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TRANSCRIPT OF PROCEEDINGS

PRODUCTIVITY COMMISSION

INQUIRY INTO THE DISABILITY DISCRIMINATION ACT

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

TRANSCRIPT OF PROCEEDINGS

AT MELBOURNE ON THURSDAY, 26 FEBRUARY 2004, AT 9.06 AM

Continued from 25/2/04

MRS OWENS: Good morning and welcome to the resumption of hearings in the Productivity Commission inquiry into Disability Discrimination Act (1992) which I will refer to as the DDA. My name is Helen Owens and I'm the presiding commissioner on the inquiry and the associate commissioner is Cate McKenzie. On 5 February last year the government asked the commission to review the DDA and the Disability Discrimination Regulations (1996). The commission released a draft report in October last year. The purpose of this hearing is to provide an opportunity for people in Melbourne to discuss their submissions and to put their views about the commission's draft report on the public record.

Telephone hearings have been held in Melbourne and public hearings have also been held in Canberra, Hobart and Sydney. Further hearings will be held in Brisbane and again in Melbourne next week. When we complete the hearings in March we will redraft the report and submit it to the government by the end of April. It is then up to the government to release and respond to the report. We like to conduct all these hearings in an informal manner but I remind participants that a full transcript is being taken, and for this reason and to assist people using the hearing, the comments can't be taken from the floor. 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 others' submissions. The transcript will be available on the commission's web site in word format following the hearings. I'd like to welcome our first participant today, Andrew Van Diesen. Welcome back to our hearings and thank you for taking such an interest in our inquiry. Can I ask you to repeat your name and just state the capacity you're appearing in today for the transcript.

MR VAN DIESEN: My name is Andrew Van Diesen and I'm appearing as an individual.

MRS OWENS: Thank you, Andrew. I've just had put down in front of me your new submission.

MR VAN DIESEN: Yes.

MRS OWENS: Thank you very much for that and obviously Cate and I haven't read it so I'll hand over to you and you can run us through some of the key points you'd like to make.

MR VAN DIESEN: Yes. I basically keep my comments here to the key points of the draft report and clarify a few points that I made, particularly in the submission last time. Firstly, I just need to express concern at the nature of the review process thus far. The inquiry's main aim is to report on the appropriate arrangements for

regulation of the DDA. This appropriateness must be questioned I think due to the lack of the draft report's general failure to incorporate views from submissions from ordinary members of the community, let alone people with disabilities.

Probably need to point out that perhaps the authors of the draft report in doing this have accidentally stumbled across inherent inadequacies of the DDA as a benefit to the community as a whole, in that, you know, the community as a whole needs to be able to express its voice, not restricting that to more advocacy groups and advocates.

MS McKENZIE: You see our problem is the way we - first the report, you know, requires us to consult whole material.

MR VAN DIESEN: Yes.

MS McKENZIE: So we advertise our hearings and we, you know, advertise that people can make submissions to us, but we don't actually compel people to come. So in a way you're right; there may be a whole stack of people out there who either don't know our inquiry is going on or who don't for one reason or another want to make submissions, and that is a difficult that - - -

MR VAN DIESEN: Or simply just can't make submissions.

MRS OWENS: It has been a difficulty, but the other thing is even when we have had individuals come, we do listen to everything that people say, and we mightn't put into the report a direct quote from that person, and maybe we've quoted advocacy organisations more than individuals. I don't know; I'll go back to the report and check that to make sure that we have got the balance right, but even if we don't do a direct quote, we are soaking up and absorbing what people are telling us, and we are trying to reflect that in our recommendations, and in fact some people have criticised us - and we got a bit of this criticism yesterday - for being too weighted in the direction of people with disabilities. So I'm sorry you feel that individuals haven't had a voice, but we have tried very hard to reach people out there - - -

MR VAN DIESEN: I know.

MRS OWENS: - - - and speak to people.

MR VAN DIESEN: I know what you're saying and that's probably always going to be a problem, but, you know, I don't know how you do take into account the silent voices.

MS McKENZIE: Yes. I understand what you're saying and I think it is a problem,

but it's a very difficult problem to solve. In a way we - the people who come to speak are the people who want to speak, and it's very difficult to deal with those who for one reason or another either don't want to or can't speak, but it can lead to a result where you only get, you know, perhaps even a more limited range of submissions. It is difficult.

MRS OWENS: I think implicit in what you're saying is that some advocacy groups or advocates maybe aren't representing the interests of the individuals. There is an implication - - -

MR VAN DIESEN: Yes, because it's probably a the stage with advocacy groups where issues are generally more systemic, and it's easier to handle issues systemically. So individual needs, individual issues are perhaps put aside.

MRS OWENS: I'll have a look - we'll both have a look at our report and make sure that we are getting as much as possible of those views reflected in our report and try and bring in more quotes from people. But the bottom line is that to ensure that our final findings and recommendations reflect the views that people are giving us about how well the act is going and what improvements can be made.

MR VAN DIESEN: Yes. I know the problems you've got, but they're probably the exact problems that you basically need to counter in order to review the workings of the DDA fully.

MS McKENZIE: The same reasons why people may not come to us might be the same reasons why, you know, they're not aware of the DDA or they have problems. You're right.

MRS OWENS: The other thing we have done as well as run these hearings is we have run a few regional forums, particularly here in Victoria, and my colleague Cate has visited Alice Springs and talked to groups in and around Alice Springs.

MR VAN DIESEN: Yes, okay.

MS McKENZIE: And from that you get a sort of a cross-section of views about issues that are relevant. I mean, we're required to hold hearings; we have to do that, but also we try to adopt other methods to consult. But do you think that we don't emphasise individual views enough? Do you think we've emphasised sort of systemic and peak organisation views and data rather than individuals? Is that a problem you have or - - -

MR VAN DIESEN: That's definitely what to me was coming across. I got the draft report and I had a look at it, and it seemed very baseless, you know. It seemed

extremely systemic, and maybe that's perhaps something you need to consider with the DDA that it is - to the extent that it is getting very systemic, very I suppose mechanical and that sort of side, you know. I'll probably discuss two of the key points in particular - - -

MS McKENZIE: Okay.

MR VAN DIESEN: - - - because you've got it all there to read anyway. The first one, the Disability Discrimination Act 92 seeks to provide a fair go for Australians who have disabilities. It gives them the right to substantive equality of opportunity in areas like employment, education and public transport. The ideal of substantive equality of opportunity is meaningless for most people. It is wholly dependent upon the free agency of people to receive the opportunity. For instance, wheelchair accessible buses are neither universal nor able to be used by all drivers. Not all buses on a route will have a low floor, and not all drivers might be conversant, competent with use of the ramps. Country trains often require people in wheelchairs to ride in the conductor's cabin.

In employment and education, numerous factors may implement opportunity which may have absolutely nothing to do with the education or employment; ie, cost, health status. Quality of opportunity is meaningless as opportunity is dependent on conditionality.

MRS OWENS: Do you think, Andrew, that that's just a timing issue? I mean, that some of these things over time will improve and hence the quality of opportunity will improve, or is this a very bleak view of where we're going?

MR VAN DIESEN: Over time it will improve simply because more and more students, for instance, are being labelled with disability at schools. More and more people with disabilities are becoming out there, noticed, in the public eye. For instance, with just tertiary education, from 1994 to 2001 there's been over a 60 per cent increase in the number of students with disabilities going to tertiary education.

MRS OWENS: Mainstream education.

MR VAN DIESEN: Yes, well - - -

MRS OWENS: Yes, tertiary education.

MR VAN DIESEN: Yes, tertiary, and there you've got to consider that really a lot of these areas are not really set up to deal with a lot of these things because simply they have never had to have increasing numbers participating in this or that or the

other. Areas of life are being impacted greatly simply by the fact that a lot more people are starting to participate a lot more. There's a lot more inclusion in the general community, for instance.

MS McKENZIE: But it is true, and we've said it somewhere - I think most clearly probably in the overview - that everything is interrelated, and you're quite right, if you're making education inclusive, how will you do that? If you haven't got the right kind of transport to get there, it's a waste of time and useless. Similarly, if you've got the right transport but you haven't got anyone who's competent to use it, to drive it properly, and to make the special mechanical things available to people with disabilities who want to use it, equally it's useless. You're quite right.

MR VAN DIESEN: Yes, it's probably more a universal change has to come in perhaps across the board, and I probably get to this better in my own additional opinions, additional comments, later. The second point I will discuss is to point in the key points, but there is not enough information to quantify these costs and benefits. Comment is requested on costs and benefits both for people with disabilities and businesses. This is a major concern. Surely a lack of data must indicate something a bit peculiar with what's going on.

MS McKENZIE: You mean the fact that data is collected for other areas but not for this one?

MR VAN DIESEN: Well, yes, that there's not the data there. I'll perhaps use an example that I've had going to - doing an on-line master's course work last year. I was sent a questionnaire to fill out; you know, basic student satisfaction questionnaire from the disability liaison unit at the university, and a few weeks ago, because my thesis is now looking in that area of tertiary student satisfaction and opportunities for universal design learning, I asked for a copy of the results of that survey and I was finally told by the manager that the results are not accessible to students. So I mean, it almost begs the point, why collect the data? But on the other hand it probably comes back to the competition principle, you know; perhaps the university wants to hold on to the data simply because it might not be markedly very good for them. So, yes, competition has in that case turned around and - - -

MRS OWENS: Made them less transparent than they would otherwise be.

MR VAN DIESEN: Yes.

MRS OWENS: They're obviously getting some - maybe not obviously but perhaps there's some results in that survey that they don't want - - -

MS McKENZIE: Yes, negative feedback. One might suspect that - - -

MRS OWENS: - - - out there.

MS McKENZIE: Yes.

MR VAN DIESEN: Yes.

MRS OWENS: It's not a very transparent process. They probably did the survey for management purposes as a management tool.

MR VAN DIESEN: Yes.

MRS OWENS: They don't like what they get and so you can't get it.

MR VAN DIESEN: Yes. Okay, the costs and benefits for me in my hearing your complaint is as follows: I freelanced as a social educational consultant where the minimum pay is approximately \$25 per hour. My hourly expense, the amount of hours I spent on the complaint is as follows. Writing up initial complaint, three hours et cetera et cetera and the total hours I figured was 50 hours just on the one complaint. Thereby loss of income then is 50 times \$25 or \$1250. Added to this is legal fees, anywhere between 500 and 10,000. Benefits - I question benefits when respondent can get away with the discrimination by denying any discrimination and just apologising for any anguish. More decisive ruling is perhaps needed there. Okay, I'd just move across to my additional comments.

MRS OWENS: Just before we move off the costs and the benefits, we're interested in those costs in terms of putting in complaints but we're also interested in a much broader range of costs and that is how much does it cost to make adjustments for people with disabilities, say, in the workplace, and what are the benefits of making those adjustments. So we're looking at it in a much broader way and that's when we start to get into trouble when we try to look around for information to pin that down. That's a very interesting exercise you've done for us. So thank you for that.

MS McKENZIE: Yes.

MRS OWENS: So we're going on to the additional costs.

MS McKENZIE: It's true because a lot of the time we had a lot of submissions where we've talked about the cost to respondents of complaints, and similarly we've got a number of submissions which talk about the costs of making adjustments to employers but not - one would have thought it was reasonably clear but not so many about the costs of not making the adjustments to the people with the disability, and clearly it means they can't do the work. They can't be employed.

MRS OWENS: And the cost of going through the complaints process.

MS McKENZIE: Yes.

MR VAN DIESEN: Yes, I mean, at least there I would have thought that there may be some benefits to be derived in perhaps providing this accessive technology or whatnot, and in that they - a lot of firms now say, "We are an equal opportunity employer." I mean, really what does that mean? And what does it mean when they say, "People with disabilities are welcome to apply?" I mean, it's meaningless unless, you know, they have some, I suppose, general sort of angle where they can say that, "Basically this is what we've done, and we've actually got employers here who use that," and so on, if they can perhaps get some promotional benefit out of it.

The additional comments, in reviewing the DDA, attention should have reflected on understanding of the consequences and interactions of competition, disability and individual difference. I provide an account of Amartya Sen's account in his *Development As Freedom* in clarifying this and previous comments from the first hearing. I might just go to that quickly. This is looking at Amartya Sen's work. Truth of the importance of markets in the economic life, as he says, is crucial to Amartya Sen's take on globalisation and human rights, yet global dynamics have tended to dictate blind adherence to this maxim whereby one set of prejudices has given way to another opposite set of preconceptions.

The importance of the markets is commonly expressed, yet this introspection from Sen questions the veracity of market dynamics in the light of the value of freedom, and development. Growth in the international markets and in the market regulation constitutes the prejudices and preconceptions that comparatively test Sen's argument. For Sen the relation of globalisation in education is not a tale of markets over social opportunity or vice versa, but a mutual bonding of the two, at all times mediated by the simple dominance of the state.

Finally Sen observes that the real problem here is not the need for financial conservatism in itself, but the underlying and often unargued belief that has been dominant in some policy circles that human development is really a kind of luxury only the rich countries can afford or only rich people can afford basically. This sums up his general slant fairly well and basically market mechanism for Sen is no easy equation. Neither is it determined by cause and effect relations. Neither is it typified as a double-edged sword. Most discussions of market mechanism focus on either the direction of the markets or the condition of the people responsible for the markets or both. Sen follows the middle path, promoting the mediating role of the state. At all levels an integrated market mechanism is exposed from determining the role of the markets to context by role, country, development and finally nature of development.

In this way, Sen gradually evolves an opinion that the operation of market mechanisms constitutes human development. To me this complicates the global view of markets, exchange in economic value with the broader public value, and I think that generally sums up pretty much what you're looking at here. You're sort of, as the - your review is basically looking - trying to come to terms with an economic value for the DDA whilst also expressing a value for the rest of the community.

MRS OWENS: It certainly has been difficult to bring those two aspects together. We've tried very hard in our report, and particularly one of the chapters, to work our way through this, but you've raised an issue - you talk about Sen following the middle path, promoting the mediating role of the state, and in another part of your submission which you didn't discuss, you made a comment, which I think you also made in your first submission - you say that, "The DDA should be abolished, even outlawed. In its place we need a universal bill of human rights."

MR VAN DIESEN: Yes.

MRS OWENS: If we don't have a bill of human rights - and at the moment that's not on the agenda - it may in the future, but at the moment we're dealing with the act as it is - do you see that there's still a mediating role for the state in having a DDA and trying to make that DDA work as well as possible?

MR VAN DIESEN: Probably most definitely in that perhaps we should not be looking at enacting a DDA that's fixed and that's - you know, it's perhaps an area where we need some sort of legislative basis that's perhaps just ongoing; that's very fluid and flexible. Definite need for universality. I think part of the problem is perhaps coming in - universality just coming across at the moment in the standards is coming across as a minimum. Standards are being put across as minimal standards for DDA compliance, and that's exactly why I say that we need - maybe eventually - a universal bill of human rights in that we can establish some kind of framework where we start to actually revalue almost humanity. I suppose in that we need to basically perhaps almost come to a holistic understanding of where we're going as a people, as a race.

MRS OWENS: Thank you for that.

MR VAN DIESEN: Okay.

MRS OWENS: We'll read the rest of your submission - I was going to say at our leisure, but - - -

MS McKENZIE: Soon.

MRS OWENS: Very soon. Leisure doesn't quite come into it at the moment, but thank you for the trouble you've taken in putting this new submission together.

MS McKENZIE: Just for the continuing thought about the direction of the inquiry and things of that kind, that's helpful for us.

MR VAN DIESEN: Yes. I think perhaps an active and a living legislation is needed that is not sold because that's probably a lot of the problem with DDA.

MS McKENZIE: You would say DDA is too narrow - too narrow and too inflexible.

