just say, "Well, that was the old service provider that did that."

MR CHICK: And what I would have had to do is go through the reapplying to them to get the services, and get them to knock me back, and to get them to put it in writing as to why they have knocked me back, and all of this.

MS McKENZIE: No. There's another quite different way of looking at that. That is, when you sell a business there's a question of whether you sell it with its liabilities, including claims. For example, when you sell a business, if your customers owe you money the debt that the customer owes passes to the new business; they can recover it from those customers who owe money. And the same with a discrimination claim. If you have a discrimination claim and you sell the business in respect of which the discrimination is claimed, then it may well be that the liability for that claim passes to the new business.

MRS OWENS: Would that have to be spelt out in the contract?

MS McKENZIE: Yes. It might be, yes - or it might be because of the general way in which the contract is worded. I'm really surprised that that way of looking at it wasn't raised with you. It's certainly a matter of concern.

MRS OWENS: I wonder if there's a grey area though, with these sorts of claims, where the new owner was aware of the claim, and if it's not brought to their attention would they still need to accept liability for that claim?

MS McKENZIE: They still ought to be liable. The question is simply whether the liability of the business, which will include their legal liability, has passed. It may well be, to clarify that, that there should be some sort of amending of the DDA, if it's a real need.

MRS OWENS: We might look at that issue a bit further and just see what the situation is because if that's the case then technically HREOC should have continued - - -

MS McKENZIE: Joined the new business, because it's just an ongoing matter.

MRS OWENS: How far into the process did you get before you withdrew?

MR CHICK: We had had a conciliation hearing with someone from HREOC, ourselves and the organisation, to which they made some concessions. But then after that they all changed - everything changed and it was back to square one, and we just can't continue to pursue it.

MS McKENZIE: How did you find the conciliation process? Can I ask you? I don't want to know what actually happened because we can't know that, but how did you find it?

MR CHICK: I suppose, personally, I found it frustrating, in trying to deal with what I saw was a brick wall. They just kept saying, "Sorry, it's not in our contract. We can't provide the service", blah, blah, blah, blah. It's a case, again, of everyone trying to blame everyone else for the issue. I suppose the only benefit I saw was that we were really making them try and address an issue which I saw as - I suppose I did it more from the principle point of view, because we are lucky we are accessing services privately and paying for them and getting money back through our health fund. A lot of people aren't in that situation. In looking at whether we would continue it it was a matter of, well, how much do you fight for a principle? Given the length of time and the paperwork of getting everything down, that's where the DDA becomes very difficult for families and very daunting for families, to try and fight these issues.

MS McKENZIE: The paperwork is difficult; you found it difficult?

MR CHICK: Just like, in our case we had to write to the organisation and say, "We want these services." They then wrote back and said, "No, you can't have the

services." So we wrote and said, "Why can't we have the services?" So that we could get it down in concrete - in writing - that they were discriminating.

MRS OWENS: You would have had to have repeated all of that process again with the new owners, as far as you knew?

MR CHICK: Yes.

MRS OWENS: Can I ask, why did you go to HREOC and do it under the DDA and you didn't do it under the local act?

MR CHICK: The local act wasn't in existence at the time.

MRS OWENS: Right. It was pre-1998?

MR CHICK: Yes. It would have been about 96, or thereabouts.

MRS OWENS: And you were able to use the DDA advocate here. Did you go through that process or just go direct to HREOC?

MR CHICK: I went direct to HREOC but I had the support of a lawyer, who has a child with a disability, who was helping me on the side.

MS McKENZIE: And HREOC would have had an office at that time, wouldn't they, in Tasmania?

MR CHICK: Yes.

MRS OWENS: So that aspect of it worked reasonably well for you. You've had access, geographic access, if you like, to HREOC and you had support from somebody with a legal background.

MR CHICK: Yes, because the disability advocate - legal advocate - is actually based in the north of the state in Tasmania, that was one of the reasons why we didn't use that person and the fact that I had a friend, through having a child with a disability, that helped out.

MS McKENZIE: Would you have felt really at a loss if your friend hadn't helped out? Did you really feel that you needed a lawyer? Did you feel that it would be very difficult for you to do it by yourself?

MR CHICK: I probably could have done it by myself, but I found it a lot easier because he was able to look at it from all of the different angles and help me phrase

the questions that I put to the company to get it down pat, so that they basically had no room to move, other than say, "Your child can't access services because they have Down's syndrome. And it's interesting because that contract is actually going to be part of a review that the government is doing on children's therapy services, over the next two years. So the whole issue will be coming up again.

MRS OWENS: And you are going to participate in this review?

MR CHICK: ACD will definitely be participating in the review.

MRS OWENS: Again, I wonder about whether, if you had been living in one of the other states, this would have been an issue or whether the parents in your situation face the same problems in other states; we are thinking nationally, you see. It would be interesting to know. If we find anybody else out there we will ask.

MR CHICK: I'm not aware of that type of thing happening in other states.

MRS OWENS: Because it would have been interesting, if you had gone right through the process, what the outcome may have been, in terms of - you say there's going to be this review - whether the government would have responded by doing something about the issue, earlier. Somebody would have had to, I think, if you had had a successful case.

MR CHICK: Yes. There would have had to have been change.

MRS OWENS: So in some ways you bringing a case, if you managed to get through it, it would have benefited other parents in the same situation.

MR CHICK: But it's how much you can take on personally for a principle, and to benefit a lot of people. That's where you have got to sort of draw the line.

MRS OWENS: It's hard to be the trailblazer.

MR CHICK: Yes. If you look at some of the cases that have come up under the DDA, in education-type issues, like the Purvis case in New South Wales, people get daunted when they see that things start going to the Federal Court on appeal, and then families get hit with legal costs and things like that. People see that and then they just think, "Hey, we can't afford - that if we take this case and lose and get hit with costs, we can't afford this sort of thing." And that's the type of view that a lot of parents have, that they will fight so far. But then if things sort of start going too far they just say, "We just can't do it."

MRS OWENS: Supposing this service provider hadn't changed and you had got to

that point where it was going to go to the Federal Court, would you have withdrawn at that stage? I know this is a hypothetical question.

MR CHICK: I suppose if there is the chance of losing out and having costs I would have had to consider it, yes. Possibly given that the contract specifically excluded and had in it the words "Down's syndrome" - because I got access to a copy of the contract, even though it was supposed to be commercial in confidence; it's amazing what can fall off the back of a truck occasionally - we felt were - - -

MS McKENZIE: There are a number of trucks like that in a number of places.

MR CHICK: Yes. I really like these trucks occasionally.

MRS OWENS: They must be very unroadworthy. We interrupted you in the middle of your issues in your paper; in your submission. You were going to talk about group homes and residential accommodation, I think was the next point, before we got sidetracked.

MS McKENZIE: It's just easy for us to ask you - - -

MR CHICK: Oh, yes.

MS McKENZIE: That's right, to get to the end of one point and then go on. I hope you don't mind.

MR CHICK: I suppose the issue of group homes, et cetera, probably may not necessarily come fully under the guise of this. It gets us back to the respite-type example of the inequity and the cost-type issue. They kept saying that there's no money for this type of thing.

MRS OWENS: Again it is just something else that I think is enriching our understanding and there is a range of issues that - as I said before - are cropping up again and again and which I think we will spell out.

MR CHICK: Yes, and if you look at the range of issues that are there, it starts putting a context of the pressure that the families are under, which then, if they are looking at taking a DDA action - with all of those pressures and the additional pressure of that, that's where it sort of - people back off. They look at the issue, "Well, can you fight City Hall?" You know, the old saying, "Fighting City Hall" - and the fact that a lot of these organisations and that are really - if you look at the Department of Education - the resources that they have on tap. If you look at a Tasmanian example that was done under the Tasmanian legislation recently, where a family actually took one of the large national insurers to task because their child was

denied access to an endowment-type policy because of the child's disability, and they actually took action under the Tasmanian legislation, not the DDA, and that has taken nearly three years.

MS McKENZIE: It hasn't finished yet?

MR CHICK: It has finished, yes, and they actually won.

MS McKENZIE: Before the tribunal - not a conciliation? It went to a hearing?

MR CHICK: It went to a hearing, but an 11-and-a-half-hour sort of negotiated settlement was reached and the terms of most of it are private, but there was a sort of basic admission by the insurer that they had done wrong, which was made public.

MRS OWENS: Because they had misunderstood the exceptions or exemptions - or whichever it was - in the Tasmanian act.

MR CHICK: Yes.

MRS OWENS: I think you raised that with us, didn't you - - -

MR CHICK: Yes. I sent you a copy, linked to the newspaper web site, where the story was, but it was good to see that someone had had the strength to take on one of these big companies, because it is a very daunting thing - to take something like that on on principle, and that's something I don't think a lot of people appreciate with something like DDA.

MRS OWENS: I think there is a broader issue about insurance that I'm particularly interested in - that at the moment it isn't the exception in the DDA, and when you talk to the people in the insurance industry they say, "Well, we need to risk-rate and we need to be able to distinguish people in determining our premiums and in determining who we will and won't insure," and it does raise a lot of really very interesting issues.

MR CHICK: Yes, well, this case was interesting because I've had dealings with the family - because they were - the insurance company, when they started quoting the actuarial data and the information that they were basing their decision on as to early mortality, et cetera, of children with Down's syndrome - most of the data they were talking of was from back in the 50s and that, and things have changed, big time, since then, and - - -

MS McKENZIE: So has the collection of data, I suspect, as well.

MR CHICK: Yes, and so this family was able to sort of gain a lot of data from a lot of other places and say, "Well, excuse me. You've got stories here of people with Down's syndrome living into their 80s," and things like that. "What's the problem?"

MRS OWENS: It raises an issue about availability of data to insurance companies in the first place because, if they haven't been insuring some groups, it is very difficult for them to obtain data, and so on what basis are they making their determination?

MS McKENZIE: What the exception really says is that if there is no data available you have to make it on some reasonable basis, so they would have to develop some methodology within their company to risk assess, even if the data is not available.

MR CHICK: No. You just say, "No."

MS McKENZIE: Were you going to talk about education, as well?

MR CHICK: Yes. I was thinking that maybe we should get on to education. It's a wonderful area. I suppose if you are looking strictly at the DDA, one of the big issues would be around the things that have happened with the development of the standards, the DDA standards, for education or the lack of development, and the arguments that are going on surrounding that.

MS McKENZIE: Would you like to talk about that?

MR CHICK: I've actually had input into some of the discussions that have been going on with parent groups around the country as to the sort of parents' submissions and input into the development of them and it has been a frustrating process because you have a situation where you have the parents presenting one view of what should be included in the standards; you've got some areas - the education fraternity in Tasmania actually being one of them - predominantly supporting some of those views that the parents have because we're fairly lucky as far as inclusion of children with disabilities into mainstream schooling in Tasmania - that it is good. I use "good" in inverted commas.

MS McKENZIE: Comparatively.

MR CHICK: Everything could be better. Comparably to the rest of the country it is good. However you then get other states which are sort of trying to water down the standards so much as to virtually make them ineffectual and, from a parent's perspective, that is disappointing, where you have the bigger states arguing cases to (indistinct) that, "Oh, no, we can't include this. We need it fairly broad" and all of this. It doesn't seem that there is a real commitment there to developing standards to

address the needs of children with a disability.

MS McKENZIE: So you think if the standard is too broad and too vague it's better not to have a standard?

MR CHICK: Pretty close, yes, because there's so many loopholes that they can say, "Well, yes, but this is an exclusion" or, "It doesn't specifically say we have to do A, so therefore we won't do it."

MRS OWENS: So if it's not in the standards, it doesn't exist.

MR CHICK: If it's not there, well, "Bye bye, Charlie. We don't have a responsibility."

MRS OWENS: You said inclusion was "good" - in inverted commas - but I think in your submission - or when we talked you did talk about the way that principles can circumvent government policy and provide part-time assistants - trained aides, inadequately trained aides or people just part-time to help with the kids and so on.

MR CHICK: Yes.

MRS OWENS: I'm not sure how you get around those problems unless you say that this is the standard of care - or the standard of education facilities - that we're expecting.

MR CHICK: Yes, and that's the difficulty we have. With education the system in Tasmania is basically there's what I would consider as three different groups of children with a disability. There's the children which are assessed and are fortunate enough to get on what is termed within the department, "the category A register", which are the children with the highest needs - predominantly high-level physical needs; intellectual disabilities, and things like that - and they are the first ones to get funding for support needs and the funding tends to be in the form of a teacher assistant to help that child be included into the classroom.

MRS OWENS: Yes.

MR CHICK: There is some teacher support that goes to the school as well in that regard. You then have the next group, which is what they call "district funding". Each educational district is given a small bucket of money to help cater for other kids, and this can range from children with autism, children with ADHD; you know, mild to moderate intellectual disability - a whole gamut of things - behavioural issues. They sort of get funded there and then you've got those that don't even make it onto the radar because you know, "Sorry, we just haven't got any money."

MRS OWENS: What sort of kids are they, Leon?

MR CHICK: Again it is probably some of the ones that fall into a mild intellectual disability.

MS McKENZIE: Mild to moderate, yes.

MR CHICK: We've had issues where a child with a known syndrome - Klingberger syndrome, I think it was - is getting absolutely no support in the school - in a high school. There are all of these types of things that can happen and the department says, "Sorry. This is our bucket of money. How many kids can we squash into the bucket of money?" Not, "Here's a whole lot of kids. This is their need." Therefore the needs of the children to get an appropriate education aren't adequately catered for or covered.

You've also got the instance where you've got the issue of special schooling - largely is frowned upon within certain areas of the Education Department as not being an option and it's not actually raised with them as an option that they may want to consider for their child - the pendulum has gone totally the other way - and whilst ultimately inclusion would be the best option for all children in a Utopia situation where you had infinite resources, realistically, it is not the option for some children.

MS McKENZIE: Certainly mainstream schooling without funding is like setting up a child for failure, isn't it?

MR CHICK: Yes, and that's what happens, and it progresses beyond your regular schooling. Once you finish college level - year 12 - the options that are out there are just very, very minuscule and, to a large extent, non-existent. A lot of the TAFE side of things don't adequately cater - and again it seems to be that children in the mild to moderate range are the ones that sort of slip through the cracks. They have very targeted programs for kids with high-level physical needs and things like that and then they've got normal programs, but there's no intermediate step a lot of the time.

MS McKENZIE: You also mentioned a problem with private schools as well - not all, but some private schools - not encouraging I think children to go on to senior levels because of the perceived image of the school. That was one of the matters you mentioned I think perhaps at the visit earlier.

MR CHICK: The private schools quite often will discourage enrolments of children with disabilities. They can start making things difficult for the families in saying, "We can't do this" or "We can't do that" or "We haven't got funding to provide speech therapy", or "We haven't got funding for this" and all this, so they

start making it difficult for the parents. And the perception is that it is to try and - private schools being "the elite", "Do we want our status?" or whatever - you know.

MS McKENZIE: Or "our results, our scores".

MR CHICK: Yes, "our scores sort of reduced".

MRS OWENS: Although it might be something to do with government funding. They may get less government funding for those kids than, say, the government schools do. I'm not of what the situation is there. So there might be other factors being brought to bear there. Have you been in that situation? Have either of you been in that situation of trying to get a child into a private school?

MR CHICK: I haven't.

MS TIMMS: I had a child in a private school - my son. He has a moderate disability. He was there probably for about four years. I didn't have any trouble getting him actually into the school, and they do get Commonwealth funding for children with disabilities, but the only help he got was how much the money was, and so any other programs - and I must say when my son was there it was before people started getting used to children in - he's 19 - getting used to them being in mainstream, so, yes, there just wasn't a lot of support. It wasn't the school, it was just that they didn't know what to do either, and because he was the only one, it was just a little bit difficult.

I would hope that now it would have improved, but in my son's case too - I mean, I've had him in state schools and the private system, and because he's got a moderate - yes, he doesn't get any funding; he got no funding at all. And to the extent that - I actually put him in a special school for three years because that was the only place actually that he could learn. The colleges don't cater at all, and the curriculum - there's no proper curriculum for them; it's either very easy and the next subjects are the VET subjects, and they're too hard. So they really need to adapt those for these children. They're capable of working if they're given the help but that's not forthcoming at the moment. I have brought that up because he's just gone through college, so hopefully they will address that problem.

MRS OWENS: So he has gone to college.

MS TIMMS: He's now at TAFE, yes.

MRS OWENS: So he got into TAFE college.

MS TIMMS: Yes, but he's in a unit at TAFE, so we still have the same problem

there, that the subjects are either too easy and the next level are too hard. So we're hoping that there can be some adaptation to those.

MRS OWENS: Does he need special facilities in the TAFE system? Is he getting those?

MS TIMMS: No, because he's moderate - he's got a moderate intellectual disability so he's fairly good in some things and not so good in others. Yes, he just needs to be able to be extended really, to his ability. I mean, he's not the only one; there are other children who are in the same position as he is, so it just means the colleges and, well, the Education Department - they're addressing it, they're aware of it - they really need to change the curriculum to cater for these children, because they get bored.

MS McKENZIE: Yes.

MRS OWENS: There's a related education issue, and that is the issue of school buses. There is a transport standard - I don't know if this is an issue in Tasmania, but there is a transport standard, but I don't think school buses are embraced in the standard at the moment. I don't know - is that an issue for you?

MR CHICK: As far as I'm aware, the school buses haven't been brought within the standard. The school bus issue can be an interesting one and our organisation is aware of instances where a school bus has turned up to take a class off to an excursion, and then a child who has a physical disability is actually put in a car and taken by a teacher or teacher assistant, or someone, behind the bus because the bus can't cater for the child so that that child can participate in the excursions. Whilst the child is participating it is not participating on equitable grounds to everybody else.

MRS OWENS: But at least the school has made some arrangement, so at least the child can go and - - -

MR CHICK: But then other schools will just say, "Sorry, the kids are going on an excursion. We haven't got enough teacher assistant time", or "they can't access a bus, so can you keep the kid home today?"

MRS OWENS: But there's the issue of just school buses getting kids to and from the school as well, not just going on excursions.

MR CHICK: Yes.

MS McKENZIE: There are other issues you raised - adolescence. Some of these issues we've probably covered - and holiday programs we talked about. Pam, before

we started you said you had a few issues that you wanted to raise.

MS TIMMS: Just with the adolescence, from 12 to 18, I mean, we employed the federal government with their funding of child care up until a child is 18, but we feel that 12 to 18-year-olds in a child care centre is really inappropriate. The other thing with it is that they can only access it in Commonwealth approved child care centres, so the guidelines need to be relaxed because I think the kids actually need to be able to take the funding with them so that they can access other programs. There was also a whole year where the parents could not access child care at all, because the funding had ceased, which meant that they were unable to work which affects their living conditions and superannuation entitlements, et cetera. Also, we believe that the funding should be ongoing.

The state government last year had developed a Christmas program in the south for children, but it was a blanket one; it didn't really cater for different age groups, which it really needs to be age appropriate, because it's no good putting an 18-year-old in with a 12-year-old because their interests aren't the same. So that needs to be addressed. Also those in the north and north-west were again disadvantaged because they didn't receive it at all. It just means, like with my son as an example: he finished college in November and then he didn't access college again or TAFE again until early March, so there's nothing in that particular time, so you have to find alternate care, which is very difficult for that period of time.

MS McKENZIE: Are there any other things you'd like to say about the DDA? We've talked a bit about the complaints process and conciliation and such. Do you feel that over the last 10 years, since it was introduced, attitudes have changed? There's less discrimination, there's more awareness within the community about the rights of disabled people?

MS TIMMS: I think there's more awareness. I think the change has actually been slow, because I actually deal with sport as well. That is now being addressed where - I mean, I deal with special olympics and so the kids are now able to swim in normal swimming carnivals and things like that. When we were at the special school, and I mentioned about our kids accessing the normal school carnivals, they were not able to do that. Also when I had introduced a team from the special school into a normal roster, we had to go in for the first term just to see how it would go. We weren't allowed to register initially.

MS McKENZIE: But now you are?

MS TIMMS: Sorry?

