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TRANSCRIPT OF PROCEEDINGS

PRODUCTIVITY COMMISSION

INQUIRY INTO DISABILITY DISCRIMINATION ACT

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

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY ON THURSDAY, 17 JULY 2003, AT 9.09 AM

Continued from 15/7/03

MRS OWENS: Good morning. Welcome to the public hearing for the Productivity Commission inquiry into the Disability Discrimination Act 1992, which we will refer to as the DDA. My name is Helen Owens, I'm the presiding commissioner. On my left is my associate commissioner, Cate McKenzie. The hearing will have breaks for morning tea, lunch and afternoon tea. We will need to stick fairly closely to the timetable today, because we've got a lot of participants.

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

We have already talked informally to a wide range of organisations and individuals. The purpose of this hearing today is to provide an opportunity for interested parties to discuss their submissions and their views on the public record. We will be holding hearings in Melbourne following the hearings today and tomorrow in Sydney. We have already held hearings in the other Australian capital cities, and we're nearing the end. We will then prepare a draft report for public comment, which we will release in October this year, and there will be another round of hearings after interested parties have had time to look at the draft report.

Now, we like to conduct these hearings in a reasonably informal manner, but I remind participants that a full transcript is being taken. For this reason, and to assist people using the hearing loop, comments from the floor cannot be taken. Participants are not required to take an oath, but are required under the Productivity Commission Act to be truthful in their remarks. You are welcome to comment on issues raised in other submissions.

The transcript will be available on the commission's web site in Word format following the hearings. I now invite the first participant of the day, the Australian Taxi Industry Association. Welcome. Could you each give your name and your position with the association, for the transcript.

MR BOWE: Yes. Thank you very much. My name is John Bowe, I'm the president of the Australian Taxi Industry Association. I am based in Sydney, and I am certainly happy to be here today.

MRS OWENS: Thank you.

MR EVANS: Jack Evans, consultant to the Australian Taxi Industry Association, and I'm based in Canberra.

MRS OWENS: Good. Thank you. Thank you very much for your submission, which we have both read. It's a very clear submission, and I don't think we need to go through a lot of the detail. But I understand that you do have a few introductory remarks for us.

MS McKENZIE: Key issues.

MR EVANS: Yes. If I may start off at least. As you appreciate, the taxi industry is ideally placed to meet a lot of the needs of those in the community with disabilities. It is a demand-responsive service. You do have, if you like, a personal support through the driver and the facilities and assistance the driver can provide. The one area where the traditional taxi industry - which is based on a fairly standard family sedan type vehicle - has been confronted with an issue in terms of meeting needs is in regard to wheelchair-dependent passengers.

There, through various types of vehicles, including the commuter van style of vehicle, over the years the industry, government and the other stakeholders, have worked together to develop arrangements that have enabled the provision of increasing numbers of these style of vehicles to support that particular section of the community.

In our submission we did highlight that there is a need to identify and support particular programs, as inherently these style of vehicles have much greater operating costs - higher operating costs than do the traditional taxi vehicles. We estimated they are something slightly over about 30 per cent higher than a traditional taxi. What has happened over time is that through various licensing arrangements the governments have been able to establish programs to release licences for wheelchair-accessible taxis into the marketplace, and the arrangements, whilst not always perfect, certainly have been improving over the years, and are delivering better and better services to those sections of the community.

The ATIA has been involved in the development of the transport disability standards and in our submission we did talk about one particular issue where we do have a safety concern, about the provision of tactile identifiers on the external area of the vehicle. There, it is an issue about whether the sort of in-principle requirements of the objectives of the act should take precedence over what we believe is a legitimate safety concern.

Overall, as I mentioned earlier, we do consider that the cooperation between the various interest groups and ourselves and government are working fairly - or very well, and we are being effective in delivering better services to the target markets. Thank you.

MS McKENZIE: The other thing I say is, when you raise the concern about identifiers - if I understand your submission correctly - you've got no problem about them being internally in the car.

MR EVANS: Yes. It's the external one where - you know, people - - -

MS McKENZIE: Might be trying to read them - - -

MR EVANS: Yes, read them as the vehicle starts to move away.

MS McKENZIE: You would want to have a very short number, I can tell you that.

MRS OWENS: Given that you were involved in the development of the transport standard, was that issue addressed at the time? I mean, were these concerns raised?

MR BOWE: Yes, commissioner. I raised those - - -

MRS OWENS: You can call me Helen and call Cate "Cate".

MS McKENZIE: Yes, as long as you don't mind us calling you by your first names.

MR EVANS: Of course not.

MR BOWE: They have been raised in the development of the draft standards - certainly by myself, because I represented the association on all of the federal committees established over the years, and I have written to the attorney-general. It is easy to construe that the taxi industry - and it has been done - doesn't want to be identified. Far be it from that. We believe a person with a sight difficulty should be able to identify the vehicle they travel in.

In short, I believe in time meters will be capable of talking the fare, and all that technology will evolve in time. But in the short term, it is far too dangerous to put them on the outside of a vehicle. The person has got enough disability with sight than to wander out in traffic trying to identify a taxicab, that may be moving, and not being able to see other traffic - particularly in the city of Sydney. Now, it is still alive, and still well within our concerns regarding that. The identification is not a problem; it is just where the standards say the identifier should be.

MRS OWENS: It raises an interesting question about standards, and that is, how flexible standards can be if some issue like this is raised or identified, whether standards can be adapted for either changing circumstances or a safety issue such as this. Have you got any comments you'd like to make about that?

MR BOWE: There wasn't a lot of flexibility developing the standards, because they were so wide and so far-reaching. When we dealt with transport and the various modes of transport, the difficulties - that are still there - and over time they will be resolved. But to accept that the standards can - if I can use a for instance - provide hearing loops in electric trains, with all the electrical interference that I understand takes place, is going to take quite a specific time in addressing and getting over that problem.

There are so many wharves - private wharves for ferries, and making them accessible, with the rise and fall of tides and things like that - you know, tactile identifying paths to those ferries. There's a myriad of problems that confront the current committee that's operating through the Department of Transport and Regional Services. To its credit, the people I sit with on the committee, they are totally committed to resolving it and to investigating all possible avenues that are available to come up with solutions that meet the standards. It's not an easy task, and it is going to take time with some of the more technical areas, but I've got to say this, with due respect to the people I sit with who represent state governments and interested associations, they're totally dedicated to fulfilling the task.

MRS OWENS: So is this issue - coming back to the tactile indicators on doors - - -

MR BOWE: That's just one of the problems.

MRS OWENS: That's one of the problems that is being addressed?

MR BOWE: Yes.

MS McKENZIE: My only concern is - everyone has said in submissions, and you I think would agree - the standards have taken a long time to develop. That may be quite understandable because of the extent of the standards and the extent of consultation involved. But if the standards take as long to amend - to fix up problems, if problems are seen, as they did to develop, then the standards might prove to be a very inflexible instrument.

MR EVANS: Yes. I think it's a major concern. The intention was that there would be a built-in review cycle for the standards, on about a five-year rolling program. But certainly, obviously, it's groundbreaking stuff to get the first set of standards up, and hopefully the process is a lot easier as the number of issues involved comes down in the future.

MS McKENZIE: Should be less.

MR EVANS: Yes. But I suspect there will always be the odd thing that crops up that is developed in an in-principle, that looks eminently sensible, and then there are practical issues that do arise subsequently, that do present problems.

MR BOWE: If I could just add - in the time of developing the draft standards and in moving from the draft standards to the standards, the people representing the various governments on the committee, from an outsider's observation - when I say "outside", outside of government observation - were constrained by budget, their own particular budgets. What that may do - and a lot of time was lost early in the piece by getting an overall national agreement - you know, the draft standards were going to move ahead come hell or high water, and it's time to put budgetary constraints to one side and perhaps deal with when the budget would be available to meet the standard, be it to trains, rolling stock, trams and that sort of thing.

So a lot of time, in my opinion, was lost early on. It certainly didn't affect the taxi industry, because as I see the taxi industry, it's straight up and down in terms of its duty of servicing the community. The only thing we are dependent on is the regulator in each state or territory, and how they regulate us in terms of the DDAs and the type of vehicles we have available to carry out the task. So ours is quite simple, fitting into the overall frame.

MRS OWENS: What is your obligation under the standard in relation to vehicles? Are there target percentages that you need to meet by a certain time?

MR BOWE: We're at the moment working as an industry towards a time-delivery standard so that, as a first step, we can supply a wheelchair-accessible vehicle outside a member of the public's door in the same time frame as we can a conventional taxi.

MS McKENZIE: But my understanding is, you're not covered by the standard itself at the moment.

MR EVANS: Yes.

MR BOWE: Yes, we are. That's in the standard.

MS McKENZIE: But when you talk about "working towards" - - -

MR BOWE: We're talking 2005 having sufficient wheelchair-accessible vehicles to do that, and that is increasing the number each year to reduce any time differential.

MRS OWENS: Do you monitor that?

MR BOWE: Yes.

MRS OWENS: How is it going? How close are you to achieving that?

MR BOWE: Some of the states have got better statistics than others. I guess it probably sets a competitive edge between the states because it is monitored by the regulators as to how well the industry is meeting its requirements under the DDA. It is moving ahead quite rapidly. In my own state, New South Wales, an impediment - and if I could just use this as an aside - over the years have been the willingness of the government to issue licences, the willingness of the government to issue them at a fee to operators that was acceptable and reasonable but the difficulty in taking them up was the provision of a vehicle capable of carrying two wheelchairs.

The government in the last week, 10 days, with the agreement of the disability groups, have moved to a vehicle that can carry one wheelchair with a mix of twos but predominantly one, and that will allow those licences out there because they're a far more acceptable vehicle to the overall community than the van-type vehicle. In other words, we can get sedans out there now with the capacity to carry a wheelchair but still be acceptable and commercially viable to the industry with the general public.

MS McKENZIE: You also raise in your submission that there's still a problem with rural areas, remote areas as well.

MR BOWE: There is a problem with rural areas and one of those problems is that with industry moving out of a lot of the country centres it's brought about a population shift and in a lot of country regions taxis have been handed back in because they're no longer viable - the very small areas. The larger areas have gone to a situation where as a normal taxi industry they are voluntarily adopting a roster system of days off because the market has shrunk. This puts a commercial pressure on how they replace their vehicles. In this state, the government provides an interest-free loan of $30,000 to regional New South Wales, to taxi operators to convert their vehicles to a wheelchair vehicle. So almost 50 per cent of the cost is picked up by government on a long-term loan, which is of assistance.

MR EVANS: But if I can just add to that, part of the problem is, say in some of the smaller areas like, for example, Eden in New South Wales, down the South Coast, I think the operator there only has two vehicles. You know, even with the assistance from the New South Wales government, given the higher cost of a wheelchair-accessible vehicle as compared with a normal vehicle and then the higher ongoing operating costs, they still might find it's very difficult from their point of view to be able to say it makes good business sense to go in and acquire a wheelchair-accessible taxi given that, for example, they might see that there is virtually no prospect of generating additional revenue from the wheelchair-dependent community because they're served already by, you know, their own vehicles or other means. As we highlighted in the submission, we believe the provisions relating to the unjustifiable hardship are an important element in maintaining a reasonable balance within the overall operation of the DDA, specifically for those types of circumstances.

MRS OWENS: But with those sort of circumstances, there's still the issue about people with disabilities being able to get access to some sort of transport service.

MR EVANS: Yes.

MRS OWENS: Is there any easy solution? Is it about government putting more money in? I mean, there may still be resistance up to a point.