MR VAN DIESEN: Yes, but in that, DDA, okay, came into effect 92-93, and basically since then there's been so much other developments that have taken place maybe as a result or even not as a result of DDA, that the DDA is not able to cope with. So from there, yes, I just think some kind of living legislation that might be almost constantly - yes, because it's an area that's going to be problematic into the future simply because it's sort of been a watershed in the closing of the institutions to community participation and acceptance for people with disabilities.

MRS OWENS: Good. Thank you.

MS McKENZIE: Thanks very much, Andrew.

MRS OWENS: That was very good, Andrew. Thank you. We'll now just break for a minute.

MRS OWENS: The next participant this morning is the Association of Independent Schools of Victoria. Welcome once again to the hearings, and thank you very much for another submission, and we're very appreciative of the input we've had from the independent schools. So thank you, and I'll ask you now each to give your name and the capacity in which you're appearing, for the transcript.

MR ROSS: My name is Alan Ross. I'm a member of the board of the Association of Independent Schools of Victoria, chair of the State Support Services committee which is a committee of AISV, and principal of Billanook College.

MRS OWENS: Thank you.

MS NILSEN: I'm Sue Nilsen. I'm the special education officer for AISV, and I've taken over in that capacity from Therese Kirsten who participated in the original submission.

MRS OWENS: Thank you.

MS BRAND: I'm Cherie Brand. I'm here in the capacity of parent of a visually impaired child who's in year 10 at an independent school.

MRS OWENS: Thank you, and what I'll do now is I'll hand over to you and you can introduce your submission to us.

MR ROSS: Thank you. We're pleased to be able to come here and make comment on the draft report. We were pleased to read that and to read that our submission was considered, and that the full potential of the DDA to provide assistance to children with disabilities was acknowledged, and that their specific educational needs at independent schools were seen to be an issue. We're pleased to see that the report suggested that funding arrangements did issue discrimination against children with special needs. But we're hopeful that where the report stopped a little short of recommending change, maybe it can reconsider in the final report.

It's clear I think that students who choose non-government schools are discriminated against on the basis of the school and the sector that is chosen, and that is discriminatory in that other children who don't have disabilities don't have the same funding discrimination against them. It seems impossible to look at discrimination in school education without considering the support that is provided by governments, and whilst we acknowledge that the DDA and this inquiry is perhaps outside the funding arrangements, funding is an integral part of providing children with disabilities with quality of choice.

We're interested to note that the draft report comments that special education

funding should follow the child, and that is something that we would support so that regardless of the school or the sector that was chosen, children with disabilities would receive equal funding, and we feel that this is highly to be commended. So we're encouraged by the commission's draft report, but we would encourage the commission to go that step further to recommend change to funding arrangements for children with disabilities.

MRS OWENS: Thank you. Before we move on to Sue, I think we said at the time in our report that it's - the funding arrangements of the schools is probably something that goes beyond our terms of reference. But what we have noted in our report, and perhaps we could highlight further, is the whole issue of who should pay for adjustments, and we do discuss that in some detail, and we have a discussion about the role of government versus the role of organisations, and we were thinking in that context more about employers, but we could extend that discussion to who should pay government versus schools, parents, individuals with disabilities and so on, so we can acknowledge that issue there.

Whether we go beyond who should pay to making recommendations about government program, we're still working that through at the moment, but we may be able to say more on that issue in that sort of more philosophical discussion that we're having about the role of government versus the role of organisations and individuals.

MS McKENZIE: The other thing to say about lack of funding is there is always a possibility, if there is a lack of funding, that there will be discrimination complaints against the school because of its treatment of the child with the disability, and whether those complaints are going to be successful of course will depend on what defences might come into play, but obviously if - assuming for the minute that there is truly a lack of funding, obviously if that were remedied, the likelihood of discrimination complaints against the school would be loss.

MR ROSS: I would agree with that, and one of the things that Sue will present is the research that we've undertaken last year to determine who is actually paying what in our sector, and whilst the amount of funding for children with disability has been decreasing in real terms over the last five or six years for the services that they're being provided, that gap is being met by schools and by parents increasingly, and I think that that's something which is discriminatory in the fact that this doesn't occur in the government sector.

MS McKENZIE: Is it right that I ask you a question about the Australian Education Union's submission or do you want me to leave that to the end? It may be worthwhile - - -

MRS OWENS: I think we should listen to the whole submission before we - - -

MR ROSS: Yes, I think that - - -

MS McKENZIE: It's just that you've raised funding issues generally now, but if you're going to do more specifics about funding - - -

MR ROSS: I think Sue will make some comments which may open up discussion in that regard.

MRS OWENS: All right.

MR ROSS: I think if the DDA objectives are to, as far as possible, eliminate discrimination against persons on the grounds of disability, then choice of education should be equally accessible to all children, regardless of their ability or disability; that funds should follow the child rather than the choice of school or the sector. So we would urge the commission to recommend change to funding arrangements to remove this discrimination to children with disabilities. If I pass over now to Sue who will talk a little bit about the research which we've undertaken last year and the 2004 state services funding arrangements.

MS NILSEN: We of course have looked in some detail at the funding and where it's going and where it's coming from, and we detailed that in our original submission and highlighted that as the number of students with disabilities in our sector increases, the amount of per capita assistance decreases. We do celebrate the fact that there are increasing numbers of students with disabilities in independent schools and all that they offer to those schools, and see it as a really positive outcome of the DDA. But of course there are negative consequences that result from the funding issues that have been alluded to.

In 2004, the number of applications for State Support Services which provide essential services to students, such as visiting teachers for hearing impaired and vision impaired, and speech therapy, those applications rose by 21.2 per cent. That's taking it from 1156 students in 2003 to 1402 students in 2004. But the amount of money received from the government increased by only 0.77 per cent. Similarly, although to a lesser extent, applications for Australian government funding rose by 9.6 per cent this year, while funding increased by 5.6 per cent. So you can see that what we're talking about is a bucket of money that just has to go further.

MS McKENZIE: So that's funding for those children or overall funding to the schools?

MS NILSEN: That is direct funding to - - -

MS McKENZIE: To those children.

MS NILSEN: - - - eligible students, and I would like to take up just a brief comment on the Australia Education Union response to the draft report, and really that is that as you've alluded to, funding is very complex and does include Commonwealth/state and state money, and is allocated to individual students, but also to school as a whole, and that mix is a very complex mix. I think the comment we'd like to make is that it's insufficient; that schools are using at least - and almost always more than - the money that they're being given to support these students, and that to meet the need for these students, a more equitable funding model needs to be encouraged and we would like the Productivity Commission to encourage that.

In the time between the last submission in July last year and now, the situation has deteriorated. The decline in funding available through State Support Services makes it most obvious. The State Support Services, as I said, provides the sector with state government funding for essential services for students. In 2003, students attending independent schools received \$17 of government funding for each hour of required support. In 2004 this funding has declined even further. In an effort to assist as many children as possible, AISV has had to stretch a stagnant amount of government funds across the increased number of students. In 2004 this translates to just \$15.75 an hour. So every year the amount per hour decreases. Year after year, the State Support Services have failed to keep pace with inflation.

During 2003, AISV commissioned independent research by ASR research, and they quantified the true cost of providing these support services. The findings were that families and independent schools are meeting a state government funding shortfall to the tune of more than a million dollars a year. The current cost of support services is at least 2.1 to \$2 million per annum. This is two and a half times the amount provided by the state government. In order to subsidise the state government's low level of funding, parents and schools are meeting that shortfall. While the state government provided just 38 per cent of the total amount required, parents and schools contributed the remaining 62 per cent.

The most commonly accessed service is speech therapy. 89 per cent of students use their State Support Services funding for speech therapy. Yet for every \$17 that the government provides, families and schools pay 53; three times the amount provided by the government for speech therapy.

MRS OWENS: I presume that's all 2003 figures you're referring to.

MS NILSEN: That's all 2003. I'll just give you a little update - a taste of what that will mean for 2004. A similar trend exists in relation to visiting teachers, and in 2003 for every \$17 the state government spends on visiting teachers for the vision

impaired in independent schools, parents and schools pay \$63. The update is that in 2004, the state government will be contributing \$15.75, and we've been alerted to an increase in the cost of visiting teaching service for the visually impaired - - -

MS McKENZIE: So the gap widens further.

MS NILSEN: - - - which will be to \$92.50. So the gap this year will be \$76.75 for every hour of service, and that needs to be paid for by someone, and the schools and parents are meeting that cost. Similarly, I could go on for visiting teachers for the hearing impaired. Parents and schools last year were paying 35, the state government 17, and for the physically disabled and health impaired, 31 and 17. So there is a huge amount being picked up by the schools and the parents, and it is clearly unsustainable.

When I met with my committee last week to discuss how we made this money stretch even further, we just said, "How far can this go? It goes down every year. When will it hit \$5? What do you do?" It is clearly an unsustainable way of funding these students. In contrast of course the state government meets the full cost of these services for students with the same needs who attend government schools. There is no cost to parents or schools.

This arrangement does leave many families with little choice but to enrol their child into a government school where services and resources are provided at no cost to the eligible students, despite the family preference for a particular independent school. Exercising educational choice is therefore clearly significantly harder for a disabled student than a non-disabled student we believe.

I'd like to refer you to attachment 1 in our submission. That talks about a particular child, Sam Byrne who attends Girton Grammar and his inability to access vital educational materials; inability to access not just because of the exorbitant cost, but because students are actually denied access to the Statewide Vision Resource Centre.

MS McKENZIE: That Vision Resource Centre, is that open to any private schools?

MS NILSEN: No.

MS McKENZIE: So not to Catholic schools, for example; it's only open to state-run - - -

MS NILSEN: You would have to check with the Catholic system. I phoned them earlier this year and asked the question, "Can students from independent schools" -

and I wasn't talking about Catholic, so the other independent schools - "access materials from the Statewide Vision Resource Centre?" and I was told no, there was a directive from the state government saying that - from the Education Department saying that they could not access those resources. Sam accessed the Vision Resource Centre for six years during his primary education, but his move from a government school to an independent school meant that he's no longer able to draw on those resources, to his mother's horror; she hadn't realised that.

MRS OWENS: So these resources are really only available to government schools.

MS NILSEN: Yes.

MRS OWENS: Was it initially set up in that way? I don't know anything about this resource centre, but was it set up as a government school body?

MS NILSEN: I don't know what their original charter was. I believe that they may have provided some service in the past.

MRS OWENS: Outside government schools.

MS NILSEN: Yes, but I can't testify to that really. Personnel at the resource centre expressed their willingness to assist Sam, both to me and to his mother, yet the state government and the Education Department have continued to deny him and any other of our students access. AISV's assessment of the needs of visually impaired students currently attending independent schools shows that there are just six students who are currently using braille or may move over to braille in our whole sector who would like to be able to access certainly the braille part of that resource centre. But in fact as Cherie will detail, they actually have to have their stuff privately or separately converted into braille when there may in fact be resources already there in the resource centre.

We feel that it is absolutely mean-spirited and very discriminatory that our students aren't able to access those resources that are there for a select group of visually impaired students it seems.

MS McKENZIE: Particularly when it's not as if this is a particular school. In other words, you're not trying to use the resources of a particular state school.

MS NILSEN: No.

MS McKENZIE: This is some statewide service.

MS NILSEN: That's right, and if you look at the total number of visually impaired,

not just braille students, in our sector, it's around 35 students with any form of vision impairment that is fundable. So we're not talking large numbers of students.

I guess in concluding I'd just like to say that the low level of funding for students with disabilities attending independent schools is becoming or has become urgent. It really does need to be addressed in some way, and I'd like to pass you over to Cherie who will give you a taste of - - -

MRS OWENS: Before we go to Cherie, maybe we'll come back to Cate's question about the AEU's submission - the Education Union's submission. Do you want to raise that now?

MS McKENZIE: Yes, and this is a very general summary of the drift of their argument. I think what they're saying is that the funds made available to independent schools are on a basis of I think 70 per cent of AGSRC, the recurrent cost of Australian government schools, and the drift of their argument really is, well, that's - it's 70 per cent because the school has - independent schools have access to private funds, and that that calculation of AGSRC includes money allocated to the state schools for students with disabilities. So that basically money for students with a disabilities at independent schools is allocated in that way, and allowing for the fact that there are also other sources of income, what the union finishes up concluding is that ultimately independent schools are as well off, and in fact I think they're suggesting more well off in relation to the funding of students with disabilities than the state school system. I think that's a fair summary of - that's the drift really of the union's argument.

MS NILSEN: Yes.

MR ROSS: I think we would refute that claim. Funding for independent schools, both for children with ability and disability, is a complex issue. Independent schools receive funds from both the Commonwealth government and the state government. From my reading of the AEU's submission, their comments relate to Commonwealth government funding and not so much to state government funding. We've been talking this morning mainly about the state funding, and the figures which have been quoted to you by Sue are of the state funding. The AEU submission as I understand it does not take into consideration the comments about the amount of funds that are going to independent schools.

MS McKENZIE: So it's because it concentrates primarily on the Commonwealth government funding that it reaches that conclusion. If it had looked at all the funding instead of just - - -

MR ROSS: Yes. I find it odd that the fact that an independent school can borrow

or use other funds then enables it to avoid discrimination on the grounds of the DDA is an odd claim. The DDA's objectives are to remove discrimination, and the fact that students from independent schools can access outside funds somehow obviates the DDA from the discriminatory practices is a strange comment.

MRS OWENS: I think with funding, the only way you can really get to the bottom of this is to bring all the Commonwealth and state funding together, look at the general funding for operational purposes or capital purposes, and then look at the specific grants that go to the schools relating to children with disabilities and then see what it all adds up to, and until you do that - get that big picture sorted out, it's very, very hard to sort of understand exactly where you stand.

So just doing a snapshot of what's happened with the state grants gets you some of the way there, but if there's an element of truth in what the union is saying, then you've got to bring that into account as well. I think you've got to bring - it really needs to be looked at - - -

MS NILSEN: Globally.

MRS OWENS: I think it needs to be reviewed very carefully globally, and maybe it's time to be doing that and maybe we'll consider giving some sort of hint that that needs to be done to the government.

MS NILSEN: I think we would welcome that. Look, I can make a very broad comment, but I don't know whether it helps. I think if you add up the money that is allocated to an eligible student through whether it be state funding or Commonwealth government funding, clearly our students receive less per head for the actual child who is eligible. Now, of course the AEU are referring to, "Well, that's not the only funding there is. There's funding that goes to the sector and to schools that is tagged for special needs students." What I would say is that in working with schools, I've learnt that they are spending way over what they are given, and they need to because they don't have the benefit of the system.

State government, and to a degree the Catholic government, have a systemic way of working with these students that provides speech pathology and psychologists and whatever as part of their systems. Schools don't pay directly for that but they can access those services.

MS McKENZIE: So it's a centralised service.

MS NILSEN: Yes, and in an independent school they don't have the benefit of that. They either employ their own psychologists, and those of our schools that can afford to will do that. Many of our schools of course. The majority cannot afford to

employ their own psychologists. So they have to use money through the school to outsource those things. So what my interpretation is, that schools are using the money they get as a whole to provide the structures within their school that are provided by a system otherwise. Do you understand what I mean?

MRS OWENS: Yes, I do.

MS NILSEN: I don't know whether that's helpful, but this - - -

MS McKENZIE: No, that's helpful.

MS NILSEN: - - - is the way I actually think a lot of it works on the ground. Rather than looking at sort of global figures, I'm thinking, well, what does this actually mean for an independent school, and that's how I believe it's spent.

MRS OWENS: I think the debate on independent school funding has been a very confused debate for a long time and there's been a lot of misinformation out there, very selective use of information about the Commonwealth funding and state funding, and I think it's time to actually clear the air - - -

MS NILSEN: Yes.