MS McKENZIE: You are now?

MS TIMMS: Yes, it's improving now. I mean, there's still a little bit, but people are aware of it now and so they're making the changes.

MRS OWENS: I think the challenge for us is we've been asked to look at what improvements have happened, the effectiveness of the act in achieving its objectives, and I think the challenge for us is trying to determine what is it that's happening as a result of that act, and each state has got its own act. Then there are just changes in society going on in any case, societal changes, and trying to decouple all of those different trends is going to be quite difficult.

MS McKENZIE: It's difficult in a broader perspective in any case. I mean, the laws, for example, that deal with punishment for violent crime - violent crime is still continuing, there's no question about that. That doesn't necessarily mean that the law should be thrown out, because they're ineffective.

MR CHICK: I think the DDA has been good inasmuch as - for a lot of people it does make them stop and think, specially if it gets mentioned. They think, "Hang on, what am I doing? Am I doing what I should be?" and "Can I get myself into strife?" So I think it's probably helping, as you say, in part of the societal change that is occurring, and I think the fact that the issues of institutionalisation and that are not as common as they were; that people with a disability are more out in the community; they're more participating in a whole range of things, and society is now actually starting to celebrate some of the achievements of people with a disability, even if sometimes it is in a token way. I think perhaps, yes, the DDA is contributing to that but I think if there is more - if it was perhaps a bit easier to sort of access the whole complaints mechanism, that side of it - and there was a few more, I suppose, cases that sort of highlighted some of the issues. Whenever someone sees a case that gets up, they think, "Well, that's interesting. We hadn't thought of that." You know, it does get people thinking, so that is where I see that it does have a benefit.

MS McKENZIE: And conciliation doesn't quite give you the same public awareness of the outcome.

MR CHICK: That's where it is sort of difficult. Where do you draw the line between sort of conciliating and resolving an issue and sort of, I suppose, in a way, of having a big public victory? So the media gets hold of it and it goes out to the community and people think, "Well, hey", you know, "Mm." It makes people sit back and think and that's where some of the things that have happened under the DDA have been good.

MRS OWENS: I think those comments are very useful. Thank you. Is there anything else you wanted to raise with us? I have kept you probably longer than we

told you we were going to. I apologise for that.

MS McKENZIE: They are very helpful oral submissions you've made.

MRS OWENS: Thank you very much.

MR CHICK: Thank you for giving us the opportunity.

MRS OWENS: We'll break for a couple of minutes.

MRS OWENS: We'll now resume. The next participant this morning is the Disability Rights Network of Community Legal Centres. Good morning and welcome to the inquiry. Could you please give your name and position with the organisation for the transcript.

MS BLADES: Thank you. I'm Judith Blades. I'm the Tasmanian Disability Discrimination Act legal advocate. I am part of two - the Disability Rights Network is the expanded Disability Discrimination Act legal advocate's network around Australia, the national one from the legal centres. We include now all of the other disability rights organisations, such as the Intellectual Rights Legal Service in Sydney, the Mental Health Legal Service, the Mental Health Legal Rights service associated with the Welfare Rights Service in Sydney and a number of other organisations in that light. So we are an expanded - we have the legal services which you would know about already and I have actually handed the 1999 report of the review of the Disability Discrimination Act Legal Services to Kym as I entered.

MRS OWENS: Thank you. We'll take that as a formal tabling of the document.

MS BLADES: Okay. I was asked a few days ago if I could talk about our resources to people in the disability community and I thought that, look, that's perfect. That will give you a much better background than what I could give verbally.

MRS OWENS: Good, thank you. Judith, I understand you just wanted to make a few comments about the previous participant.

MS BLADES: Not about him per se, no.

MRS OWENS: Sorry, about the comments he made, about the previous discussion.

MS BLADES: Yes. I just wanted to address some of the service issues. I could go on all day about the gaps in services in education, in accommodation, a whole range of issues; and quite a few people do come to me to try and put up a discrimination issue in regard to lack of services or insufficient services. What we're finding is that it touches on the separation of powers and the constitutional issues of where government puts its funding and what its policies are in regard to where that funding goes; so as a legal issue we're not able to touch it, if you can glean what I'm talking about. I can comment that ethically it would be better if there was more funding or if, you know, people with Down syndrome were able to access a certain type of service but I can't, and the courts can't, tell the government where it puts its funding.

MRS OWENS: But we can - I mean, as a commission - - -

MS BLADES: That's a different matter altogether.

MRS OWENS: We can't say, "Thou shalt put more funding into this," but we can bring to the government's attention inadequate funding.

MS BLADES: That's right. Yes, I'm not talking about the commission. I'm talking about the DDA's capability of dealing with service and funding issues.

MS McKENZIE: But in a way you might be able indirectly to do that. I'm using that word advisedly because - - -

MS BLADES: Are we talking about indirect discrimination?

MS McKENZIE: In some indirect discrimination cases, that is the result.

MS BLADES: Yes, it is.

MS McKENZIE: You know, if you, for example, finish up with the conclusion that it indirectly discriminates to have a requirement that a particular disabled person has got to put up with the state of things as they are, and the state of things as they are can be coped with by someone without that disability, then it's not reasonable if you've got - - -

MS BLADES: If I can twist an argument to cover it - - -

MRS OWENS: You will.

MS BLADES: I will. But it's really difficult if you actually end up in a tribunal because, if it touches on an arm of government, I end up against the DPP. It's the DPP, the director of the DPP, who is defending discrimination cases. So what I get is someone with 20 years' experience in criminal up against me in court. It's incredible. So what you get is incredibly technical definitional issues and procedural - really good procedural games that last a long time.

MS McKENZIE: Yes. I mean, in cases like Waters and then later in Victoria in a case called Sinnapan v State of Victoria, that really was how things ended up, because - I was talking about the indirect discrimination claims. Well, Waters was a different set-up because - there's no point in going into all the legal technicalities; but certainly with Sinnapan, because the indirect discrimination claim succeeded. That resulted in the effect that a service could not be withdrawn and therefore large amounts of funds had to be allocated to maintain that service. But your problem really is what happens when one of those claims gets run, isn't it?

MS BLADES: Yes, that's right. That's exactly right. So frequently what I come up against is actually the separation of powers issue, when I'm dealing with allocations of funding. I have successfully conciliated indirect discriminations where there's been a lack of appropriate accommodation, so that a woman with a mild intellectual disability could access the curriculum because she doesn't fit. That got to the tribunal, but in the tribunal we had a hell of a time with definitional issues, damage claims, proving damage, wanting to have the same measurements, almost predicating it on the damage not on the disability, if you understand what I'm talking about; so they had to prove medical damage before we could go into the substance of the case.

MS McKENZIE: It's a very, I would have thought, strange way to approach the matter.

MS BLADES: Yes, well, what can I say?

MS McKENZIE: It's just a little hard. It seems to be starting from the end.

MS BLADES: Well, that was my comment. It sounded like we were running a personal injury claim but it was supported by the magistrate. It's a new jurisdiction here and the respondent was extremely experienced and able to do that.

MS McKENZIE: Would this be a situation where in claims of that kind, very complex and also far-reaching claims which might have funding implications - will have funding - should that be the kind of claim that perhaps the commission might have power to initiate?

MS BLADES: Do you mean of their own volition?

MS McKENZIE: Of their own volition.

MS BLADES: As an inquiry?

MS McKENZIE: As an inquiry or give the commission power - there would have to be careful administrative arrangements to prevent apparent appearance of conflict and so on, but to initiate a complaint about that matter?

MS BLADES: I imagine the Human Rights Commission has that type of power for inquiry. I ran it through the Tasmanian commission when I'd run them and that's because we have a no-cost jurisdiction; so it would be my first choice.

MS McKENZIE: Your first choice would be the Tasmanian commission because of that?

MS BLADES: Yes.

MS McKENZIE: You regard the costs element in the federal jurisdiction as a real deterrent?

MS BLADES: Yes.

MS McKENZIE: Sorry, we've sort of side-tracked you.

MRS OWENS: You have.

MS BLADES: That's okay.

MS McKENZIE: But you raised a very interesting issue.

MS BLADES: The other thing, couple of things: I've been in this position in Tasmania for two and a half years and I was in the same position in South Australia for six years under the mentorship of Helen Finch, who was the DDA legal advocate there. Pretty much in all that time we've only ever needed to get to a couple of hearings. I haven't had to have a full hearing in Tasmania yet. We've been able to conciliate nearly everything and I'd like to say that the conciliation process has been great and that it can be used in a much broader way. Before I'd take a claim to the commission, I'd try and negotiate it through conciliation myself anyway. We had a huge outcome here for Tasmania on the two twin ships here. Are you aware of our ferry system?

MS McKENZIE: The new ferries, is it?

MS BLADES: Yes. The two new ferries which come under the Premier's Department here were purchased last year, around March last year. The transport standards were in draft form at that time and had been around since 1999. Neither of the ferries complied with those standards and were multimillion dollar ships, basically.

MS McKENZIE: And no-one had thought about that at some earlier phase?

MS BLADES: I can't say that nobody had thought about it because I'm not privy to that information; but they did not comply and there was no attempt to make them comply. So the disability community, many agencies here, many umbrella organisations and peak bodies wrote to the Premier's Department, wrote to the ferries' corporate body and were unsuccessful in getting anything changed. Then I was asked to step in. A legal letterhead seems to do a lot. We were able to negotiate finally some meetings with the corporate body and successfully have negotiated

long-term changes and six-monthly reports on the changes that are being made.

At the last report, textured surfaces had been put throughout, end-to-end, both ships and quite a number of other arrangements that were easy and, you know, cost-effective to make were made. Eventually, things like the cabins - there are two cabins per ship. For 1400 passengers, there are two cabins that are accessible. We were able to get those changes made and instead of it being a private, conciliated agreement it becomes a really positive issue for the government. So that's how we tried to run our conciliations. "Look, you do this and we'll recommend you to the media," and we did. We had quite a bit of media coverage on it.

MS McKENZIE: And they were happy to disclose the settlement, at least to that extent?

MS BLADES: Absolutely.

MS McKENZIE: They've turned it into a positive.

MS BLADES: Yes.

MS McKENZIE: Was that complete disclosure of the settlement or were there terms that still remain confidential.

MS BLADES: No, complete disclosure. We were able to talk about the problems that had been there before and what they were doing to fix it up and they're quite happy to let us comment and them not make any comment.

MRS OWENS: I gather there's going to be a third ferry at some stage and presumably they will learn from this previous experience and you won't have to go through this again.

MS BLADES: Indubitably they'll have learnt from that - facial expression.

MRS OWENS: And intonation.

MS BLADES: For the transcript. I would hope so. So conciliation can be used really positively in that way. Also not every respondent knows that there has to be a confidentiality clause in a conciliated agreement.

MS McKENZIE: I think after these transcripts are put on the web, a large number of extra respondents might realise.

MRS OWENS: If they read the transcript.

MS BLADES: The last thing I want to say before I get into the paper is, I haven't put in my paper anything about the intervention cards because it's covered so much by other people, including the senators that were involved in talking about this - that's the HREOC powers. So I'm going somewhere else.

I've talked about the definitional issues and a lot of people have spoken about definitional issues in the submission and referred to the Purvis cases, and I just wanted to make a suggestion which is that the Tasmanian act covers it pretty well. It hasn't been tested in that what they've put in theirs - which I would think would happily fit in the DDA - is to add to the definitional section, that it has a characteristic imputed to the disability.

MRS OWENS: That's in relation to behaviour caused by the disability. Is that what you're talking about?

MS BLADES: It's born out of that but it's not only about that because one of the arguments has been that the precedent of Purvis, the long-term consequences of it could be that it could be applied to acquired brain injuries and seizures that are affected by it, the seizures could be used as a reason not to employ somebody on the basis that it's not the disability, so it doesn't fit in the disability discrimination.

MRS OWENS: Have you got a problem if you incorporate say behaviour caused by a disability when like behaviour by somebody without a disability would not be covered by the act? Is there something there that's hard to reconcile?

MS BLADES: I think that the courts for the DDA and the federal courts have had real problems with the interpretations of the normative comparator anyway. I think that's on the table at the moment. That was shown up in Purvis too. Do you know the part I'm talking about, where they were talking about the discipline?

MS McKENZIE: Yes.

MS BLADES: And the same discipline was being applied - that's because they were talking direct discrimination.

MS McKENZIE: That's the same treatment, it's not differential treatment.

MS BLADES: That's right, yes. So I've found the courts are having a bit of trouble applying that normative, but - - -

MS McKENZIE: Should there be a change in the legislation to - I know what you said about materially different, so perhaps you might talk about that. But before you

do, I was just going to say by way of a comment, I suppose, when Helen asked is it hard to reconcile treating - allowing what seems to be differential and better treatment of the person with the disability than the one who doesn't have it, I think the crunch is that the person with the disability has no control over the behaviour.

MS BLADES: Good answer.

MS McKENZIE: So that's the difficulty. The behaviour is not, if you like, their fault, whereas with the person without the disability, even if they might feel grumpy that day but it is their fault. They do have control over it.

MS BLADES: I think you're absolutely right; and it's pretty clear too that where behaviour causes occupational health and safety problems or is really unreasonable, then it wouldn't matter whether the person has a disability or not a disability, you have to look at other ways of dealing with it than just outright suspension in an education - or being fired. Like, if there's other ways of dealing with it you would; but I don't think anybody in the disability community would expect any organisation to put up with unreasonable levels of behaviour. I certainly couldn't represent somebody and consider it to have merit.

MS McKENZIE: Yes. And it may be - if one is to include a characteristic in the definition of "disability" there may be some extra exceptions needed to deal with that situation. You'd have to look carefully to see what exceptions were there currently and whether there should be some more to make it clear that one is not expected to put up with totally unreasonable or completely unsafe behaviour. As well as perhaps the reaction to it is proportionate with the risk.

MS BLADES: Certainly in the Tasmanian act. I haven't got the definitions in front of me of the DDA. If you claim indirect discrimination you have to claim that it's unreasonable as well, and I can see that fitting in there very well.

MS McKENZIE: "Less favourable treatment." I was going to ask you, because you've made some comments about not "materially different", what do you think should be done?

MS BLADES: They don't use - - -

MS McKENZIE: That's a question I can't answer.

MS BLADES: Is that a good enough answer?

MRS OWENS: We are hoping you will have an answer for us that will solve the problem.

MS BLADES: I don't think that those words need to be used. I think if you look at the Tasmanian definitions they don't use those types of words and you don't end up with a huge amount of technical arguments in cases around it.

MS McKENZIE: Do they use "less favourable treatment"?

MS BLADES: They use "less favourable treatment" I think in "direct discrimination." I haven't got that one here.

MS McKENZIE: Yes. We will check.

MS BLADES: "Has discrimination happened?" is fairly clear. "Have you been treated differently than people without the condition or have you been treated the same in circumstances where you should have been treated differently because of your condition?" - the act is predicated on that. "Less favourably" is about the damages. It could be worded that instead of "It causes you less favourable treatment" or whatever it could be that the first part - very very clear; Mary Gaudron's words and explanation - and the second part is "causing you" and "has this caused you some sort of personal loss, damage, humiliation", which is the "damage" stuff. I just think it could be much clearer.

MS McKENZIE: And then as far as "indirect discrimination" is concerned you worry about the words "substantially high proportion".

MS BLADES: Yes, the same thing. Like even the sexual discrimination cases show that most clearly, that when working out whether or not - what that substantial proportion is, it just takes up a whole lot of court time and legalistic argument, basically. It takes the whole case off on a tangent and it's not necessary.

MS McKENZIE: Do you think that whole test should be removed or do you think just the word "substantially" should come out?

MS BLADES: No, I think it should be removed.

MS McKENZIE: That whole bit of it should be removed?

MS BLADES: I think it should be just really straightforward, the definitions. It could be "a substantially high proportion of people".

MS McKENZIE: Generally you think that we can learn something from the Tasmanian act?

MS BLADES: Absolutely, yes.

MS McKENZIE: Dr Scutt, yesterday, said that it was one of the better acts in Australia.

MS BLADES: It is, yes, because it has learnt from the experience with the DDA in the courts, and it just doesn't have the same sort of definitional problems.

MS McKENZIE: So you think that when they were drafting that act they looked at what had been happening with the DDA and said, "We are going to try and remove any obscurity."

MS BLADES: I think Anita was quite involved in that and she had been in my position for some years and seconded to the Human Rights Commission. And then she was with the attorney-general here and had quite some input into the formation of the Tasmanian act.

MS McKENZIE: You made some suggestions about the unjustifiable hardship defence. It's clear enough from what you've said that there's a problem, but do you want to say anything more about it?

MS BLADES: What I've written is fairly clear because sometimes it's used as the be-all and end-all of the argument that it's unjustifiable hardship. You might get through conciliation or to tribunal and if you get to tribunal - there are the two prongs. There's the unjustifiable hardship by itself. If it's successful it means that discrimination can go on, and because they either can't economically afford it, or structurally put in, or whatever reason, it causes unjustifiable hardship; they can't do it, so the respondent can continue to discriminate. But I think that there are sections in the DDA, such as action plans, that could be used; that they should be triggered by the use of that defence; that if they can argue that defence successfully then it should trigger that they need to look at long-term rectification of the discrimination. I use that here. We don't have action plans in Tasmania. But when I'm negotiating something with a respondent that is clearly discriminatory, and we are negotiating it, I say, "My client could take a claim but how about instead you put a new budget line in that takes care of this over a period of time? You don't have to do it all now."

MS McKENZIE: So you are doing it informally?

MS BLADES: Yes. So we make those sorts of arrangements. And if they do that you don't take a claim and you get what you want.

MS McKENZIE: And it's working?

MS BLADES: Yes, it's working. And although it's not under the act that's the sort of thing I would ask for, and conciliation as well - informal conciliation - because it works; it's very very simple. We have just had every bowling club in Tasmania do this. We have got tiny little bowling clubs that say, "We haven't got any money to do that." "That's fine. That's fine. But people with no legs and in wheelchairs and stuff can't get onto the bowling greens. You've got a lot of the aged population, with conditions, that play bowls, let's look at really cheap ways to get them on."

MS McKENZIE: So they have put in some kind of access with a reasonable amount of time, presumably, to do it?

MS BLADES: Yes.

MS McKENZIE: Has there been some flexibility permitted for the smaller, obviously not too profitable clubs?

MS BLADES: Yes, because you've got to be reasonable. To me both acts are predicated on reasonableness. The discrimination has got to be unreasonable, in the indirect form.

MS McKENZIE: Then you talk about the various harassment provisions.

MS BLADES: The other thing about unjustifiable hardship is the doubling up of defence.

MS McKENZIE: Yes.

MS BLADES: What I found confusing, even as a solicitor - and my clients can't get head nor tail of it - is that if you are claiming indirect discrimination you have to prove in the circumstances that it's unreasonable, and the onus is on you to prove it. But if the defence of unjustifiable hardship comes up then they have to prove that it's unjustifiably hard. Well, they are the same things, virtually. It's virtually the same argument. Then the onus goes to them to prove that it - do you see how it doubles up?

MS McKENZIE: Yes.

MS BLADES: It's quite confusing and you end up not knowing who has got the onus. I think it should be just a bit clearer. I don't know who can make it clearer but just if it could be clearer.

MS McKENZIE: Yes. What's the answer to that one?

MS BLADES: I'd have to sit down and really thrash it out with other people. If it was left to conciliation you would thrash it out together, either by action plans or whatever.

MS McKENZIE: So where should the onus be?

MS BLADES: I think the onus should be on the claimant to prove discrimination and the respondent to prove that's reasonable in the circumstances.

MS McKENZIE: Because one of the difficulties has always been that while it's easy for a complainant - as easy as one could say in any case - to show that some conduct is unreasonable because it has some unreasonable impact on the complainant, because of a disability, it's really hard for them to prove other elements of unreasonableness which have to do with the respondent's particular circumstances; their finances, their company structures and so on.

MS BLADES: Exactly.

MS McKENZIE: Because the respondents know these.

MS BLADES: You try getting that information as well.

MS McKENZIE: Yes.

MS BLADES: You wanted me to talk about harassment?