MR EVANS: As I said, a lot of these businesses - as John pointed out, you know, the licences are being handed back in because in the end they're saying, "We just can't make them viable." The additional cost pressures that come with providing wheelchair-accessible vehicles - if the government program is sufficiently supportive that it neutralises that, then most of the operators I'm sure would be committed to be installing or putting on such vehicles. Even if they provide support at the capital cost stage in the process, it still doesn't resolve the ongoing operating costs, you know, if you've got a lift in the vehicle and that requires ongoing maintenance and servicing and those vehicles themselves are just more expensive to operate than the standard vehicles. So it's a very difficult issue and there's no, I don't think, easy solution that says, if we do this then everybody will be satisfied.

MS McKENZIE: The incentive that you spoke of, where the money is provided or a long-term loan is provided to assist in the purchase of a wheelchair-accessible vehicle, does that apply in all states or only in New South Wales?

MR BOWE: No, not that I'm aware of, Cate. I'm only aware that that money is available in New South Wales.

MRS OWENS: Has that scheme made a difference?

MR BOWE: Absolutely.

MRS OWENS: It has provided incentives?

MR BOWE: Absolutely, no question.

MRS OWENS: I think somewhere in your submission you say that wheelchair-accessible taxis are heading towards about 10 per cent of the fleet. Is that across Australia or is that just New South Wales?

MR BOWE: Well, there was a myth promoted in early days trying to assess the population, the percentage of the population that would require that specialised taxi transport and it was fixed at 10 per cent.

MRS OWENS: Who fixed the 10 per cent?

MR BOWE: Well, I don't know how - I tend to think it's a myth, because my view is that you keep on putting on those vehicles until you provide equal delivery standards and hopefully, you know, in the years to come with the vehicle changes that seem to happen each year, and maybe the federal government's generosity in dropping the excise on bringing in vehicles from overseas, which has always been a difficulty for the taxi industry - those vehicles are available in other countries.

MR EVANS: You know, the London-cab style vehicles.

MR BOWE: We have persevered trying to build our own vehicles, but by and large we're an industry with about 15,000 vehicles nationally. We can't interest a vehicle manufacturer to building a purpose-built vehicle, mainly because of the size of our industry and its turnover of vehicles, so we've got to rely on making use of what is available and making it do. It was years before we were able to get the excise off the additional alterations that were made to vehicles. They were subject to special taxes that have hampered us all the way along the line. There really hasn't been - this might sound very critical - but there really hasn't been the support from the government in terms of tax, excise, in terms of criteria in the various states for people to be accepted in the taxi transport subsidy scheme that in my opinion there should have been.

MRS OWENS: But you said the government did reduce that excise on imports?

MR BOWE: Only on the conversion.

MS McKENZIE: On the additional conversion?

MR BOWE: Only on the conversion costs, and they were only locally produced vehicles, not vehicles brought in from overseas.

MR EVANS: So you're still subject to quite heavy duties on the imports.

MS McKENZIE: And presumably - I don't know whether this is the case; but presumably it's more expensive to retrofit a local vehicle to make it wheelchair-accessible than it would be to perhaps buy a ready-made purpose-built one from overseas, putting excise to one side.

MR BOWE: Absolutely, Cate. There's no question about that. Once you start to interfere there are so many standards that you must meet once you start to alter a motor vehicle.

MRS OWENS: What about these differential arrangements across states in terms of support for people using wheelchairs, using your services.

MR EVANS: The taxi services?

MR BOWE: The schemes in the various states and territories vary from one to the other. We were able to get reciprocity in because that was - but again, it was the worry of states in early days that people may come from another state and may, you know, dramatically affect the budget. However, we got over that, but I can't relate the exact subsidies that are available in all the states, but they do vary.

MRS OWENS: So there are different criteria?

MR BOWE: Generally it's 50 per cent with a kilometreage, with a maximum kilometreage on the fare.

MS McKENZIE: But they vary by percentage?

MR BOWE: They do.

MS McKENZIE: And eligibility?

MR EVANS: Yes, in Western Australia for example they're at 75 per cent. But as Helen was saying, one of the things that has happened as each state makes its budget decisions over the years, the eligibility criteria evolve individually in each state. Whilst there are processes, I think, where the states do consult each other about who's in and who's out type of thing, the reality is that they'll make the decisions about who's allowed to participate in the scheme and quite often they're as much driven by their budget, the state's budgetary considerations, as any other factors.

MRS OWENS: Can I just come back to this 10 per cent again? Somewhere in your submission you said you thought maybe that was excessive, that you could have an appropriate service with fewer than 10 per cent. But at the moment we've still got people that are saying that they have to wait for long times for taxis to turn up or the taxis don't turn up at all because those taxis are also servicing the rest of the population. I mean, I don't know what the magic percentage is or if there is a magic percentage.

MR BOWE: There is a difficulty in it, inasmuch as, and we've experienced that in New South Wales - over the years, with changing governments and changing regulations, taxi plates have been issued. We have maintained that where a licence is issued for what we call a WATs vehicle - a wheelchair-accessible taxi - that the condition of licence is that first priority be given to wheelchair-accessible bookings. However, we've seen that left out of conditions documents and people being what they are, we don't get the full cooperation at all times from the fleet that we have on the road.

Now, as an industry we're trying to address that in setting our own standards, but when you take on overall taxi servicing of a city, regardless of what city it is, you have service delivery standards that say - usually government criteria - that 80 per cent of bookings taken will be serviced within 10 minutes of receipt of booking. As you get out to the peripheral areas of the metro, if we could say that, the service delivery standards are a little bit more elastic so that you finally get 100 per cent of your bookings picked up, but that final 4 or 5 per cent maybe have a latitude of 30 minutes from receipt of call. This does, at times, tend to complicate equal-time delivery.

MRS OWENS: You mentioned the difficulty with I think what you called bailee drivers.

MR BOWE: Yes.

MRS OWENS: Those are the drivers that are just driving for other owners. Is that who they are? What's a bailee driver?

MR EVANS: Well, the way the industry is structured, obviously there's either the vehicle owner or a lessee where the operator will lease the actual taxi from the owner. Then that operator may or may not drive, but assuming he or she does drive for say five shifts a week, there will be other drivers that operate the other available shifts, so there might sort of be an extra couple over the weekend and maybe a night driver or something like that. Those drivers are the bailee drivers, so they're not directly responsible for the vehicle and they don't immediately have an arrangement that reinforces the obligation that the operator of a WAT vehicle has in regard to the priority for the target market group. So that's where the difficulty comes, and in part it might be depending on again the transport taxi subsidy arrangements; what they see is whether there is the appropriate level of assistance for perhaps the extra time involved in assisting the passenger into and out of the vehicle, as compared with dealing with the rest of the community.

Now, again, in some states there are reasonable allowances for that and, in others, the drivers are telling us that it's not adequate. It's a very difficult part of the environment and, whilst clearly the monitoring and the policies are to make sure the service delivery is achieved, there are all these factors that can combine to thwart it in individual circumstances.

MRS OWENS: But doesn't your industry self-regulate - in terms of these bailee drivers somebody needs to make sure they are providing equivalent services as the licensee or the owners. How does that happen?

MR BOWE: That's extremely difficult because of the fact that it is a bailee-bailor arrangement as opposed to a master-servant relationship. The moment the vehicle - if we can say - leaves from the front of this building with a bailee driver in, he then only has to meet the requirements of the regulator - state government, New South Wales. His conditions of bailment are that he pays X amount of dollars or receives X amount of commission - whichever system he chooses - for his labour for that shift. His requirements are set down by the regulator as to how he operates and how he conducts himself and he is answerable to whatever acts govern his driving of the vehicle and so forth, but the bailor doesn't really have any hands-on control of what that driver does during the course of that shift.

MS McKENZIE: Would the bailee also be liable in respect of - or required to fulfil any conditions that were on the licence given originally to the operator?

MR BOWE: You ask the question of self-regulate - we in New South Wales, and I can't speak for the other jurisdictions, but I assume it's the same - provide a training course for drivers and we certificate them as being competent to drive a wheelchair-accessible vehicle and, as such, their licence is endorsed and they generally by the fact they volunteer to do that course understand the requirement on them. We do not let anybody who is not qualified drive one of the vehicles - that's a regulation - and, yes, I would say that the mere fact that the person has put his hand up to drive a wheelchair-accessible vehicle, he understands the requirements.

MS McKENZIE: But also you said earlier - and I am not quite sure whether it's a condition of licences - that where you have got a wheelchair-accessible taxi operators are generally required to - - -

MR BOWE: The operator is, no doubt.

MS McKENZIE: - - - give priority to wheelchair passengers.

MR BOWE: Yes.

MS McKENZIE: Does not the same requirement apply to the driver?

MR BOWE: It does but, again, as I said, he doesn't have that hands-on and, at the end of the day, it comes down to the driver and the driver's authorisation standards as set by the regulator. He's driving a wheelchair-accessible vehicle; he's expected to provide the same performance as the operator - the differential being that the operator has signed the conditions document, the driver hasn't.

MR EVANS: If I could just add to that. In the end it probably comes down to a situation where the driver doesn't feel the same compulsion necessarily because, at the end of the day, even if his authority to drive wheelchair-accessible taxis was removed he could still drive a normal taxi whereas the operator stands potentially to lose his or her licence at the end of the day. The expectation and the pressure and, if you like, the stick, if they don't, therefore is that much stronger on the operator than on the driver.

MRS OWENS: Could I just ask: the operator could lose their licence. Could the operator lose their licence for the behaviour of their driver if the driver was not doing the right thing? Is he or she responsible for the driver in regard to the conditions of the licence?

MS McKENZIE: The licence conditions.

MR BOWE: Only to a point as far as the regulations. There may be a counselling procedure, complaint-mechanism procedure, where the operator is under his authorisation standards, required to counsel the driver but, ultimately, the power for discipline, the power of cancelling, is in the hands of the regulator.

MRS OWENS: But we need that sort of incentive structure going from the regulator to the licence - - -

MR BOWE: The operator.

MRS OWENS: The operator with the licence down through to the driver. We need a chain that works, don't we?

MR EVANS: Yes, and potentially, if say the driver continued to breach the obligations and the operator was counselled, as John said, and the problem still continued, then the accountability could well be that the operator could lose their licence in those circumstances, and so the operator may get to a stage where he says to the particular driver, "I'm sorry. I'm not going to let you have my vehicle any more." The other side of the coin on that for the operator is of course that if he can't get another driver then no service is being provided while the vehicle is sitting in the yard.

MRS OWENS: And that driver, you said, could just go off and drive a normal taxi.

MR EVANS: Absolutely.

MRS OWENS: There's nothing to stop him from doing that.

MR EVANS: And, quite frankly, the structure of the industry means that there's always plenty of taxis available for drivers. Quite often wet weather or whatever puts pressure on the supply of taxis and people see the newspaper screaming delays out at the airport or whatever, and we need more taxi licences, when quite often the reality of the circumstances is there are plenty of taxi licences sitting on vehicles that are idle in yards because there isn't anybody to drive them.

MRS OWENS: What about complaints? As far as you know have there been any complaints about individual taxis or the industry to the Human Rights and Equal Opportunity Commission?

MR BOWE: No. We have certainly attempted to work in with the Human Rights and Equal Opportunity Commission, but the incidents - I can't recall any major incident to this point in time. There's certainly been expectations by the Human Rights - but it has mainly been directed to the regulator in terms of, "You have these licences available. What are you doing to encourage operators to take them up? Perhaps you should be a little bit more elastic in your charging," and so forth and so on, but certainly - to get back to your question - no, I don't recall any individual incidents.