MRS OWENS: - - - quite frankly.

MR ROSS: We would agree and we would support such an inquiry.

MS McKENZIE: It may be that it's not just for independent schools. Perhaps the funding of students with disabilities in primary and secondary education should be looked at so that we don't finish up with some result which leaves out some problems which still may exist in the state school system.

MR ROSS: I think that we would still argue that those children with disabilities who attend non-government schools receive less funding from both sources at Commonwealth and state funding, and it's in the government's arena to provide that funding equally to children with disabilities as it is to children with abilities.

MS McKENZIE: I mean, the lack of centralised services is a fair matter to take account - - -

MR ROSS: It's a real issue.

MS McKENZIE: - - - because of course that means you're almost replicating services from school to school. I wonder whether - - -

MS NILSEN: But we have to find access to things like the Statewide Vision Resource Centre and so we have no choice but to duplicate that.

MRS OWENS: I think you've raised a very, very important issue and I still think that what we've said in our report about the dollars for these additional services following the child still stands.

MR ROSS: We would support that.

MRS OWENS: I don't see that there's anything that the union has said that changes that view of the way that funding should take place, but as I see it, these should be generic funding for educational services, however distributed - and that's up to the governments to decide how that's distributed - and then you say you've got these additional needs on top of those base educational needs for particular groups of kids in our society. How are those additional needs going to be both funded, and how are the services to be provided through centralised service provisions such as the program that you talked about in your appendix, the Statewide Vision Resource Centre, and other centralised services such as psychologists and so on.

MS McKENZIE: And it may be that there's an argument for those services being made eligible perhaps under some conditions to all schools in Victoria, not just to the state school system.

MR ROSS: We'd support that.

MRS OWENS: I thought you might.

MS McKENZIE: But that might be something that we may want to comment on as an issue.

MRS OWENS: Well, maybe we'll go on to Cherie and you can tell us your story.

MS BRAND: Personal perspective.

MS McKENZIE: Yes.

MS BRAND: I just want to really comment on how the current funding arrangements impact on the services provided by independent schools and the additional costs that are actually incurred in providing equal education services to visually impaired children, and a lot of the comments you've just been making are very pertinent.

My son James is 15. He was born blind, and initially my intention was to send him to the local state school round the corner, very good school, all the parents in the neighbourhood had their children there and there was a lot of parental input, and I went and saw the school, and the headmaster was lovely and there were parents on duty that I knew and it was welcoming. But the issue to me was that there was from prep through to grade 6 at this one campus sharing one playground, and when the bell went, a mass of kids would race out of classrooms, and I was very concerned that my little four or five-year-old would get trampled and feel very insecure in the environment.

I looked around at private schools, and initially I moved to a private school because they have a system whereby they put the preps in one area and they have their own little playground and they get familiar with that, and it's a much more secure environment and there's supervision to a greater extent than the mass of kids out in the big playground, and it follows through for grade 1 and 2 and, you know, as they work through the school. So that's initially why I chose an independent school.

I selected St Michael's - and one thing I should say about the government schools, they are very nice and welcoming, but when I went, it was more about - there wasn't a problem taking James. There wasn't any problem taking a visually impaired child; it was all about what funding they could get to assist and how much aid time. That was the approach. When I went to St Michael's it was all about how wonderful integration was and the values and benefits to everyone it imparted in the school system, and the principal at the time actually told me that he'd had a visually impaired student in the past when he first arrived at the school who - I don't know who it was, but she was very intelligent and apparently ended up dux of the school. But he commented that it was great for the kids in the class because in those days they didn't have computers, and the students had to read the work to the blind students. So that improved their own literacy.

He said the teachers improved because they had to be more organised and have their work prepared in advance to send off to the RVIB to have it brailled. He said the kids learned to work together, and he commented - at St Michael's they have a number of outdoor ed programs, and he recalled an orienteering experience where the kids were all teaming up to tell this particular blind student where to put her foot and where to go next, and it was just one benefit after the other. The funding side really wasn't addressed. We talked about the RVIB providing a visiting teacher service, and that was it.

So with that sort of welcome, I was very keen for James to move to St Michael's and I have to say he has been very happy there and I have been very happy there. We've been receiving visiting teacher support from the RVIB since James started at school. We've been receiving brailled textbooks at no cost from

RVIB up until last year.

At the end of 2002, a visiting teacher from RVIB mentioned that new costs were going to be introduced in 2003 and that there would be a letter forthcoming from RVIB. Now, that was twofold. It was increasing the visiting teacher cost which had been at \$55 an hour for many, many years, and they were introducing a new cost of \$75 per hour from July 2003 and then raising it once again to \$92.50 per hour from January 2004.

MRS OWENS: How many hours a week - I don't whether you know for 2004, but how many hours a week does that teacher come?

MS BRAND: For this year he's going to come for one and a half hours a week. If there wasn't budgetary issues, the recommendation would be a minimum of two and a half hours a week. But even at these costs - I've done a calculation on what the additional costs are for the school in having James there and accessing services, but even at one and a half hours a week, the school will have to pay an additional - I think it's about \$6000 themselves, even though they get 3000 - I think it's 3000 - sorry, yes, they have to pay an additional \$2800 for the year. Last year they got 2040 in state funding. Obviously now that will be lower again.

So that was one cost that the school really didn't get much notice about so they couldn't budget. Then there was an additional mammoth cost being introduced which was cost recovery services for braille. In the past as I said, it had all been provided through RVIB. They've had funding constraints. They're feeling the squeeze. They now only provide services that they get paid for basically or get funded to provide. So NILS - the National Information Library Service I think it is - was set up to provide braille services, and they charge at cost, and they now charge the schools direct at the end of each term.

For independent schools that is paid for - charged to the school and paid for by the school. For the other government schools, it's all picked up by the government. So there's no cost to them. The frightening thing is when you go into the cost of what the braille will be, the estimate I was given after really chasing it up because there was nothing provided to the school in terms of what the prior years' costs had been or what it was likely to be in the future, but I heard unofficially that \$35,000 would not be a surprising figure for the year.

MRS OWENS: That's across all the material you need or just one piece of material?

MS BRAND: That was for all the material.

MS McKENZIE: For a term or for a year?

MS BRAND: That was for the year. That was a rough estimate, and that's doing things like - for example a maths book, you would just pick out the exercises on each page that you wanted. You wouldn't have the whole - - -

MS McKENZIE: Book brailled.

MS BRAND: The whole book brailled. So it's being very, very specific. Instead of having 15 examples all right, well, we're only going to have five.

MS McKENZIE: It also means that James is disadvantaged in that - - -

MS BRAND: It does.

MS McKENZIE: - - - way in respect to other children. Other children can look at all the other exercises if they're a bit confused about what to do, and they can do them.

MS BRAND: That's right.

MS McKENZIE: He can't; he can only look at a sample of those.

MS BRAND: That's exactly right. So that's what has occurred this year. The school have apparently allocated a budget themselves for this year for braille cost from NILS of \$25,000. In addition to that, they have sent one of their staff on a braille training course. They have bought a Braille Blazer machine that can produce braille. The purchase of the machine was paid for through funding, but the cost of sending this lady on the course, the cost of paying her salary is all borne by the school; the cost of buying the materials, storage cupboards, all this sort of stuff.

MS McKENZIE: Also of course while the braille production is being done, that person can't do other work.

MS BRAND: That's right. Look, I've put down some rough figures, as I said, on the additional costs, and I've got in support staff, James has an aide who helps him in class. It's about 11.25 hours a week by my calculations. That's a cost of 9625 a year, less the Commonwealth funding of \$3000, which means St Michael's have an additional cost just on the aide of 6625. Then there's the input of the special ed teacher who is apparently 3.35 hours per week. The calculations there work out at an additional cost for the year of \$5059.25.

MS McKENZIE: This is not the visiting teacher. It's - - -

MS BRAND: This is not the visiting teacher.

MS McKENZIE: This is a special - - -

MS BRAND: This is a - you know, they have a head of special ed and they have another lady that's there that, when he's got spare classes, she might do some reading with him or some assistance on the Internet. There's the brailleur's salary. They're estimating five hours a week, an additional cost for the year of \$3762.50. The braille budget through NILS which they're saying 25,000 allocated - the visiting teacher I mentioned before, there's an additional cost to St Michael's using last year's figures of 2816. So on top of that I know they've had to get special built cupboards and paper and stuff which is another approximately \$1800. So I'm looking at St Michael's having to pay this year in additional costs - to provide an equal opportunity education for my visually impaired child, they have to fork out \$45,000 plus.

MS McKENZIE: And if James was a state school, that would all be met.

MS BRAND: Yes. I can't say how much special ed teacher time he would get or the aid time would be provided or the braille would be provided. They can get funding for cupboards and materials. So whether he would get the same amount of - you know, they wouldn't have a brailleur's salary I wouldn't think because he'd be getting all the resources through State Resource Centre.

MRS OWENS: And the visiting teacher - - -

MS BRAND: The visiting teacher would be paid for by the - - -

MRS OWENS: - - - in the state school, that would be paid for by the government, too.

MS BRAND: That would be paid for, yes, and he would get - presumably he would get more time than he can now access.

MS McKENZIE: Blind Citizens Australia made submissions to us and mentioned in their submissions that there were other braille providers. Has the school investigated whether other braille production providers could have met this need at a lower cost?

MS BRAND: Yes. We've got quotes from other independent - and last year that we actually had some or they had some braille provided for maths through an independent brailleur, and they have got a number of quotes, but it's just very

expensive.

MS McKENZIE: It's still very hard.

MS BRAND: The cheapest way is to do it yourself with this Braille Blazer, which they're doing, but it is slightly a different format. I'd seen James carrying around - instead of the normal bound braille books, you know, he's now got masses of individual sheets of paper that are stapled together at the top that, you know, put in plastic covers. It's a very messy system.

MRS OWENS: It looks like what Cate here does some of the time - carrying around scraps of paper.

MS BRAND: Must get good at weightlifting.

MRS OWENS: I was going to ask you, how do the other parents react to this, because presumably that \$45,000 eventually gets absorbed into everybody else's fees. Does this cause any consternation at the school?

MS BRAND: It hasn't in the past. This is a relatively new problem because it really only occurred from last year. I mean, prior to that you're looking at a couple of thousand dollars I guess for a visiting teacher out of pockets. But now it's this huge cost, and I can't see - I mean, that's why I'm here. I want my child at an independent school, but I understand it's a business. They're in the business of education, but they've got to break even, and they can't educate my son at the expense of the other children that are there, and the other parents - at the moment there's a lot of benefits from James being in the class, and I've had letters from outdoor education staff, you know, about different camps he's been on and how amazing it's been and what it's done for the rest of the group and all sorts of things. But the bottom line is there's a huge cost there.

MS McKENZIE: I also can understand - this is NILS that is providing - - -

MS BRAND: Yes.

MS McKENZIE: I can understand a small braille production company having to charge - I mean, if all it is is a for-profit business which does braille production, then of course they're going to charge whatever it costs them. But I have no problems. I thought that NILS was partially a government institution. I also thought that NILS was partially funded through organisations like Vision Australia and the Royal Victorian Institute for the Blind who are also charitable organisations who collect fund for their various purposes. So I find it difficult to understand how that organisation has adopted a full-cost recovery mode.

MS BRAND: I actually raised that with Blind Citizens of Australia because I wondered if I had a case of discrimination against RVIB because they weren't providing the service to the kids that - you know, independent schools. But there's a whole range of issues there. The actual costs in producing braille seem to be exorbitant, and I can't believe there's not a better way of actually producing them, and pooling resources, like using the Vision Resource Centre and having a textbook that's available in braille for year 10. In maths, you know, one textbook - most teachers can work from the one book. They just pick out appropriate examples. You don't have to keep brailing different textbooks for different schools.

The cost of producing a maths braille page - this is through NILS, and apparently we've had it checked with outside sources and they agree - - -

MS McKENZIE: They're very similar I think.

MS BRAND: Yes, it's around \$6 per braille page, and for a diagram - as you know, there's lots of diagrams in the maths textbooks - \$22.50 per page, and when you're getting something brailled it works out three to four times the amount of pages that you would have in a normal textbook.

MRS OWENS: we at the commission a couple of years ago undertook an inquiry into cost recovery and developed some guidelines to be applied which have now been implemented through the Department of Finance. So what I'll do is go back and see to what extent NILS is following these guidelines; whether what has happened is consistent with those guidelines.

MS McKENZIE: And those guidelines had some public interest component.

MRS OWENS: They did. But that was very interesting getting that information, albeit a little bit depressing - not just for you, but for the school. Now, the school hasn't asked you to fund any of this additional \$45,000?

MS BRAND: They haven't at all. Look, I've just been so happy with them, and when I approached the National Blind Federation, they said the only thing they could do for me would be if the school refused to pay, in which case I would have a case to go before equal opportunities on discrimination ground, and I said, "But they're bending over backwards. It's just not right that they have to pick up these additional costs for integration. It's government policy. It shouldn't be any different if my child goes to a state school or to an independent school. If he needs these services to access this education, he needs them regardless."

MRS OWENS: We are looking at this balance of who should pay for what. Do

you think the government should be responsible for paying for the full costs of the additional services?

MS BRAND: Yes. I do. Look, there's additional things that I pay for, not that the school have asked me to, but things that, you know, because James is visually impaired, it made sense for him to have a computer in year 7, whereas, you know, the school policy is year 9. So I've had to purchase the \$4000 computer in year 7. I've had to purchase the Jaws reading program so the computer can talk to him which is another 2 and a half thousand dollars. I've had to purchase the upgrade so that you can access the Internet more easily. I've had to - there's another upgrade I have to get to make it compatible with Windows XP. It goes on and on like that, and I will have to buy him another computer because, you know, they only last for three years.

MS McKENZIE: And also because the upgrades keep requiring more memory.

MS BRAND: Yes. So I purchase that.

MRS OWENS: You're prepared to share some of the responsibility.

MS BRAND: Yes, I do.

MRS OWENS: But you're saying in relation to these school-related costs, you would like to see the government do it.

MS BRAND: That's right. Look, Helen, I'm prepared to buy textbooks. I buy them for my daughter who's sighted. I buy them for my son who's not sighted, but needs them so that the sighted aide has something to refer to when he's using braille. So I buy the textbooks, and then there's this additional cost so that he can have a textbook that's accessible to him, and I think that should be picked up by the government.

MS McKENZIE: Of course the other difficulty is - talking about costs sharing, it seems that you have the ability to cost share.

MS BRAND: That's right.

MS McKENZIE: If you just have - are tight as far as money is concerned and you can afford the school fees but that's really as much as you can do - - -

MR ROSS: There's an important principle at issue I think, and that is that children at non-government schools should receive the same level of government funding and support as children in government schools receive, so that when they choose one school over another, they're not discriminated against.

MS NILSEN: Can I point out that St Michael's pay this. There are many schools in our sector for whom that sort of cost would be crippling.

MS BRAND: But also you have to look at it from the other perspective. I mean, when I went to NFBCA or whatever their acronym is, you know, they were offering to push it as a discrimination case if the school didn't pay. So they're really in a no-win situation. They're forced I'm sure - you know, they're really forced into it, but I don't know how on an ongoing basis schools can do it, and what the impact is long term - it will be all right for my son. He's only got a few more years to go, but for another visually impaired child trying to get into an independent school, if they've had the experience of these tremendous rises in costs, how is he going to get in?

MRS OWENS: They won't take the child in the first place.

MS BRAND: They won't.

MRS OWENS: They'll claim unjustifiable hardship.

MS BRAND: That's right.

MS McKENZIE: And that effectively means that then the parents will not have a choice about where to send that child, even if they had wanted to send the child to a government school, and even if the child wanted to go.