MS McKENZIE: It's very clear in your submission. I'm just wondering whether you wanted to add anything or whether you are happy to - - -

MS BLADES: No. I think they speak for themselves pretty much. There are just gaps, I think, in those sections.

MS McKENZIE: I did want to raise though, your comment about standards and how they might or might not affect the defences against complaints.

MS BLADES: Quite some time ago, when the education standards were being developed and the drafts had gone out, quite a few people commented on the drafts, including myself, and one of the things was that at the moment in education section 11 has been used to stop the enrolment of a student on unjustifiable hardship grounds but it has not been available once a student is enrolled. Once the standards are in place, section 11 goes right across. So if it becomes unjustifiably - say it becomes inconvenient, I would say really inconvenient to have a student in the school, even though they have been going there or maybe they develop a condition

while they are going to the school, or maybe they have been going to the primary school of that private school or whatever, and then it becomes hard, at the moment they can't ask you to withdraw your child on unjustifiable hardship grounds. With the education standards they can. Have you not heard this argument yet?

MRS OWENS: No.

MS McKENZIE: Not yet.

MS BLADES: I had this discussion with Graham Innes, from Human Rights Commission, two years ago and he said that initially that was the intention, that they wanted the section 11 to go right across the board.

MS McKENZIE: But it's not there at the moment.

MRS OWENS: But how can a standard operate inconsistently with the primary legislation?

MS BLADES: Because HREOC holds that the standards override, that they will be the legislation.

MS McKENZIE: How can the standard override the legislation? I'm not a lawyer so I don't understand how that can be the case. Surely standards should be consistent with what's in the legislation.

MS BLADES: Yes, you would think so, but it's not what they are saying. I'd have to go back. I'd be really happy to - - -

MRS OWENS: No, there's no need. We will ask.

MS BLADES: Okay.

MRS OWENS: That's a most unusual interpretation.

MS BLADES: And if you go to a number of the comments to the draft, from about 18 months ago, you will find there is a lot of concern about it.

MRS OWENS: That's a very helpful comment.

MS McKENZIE: Would this have been one of the issues which would have held up the education standard that has caused problems or has it been other issues?

MS BLADES: I don't know why it hasn't gone through in the bill, but at the

moment there's another paper out, another consultation paper out in regard to those standards, about the impact of the standards, and I've only just been sent it probably about two weeks ago, so I haven't had a chance to actually get right into it.

MS McKENZIE: It may be not held up it's just that all these standards - the processes - seem to be quite long because of the consultations.

MS BLADES: It's interesting though that they've put out another paper, because it's at the stage of being ready to go through - the bill is ready to go through. I think that they are aware that there may be substantial financial impacts on governments as well, in education.

MS McKENZIE: But what about the substantive issue about being able to use unjustifiable hardship once the children are enrolled? Do you think that that's appropriate or not, regardless of what's in the act because we are reviewing the act?

MS BLADES: How I see it, currently, is that you are narrowing the scope of the act yet again, if you expand the defence. I'm a legal advocate for people with disabilities, and I'm really reasonable, but where the objects of the act are being narrowed by the expansion of a defence I have a real concern.

MS McKENZIE: Unless you want to add any more to these things, can I move on to ask you about some of the exemptions?

MS BLADES: Yes, please do. I'd really like to address the workplace exemptions.

MS McKENZIE: And there are a number of others you have mentioned as well. The insurance one, perhaps to start with.

MRS OWENS: There are a lot of good issues.

MS BLADES: I do a lot of systemic work at the moment, and I had a number of the employment agencies that assist people with disabilities to get back into work, by educating workplaces, by one-on-one networking with employers and educating employers in disability awareness, helping the person train, helping them in the workplace, negotiating with the employer around accommodations et cetera. A number of those agencies have come to me and said, "We are having a really bad problem about WorkCover." Clients with disabilities, employers - they are approaching employers and the employers are saying, "Yes, we'll take them on."

They come back and they say, "Our insurance company won't cover them for WorkCover" or "The premium they want to charge us is so exorbitant that it's not profitable for us to take a person with a disability on." As you would know,

WorkCover is compulsory to a subscription by the employer, so what you're getting is they're just not employing people with disabilities. So recently what has been happening is that the employer and the person with a disability have been coming to an arrangement whereby the person with a disability either pays the WorkCover so they can work, they pay the employer's part of it, or they go and try and get private insurance for accident, personal accident.

MRS OWENS: That's a completely different treatment from the treatment that is given to non-disabled people when they join.

MS BLADES: Recently I had a client that we're going to try and run as a test case, who applied for private insurance, personal cover, personal accident insurance, and was rejected by a major WorkCover licensed insurer.

MRS OWENS: But they were applying for private insurance not for WorkCover.

MS BLADES: Yes.

MRS OWENS: I mean, it wasn't part of them trying to get a job.

MS BLADES: Yes, that's right. But it was - and he would then work as a contractor to the employer so he could still work.

MS McKENZIE: This is a way of getting around the problem, that he was not insurable by the - - -

MS BLADES: Yes. This is what WorkCover - trying to find all ways to get around, and he was rejected on the basis that he had autism. So then we get to insurance companies rejecting people on the basis of a disability, which is a label and not actually the person's disability. So I'm now investigating that. I also have been really lucky enough that the WorkCover Board Tasmania is investigating as well. So I usually would do a direct approach like that to some commission.

What I found is that - I've put two examples. We've got the one that HREOC came across where it was a woman with post-natal depression. The depression has nothing to do with her workplace and is not triggered by her workplace; it doesn't affect her work. We've got my client who has Asberger's syndrome, has a long work history, is obsessive about safety in fact - which is why he's a really good worker - and is rejected on the basis that he has autism. Now, as you know, autism is a very broad label for a range of conditions that at the lowest end could be - at the lowest functioning end, yes, could be a danger in the workplace or could be a danger to their own safety. At the Asberger's level, very unlikely. I mean, Asberger's was hardly recognised as a problem even, until recently.

So they're not taking it on - the actuarial data that they're putting up isn't necessarily accurate as the gentleman said before, but they're applying a broad label to people as well, and just rejecting them out of hand, so they're not looking at the individual.

MS McKENZIE: The degree or the type of disability.

MS BLADES: No, nothing. Then they're going - but they've got this hole to do it because they're supposed to have the actuarial data or any other relevant circumstance - what is it I've got in here? I've got - well, "if it's reasonable having regard to any other relevant factors" - that is so broad. That is just another legal argument.

MRS OWENS: It's a really broad clause, that one.

MS BLADES: Well, you know, autism - they've got heaps of relevant stuff about autism but we're talking something else; we're talking Asberger's syndrome.

MRS OWENS: And there will not be very much information out there about Asbergers because it has only been recognised as a syndrome. I think it's coming into the front of people's consciousness but the insurers won't have much information about that. We heard a really interesting story - it might have been before Cate came on board - about somebody with Asberger's syndrome who had been employed as a quality control officer. He was obsessive about quality.

MS BLADES: We've got one as an auditor.

MRS OWENS: And the very, very best person you could possibly have in this job. It's a terrific story because he really enjoys the job and does it really well, because he's got that sort of obsessive streak.

MS BLADES: Is that one of the employment agencies here?

MRS OWENS: I don't know. I heard about it on one of my visits but I can't remember which one it was.

MS BLADES: We've got one up in the north and he's got obsessive compulsive and they've put him in as a auditor, and he's got the commercial background and training as well, and that's great.

MRS OWENS: A beautiful fit.

MS BLADES: Yes, exactly. Yes, it can be done. So, yes, there's real problems with the insurance companies. I know HREOC have been negotiating with them around the mental health, and so has the Australian Mental Health Foundation, and that's great, but they obviously need educating, and that clause really needs narrowing in regard - any exemption needs narrowing as far as I'm concerned.

MRS OWENS: Should there be an exemption at all?

MS BLADES: Well, I can't see how they don't fit in the same way that other respondents do, in that if it's reasonable - like, if it causes - if they use a defence and they can prove it, like they did with the AIDS case in South Australia - do you remember that case? I'm just trying to remember his name, because I was there when it happened. I mean, once they had actuarial data about HIV and AIDS, then it was reasonable for them to reject his claim. Later down the track they'll still be using it but circumstances change. HIV isn't necessarily a death sentence any more, or a high dependency sentence either. So I mean, I think they should be put to the test the same as any other respondent.

MRS OWENS: Thank you.

MS McKENZIE: And you want to talk about other workplace exemptions. Is that right?

MS BLADES: Yes, I do. I've had long discussions about this with one of the major unions down here, and I've been watching this - acts done under statutory authority I say should be repealed. I make an exception to the first part of that section which is a court order, but the prescribed laws - we've got 47(1)(c) to start with - is the industrial - where AWAs, awards, EBAs, anything in regard to minimal wages, they're exempt. That's a permanent exemption. There's a number of arguments that I want to put up. AWAs and EBAs require consultation with the worker, and most of these people who they're trying to cover here are people in sheltered workshops. These people don't have the capacity to negotiate with informed information, really in an informed way to negotiate an AWA nor to consult with on an EBA.

In regard to awards, a number of awards have separate sections for people with disabilities, and they haven't been thought through. They've been done from a touchy-feely stance; they've been done as a favour. I know this. It hasn't been thought through. There was no consultation from disability experts and the workplace in regard to a number of these awards - or the ACTU attitude to it. The fact that people with disabilities are dealt with separately in awards is discriminatory on its face. They should have the same industrial rights as anybody else. At this moment in time, all this exemption does is allow people to exploit people with disabilities, specially intellectual or mental disabilities, to give them lower wages

than anybody else for the same amount of work.

At the moment I think that this section erroneously measures a person's wages by their capacity. These people work for a dollar a day; nobody has that little capacity. I have a client who gets \$4 a day because she's blind, and she's doing a traineeship, training to be a telemarketer. There's nothing in her being blind - she is profoundly blind - that differentiates her from her co-trainees in her ability to perform the job; it's on the phone. She doesn't have to do paperwork. There's no difference. They earn \$11 an hour, she gets \$4 a day. The old excuse has been, "So we don't rob them of their pensions." I'm sure these people would rather have a wage.

MS McKENZIE: But in any case it should be their decision.

MS BLADES: That's precisely right. That's exactly right.

MS McKENZIE: If they prefer to have their pension, they may want to perhaps not do that job or they might want to negotiate some other outcome, but if they want - yes, it should basically be their choice. But isn't there another reason perhaps why such an exemption might be put into an act?

MS BLADES: Special provisions? Are you talking about positive discrimination?

MS McKENZIE: No.

MS BLADES: Sorry.

MS McKENZIE: What I'm thinking about an exemption like this, to do with awards and so on, is that these are creatures of a different system. There's a different commission that looks at these matters. There's a different legislative system that applies, and I'm just really wondering if one took out exemptions like this, how does it work when you have two commissions with responsibility? In other words, I'm wondering whether the way the address it would not be by some appropriate amendment to the Workplace Relations Act, perhaps in conjunction with removing this exemption?

MS BLADES: The Workplace Relations Act is in the middle of being changed at the moment, so it is quite complicated - complex - the changes that are being asked. This is where I am at the moment. I don't usually appear before the workplace relations stuff but I will be in regard to these issues, and I'm suggesting that this needs to be repealed; it should not be exempt from discrimination of my clients.

MS McKENZIE: But there also needs to be some - if it's going to be repealed there

needs to be some consideration of how the two systems then mesh.

MS BLADES: Yes. Certainly it needs to be thrashed out a lot more than the way it stands.

MS McKENZIE: Yes.

MS BLADES: Section 47(2) where a prescribed law is exempt from compliance with the DDA: quite some few years ago, like if you look at just straight section 47(3), that part of the DDA is out of time; that was put in - like there was a three-year limit on that, where some acts were prescribed at the time of this act coming into being.

MS McKENZIE: So it was a transitional act.

MS BLADES: Yes, that's right. That should be repealed out of hand, but what happened was that when I was in South Australia and that time limit was coming up, state attorney-generals were asked did they have any laws that they wanted to put up for prescription or re-prescribe. In New South Wales the whole of the Mental Health Act was put up. I don't know if you recall that. Right. I don't know what the outcome of that was, but the disability community should get to have a look at what laws are now prescribed as exempt from compliance with the DDA, and I think it should be that whatever is being prescribed should be reviewed. Whatever gets prescribed should be reviewed because things change. It shouldn't just be permanent exemption.

MS McKENZIE: How is a prescription done? It's done by regulation, isn't it?

MS BLADES: Yes, as far as I know. When an organisation applies for exemption it has got a time limit on it. Legislation sometimes runs out of relevance, and sometimes things change in the disability community, so that's pretty much what I wanted to say about those exemptions. The exemptions for migration: now, you have another submission by Placido Ballado - he's from the DDA network as well, and he addresses this. I don't know if you're going to address it, but he has asked me to address this for him as well, and so I've put it in. He refers to the case which we've able to find the citation for, but the Human Rights Commission are aware of it, it did go through and it did go to Federal Court where a person who applied for admission to Australia - immigration status was married to a man, an Australian citizen, who had an intellectual disability. Do you know this case?

MS McKENZIE: No. Do you know what it is called?

MS BLADES: No. We are trying to get the citation through Karen Toohey at the

moment in HREOC, and we will get it to you as soon as we can.

MS McKENZIE: Good, thank you.

MS BLADES: This woman was refused on the basis that her husband had an intellectual disability. He was the Australian citizen, okay? It went to Federal Court - I'm just trying - one of the bases is that it has to be a genuine and continuing relationship. Because he had an intellectual disability they determined that it wasn't a genuine and continuing relationship, on that basis.

MRS OWENS: So people with an intellectual disability can't have genuine and continuing relationships?

MS BLADES: A complaint of disability discrimination was put in by the agent. It went to Federal Court and the ruling was that an immigration ruling, under the Migration Act, can include the spouse, even if they are an Australian citizen, because the Migration Act is exempt from the DDA.

MRS OWENS: I don't understand the logic of that.

MS BLADES: It's a way for them to be able to apply discriminatory actions and decisions without being - because they are exempt.

MS McKENZIE: Certainly under migration law - and I'm not a migration law expert - my understanding is that under the Migration Act there is different treatment of disabled people from other countries who apply to migrate here.

MS BLADES: That's right.

MS McKENZIE: There are agreements they have to enter into, if they are given permanent residence, that they won't claim benefit or benefits for a number of years, and often they are refused permission to migrate on the basis of medical examinations. So there are lots of areas under that act where people are dealt with differently because they have a disability.

MS BLADES: But those people aren't Australian citizens, and what we are looking at here is discrimination on the basis of an Australian's disability.

MS McKENZIE: Yes.

MS BLADES: You can see I have talked about the combat duties in the armed forces. We had some cases where a woman was refused application to the armed forces on the basis of an imputed disability. How this came about was - this was a

case that the DDA in Melbourne had. It didn't go all the way through because of the emotional consequences on the family. The woman applied, she was in perfect health, but on the application form it required her to disclose that she had wet the bed until she was 12 or 13. On that basis it was decided that she had an underlying psychological condition and was refused.

So what we have found is that the exemption for combat duties, combined with the defence regulations, makes it so broad an exemption that you get something like that and you get an exemption from even positions such as admin staff, stores, PR people and recruitment people. So although the act is talking about combat duties, combined with the regulations, you can't get in the armed forces in any capacity if you have any form of disability, or imputed disability. I mean, at this stage we're just asking that they not be exempt from imputed disabilities, because this person didn't have a disability.

MS McKENZIE: And you want administrative duties also exempted.

MS BLADES: Yes, not exempted.

MS McKENZIE: Yes, you - - -

MRS OWENS: Not exempted.

MS McKENZIE: Yes, that's right, sorry.

MS BLADES: Yes, okay, so that one is pretty clear I think. You can see the exemption - we would like people to put forward action plans.

MS McKENZIE: Yes.

MS BLADES: My last point is action plans. I knew this for quite some time, but I was really aware that the disability community was not aware of it. That is that the Human Rights Commission, when they were down here last on the 10 years' celebration and in frequent occurrences where I've seen them speak, talked about the positive aspects of action plans, and you have heard me speak about the positive aspects of action plans. However, the disability community has been very unaware, and have been kept unaware, that those action plans don't have to be compliant with the DDA. You can put in as shitty an action plan as you like and it is accepted - - -

MS McKENZIE: So it's not checked for compliance - - -

MS BLADES: No, yet you can bet anything - that's what I put there. My reasons around it is, if that is not clear that it's not checked it should be checked, because it's

held up as a way - because at this point in time both the organisation, or respondents, that are putting in action plans, and the complainants, are under the belief - they labour under the belief that an action plan prevents you from taking out a claim against them. It's used almost as a defence. They think it protects them from liability. Organisations think it protects them from liability.

The DDA network, the legal network, sees action plans as a really valuable tool towards compliance, and we think they are really underused. We think that HREOC should check action plans and make sure they are compliant. We think that that's the conciliation tool that can satisfy everybody, both claimants and organisations. It takes care of unjustifiable hardship or unreasonableness. HREOC do have the skills, they have the national network in the industry and in the disability community to determine if action plans are compliant.

MS McKENZIE: If action plans were determined to be compliant, it would then be fair, would it, to say that they could be a defence?

MS BLADES: That's what we talked about. It could be used as a conciliation tool very easily, because what you're saying is, "Yes, that action plan is compliant with the DDA. Is it a reasonable action plan?" "Yes." I mean, you get a chance to comment on it. At this point in time action plans - unless somebody from the disability community or someone else goes and checks an action plan is compliant, and makes a complaint about it in the normal DDA framework, then they just sit there as is.

MRS OWENS: But these action plans at the moment are voluntary.

MS BLADES: Yes.

MRS OWENS: So I mean - I don't know how far a complaint could go against an action plan itself, because they are just voluntary. Some have argued to us that perhaps they should be mandatory. Have you got any views on that?

MS BLADES: I think that they are a really valuable tool. I think that action plans should be used and have more power than they do. I would really have to think through the mandatory argument. I would have to think it through as to the consequences and the reasonableness of it. I think they are undervalued at the moment and they are under - they are not used - - -

MRS OWENS: Underused, yes.

MS BLADES: They are not used as they should be. So although they are voluntary, at the moment they sit there as a defence. You know, they do. They are

not a real defence, but people think they are. Even the transport standards that came out, people - you talk about the 20-year action plan by Metro buses here, and everyone is told about how wonderful it is. We don't know. We're taking HREOC's word for it, unless I want to sit there and pore through it.

MRS OWENS: We've gone over time, Judith, so - - -

MS BLADES: I'm finished.

MRS OWENS: Sorry, I didn't mean to cut you off - - -

MS McKENZIE: I've asked all the questions I need to ask.

MRS OWENS: You have? Yes, I have to.

MS McKENZIE: That was a really helpful and very interesting discussion.

MS BLADES: Thank you.

MRS OWENS: I just wish I had trained as a lawyer now. Thank you very much. We will break for five minutes.

MRS OWENS: The next participant is Mary Guy. Mary, could you just repeat your name and the capacity in which you are appearing today for the transcript?

MS GUY: Mary Guy, and I am here as an individual.

MRS OWENS: Thank you for coming, Mary, and sorry for the slight delay in talking to you, but we are running just a little bit behind time.

MS GUY: That's fine.

MRS OWENS: We've now received some points that you want to raise and, as I said to you before, we could maybe just go through each of those points one by one. Do you want to introduce the first point?

MS GUY: It was simply that - and my friend from Launceston that was here prior to me was bringing up the same issue, and that's in reference to the action plans and that many people believe that the action plan, once it has been put into place and it's said it has been accepted by HREOC, that that then leaves the organisation - or whoever, and that includes organisations like local government - to just go on doing what they're doing and think that that exempts them from any claims but, of course, that's not correct. It also concerns me that there isn't any checking of the action plans and some of those action plans have actually now been in place for the 10 years that the DDA has been in place.

MS McKENZIE: And they've not been changed.

MS GUY: And they've not been changed nor are they reviewed. In Tasmania I only know of two organisations - and one of those is a local government - that actually spend any time reviewing their action plan, seeing where they have reached in a certain time, why they haven't got further, and what they're going to do about it.