MR EVANS: There's always the anecdotal stories about response times to bookings and, "I waited X time and somebody else got a taxi within five minutes in comparison." Unfortunately those stories apply across the board at various stages with both the wheelchair-accessible taxis and other taxis and the situation is that demand can vary enormously. Wet weather is obviously one factor that generates a big increase in demand and therefore makes response times slower than they are at other times.

As John mentioned earlier, most of the radio networks - certainly in the metropolitan areas - are now keeping very good statistics on their performance and part of the relationship with the regulators is that performance standards are being imposed and, generally, the assessments that have taken place by the regulators have found that the industry is doing pretty well in meeting those standards.

MS McKENZIE: And there is some internal complaints mechanism, I assume?

MR BOWE: Yes, very much so. Generally the initial complaint will go to say the radio network and they will follow it up and provide advice about what has happened.

MS McKENZIE: And then from there where a person - - -

MR BOWE: If you're not satisfied there you usually go to the state regulator and they will then pursue it.

MS McKENZIE: I want to ask you about two things that were raised in the submissions. The first one - I may have got this wrong, but my recollection is that in Tasmania some of the submissions made to us raised a problem with certainly wheelchair-accessible taxis where the person who took the taxi was charged an up-front fee, which had nothing to do with the number of kilometres travelled. My recollection for the minute is that the up-front fee was $15, irrespective of the number of kilometres travelled, but if you got up to the number of kilometres that showed $15 on the meter, then of course if you were going to be travelling more kilometres than the meter charge will be used; in other words, a fee was being charged which had nothing to do with what was on the meter, and only to disabled people.

MR BOWE: I did see that article come through the press clippings at the time and it was something which the regulator should have immediately done something about down there, but, yes, you are right, and if the press record of that was correct, yes, that's what was happening. Again it would be up to the regulator in Tasmania to take some sort of action. They were, I guess, a little bit tardy in the early days of the scheme and probably lagged a little bit behind the other states and territories in coercing the industry to meet the challenges of the DDA, but certainly that would be - that wouldn't be a question in New South Wales to do anything like that - not just because I am from New South Wales, but that's so outrageous.

MR EVANS: If you like we could follow it up and get the details from the Tasmanian Taxi Association about what exactly happened and provide that information to you.

MR BOWE: Yes.

MS McKENZIE: Yes. If you would like to put just a one-pager to us to perhaps tell us, that would be helpful.

MR BOWE: Yes. Not a problem.

MR EVANS: Yes.

MS McKENZIE: The other one I was going to raise and it was not raised in Tasmania this time, but more recently - I don't know whether you know anything about this, but I gather there has been a move in the UK to make London taxis - I think it is - all wheelchair-accessible. Do you know about that?

MR BOWE: Yes, that's correct.

MR EVANS: That's correct.

MS McKENZIE: Which would of course explain why it would be so easy for you to get purpose-built vehicles from the UK.

MRS OWENS: Yes.

MR BOWE: The bit they haven't said in that, Cate, is that you can only use a wheelchair of certain dimensions, and that was a problem that we have had to tackle as an industry in Australia because there is no standard on what is the size of a wheelchair for transportation in a taxi, so we have to try to convert our vehicles to be able to take from the biggest to the smallest.

MS McKENZIE: So in London - - -

MR BOWE: In the UK it's a standard wheelchair or you don't get into the cab.

MS McKENZIE: So there would be a huge problem for many of the people who are in mechanical wheelchairs because they are traditionally bigger and heavier.

MR EVANS: Absolutely.

MR BOWE: Yes. The one-shoe-fits-all idea in the UK.

MR EVANS: The London cab is a particular shape - and if I can divert slightly - that's part of the history of the taxi industry that goes back to the Hanson cabs, and the requirements there always were that the internal dimensions of the vehicle were sufficient for a gentleman with a top hat to be able to sit in the taxi, and so - - -

MS McKENZIE: With a lady, as well?

MR EVANS: Absolutely.

MR BOWE: We did endeavour to bring those out here. We had the Metro cabs out here and we built them in Australia and we converted the vehicles to using General Motors parts here because of the terrain. They worked well, but one of the problems with the cabs is that the person in the wheelchair rides backwards, and that was not acceptable, and gradually they were phased out. But we did try the Metro cab, which is the same version as the black cab in London.

MS McKENZIE: It might have some advantages, particularly given an occasional experience of it that we've had, where you wouldn't actually be able to see which side streets you - - -

MR BOWE: I don't think we'll comment on that.

MRS OWENS: Good. Thank you. Is there anything else you would like to raise with us? We've asked you our questions. Any other issues come to mind? I don't know if you've looked at other submissions that we've received. A few people have raised these issues, but not as many as one might have expected. So maybe that's a good sign.

MR EVANS: Yes, I think that's probably right, hopefully. I think we've covered all the major points that we wanted to highlight to you. Basically it is an area where we are trying to provide a service, and through the programs that are operating around the states, it is getting better and better. Thank you.

MRS OWENS: Thank you very much. We'll just break for a minute.

MRS OWENS: The next participant this morning is the Investment and Financial Services Association Ltd. Welcome all of you - seven. I will now hand over to you, to each give your name and the capacity in which you're appearing, for the transcript.

MR MICO: I'll start, commissioner - - -

MRS OWENS: Can I just stop you and say, we're Cate and Helen. So if you're happy all to be called by your first names - - -

MR GILBERT: I'm very happy to be called Richard Gilbert - Richard preferably. Richard Gilbert, chief executive officer, Investment and Financial Services Association.

MR MICO: David Mico, senior policy manager of the Investment and Financial Services Association.

MR LEONARD: John Leonard. I work for National Wealth Protection, and I'm here as part of the IFSA representation.

MR McRAE: Chris McRae. I'm a specialist legal counsel at AMP and a member of the life and risk committee of IFSA.

MR BLACK: Geoff Black. I'm managing director of Lumley Life and I'm here as part of a working group with IFSA.

MR PENNINGTON: Brett Pennington, head of risk, underwriting and claims, Westpac Life, a member of the life risk management board for IFSA.

MR BRIEN: Anthony Brien. I'm an actuary with General Cologne Life Reinsurance, and a member of the IFSA committee that has put in the submission.

MRS OWENS: Thank you. On behalf of us both, I thank you for the submission you've given us. You've provided us with a very good education in all matters relating to insurance. There's a wealth of material at the beginning of your submission which I found very useful, and you probably don't need to go through a lot of that today.

Just so that you know, a few years ago I jointly presided on an inquiry into the private health insurance industry, and have had an interest in insurance matters for a while. But some of these issues I have no doubt will be raised through your presentation. But thank you for the submission, and we have read it. Now, I'll hand over, and Richard, you're going to do an introduction for us.

MR GILBERT: Yes, Helen - and Cate. It will be brief. I think what's important to say here is that this inquiry goes to the very heart of what this industry does, that is, underwriting, and the right to underwrite. That is a fundamental tenet of our business, and our business since this industry began more than 100 years ago.

It's important that out of this process we still have an affordable life insurance industry, in a voluntary system, but one which offers products to individuals to meet their particular needs. That means we have to have a sophisticated system. We wouldn't want, coming out of this inquiry with recommendations, a vanilla-flavoured system; it has to meet the needs of all individuals, and it has to be affordable. So that's of critical importance. I guess that's why we have such a broad range of representation here today, from both the retail insurers as well as the reinsurers. I think the magnitude and the gravity of this inquiry has attracted the number of people that we have at the table today.

I think the important point this industry can make here is that our record in relation to these issues has been very good. We have tried to work through the onerous obligations that we have under the Life Insurance Act, and under the associated acts - for example, discrimination provisions - tried to work through those provisions in a way that satisfies our customers.

I guess good evidence of that is the fact that HREOC - which could have done this, but has not - has not made particular references or recommendations or findings in its annual report to parliament, in how the life insurance industry does its business. So what I want to do now is to hand over to Geoff Black, who chairs the particular working group that we have on these issues.

Then I would like to seek the indulgence of the commission to make some comments about one particular set of evidence from the Mental Health Council, which reflected on our organisation - I won't say adversely, but it did reflect on it. So I'd just like to give our view on this issue. But in doing that, when I get the opportunity, I don't believe - and the reason I don't want to do it now is because that is only one subset of our business and our underwriting program, and I'd prefer to do it after Geoff has done his global view, if that's okay.

MRS OWENS: Okay. Geoff, I'll hand over to you.

MR BLACK: Thanks, Helen. I'd like to set the scene and give a little bit of background to our submission, and I guess set a framework with which you can ask questions of us on issues that you consider relevant. The life insurance industry believes the current form of the Disability Discrimination Act, as it affects insurance, should be maintained as it is. Section 46 gives insurers the right to give the same product to different individuals on different terms, provided that the offer meets the requirements contained within the exemption.

In a nutshell, our business is a business of discrimination, and I guess what I'd like to talk a little bit further about is how that works, and why we're supporting the DDA remaining the same. I think one of the key issues is, the DDA exemption as it stands at the moment, it does work for the community and the industry. We respect the rationale behind it, and it has enabled us to insure around 6.5 million Australians. 98 per cent of life applicants are able to get some form of cover; 90 per cent of income protection applicants are able to get some form of cover.

There is a very small number of recorded complaints, and those that are recorded appear to be dealt with very diligently within the internal complaints system of the organisations. Responsible risk classification is fundamental to us providing affordable cover to as many people as possible, and that's what we're looking to try and do. It facilitates healthy competition by allowing companies to underwrite each risk individually.

I guess, summarising, removing the section 46 exemption I think would be tantamount to destroying voluntary risk-rated insurance, and this is the fundamental basis behind our position, and I want to compare voluntary risk-rated insurance - which is what we're talking about - as opposed to community-rated insurance, with which, Helen, no doubt you're well aware, so I won't go into that. But we are different, and it's important that distinction is well understood.

Looking at the voluntary risk-rated insurance sector, there are around 20 active insurers operating in that market in Australia. It's an extremely competitive market. Profit margins are very fine and it's generally accepted the profit margin is around 5 per cent of premiums being written; that's what we're pricing for. It's a highly regulated industry and credential requirements are very very strong.

I guess there's a number of fundamental principles behind what we do. One is spreading risks across large groups. The concept of pooling to reduce the financial hardship on one individual by spreading that risk across a large group is really the very heart of insurance. We also need to charge a premium that reflects the risk. By way of example - and again, this was in our submission - the disability market in the US, where, through competition and mispricing, there are now only one-third the number of companies that were in that marketplace in the mid-80s. So that's the impact of mispricing and misunderwriting.

In charging a premium, we look to a number of factors. They're not limited to health, but health is certainly a big factor - lifestyle, family history, occupation, smoking status, male or female status - they are all considerations. Another key element is, we try to pool similar risks, and we describe it in the industry as "risk stratification". We are able to identify factors which indicate increased probability of a policy owner making a claim. We pool the similar risks and charge the same premium rate consistent with the predicted cost of those claims.

One thing I need to stress here, in voluntary risk-rated insurance you cannot change one person's individual premium rate once they are on risk. We can change the pool, but not the individual premium rate. Another fundamental to our business is equal access to information; the concept of utmost good faith. It's been around for a long time. It's embodied in the Insurance Contracts Act. Any imbalance here will result in a form of anti-selection, which may result in an insurer not being able to meet its obligations, or alternatively, significantly increasing premiums for all insureds.