MRS OWENS: Now, we've gone over a bit with time, but I might just come back to a very general issue just for a minute, just to see what has been involved, but this comes back to the senate inquiry which recommended that the Commonwealth commissioner study to develop a best practice funding model for school students with disabilities, and the government said it would consider funding models within the context of negotiating funding for the 2005-2008 quadrennium and refer the matter to the ministerial council of employment, education, training and youth affairs. I'm just wondering if you've been directly involved in those negotiations because that's another way in which you can get your views onto the table about new funding models. Have you been involved in that?

MR ROSS: Not personally, but AISV has, and we've made submissions to that inquiry, but I think that that relates to Commonwealth funding again.

MS McKENZIE: Not the whole funding, global funding.

MR ROSS: It's not a global funding issue. It's more relating to Commonwealth.

MRS OWENS: So that doesn't solve our general problem that we were talking

about earlier about trying to look at all the funding as a block and see where it's all going.

MR ROSS: It is a complex issue because education was a state matter, but the Commonwealth government has contributed funds towards education in recent years, and that's where some of the complexities tend to be blurred, and funds which come from both sources are not always included when people are talking about what level of funding goes to independent schools. But AISV would welcome the opportunity to press the issue so that children with disabilities weren't discriminated against at any opportunity at the senate inquiry - it would certainly be one of those - but it is relating more to Commonwealth funding than the whole global issue.

MRS OWENS: The senate inquiry is finished now, but it's just this process has developed as a result of it. That's one way of addressing it, but I think there is a question about - the broader question of state and Commonwealth funding, one that we talked about before. Any other questions, Cate?

MS McKENZIE: No, I've asked mine.

MRS OWENS: Is there anything else that you'd like to cover with us? Your colleagues have all been sitting in the audience very quietly. So obviously you're doing the right thing. Is there anything else you wanted to raise?

MS McKENZIE: You did tell them you couldn't take questions from them.

MRS OWENS: I'm very appreciative of Cherie coming along and sharing your story with us because it does give you the reality of the situation for just one child, and there's other children out there as well that are probably facing similar problems.

MR ROSS: Sadly, Cherie is one example. I guess in closing we'd urge the commission to recommend change to funding arrangements so that we can remove discrimination to children with disabilities in our school.

MS McKENZIE: Thank you very much.

MRS OWENS: Thank you.

MS McKENZIE: Very helpful submission.

MRS OWENS: We'll now break and we'll resume at 5 past 11.

MRS OWENS: The next participant this morning is Action for Community Living. Welcome to our hearings, and thank you very much for your submission to us which we have read, and thank you once again for appearing. Could you each give your name and your position with the organisation for the transcript.

MR CRAIG: I'm David Craig. I'm the executive officer for Action for Community Living.

MS IRELAND: Maree Ireland, lawyer and advocate.

MRS OWENS: Thank you, and, Maree, I think you're going to introduce your submission.

MS IRELAND: We think the commission has worked at the DDA fairly. Some recommendations are good and clarify where definitions should be looked at and extended. We still have some concerns. There are areas where people with disability can experience some discrimination without recourse through the DDA. The areas are employment, the exemption of workers in sheltered employment where such places are exempted; and government-owned accommodation and support settings.

MR CRAIG: Did you get that?

MRS OWENS: Yes, I sure did.

MS McKENZIE: Yes.

MRS OWENS: Very clear. David, do you want to go on or we can - - -

MR CRAIG: I can add a few things, yes.

MRS OWENS: - - - we can go to you and then come back to this issue of business services, sheltered workshops.

MR CRAIG: Yes.

MRS OWENS: Maybe we'll go to David. What do you think, Cate?

MS McKENZIE: Yes.

MRS OWENS: And then come back to the issues. Thank you. That was very clear.

MR CRAIG: I suppose the - and I realise there's some sort of limitations to the scope of what this particular commission inquiry can do in relation to some of those areas that we still see are weaknesses. But I think the work we do in advocacy with people with disabilities tends to I think indicate that the advantages that have been achieved under the DDA have probably favoured those with less disability or who have been in a position to take advantage of it due to either better access to resources or whose support needs don't challenge perhaps notions of unjustifiable hardship and the accommodations that need to be made, and I suppose particular concerns for people that that particular target group do tend to end up reliant on services that were never actually expected to continue beyond the life of the Disability Services Act, but have continued to exist as an area where people are supposedly provided for in a special way, but where their rights around tenancy issues in accommodation and, as Maree raised, sheltered workshops are sometimes ignored.

Also where statistics tend to allow for the idea that maybe, you know, 10 per cent of the population don't really count, and this concept of universal planning and thinking for, you know, those who are most vulnerable and most likely to be excluded or discriminated against doesn't seem to carry a lot of weight in the process of applying the DDA. Some of those issues I think have been well identified in the report: access to resources, the higher resource needs you have, the less likely it is that you can be taken on in services that are pretty stretched, and it sort of continues on.

MS McKENZIE: That's finished.

MR CRAIG: That's it, yes.

MRS OWENS: I think we'd probably acknowledge that the act probably has a differential impact on different people. We had a finding to that effect which was talking about people with different types of disabilities, but I think what we possibly haven't made as clear as you just have is that people who have got more severe disabilities probably don't benefit as much from the act as others. I think that's probably a realistic view either because of lack of resources or - we've acknowledged that people with intellectual disabilities have a great deal of trouble and people with psychiatric problems also have problems getting into the system, making complaints, but it probably goes a bit beyond that, doesn't it? Is that what you think?

MR CRAIG: It is, and I think excluding the disability services sector - I mean Maree knows more about the sheltered workshop situation than I do; that's her area of specialisation, but lack of access to tenancy rights in government-owned accommodation has created some really difficult situations for us to pursue the rights of people with disabilities in those situations against abuse by another resident, the same sort of judgments or judgment calls that are made around physical abuse or

violence against - you know, between residents is not handled in the same way, and we don't have the same recourse to laws or legislation from the legal advice we get on those matters that we believe is available to the wider public.

MS McKENZIE: And other people with disabilities who don't live in those particular environments.

MR CRAIG: Yes. But I think particularly they're exempt from tenancy rights under the residential tenancy legislation in this state in particular. So there are some areas like that where because of their level of disability, they end up in some way victims of so-called special care.

MRS OWENS: Our comment in our report about it having an accommodation standard which possibly could be extended into institutional accommodation probably doesn't quite hit the spot that you're talking about in relation to tenancy rights or could it potentially cover that?

MR CRAIG: I think standards as they're applied - there are standards, and whether they're actually called accommodation standards, there are disability standards, but if the accommodation standards were as detailed and specific around those kinds of issues, I suspect that, you know, the exemption from mainstream tenancy legislation would be one of the issues that could be targeted as well. It's generic legislation that exempts people because governments - so called has a role to play in funding and providing care, creates I think some difficulties in terms of rights and equity.

MS McKENZIE: The other simple problem that occurs, to me, is that if we wanted to have - well, at the moment, if we make sure the power to have standards clearly applies to accommodation which clearly is covered by the act, at the moment, specialist disability services are not covered and so couldn't be the subject of a standard. So we'd need to make it clear that the standard could also apply there.

MR CRAIG: I suspect also the allocation of resources - and I think sort of picking up on that, the allocation of resources according to assessment create I think situations where people can't get out and know what - you know, can't get outside that special care system because they're based on wholesale care strategies. The unit cost funding for people with high support needs means that if they need support for every hour of their day, the most they could get in what's a notional 35, 40-hour week in day placement would extend to about 12 to 14 hours of individualised support.

So they're forced into warehouse care structures because the resources don't actually give them the freedom to make a choice between disability services and mainstream services. So in terms of a marketplace, they are not even really a

customer that can make choices. They get assigned to an agency or, you know, there are limited choices and therefore I think that notion of a marketplace and rights and choices and competition within the disability services area is, you know, I think an area that - I'm not quite sure if it comes under the brief of this, but it is - I see connections to productivity and competition and lack of choice that also limits or excludes people from their rights.

MRS OWENS: There's almost room to have a major review relating to disability service provision which could pick up all these issues, because these are very, very, very big issues that do cover issues of people's rights to make choices, the adequacy of resources et cetera et cetera. So just like we said to the former group who were concerned about educational funding arrangements which are very complex and possibly unfair to kids that go to certain parts of the education system, just in this case there's probably room to be looking very carefully on a national basis at what's happening on disability services. It's probably different in each state, too. But you did say in your submission that in your view there should not be standards for institutional living arrangements; the standards should be that people with disabilities should not have to live in institutions. Was that a Maree comment?

MR CRAIG: Yes, we both felt strongly about that one.

MRS OWENS: I don't think we'll solve that in this particular inquiry.

MR CRAIG: But probably, you know, a review of the Disability Services Act or investigation into that, you know, that would be an issue because we've certainly had again significant debates over the institutions that exist. They still exist in Victoria, and there's long term - I mean, two of the large institutions in Victoria aren't even on the government's agenda for reform or closure. The major focus is on closing one of them at the moment.

MRS OWENS: But there has been quite a bit of resistance for that closure, too. So there's obviously different views out there in the community.

MS IRELAND: Workshops are trying to be more businesslike and expect workers to work to some extent, but their right to legal recourse hasn't improved.

MRS OWENS: While we're talking about the business services and sheltered workshops, your submission made the comment that our report had not mentioned let alone addressed the exemption of workers within sheltered workshops, but we did spend a bit of time in our report on page 272 - maybe we didn't talk about the things that you expected us to talk about, but we talked about this whole issue of productivity-based wages and had a finding in relation to that on page 273. I'm not sure whether you managed to pick that up or whether that wasn't what you were

talking about.

MS IRELAND: Groups are more in favour of the SWS system of wage determination. We feel PB wage determination can be a bit discriminatory for some workers.

MR CRAIG: That's productivity based - "PB" is productivity based.

MRS OWENS: So you think the productivity-base system is discriminatory, but what about those places where they basically pay what they want? I mean, couldn't that potentially be more discriminatory?

MS IRELAND: We would prefer SWS - - -

MR CRAIG: And SWS is?

MRS OWENS: It's a different - - -

MS McKENZIE: Supported wages system.

MR CRAIG: Support wage system, yes.

MRS OWENS: And that's not based on a productivity assessment through a wage assessment tool. So does that imply that you think that the wage assessment tool that's being used is just not accurate? You still think that that's discriminatory because it cannot measure productivity appropriately. Is that the problem?

MS IRELAND: Yes.

MR CRAIG: I suppose that kind of productivity tool isn't used elsewhere in the workforce to the same extent. I mean, you can see elements of productivity-based incentives and so on, but it's not as - I think the other thing, too, is if that area is exempt from discriminatory action under the legislation, and I think, you know, people have experienced difficulty negotiating part-time work in some of those places. There are built-in incentives for those business services to hang on to the most productive workers rather than support their opportunities in open employment opportunities. So there's actually a built-in disincentive for workers to access a wider range of employment opportunities.

So there are a number of ways in which that system actually makes it difficult for people to develop equitable and fair range of choices. We'd rather see the disability support system supporting people at the individual level and also the systemic level to make workplaces more accessible and find ways of creating

employment rather than an employment system that seems to operate outside the normal discrimination legislation.

MS McKENZIE: Then there are all the other conditions of employment. I mean, this focuses only on wages. One wonders why - whether it should be that the system should make sure that other conditions of employment are equal.

MR CRAIG: Superannuation is probably a classic one where the superannuation was only calculated on the actual productivity wage which is an add-on to the disability support pension that you'd collect anyway if you weren't in the job; you know, if you went off and chose to, you know, participate in the community as a volunteer, you'd - so superannuation isn't really a fair assessment and it's not based on the total wage, and yet when you complain about the size of the wage, they use that total package as the measure of what they're paying the person, so the supported wage system.

MRS OWENS: So people are getting this total wage base on their disability support pension plus their productivity-based wage. The productivity-based wage is the basis of the superannuation calculation.

MR CRAIG: Yes.

MRS OWENS: But when they're being told how well off they are, it's based on - - -

MR CRAIG: An advocate in an organisation recently received a letter of thanks because they'd helped this person fight for their superannuation payment once they retired, and I think it was in - \$19 or something. It was really pretty pitiful.

MRS OWENS: That would go a long way in retirement.

MR CRAIG: So these are the kinds of incentives, and they've also brought in that whole notion of superannuation has only been applied very late in the piece. So it hasn't followed the same sorts of schedules and procedures that the rest of the workforce has had access to. I think by marginalising that whole business service sector I think is Maree's concern. It isolates people from some of the normal assessments about what's appropriate and what's discriminatory and what isn't, and how you can seek recourse in that situation is the biggest problem.

MRS OWENS: Are you saying that we should move away altogether from business service provision or - that's a tricky question, isn't it?

MS IRELAND: Yes.

MRS OWENS: Your preference would be to have people in the general workforce with some assistance rather than in business services. But there may be some people that maybe still feel happy working in that environment. Would that be the case?

MR CRAIG: Yes. I mean, the position of the organisation is that it doesn't support institutionalised segregated structures of support in any area of life, and the fundamental problem with sheltered workshops or business services is that they have contradictory purposes; one to provide employment outcomes and support for people to enable them to pursue through work the kinds of self-worth, wealth - whatever else - income that the rest of the community aspires to through work.

At the same time, they have a purpose that is to make their businesses viable and productive, and I think that those two purposes are in conflict. To separate the purposes would be the only useful way but, you know, if you had the work support strategies or the disability support - employment support strategies operated separately, and people then still chose to go to a sheltered workshop and was supported separately to do that, and the business service was just a business, that might make the system a little bit more valid, but I think their current system really sets people with disabilities up for exploitation.

They may choose to do that, because they know nothing else and there is arguments that it gets people out of the home and they meet their friends. You can do that at the leisure centre where you can swim and do a lot of other more interesting things that are much nicer places to meet people and socialise than a tin shed that's set up like a factory and so on. So I think people really haven't been offered independent support to pursue a range of employment alternatives, and any work we've done in that area has highlighted that people really haven't been given a lot of choice or information about their choices before they make those decisions and I think that would be a prerequisite.

MS McKENZIE: Maybe that's something that Job Network should look at. I mean, the government is beginning to look at specialist job networks, and maybe that's one of the issues that those job networks should tackle.

MR CRAIG: Yes. I think you still need to put the support in in that sector and to make sure that the support doesn't create a disincentive for those job support agencies to not take on people with half support. I think that's the difficulty; that the current incentives are mainly support people that are - that have I suppose less impairments or less impairments to have to adjust to in terms of the workplace.

MRS OWENS: Yes. It comes back to the same point you were making about the Disability Discrimination Act; the rest of the system is set up to help those people

that are more likely to be able to get out into mainstream jobs.

MR CRAIG: And the reality of people with disabilities' lives when they're in the mainstream is that, you know, people have to work out what they can physically manage, or if it's a - it's like you have to see what they can emotionally or psychologically manage in terms of workload, and that varies across time. So flexibility and adaptability of workplace is pretty critical. There's not a lot of that in the business service system. It certainly is more easy to access that kind of flexibility in the mainstream than it is in that sector. But that's also a wider issue.

MRS OWENS: Do any people go into the business services sector and treat it more like a training ground to move on and out or once people get in there, they stay in that system?

MR CRAIG: Maree's had a personal experience of escaping from one. Maree escaped from a sheltered workshop to get a law degree. That wasn't with help.

MRS OWENS: Are there any others like Maree?

MS McKENZIE: Any other escapees?

MS IRELAND: You enter thinking you will be trained. But the reality is you are there to work with little expectation of open employment.

MS McKENZIE: That's an area of that exemption that we may need to reconsider I think.