MRS OWENS: There's not much point, is there, having an action plan if you don't come back and say, "How are we going with our plan and are we achieving the objectives that we set ourselves?" HREOC is not saying to these organisations, "You need to do this"?

MS GUY: Not to my knowledge. I know that I was involved with the Metro action plan that was some years ago and, although now they have actually put on 10 accessible buses in this state, we are still years behind other states in having accessible transport and, every time you bring this up, it's, "We've got an action plan and we're working to the action plan." But now I am pointing out to them that, "The action plan was put into place approximately six or seven years ago and 10 buses doesn't mean that you are accessible in any other real way, and maybe it is about time

you started reviewing the plan before somebody really does something about it," but many people - particularly people with disabilities - believe that if an organisation says they have an action plan, then HREOC is saying, "Well, now, they're okay. They're working towards becoming an equal opportunity area and you just have to be patient."

MRS OWENS: You said you got 10 buses - accessible buses - out of how many? This is in Hobart?

MS GUY: There are 10 accessible buses in Hobart and, except for one privately-owned one on the north coast, that's all in Tasmania out of some several hundred vehicles.

MS McKENZIE: 10 in the whole of Tasmania?

MS GUY: 10 in the whole of Tasmania. My understanding is that there are another 10 on the way, but sort of in Tasmania you don't hold your breath, waiting.

MRS OWENS: Do you have timetables that tell you when those buses are going to be going and where they are going to go or is it just - - -

MS GUY: Yes, now we do, in the last couple of months. There were a lot of issues about - the buses were actually on routes, but nobody was being told where they were because people might want to use them. Then of course, getting one to go somewhere, you might want to come home, and so it was a major issue. Now there are timetables, but there are major problems with the timetables.

MRS OWENS: And with the action plan that they say they are complying with - that they are working through - is that plan out there in the public domain for you to look at and to comment on?

MS GUY: When it was first worked on - which, as I said, is about six or seven years ago - they got together a group of people from various areas, who worked on the plan, but it was never highly consulted with around the state and then it was just agreed. Metro decided that that was okay - they would work by that - and now of course they are still using that action plan as we are working towards an accessible transport system. My honest belief is that they're using the action plan - like many other organisations - as an escape, and they're using it as an unauthorised exemption. People believe it has some authority because HREOC said, "You've done an action plan."

MRS OWENS: Yes. You have raised some important issues there, just in terms of the process of putting an action plan in place; the extent to which it should be

checked by HREOC; the extent to which it should be reviewed, and there is another issue as to what do you do if the review shows that that action plan is not being met and whether there should be any enforcement of the plan. Whether HREOC should have the power to say, "You've got a plan in place but you're not meeting the objectives of your own plan."

MS McKENZIE: One possible sanction - in the worst case - would be to either direct them to amend it - to fix it up - or direct them to withdraw it, so they have no more, even perceived, protection from - - -

MS GUY: The last option I believe is the correct one because people still believe - even after 10 years - that action plans do have some form of accepted compliance to the DDA.

MS McKENZIE: Yes.

MS GUY: And of course they don't. They are just stated facts that, "We may do something in a given time frame" and there is no action taken if they don't meet it.

MRS OWENS: That was very useful. The next point?

MS GUY: I guess the next point is probably the most important one I consider out of all the things that I have listed here, and that is that there doesn't seem to be anything in the DDA that really enforces state governments to ensure that the state government legislation meets any quality at all, and we have a prime example in Tasmania at the present time because of the current legislation for wheelchair cabs. For some odd reason they come in under a different form of legislation to all other taxis in Tasmania and we now have a huge issue where the taxi companies - because of that odd bit of legislation, which is simply a loophole - can discriminate against people in wheelchairs in their cabs by having an added cost to the cab. So they have got a cost of \$15 when you get in the cab and yet the ordinary cabs have an average flag fall of something like \$2.80, so before you leave your abode until the meter runs up \$15 you have to pay \$15. They introduced it themselves and the government says they don't agree with it, but there is a loophole in the state legislation that allows these particular cabs to do this and, although they could have plugged that hole, they are refusing to do so, so the state government is actually allowing this discrimination to go on right now.

MRS OWENS: There is more than one taxi company.

MS GUY: Yes.

MRS OWENS: I presume they have all got the same flag fall, have they?

MS GUY: Yes. In the south there are three cab companies and there are nine cabs in the south of the state and there are a few in the north - on the north-west - and they're all applying this \$15 and then, if it's weekends, one of those companies is applying an \$18 fee, so before you go anywhere it has cost you \$15.

MS McKENZIE: Even if you go on a two-block trip?

MS GUY: Yes.

MRS OWENS: That's an enormous amount to spend, isn't it? You don't have enough buses and you have expensive cabs.

MS GUY: Very expensive.

MRS OWENS: I mean, you have got to pay the fare on top of that.

MS GUY: And you cannot get those cabs - very rarely of an evening. After hours or of a weekend it's very hard to get cabs in Tasmania and we seem to be constantly told, "But we're changing it. You will eventually get cabs." I've been told that for 16 years.

MRS OWENS: Who tells you this?

MS GUY: The Transport Department here - the area that is in control of all the taxis in Tasmania, including the minister for transport at this stage in Tasmania, who, nine weeks ago, told me he would solve the problem in due time. In the meantime, it is now discriminating against many people because - when this costing was added on last October and was not publicly advertised that people would be treated like this - it is now stopping a lot of people from going and doing their shopping and things like that because, if you imagine, if you add on \$15 to a cab fare that really should only cost you about \$7 at the most, people can't afford to go out if they're on limited incomes and that's the only transport they have.

MS McKENZIE: And does this Tasmanian law actually say that they can do that - they can charge that - or does it just not prohibit it?

MS GUY: It doesn't prohibit it for these particular cabs but, if it was the average cab, it would prohibit it.

MRS OWENS: It is just for these accessible cabs.

MS GUY: Yes.

MS McKENZIE: Yes, so if it was just a normal cab they couldn't charge you - - -

MS GUY: They couldn't do it.

MS McKENZIE: - - - a \$15 rate flat for - - -

MS GUY: That's right. They couldn't put on their own charge. They are bound by law to have the correct charge and run by the meter.

MRS OWENS: Cate is our legal expert, but I don't know whether - does the Disability Discrimination Act override state legislation?

MS McKENZIE: Not at the minute.

MRS OWENS: No. It potentially could.

MS McKENZIE: Yes, theoretically it could - not at the moment because it has got a provision that says that if it's - that state legislation which is capable of operating with it can, so there is a sort of grey area about that. There are other discrimination acts in the Commonwealth - like the Race Discrimination Act - which does deal with inconsistent laws specifically, and maybe that is something we should look at.

MRS OWENS: But there are no constitutional barriers - - -

MS McKENZIE: No. Unless - well, the answer is no, because the way it's done is by looking at the inconsistency of laws provision, so not if it's done in certain ways but there will be if it's done in other ways. It's quite difficult, technically.

MRS OWENS: Thank you for that point.

MS McKENZIE: That is really helpful.

MRS OWENS: We'll look at that issue, as well.

MS GUY: Thank you very much. I'm not quite sure if it does come under the act, but the fact that it takes so long to get a case of discrimination heard - I'm not sure in other states, but I do know in Tasmania it can take up to two years or more to get a case actually heard before - even just to the conciliation hearing stage, and then if it's settled there that's fine or then onto further action if that was needed. So many people hesitate to use the act as it stands at the present time because of that long delay and the trauma and stress of going through what many people see as a huge legal process.

MS McKENZIE: So up to two years - this is under the DDA - up to two years before even a conciliation?

MS GUY: Yes. At this stage, in Tasmania, it can take up to two years.

MRS OWENS: Does that push people into the Tasmanian system?

MS GUY: Many people don't - I don't think many people know about the Anti-Discrimination Act in Tasmania as they do about the DDA, because I think the DDA has been heavily promoted and, of course, through the disability sector it is heavily promoted, although we try to tell people there are two acts; one is state and one is national. But I believe it still takes nearly that time if you use the Anti-Discrimination Act. It is a very long process. Many people - it greatly affects people with disabilities of - comprehension disabilities and areas like that, but it also affects many people with other types of disabilities, particularly psychiatric, mental health issues, and also people with physical disabilities where over such a prolonged time, just to talk to people, it is not always possible to get the physical support they may need, or the other support they need, over such a long time. So many people get to a certain part and then they withdraw. Then of course the people that they have put the complaint up against says, "Well, we got away with that."

MRS OWENS: Plus, if there is a hearing in Tasmania you've got to actually get there, don't you?

MS GUY: That's right, and at this stage if you have a physical disability in particular that is a major problem. Just to go to one, two or three it's very expensive, if you've - well, even if you're only around the corner now, but it's also the fact of whether you can get the transport when you need it.

MRS OWENS: Have you ever been tempted to mount a case on any of these issues that you've dealt with?

MS GUY: The reason I knew about the long time was because I did mount a case under the DDA. That was a local government issue and it took just two years to get it to conciliation. Then when I realised that it would take at least another 12 months to go any further, the energy you had to expend to do that just didn't seem worthwhile. So we - - -

MRS OWENS: So you withdrew?

MS GUY: No, we went to conciliation and signed a contract and hopefully we both keep to it.

MRS OWENS: I mean, obviously we can't ask you the details of the case, but we're always interested in these process issues, because that's what we hopefully will be able to improve through any changes.

MS GUY: It seemed to be a long, slow process, and then when we started to put the time frames together it was just on two years when we reached conciliation, a meeting in the commission, conciliation.

MRS OWENS: There is also another issue that people raise with us about why they settle or withdraw, and that is because of the potential costs that they might face if it does end up in the Federal Court. Was that also a consideration?

MS GUY: That is a major consideration for many people.

MS McKENZIE: Do you want to go to another point?

MS GUY: Okay. I believe that the legislation, now that you are looking at it and reviewing it, needs to be strengthened so that penalties of some form are there if people continually offend against the act. In other words, if they have come to conciliation, they make an agreement and they break the agreement, it takes you a long time then to get it back, or while that is going on they are breaching the act in many other ways. I do know that that has happened a great deal in Tasmania and in Canberra, because I've spent a lot of time between the two. I know that it is a constant thing in Canberra and discussed with groups of people with disabilities where there are access areas buildings - they just keep - it goes on and on and on, even though they may have faced a tribunal.

But then you have the offender again a couple of years later coming back with a similar issue and the argument is, "Well, we knew we weren't allowed to do that, but we didn't know that it extended to this." So it's continual. I just feel that maybe after 10 years we need to say, "All right, you've had 10 years to know that now there is an act." Maybe we should be making the act stand up for itself as well. Make it either really worthwhile or it's not going to help people much in the future.

MRS OWENS: So you would need to monitor people's compliance, wouldn't you? You would have to have some sort of monitoring process.

MS GUY: I believe so. I would have thought after 10 years that there would be something introduced, but, like the action plans, I don't think - I think once something is believed settled it's settled until it comes up, but you would know after a while that this person or organisation has - - -

MS McKENZIE: Just flouts the act and doesn't - - -

MS GUY: Yes.

MS McKENZIE: So you would want it to be a criminal offence with a penalty attached?

MS GUY: I certainly would like to see it with a much greater amount of enforcement than there appears to be at this time. I guess after you breach a federal legislation so many times, I guess it does become a criminal act. But I'm not a lawyer. All I know is that what appears to me to be fair or unfair, and I think that the DDA in its conception was to try and make the country more fair to people with disabilities.

MS McKENZIE: There are some provisions like that in some of the vilification laws in different states where - it's hard to talk about normal vilification, but not very serious vilification - goes in the normal way, just as if you were going to make a discrimination complaint. You just make a complaint about it to whatever commission - you know, whether it's an Anti-Discrimination Commission or an Equal Opportunity Commission - that has that role in that state. But if the vilification is intentional or deliberate, serious or repeated, then it becomes a criminal offence. So perhaps that might be a model for - - -

MS GUY: I guess it could be, but I just think that if you keep breaching a legislation repeatedly, and I think more than three times should be quite sufficient to get the message that it's not acceptable - - -

MRS OWENS: If it happens twice you could have a warning-type system in place.

MS GUY: Yes.

MS McKENZIE: Okay, your next point?

MRS OWENS: I think this is the last point on your list.

MS GUY: This is one that I guess has come up in many areas of Australia I visit, because of my connections with many organisations and at national level as well as here in Tasmania. That for people who are highly active, or even just attend a hearing like this, where they do not have the ability to be able to write - that is in physical form - or because they may not be able to write for other reasons, they are not allowed to use some form of note-takers, electronic note-takers, for their own use - to be able to take notes and retain that information so they can then use computers - to dictate it back to the computer - to put it into a computer or whatever they use as

their written form. I have found that because of my connections with local government, I'm an alderman in a local government area in Tasmania along with being affiliated with many other organisations, I cannot write notes such as you are doing now and yet many times I've been told, "You cannot use a note-taker."

MRS OWENS: Why is that? I don't understand.

MS GUY: Because if one other person in a room objects, then they have the right to object and they say that that stops them from participating in a comfortable manner, so I don't have the right to - because I might use it in the wrong way afterwards.

MRS OWENS: I find that bizarre.

MS GUY: So do I. I find it very limiting. Also I have been informed several times at meetings, "This is a meeting, so you cannot have another person with you physically to write the notes down either", which - there have been pages in my hands, but - so I am limited and so are many, many other people, because of it. Over the last four years this has come up on several occasions, and I know that there are areas in the act that look at alternative ways of communication, and part of communication is being able to retain information at any given time you hear it, and yet we are deprived of that.

MRS OWENS: I couldn't function from day to day unless I had my notes. I use a notebook. Now, Cate is going to get spare tapes after this session - - -

MS McKENZIE: I use tapes to make my own notes.

MRS OWENS: And makes notes later. I mean, everybody needs something to have a retrieval mechanism.

MS McKENZIE: Everyone uses some different set-up, but to actually stop you using whatever set-up you want to use is hard to understand.

MS GUY: Well, it is happening here.

MS McKENZIE: That's good to know.

MS GUY: I was just wondering whether the legislation at this stage does have any form of a way we can address that issue without having to yell every time, "If you don't let me do it I'll take up the case with the DDA or the Anti-Discrimination Act." Often you feel very uncomfortable having to be doing that all the time.

MRS OWENS: In your role as an alderman you've come up against this issue?

MS GUY: Yes.

MRS OWENS: They won't let you use, say, a tape-recording device?

MS GUY: If I actually took a note-taker into the council chamber there are five aldermen that would walk out and refuse to participate in the meeting.

MRS OWENS: I think we need good education.

MS McKENZIE: But the aldermen, presumably, take notes themselves.

MS GUY: Of course, that's different. Their notes are private notes written by themselves.

MS McKENZIE: So are yours. They are just done differently.

MS GUY: Their fear is that I could use them inappropriately outside of that meeting.

MS McKENZIE: So could they.

MRS OWENS: So could they. They could just walk outside that meeting and transcribe them or read them out to a radio station, or whatever they wanted to do.

MS GUY: You're a politician, are you?

MRS OWENS: No, I'm not a politician. Never have been.

MS GUY: I just thought you must know how we work.

MS McKENZIE: We might be finding out.

MS GUY: But they are issues that I have never heard discussed in all the other areas that I have been involved with disability issues, the Anti-Discrimination Act, the DDA. It is one of the few - we often hear about alternative, and that is the opposite way of getting information to people, and tapes are quite acceptable - that way of having things transcribed - but not you using it the other way, you having some form of note-taker, an electronic device that will take down notes in some form.

MRS OWENS: Why don't you, Mary, go to your next meeting and say, "I'll walk

out if you sit there and write your notes." I mean, if you can't use your whatever means to take notes, nor should they be able to. It's very unfair.

MS GUY: That's true. I guess the thing is that I would probably have a lot of free time to myself, because I have a feeling they would accept my offer. I think if I just said, "Well, if you don't allow me to take notes my way I will leave," it's, "Well, leave." It has got to work so that they have to accept that some people do things differently.

MS McKENZIE: Absolutely.

MRS OWENS: You haven't thought of bringing this to the attention of the Anti-Discrimination Commission?

MS GUY: I have several times, but I thought it was a long time to wait to be able to take notes. I would probably be off council and most of the committees I'm on by the time it gets to the end. Yes, I have, and I have been giving a lot of thought in the last three months to whether I would actually do something about this one, because I think it needs to be really tested to enable people to be able to participate in a much fuller way. It stops the dependency on another person writing notes and interpreting them their way as well, so it does leave you at a disadvantage. It's not only just the fact of someone writing down notes for you, but often they take the notes under their own interpretation of what they're hearing rather than the way you want, and then it takes a lot more to use them later because people think in different ways.

MS McKENZIE: That's a point that has not been raised before and a lot of perspectives you have given on the various issues you have raised are different. That's what we're finding with the submissions - that it's really good to look around a problem, as well as at a problem, and that's really what we're doing.

MRS OWENS: Mary, are you on the National Disability Advisory Council?

MS GUY: No.

MRS OWENS: You were just saying that you went to Canberra .

MS GUY: I spend a lot of time in Canberra. I spent a lot of time around the country now I'm involved with a national organisation, NARCAM, which has a broad range right across the country. I also represent the advisory committee - I'm the chairperson of the advisory committee in Tasmania and I do travel between the different states in that role as well, besides other things, and I do have a connection with the national advisory committee through the state advisory committee.

MRS OWENS: Do you want to comment on getting around in aircraft between states?

MS GUY: I thought we had to keep the language polite.

MRS OWENS: Well, not entirely polite. Just give us some experiences - - -

MS GUY: There are major issues when you travel particularly with a wheelchair, but even in earlier days there was a problem with people if they travelled with a guide dog, and I've had Help take that issue up several times from here. There are major issues travelling, because of the chair - because they tell me that I can take the chair - it will fit on the plane - but I can't take the batteries, and so of course without my batteries the chair is not much good to me, so you spend quite a bit of time arguing. You find that usually the chair has been taken completely to pieces by the time you get from Tasmania to Melbourne to go on anywhere else, so that when you arrive at the other place you spend about two hours putting your chair together.

Staff have become much more aware of different issues for different people, but they don't allow that it may take you a few minutes longer to do things, and so there is a lot of pressure. I find the hardest thing is for people that are travelling - that the person who has actually managed to travel all around the country and then they're left stranded in an airport because the airline then says, "No. You can't travel on this airline because you haven't got a carer with you." That has happened on quite frequent occasions and I do know that it happened here in Tasmania about two months ago with a young woman who had travelled in without anyone with her on the same airline but, when she arrived at the airport to go back, they left her at the airport. They refused to allow her - unless someone travelled with her - so to get home she had to ring her mother; go back to her house; stay an extra night, and then her mother flew back to New South Wales with her.

MRS OWENS: With the additional costs that that would have incurred.

MS GUY: That's right, and that is a frequent occurrence. They define the disability and if they feel that you will need anything added - yet this young woman, although she has quite a high-needs disability, physical disability, she's quite independent. She only needs assistance on and off the plane, and they had done that coming from Sydney, but the airline refused to do it going back, and yet there were no problems coming.

MRS OWENS: Yes.

MS GUY: The major drama for someone like me is that some airlines refuse to carry the chairs.

MRS OWENS: Which means you can't go.

MS GUY: Of course you can't go. I don't go anywhere without this chair. I don't have a manual chair and I refuse to use a manual chair anyway because, without the batteries and the electronics on this chair, I can't go anywhere. It's my total mobility and it's very hard when you're trying to explain to somebody that it is, but it is, and I don't go anywhere without it. I wouldn't travel anywhere without it.

MRS OWENS: Is there anything else you want to raise with us?

MS GUY: No. That was mine.

MRS OWENS: It was fantastic.

MS McKENZIE: That's tremendous. Very helpful, as well. That's great. Thank you.

MRS OWENS: Thank you very much, Mary, for attending, and again sorry for the slight delay.

MS GUY: The delay was fine. It was interesting to hear the other parties, so thank you both very much.

MRS OWENS: Thank you. We'll now just break for about a minute while we get our new participant up.