I need to reinforce this point as well - we only get one opportunity to underwrite. A life insurance policy is guaranteed renewable. The policy owner, however, can cancel that policy whenever they wish. If, for whatever reason, they have been moded or a benefit has been excluded, and they feel their health has changed, they can apply to have that exclusion removed. So the consumer, the customer, has a number of options, whereas the insurer, once the policy is in force, the benefits on that policy are guaranteed.

I think at this point in time - I went through my own organisation's records the other day, and just to make a point about that only getting one opportunity to underwrite, I found a couple of policies where we paid claims for recently, and they're policies that were - one was taken out in 1923 and one was taken out in 1929, and that's the very heart of what we're talking about - they're very long-term contracts, and there needs to be a degree of prudence and conservatism in the way we take that business. But it also demonstrates - one of the policies, at the top of it, has the owner of the policy written at the top "Dad", which I think is significant to - you know, it had a place in their economic future, and it was filed away in an envelope for 60 years, and the claim was made. So I think it's important to understand the type of business we're in. You're welcome to have a look at these, if you like.

MRS OWENS: I won't ask you to table them, because I can see that they're very old policies.

MR BLACK: They are.

MS McKENZIE: And also - - -

MRS OWENS: And private.

MS McKENZIE: - - - there will be all sorts of identifying information.

MR BLACK: Absolutely. People who have long gone. But anyway, to achieve our underwriting, we rely on manuals drafted by reinsurers predominantly, based on both global and local experience. The manuals are based on historical analysis. One of our challenges is obviously interpreting that analysis as to how it's going to affect the future, when the claims are likely to be paid. As I said earlier, the policies are guaranteed renewable; we only get one chance to underwrite, so it's important that we do this well.

A dynamic and effective, innovative market thrives on competition. Our highly competitive market in Australia is driven by capital flows and individual insurers' appetite for risk. Sustainability of this market is based on prudent and responsible underwriting practices, ensuring reasonable profits are made and therefore support a reasonable return on the investor's capital in the life insurance sector.

Much of the capital supporting the life and disability insurance is sourced from five reinsurers in the Australian market, all of whom are foreign-owned. If inadequate returns or unduly harsh restrictions are imposed, that capital will exit our market and invest elsewhere. We've seen some of that occur in the liability markets in the general insurance industry of late, and getting insurance for, say, terrorism is nigh-on impossible at the moment. So in the life industry, we don't want that to happen to our marketplace.

In recent years the disability market in Australia has lost money. Much of this was brought about by a competitive market and a relaxation of underwriting criteria. Disability premiums rates have gone up by as much as 40 per cent over the last four years.

MS McKENZIE: Sorry, 40?

MR BLACK: 40, four zero. It's worth spending a moment on this. In disability alone, 65 per cent of applicants get standard rates. Approximately 25 per cent have either loaded or exclusions on their policy. But more importantly, only 10 per cent are not offered cover, and this in a market where the industry has lost many millions of dollars over the last five or six years.

MS McKENZIE: You said 65 per cent get standard rates?

MR BLACK: Yes.

MS McKENZIE: So how does that relate to the figure you've just given me, in relation to the rise in premiums?

MR BLACK: How it relates is that despite the losses being made, we are endeavouring to try and offer cover to as many people as possible, through modifications to policy definitions, for new products, and similarly through underwriting standards that reflect the risk that we're trying to underwrite.

MS McKENZIE: But you said the premiums have risen by 40 per cent.

MR BLACK: Yes, they have.

MS McKENZIE: Is what you're telling me that many of the previous premiums were too low - they were lower than the standard rate?

MR BLACK: They were lower than they should have been priced to properly reflect the risk that was being undertaken.

MR BRIEN: Basically over the last number of years there has been a large increase in the amount of claims made and the cost of claims, so that the increasing prevalence of people to make claims has resulted in the standard premium rates rising by 40 per cent.

MS McKENZIE: So what you're saying is the standard premium rate is rising by 40 per cent - - -

MR BRIEN: Yes.

MS McKENZIE: - - - and not the disability premium?

MR BRIEN: The standard premium rate for disability insurance products.

MS McKENZIE: Okay.

MR BRIEN: So 65 per cent of those people who apply for them still get the standard rate. It's just that experience and the amount of people claiming them - the cost of claims for these products - has resulted in those base premium rates having to increase.

MRS OWENS: We might come back after you have done your presentation and ask you why these claims are going up so much.

MR BLACK: Okay. That's not a problem at all. It's important to appreciate that insurers actually want to insure people - that's the market we're in - and if people don't want insurance we won't have a business - I think that's important - but this can only be achieved by good quality commercial underwriting and discriminating on a basis that is fair and reasonable. I think that is very critical. I would just like to touch briefly on privacy.

The life industry has what I believe is a very enviable record in respecting an individual's rights to privacy and confidentiality. All insurers comply with the

Privacy Amendment Act and the national privacy principles, and I think this has been reflected in the Privacy Commission's general satisfaction with our handling of private information. Before inviting you to ask questions I would just like to restate that we are very happy with the DDA as it stands because it works and our belief is that there are no viable alternatives available which will ensure Australia has a competitive, innovative life industry that provides enormous benefits to the community and to the Australian economy generally. We think the DDA provides adequate protection for the community by imposing a requirement for actual statistical and reasonable basis for discrimination, yet is not so prescriptive that it inhibits a good, healthy, competitive market. Thanks very much. I invite you to ask any questions.

MS McKENZIE: Do you want to talk first about the Mental Health Council's - - -

MRS OWENS: Yes. Richard was going to tell us a bit more on that.

MR GILBERT: Thank you. Just briefly, as you would know, IFSA and the Mental Health Stakeholder group entered into a memorandum of understanding to progress the issues mutually that we have. I think it was unfortunate that certain statements were made in this record at their hearing because we believe that these issues are being progressed very efficiently and relatively quickly. I think it is important to realise that the issues the Mental Health Stakeholders bring to the table are major issues for this industry in terms of the fact that, for example, 30 per cent of our claims are in relation to mental health conditions - 30 per cent - and the fastest-growing segment of our claims is mental health.

It’s important we meet with these people and that we progress the issues but, equally, we have to do them with the right degree of commercial caution. I would think a good example of how this is being done in another forum is with the Law Reform Commission report on genetic privacy; that took two years and it is still in the government cycle. We only took six months to set up the MOU; not two years, as was suggested by previous witnesses. We believe we are very active in the four or five groups - working groups - that we have on underwriting claims disputes and complaints. We believe that we've been responsive.

An indication of that responsiveness occurred earlier this year, when I - the CEO of IFSA - went to the Mental Health Stakeholders and said, "To progress this MOU effectively we need a steering committee," which we've now formed. It has met. At the last meeting we agreed at the end of this year we would be having a workshop with all the stakeholders, which IFSA will be convening, and during that meeting, interestingly, we talked about the prospect of a second year of MOU to extend the one-year MOU to a second year. I would just like to put to the commission that we think that process is working well; it's proactive; it's productive, and it should be allowed to continue.

MS McKENZIE: The MOU is in place now, isn't it - at least that is my understanding?

MR GILBERT: That is correct.

MRS OWENS: And it is there until December.

MR GILBERT: Until December, and we are already talking about a second year.

MS McKENZIE: Can you tell me something about the positive results that have come from that MOU.

MR GILBERT: Yes. The two major products are the underwriting and the claims guidelines. Now, they are critical and they're things that we've been working on and I think they are just about to finalisation.

MR PENNINGTON: If I could just jump in there because I'm chairing the working group of the depression initiatives with the six projects running. One of the huge tasks which is currently operating is the data collection for underwriting and claims and two reports are almost in final draft stage; also a brochure that has come out that is called "the disclosure group", which is a generic brochure for applicants for insurance to basically explain what the basis of insurance is, what happens if they answer yes to a question, and also what we do with medical information.

We give them roughly how many people get accepted at standard rates and loaded and things like that because, one of the things that came out 18 months ago when we had a day-and-a-half workshop with the MHC and related parties, was that a lot of people were actually non-disclosing a mental health condition and some groups were actually advocating it, particularly in respect of travel insurance, which has nothing to do with us, but it did show that there is a high level of concern there for the actual disclosure when people apply for insurance.

MR GILBERT: Just on that point: I think in the evidence that the Mental Health Council gave they talk generically about insurance. I would just like to delineate: we represent life insurance, not general insurance - it's another organisation, a different product and a different act.

MRS OWENS: We're getting quite a lot of concerns raised - and you might have seen it if you've looked at our transcripts about general insurance and travel insurance and so on - - -

MR GILBERT: We don't write travel insurance.

MS McKENZIE: Certainly some about life insurance and life insurance products, but - Helen is right. We understand that it's a totally different issue.

MR GILBERT: I appreciate the chance to address this issue, which was raised in previous evidence. I don't want this to be a factual ping-pong match.

MS McKENZIE: No.

MR GILBERT: I think the focus of this inquiry, as we understand it, is on discrimination generally.

MS McKENZIE: But the reason we are asking you - in particular why I am asking questions about the MOU - is because one of the things we're looking at is, is there any place for voluntary codes, self-regulation, memorandum of understanding in these areas, and we're really interested to know what are the positives that have come out of having an MOU. Would it be an appropriate mechanism to apply to other areas, for example?

MR GILBERT: We're positive about it and, voluntary codes - again we're positive about it. I think the shining example of voluntary code working well with this industry is in relation to genetic privacy, and we went to the ACCC, got approval to agree not to collect new data on genetics, and that is working, and it was endorsed, I think, quite emphatically by the Law Reform Commission.

MR PENNINGTON: And the previous good example would have been the HIV-AIDS issue in the late 80s, where there was agreement between basically the insurance industry and interested consumer groups.

MRS OWENS: With genetics - just while we're there - you're not going to collect data, but supposing somebody had had a genetic test done at some stage, it would be incumbent on that person to divulge that information.

MR GILBERT: That is correct.

MR PENNINGTON: Yes.

MRS OWENS: So even though you are not actively, proactively, saying, "We want to get this material," people would still have to make that clear.

MR GILBERT: That is absolutely correct.

MS McKENZIE: And also how does all that fit with questions about family history? In many ways that might be a related matter.

MR GILBERT: I think that's what the commission found. I think perhaps Mr Brien - - -

MR BRIEN: As far as questions on family history - I mean, if an individual knows about their family history then they are required to disclose that. If you know that both your parents died of heart disease at a young age then there is a predictive nature of that and you're aware of that and that is one of the factors that an underwriter would take into consideration, along with how you're responding to that information yourself.

If your lifestyle is such that you are overweight and drinking a lot chances are that you are going to be at a very high risk of heart disease because you have that family predisposition to it but, if you have a very healthy lifestyle and good cholesterol and all that sort of thing, the chances are you're aware of it and you're responding in a positive manner, so it's not just saying because there's a family history we will load you. It's saying family history is one of those factors an underwriter considers when saying, "How exposed relative to a standard person are you to suffering that condition?"

MS McKENZIE: Yes.

MR BRIEN: You have a genetic predisposition for it, but the way you respond to that information could be countering that negative and actually come back with a positive so, on average, with the fact that you are responding to a known health issue in a very positive way could mean that you're just treated as a standard life.

MS McKENZIE: Yes.

MR BRIEN: If you're ignoring it and you're becoming a diabetic then it will be treated against, of course.

MRS OWENS: But couldn't people exaggerate what they're doing and make it sound really good.

MR BRIEN: It's hard to exaggerate a blood test.

MRS OWENS: But going to gym - you could exaggerate that and say, "I'm going five times a week," when you're not.