MRS OWENS: Okay. You mention on page 2 of your submission that:

The definition of "disability" is broad. However, at present it does not include people with chronic fatigue syndrome. We made a recommendation to clarify the definition by - and we put in what as code for that which was - we said in our draft recommendation 9.1:
The definition of "disability" in the Disability Discrimination Act 1992 should be amended to ensure that it includes medically recognised symptoms where a cause has not been medically identified or diagnosed. We were thinking there of things like multiple chemical sensitivity and chronic fatigue syndrome. But maybe that was so oblique that it didn't come across. The reason why we put it generally was because I'm sure there'll be others. I mean, they're two examples, but I'm sure there'll be others.

MR CRAIG: Yes. I think though there's an interesting situation even just around

the public transport issue and who's included and not included in the multi-purpose taxi program; that it's been diagnostically, you know, selected rather than being based on impairment or mobility impairment or need for additional support based on what isn't available for the people in that particular target group. It's a classic case where, you know, medical diagnostic categories are being used which aren't necessarily related to need or, you know, a definition of "disability" that's more justifiable within the context of changing and new and emerging forms of impairment. I think that broader category approach that's based on more of a needs and support base definition I think would be more useful.

MRS OWENS: I suppose there's the issue of how do you administer that and how do you judge people's needs and do that. You'd need to get forms filled in by GPs and - I mean, I think that that happens now, doesn't it?

MR CRAIG: I think it's whether you focus it around the need for mobility or the need for an aide or the need for attendant care. You shouldn't have to say, "Well, this is the new category." You actually can do it - I mean, a doctor could do a physical assessment rather than say, "Well, the label is chronic fatigue." You would say, "This person physically cannot do certain tasks without an attendant or without assistance." I think it's more around activities of daily living and the need for support to do those as a way of defining, and I think there are already structures within the system that are used along that line. But we then get areas of government where they use outdated - you know, more archaic notions of disability assessment.

MRS OWENS: We heard in Tasmania that there are problems there in terms of people that have got temporary disabilities, and then once they're in the system, they don't ever seem to get out of the system. That relates to parking permits as well. So there's also just how you administer the scheme to ensure that it's kept up to date, and people that really need to use the system can do so.

MS McKENZIE: Maybe we should have broadened it a bit. We talked about "medically recognised symptoms, although the cause has not been medically identified". Maybe we should have broadened that to "medically recognised systems or medically identified needs, although the cause has not been medically identified".

MRS OWENS: We'll have a look at that. We've talked about institutional accommodation briefly. We've talked about the accommodation standard briefly. You agreed with our recommendation 6.1 in relation to the attorney-general commissioning an inquiry into the access to justice for people with disabilities. So we probably don't need to discuss that issue unless there's anything you'd like to say further on that.

MR CRAIG: No.

MS McKENZIE: They're all my questions.

MRS OWENS: I'm just running through mine. You have got some comments on page 4 about competition and economic effects, and you say that - I'll just read the paragraph I'd like to ask you about:

ACL believes that any mechanism that removes barriers that restrict people with disabilities from full participation in the community should be encouraged to the fullest, and perhaps given an advantage over other competing legislation and legal obligations.

We're entering into some interesting territory with competing legislation and regulations because there are - there's legislation such as the Workplace Relations Act and civil - and the CASA regulations, occupational health and safety regulations and what should take priority and when. It's really a interesting issue that we're grappling with. Maree, you've obviously been thinking about this issue.

MS IRELAND: Seems like people with disability have to take in so many other considerations and daily repeat, and maybe I'm being a bit idealistic, but think we need something to put forward our rights.

MR CRAIG: Occupational and health and safety is particularly an issue at the moment. I think that legislation has been written without almost any reference to the fact that it's not just boxes and inanimate weights that are being lifted and moved. But it doesn't take into account the fact that people's lives are being significantly restricted by the application in a very rigid way of those sorts of considerations.

MS McKENZIE: The other thing that occurs to me with the OH and S legislation is that I think the balance has become a bit skewed. I mean, there is a duty - the employer has a duty to other workers certainly, but also have got a duty to the worker with a disability, and it's really just looking at how to mesh those two duties, but I think sometimes it gets forgotten that the employer always has a duty to the person with disability - the worker with a disability.

MR CRAIG: And perhaps some responsibility to manage risk rather than avoid it or exclude it. I mean, I think that's the issue. People are taking far too safe an option to protect their organisation against any insurance claims and not actually managing and weighing up the rights. Human rights isn't actually calculated in that decision-making process.

MS McKENZIE: If perhaps that act required an employer had, as well as taking into account all the other things, also to take into account the provisions of the DDA,

that might help.

MRS OWENS: I think others have made the point to us that some employers just do have a fairly stereotypical view of the potential safety - occupational health and safety issue that may arise without really having full knowledge, and that some of that fear may not be justified in reality.

MR CRAIG: Yes, negotiation and commonsense are sort of really excluded at the moment. There's certainly a lot of advocacy work around these issues at the moment.

MS IRELAND: Especially in a person's home.

MR CRAIG: In a person's home - especially in a person's home.

MS McKENZIE: Thank you. I think I've raised all the issues I was - - -

MRS OWENS: I've raised all mine as well.

MS McKENZIE: - - - wanting to raise. Is there anything else, David or Maree, you'd like to raise with us?

MR CRAIG: Probably just I think to stress under the insurance and superannuation - and I know this was referred to and there were some discussion in the report. But the sport and rec area in particular, also sporting clubs and groups like that I think are fairly - they're run by voluntary groups mainly and they're fairly ignorant of good advice about insurance companies advising them what they can and can't undertake as a risk for what their costs will be if they include people with disabilities. I would argue that if it was based on proper actuarial evidence and risk and the cost implications, in actual fact, people with disabilities often would be able to make less claims in the case of an accident or whatever else than others using those structures.

That's fair enough, but they are actually seen as a bigger risk in insurance when there's not evidence - there hasn't seemed to be much onus on insurance companies to provide arguments or evidence-based rationale for why they present clubs and groups with advice that's quite discriminatory, and because that's been not terribly clear under the act, it is a difficult area, but I think it's one that needs certainly more guidelines, and we would support that area in particular.

MS McKENZIE: We've also tried to limit the exemption so that in fact we try and make insurers - they can't take advantage of that exemption unless they show that there's current statistical evidence or if they're relying on some other relevant factor, that they're not making stereotypical or unfounded assumptions.

MR CRAIG: I suppose along with the occupational health and safety, basically people's lives now exclude adventurous leaping more than they ever have in the past, and for people with disabilities who can't act without the support of others, that's particularly I think restrictive.

MRS OWENS: Thank you very much.

MS McKENZIE: Thank you both very much.

MRS OWENS: I'm sure that Maree would have also had some very interesting things to tell us about her experiences going through law. But maybe that's for another day. Our next participant I think is here. So thank you very much. We'll just break for a minute.

MRS OWENS: The next participants this morning are Milan Paliatka and Peter Tanglmayer. Thank you for coming to our hearings, and what I'll ask you to do is each give your name and state the capacity in which you're appearing, for the transcript.

MR PALIATKA: My name is Milan Paliatka, and I'm the carer for Peter who suffered multiple trauma back in 1989 being a charge nurse at the Alfred Hospital, and he was one of the participants - medical team delivering human heart from Newcastle for the cardiothoracic transplant.

MRS OWENS: Maybe we'll just get Peter to give his name and then we'll come back and you can give us more information, Milan.

MR TANGLMAYER: My name is Peter Tanglmayer and I am a victim of someone else's mistake or tragedy that has ruined my life and my profession, and I became a WorkCover claim number which has been manipulated, discriminated, defamed, refused, accused and whatever you possibly can think of. Any entitlements as a WorkCover claim, the insurers will fight till - and this is my personal feeling, the way they handle me, that they cannot wait for me to see me cold and blue which is equivalent to dead.

MRS OWENS: Thank you for that. Who would like to - - -

MR PALIATKA: I would like to be heard. As a result of this accident, he suffered severe head injury which is frontal and temporal lobe, extensive chronic contusions on his brain which gives him this frontal lobe disorder, and he suffers a post-traumatic stress disorder and has some reduction in - - -

MR TANGLMAYER: If I can interrupt, it was the trauma that happened that was caused by police driver who died instantly at the crash when he crashed the car - - -

MRS OWENS: You were in the same car.

MR TANGLMAYER: - - - in Flemington - yes. I was a member of medical team who went to Newcastle to retrieve the heart from a donor for transplant. There were two surgeons, myself as a charge nurse as an instrument nurse and coordinator, and when the police - at that time in 1989, the usual procedure of transporting human tissue was a police or ambulance. So when we flew to Newcastle and we flew back, and there was a police car at the Essendon Airport waiting for us, to transport us from Essendon Airport to the Alfred, and the police driver in the police car was driving along Tullamarine Freeway in spite of the fact that he was reminded of - he doesn't have to hurry, even though it was a requirement to have the emergency signals activated, which is the blue flashing lights and siren on.

When he left Tullamarine Freeway and approached Flemington Road, he lost control of the car and cashed into the electricity pole at 140 kilometre an hour. He died instantly behind the wheel, and I suffered multiple trauma from head to toe, and I've woken up after five days being unconscious in intensive care at Royal Melbourne Hospital, remembering absolutely nothing because my head was as swollen as this building, and I was - broken arm, chest and legs and everything - the lot.

It took me some time to recover, and I returned to work, which I have been - being sort of literally pushed to recover - quick, quick, quick, quick, quick, come back to work. I was only allowed to work part-time. I worked part-time, but because you're dealing with human lives at the operating theatre - Alfred Hospital has got 30 operating theatres, and when I was on duty as a charge nurse, I had under control - I supposed to have under control 13 operating theatres which one theatre consists of six people - professionals. There's a surgeon, two assistants, anaesthetists, instrument nurse and circulating nurse times 13. I mentally couldn't cope, let alone physically. So they reduced me to work on weekends only for emergencies, and I was only allowed to work 14 hours a week; one eight-hour shift and one six-hour shift.

Alfred Hospital wasn't even happy with that. So not long before - it was not long before the Christmas. On the beginning of December of 1991 when I was called to nursing administration and they said to me, "We are sorry. We cannot keep you on employment roll - on payroll. We are offering you enhanced resignation package or you can resign, but 31 December 1991 is your last day on our payroll list."

From that I took the enhanced resignation package because it was - at that time there was a major nurses' strike, as you can remember. The premier of Victoria was Joan Kirner who had the problem with the nurses' pay rise, and before that it was David White who was the minister for health, and he had a big fight with Victorian Nurses Board. So they were firing enhanced resignation packages and firing nurses left, right and centre. So Alfred Hospital terminated my employment, and from that moment I was terminated, I have not - and I repeat, I have not - received one second of rehabilitation program, support of any sort, whatever you might think of - and there are support groups existing in state of Victoria or country Australia.

I have not received a single support except as from Milan who became my carer and who still cares more than the whole world does. But the moment that I was terminated from the Alfred Hospital, of course I became the WorkCover claim insurance number that has been fighting me and fighting me and fighting me, and refusing and refusing and questioning, and, "This is not related to this accident. This

is not related to this accident. This is not related" - all sorts of excuses. Nothing was related to the accident in spite of the fact that I was dead on respirator in intensive care unit for five days. The insurance said, "Well, it's argumentative. It's inadequate and it's inappropriate," was every single answer I received and I'm still receiving from the insurance.

Unfortunately the state of Victoria - I mean, the insurance for the provider Alfred Hospital, I started with SIO, then it was transferred to GIO. From GIO it was transferred to HIH - FAI. From FAI - - -

MRS OWENS: This is the workers compensation claims agent.

MR TANGLMAYER: Yes, the insurance for the provider for the Alfred. FAI was - well, you might probably use the term bought over or transferred FAI to HIH, and I don't think we have to talk about HIH past history. You all know what happened to that. HIH - well, the Alfred Hospital took up NRMA, and last year or some time ago - not long ago, it was transferrer or sold or - I don't know what happened. Nobody let me know anything. I ended up - at the moment currently I am registered under CGU who sent me a questionnaire, "What's all this about?" The accident happened 14 years ago. I went through six - did I say six? - insurances. My file - - -

MRS OWENS: Yes, six.

MR TANGLMAYER: My file of injuries and suffering and - none of you can imagine what mental and physical torture and pain I have been living from day to day for 14 years. As I am sitting here today, the CGU is questioning, "How did you become a WorkCover claim number?" Thank you for your attention.

MRS OWENS: Thank you.

MS McKENZIE: Thank you, Peter.

MR PALIATKA: Peter has gone through many surgical interventions. He had 24 operations to the brain, and his facial reconstruction is not completed. We have been forced to take Maurice Blackburn and Cashman, legal firm, for his entitlements to go - particularly to the dental claim, he had - - -

MR TANGLMAYER: I'm terribly sorry. It's just that - - -

MRS OWENS: No. Would you like us to stop for a minute?

MR TANGLMAYER: No. It's just that it hurts me that I have saved the life at the cost of my own health and profession.

MRS OWENS: And that has not been recognised.

MR TANGLMAYER: The recipient of the heart transplant is probably - well, to my knowledge - I never met the patient because of emotional - for emotional reasons. I would mentally - if I see the patient, if I would have seen the patient, I would have mentally collapsed.

MRS OWENS: Absolutely.

MR TANGLMAYER: But what hurts me most is that this patient - and I wish him all the health and all the best and live for many, many centuries - not decades or years - but he is probably - and this might sound ruthless and cruel, he is probably well enough, sitting somewhere in Crown Casino playing pokies, and here I am fighting for my rights to be treated as a human being medically.

MS McKENZIE: Peter, as you've been talking, I've recollected how it is that you know me, and it's because - - -

MR TANGLMAYER: Yes, you're involved with my case of equal opportunity.

MS McKENZIE: Not with the Equal Opportunity Commission, but with the tribunal.

MR TANGLMAYER: Yes, tribunal, because I was accused during my - the insurance accused me of that my health is deteriorating because I am infected homosexual with AIDS, that I went through extensive chemotherapy or radiotherapy, which I never had. I never had AIDS. All my tests and all my HIV tests are negative - were negative, are negative and will remain negative because I have got no sex whatsoever. They took the defamation, they defamed me - I mean, they - for defamation of personality and character, I took them to Equal Opportunity Tribunal where madam was the commissioner.

MS McKENZIE: Yes, I was the member who heard the case.

MR TANGLMAYER: Yes, you handled the discrimination - I mean, I took them for defamation and discrimination.

MS McKENZIE: But if you remember, when I heard the case, that was on a particular legal point it came to me.

MR TANGLMAYER: Yes.

MS McKENZIE: And on that point you won and the insurer lost. But after that, the case - after that I don't know the rest of the history. The case either went back to the commission and went to conciliation or did it come again to the tribunal? It might have come again to the tribunal, but not to me.

MR TANGLMAYER: At that point, the moment - I mean, when you brought your verdict, that was the end. It died a natural cause. Nobody wanted to deal with it.

MR PALIATKA: It was the condition that - actually it is very hard to - - -

MR TANGLMAYER: Nobody wanted to hear about it.

MR PALIATKA: - - - prove discrimination, but the burden of proof was on us, and they gave us 200-per-hour legal representative from Maurice Blackburn and we couldn't afford it. So all of a sudden, HIH claimed a victory. We couldn't - but this was only one thing. What is the main thing that Peter's dental claim then actually was estimated already from 30,000, and FAI was not prepared to pay only 20,000. So all of a sudden two years later, because of the stress disorder and unfavourable treatment and procrastination, Mr Moshinsky QC said that it actually amounts to the constructive refusal of the treatment. I've got the article from the minister.

So they are still - until today they haven't provided him with the outcome. They ask for another medical panel and the one before, which was behind Peter, was not good enough, and the other one, they worked very hard to find people who would support their story. So eventually they thought nearly \$90,000 now was far too much, and we lost the case after all.