MRS OWENS: We will now resume. The next participant this afternoon is Mr K.F. Pennyfather. Could you repeat your name and the capacity in which you appear today?

MR PENNYFATHER: I'm K.F. Pennyfather and I'm here in my own capacity, but as a member of ParaQuad Tasmania, who didn't deem it important enough to make a submission, as far as I know, but as a preamble I must support what the previous - Ms Guy had made. She has covered a lot of areas that are of prime importance as far as I'm concerned, as well, and I may be able to add to them with my submission.

MRS OWENS: Yes, thank you. We have just received your submission, so we haven't had time to go through it yet, but I think we would both find it very useful if you wanted to pull out some of the main points and we can have a discussion.

MR PENNYFATHER: Would that be all right?

MS McKENZIE: Yes, sure.

MR PENNYFATHER: If I could proceed. I have found with the application of the DDA in 1992 there was a mad rush for the enactment. I was in rehabilitation at the time and the now premier of Tasmania was secretary of the Trades Hall Council and he came to me at the rehabilitation centre in Hobart, waved it under my nose and said, "Make sure that everybody around the place knows about it," and we spoke about it and everybody went away, but the three tiers of government I have found - which is the Commonwealth, the state and local - are very loath to implement anything else.

The state put the supplementary act for the DDA but, after that, it mainly came into the realm of the local council under their local council act and their building regulations. They were loath to implement the sections and the building regs of the local council act but, in 1994, they finally made a move to incorporate the relative sections, but they are still looking for areas to get out of their application. The main point - I found that Tasmania is heritage-hungry and, providing you leave the façade of any building that may be heritage-like, you can gut the internal one, so you gut everything out of it and you rebuild it, and then the council says, "Oh, yes, what use is it?" and I said, "It was offices before," but a doctor moves in and they become consulting rooms. He doesn't have to put a disabled toilet in because there's been one before, so he's got there - but in a new building he would be required under the local building act to put it disabled toilets and a ramp.

MS McKENZIE: Even though the use has changed - it's a completely different use from what it used to be - - -

MR PENNYFATHER: Yes, but they say, "Oh, no, it's not. It's offices," but one in point is Hobart Surgical on the corner of Liverpool and Campbell Streets, right opposite the Royal Hobart Hospital. I have need to go to the Royal Hobart Hospital for treatment. I go across to my surgeon, who is in Hobart Surgical. The ramp is about one in six. I've got to get four people to push me up or I'll fall backwards. There are no disabled toilets, yet it was completely gutted and rebuilt, because the council said there's no change of use, but if one is a consulting rooms for a doctor and one is offices for the Federal Police, I can't see they're alike in any way - they're the complete opposite - unless the Federal Police go into examination tables and racks of instruments and stuff - whether they're doing torture, I don't know - but I thought the Federal Police were governed by a reasonable approach to the implementation of the law.

MRS OWENS: Although, even with the Federal Police, it would be nice if you wanted to go and visit the place, that you would be able to have seen them, too.

MR PENNYFATHER: Yes, but the internal thing was completely gutted and each specialist - there are three specialists there - a big waiting room, which you look around and 90 per cent of the people are in wheelchairs. The passageways are very light - I've got to be pushed around to get into mine - Mr Michael Wertheimer's - and there is no disabled ones. If I want to use the disabled toilet I go across to the Royal.

MRS OWENS: You wonder why the surgeons chose that building and chose not to make the necessary changes, given their potential clientele - their potential patents - that are going to come through the door.

MR PENNYFATHER: As far as I can make out from Michael Wertheimer - who's the son of my commanding officer in the navy - he said that they were looking for a building and their architects found this building was available and he went to the government, and the council agreed with what was said and he built them, but they didn't worry about the disabled side of it. They only went with the laws - and again there's no change of use. There's one toilet. That's all you need - there's not a disabled toilet - but a new building - you've got to have the toilets in and the ramp.

MS McKENZIE: So the council takes the view that if you've got a - - -

MR PENNYFATHER: No change of use in their idea; don't touch it.

MS McKENZIE: They don't have to change it.

MR PENNYFATHER: And that's a really salient feature, and with this heritage approach - pull down everything within the building and leave the façade, you don't encroach on the heritage approach, but the internals is exactly the same.

MS McKENZIE: What if the façade has got huge flights of steps? Does that mean that they don't change it?

MR PENNYFATHER: They don't have to worry about it. No, they don't have to worry about it. If anybody has three steps they want to get up, they've got to get somebody to carry the wheelchair up, but I've got to look at places to go and say, "Can I get in?" before I start.

MRS OWENS: I don't know if there is enough choice of doctoring in Tasmania, but I suppose there is always the option of going to somebody else that's accessible.

MS McKENZIE: But that's like saying - - -

MRS OWENS: Why should you, yes.

MS McKENZIE: Why should you have to change your doctor because the premises are not accessible?

MR PENNYFATHER: Yes, well, I mean, it's supposed to be choice, but I mean they sit on the right hand of God - on the left hand is the lawyers - but the point is I find I'm only going to Michael Wertheimer because I've got to. He's the man that handles my worries, and you know that's it.

MRS OWENS: Have you explained to to him or made it clear your views about his building?

MR PENNYFATHER: He just leans back and says, "Ah, you know, Keith, you're really right. You've got plenty of money. Don't worry about it, son. She's right," you know, and that's the end of it. I mean, I don't think I could get serious with Michael - I couldn't - and the other two members - one is a surgeon and he's also my surgeon again, and he - I think he'd say, "Well, I'd rather put in a tennis court than put in an extra chain," sort of thing, but the other one I haven't worried about very much. It goes on everywhere. If they can get around it by the council saying, "No change in use" - that gets you out from the DDA.

MRS OWENS: We'll have a look.

MR PENNYFATHER: It would be an interesting exercise, I feel.

MRS OWENS: Yes. There has been a process to develop access to premises' standards which still haven't gone right through, but there have been arguments put that there are some states - including Tasmania, I have to say, where the standards

are deemed to be better than the Australian Building Code, on which these other standards are being placed, and even with the Tasmanian standards there's obviously ways around them. These standards don't prevent this sort of thing happening.

MR PENNYFATHER: I went to the HREOC people about the building and they pointed out the fact that the ramp was in the building first, there was no change of use, and that was it. And then I started to investigate the matter, you see, and the council came up with the same answer. A ramp could be put outside the building, but they didn't alter the façade. If they put the ramp outside they would have had to alter the façade, you see, to go around the building. But that's just the major point. I mean, there must be other people that are in wheelchairs that are in the same position in different buildings, and there's a hell of a lot going on.

MRS OWENS: But it's not just people in wheelchairs, it's for the elderly and - - -

MR PENNYFATHER: No. People with prosthesis and everything else have got to have help for this sort of thing, and they've got to use disabled toilets. Even in new buildings there are anomalies existing that have been passed by the council, and one of them was constructed in the last 12 months. The anomalies of the disabled facilities are ludicrous. Even when I pointed it out to the owner he said, "That shouldn't be there." I said, "No." But he said, "It was approved by the council and approved by my architect." I found the only one working was the washbasin. At least it was the right height and the hot and cold water was on. The rest of the thing was useless.

MRS OWENS: That's a depressing picture you've just painted.

MR PENNYFATHER: Yes.

MRS OWENS: The other issue you've got here is about the grading of footpaths.

MR PENNYFATHER: Yes. Here we've got another anomaly. When you come from the kerb into the gutter it's nicely splayed everywhere. There are municipalities I go in; there's Glenorchy, Hobart and Kingborough, where it's magnificently splayed. So you come in on your wheelchair and you go down the ramp. Then you hit the gutter, which is a profile adopted by all governments, it's that one along - the little one that carries the water - and then up again. That's not altered. You drive into that, and the angle from that side out onto the road is so much more acute that your front builds in and hits the bottom and you dig in, and you are thrown out of your wheelchair. And the only way I get out, even with the whatsaname, I've got to take my feet off and my carer has got to pull me back and I've got to turn sideways and run out on an angle, and then your wheelchair is out of kilter and you've got a tendency even to roll out then, because they just bring the macadam up, or the

tarmac, to the edge, and they don't worry about that. But if you go to Launceston you will find it's like this table, you just roll in and you roll out. I go up there and I disappear on my own. I don't want a carer. I can go anywhere in Launceston.

MS McKENZIE: So in Launceston it's quite different. How is it configured in Launceston? Is it just flat?

MR PENNYFATHER: It's just that fine over the points. There is hardly any movement shown, hardly any angle at all. But the others come down and they go up.

MS McKENZIE: Too steeply.

MR PENNYFATHER: Yes. They are not obtuse enough.

MS McKENZIE: Is that because Launceston council has adopted something different, or the roads department.

MR PENNYFATHER: The Launceston council is pretty good. The parking - the disabled carparks - they are wider than they've got here. The areas where they park are better off; they've got more of them. And I think they are more disabled - - -

MS McKENZIE: Friendly.

MR PENNYFATHER: - - -friendly, through this Dickinson woman. She's a young lady who has made an issue up there. I think that she is doing everything that's right, whether or not the old guard approved of it or not. But she's the lord mayor, and she has found it down there. But down Brisbane Street and such around there, the town centre, going through gutters is a non-event, you know? You just roll over and you don't know they are there.

MRS OWENS: Coming back to Hobart, where you said you need your carer to help adjust the wheelchair.

MR PENNYFATHER: Yes.

MRS OWENS: There are a lot of people in wheelchairs who wouldn't have a carer with them.

MR PENNYFATHER: No. I could go down there but it would be battling for me to move backwards, to get up the other end, to the far end, to get out of that. They are not going to take the feet off, drive out on an angle - and I'm still in the roadway then.

MRS OWENS: You are still on the road.

MR PENNYFATHER: Yes. And you've got to put your feet plate down. The ramp in front of Hobart surgery, well, here we go again. I went to the council about that because I had to get out of a maxi-cab and roll down the road - of Liverpool Street - against traffic to find an area to get over the gutter outside the old TAA building; that's where I went to. They put one in in front, but into the kerb is a junction box for the Hydro, which has got a steel lid on it, and the Hydro said, "We are not going to move it." So they moved it round the corner. So instead of the area being splayed at the intersection where the lights are, you drive down the road about 20 yards, where they put it in, and you've still got to come up to get in. But the Hydro, there's another here, sort of thing, that's not prepared to move that box; but it would be as large as that table. It lets a couple of people in for the junction there, do you see?

MS McKENZIE: So that's not negotiable at all?

MR PENNYFATHER: No.

MRS OWENS: And you've got the issue of the maxi-cabs themselves, and I presume the same issue as Mary - - -

MR PENNYFATHER: No. The maxi-cabs - this guy really goes - I use, if I use them at all, the Southern Maxi-Cab, which is not a modified taxi in the true sense of the word. It has got a hoist on the back and he has tucked in the hoist and driven inside. But Mary Guy has told me about these modified, elongated Fords with a bubble top, where they put a ramp in and they drive you in and then they shove you around and clamp you down and they're dirty, and everything else. But they are the people that have been in the matter about overcharging. My fellow charges me, with the allowance for the travel allowance that I've got, where the government pays 70 per cent and I pay 30, for a trip to town, they usually end up paying about 7 or 8 bucks each way, which is the average toll rate, but the bill might have been 18 or 19 bucks each way. But overall, the other taxis I don't use, I use the maxi-cab because I know I'm going to be loaded with this other (indistinct)

MRS OWENS: So the government's reimbursement covers both the flagfall and whatever the rate is to the fee?

MR PENNYFATHER: Yes.

MRS OWENS: So at least there's some back for you. But not everybody that is going to be travelling in maxi-cabs - - -

MR PENNYFATHER: No. I think I'm in possession of what of the discount cards issued by the government.

MRS OWENS: But not everybody gets those.

MR PENNYFATHER: No, not everybody gets the transport allowance, you see?

MS McKENZIE: And that covers this extra charge that - - -

MR PENNYFATHER: Well, I don't use them for the extra charge, but if my maxi-cab - he has got a meter in - was going to charge me he would have charged the fare up on the meter. But he doesn't, he only charges me 30 per cent of what's on the meter.

MS McKENZIE: That's not this extra charge that the - - -

MR PENNYFATHER: No, it's only these other cabs - - -

MS McKENZIE: That's just the meter charge.

MR PENNYFATHER: - - -around the town that have been brought in as taxis, in the true sense of the word. They've got a bubble top and they've been cut out and repacked to allow for a ramp on the side.

MRS OWENS: But the meter would build in the \$15-dollar flagfall wouldn't it?

MR PENNYFATHER: The maxi-cab bloke doesn't have it built in, you see?

MRS OWENS: Okay.

MS McKENZIE: I didn't think, from what Mary said, that the meter does build it in.

MR PENNYFATHER: No, well, the other cabs build it in.

MS McKENZIE: The meter shows the meter time.

MRS OWENS: So he is only charging you just the meter component?

MR PENNYFATHER: Yes. I think when he comes up - with the flagfall it's about \$2 I think, when he arrives for me, and then it adds from then on. But a trip from Mount Nelson- where I am - to town is about 14 or 15 bucks I think, and I pay 30 per cent of that return, down here to the building.

MRS OWENS: So there's a bit of flexibility in the different drivers?

MR PENNYFATHER: What you tend to use. But then of course, with the maxi-cabs, he'd like to put more in but he has got a lot of idle time, because certain times of the year - these vans are specially built - they could be lying idle in his yard, yet at certain times you can't get him. So I've got to book about a week ahead, actually, if I want to go anywhere, to say a doctor or to some function. I've got to book a week (indistinct) he's got there. If the school kids are on, after 3 o'clock or until nine - because he takes children - I can't get him. But if I get him in between 10 and 11, I'll get him, and then if I get him after two to three I will get him quite easily.

MRS OWENS: What about night-time?

MR PENNYFATHER: I don't go out of a night-time.

MRS OWENS: But if you wanted to?

MR PENNYFATHER: If I wanted to I'd have to test him for that. I couldn't say what he would do. But I should say, of a night, he would definitely come and get me.

MRS OWENS: But you've got a personal relationship with this guy?

MR PENNYFATHER: Yes. I know the person that is running the maxi-cabs.

MRS OWENS: In your submission you talk about HREOC, do you want to say something on that?

MR PENNYFATHER: Yes. The Human Rights Commission, we were represented here at one stage; they closed down and transferred to Melbourne. And I have found that with any submission I made, even while they were here, we had trouble getting across the fact that it was important that we should do it. They were looking at it and said, "Oh, do you think it's worthwhile?" And when they did they arbitrated the submission, they spoke to these people and they came out with a recommendation. A lot went along and they said, "Oh, well, they've got no power to pay. Bad luck," and just went their merry way. I said, "Well, give these people the power to punish. One in, all in. You can't plead ignorance of law." And that would be the ideal thing for it.

I think the Human Rights would appreciate it too because they could write reams and reams of letters pointing out the things that are definitely wrong and

should be righted. But the person you are complaining against can laugh it off and say, "No". What can they do? Write me letters? I'd tear them up and give them to the WPB." It's not on. But it's the voice crying in the wilderness again. We are a minor body around here. Even representation on government committees, one might be there. Mary Guy is on the premier's advisory council. It's overloaded with out-of-work politicians, party faithful, periphery politicians and would-be's, and they are getting nowhere. I mean, I met one and I think her aim was to see that the join on her stockings was right, and she was just there for coffee and biscuits, you know, and she is a member. It amazes me.

We should have a major representation to enforce what we are there for. I had the instance of one committee I was on, appointed by the state, where I was told by the chairman, because he wanted to move the meetings from Hobart up to Ross, because he is a Launceston native and didn't want to travel away - a prominent son of a politician, Mr Ray - he didn't want to come in so he decided he'd have the meetings at Ross Hotel.

They have not got disabled facilities. I can't even get in. When he told me he said, "There's no need for you to be on this committee. It's only a disabled ethics committee and there's seven other representatives." I think there are a couple of physios, a couple of social workers, maybe a carer. I think the main time it's just keeping awake. You know, I was amazed. I wrote to the then minister. I can produce a copy of the letter - I've got it there now - that laid it on the line. They wrote and said, "Well, stiff, young fellow," you know. "Resign."

MS McKENZIE: But even one person, even one person with a disability is not going to be enough if they can always be outvoted, if it's basically seven to one.

MR PENNYFATHER: They can always outroll you, but if the committee - if the thing is there for the disabled, we should have equal representation or majority representation. You can't regard us all as ineffectual because we're in wheelchairs. There's a lot of brilliant people confined to wheelchairs. The majority of us are not in wheelchairs because we want to be. We're there because something has happened and I think that we've got to just get our voice there, but the government looks at it, "Oh, put him on in name only."

Mary I should say - I'm harping back to Mary, but she's doing a job there. She'd be battling there to load anything through there if they jacked up against her. I mean, talking about the council out there. I mean, she's the voice crying in the wilderness. I ring her up about there, because I go out to ParaQuad, about little things. She says, "Oh, I'll take it up at council," but she's battling. They're business people there and they want our business. They're not prepared to give us the access but they want everything on the cheap.

MS McKENZIE: Do you have an issue also about holiday accommodation as well?

MR PENNYFATHER: Yes, well, I have. They haven't put it in here, because - I could have written another 10 pages but I thought you'd get sick of it. Holiday accommodation, you've got to ring ahead to go anywhere in Tasmania. I go to Launceston a fair bit. There's only two hotels that have got disabled accommodation that's worthwhile: the International Hotel, which is the Novotel, and the one up in behind Brisbane Street there - what do they call it? One in Launceston there anyhow. But even the Riviera at the Wrest Point out there, federal hotels, their disabled facilities are poor. But the International Hotel, they have wide-access rooms. They provide a toilet chair which I think is a thing that any disabled facility wants. There's no rim approach on the shower. The toilet is at the right height. The baths are the right area. The beds are even reinforced and cut to my height so I can transfer without any trouble. I don't have to lift up, I just step out.

MRS OWENS: So they've done it properly.

MR PENNYFATHER: They've done it properly. The dormers are double there and the whole thing. And anything I want, there's no movement. Car is valeted, parked, no worry there. But when I'd be able to go anywhere else and, "Yes, we've got disabled facilities", you get there and you'll find the room - yes, it's there and the facilities are upstairs. This happens many times. You can't get in. When you get in you find there's a whole brick height in the shower bay, which is a four-inch brick. That's what they've tiled there. The toilet chair is a plastic chair put in the shower. You've got to get out of that into that. You'd appreciate it, sir. It's just not on because you can't take their word.

Then we get - well, the RAC and ParaQuad are doing an audit of hotels. Both disagree on what they feel is sufficient. None of them really comply with what you should have. They say, "Oh, I'll accept this. You know, it's hard to get into, but you can." That's not good enough. You should be able to get in and it shouldn't be hard. It should be straight on. "The toilet bowl might be a bit loose but you can use it. The rails are in the wrong place but you can use it", you know; and it's not on. If you've got anything at all and it doesn't comply, it is not suitable.

MS McKENZIE: And also they have to give you correct information. To say that that's accessible is not correct.

MR PENNYFATHER: Yes, but the majority of them just say, "Oh, yes, disabled accommodation, come along."

MS McKENZIE: They should say, "Accessible with great difficulty," or there should be some way of explaining.

MR PENNYFATHER: They give you a four-star rating by RAC and when you get there it's not four stars. I mean, you know, it's a thing that really upsets me because I like to travel in the car. I've got a winch on top and I lift my wheelchair on and I find, you know, even parking in some places is not wide enough to get the winch over the side.

MS McKENZIE: Are there any other issues you want to raise with us? They're I think all the issues I was going to raise with you.

MR PENNYFATHER: No, well, you can raise as many issues with me as you like.

MS McKENZIE: I think we've covered all the ones in your submission.

MR PENNYFATHER: Yes, well, I only just kept it to the main point because there are a lot of issues over the whole thing but, you know, the majority committees for one, we are not - the people that are disabled are not of another level as far as integrity or intellectually. We're in a position, the majority of us, where we can give something but we're not given the chance. I was regarded as a bit of a loose cannon, actually, because I get up and speak my mind and of course it doesn't go down well. Then I even came to the Hobart Access Committee. They said, "We don't want you, mate. You speak out, you know, and we won't play." I didn't get a guernsey. But I know this from an alderman, one of the councillors. "You come up," he said, "but no, Pennyfather's a loose cannon. You're going to have trouble with this boy."