MR BRIEN: It’s a combination of qualitative and quantitative factors. You've got to look at what do the blood tests and things like that show you versus what lifestyle considerations are there. The underwriter then makes judgment calls on, does he seek further information from their doctor; does he send them to a specialist physician to actually see - if there is information which conflicts - which suggests a non-disclosure, then you would look into it a lot more than something that all jelled together and showed very straightforward - and that's an underwriter's judgmental skill. That's where they are specialists.

MS McKENZIE: One thing that is raised in a number of the submissions is the feeling that there is some kind of stereotyping that happens; that sometimes unwarranted assumptions are made about, for example, the capacity to live with safety of certain people with disabilities.

MR BRIEN: The starting point is to base on the average of large numbers. You look at a large collection of information about general aspects of people with disabilities or people with health problems or people with bad backs or people with diabetes and what happens to them on average. It is only once you start to drawn down on that individual - if they disclose enough information - that you can actually start making more individual-specific assessments, so if you are only given a very limited amount of information you can only base it on - overall, people with bad backs are more likely to claim than people without bad backs - well, yes, that if a person with a bad back has this done and that done, then maybe no. As I said before, people with a genetic predisposition to cancer - if they are being far more vigilant on whether cancer cells are forming, they may in fact have a better chance of not suffering severe cancer than someone who is not aware of his genetic predisposition.

MS McKENZIE: The same perhaps with a person with, for example, a psychiatric illness, which is amenable to treatment.

MR BRIEN: Yes.

MS McKENZIE: Surely there must be a great difference between a person who regularly didn't take medication and a person who did.

MR BRIEN: Absolutely.

MRS OWENS: And the person who has regular colonoscopies or whatever, that would all be taken into account.

MR BRIEN: Yes.

MRS OWENS: Do the people who do the underwriting have a lot of medical expertise or do you rely on outside medical opinion?

MR BRIEN: I suppose it's a combination. There's an underwriter on the panel who perhaps can make some more comments. You start off with an underwriter who has limited capacity, who then becomes more specialist. Underwriters have reference to chief medical officers, who are medical experts, and to reinsurers, who provide them with guideline manuals, but it is a very involved process. John?

MR LEONARD: Certainly underwriters have medical backgrounds generally. We sometimes employ people with nursing backgrounds; other times we actually provide that medical background for them by sending them off to particular courses. Over years they get that level of experience to do their job. We're talking about five years before someone could be qualified as a senior underwriter in our industry and, as Anthony mentioned, they have access to chief medical officers. More recently our organisation has appointed a psychiatrist as a chief medical officer, as well, so we are conscious of the fact that we need to get more experience in that particular area, and certainly that is one of the recommendations that was made by the industry in relation to the recent guidelines that IFSA put forward concerning mental health conditions and the recent workings with the stakeholders, so - - -

MS McKENZIE: So you rely on your own medical expertise of employees and so on, and then the manuals?

MR LEONARD: We have access to our own internal underwriting guidelines, which we develop. We largely rely on reinsurers' underwriting manuals. There are five reinsurers in the market. Most companies generally rely on their treaty reinsurer, but do have access to other reinsurance data, as well, to help make underwriting decisions.

MS McKENZIE: And those manuals reflect the historical experience and expertise of that reinsurer. Is that right?

MR LEONARD: I don't believe it's specifically related to the experience of that reinsurer, but it's certainly mortality and morbidity experience in a general sense.

MRS OWENS: That's across a population. This would be broader medical data.

MR LEONARD: Yes, that's right..

MR BRIEN: Yes. The way a manual is derived, if you like, is it's an internal manual that would be similar in the way a pricing approach for a new product, say, for when we developed, the development for covering hepatitis B, hepatitis C sorts of conditions. Basically, you go and look at the medical research. You go and look at what evidence is out there in population statistics, stuff put out by Cancer Council if it's to do with oncology, stuff put out by Births, Deaths and Marriages - causes of death, hospital reporting, things like that - to develop the statistics for population experience. How then do you go from population experience to insured life experience? How effective is your underwriting process? You draw some general lines for that. In areas where there is a lot of change or development or growth in understanding often an underwriting manual will say, "Refer to your CFO because this is a new area, this is a changing area."

MS McKENZIE: That was about to be my next question, so I'm very happy you - - -

MR BRIEN: It's an actuarial thing, that we look backwards to predict forwards. Mortality improvement in Australia has been quite consistently 2 or 3 per cent for many age groups, reducing to sort of 1 or 2 per cent for the older ages; but there's a continuing mortality improvement that results in - more people survive conditions but they may not live as good a quality of life after the event.

MS McKENZIE: But where views are subject to change, of course looking backwards is not always as good a guide.

MR BRIEN: Yes, so you make predictions about the future and what you think future claims experience will be and anything that's still too changing or developing or is a condition that has too many factors - you can't just look at one thing and say, "This will give you an ultimate result." It's, "How do they all interact?" Then it requires individual expertise and current medical information and that's where it's, "Refer to CFO," and that then is where you go and seek the latest information to try and look into things.

MS McKENZIE: And in those cases, might the mix, the balance between the individual factors of the person applying for insurance and this information be slightly different?

MR PENNINGTON: Brett Pennington. This is where the individual risk classification of underwriting comes to the fore, because generally the reinsurance underwriting guidelines will give you the sub-categories or pools. So, for argument's sake you can go, all insulin-dependent diabetics. Here's your group. You start with those. Then you have to look at what we would think are the debit and credit features for that person. Are they overweight? Do they have any secondary complications like peripheral vascular disease or retinopathy? Do they have high blood pressure? Do they have any evidence it's ischaemic heart disease? How well do they control their diabetic condition?

MS McKENZIE: And how severe? Do you look at the severity?

MR PENNINGTON: Absolutely.

MS McKENZIE: That's another matter that's been raised in numbers of submissions, a concern that perhaps severity isn't given sufficient weight.

MR PENNINGTON: That's where we get down to the individual classifications in each one of these subgroups, so you could have a range for diabetics that are exactly the same age, that were diagnosed at exactly the same time in their life, and one might be an acceptable risk with perhaps a small loading and another person would be declined outright because they're not managing their condition very well.

MS McKENZIE: Or because the condition is - there are different severities of condition. I'm not a doctor so I'm not certain whether it's fair to talk about differing degrees of insulin-dependent diabetes; but certainly with other conditions, and I'm thinking of some psychiatric conditions, there are unquestionably differing degrees of severity.

MR PENNINGTON: Absolutely.

MR BRIEN: The methodology that's applied in underwriting is one where you basically start off assuming - the premium rates are determined by the actuaries assuming a standard life, if you like. A standard life has certain attributes which are considered the acceptable ranges that you try and underwrite on - for height, weight, levels of health characteristics and things like that. What the underwriting manuals then do is they say, "Compared to a standard life, if the person reports a history of these conditions - diabetes being one, mental health conditions being another - these will give you ratings" - depending on severity, how recently it occurred. If it was cancer, how severe it was, when it was removed, has there been a reoccurrence, how long ago did it occur, how early was it diagnosed? All these factors will give - if it was a very mild one, maybe a plus 25, if it was a very severe one, maybe a plus 200. You get these pluses and minuses on a rating scale.

MRS OWENS: And you're weighting.

MR BRIEN: So there are these weights. It then comes up and says, "Well, the final weight after taking all the positive factors and negative factors from history, health, lifestyle and all these other factors into consideration is" - you come up with a final rating, if you like. A life insurance company may say, "Anything up to 150 per cent we accept at standard rates. We'll then develop substandard acceptance and give loadings or exclusions for particular conditions, maybe up to four times standard rate." So if a person is unwell with a particular history for the condition they may still get cover, but because they are three times more likely to claim, they'll be charged three times the premium.

MS McKENZIE: And what if the person is better than the standard rate, if you like? Not just particularly unwell - you talked about loading - but what if they're particularly well?

MR BRIEN: In Australia there's not been developed what's called a preferred life product where you provide exceptionally good rates for people who are exceptionally good risks. In fact, in our genetics guidelines, in our standard number 11, we said we wouldn't provide better than standard rates for people with good genetic histories to create this genetic underclass or a genetic superclass. It was considered socially inappropriate and something that we had to go to the ACCC to get approval to do, because it was a collective industry agreement, so it's if you like a restraint of trade; whereas in the United States, preferred life products exist and in fact there are sort of up to six or seven levels of discount if you happen to be one of these super-healthy people, you get a much lower one and that measures on blood pressure and cholesterol and those sorts of things.

So the products do exist in some markets, but in Australia the idea is to provide standard rates for standard lives and then to try and give as much cover as possible by giving cover for substandard lives as much as becomes economically viable. There is a point at which - you know, if the premium is going to cost you a quarter of the sum insured, it becomes uneconomic to consider that sort of risk.

MS McKENZIE: Even though you might give insurance?

MR GILBERT: Can I state there, the sophistication of the industry is such that individuals can elect to dial-up their cover. So for example you can actually have policies whereby you only are covered for a mental health condition for two years. That gives you a lower rate, lower premium; so I mean it's not just the standard. It's the type of benefit that's being offered. That introduces an element of price competition.

MRS OWENS: We're interested in this Disability Discrimination Act, so we might come back to that. Supposing there is an individual that really does feel that they haven't been treated appropriately and decides they're going to go to the Human Rights and Equal Opportunity Commission and put in a complaint under the act, would that - there is an imbalance in terms of possibly the individual's understanding of how you do the underwriting. I mean, inevitably people are not going to be as fully informed as the underwriter. Does that person then get access to the thought processes and those underwriting manuals or that person's advocate or legal adviser get access?

MR GILBERT: Yes, thanks for that, Helen. I'll get Geoff Black to start there and perhaps go to another one of the retailers because they've got the interface ultimately with the customers. Geoff?

MR BLACK: Speaking of my own organisation, I think is probably consistent with most.. We have a very active internal complaints resolution and, you know, we do try to be as open as possible. I think if there's something perhaps the industry is a little bit guilty of and we're trying to rectify that, it's not necessarily our decision-making but more our communicating. We are making great steps in that area to be as communicative as possible.

MRS OWENS: Would that extend to providing people with information about how that decision was made?

MR BLACK: Absolutely.

MRS OWENS: And would they be able to, say, get another - - -

MS McKENZIE: Including relevant bits of the underwriting manual?

MR PENNINGTON: Only, though, if the information was disclosed.

MRS OWENS: Sorry?

MR PENNINGTON: Only if the information was disclosed by the applicant. This is where we have the triangle between a treating doctor, the insurer and the applicant.

MRS OWENS: Put that one to one side. It could all be done through the doctor, so just put that to one side.

MS McKENZIE: Yes, but to the applicant or the applicant's treating doctor that information would be disclosed?

MRS OWENS: Supposing there was going to be a complaint, they'd gone through an internal complaints process with Lumley and that hadn't worked. We'll just use Lumley, I'm sorry. It could be AMP or anybody.

MS McKENZIE: Insurer X.

MRS OWENS: They're still dissatisfied. Could they - they could get access to your underwriting manuals or the decision-making process? That would all be itemised in some way, I presume?

MR BLACK: We would be endeavouring before it got that far to explain the rationale behind our decision-making to that individual.

MRS OWENS: If that individual came along with somebody from another insurance company who was an expert in this area, would you be prepared to show that other person the material? Or are these things kept secret?