MS McKENZIE: You see, in a way, as you'll understand, we are doing an inquiry into the Disability Discrimination Act. We can't help people with their specific cases. But what we hope we can do is to look at the process, whether it's a process before the Equal Opportunity Commission in the state or before the Human Rights Commission, and see whether we can make some recommendation that might make the process better for future people.

MR TANGLMAYER: I think there is a great deal of injustice for injured people.

MR PALIATKA: Because Peter actually - - -

MR TANGLMAYER: Not only from the employer or by employer to an injured worker, but in general if you say you are disabled, they automatically put a label on you. They don't want to know about you. There is no law, there is nothing that can be applied or that can prevent or that can support your disadvantages being disabled, and I think it's simply that injustice is stronger, wider, taller and more vigorous than

justice, and that's where the problem is, is my opinion.

MS McKENZIE: And it's hard - I mean, really what you say is even though you won your case on the point before me, later you couldn't - it was too costly to continue the case.

MR TANGLMAYER: Yes. How could I afford to hire a lawyer when you end up on disability support pension from Centrelink which I receive as \$324 a fortnight.

MS McKENZIE: And the other side has of course all the resources.

MR TANGLMAYER: Can you afford a lawyer or can you afford a specialist - top specialist, medical specialist, who will shove under your nose \$220 for 20-minute appointment? Can I afford to pay that from disability support pension \$354 a fortnight? I think we all understand mathematics.

MS McKENZIE: That's another point that people have made to us; that it's not just the cost of the lawyers, but if you need medical witnesses, it's their cost, too, that is a problem.

MR TANGLMAYER: Yes.

MR PALIATKA: And once they know it's related to WorkCover, they don't give you much; they only give you few minutes. This case, you can't collect your thoughts and put the valid case in front of your medical practitioner.

MR TANGLMAYER: For example, the government - the Labor government lost the election. So the Liberal government got into parliament and it was Mr Jeff Kennett who cut off from WorkCover from the measure. From left and right, he cut off what he possibly could. For example I remember at the beginning as a disabled WorkCover, I was entitled for transport reimbursement to attend my medical appointments. Mr Kennett cut it off, "You pay your own fares."

Because I have permanent - and I will die, and I wish I am dead and I will drop dead in this very instance, when I have to attend an appointment and travel by public transport and there is - we all know about hot summer days or whatever, it's - well just about collapse from heat. Well, whether I will make it or I won't make it to attend the appointment by public transport, the government doesn't give a damn because the insurance will not pay for, for example, a taxi or any other transport. I'm sorry.

MRS OWENS: Milan, can I ask you, as a carer, do you get any support from the government? Do you get the carer support?

MR PALIATKA: I tell you actually when this happened, I worked also for the Alfred Hospital, and Peter - after five weeks he was discharged from the hospital. The first part of surgery and treatment was over. So they sent him home. I became full-time carer. He could not cope with the - he still has swollen head, and the arm was in plaster, leg in plaster, he needed someone. We don't have any family in Australia. So it was obvious that I was the one who has to pull the weight, but Alfred Hospital terminated me. They just dismissed me.

MR TANGLMAYER: The reason they terminated Milan's employment was that Milan worked and he requested to use his holidays to attend - to come and visit me on daily basis in the hospital. When he exhausted his holidays, he asked for unpaid leave, and the Alfred Hospital said, "No, you are not granted unpaid leave. You can take - you are terminated, and look after Peter."

MR PALIATKA: I also applied for actually transfer to another job, something easier, was then working at the sterilisation department. I had to do heavy lifting, and I had two spinal injuries, abdominal hernia. I had a number of injuries which never had been compensated. So they saw me as actually the best one to remove because I was - potentially I could claim compensation. But when they told me to resign, I said, "I have no intention of resigning. You will have to terminate me," they did.

Since then on, I could not work of course, and Peter was out of work. We were absolutely outsourced. Peter had so many appointments, I had to follow him everywhere, every step.

MR TANGLMAYER: Since the incident I had 24 surgeries, 24 general anaesthetics, and you can add the medical appointments preoperative and post-operative to those 24 surgical procedures that I had to go through. You can imagine the - - -

MRS OWENS: There's a lot of appointments there.

MR TANGLMAYER: You can imagine the state of my liver from general anaesthetics, let alone the brain, and Milan - I mean, it as - I mean, he is the person who got - he is a person who has morale, and he took it as his moral obligation to be present to see me being wheeled into the operating room and being wheeled out of the operating room. But 24 surgeries I think is a reasonable number.

MR PALIATKA: Peter also has collapsed and lost consciousness sometimes for three-quarters of an hour, sometimes he takes less. So it happens anywhere. He could not cross the road. He was terribly afraid of traffic.

MS McKENZIE: Of course.

MR TANGLMAYER: I still am.

MS McKENZIE: Of course.

MR PALIATKA: His eye was much lower than the other, he's got double vision. Post-traumatic stress disorder is just enormous. The stress is absolutely impossible in that we can evaluate what his condition is. So I think it was inappropriate to force him to go through courts and claim compensation which he didn't believe that he had to do, defend his - - -

MRS OWENS: I find it incredible really that Peter managed to get back to work. I mean, there are a lot of people - I can just see that you have been severely injured. I don't need much more information.

MR TANGLMAYER: When I returned to work, the occupational health and safety officer at the Alfred Hospital at that time I was on duty came up and - as you know, operating rooms are isolated from the wards because of the sterile environment, and it was - I think I was back to second week. He said to me, "Your little accident cost us already \$60,000."

MRS OWENS: "Your little accident?"

MR TANGLMAYER: Yes. That's what he told me. His name was Grant Prentice. He said to me, "Your little accident cost us, Alfred Hospital, \$60,000," when I was two weeks back at work. If somebody thinks this is a little accident, I think we're all wasting time.

MRS OWENS: I've done an inquiry into the workers compensation arrangements in Australia as my first inquiry I did when I came to this commission 10 years ago, and I know that there are other people that have been as severely injured as you who could not return to work, were given appropriate rehabilitation and then went onto WorkCover or got, in some cases, fairly significant lump sums. Somehow you've done the right thing and you went back and tried desperately to go back to work, and you did the right thing and you're still being penalised for that decision.

MR TANGLMAYER: I was being paid common law compensation \$64,000 for the little accident. Has anybody got any questions to this speaker?

MRS OWENS: They can't ask you questions from the audience I'm afraid.

MR PALIATKA: Including the staff - at the time you had this Phantom of the Opera. He got anonymous letters calling him Phantom of the Theatre.

MR TANGLMAYER: Because the eye was sitting here when I returned to work and, you know, at that time there was in the Art Centre opera - the Phantom of the Opera. I received anonymous letters from my colleagues and from the rest of the hospital, the Phantom of the Theatre.

MR PALIATKA: But also when he was at the Royal Melbourne Hospital - - -

MR TANGLMAYER: And that was the compliment.

MR PALIATKA: When he was at the Royal Melbourne Hospital in the most critical care, they also had excuse that being short of staff, the nursing staff - the nurse's were holding picket lines, they didn't give him appropriate care. So I said that he was a charge nurse and he was an excellent - he was a role model. He couldn't ever take this as an excuse. He contracted the infection to the rib graft he was given. His own rib was put in there, and that had to be later removed, another rib was taken and that also didn't have much effect; so one setback after another. But he could not understand either why, when he lost all the teeth and he ask for replacement - he paid initially actually \$3000 for restoration of his teeth, out of his pocket, when all his teeth disintegrated. It was an effect of the impact of the injury.

But the WorkCover had - actually they still thought - you know, the doctors, the dentists are the most expensive medical practitioners in the country. So they put up the price, it was not Peter who put up the price, to \$90,000. They thought it's far too much. Actually they were hounding him. They were only interested in his coming back to work as soon as possible. So within three months he was, but they say also their philosophy is, "Unless you want to get back to work, we have nothing to give you." Then they have terminated him.

So actually there are logical - this philosophy is twisted. It doesn't really help these people, and 15 years after the accident, he still doesn't have his facial reconstruction completed, and they thought within three months he can work? Now, they completely misunderstood the term "multiple trauma", particularly the emotional trauma and the psychiatric treatment which came along only few weeks later because there was no time for it. Neurologically he was underestimated. They didn't find out that he's got this chronic extensive contusions on his frontal and temporal lobe, giving him only five years later most significant behavioural changes, and it is still degenerating. It is getting much worse. It is precipitated of course. They did not take any account of that.

So obviously they only knew that they can't keep him in charge position,

quickly to terminate him, but coming back to work and work - particularly I don't know what they had in mind really, because Peter in the past, he is champion of figure skating with three gold medals. He was in Australia listed in modelling and acting agency the same for Elle McPherson, and he was also one of the most successful physical instructors, trained in Los Angeles and Zurich. So he was earning a lot of money out of work, and he was still ambitious. We bought unit in South Yarra. We were five years down the track paying off the mortgage once this happened. We lost the unit, we had to return money to the bank and we became homeless. We are still homeless.

Nobody ever actually thought about compensating us about these additional losses which started rolling, and within the year he lost his father in Czechoslovakia. He died in effect actually of stress and we could not bring them over. We could not - - -

MS McKENZIE: And you couldn't go there.

MR PALIATKA: We could not go there. We could not even actually inform them. I had to bottle it up and I had to - I knew that they are in critical state. Also his mother, since then on she's in psychiatric nursing home, and also contracted cancer. My mother also - she was already elderly and invalided. She was in wheelchair. In 1990 I had to take him home - it was already impossible. I had to take him home and start looking after her, and together with Peter. I had both of them, and I was not paid. For 12 years I had income whatsoever. Only just a year ago I got this carer's allowance which his \$45 a week. That is not much of a help. So I became very depressed and anxious. Practically I now appear to be as brain damaged myself as a result of the stress.

So being outsourced, I am not much of a help to Peter really, and I wish I could somehow find out a way how to convince them that the more obligation - they have actually settled out of court - to provide him with medical care and other necessities for the rest of us, because it was just the capped compensation, this WorkCover. It was not much really - capped compensation.

MRS OWENS: You didn't go to court to get that compensation. Was that just the table of mains compensation; the set amount that you get under WorkCover do you know?

MR PALIATKA: We had to take a lawyer. At that time they couldn't advertise. We had Riordan and Partners - Mr Burt - and because actually he was not properly diagnosed for the neurological damage, he was not compensated for the brain damage at all, and once he signed, they say, "You can't get more."

MS McKENZIE: As a settlement.

MR PALIATKA: I think actually now they didn't keep the outcome, the settlement - what they have committed themselves, the duty of care really. They gave him only they said reasonable duty of care, and they suppressed it actually to practically almost zero. They pay still but - for instance when he needs to be hospitalised, it's up to three months the doctors have to wait for their permission to hospitalise him. I mean, that's unreasonable to me.

Also all those bills - the dental bills - it was up to two years until the WorkCover paid finally. So in the meantime they could not proceed with the work because the major work was practically prevented from happening. The major work was still not done, and that is his facial reconstruction. So they didn't keep that part of their settlement, the contract, which is one thing. Maurice Blackburn has problems with it. It's like because it's WorkCover, nobody wants to touch it.

MRS OWENS: Including Maurice Blackburn.

MR PALIATKA: Yes. They thought this part of discrimination actually was like we would need to pay - even though they have this no pay, no win provision - \$200 per hour, and you know the lawyers actually drag it out. We had this claim for six years with Maurice Blackburn, and after all we lost. In the meantime we had the lawyer actually representing us by Maurice Blackburn on maternity leave for nearly two years, and in the meantime - - -

MRS OWENS: Nobody else took the case.

MR PALIATKA: No, and he cannot use the prosthesis properly. He is on a liquid diet for 15 years now. That did not actually wash through with the insurance companies. These people actually - they change places so quickly that you can't even relate to the same person. How am I going to talk about this when the HIH, those officers are no longer in power. Even having chief executives been tried for criminal offences, this is something also else to consider. These injured people have to be hooked onto corrupt insurance companies and people who are in power. This may be off the cuff, but I saw Mr Rodney Adler checking into the Park Hotel Hyatt, most expensive in Melbourne, and we don't - - -

MS McKENZIE: We're not the ones doing an inquiry into Mr Adler.

MR PALIATKA: This is very interesting to see, but I'm trying to create miracle for him that he will get his dental treatment done and he can start eating food.

MR TANGLMAYER: What I would like to say as well is that the WorkCover

insurance or the insurance for the provider, they're quite happy for me to wear a dental plate. I'm wearing a dental plate which you can see wiggles, and if I bite - I can't even have toast for example, it's too hard. Because this plate has hooks which is attached to my own teeth, if I do bite and I break my own teeth that holds the plate, then I'm gone, over and done with. So I don't even have the luxury to have toast in the morning. Everything has to be vitamised.

MR PALIATKA: And he doesn't have things for brain injury. Brain needs nutrition, and he can't get the nutrition. They just cannot understand that this is absolutely vital for him to have - everybody knows what are the teeth.

MR TANGLMAYER: Insurance doesn't think that I need the proper teeth or implants that my treating specialist, they said I've got every right to have implants to replace my own teeth that I have lost after the accident. The insurance said, "No. It's inadequate and - - -"

MR PALIATKA: Inappropriate

MR TANGLMAYER: "- - - inappropriate to have the implants."

MR PALIATKA: And it's too expensive.

MR TANGLMAYER: "It's too expensive - far too expensive. It is much cheaper to have what you've got," and I call it a monster because it wiggles like a monster.

MR PALIATKA: But he also has - - -

MR TANGLMAYER: But the insurance - - -

MR PALIATKA: I wouldn't describe the surgery, but he's got a face full of plates and screws and wires and coral, and this joint is disaligned. So he's got other disabilities in the face. He's got double vision and destroyed tear duct. The tears are running down the cheek. They don't - - -

MR TANGLMAYER: I was just about to say that I am not only fighting with discomfort and impossible to live with the monster in my mouth, and I stress and underline that I have to fight with double vision. I see double of everything. When I look around, you are - there are two of you in here - two of you - and when I walk the street - and this why I'm frightened to cross the road - - -

MS McKENZIE: Yes, because you see - - -

MR TANGLMAYER: - - - because of the vision, because I don't know where the

car is.

MS McKENZIE: Yes.

MR PALIATKA: So he sees - - -

MR TANGLMAYER: But insurance - - -

MR PALIATKA: Then you have to have neurology - the post-traumatic - - -

MR TANGLMAYER: It's not a problem - - -

MR PALIATKA: Memory loss, vocal, intelligence.

MR TANGLMAYER: You've got double vision, you've got double vision.

MR PALIATKA: So it's just head, okay, then he's got the arm and the leg of course; herniated leg, there is lymphatic drainage in disarray.

MRS OWENS: We can't talk from the audience, sorry.

MS: (indistinct)

MR TANGLMAYER: A patch?

MRS OWENS: We'll finish in a minute and you can have a chance.

MR TANGLMAYER: No, I refuse to wear a patch to cover the eye because, you know, it's bad enough - I mean, a lot of people they say, "Well, what about glasses?" I said, "Glasses do not correct double vision. Glasses correct shortness or distance, but they do not correct the broken image," because this eye is sitting - and you can all see it - three millimetres lower and two millimetres deeper, which breaks the image like this. That's why I see double.

MR PALIATKA: But also there was a surgery when Peter actually had eyelashes. He doesn't have the bottom eyelid that was taken off the ear and put there just to restore it, but the eyelashes were inverted inside. So it was scratching against his eyeball, and then he said, "I can't tolerate it. I can't. Please, I don't want this eye any more." He wanted to force the surgeon to excise his eye, and surgeon says, "I cannot - - -"

MR TANGLMAYER: I requested to put a glass eye.

MR PALIATKA: "- - - do it, because when you lose this one, then you're blind."

MRS OWENS: Then you're gone.

MS McKENZIE: Yes.

MR PALIATKA: So he still has to cope with the double vision as such.