MRS OWENS: Well, you got a guernsey today.

MR PENNYFATHER: Yes, but I came up here on my little lonesome. I thought, well, I've got to do something. I mean, whether I'm going to be the voice in the wilderness I don't know, but I'm just bringing to the point of the Commonwealth what is actually going on here. We're a funny area in Tasmania because the people are - most of the government is people that are out-of-work politicians or politicians on the periphery who have maybe had three years in parliament and they're out and they're friendly with the government. Or the good loyalist, always supported the party for years. "I want a job. I'm only there for a cup of coffee and a sitting fee." They're the people that are getting the guernseys. There's not my friend and I here on a committee. We can't go along because we wouldn't get a guernsey.

MS McKENZIE: I think you should be on the Privileges Committee.

MR PENNYFATHER: I mean, when we look around here, how many people, disabled, are interested, barring you and I and Mary Guy? How many people are coming in future? I don't know. But I mean, it's a thing that we require attention to by the Commonwealth. We're all taxpayers, we're all equal in the eyes of everybody and the law but we're not getting - well, I'll put it this way, a fair suck of the sauce.

MS McKENZIE: Thank you for that. You did I think give us a really good flavour of the issues that you're facing directly.

MR PENNYFATHER: Yes, and Mary covered you know minor - because I agree with everything she said; but as I said before, she is the only voice we have really.

MS McKENZIE: So your general view about the Disability Discrimination Act or the Tasmanian act is that they're not as effective as they could be?

MR PENNYFATHER: Definitely.

MS McKENZIE: There are some holes to be plugged.

MR PENNYFATHER: Definitely. Tightening up all round, I think. And as I pointed to the power to punish, as Mary put it, with the HREOC. I think if they had something, a bit of monetary - hit them with a monetary fee is the thing. They jerk themselves into gear. And they can't plead ignorance of the law if they say, "The fine is this and you'll get it."

MRS OWENS: Thank you.

MS McKENZIE: Well, thank you very much for your submission. It's really good because you gave us illustrations and that's very helpful.

MR PENNYFATHER: I could go into it a lot more deeply, but it's one of these things. You know, there's allowances and everything else that we don't get and the other ones like Mary with the air travel. They put you into a small wheelchair. But Mary is awkward because she's been incapacitated from the word go and to get, as you say, that motorised wheel chair onto the aircraft today, they've got to use a forklift to put her in. Then you'll find the mid passageway is not wide enough to take her wheelchair. They only want to be able to take out one seat and they use a wheelchair, their own wheelchair. If it's not available, you don't fly.

MRS OWENS: And they are very small wheelchairs.

MR PENNYFATHER: Very. I've got an overwidth wheelchair and I can just get in ordinary passageways. 28-inch doorways I'm very lucky to get through.

MS McKENZIE: That's a very good submission, very interesting material that you've raised.

MR PENNYFATHER: I'm glad I can be of some help. I'm only hoping, as I said - to the benefit of the disabled in the future in Tasmania but we're a weird mob, put it that way, down here.

MS McKENZIE: May we quote you? Thanks very much.

MR PENNYFATHER: It's a pleasure.

MRS OWENS: Thank you. We'll now adjourn until after lunch, at 1.30.

(Luncheon adjournment)

MRS OWENS: We will now resume. The next participant this afternoon is a group called Cadence FM. Could you please give your name and your position with Cadence for the transcript.

MR DALY: It's Christopher Daly - Chris Daly, I prefer to be called. I'm the president and station manager with Cadence FM community radio, Hobart.

MRS OWENS: Good, thank you, and we prefer to be called Helen and Kate. Thank you. I understand, Chris, that you'd like to just introduce your submission for us, and you've got some additional points you'd like to make.

MR DALY: Yes, I have. Cadence FM would like to thank the Productivity Commission for this opportunity to contribute to its hearings into the Disability Discrimination Act. Cadence FM has processed two anti-discrimination applications against parties involved in the broadcasting industry. It is improper for us to disclose whom the applications were and are currently against. We would like to, however, voice our concern at the lack of care and recognition of people with disabilities and provide a suggestion for change. It is important in the broadcasting industry to enable equal right and representation for any interested individual or group to have a voice.

Aside from 7RPH, a service catering for the visually impaired in Hobart, Cadence FM knows of no other broadcaster in Hobart currently providing broadcast access to people with disabilities. Persons with mental disabilities were given presence on radio in Hobart by Cadence FM but are now, to the best of our knowledge, given no such ability due to a decision the board of the Australian Broadcasting Authority made on 19 December 2002.

Cadence FM works closely with Cosmos Recreational Service, a leading recreation service for people with disabilities in Hobart. Our role as a provider of radio delivery was sadly exchanged for youth representation by the same decision made by the Australian Broadcasting Authority on 19 December. The ABA showing, in our opinion, no concern for our relationship with Cosmos and Strathcare and for the loss of these programs to contributors and listeners in Hobart.

The ABA wording, in its letter dated 23 December 2002, was that Cadence FM failed to provide adequate opportunities for the selection and provision of programs. We find this statement is clear evidence that the ABA did not inquire as to our provision of programming. Had the ABA done so it would have found ample evidence of programming assisting not only our local community, but also assisting the disabled to have a voice in the community. The ABA, in the same letter, left us with no ability to counter its ill-researched claims.

Cadence FM supports Strathcare with radio programming who, in their caring role, support the elderly and people with disabilities. Likewise, the ABA has shown no regard for these people. Our continued requests for radio licence to the ABA and to Senator Alston has been met with silence. We've written on at least 10 occasions to opposition spokesperson, Lindsay Tanner, who has not on any occasion even acknowledged our letters.

Cadence FM, despite this loss of broadcast ability, has continued its relationship with Cosmos Recreational Services and Strathcare. Cadence FM in May 2003 provided a six-day broadcast under a special events licence to the Works Festival. Cadence FM provided in this brief period a program for both Cosmos and Strathcare. The Works Festival, an initiative of Kickstart Arts and the Glenorchy City Council, has long recognised the representation by people with disabilities, providing representation to both Cosmos and Aurora Disability Services.

Cadence FM, an association formed in 1997 and entirely volunteer run, up until December 2002, held a community broadcast licence. Cadence FM contributes entirely at its own cost to providing forum and representation to many diverse interest groups who have sought our high standards of presentation. The funding body behind community radio, the Community Broadcasting Foundation, we consider also fails to interest itself enough in the pursuits of community stations, up until such time as the ABA has allocated permanent services.

The only means of obtaining funding that we know of - whilst holding a temporary community broadcasting licence - is to try and access grant funding. Despite our efforts, Cadence FM was unsuccessful in accessing any such funding. There has been no inquiry that we know of that has asked how people with disabilities are represented in community broadcasting. We find disgust at the ABA's recent decision to ignore our need of representing, as one of many interested groups, people with disabilities and the continued silence of our request for reissue of a community broadcast licence.

In total contrast to Australia's lack of interest, New Zealand provides care and concern to adequately represent the community radio broadcast of people with disabilities. New Zealand provides what is termed access radio, with the funding criteria stating, "We will take into account the extent to which the station reflects the diversity and in the community and, in particular, the interests of women, children, the disabled, minorities, ethnic minorities and nonprofit community groups." Cadence FM considers there is urgent need for outcome of these hearings to also influence the Broadcast Services Act and to adequately define nonprofit community broadcasting, as opposed to bodies making application that are corporate institutions in their own right, such as universities and other colleges, together with hospitals, et cetera.

The radio reception for Hobart's main hospital, the Royal Hobart Hospital, is awarded to the highest bidder. This lack of sensitivity could easily be rectified with provision by 7RPH, at least then assisting the visually impaired. The services provided, as they are on a monetary contractual basis, ignore provision by community radio stations. Cadence FM is happy to contribute to a further submission if required at a later date, and we thank you once more for this opportunity to contribute to the disability discrimination hearings.

MRS OWENS: Thank you very much. Could you just give us a little bit of background on the sorts of programs that your radio station ran when it was in operation?

MR DALY: Yes. We ran general interest programs. We ran world music programs. We ran the program for Cosmos, which was twice weekly. The Cosmos program featured excerpts of people's interest in football and all different manner of voicings that they needed to have. Cadence FM also catered for Strathcare, being the elderly and people with disabilities home in Berriedale. That program also was hosted twice weekly, each program being hosted for an hour on those occasions. I was employed as a radio tutor with both organisations and now have lost those positions, although not officially with Strathcare - I'm actually providing my services to Strathcare on a volunteer basis.

MS McKENZIE: Were people with disabilities able to broadcast or contribute to broadcasts on your station?

MR DALY: Most certainly.

MRS OWENS: How were the programs developed? You mentioned in your opening comments that the ABA said that there hadn't been sufficient input program development. I assume from your remarks that that wasn't correct. How did you bring the people with disabilities into designing your programs?

MR DALY: Being employed with Cosmos, I was employed under a casual basis with Cosmos and as a radio tutor my position was to help people with disability give them a voice and train them to - I suppose bring their best highlights out. As you may know, people with a disability can be quite different in some ways and some remarks might be offhand to radio listening, and it's a matter of providing the best highlight of their ability, rather than shutting them out and excluding them.

MS McKENZIE: So you help to train them to be radio presenters.

MR DALY: Yes.

MS McKENZIE: And now they have no - - -

MR DALY: No such ability in Hobart.

MS McKENZIE: I understand you can't talk about the actual complaint or the complaints themselves but can you talk at all about - they were complaints to the HREOC, or the Tasmanian commission?

MR DALY: Our recent disability discrimination hearings?

MS McKENZIE: Yes.

MR DALY: I can mention that in the first case the first business that we were involved with, offered a contract to the entire broadcasting industry and within that contract it was stated within a clause that people were only able to play three pieces of the one artist and if they were to play a fourth, they then had to allow a 15-minute break - sorry, let me word that again. They could play no more than four pieces and if they were to play a third piece, they had to allow a 15-minute break between the third and the fourth. They wouldn't substantially be able to play from one artist. They weren't able to feature one artist or one label as such.

Now, with our disability anti-discrimination claim with that body, we said, "Okay, this isn't fair to people with a disability who might want to choose the music of their choice." We said, "Okay, ABBA is a favourite of people with a disability" - I mean, Dancing Queen and Knowing Me, Knowing You, are favourites. Who are we, as the broadcasting body with this contract - knowing we had this contract - to tell them that they're not permitted to play more than three tracks of ABBA or four tracks of ABBA. We said, "This is a basic human rights issue," and we stood up and we said, "No, we're not going to put with this," and we wrote to our national body, who weren't interested either in these matters. That's the Community Broadcasting Association of Australia. We found that abhorrent, that a basic human rights issue was not being investigated on a national basis, rather we - as one station in Hobart - had to defend the rights of these people.

MS McKENZIE: Did you then go to HREOC or go to the commission in Tasmania?

MR DALY: We went to Jocelyn Scutt, the commissioner in Tasmania, and the matter, to our mind, is not fully resolved. I can't really reveal the findings of that hearing. I don't think that's proper in this scenario.

MS McKENZIE: No, it's probably not, but certainly what you can tell me -

without telling me what actually happened - did it go to conciliation, or has it gone to a hearing?

MR DALY: It went to - it basically ended up with Jocelyn Scutt writing back to us with a very lengthy expose and at the time we were battling numerous issues and we really haven't gone back to it, as yet, but we will.

MS McKENZIE: You are still digesting her letter.

MR DALY: We are still digesting the letter. Over a coffee we found a couple of things that were quite wrong with it, but we haven't gone back and looked at that issue as yet.

MS McKENZIE: You sound like you might need about 10 cups of coffee before you get finished with it.

MR DALY: Yes.

MRS OWENS: Who was the contract with, that had these clauses in?

MR DALY: Okay. Am I able to name them at this hearing?

MRS OWENS: Maybe not, but let's think of asking something else. Are these sorts of contracts common for other types of broadcasters?

MR DALY: Other types of broadcasting institutions, or other types of broadcasters are allowed - are availed allowance within this clause. National broadcasters, for instance, are allowed allowance with this clause. We, as community broadcasters, were not.

MS McKENZIE: Was that a sort of standard form contract applied by the ABA or someone? Is that how it works? Is it a - - -

MR DALY: No, it's a - I've got - - -

MS McKENZIE: Don't tell me the organisation, but all I want to know is if it is a common kind of contract in the industry?

MR DALY: Yes, it is a common contract. Yes.

MS McKENZIE: What is the thinking about it? Is it done to stop one artist being played more than others?

MR DALY: It's done to turn over more recorded works, so that the purchaser of recorded works - CDs and the like - buys more product.

MS McKENZIE: Okay, I understand.

MR DALY: And substantially can't tape one artist from that radio source.

MRS McKENZIE: The other question I was going to ask you was - and again I don't want to know what's in Jocelyne Scutt's letter - did you find the process not quick enough, or did you have any concerns about the process that you think might be transferable or applicable to the Disability Discrimination Act, which is our main concern?

MR DALY: We found Jocelyne Scutt's reply very lengthy. However, not succinct to the remarks that we were trying to achieve. I should start by also talking about the second discrimination claim, and if you had listened to my speech today you probably know who the person is that we are attacking. The second claim deals with a broadcast that occurred between 23 August and 19 September, last year, and particularly a letter that we received from the ABA on 15 May 2002, and that letter basically set out a directive for us to share with a university body.

MRS OWENS: For your?

MR DALY: To share our broadcast with the university body. And we found the fact that this was a directive quite in contrast with the ABA's own worded documentation which says that it must provide consultation. Had the ABA consulted with us it would have found that we had funding for Strathcare, Cosmos and the like, and would have said, "Well, this is not appropriate that your radio station is taken away for some four weeks of broadcast. What were these people to do in that interim period?" The ABA did not consult with us, it issued us a directive, and that's contained in this letter of 15 May.

MRS OWENS: And it's in relation to those.

MR DALY: That matter has gone to a tribunal hearing and we haven't heard a result of that tribunal hearing back yet.

MRS OWENS: And again, you went under the Tasmanian act?

MR DALY: Yes.

MS McKENZIE: Did you think about going under the Commonwealth act at all?

MR DALY: If we could do it for free we would.

MS McKENZIE: So it was the costing that worried you?

MR DALY: Cadence FM is, as I say, a volunteer-run organisation. We have had some experience with the court system and we find the court system atrocious in this state. We have asked also for the ABA to have a tribunal board sitting on top of it so that its decisions can be - stations such as ourselves that have no large financial assets can obtain genuine legal representation with the tribunal, sitting over the top of the ABA.

MS McKENZIE: The second complaint that you talk about, the first one was the Jocelyne Scutt one. The second one was a - - -

MR DALY: Also Jocelyne Scutt.

MRS OWENS: It has gone further.

MS McKENZIE: It has gone further. This one has gone further?

MR DALY: Yes. It has gone to a tribunal hearing and we are awaiting a decision on whether that proceeds or not and the matter involved was a discrepancy on the first page of the documentation, that we absentmindedly had forgotten to fill in, but we represented ourselves at a hearing in February and said, "Look, I'm sorry we omitted this but this is what we would like to place in it." And we were availed the opportunity of resubmitting that discrimination claim. It's getting fairly close now to the time where we need to resubmit that; ie 42 days before the hearing. One has to allow 42 days as an input period.

MS McKENZIE: Did you find the process, the tribunal process, difficult?

MR DALY: No, quite easy actually. The tribunal was very good to us. We had a hearing at the courts here in Hobart, and that was very straightforward and very well mannered.

MS McKENZIE: The other question I wanted to ask you has to do with - because of your experience, in at least the broadcast media, have you got any comment that you might want to make about the portrayal of people with disabilities, in either that media or the media generally, whether you think that there has been any change in the way people with disabilities are portrayed or depicted in the media, over the time when the DDA has been in force; in other words, over the last 10 years.

MR DALY: I think the media definitely tries to represent people with disability,

and often inquires quite successfully in that manner. However, at the grass roots level, rather than the sensationalist area very little is done; and yes, ability is given to the media, when there is a known story. But the day-to-day activity isn't really catered for, we see. I think for everybody to be able to have a voice is the key to this issue.

MS McKENZIE: So maybe a bit of improvement on the macro level but the micro level you think has still got a bit of a way to go. Would that be fair?

MR DALY: Yes. Definitely. A long way to go, yes.

MS McKENZIE: They are all the questions I was going to ask you.

MRS OWENS: I had a few others. Your radio station operated out of Hobart.

MR DALY: Yes.

MRS OWENS: Is there anything in northern Tasmania that's covering the sorts of issues that were specifically targeting disability groups?

MR DALY: Not that we know of. As far as we know we were the only broadcaster in Tasmania offering programs for people with recognised mental disabilities, and the Cosmos being the leading provider of disability services, recreation services for people with disability, has a vetting process for assessing people's stated condition. So a lot of the groundwork in that way has already been done for us, because Cosmos is such a leading figure in this area.

MRS OWENS: Could your broadcasts have been received in places like Launceston?

MR DALY: We wish. The sad state with community radio is that community radio is left to fend on its own, and paying for transmitters and the like we, in our first year of broadcast, were availed some 15 watts; our second year 15 watts; our third year 50 watts; our fourth year 250 watts. Now, 15 watts would cover around about half of one suburb, effectively.

MRS OWENS: 250, which is the highest?

MR DALY: 250 would cover most of the suburb; perhaps two suburbs.

MRS OWENS: They actually limit what you can have?

MR DALY: When you are talking about power and radio you are assuming that

everybody has got the highest quality receivers, and the highest cost, whereas most people tune in with a bare clock radio. And this is why we would say 250 watts might be suitable for two suburbs. We continually ask the ABA for the required power to provide our community with that service. Now, the broadcaster who took our place, the Tasmanian University Broadcasters, were, in their first period, granted some 983 watts to broadcast with and that has been cut back for some strange reason; we can't quite understand that. But there seemed to be a disparity. In that first application period we had existed for two years on 15 watts, and here is a body who is broadcasting for one month with the stated power of 983 watts. Now, whether they use that or not is up to them but the broadcasting authority enabled them 983 watts. So, ask yourself.

MRS OWENS: Do you have any understanding of how the ABA decides how much different broadcasters get, or whether you should stay in business?

MR DALY: Broadcast power or ability to broadcast is very much the radiation characteristics and whether you are close to - you know, in a suburb of such. And that's what we were. Now, we were also - well, contributed to submissions to the ABA, which can be looked up - that we found that other community broadcasters in Hobart were availed some 3 kilowatts, and also within a residential area. To give you an example of how community radio struggles against the overall aspect of its delivery, commercial radio in this state; some 36,000 watts for commercial channels, national channels 56,000 watts. So a 15-watt transmitter isn't going to be heard. Whereas to reach a community you really need around about 1 kilowatt, 1000 watts, to work with, and that should be a bare minimum level, but sadly we didn't get it early on.

MS McKENZIE: What about RPH, can I ask?

MR DALY: 7RPH is on the AM band.

MS McKENZIE: So what does - - -

MR DALY: They don't have as much power as the other AM channels - national channels et cetera - but AM radio reaches a lot further than FM.

MS McKENZIE: Have you thought of going to AM? Would that be a feasible course?

MR DALY: There are currently no licences available in AM, and it's a large transition with equipment to go from one to the other - something which we couldn't afford. You are quite correct in your inference that one should be able to reach to one's community. But had we been availed of that power we would have been much

better at it.

MRS OWENS: You argue in your submission that you consider there's a need to influence the Broadcasting Services Act, and to adequately define non-profit community broadcasting, as opposed to bodies making application, that are corporate institutions in their own right, such as universities, colleges and so on.

MR DALY: Yes.

MRS OWENS: So you'd make a distinction between your group, as being representative of specific subsections of the community, with specific needs, and these other groups. Is this something that happens? Is that distinction made in New Zealand, in that way?