MR BLACK: Within their limits. No, I guess there's a certain commercial arrangement with respect to reinsurance underwriting manuals that, you know, there's a lot of intellectual property involved in those manuals, so you'd clearly want to get approval before you did that. The obvious answer to the question you've asked is, the other insurance company would offer the cover if they felt that - it's a very competitive market. There are brokers in the market who would - you know, if they felt one company, they could get a better deal somewhere else, would go somewhere else. The scenario you're talking about would probably be resolved because that other company would presumably want business.

MS McKENZIE: By finding them another company to go - - -

MR BRIEN: The underwriting process is part of the competitive nature of the industry and companies get a reputation for being experts in particular areas. Reinsurers get reputations for being experts in particular areas. It's seen that, you know, when a company is reviewing its product it will go and speak to the reinsurer and have a new benefit designed or something new they want to do. So there's competitive pressure to try and be as up to date as possible and accurate as possible in your underwriting process, that the latest research is used because if it's found there are now treatments and a way of managing this disease, then someone will go out and offer cover for those conditions.

That presents a competitive advantage in that area, if you like, and other companies therefore will try to match that. But generally between companies I think you'll find senior underwriters will come up with very similar - I mean, this one may rate 25 per cent and this one might rate 30 per cent and this one might be 50 and that one might be 70, but they're all similar. They say, "Yes, that's a problem and that's a problem," or, "We're a little bit more au fait with this particular disease because we've worked with it a lot more, we've had more cases, our CMO has done more investigation into it and we've found the latest treatment practices are this," so there are changes and developments in underwriting practices almost on a weekly basis with some conditions.

MR PENNINGTON: Also sometimes you're not comparing apples with apples. Our company, for argument's sake, builds into the pricing the fact that we will allow up to a certain level of substandard business to fit in the standard pool. So a plus 75, for argument's sake, with our company on a lump-sum contract will be standard for us, whereas in another company they will actually be charged plus 75. The underlying numerical rating system, which is what we call it, is exactly the same. However, the difference coming at the back end is not seen by the applicant. They see that they're getting a product at a standard premium rate and at another company they'd actually have a loaded premium.

MS McKENZIE: But that really has to do with the company's approach rather than that they're taking into account different factors.

MR BLACK: I think also there's different types of product as well, where there might be a product that's priced such that underwriting is minimal. There might be five questions, say, and that product will be very, very expensive but it will be more along the lines, "If you don't meet those five criteria, if you can't answer 'Yes' to the question, then it will probably be declined," and the nature of that product is priced accordingly. That's another differentiating factor that needs to be considered, the type of product that is actually being offered in the underwriting process.

MRS OWENS: But often, say they're declined on that product, there might be another product where there's easier access.

MR BLACK: Absolutely.

MRS OWENS: I think you made that clear in your submission.

MR McRAE: Helen, perhaps another view - Chris McRae, AMP - to come back to your question of complaint handling where someone does feel aggrieved, communication is the key. When you're running big operations, even though we comply in the context of letters, we comply in the context of offering people an opportunity to hear from our chief medical officer or chief underwriter via your own doctor if we think that's a more appropriate method of communication, depending on what the reason was for discrimination and for saying, "No, I'm sorry, we can't insure," or we insure on terms - beyond that, if someone did go to HREOC, really each individual company might see that in a different light; that there might be companies that see that, frankly, as an opportunity to get face to face with consumers, and I think there is a greater emphasis on ensuring that that level of communication is really so critical. The things you've heard discussed today by industry members show that there really is a lot of explaining to be done in ensuring people understand why decisions are reached, and that there is a rationale.

Certainly from an industry perspective, we recognise that there's a deal of educating that has to be done with the general medical community as well, who don't necessarily understand the rationale behind why insurance wasn't offered or was offered on substandard terms. But the challenge for the industry - and it's one that we recognise and we're trying to meet - is to get to that level of individual communication, in circumstances where really that's what you're dealing with - the individuals concerned, that they have been discriminated unfairly. So it is a challenge.

MS McKENZIE: There is a concern also raised in the submission that if there is a complaint to HREOC - if there is some individual approach, then in each of those cases you've got to go through not just an examination of the manuals and how they might apply, but also the data behind those manuals as well, and that that might be both time consuming and very expensive to have to do it every time, in every case. What can you suggest as a way that that information might be perhaps more generally available, so that people could look at it in a more general way, and there wouldn't then be the need to have to, if you like, reinvent the wheel in every single case?

MR PENNINGTON: I think that goes to the - I think it's 7.3 of the guidelines issued to insurers and providers of insurance and superannuation, and that under the section 46 provisions of the DDA the guidelines from HREOC were essentially saying, "It's okay for you to rely on these guidelines, because they're based on actuarial and statistical and medical evidence," and a number of my colleagues in the industry, when we've received a complaint through HREOC, have provided copies of the guidelines specific to that person's particular medical condition, and a copy of all of the medical reports and the application.

It has seemed though, over the last couple of years, that we have been asked to drill further and further and further down, to actually get the medical research, et cetera. I was just telling Chris before coming in here, our company has got a case for discrimination running at the moment. We've already spent $75,000 on it, and we haven't gone to mediation yet.

MRS OWENS: Is that with HREOC?

MR PENNINGTON: That was through HREOC. They terminated the claim because - - -

MRS OWENS: It's gone to the court.

MR PENNINGTON: It's gone to Federal Court. It has moved from the Magistrates Court to Full Federal Court, because it also involves the Insurance Contracts Act, so there's two federal statutes involved, and we've got mediation later this month, and then the court is set down, I think, for later this year sometime. So, yes, it is very expensive - that's 75,000 just on legal fees, and that's not on the time obviously of the individuals in the company, such as myself, that spend so much time doing affidavits and research and everything as well.

MS McKENZIE: My difficulty, I suppose, is that it's all very well to have a guideline which says basically, "The manuals are based on statistical evidence; just accept them, don't ask what might be behind them." The difficulty about guidelines are, first, they're guidelines, so their status is questionable in any case, and you can understand an individual complainant might want to go further. But I was wondering whether an alternative solution might be to look at some way in which that information might be more generally available if there were a query from an individual.

MR BRIEN: I guess it gets fairly complex, in how do you make the information available. Certainly much of the basis on which a lot of that information is derived is publicly available, because most medical research papers are now published on the Internet, and certainly that's a very significant research tool that a lot of insurance material is developed from; you're looking at the medical research, or you're going into births, deaths and marriages or to the hospital reports, which are all public documents. It's then how that data is then taken and interpreted and analysed and selected, to then come up to rating factors, if you like - - -

MRS OWENS: That's the bit that's not out there.

MR BRIEN: - - - which is an interesting question. I mean, it's a commercial activity and it's a costly exercise to actually do that research, and reinsurers like to think they've got an underwriting manual that they can provide only to those companies that do business with them, as a value-added feature, because it's seen as a differential; it's a commercial issue. Much that the differences between the underwriting manuals between reinsurers may not be particularly great, but if this reinsurer has a better reputation in dealing with disability, and this one has a better reputation for dealing with trauma, and this one has a different - then you've got a way of saying, "Well, we're becoming a specialist in that area," and if that document becomes publicly available and is used by everyone and everything, then you lose the competitive advantage issue.

MS McKENZIE: Perhaps the answer is, it's a very difficult problem to solve.

MR BRIEN: Yes.

MRS OWENS: Indeed.

MR BRIEN: But certainly the underlying information is there.

MRS OWENS: But that is not very useful to somebody that's possibly going to put in a complaint - they're really behind the eight-ball to start with, because they're not going to be able to sit there as an underwriter and get all that information.

MS McKENZIE: Find it on the Internet, read all the medical research.

MR BRIEN: Even if they're given all that information, would they be able to interpret it and understand it, I suppose it comes down to. Where do you rely upon a profession, having professional standards, to do work that presents - you know, if you've got an underwriter or an actuary who is analysing and producing data, the same as you've got a doctor, where do you say that this doctor's research is appropriate and accurate, or where is it a misinterpretation because the research is flawed. It's a similar sort of issue really.

MRS OWENS: I think there's another issue from the point of view of people with disabilities, and that comes back to the wording of section 46. Now, you said at the outset that you're happy with section 46 and you want it retained. There's two issues - whether you have a section 46 and an exemption, and if you have an exemption, how that exemption is worded. At the moment it's in terms of actuarial, statistical and other relevant factors.

Now, I presume the other relevant factor as far as you're concerned is all this medical information, et cetera. But it's a very open-ended sort of term, which I think does worry some people. It worries me a bit, I have to say. That you've got other relevant factors is a real - it's a let-out clause.

MS McKENZIE: What factors do you - apart from statistical and actuarial information - - -

MR BRIEN: Lifestyle would be, I think, a significant factor you'd say wouldn't be statistical or actuarial.

MR LEONARD: Financial would be another.

MRS OWENS: So would it be possible to pin that down sufficiently so it wasn't so open-ended - like, talk about lifestyle, medical - I mean, is it possible - - -

MS McKENZIE: Individual circumstances.

MRS OWENS: Individual circumstances. That's also a bit open-ended too, I suppose, but is it possible - - -

MS McKENZIE: It is a guide, at least, to what kind of factors it might be.

MR BLACK: I think one of the dangers you have there is, you take innovation away. You know, when you have new products and new concepts, there's a degree of unknown, and if you set criteria - as you know now, this is the rules that you can't move outside of - you'll be locked into those, and to come up with some innovation, you're going to be conservative, you're going to be prudent, because you have to be. I think there needs to be a broad statement, to encourage that type of innovation.

MRS OWENS: But can you see there is a potential to abuse a broad statement, a let-out clause? There's a potential, because then it leaves it to courts to have to interpret what that might mean, and that leaves it to lawyers - - -

MR BRIEN: I guess the interpretation that I think is easiest put in there is from the Insurance Contracts Act, where it talks about the duty of disclosure and the duty to disclose any information which a reasonable person is likely to believe would have a material impact on the risk. So that if you are looking at a very limited sort of contract, with very limited cover, that's quite simple; it takes a very limited number of factors.

But if you're looking at income protection that runs for a person's life, from when they take the policy out at 30 to when they finish working at 65, the potential factors that can have an impact on their risk, relative to an average person, are extremely broad.

MS McKENZIE: Such factors relevant to - might it be factors relevant to the risk, and the nature or extent of cover?

MR BRIEN: Well, other relevant factors.

MS McKENZIE: But I'm looking to try and work out whether it's possible to be more specific, but not too - - -

MRS OWENS: Too inflexible.

MR BLACK: Is it possible to stand on our record - I mean, looking back and saying where we've come from. If you look at the record, as I said, 98 per cent of people get cover, who apply - 90 per cent for income protection - that's for lump sum business. You know, the actual number of complaints, beside the 6.5 million people covered, the competitive nature of the industry, you can see the profits being derived by the industry - they're not super profits, they're not excessive, it's not a monopolistic environment. So if you put all those factors together, I think it says to me, well, the insurance industry is trying to cover as many people as possible, and looking for avenues to do that.

MR PENNINGTON: That's why exclusions were developed, because previous to that it was just, "You pay some extra money to be covered," and then the advent of exclusions, and I think probably the 80s where, "We will cover you for absolutely everything except any insured event that occurs due to" - bang, which would be a pre-existing condition.

MRS OWENS: That was just in the 80s that those exclusions came in?

MR PENNINGTON: Yes. I think so.

MRS OWENS: So recently?

MR BRIEN: Yes. The nature of the industry is innovation in response to consumer need, and certainly a lot of product developments and changes in products have been in response to what do people need cover for, what are the issues that are confronting the consumer. Because in a commercial market, if you want to make more profits, you've got to sell more business. How do you sell more business? You meet customers' needs. There will always be some customers who believe they have a right for some cover, because they have a need for it. But if you're saying, "But you are too likely to suffer a condition and therefore we're not prepared to take on that risk, you are too high a risk for us to take on on a commercial basis," then there will always be a commercial dispute between a person wanting it and a provider not willing to provide.