MRS OWENS: Thank you for talking to us. As Cate has said, we're reviewing this Commonwealth act, the Disability Discrimination Act, but we are informed each time we talk to individuals that have gone through these sorts of experience - and I have to say this is at the very, very difficult end of the spectrum, your own experiences, both of you, and I think learning of your experience, too, Milan, as a carer has been very interesting for us because we haven't had that many carers come and talk to us.

MS McKENZIE: No.

MRS OWENS: So I'd like to thank you. I know it would have been very difficult for you to do this today.

MR TANGLMAYER: I know we're finished, but I can swear on Bible or whatever you want me to swear on that if I did not have Milan as a carer, a person who cares for me, I definitely wouldn't be sitting here today.

MR PALIATKA: He had nine suicidal attempts actually.

MR TANGLMAYER: You can believe me that - - -

MRS OWENS: I can't think of very many positives that have come out of your experience I have to say, but I suppose one positive is that the man or whoever - the person got the heart and maybe they're not sitting in the Crown Casino; maybe they're a school teacher. We don't know.

MR TANGLMAYER: Because I'm still convinced that the WorkCover insurance prefers to see the claim number cold and blue.

MR PALIATKA: I would like to say something really - now, we love the heart transplant. We sit here and we love him very much and we wish him - God bless him.

MRS OWENS: I just hope he's still alive and that is a positive outcome, because you don't want all this to have happened for nothing.

MR PALIATKA: No, we absolutely adore this, but there was another thing, this policeman, he had the state funeral. I was there. The police force, they got fleet of new Ford Falcon cars because these were found actually defective. So the police force benefited very much.

MRS OWENS: There's another positive outcome.

MR PALIATKA: Alfred Hospital - - -

MR TANGLMAYER: Yes.

MR PALIATKA: - - - they got from the - because this public - - -

MR TANGLMAYER: Another positive outcome was after the accident, the Tattersalls and other organisations donated money to build the helipad.

MR PALIATKA: No, that was the Transport Accident Commission gave the helipad to the Alfred Hospital, but they also got - - -

MR TANGLMAYER: And Tattersalls.

MR PALIATKA: The Tattersalls were supporting Alfred Hospital - - -

MR TANGLMAYER: Or maybe I'm confused.

MR PALIATKA: - - - ever since, yes, but - - -

MR TANGLMAYER: But I know that the helipad was built after this accident happened.

MS McKENZIE: Yes.

MR PALIATKA: Practically this was the last tragic heart transplant - - -

MR TANGLMAYER: And it was the reason why - - -

MR PALIATKA: - - - delivered by the police force. Since then they have the helicopter, but also they got trauma centre in the Alfred Hospital. It's a very good one actually, serving the whole of Victoria.

MS McKENZIE: I mean, all of those things help the community greatly.

MR PALIATKA: Absolutely. This is the positive. This is fantastic, but the TAC themselves they started advertising the drink driving idiot, and they made millions and millions of dollars in profit, yet they did not have enough money for this - - -

MR TANGLMAYER: I mean, it sort of comforts me to a degree that, you know the Alfred Hospital has improved and is able to provide such service for road victims or accidents and things like that, but what hurts me deep down in my soul is that not a single person in the state of Victoria or the country of Australia would stop and think, "Has Peter got \$1.20 to buy Panadol in supermarket or not?" No, he doesn't.

MR PALIATKA: We were actually sidelined - - -

MR TANGLMAYER: But we've got the helipad and we've got the Alfred and we've got the success and we've got the everything resulting from what I had to pay for, and that's my health, my profession - - -

MR PALIATKA: It was politicised because - - -

MR TANGLMAYER: - - - and my existence, and we have finished.

MR PALIATKA: There was coverage from the impact and it was very big issue of course, and I've got a lot of documents that The Age had ever since it was been for years - the Coroner's Court and everything, the findings. So it was wonderful, but Peter's name was deleted from the press from the start, and we had also all television channels interested once he was in the Royal Melbourne Hospital to come, and we gave them permission. They emphatically refused access to those television channels.

MR TANGLMAYER: It was denied because when I was loading the case of instrument in the police car and I was having a social conversation with the policeman and telling him that our ischaemic time - ischaemic time is the time when the issue survives without blood supply without any damage or is exposed to any damage, I could smell alcohol out of his breath. So the police driver who crashed was on duty, under influence of alcohol which was denied in Coroner's Court, denied by police and denied - it was just simply denied because they knew they are guilty as hell.

MR PALIATKA: But there were also laws permitting this alcohol actually, and the laws were tightened up after. These are all the good results from this.

MRS OWENS: And I think the other good thing for Peter is having you there to help him and be here with him today.

MR PALIATKA: Yes, it hurts that those who were in the car, those two surgeons, they never actually cared. They never got in touch with him ever since; those who were in the car, who survived practically with no injuries.

MRS OWENS: Thank you for that.

MS McKENZIE: Thank you,

MR TANGLMAYER: Milan - because of the insurance, Milan and myself, we've been scrutinised and bombarded with injustice by insurance, and I am worried. I'm petrified because Milan is 60 years old, and he is going through enormous amount of stress for me on my behalf because he cares for me.

MRS OWENS: Which is not going to do him any good.

MR TANGLMAYER: And if he drops dead from heart attack, then I've got nothing to live for, and that's what is - for anyone to stop and think, another life gone just because there is injustice is a victory instead of justice being a victory. Thank you.

MR PALIATKA: Excuse me, one more sentence. For me, important - I only knew just recently that this is going on. Also I thought somebody has to say something, and there are many people who came here to claim the discrimination. The WorkCover and TAC will somehow - if there is any chance, all those who suffer under these tyrants, I try to do something for them. If they can change their policies and they can also include their carers as somebody - because I was only just recently in touch with the Brain Foundation. They told us the carers themselves, government owes them \$20 billion every year. There is two and a half million in Australia, they have not been recognised yet. If something can be done, I wish I could help. This way at least I know - - -

MS McKENZIE: As Helen said, there are not many carers who came to make submissions to us, and really it's very helpful to us that you've been able to come.

MR PALIATKA: Thank you very much,

MRS OWENS: Thank you.

MS McKENZIE: Thank you both very much indeed.

MRS OWENS: We'll now adjourn, and we'll resume at 2.30.

(Luncheon adjournment)

MRS OWENS: The next participant this afternoon is Stephanie Mortimer. Welcome to our hearings, and thank you very much for your very early submission in our process. Would you like to repeat your name and state the capacity you're appearing, for the transcript.

MS MORTIMER: Yes. I'm Stephanie Mortimer, and I have a sister who is intellectually disabled, and she's 53 years old, and she's got the intellectual capacity of a two to five-year-old child. She's physically perfectly normal and perfectly normal to look at.

MRS OWENS: Thank you.

MS MORTIMER: She also has a dual disability which is a problem. She has a psychiatric illness as well.

MRS OWENS: Does she live with you?

MS MORTIMER: No, she doesn't. She lives in a community residential unit which is a department stand-alone house.

MRS OWENS: Okay. I'll hand over to you, and you can just lead us into what you'd like to discuss with us today, Stephanie.

MS MORTIMER: I want to discuss the right of choices - having the right of choice - for a person with a disability. I notice that the two previous speakers earlier this morning - not the last speakers - spoke about what they felt was appropriate for the Disability Discrimination Act, and some of the things they were saying were obviously relevant to their particular circumstances; that they wanted, you know, to question productivity pay for employment, what your production was, and I know they've been doing that with people with disabilities recently. They get a percentage of the total wage.

Some people are not even capable of working. They're intellectually so immature, they're children although they're adults, and whilst that might be appropriate for those people, it's not appropriate for others. I find that government-funded advocacy organisations always advocate for what they themselves want. They don't advocate for other people. One of my friends rang Valid Advocacy Organisation and she said, "I want my daughter to live in cluster housing." He said, "We don't advocate for that. Everybody can live in a real home, a stand-alone home in the community."

So we have all sorts of advocacy groups that are government funded that impose their values on other people, and I think the most basic of all human rights is

the right for us to be self-determining and make choices in our lives. Even my sister can make a choice. You can give her a ball of wool or even put \$10,000, and she'll take the ball of wool. So she is capable of making choices in her life. I think people lose the right to make a choice when those choices take away other people's ability to have choice. The same as when you exercise your rights, if it impinges on someone else's rights, you don't really have those rights. You only have rights as long as they don't impinge on someone else's. You only have choices as long as those choices don't impinge on someone else's choices.

So choice is very important because that would allow choice in housing, it would allow choice in education. You could go for integrated education or you could go to a special school. Integrated education is great for some people who have got a certain amount of intellectual capacity. When you've got a lower intellectual capacity, it's absolutely useless. You need to go to a special school and learn how to manage your daily living skills; just basic things like cleaning your teeth or combing your hair. They're more the things you should be learning because you're not capable of mainstream-type education facilities.

So whilst people are pushing their values on to other people and not allowing a range of choice, we're never going to get anyway.

MS McKENZIE: The other thing is, too, if people do learn those basic skills, that gives them another kind of choice, and that is the choice of whether they want to live independently or not.

MS MORTIMER: Yes, that's right. There can be all sorts of better outcomes because they've had the right of choice. I notice that there was a mention of Kew Cottages and the former speakers were saying, "Well, institutions have to be closed," but I put forward a case for gated communities, because we've got 147 people with intellectual disabilities in jail. Are those people expendable just because someone else thinks that everybody should be out of an institution in a stand-alone house, because some of our big men in stand-alone houses do inappropriate things. They jump the fences, they take the children's balls. They're only being friendly - they take their cricket bats off them. They jumped fully clothed in the person's swimming pool. They're repeat offenders because they do it week after week. They move the CAU to another location and then they move it again, and about the third time, they give up and the person goes to jail. Six of the ex-May Day Hills clients are in jail. It's not appropriate, because a person is intellectually immature, to go to jail.

So by allowing choice in every aspect of life, as long as that choice doesn't impinge on someone else's right to choose, you know, we could have choices from a range of options without being prescriptive and saying, "This one model is the only model we should have" or "This one system of education" or "This one system of

funding". We can have various systems of funding. I think that by - I'm very concerned that the universal declaration of human rights doesn't include the right of choice, and I notice that the Victorian government are now looking at choices, but I think it's a paper matter only; it will never realise - choice won't realise, the DHS won't give choice. They write prescriptive things in their policy like, "Everybody has got the right to a real home, a stand-alone house in a suburban street." Well, some people can't - without travelling and money skills, they can't even get out of the front door.

If you've done any work in these houses, you'll see the pantry is locked, the fridge is locked, the back door is locked, the front door is locked. It's like living in a mini prison, and they don't always have transport. So the people can't get out. They pay for day programs that are only part-time programs. You may pay for a full term, and out of the 12 weeks, you go to the program for eight, and then you may have what they call a holiday program where you pay extra money for a week. So it's not a full-time program, and the rest of the time, these people are incarcerated in a home where the front and back doors are locked and they can't get out.

MS McKENZIE: So it doesn't really give quality of life.

MS MORTIMER: No. We're just moving the institution from a bigger one to a smaller one. I don't think institutions are appropriate; I'm glad to see them go. But I would like to see the land that belongs to the institutions being redeveloped for appropriate housing for people with disabilities, and that includes people with progressive illnesses, so that they can make one move and maybe pay, you know, for an independent living unit in a cluster housing situation. When they can't manage independently, they could move into assisted living, then they could move into supported living, and then they could move into total care, and they could move within that one facility rather than having to sell up, buy again and sell up again.

I have a friend with Parkinson's disease that moved three times and eventually went into a nursing home. In that time he spent all of his money trying to get the facilities that were right for him at the time. But once he deteriorated, he had to sell and move on.

MRS OWENS: It's a bit like the model we've got for the aged where - - -

MS MORTIMER: Exactly, yes.

MRS OWENS: - - - people have got the choice of going into a community with others - you know, they have housing and then move into the hostel and then move into the nursing home - - -

MS MORTIMER: That's right, yes.

MRS OWENS: - - - in a sort of natural progression through the system.

MS MORTIMER: Yes.

MRS OWENS: So that's what you're suggesting.

MS MORTIMER: I'm saying that it should be an option. It's not suitable for all people. There are people who have got travelling and money skills that it would be constrictive for them to have to live in that sort of environment, but for people like my sister, it would allow her to walk out of the front door and freedom to ride her three-wheeler bike. She could live in a house shared with five people, and the other thing is she could equity purchase. There's no reason why she can't buy her own home. But there is today because the DHS won't staff a home owned by the client. That's discriminatory.

The other thing I wanted to comment on was that we keep talking about human rights, and I notice in the definition of the Disability Discrimination Act, page 15, section 2.2, "The focus of the objects on the human rights of people with disabilities", and it goes on, well, human rights are more than equal opportunity and discrimination, and I find the fact that we've only got an Equal Opportunity and Discrimination Commission is wrong because the human rights encompass more than equal opportunity and discrimination. The right to shelter, clothing and food, they're basic human rights. Equal opportunity and discrimination don't cover that. So when we look at what our basic human rights are, equal opportunity and discrimination doesn't cover that, only human rights covers that.

MS McKENZIE: So you would think that really we should have more of a human rights bill, which quite a lot of people say - - -

MS MORTIMER: Yes.

MS McKENZIE: - - - than just a Discrimination Act - Disability Discrimination Act

MS MORTIMER: Even so, if it was a Discrimination Act, if it incorporated human rights issues, yes, and certainly the right of choice is most important; whether it's education, employment, some people would be best in - I don't know if you saw Geraldine Doogue's program several Mondays ago, and she was talking about people who had been displaced from psychiatric institutions and were now in communities and in boarding houses, and they made the point - the psychiatrist made the point that a lot of these people functioned better in boarding houses because they were in a

group of people, and they didn't have to relate one on one, and a lot of people with schizophrenia can't relate one on one.

But they go with the flow, and they functioned because they were being cared for, and they had familiar people around them, and in the group they did well. Whereas if they were on their own, they wouldn't do as well at all. A lot of them were more stable in good boarding houses than if they were in situations where they had to - - -

MS McKENZIE: Isolated.

MS MORTIMER: - - - relate to other people, and the same goes for sheltered workshops. Some people are better, if they're unwell, with repetitive tasks. They like to do the same thing because they can't cope with any more, and they like to do repetitive things and they like to be busy and active. So they do have a place. So we can't say that - I mean, naturally we're talking about the pay; that's a different thing, but there is still a place for sheltered workshops. I'm not here to discuss the pay issues. That's a bigger problem probably than what I can address, but I think there's a need for them and I think there's a need for various types of employment as well. So choice allows that and I think choice should be incorporated. It's not just equal access and equal opportunity; it's choice.

MS McKENZIE: That's a really good balancing view that you're giving us, and it's interesting to have that.

MS MORTIMER: Yes.

MRS OWENS: I also think what you said about human rights being broader than just equal opportunities - we talked in our report about equality of outcomes and we talked about human rights in that broader context. I suppose we've focused more in discrimination because we're reviewing the Disability Discrimination Act, but I think we said to one of the other groups this morning that perhaps what's needed is a good look at at least the Disability Services Act to see, you know, what's happening there as well because a lot of people come to our hearings both this time round and earlier in our process and talked about the inadequacies of services.

MS MORTIMER: Yes. transaction.

MRS OWENS: And you're making another really important point about this right of choice.

MS MORTIMER: Yes.

MS McKENZIE: In a way a related thing is - and a number of people have mentioned this; it's the one-size-fits-all approach, and really you're saying that's not a good thing.

MS MORTIMER: No.

MS McKENZIE: You need several different choices available so you can actually make a proper choice.

MS MORTIMER: That's right. Well, neuro-typical people can live in a house or a flat or a village or an intentional community. They live in gated communities, you know, where you've got to push a bell and speak at the door before you get in, but we won't allow that for people with disabilities. It's terrible.