MR DALY: Yes, it is. Ireland also. Ireland has an excellent principle with institution licensing. It recognises that - for instance, the Cork University has been availed a broadcasting licence but it is given an institution licence. Or another term which the Irish Broadcasting Authority use is a Community of Interest Licence, which is fairly akin to section 18 of the Broadcasting Services Act, which is narrowcasting, and narrowcasting the ABA had recently sought re-clarification on, but I don't think really has reached any useful summary of that information. Narrowcasting, one pays for that licence some \$5000 and it's typically provided to limited information to a limited audience. And that doesn't necessarily mean range, the limited audience, but the information that the broadcaster is giving is of limited appeal. Certainly in our experience with the broadcast of the University of Tasmania, their principal interest is businesses surrounding the educational sector, and they don't seem to be willing or able to go further out of that field.

MS McKENZIE: I suppose what you are really saying is that there's an enormous difference between a very large body, such as a university, which has not just academic interests or the interests of students to cater for but is looking at relationships with business, as universities do nowadays.

MR DALY: That's correct.

MS McKENZIE: And a small volunteer community organisation.

MR DALY: Yes. It's the disparity that is what you are referring to. The differences between these two groups are just enormous, and it's not something that can be provided for within one class of licensing. We have emphatically presented all of the ministers in parliament in Australia - we have written to some 240, I think, of them. Also to Richard Alston and to the ABA, that a class of licence be set up called Institution Licensing. And that, we see, is commonsense, that it acknowledges

that these groups are quite different in their business manager and their intended outlook. We are not saying that they can't broadcast; in fact I think some of their programming could be quite interesting. Certainly, some of the programming that the university has provided is quite good.

MS McKENZIE: It's just that they shouldn't be treated the same way.

MR DALY: No, as community broadcasters, so we see that as a fairly simple thing, but converting it into actually occurring is quite difficult.

MRS OWENS: No. It's an interesting idea. Can I just ask, did you participate in our broadcasting inquiry?

MR DALY: Yes, I did. Unfortunately, I didn't word any of this current information at that time, and I wish I had.

MRS OWENS: Some of this hadn't happened to you at that time.

MR DALY: No. I'm just trying to recall what I did say at that time. I was talking about the local city councils having more of an input into community broadcasters rather than the ABA, and I was saying that the Community Broadcasting Association should work with the local councils in assessing and working with community radio applicants because, invariably, community stations work with their local councils in any case. That's what we've found.

MRS OWENS: Yes.

MR DALY: But sadly that was ignored.

MRS OWENS: I suppose one of our interests is one of education and being able to get information out to people with disabilities about their rights under the Disability Discrimination Act and I would think that something like your radio station would have been very useful in that context.

MR DALY: Yes, well, we definitely haven't gone away. Our association still exists and we intend to re-form this current coming financial year and continue to implore our case for institution licensing to be set up and for community applicants, Australia-wide, who were put out of a licence, to reapply and be considered for a community licence.

MRS OWENS: We're not doing an inquiry, as you know, into the broadcasting - which is sad.

MR DALY: I wish you were.

MRS OWENS: But what I say to people who raise some of these interesting issues is that what we are doing is noting these issues - - -

MR DALY: Concerns.

MRS OWENS: - - - and we will bring some of these issues to the attention of the government. It will actually be a, "By the way, there are these other issues."

MS McKENZIE: Yes. There is no reason why we can't collect them and note them in our report as other important issues, but not quite - - -

MR DALY: Specifically with these - - -

MS McKENZIE: - - - putting the specifics, but nevertheless issues that are related in some way and need to be considered.

MR DALY: Thank you.

MRS OWENS: Did you have any other points that you wished to make, Chris?

MR DALY: As an example of the matter which I talked about in my opening speech to do with the ABA disregarding our programming, here's an article from the newspaper, Wednesday, 8 January, and Strathcare residents wanting their radio station back.

MRS OWENS: So you're tabling this - just for Cate's benefit I'll read out the headline. It says, "Home residents fight to get station back on air."

MS McKENZIE: Yes, that's fine.

MRS OWENS: Thank you for that, and you said you had some letters with you, as well. I don't know whether you wanted to bring any of that to our attention.

MR DALY: Okay. I can bring some of this to your attention. Let me quote from the ABA's letter of 23 December 2002:

The ABA conceded that the level of support in terms of letters of support and financial members for Cadence FM from the general community is relatively low compared to the level of support for Edge Radio, which has only been on air for four weeks, particularly given the fact that Cadence FM has been broadcasting on a TCBL since 1998. The ABA

was of the view that Edge Radio had solid community support with 36 financial members, 193 individual emails of support, and a petition containing 1450 signatures, while Cadence FM had a moderate to low level of support from the community, with 48 financial members and 29 letters of support.

It's an interesting area, that one. We collected some 1003 signatures from the community in a petition. We have asked for the ABA to provide us under the Freedom of Information Act the 1450 petitioners petitioning the university applicant. The ABA are unwilling to release that petition to us and we find that quite alarming. The sad fact is that the university faculty funded that station to the extent of \$193,782 - if my memory recalls - and members' funds were some \$200.

MS McKENZIE: And really that is pointing out the difference that you have been saying - - -

MR DALY: It is, yes, and it's saying, "Okay. Here's an applicant who really is the University of Tasmania. It's not the so-called incorporated body that's working within the university. It's the University of Tasmania." Further to that, the university is now providing courses in radio journalism, which is adding value for them in this manner. Do you want me to go on? I can if you want. I can give you a lot more.

MS McKENZIE: I just think that that is an interesting criteria for making decisions - the number of petitioners and so on.

MR DALY: Petitioners, yes, and we - - -

MS McKENZIE: I would have thought that the criteria should be slightly more sophisticated.

MR DALY: Exactly. The appeal rights for this letter were - this is for appealing the ABA's decision not to allocate licence SL1150787 directly to the ABA:

However Cadence FM has a right to seek judicial review of the decision from the Federal Court under the Administrative Decisions Judicial Review Act.

Now, if you read the Judicial Review Act you can't actually argue a decision like this under judicial review; rather you have got to find some aspect of the ABA's process to be in error, which we did. We found the ABA's process to be quite in error with what it had done. However, we couldn't have that heard in the Federal Court because the station could not afford the surety for the court's costs, and this is why we have asked continually for a tribunal to be appointed to sit over the top of the

ABA, and all of these letters are being ignored by the current government body - namely, Richard Alston and the Department of Communications.

MRS OWENS: Thank you for that.

MS McKENZIE: Thank you very much. You have raised some interesting questions and also some interesting comments about the Anti-Discrimination Act in Tasmania - how that matter sorted itself out.

MR DALY: Thank you, yes.

MS McKENZIE: Thanks very much indeed.

MR DALY: Thank you for having me.

MRS OWENS: Thank you for appearing. We will just break for a minute.

MRS OWENS: We'll now resume. The next participant this afternoon is Mr Des Le Fevre. For the transcript could you please give your name and the capacity in which you are appearing today?

MR LE FEVRE: Yes. My name is Des Le Fevre and I am here in an individual capacity.

MRS OWENS: Thank you, and thank you for the submission which came back in April. We appreciate when we get submissions earlier in the process because it means that people are keen to participate and it gives us time to read it and absorb it, so thank you for that. You don't mind us calling you Des?

MR LE FEVRE: No, that's most appropriate.

MRS OWENS: Right. You said you would like to make a few comments.

MR LE FEVRE: Yes. I would just like to place before the commission the fact that I don't make any pretence to have suffered a disability at the time all this happened, but what I am putting before you is the fact that - and I call upon the support of some of the other witnesses that I've heard here in the last two days - that people with disabilities can and do confront the very same issues of access - in particular remedial access - to members of parliament who, in my view, provide means by which they excuse themselves from the operation of the acts that they bring in and that they should not be able to do that if they are going to venture into areas where they are likely to commit equally as serious discrimination as any other organisation or authority.

My experience has been that in 1998 I received information that a decision had been made that I was to be nailed - and those were the words that were used - and I then wrote to my lawyers and asked them to place on record the information that I had received - and I then made nothing further of it and I have never disclosed that information - and waited and eventually I was invited to appear before a select committee of the Tasmanian parliament to give evidence in relation to the matter of undercover policing, which is a field in which I had some experience over quite a few years.

I had previously given evidence to another select committee of the parliament in relation to sentencing and, at the time of accepting that invitation, I was issued with documents, which explained to me that I was entitled, in giving my evidence, to the protection of the Parliamentary Privileges Act, provided I didn't repeat the evidence that I gave outside of the parliamentary institution in the public arena. When I received the invitation to appear before the committee in relation to undercover policing, I consulted my employers - who were the Police Association of

Tasmania - and I asked them whether they wanted a submission made on their behalf and they declined.

I then advised the committee that I wouldn't be accepting the invitation. I should say at this moment that the documents of all the major issues to which I refer are available. Within a few days I received a requirement from the House of Assembly, requiring me to appear before the committee, which placed me in the position of being eligible for a prison sentence if I didn't go. I went before the committee. I was put on oath. I gave evidence throughout one public session of the committee and, later, one in-camera session in relation to undercover policing, and I then returned to my work and I was dismissed from my job for having gone before the committee.

That was the last employment I've had and it deprived me of the ability to maintain myself and my family. I made a complaint of unfair dismissal to the Tasmanian Industrial Relations Commission, and all that achieved was to relieve me of \$7005 in the way of costs. I then sought to make a complaint to the ombudsman who advised that the parliament was not within the ombudsman's jurisdiction. I then made a discrimination complaint and that was eventually dismissed on what I consider to be a legal technicality.

I don't understand the legal niceties of the decision even to this day as to how I should describe it to you. But it was a decision based on the provision of services and I think that the tenor of the decision was that the Tasmanian parliament does not provide services to the people of Tasmania. Whether that's legally correct, I'm just not - - -

MS McKENZIE: No. I think - and I've not read the decision; but I think what they were probably saying was - because it's been raised in lots of cases - is that what the act is looking at is basically the service to an individual, as in you. The act doesn't cover very neatly, or very well, services which are not provided to an individual specifically but to the community in general. You know what I mean?

MR LE FEVRE: Yes.

MS McKENZIE: I think that's the problem that the tribunal would have had, and it would be exactly the same problem under the DDA as well.

MR LE FEVRE: Well, I had a very strong and profound belief in my own mind that I was providing services to them because they extracted them from me by using the heavy hand of the law if I hadn't have complied. I had to go along and I did and I didn't mind doing it, but it had an outcome that I didn't expect. Being armed with their undertaking to protect me under the Parliamentary Privileges Act, I contacted

the parliament by letter, and through a lawyer as well, and asked them to invoke the provisions of that act, and they declined to convene the committee.

MRS OWENS: Why was that?

MR LE FEVRE: I don't know.

MRS OWENS: I don't know, but I would have thought would have been the appropriate course of action.

MR LE FEVRE: I certainly did too and I wrote myself and then I had a lawyer write and, well, I don't want to take it further than it actually should, but I was in effect ignored.

MS McKENZIE: So what you tell us has quite a lot of relevance, you're quite right, to the DDA.

MR LE FEVRE: Yes.

MS McKENZIE: Because you just need to twist the situation just a very little bit - say, for example, you'd gone before some parliamentary subcommittee that was inquiring into some disability discriminatory practices, and you'd given evidence about some dreadful systemic discriminatory practice that you saw and then you went back to your employer and got sacked because of that.

MR LE FEVRE: That's the scenario that I'm putting to you.

MS McKENZIE: Yes, that's right.

MR LE FEVRE: And because I was eventually represented by the Anti-Discrimination Commission who accepted my complaint for investigation. In the course of attempting to undertake that investigation, the speaker of the lower house and the president of the upper house were both approached and both declined to participate in the investigation on the basis that they weren't within the scope of the law. The Anti-Discrimination Commission then took the matter before a tribunal.

MRS OWENS: For a ruling?

MR LE FEVRE: For a ruling, which eventually came out on the basis of this services decision. My complaint there is that that process took almost 32 months, and at the end of it I'm still left without an investigation, without an outcome and listening to Dr Scutt's evidence yesterday, I am also probably presented with a bar to

my making a representation to the Human Rights and Equal Opportunities Commission, because I've been in the Tasmanian process.

MRS OWENS: You've been in the Tasmania process.

MS McKENZIE: And you're right; that's something we also have to look at.

MR LE FEVRE: Yes.

MS McKENZIE: But also more generally you would not want someone who did exactly what I suggested to be in your position.

MR LE FEVRE: Exactly.

MS McKENZIE: In other words, not to be protected under the DDA.

MR LE FEVRE: Yes. Had I the skills, by looking at the Human Rights and Equal Opportunity Act, there are a number of occasions in that act where it appears to me that the intention of the act is that people should not be treated in that way. I'm referring to schedule 2 of the act, article 2 at section 3A:

To ensure that any person whose rights or freedoms as herein recognised are violated shall have an effective remedy notwithstanding that the violation has been committed by persons acting in an official capacity.

MS McKENZIE: That's what you're arguing: the parliamentary committee is acting in an official capacity.

MR LE FEVRE: Yes, because they chose to use the parliamentary - the powers of parliament to get me there, to put me on oath, to have me tell the truth and then not provide me the protection they had promised me in writing if I went along and did all those things.

MS McKENZIE: But you see, in a way it may well be that it should not be up to a vote of members whether or not that protection is provided. I would have thought surely if you are compelled to go along to parliament and give evidence, then the protection should come automatically. There shouldn't be a question of whether there's got to be a vote to give you the protection. You should get the protection.

MR LE FEVRE: Yes, well, I certainly asked for it. In fact the words I used in my letter were that I pleaded for it, because I'd suffered a substantial setback. When I didn't win that argument - well, there was no argument, I just didn't get any sort of affirmative response. I then had a lawyer write to them and the only response was

that they didn't propose to convene the Privileges Committee. So for my efforts I've lost my job at an age when it's very, very difficult to get any other employment. I've now suffered a disability in the process of trying to retrain myself at university and we're now at the stage where after 40 years I have nothing.

MS McKENZIE: The other thing that occurs to me is what message does that give to people who want genuinely to bring to parliament some basic concern? It's really telling them, "Don't."

MR LE FEVRE: Yes.

MRS OWENS: But in your case you had no choice.

MS McKENZIE: In your case you had no choice.

MRS OWENS: You were damned if you did and damned if you didn't.

MR LE FEVRE: Yes. I was going to gaol if I didn't and to the poorhouse if I did. And on so many occasions you see that the politicians of today - and I don't put them in parties or whatever - they retreat behind the ramparts of their castle and ignore you. You can't get them to speak to you, you can't get them to answer your letters. They just do not.

MRS OWENS: What about when it's election time?

MS McKENZIE: First question is, who can wait?

MR LE FEVRE: Yes. I certainly take an active part in some aspects of the political world. I write policy for obscure political parties and stuff like that and I work as a volunteer at the Maritime Museum where I talk to squillions of people, but none of it seems to have any effect in bringing the existing politicians out of their castle to where they need to deal with you on a one-on-one basis. I see in all that that the greatest fear is that if they continue to pursue that type of policy or action any of us who may have the need of understanding, action - from the buses we've heard about to the toilets we've heard about - can be ignored and just left to flounder.

I'd suggest to you - and certainly your consideration to be given to that matter - that we have heard several assertions here in the last couple of days that that is exactly what happens. For myself I say that the 31 months' delay waiting for a ruling out of the tribunal was a denial of natural justice and I also contend that I've been the subject of a gross lack of procedural fairness, because I haven't said a word in any tribunal in my own defence.

MS McKENZIE: I understand.

MRS OWENS: All I can say is that I find it an incredible story. As I said, damned if you did and damned if you didn't. I don't know how we can deal with this but we certainly will not ignore it, and at least in this process you were able to have your say, which I think is probably worthwhile. I think it was worthwhile for you but I think it was particularly worthwhile for us to hear it.

MS McKENZIE: And it will be made public. It will be on our web site, so that people will know.

MR LE FEVRE: Yes, well, it's never been public before because all the hearings that were heard were heard in closed court. The evidence that I have available I've never made available publicly because before I was disabled there was no great public benefit to be had at that stage of the whole thing by slapping the thing all over the newspaper. I certainly had the facilities but that would have only given the perpetrators a reason to resist my push.

MS McKENZIE: But the other thing too that what you said to us can help us do is to look at the victimisation provisions in the Disability Discrimination Act and make sure that they're wide enough to protect people who bring matters forward or are compelled to bring matters forward. The other thing I want to say is that I realise that it's often very hard to bring matters of great personal grief before a body like this in a formal hearing, or a reasonably formal hearing.

MR LE FEVRE: Yes.

MS McKENZIE: It's difficult and a very courageous thing to have done.

MR LE FEVRE: The other thing is that the matter has achieved some degree of notoriety in the Supreme Court not by any actions of mine but I noticed in the judge's ruling in relation to that, which is of some 87 paragraphs, the judge refers to me as "B". The only other thing in his finding, I notice, is that he at least included the fact that the whole situation at the beginning was a contrived situation. I don't seek to put any construction on that.

MRS OWENS: Good. Thank you very much for attending and we really do appreciate you coming along and we appreciate the submission as I said at the outset. So thank you very much.

MS McKENZIE: Thanks very much.

MR LE FEVRE: Thank you very much for your patience.

MRS OWENS: This is the point of the proceedings where we conclude but I always ask at this stage if there's anyone else that wants to appear before the commission today and I understand that we do have somebody who does. Would you be happy to stay there? We can bring a mike to you or would you like to come up? Thank you. We might just stop for a minute while we change over.

MRS OWENS: We will now resume. We have somebody from the audience who would like to make some comments to this inquiry, to this hearing. Would you like to give your name and the capacity in which you're appearing this afternoon.

MR McCARTHY: Thanks, commissioner. My name is Daryl McCarthy and, as an individual, I'd probably like to briefly discuss the area of tertiary education relating to disability in a holistic way.

MRS OWENS: Good, thank you. We will be interested to hear what you have to say.

MR McCARTHY: I'm referring to the tertiary institution, and I think I can name it here quite safely - I think it would be the same at university, although I haven't got the experience at university level, so I'm referring to tertiary education, but specifically the TAFE college in Hobart, Tasmania. I've got partial sight myself and have been a student in the TAFE services. I'm referring to the areas of study, namely psychology and welfare, as specific to the main body of education which is business, et cetera. I'm specifically targeting, if you like, the area of psychology and welfare and I repeat that.

A number of us students - it's not only myself, I can demonstrate that down the track, about complaints mechanisms - a number of us disabled students have experienced in the past being lured on to courses of psychology and welfare studies, or community services studies, only to realise that the staff find out we have a disability. In my own case it's part-sight, someone else could be an epileptic, and so on. This is okay when you're studying and you are passing; you are passing your theory and your paradigms and your philosophies and what goes on in the studies, only to realise, when you are put out on what they call loosely block training - that is, training in industry for some 12 to 14 weeks - it is not our experience that the agencies discriminate against us at all, the agencies are very accommodating.

Nine times out of 10 they're not told we've got a disability - namely, part-sighted or one could be an epileptic and so on. That is not revealed by the college because the college - at least TAFE - classify that as confidential information per their forms, when you fill their forms out at tertiary level, as you are probably well aware. That information is highly confidential. But having said that, there's been a blockage if you like between the teachers of the period giving agencies relevant information so they can accommodate for people who are disabled doing block training in industry - namely, the workplace.

Can I quote my own case, if you like, just to illustrate a point. When I was doing psychology or welfare studies I was placed with Probation and Parole Services. Of course - namely, I was taken over to prison. I assumed that the teacher

of the day would have told Probation and Parole Services that I had part-sight - which they didn't. It was only that they found out by choice and I - you know, told them the information after they found out. They decided to challenge me for a game of eight ball. They noticed I was a bit slow. I could play but I wasn't fast and they were really up to scratch and I made the issue, "Okay, you play every dinnertime, you guys are really spot-on, including you good females," who were playing with them as well. I could take a few lessons from both sides here, sort of thing.