MRS OWENS: You've got to link that risk to the insurance contract and what that person is being insured for - - -

MS McKENZIE: Yes, extent of risk and nature and extent of cover.

MRS OWENS: - - - and the two things need to come together. We've had other examples - which don't relate to your association - we've got an example from South Australia of a woman who is now taking her complaint to the Federal Court, who was denied all travel insurance because she had advanced breast cancer, but that denial meant there was not just saying, "You can have travel insurance for everything else but that condition," it was denying all travel insurance, including for her baggage. You've got this open-ended exemption, which can potentially allow that to happen, so it's just a matter of - if we can think up a way of making it very clear. I take the point that we've got to allow for innovation and ongoing changes in the market, but it is a dilemma. Maybe it's less of a dilemma for your sector, for life insurance and disability insurance, but this exemption is covering all forms of insurance. Can I go back to MOUs for a minute?

MR GILBERT: We would love you to.

MRS OWENS: It was just a point that - - -

MS McKENZIE: But for only a minute.

MRS OWENS: - - - Cate just threw in, and that was the potential for MOUs - memorandum of understanding - in other areas - you know, like diabetes or HIV-AIDS or wherever. Is there potential that you could think about this for other groups?

MR BRIEN: Yes, it would. But I think at the end of the day, IFSA is - we're a smallish body by industry association standards, and to the extent that we could sustain a number of such MOUs, we would. So based on our experience to date with the MOU, with the mental health stakeholders, we would certainly consider other stakeholders wanting to do the same thing, provided of course that they can establish a clear need. Because the industry has been - is still grappling with genetics and genetic privacy, and has mental health issues - perhaps there might be an opportunity to look at other areas, if there is a demonstrable community need. We wouldn't refuse to talk to any group about the problem. Certainly one of the things the MOU is doing with the production of underwriting guidelines, and claims guidelines, if you like, is to get an agreement between and an education process going on between the industry and the other stakeholders about how we underwrite the fact that we do understand the conditions because we are using medical practitioners.

When we had the stakeholders meetings associated with the Law Reform Commission's inquiry into genetic information, we had geneticists and Alzheimer's disease and other related genetic condition bodies there, and just at those meetings the amount of information transference and understanding that developed about each other's industries, and how we do things, was quite large. So certainly there's very positive and productive things and these sorts of things. Because there is buying-in, if you like, from the representatives of the mental health associations, if you like, there's less chance of a complaints process, because it seemed to be an agreement that, yes, that underwriting process has been vetted or agreed to by other bodies. So there's a lot of positive value in that.

MRS OWENS: And there's a potential that you won't be spending $75,000 on legal fees and so on.

MS McKENZIE: Because most problems might have been - - -

MR MICO: To answer your question, I think there are other ways of doing things other than having MOUs. In fact, we've been working with the Hep C Council in developing a fact sheet for them so that is another way of getting communication. We're doing it in two ways: one, we're introducing an industry-based public document for hep C, which will be reconverted into a document that fits their method of communication and their format, so there are other ways. We have already been contacted by the Diabetes Association, who are sort of waiting in the wings for us to get some time to spend with them and look at their issues. Huntington's disease have asked us to talk to them. There are other ways of communicating and working with other external stakeholders.

MRS OWENS: I just alert you to a submission we have got from the National Association of people living with HIV-AIDS and they have got some concerns in their submission about insurance issues, so you might like to have a look at what they're saying. That's why I thought maybe an MOU with that sort of group might be very useful or an educative process that's more targeted because you do mention in your submission that - I mean, from your perspective that you feel things have improved there. From their perspective there are still some outstanding concerns.

MR GILBERT: On that, we haven't had any recent contact with them.

MR MICO: I am sorry, Richard. I have misled you. The New South Wales Aged Council have been in touch and want to talk about development of a fact sheet and they indicated that they would go away and do that drafting, but we haven't heard anything more in the last probably three months, since they made that overture.

MS McKENZIE: Because that situation has changed dramatically because of the treatments available and that must impact on the insurance approach to that matter.

MR PENNINGTON: One of the difficult things, I think, in that area would be having an affordable contract. I think, to my mind, South Africa is the only country that's covering AIDS patients, but I think they have quite selective criteria for insurance.

MS McKENZIE: But the situation in South Africa is very different to that in Australia. One can only rely on what one reads, but the problem is massive. The lack of treatment is extreme and so on and so on. I would have thought that the Australian position would also be relevant.

MR BRIEN: There are, I suppose, a couple of stages: one is insuring against the risk of contraction, and certainly the underwriting process does ask lifestyle and behavioural questions to look at exposure to the potential for contracting of HIV. There have been specialist products designed - or additional benefits to products designed - that provide benefits on occupationally-acquired HIV - for medical practitioners for medically-acquired HIV through blood transfusions and things like that. That has been recognised as an exposure need and been developed into new products.

I suppose the other areas then for those people with HIV-AIDS is looking at the ability to obtain insurance after the event and, because the nature of life insurance is that it's a permanent policy, you're taking at the point of underwriting what will their behavioural lifestyle be into the future. Will they continue following the medical regime - that sort of thing - so you need enough history to look at how they have behaved in the past to say, is it going to predict into the future, and so you are only just starting to get to the point now where you're starting to get enough reliable behavioural information, if you like, on which you could even consider whether that gives you a basis to underwrite. I mean, there are time history availability of information constraints to be able to even consider looking at behaviours in the literature.

MS McKENZIE: And you can see why that is of great concern.

MR BRIEN: Yes.

MR PENNINGTON: You would need to go back again, as I said, to affordability because, if you look at the subgroup of people with AIDS and then say, "Well, on average, this group will have a life expectancy of blah," then that life expectancy may be 10 times shorter than the standard insured population, which would mean that the premium, instead of being $1000 a year would be $10,000 a year, which then makes it unaffordable to the majority of insurance applicants.

MS McKENZIE: But see, equally, as I said, that's an area of enormous change. If one had asked that same question four or five years ago the answer might have been "an extremely short life". When one asks the question now, with various drugs that have been developed, the answer will be quite different.

MRS OWENS: But it puts a lot of challenge back on you in a rapidly changing market.

MR BRIEN: To take a bit of a sidestep: I suppose, group insurance is insurance that's provided for superannuation funds and through say employers for their employees, and this cover allows individuals, if they start work, to get cover from day one up to set - usually multiples of their sums insured - and there is usually no underwriting up to a certain level. Certainly when the AIDS virus first became known the industry's reaction was, "This is going to be a great concern." There was a very conservative response. Premium rates were loaded considerably because of the concern with this. As the understanding of the disease and the nature of the disease prevalence - that sort of thing - so the amount of extra premium charged to try and cover that risk has again reduced.

MS McKENZIE: But when you talk about a great concern, really what's happening is that assumptions are being made, and that's another - - -

MR BRIEN: Based on epidemiology, if you like - you look at specialist epidemiologists - when the virus first came out and they predicted what the likely behaviour was going to be - you look at the epidemiological studies to then say, "Well, what is that going to mean for claims rates? How is it going to increase our cost of claims?" - which is really what premiums are designed to pay for - so how do we need to increase the premiums to meet that increased risk? As more research is done, new information is found out, so the epidemiologists rebuild their models; the actuaries go and take their new models and put that into, "What does that mean for claims costs?" and that's how things happen.

MS McKENZIE: As long as that happens quickly, relatively quickly, that would be okay. If it happens very slowly - - -

MR BRIEN: It certainly does because if that company out there does it first and their premiums come down 10 per cent then they sell all the business and you don't.

MS McKENZIE: Yes.

MRS OWENS: One of the matters raised in a submission from Jack Frisch, the economist, relates to the kinds of cover that disability insurance gives. He is certainly of the view that it's limited in many ways and that it doesn't cover all the real costs of disability. Do you want to make any comment about that? And there's limited cover for long-term disability also, of course.

MR BRIEN: I guess it's very difficult to try and design a contract that is purely related to expenses incurred. The approach the industry takes is that we provide, if you like, two sorts of disability cover, one of which is a lump sum on total and permanent disability, and that lump sum is chosen by the individual at the outset of the contract and they can increase or decrease that at any time, and that's a single lump sum payment - - -

MRS OWENS: Which can be used for anything.

MR BRIEN: - - - which can be used for anything by the individual. The second is an income protection or an income-replacement style of benefit, which provides a replacement of up to 75 per cent of the individual's income and the individual has the ability to purchase that on either an indemnity or an agreed value basis, which says, "An agreed value says, 'This is the amount that we agreed at the outset and we pay you that amount on claim with certain offsets if you are getting income from other sources." The other sort is an indemnity style which says, "If your income has come down from the time you took the policy out then we're only going to replace 75 per cent of your income just prior to claim."

It's looking at replacing, if you like, the income coming into the individual as opposed to trying to meet the expenses of the individual going out. However a lot of these products, the income-based products, have additional benefits to provide workplace modification, accommodation facilities, transportation, rehabilitation costs, so there is an identification that there are expenses an individual incurs which can help them recover from that disability.

MS McKENZIE: But apart from the lump sum product there are no core expenses.

MR BRIEN: No. Those sorts of additional benefits are on the income product.

MS McKENZIE: Yes. There's no whole-expenses cover, apart from the lump sum one.

MR BRIEN: No.

MR BLACK: One of the issues we do face is we're not allowed to be seen to be competing with the health insurers and there is a grey area there between what comes under health insurance - which is separately legislated - and what we market, which is income protection products, which are called "disability", but essentially the products that are generally in the marketplace are income protection; ie, designed to replace income and they have a number of ancillary benefits that will hopefully facilitate somebody's recovery and return to the workforce, so they're earning income again, so it's really - - -

MS McKENZIE: That's how you bring those in.

MR BLACK: We bring them in, but you know our interest is about the person; gets rehabilitated and back to work and earning income again and that's the nature of the product.

MR McRAE: To reiterate Geoff's point, we actually did have a member of IFSA some years ago who produced a product that caused the Minister of Health, federally, to change the regulations to the Health Act, which in turn made probably most of our products, at first blush, prohibitive, and there was I think a $20,000 fine per day for breach, and it was only really after the industry sat down at a table over a period of about nine months to 12 months that we sorted out the regulation so that the life industry could continue to be viable as a life industry and wasn't health insurance, but it is a grey area and one that, because of that experience, I think members stay well away from.

MRS OWENS: Yes, the health insurers have got all these ancillary products, which, in some senses are, to my mind, not true insurers. There's a huge amount of moral hazard in there.

MR McRAE: Yes, indeed.

MRS OWENS: I think that's where people start to get confused about what is insurance. I think people see that they are paying a premium for some of those products and they then want to get their returns through their gym shoes or their visits to the dentist or the orthodontist.

MR GILBERT: We don’t offer gym shoes or squash racquets.

MRS OWENS: No. We understand that. There are plenty of other things we could ask you about, but - - -

MR BRIEN: One of the questions you raised earlier was where we talked about 80 per cent of people who apply for disability insurance - obtain disability insurance - of those, 65 per cent achieve cover at standard rates, but those standard rates have increased by up to 40 per cent in some companies over the past few years.

MRS OWENS: Yes.