MRS OWENS: You said that your sister is in a position where she could make a choice.

MS MORTIMER: Yes.

MRS OWENS: From your point of view, would it always be a reasoned choice or do you think there's potential - - -

MS MORTIMER: No. That is why - - -

MRS OWENS: She'd need some assistance with that choice.

MS MORTIMER: That's right. Yes, she does. Under the Guardianship and Administration Board Act, she's the type of person for whom an order can be made which means that she can't make reasonable decisions for herself in all matters relating to her personal circumstances. I feel very disillusioned about the Guardianship and Administration Board because they seem to feel that it's restrictive for a person to have a guardian. But in actual fact if a person can't advocate for themselves and they haven't got the intellectual maturity to advocate for themselves or make decisions, they need someone, and the act itself implies that relatives and the community should take responsibility for guardianship and it says that the public advocate should promote community advocacy and community guardianship. But they don't promote any form of guardianship; they actually try and prevent it.

MS McKENZIE: You see, the act is a bit hard because it says you've got to strike a balance. On the one hand you're right; you've got to look at whether this person can't make reasonable judgments about their circumstances. On the other you've got to look at what's the least restrictive alternative for them.

MS MORTIMER: But how can it be restrictive for someone, say, that cannot advocate for themselves at all; they can't even speak or communicate, and if you talk to them they can only grunt or - how can it be restrictive for that person to have an advocate because they certainly can't advocate if they're like that, and to have a guardian gives them the right of decision-making for the first time in their lives.

MS McKENZIE: It gives them a voice.

MS MORTIMER: It gives them a voice, that's right.

MS McKENZIE: It depends on how great the disability is; you know, how - - -

MS MORTIMER: That's right.

MS McKENZIE: - - - serious it is in extent.

MS MORTIMER: But for anybody who is the type of person for whom an order can be made, they have to be pretty bad, you know, as far as decision-making is concerned. So then it would naturally follow that they need a guardianship to give them the right to make choices over their life, whether it's community guardianship or whether it's someone in the family. They would have more choices if there were more guardians appointed. So I think that the Guardianship Board, the interpretation of the act is not really terribly good. I think it can be interpreted - I think the original intention of the act was to promote community guardianship for people so that they could make decisions. I think it was a very good act, but I think it's not perhaps interpreted the way it was meant to be.

MS McKENZIE: And also to stop people being exploited. That's the other reason.

MS MORTIMER: That's right. Yes.

MRS OWENS: You did express some concern in your original submission to us about the situation in your sister's own case about the department making a choice which involved her having a male staff member or members, and she doesn't particularly like having male staff looking after her.

MS MORTIMER: Yes.

MRS OWENS: So there's a situation where it was a choice, but it wasn't really a real choice for her, was it?

MS MORTIMER: It wasn't a choice for her because when I rang the department and said, you know, "My sister doesn't want male staff at night, and the parents of

some of the other ladies have already expressed that they don't want a male staff member in the house because the ladies are in individual bedrooms, and if anything went wrong, there would be nobody to know anything about it," and the department said, "Well, you're not in charge of the staff roster. We decide who will be in the house." Now, even a prisoner has the right to choose whether they have a male or female staff member, but a person with an intellectual disability living a department house doesn't.

The other thing about - the state government are reviewing their legislation, and they say in a section here that people with intellectual disabilities should have the right to access information about themselves from the service provider, but in real terms that never eventuates. I've got the page here somewhere - here it is, page 16:

The right of a person to access information about him or herself held by his or her service provider unless to do so would jeopardise the health and safety of the person or another person.

MS McKENZIE: That's - - -

MS MORTIMER: If you ask for the staff roster, they refuse to give it to you with the full names of the staff; only the Christian name, and if you've got - I mean, my sister has had things stolen at the house, not just small things, you know, valuable things; hand-painted china plates and things that came out of the house when our mother died, and a Lladro figurine. So we wouldn't give a person something like that, but why not?

MS McKENZIE: If she was fond of it, why shouldn't you?

MS MORTIMER: Yes, why not. You know, she should be able to have that.

MS McKENZIE: In a way that's a most - that's almost an ideal and somewhat impractical statement unless it's done in a particular way. For a start, if that person didn't have a guardian - if that person with an intellectual disability didn't have a guardian - how would they know about that right, and then if they did know about that right, how would they find the information in a form that might be accessible? They might have difficulty in understanding it. I think that right needs to be backed up by lots of additional mechanisms.

MS MORTIMER: That's right, because in actual fact if you look at people with intellectual disabilities, not speaking about the whole disability, 60 per cent of people with intellectual disabilities can't advocate for themselves. But if you look at the funding, it goes to places like Villamanta Legal Service and a lot of advocacy groups

that promote the one form of housing - that's the CAU model - and my sister couldn't pick up the phone and ask Villamanta Legal Service to represent her, so she can't get it.

So you find the people that are not vocal and that can't represent themselves miss out on all the funding, and the 40 per cent that can advocate for themselves get all the funding. For instance, Vicks Rapid provide sport and recreational for people with disabilities and they get funding. I rang them and said my sister would like to do some recreation at the weekends. She can go to - there were several options given, but all of those games that were given were beyond her capability because she couldn't even understand the scoring, and I said to them, "She would like to be in a tunnel ball group or in a group where you're pulling the rope or volleyball, because she knows to keep the ball in the air, and she'd love to play those." "We don't have anything like that."

So because she's a little bit less advanced than others, she misses out on all the funding. The 60 per cent of them do. The 40 per cent that can advocate for themselves get the lot. Disability Discrimination Legal Service won't do anything for my sister because she can't ask for what she wants. So she misses out on a lot of things because - well, she doesn't because I'm there, but unfortunately a lot of families lose interest and a lot of siblings lose interest, but the ones that are interested aren't really encouraged because the service providers don't want to be accountable.

MS McKENZIE: Do you want to talk a bit about your own situation that you were telling us about before?

MS MORTIMER: That's right. My own situation is that I have had an injury while I was working in a nursing home, and I'm a registered division 2 nurse, and I've had to leave work several times because my sister has been really ill to the point where they thought she was dying, and I had to bring her home and look after her, and when - in 1998, Jeff Kennett changed the WorkCover laws, and under section 69, it became compulsory to divulge any previous injury. I have had a back injury working at Villamaria, and you've usually got to fill out a declaration to say that the information is correct, and I'm not going to lie in any declaration, and I put down that I've got a back injury and they won't employ me.

I've got a friend who's a director of nursing and I said to her, "I can't understand this because, you know, the injury - I know where the injury occurred and there was a report form. So if anything happened, they'd be responsible," and she said, after six years she doesn't think they'd be responsible or there's a certain period, and she said, "Even as a director of nursing - I know you and I know you're honest, but I wouldn't employ you because if anything happened to your back while you were working for us, I'll be blamed because I employed you with an injury."

MS McKENZIE: That makes it very difficult because it means in effect that you can never get back into the workforce as a nurse.

MS MORTIMER: That's exactly right. I haven't registered this year because it's a waste of time.

MS McKENZIE: Even though the employment might not involve anything that was going to put a strain on your back.

MS MORTIMER: Yes, that's right.

MRS OWENS: But does it preclude you from, say, going into a GP's surgery as a practice nurse or would you still be precluded from doing that?

MS MORTIMER: If you could get full-time doing something like that - I've applied recently with Ashcare. That's disability. There's no lifting there, they're ambulant intellectually disabled people. You've got to make a declaration about a previous injury to your back. So all the disability organisations are doing it, too. The Transport Accident Commission are doing it. If you apply with an agency through the Transport Accident Commission, you've got to fill out a form to say, you know, "Have you had a previous back injury?" You've got to be able to put down, "No."

MRS OWENS: But it doesn't make a lot of sense for the jobs where you don't need to do heavy lifting. It just doesn't make sense, and we do have a shortage of registered nurses out there.

MS MORTIMER: Yes, that's right.

MRS OWENS: And there's others in exactly the same position as you who are basically out of the workforce.

MS MORTIMER: There's a lot in my position that are out of the workforce now because of that requirement to disclose a previous injury, yes; a lot.

MRS OWENS: There is a potential for you to be able to plug some of those gaps out there in the market in terms of where there are shortages.

MS MORTIMER: Yes.

MS McKENZIE: But, you see, to refuse you employment on the basis that you have a back injury, that will be simply discrimination.

MS MORTIMER: Yes. But the fact of the matter is you can't prove it's discrimination because you wouldn't know how many people have applied for the particular job. I applied at Surrey Hills Nursing Home for night shift because there's not as much lifting to get people in and out of bed. At night you're only turning people in bed, and there were three nights a week going there, and I applied there and I wouldn't have any idea how many people applied. She said I was very well qualified, but once I filled in the form and said I'd had a previous back injury, I didn't hear from them.

MS McKENZIE: Where it involves lifting it's harder, because you can understand that might be of concern to an employer, but if the job really doesn't involve any lifting, then it becomes very difficult to explain why you would be refused.

MS MORTIMER: With MMSA who are an agency that contract out and supply staff to people with disabilities in home support for aged people, you still have to fill a form to say whether you've got a back injury or not. All the nursing agencies ask now. If you have an injury and you're working for an agency, the agency are paying the WorkCover. So they all ask. If you apply night and day, if you want to be with a nursing agency, it doesn't matter where you go, they ask you the same thing. If it's in the disability sector or in the nursing sector, any sector - whether you're lifting or not, it's irrelevant. They still ask.

MRS OWENS: I was under the impression that a lot of the lifting functions of nurses had been reduced if not eliminated through the use of - - -

MS McKENZIE: Hoists.

MRS OWENS: - - - hoists and so on.

MS MORTIMER: There's no such thing as a no-lifting policy. A lot of hospitals advertise, "We've got a no-lifting policy," but that's ridiculous, because once a person is in bed, if they slip down in the bed and you've got to move them up the bed, the best you can do is use a parachute tube, but you've still got to lift them on the parachute tube and slide them up. So there's no such thing as no lifting. If you've got a person and someone else has got the lifting machine - you can't have a lifting machine for all of the people in the nursing home - at some stage you've got to be lifting. Whether you had a lifting machine for everyone, once a person is in bed and they need adjusting in the bed, you've got to lift them. It's just ridiculous to say that, "We've got a no-lifting policy." It's not possible.

Nursing is a job that involves lifting. It's not possible not to lift; the same as looking after people with disabilities is a job that involves lifting. It's not possible

not to.

MRS OWENS: Do you want to say anything about the issue of enforcement? You raised that issue in your submission - your early submission - where you said that it's been impossible to get the terms of the act - we're talking about the Disability Discrimination Act - adhered to. The Equal Opportunity Commission will not do anything to enforce the current act. What have you got in mind in terms of enforcement? What would you like to see done?

MS MORTIMER: In terms of enforcement, I wonder if it would be better to have an independent ombudsman regarding complaints, because all the formal mechanisms that we've got at the moment don't seem to be appropriate and don't seem to be able to help. Often it's not a matter of going to a board and having a hearing and deciding what's appropriate or not. It might be a matter for mediation. It's something that may be speaking to an individual person and getting together with the other party so that both parties are aware of the situation and aware of the other person's problems, where say an ombudsman that can bring some sort of mediation would be better than, you know, having a formal hearing and maybe not having an outcome that's satisfactory to you.

MRS OWENS: You're really talking about a really very informal process - - -

MS MORTIMER: Yes, that's right.

MRS OWENS: - - - that would be facilitated.

MS McKENZIE: But also a process where perhaps an ombudsman can step in and help a bit more and investigate a bit more than the normal commission I think.

MS MORTIMER: Yes. I feel that with government agencies, they've got a bit of a conflict of interest to start with, and the other thing is they're often very short staffed and they can't devote the time and they can't investigate, as you say, as much as an ombudsman could. A couple of complaints I've made, they've said there's no comparator. I can't understand that because the comparator is a neuro-typical person. How can you say there's no comparator because it involves a person with a disability.

MRS OWENS: What were the complaints you made? Did you make a complaint through the Human Rights and Equal Opportunity Commission under the act that we're reviewing?

MS MORTIMER: No, I didn't.

MRS OWENS: It was under the Victorian act, was it?

MS MORTIMER: Yes. I've made one - well, I did make one under the federal act, but the Victorian refused to advance it to the federal level, and the one I made recently was in relation to the capping of the multi-purpose taxis, and in effect at the moment it doesn't affect my sister because she's already got a card, but she's in the situation where she could lose a card if she gets unwell and she can't go to a day program. So then she would have to go through the whole process of trying to get it again and the costs involved. So, you know, it would be very detrimental to her because she spends \$2000 a year on taxis. If she lost the ability to get that half-price taxi card again - she uses taxis for her day programs.

MRS OWENS: So that's every day she would use a taxi.

MS MORTIMER: Every day.

MS McKENZIE: So could that get taken away from her, that card? I thought that - - -

MS MORTIMER: Yes. If she becomes mentally unwell and she can't go to her day program, if you're not going to a day program you don't get the mobility allowance and you can't have the half-price taxi card.

MRS OWENS: That means that people that aren't going to day programs don't get the card at all?

MS MORTIMER: I think you can still get the card.

MS McKENZIE: But it's a different ground of - - -

MS MORTIMER: Yes, that's right, different grounds. I think for the person with an intellectual disability to get the card they have to be going to somewhere like a day program so that they've got a need for the transport.

MRS OWENS: Whereas if you've got a physical disability you would be able to make a case to get a card for any use.

MS MORTIMER: Yes, that's right.

MRS OWENS: Subject to this cap they're talking about.

MS MORTIMER: Yes. So hopefully someone else will take the matter up.

MS McKENZIE: But with people with intellectual disabilities, just as with a

physical disability, the argument is that it's - because of that disability, it's difficult or impossible for you to use public transport. Similarly you can make the same argument with intellectual disability because your understanding - some people with intellectual disabilities might be able to use public transport.

MS MORTIMER: Yes.

MS McKENZIE: But some may not.

MS MORTIMER: No. My sister couldn't possibly.

MS McKENZIE: Yes, because she wouldn't perhaps be able to understand where she was to get off, how to use, how to pay and so on. Even if she had a pass, when to present it and so on.

MS MORTIMER: In some cases she's got less ability than some people in wheelchairs because, you know, she can't even push the button to cross the road, whereas a person in a wheelchair can, you know - I know it's difficult; they have to negotiate gutters and things like that, but at least they can understand the traffic signals and negotiate the road, whereas she can't. A lot of them can't.

MS McKENZIE: I mean, in our report we have said that the Disability Discrimination Act has been less effective for some groups with disabilities and we've said that intellectual disabilities may well be one of them.

MS MORTIMER: Yes. I think intellectual disabilities have got less access to the Disability Discrimination Act, and they're more forced into options that are forced on them by paid advocacy groups that see certain things as appropriate for all people without the right of choice. Certainly I know a group in Monbulk who were self-determining. They had a range of disabilities, and they got together and the Shire of Kardinya donated them five hectares of land, and they got funding from the department some years ago to build rammed-earth homes for this group of people, but apparently there's been some hiccup in getting the place off the ground, but they were into growing organic vegetables and that sort of thing. But if that's what they wanted to do, I think they should be able to do it. That's a choice. It should be a choice.

MRS OWENS: I think you've made that point very well. Is there anything else?

MS MORTIMER: No, I don't think there's anything else.

MS McKENZIE: It's a very helpful submission.

MRS OWENS: Thank you very much. Thank you for attending. I'll now adjourn these proceedings to tomorrow, and we resume at 9 am. Thank you. More details about the hearings in Melbourne and other locations are available on our web site. I now close.

AT 3.12 PM THE INQUIRY WAS ADJOURNED UNTIL
FRIDAY, 27 FEBRUARY 2004

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