"There's something wrong with your eyesight, isn't there?" I said, "Yes," and I pulled my glasses off and I said, "Yes, I've got part-sight." "Oh," says the supervisor, "Come in" - probation and parole, the chief probation and parole officer said to come in to his office. He said, "We weren't told this from TAFE." I said, "Well, I assumed that you would have done, you know, because it's up to the teacher who briefs you before us students go into the agency. You know all about us before we go in there. I mean, you ask us questions if there are any problems." He said, "Yes, I've got no problem with that. The problem I've got is - you're telling the truth and that's fine, but we just happened to find out that you have a disability. We think the system needs" - as it were, quote unquote - "tightening up, between the teaching fraternity and agencies, and particularly our agency." I said, "Yes, that's right."

So he said, "What we have to do is, we're going over to the prison tomorrow, so to speak, and you can go with us." I said, "All right." I was a bit apprehensive because I can't see - you can appreciate I can't see quick enough - I suppose mobility would be the word. So I got over there and everything was all right over the prison. And things were moving fairly fast over there, as they do, I suppose, in prisons. So we got back and everything was all right. The probation and parole officer said it was all right. Then he gave an accommodation network and file to work on, which I did, around the community - that's fine. There's another job, routine job.

Then the head probation and parole officer called me in once more and said, "Listen, chum, I'm sorry, I've got fail you." I said, "How is that?" He said, "Right, we know about your eyesight, we're not discriminating and we're not taking it out on you, but we can't have you in the prison network. If something goes wrong and the prisoners riot or whatever, and you happen to be there with part-sight, this is a liability to us and yourself." I said, "Yes, I acknowledge that." "We think it's the wrong placement and an unfair placement."

Can I quote what the probation and parole officer - who was very astute - on his feet said, "I think they're trying to fail you." They've put you in our agency to get rid of you." I said, "What, because I've got a disability?" He said, "You could say that." I said, "All right, I've got the right of appeal." He said, "Yes, that's right." And he said, "And by the way I'll be at the appeal; I'm going to support you." So I thought that's great. So, anyway, I went back to the college and of course the teacher

got to me and said, "Look, I'm sorry, my report on you is going to adverse. You didn't do well in the prison," blah, blah, and of course I didn't answer back on that. I said, "Yes, but I have the right of appeal and I wish to appeal before" - in the appeal room, so to speak. That's another area of TAFE, a private area.

And, by the way, I've had the appeal system changed for disabled students after all this, because I wasn't - I only picked my own case because there were other disabled students who had similar consequences; one epileptic and someone else with a psychiatric disability who had the same thing, going into agencies, okay, and all of a sudden your studies are curtailed and you have to sit an appeal and you fail the appeal, by the way; if you're a disabled student you're more likely to fail it than win it.

What happened in the appeal, really the appeals procedures, I got hold of the teachers' briefs myself. I forced them out of the staff. They didn't have to hand them over. I've seen the act and so on, the by-laws of education. "I'm sorry, if you're going to condemn me, I want the briefs that are written on me." I've still got them. "I'll have those, thanks." "Well, there is no appeal. Then you fail." I said, "It doesn't matter if I fail or not, I want the briefs that are written up on me." So anyway, I've got those. My positive self-worth and all that was there, that's fine. No mention of disability, nothing of that nature. No problems I've had with the probation and parole services in the prison, no problems there - of slowness or whatever, which they picked up.

So the probation and parole officer, who was a nice guy, who said - you know, made it quite clear to me, "We, as an agency, haven't got the power to fail you. It's within the teaching faculty that fails you; it's the education faculty that fails you." I said, "Yes, I understand that." "We are advising TAFE" - in other words- "that we want you in our agency but not over in the prison for safety reasons, because of your disability." I said, "Well, that's fine, I've got no problems with that. Do you think I should fail because of this?" They said, "No, we don't. We are going to sit in the appeal with you." I said, "That's great; that's good. You're going to support me." "Yes, no problems."

The appeal date came and I said, "Okay, am I entitled to an advocate?" - meaning legal representative, friend, doctor, whatever - no, I'm not. "Oh," I said, "That's fine." So I appeared over a gruelling seven weeks of the appeal, and it went on and on and on until towards the end I curtailed it myself - in the end. I just said, "Okay, we're getting nowhere." "Have you got anything more to say?" I said yes, I had definitely something to say. "We're getting nowhere, but you're not going to hear the end of it. I know I've failed. That's fine. You don't have to write and tell me I've failed. I know that. That's fine, but I won't be beaten in the education system. You are going to record that", I said. "Yes, that's fine."

So the principal of the college, who was known to write a one-liner or one phrase, "Dear sir" he puts to me - my address, "Dear sir, you have failed. Yours faithfully," principal of the Hobart technical college. So I held my composure, never saw the principal to this day - he's no longer there. So I went to the ombudsman and the ombudsman staff, as you know, question you and so on. They question of course the teachers in question, they also informed me in the ombudsman's office that they had a number of complaints with disabled students in similar circumstances. They asked me would I go to university and I said, "That wasn't the issue." Whether I should go to university - it's whether I'm getting a fair deal of natural justice here. Being a disabled person, I'm not the - I'm plugging for other disabled people as well is my own speech in context there.

Then the ombudsman staff discharged me, as they do over time, as you know; the file is closed. I got nowhere with the college but I thought I'd test the college out. I said, "All right" - I'm thinking aloud now. "All right, if you discriminate against disabled students in areas of psychology and welfare studies which I think is highly unfair, you lure people into the situation - disabled students into the situation only to experience, if you like, career closure. It's highly unfair and unjustified and discrimination."

TAFE held a review and I spoke to the minister for education - on the day it was Sue Napier. The opposition I think now, isn't she? The opposition education minister now. She has a master's herself, bachelor's, honours, master's - taught in TAFE Launceston. I went down to the minister myself and I said, "All right, I'm not beaten with your system, or the system yet. I'm going to do contract law, statistics and other relevant studies, accounting two and three," passed all that and I was testing the field with TAFE, if you like, as a disabled student - it had it on the forms in another area of TAFE - all right, another department of TAFE, put it that way - we'll get away from psychology now. Another department of TAFE where you are assessed on your abilities with figures and accounting and stats and law. You pass law fair and squarely and so on.

I passed all those subjects and did very well. In fact a professor of law at the university took our classes in TAFE and I didn't do so bad at contract law. I came out very well. I had in my mind I wasn't - and I said to other disabled students, "Don't be beaten by the system of TAFE." Sorry, TAFE people get paid, they have a job to do and they're not there to condemn disabled students. They're there to train disabled students. The government are the first to say that disabled people must be educated and working. Okay, well, let's test the system on this. Let's test the education faculties in this area. I'm going brazenly but quietly into another area of TAFE, another department to see how I get treated and if I get treated badly in that section, then yes, I'm prepared to fire that up in federal politics. I'm talking about the

federal minister for education. I'm prepared to go the full way above the state. I want to pull other disabled students behind me doing it as well.

So I said, "Let's test the field a bit first." If you like, I was having a meeting like I am now, so to speak, or behind the scenes away from TAFE, like I am now. Let's test the field. I said to the other student - one bloke wanted to do librarianship. I said, "Right, get yourself in there; that's fine. I want to know how your training is going." You know, "You get in that area. I'm going to an accountancy and that area." Another student went into - a couple of other disabled students - one epileptic went to university and got a BA honours; went back to TAFE - I think it was hairdressing - some other area. So she passed in that area as well.

A couple of other disabled students went, you know, somewhere else in the departments of TAFE, away from psychology and welfare, if you like. Got placed out into industry, block training or workplace training - can I used the words "passed with flying colours" and I said, "All right, we've beat the system; we've beat the day. We've won, really. We've won over the system." When TAFE tell us we're no good as disabled people in the system, we have finally come good and said we're doing all right and the teachers are treating us well.

All right, nowadays you will tell us we've got the DDA and there are policies against harassment and intimidation and fair equity, laws of natural justice. I fired up a couple of times more in the TAFE system. One area was the appeals tribunal where, as I said, I previously experienced before, and so did other disabled students, where you fronted the appeal, as it were, and you weren't allowed an advocate. I'm talking about a lawyer friend or whatever - someone to accompany you. Wasn't allowed at all. So when you got in there - in the appeal room process - it was clear-cut and dried. If they said you'd failed you'd failed - it doesn't matter what you said - but notably everything was recorded, which I found out through the archives later.

I went back through the tape system and read all the transcripts - through the filing systems. I've just had a look. So anyway, that's fine. I thought, okay, knowing that TAFE teachers can do this, I put it to the ombudsman as a matter of fact, "Okay. Can we sue a particular TAFE teacher or a couple of teachers, who are noted for this with disabled students?" - two specific people they need to get out of the system eventually - but, "Can we sue two people in this area of condemning students, once they find out they've got a mental incapacity," if you like - a disability. In other words - "Can we do something about it?" and they said no.

The advice given to me is that, "Who's going to sue the government? You're not going to get anywhere. What teachers would turn around and tell you in court - they'd say, "Okay. We've got the right to assess the student and if we say that the

student is incompatible with the training, okay, they fail. That's it. What we write - we're covered by that." I said, "Hang on. Isn't some of the stuff belligerent and all the rest of it?" "Doesn't matter. The teacher has the power over the top of the student", and of course so did the government - because who would sue the Education Department?

So, "Okay. That's fine. All right. I'm going to fire up one more. I haven't finished yet," I said. So I went down to Sue Napier, who was then minister for education, who taught in TAFE Launceston - as I said, bachelors, hons masters, et cetera, minister for education at the time - now she is shadow minister, but at the time she was the minister for education. I had it out with the minister and she said, "I'll tell you what I'm going to do, Daryl" - she used my first name, as we did - like we are here. She said, "I'm going to hold a TAFE review," and I said, "If you don't mind me saying, minister, I am just the boy that can churn out a load of rubbish." She said, "What do you mean?" I said, "I'll put 56 foolscaps together with relevant appendices and bibliography, and we'll see how we run, and I'll personally hand-deliver it. It's good for you."

So we had the review. As a matter of fact I did do that and I took it down to her office and I turned around and she said, "Is that you out there?" and I said, "Yes," and she said, "Come in," and I couldn't help myself. "Minister, you've got some homework to do tonight - good afternoon - and I expect a letter from you because in that letter it says that I request a reply," and I said, "I don't mind telling you, being a good little public servant, I suggest you answer it," which she did, eventually. She answered it eventually.

MRS OWENS: She did her homework.

MR McCARTHY: If she hadn't done it I would have fired her up, as well, but yes, she put in that letter, "This will change. This will occur" and so on (indistinct) or "This one needs (indistinct) so in the TAFE review, I suggested - to make things brief and short - they change the appeals procedure within the by-laws of education - it's by-laws, isn't it? (indistinct) the by-laws of education, how your appeals process works and so on - that students should be allowed an advocate in the appeal room, and that's not only confined to disabled students but students per se.

MS McKENZIE: Yes, and that will help other students also.

MR McCARTHY: Yes, and now, Cate, that has been adopted. That has happened. What we, as disabled students, I suppose, in our days, if we want to do some training in psychology - specifically in that area - we were reluctant to touch it because, if they know you've got a disability and whatever, you're done like a dinner - and I use a phrase there. Other areas of TAFE we have not experienced this. I think

complaints with the ombudsman - or about the (indistinct) or the average per year was about 28 per year, and I say "about" - approximate - and now it has gone down to I think about 10 or 11, and that's pretty good for a TAFE system now.

I am letting the commission know here, if you like, okay, discrimination does exist in education. We are powerless, I guess, to do anything about it, simply because I suppose the teacher teaching you - mentor, whatever - has the power to assess and fail you. That's fine, but can I put it to the commission that it has to be fair and equitable within the laws of natural justice. It has to be equitable for - you made the point, Cate - all students, not only disabled students.

MS McKENZIE: Yes.

MR McCARTHY: So I probably still question that area and that's my brief, I would think.

MS McKENZIE: Did you think of making a complaint for example under the Disability Discrimination Act?

MR McCARTHY: And I know Dr Scutt very well - I was talking to her yesterday. At that stage I think she was just appointed. I thought it was a bit new and, you know - I know Jocelyne very well and, as I say, she spoke to me before she left yesterday. I wouldn't hesitate to nowadays. I don't have to nowadays because I'm not in that area. The disabled students who experience similar situations in, all right, psychological welfare studies at TAFE, who were disabled like myself, if you like, have simply left TAFE, disgusted, and said, "To hell with the system," so to speak, "We're not going to get anywhere," but I encouraged three or four of them, like myself, to go into other departments and disciplines of education within the TAFE network, and it doesn't exist there - in other areas.

MS McKENZIE: So rather than complaining in that way they just went into other areas or left?

MR McCARTHY: Left. Their whole idea is, "Centrelink sent us here to do studies - to get on with it." Even Commonwealth Rehab Services took on a couple of cases, and they didn't pass. We thought that was highly unfair because when you get to the appeal room, as I said, you've got no support. Now, it's slightly different. Nowadays I'm on the board for Advocacy Inc, where the advocate presented to you yesterday. In our days the advocate will go with the student and, all right, eight times out of 10 that appeal is won in education, believe it or not - in our days - so that's how the system has radically changed.

MRS OWENS: So there has been a big improvement there.

MS McKENZIE: So that's changed.

MR McCARTHY: There is a hell of a big improvement. We also push for a student rep council - SRC - which TAFE didn't have - because we felt that management in TAFE needed to know - and again, holistically, with all students - to know how the student was working and, if there are any problems with the system, could the principal and his management look at these problems - and of course that happens now. It didn't before - the era I was talking about. What I am probably doing here today is to protect us from that happening again - or it should be noted in literature somewhere.

MRS OWENS: Yes.

MS McKENZIE: Yes.

MR McCARTHY: There should be protection there. As I say, Centrelink clients are sent through the Centrelink network to do further studies - more so now than ever - with mutual obligation, of course, now, but they are sent through the network to further their education, only to have what I would term "career closure" in this area. I call that "career closure" - in my words, I guess.

MRS OWENS: What do you mean by "career closure"?

MR McCARTHY: In other words the door is closed on you. You can't pursue your studies any further. You've set your prerequisites - like university, like TAFE. You know how you've got to write your assignment to see whether you are suitable, plus your relevant qualifications; you have your orientation; you get in there; you're fine, but all of sudden you've got disability and all of a sudden they make a big issue of that, and I think that is slightly unfair.

MRS OWENS: Although in your case you were able to switch over and do something else, so it wasn't total career closure. When one door closed another one - you said you did some contract law and statistics.

MR McCARTHY: I did, yes.

MS McKENZIE: Yes, but you couldn't do the thing you originally had decided to do.

MR McCARTHY: No, commissioner, I couldn't. I couldn't pursue what - that's right, but nowadays, believe it or not, I'm a mentor with TAFE and I then receive basic education - there you have it - and I'm in the classroom with Asian students, so

let me say that TAFE haven't expelled me - all right? - or given me the sack or whatever. They haven't done all this, so I'm still in there. They're wanting me in the classroom and I sit in classrooms with Asian students, helping them with literature. I work in tandem with the teachers out front, and sometimes the teacher could be out front or I'm out front or vice versa, so I'm very much wanted in the TAFE network. I'm suppose I'm getting back to the old days - just to illustrate a point - with discrimination and education and tertiary networks. I'm trying to say there have been problems. There still are problems in fact - always will be in tertiary institutions, as you would acknowledge to me. At university it happens all the time.

MS McKENZIE: But there have been some improvements, as well?

MR McCARTHY: Yes, Cate, there have been some improvements and probably that's what my verbal submission is here today: that it would be good if it were noted that there have been problems in the tertiary system - there have been problems there - and, okay, it will save me putting a submission together for you - I'm taking it ad hoc, if you like. It would have been interesting to see the stats from the ombudsman's office because TAFE had a high percentage of complaints against it because, as you know, the complaints at university are solved by the university ombudsman.

MS McKENZIE: But is it fair to say about the improvements that they have happened not because of discrimination legislation, but because of political action. I mean, if I understand what you have told me correctly, improvements really started to happen when you went to see the minister for education.

MR McCARTHY: Yes. I must admit because - I just use the words - I was, quote, "fired up", unquote, right, and down I went with the polished shoes - and I tell you what, my shoes were really polished - and I had the best briefcase you can think, and up I went on the 15th floor; "Excuse me. Is the minister for education -". "Yes. Who are you?" and I told them and they said, "Show the gentleman in," so when I walked in, yes, I did spell it out pretty thick and thin, and she turned around and said to me, "As a matter of fact we're going to have a TAFE review" and I just happened to say, "Well, I'm just the boy who can churn out a bit of stuff for you."

MRS OWENS: I think you could have run the review actually with your experience.

MR McCARTHY: It has been - don't put this down - noted that I run the college, and I said, "Yes, indirectly."

MRS OWENS: It has just gone onto the transcript.

MR McCARTHY: At the time - take that off the transcript, for goodness - they reckoned I was running the show but, yes, we did have advancements. We had a principal then, I must admit, without casting aspersions, who did not have a degree; who was an electrician; who didn't really care about students per se. We now have a principal who has three degrees, with his honours and whatever, and does really care and will really listen, so things have changed, yes.

MS McKENZIE: So that's another reason why things have changed.

MR McCARTHY: Yes, because of the principal holding - his background in this case.

MS McKENZIE: Yes.

MR McCARTHY: This particular principal was principal of the Northern Territory TAFE, which is a rather large complex. He is very good and listens. He told me in fact the other day, "You're still here" and I said, "Yes. I'm a professional student" and he said, "So am I, believe it or not." He said, "What area of TAFE are you in?" and I said, "I'm in ALBE, adult literacy and education now," and he said, "That's great. It's good to see you around," so the approach is good - there are no problems - and I quickly let our minister, Paul Arete - who is our minister in our days here - and I happened to be at a function - just a quip here - in my old clothes, and I was in TAFE because I was looking through some library books - I didn't have a student or anything to help, to mentor - and all of a sudden I'm in front of the minister for education, and of course I've got these old, tatty clothes on, and she asked me how I was and I told her. She said, "Are you a student?" and I said, "Yes, yes. Well, you could say that, minister, but", I said, "Listen" - can I use the situation I mentioned in a bibliography - "I'm the third grade, third shelf minister", and I told her all about it, so I made her (indistinct) aware of what was going on there and then.

MRS OWENS: Excellent.

MR McCARTHY: So I thought I would use the situation as a PR thing, so that just happened on an ad hoc basis, but yes, there have been problems in the system. I would have to say, to be true and fair, that I am not aware currently of major problems, but there certainly have been problems in welfare studies and the psychological department of TAFE due to finding out there is something wrong with you, as it were, and they use that to get rid of you, and I think that is highly unfair.

MRS OWENS: It would be very interesting to see whether somebody else is brave enough to go and try and do a course there now with this new principal.

MR McCARTHY: There have been appeals, I believe. There have been appeals

where the appeals have been won.

MRS OWENS: So things are improving in that department, too.

MR McCARTHY: Yes.

MRS OWENS: That's good.

MR McCARTHY: They are improving but, as you tell me, there are teachers and teachers. You get good and bad teachers. You get good and bad in every profession. I think what this principal has done - at least currently - you're not a teacher on a permanent basis per se. You're a teacher that would have a tenure of three months and see how you go teaching in that stream, and you might be invited for another three months on the register - you may not be; I think that leaves room for expertise in good teachers, however short-term that is.

MRS OWENS: That sounds like a good place to stop. Have you got any other issues?

MR McCARTHY: No.

MS McKENZIE: No. I have asked you all the questions as you have been telling us the matters you want to raise.

MRS OWENS: Thank you, Mr McCarthy.

MS McKENZIE: Thank you very much indeed.

MRS OWENS: That was a very good end to hearings in Hobart. It was very informative.

MR McCARTHY: Thanks very much for the time for presenting.

MRS OWENS: That concludes today's proceedings. I should just mention for the benefit of those still here that we will be handing down a draft report in October and holding further hearings in Tasmania. Thank you for attending. I now adjourn these proceedings and we will be resuming in Canberra on Wednesday, 18 June. Thank you.

AT 3.15 PM THE INQUIRY WAS ADJOURNED UNTIL
WEDNESDAY, 18 JUNE 2003

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