MR BRIEN: I guess if you look at what has been happening over the last 20, 50 years in Australia - people are surviving a lot more of what were previously fatal conditions - heart attacks, strokes, cancers, things like that - and a lot more of the significant causes of claim, if you like, are those survivorship claims. I think we can actually refer to the Mental Health Council's submission, where they quote the welfare organisation's research on the global burden of disease and, if you look at how that changed from 1990 to what is expected in 2020, a lot of the top 10 diseases in the old days were diseases that would kill you. These days the most significant diseases are diseases that will impair you, so you're getting a lot more, if you like, causes of claim, that are resulting in higher proportions of claims, and this is why claims are going up.

MS McKENZIE: Yes.

MR BRIEN: People are surviving heart attacks, but they are unable to work.

MRS OWENS: And why is the cost of claims going up?

MR BRIEN: Because there are more claims.

MRS OWENS: But on a per-claim basis, I thought the - the impression I got was that - - -

MR BRIEN: You're getting more claims in total and also incidences of claiming and duration of claims is getting longer; it takes people longer to get back to work - - -

MR PENNINGTON: Particularly for the psychiatric point.

MR BRIEN: - - - because of the nature of the sort of claim - someone who has a broken leg; legs haven't taken longer to heal - you know they take the same time as they used to - but those people who are going on to stress claims and other mental health related claims may be on a claim for quite some time.

MR GILBERT: It's a good question, Helen. I mean, why are claims going up? I think labour turnover and job insecurity have a role here. We could probably go for quite some time to talk about that, but can I just give some additional economic information for the commission because I think, at the end of the day, if you make recommendations which push prices up there are consequences, and I think it's important that you look at the elasticities of demand for our products.

We did some survey work with two of our companies and we found out that one company, which was forced to increase premium rates by 20 per cent on average across all disability insurance classes of business, it resulted in a lapse rate of 30 per cent of enforced business, and then the other company had a 25 per cent increase in premium rates with a lapse rate of 27 per cent. Now, that's a fairly elastic demand curve. You can see the consequences of having significant price rises, so at the end of the day we believe our industry fulfils a very important community function and so what we wouldn't want would be fewer Australians having access to life insurance because of significant price rises. We hope and trust, as you consider these things, the economic factors are taken into account properly, or appropriately.

MS McKENZIE: Yes.

MRS OWENS: Although you have got to look at the nature of the whole industry and say, "Well, that company loses and another company probably gains" - or are they dropping out altogether?

MR GILBERT: Possibly, yes. The trouble in our history has been people dropping out of the industry, not coming in - there are fairly substantial barriers to entry.

MS McKENZIE: Yes. I think you mentioned somewhere in your submission that there has been a great drop in the numbers in the industry.

MR GILBERT: Yes.

MRS OWENS: But that's not necessarily a problem, is it? I mean, I look at other industries, like the private health insurance - there are 44 companies in the market. That's not necessarily an ideal situation.

MR GILBERT: It could get to a problematic point when we reduce our number of reinsurers down to a couple or a handful. There are five now. We wouldn't want a duopoly there or a monopoly.

MS McKENZIE: I understand that. Maybe we should do an inquiry into life insurance.

MR GILBERT: I thought we were doing that now.

MRS OWENS: Our focus is on the Disability Discrimination Act - - -

MR GILBERT: Yes, I understand that.

MRS OWENS: - - - despite some of the questions that we ask.

MS McKENZIE: But we need to understand because of the broad exception and because of what has been said in all the other submissions and certainly those submissions say that either the exemption should be rewritten or altogether dropped, so we must understand - - -

MR GILBERT: Yes, I do.

MR PENNINGTON: That's one of the interesting things this group has obviously discussed at length and because we've had a lot of dealings with the Mental Health Council and the Mental Health Stakeholders group - is that we've noted their submission essentially stating that it's a huge burden to the community in respect of the number of disability days and the social cost, et cetera. I think from memory, one of their quotes them. So it's one of those difficult things that it costs so much money and that the insurance industry is perhaps expected to fund it instead of government.

MRS OWENS: That might be a really good place to stop. I could go into another lot of questions about - but thanks for that, Brett. That was a good spot to stop.

MS McKENZIE: It's a really helpful written submission and the discussion that we had has been enormously helpful to us as well.

MRS OWENS: We'll now break and resume at 20 past 11.

MR PENNINGTON: Thank you.

MRS OWENS: We'll now resume. The next participant this morning is the Public Interest Advocacy Centre. Hello, and could you please give your name and your position with the centre for the transcript.

MR MORAN: My name is Simon Moran, I'm the principal solicitor of the Public Interest Advocacy Centre.

MRS OWENS: Thank you, Simon, and thank you for the submission which you probably prepared yourself, did you?

MR MORAN: I did, yes.

MRS OWENS: In your spare time?

MR MORAN: In my spare time. That's right.

MRS OWENS: Congratulations. Thank you for that. You said you just had a couple of minutes; some points you wanted to make. Thank you.

MR MORAN: I did, yes. Thank you for the opportunity to address the commission. Rather than going through the submission word for word, I thought I might just make a couple of key points or bring out some of the key points that we're trying to make in our submission. PIAC is a legal and policy centre that undertakes activities which are considered in the public interest. I am the head of our litigation section and one of our primary focuses over the last three to five years has been undertaking actions under the Disability Discrimination Act so our submission is based on our experience representing clients; complainants who have lodged complaints under the DDA. We don't have comments to make broadly about the issues raised in the discussion paper, but they're really quite focused on the litigation aspects.

Probably the two key issues that I'd like to focus on as part of our submission are the issues relating to unjustifiable hardship and the issues surrounding the complaints process. Just very briefly, our belief is that there is in the act sufficient guidance given to the definition of "unjustifiable hardship". What has developed from the case law in the area is that essentially what's required by the courts is a weighing process of various factors. We believe that the courts and tribunals that consider unjustifiable hardship at the federal level but also at the state level have developed sufficient jurisprudence to give themselves guidance and also to give clients, our clients and complainants and respondent, sufficient guidance on the issue of unjustifiable hardship.

I suppose one of the key points we'd like to make is that although it's a process of weighing up various factors, the courts are experienced and highly skilled at doing exactly that. Courts all the time resolve disputes, based often on general principles. The classic example is probably courts defining what is reasonable in certain circumstances. I think the provision in section 11 is quite clear and does give courts sufficient guidance. They don't appear to have had particular difficulty with the provision, either.

The second area which our submission focuses on is the complaints process. Our experience of the complaints process with the Human Rights Commission is very favourable. Many of our clients' complaints have settled through the conciliation process and we think that's a very valuable process. Where there is goodwill on both parties' sides or where there isn't a clear fundamental disagreement on a particular issue, complaints can be settled speedily and they can be resolved to the satisfaction of both parties.

We have, however, a couple of concerns when conciliations can't achieve settlement. They really relate to the costs of pursuing litigation. Part of our centre is primarily focused on running litigation and we have extensive litigation experience in this area and in other areas. Two of the key issues relating to costs for complainants are the costs of their own legal representation and the costs awards they're required to pay if they're unsuccessful. The Federal Court and the Federal Magistrates Court have specific rules relating to the awarding of costs. If a party is unsuccessful and they make an application to the courts, then the usual effect is that costs follow the event - that is, that the loser pays the winner's costs.

Now, I think there are cases where the usual costs rule hasn't been followed, but in the main our experience has been that costs have followed the event. I suppose the difficulty that this raises is not so much when clients decide that they wish to pursue the case, because we can make submissions at the end of the day in relation to costs. Our experience has been that when we've advised the clients whether or not to pursue complaints, we have had to advise them that they may well be liable for very large costs payments if they're unsuccessful. We cannot do anything other than advise them of that prospect. We can advise them whether they are likely to be successful but we can't make any guarantees. So individuals and groups have to be aware that they could well be liable for large costs payments.

The second issue in relation to costs is simply the payment of expert reports for our clients. We can and do act for clients pro bono or on a speculative basis and counsel that work with us are prepared to work on that basis. However, we cannot pay for expert reports for our clients and in a number of the matters that we've considered, our clients have required extensive and thorough expert reports. Particularly these issues arise where the complaints relate to access to premises, where extensive building reports might be required or occupational health and safety reports might be required. These are difficulties for our clients. The way to resolve those difficulties is really through the funding of these types of cases and legal aid is available to some extent in New South Wales. I'm not sure about other states. And the attorney-general does have a power to award funding for particular cases but again in both areas the allocation for funding is limited.

MS McKENZIE: And really, there have been some suggestions in some of the - I'm sorry to interrupt you. Do you mind?

MR MORAN: No. I think that's essentially all the points I wanted to raise.

MS McKENZIE: What I was just going to do was ask you a question about that particular point. Some of the submissions have suggested that there might be some scope to change the burden of proof, either the onus or the burden of adducing evidence; but really what you're saying is that where experts' reports are required, that's not going to help. Even that change is not going to help because in the end, at the end of the day if the respondent produces lots of expert reports, the complainant is going to have to do something about them.

MR MORAN: I think that's right. It's really an evidence based process before a court. So if a respondent produces an extensive amount of expert evidence justifying their position, then the only way to refute that is to present expert evidence yourself. Then the court will consider both sets of evidence and make its decision.

MRS OWENS: We might go back to unjustifiable hardship and then come back to complaints, maybe do it in the order that you ran it in the beginning. With unjustifiable hardship your submission actually went further. You said that if you were to retain such a clause, then there was sufficient guidance in case law. But your submission also suggested that we don't necessarily need such a clause at all because it reduces capacity for inclusion. I think you recommended that it be removed.

MR MORAN: I suppose that was more a hope than - we work with the act as it is now and we have developed mechanisms and strategies and worked out legal strategies to deal with the act as it is. I think the inclusion of a provision in relation to unjustifiable hardship is really an inclusion in the act that is balancing the interests of people with disabilities against the interests of society as a whole. I think that section enables a court to undertake that balancing process. If the act was specifically for the benefit of people with disabilities, then I don't think that section would be there. The first question a client has to answer is: have they been discriminated against? That is in itself a difficult question to answer and particularly in the area of indirect consideration there are considerations of reasonableness there as well. So I think section 11 does place a limit on the claims that complainants can make. Legislation is always a result of compromise and I think is one of the key compromises that faces people with disabilities.

MRS OWENS: I suppose it raises that fundamental question as to what the act should be there to do and whether broader, community-wide issues should be relevant to the workings of the act. At the moment there is this balance in the act, so that if the respondent does have problems, be they related to the costs of having to make adjustments or whatever, there's a provision there to deal with that. But you said that as it stands at the moment, there's sufficient guidance in the act in terms of interpretation and in case law, and you said that at least gives the court something to go by. But what about the complainant themselves? I mean, the complainant may not be an expert on all that case law. They may not have a lot of expert advice. They might not have a legal adviser. They might be just running this themselves or they might be working through an advocacy organisation that's not particularly well resourced. Is that going to help them?

MR MORAN: No, I don't think it does help them. The fact that we as lawyers have that understanding and that knowledge doesn't really assist clients unless they can actually access you. PIAC is one of a limited number of organisations that run these particular types of cases, so it's difficult for clients to access all those services.

MS McKENZIE: Do you have to turn people away?

MR MORAN: We do turn people away, but often we turn people away as well because given the framework created by the act, their complaints may well not be successful. So we advise people that, although they may have a strong belief that they've been discriminated against, given other provisions like section 11 their case is just either going to be too difficult to prove or really on the balance of the evidence that's on the face, they're not going to be successful.

MS McKENZIE: What you raise about who the act is aimed at is a good point and you're right that if it's looking both at people with disabilities and society then an unjustifiable hardship provision is understandable. If it's looking at people with disabilities, then unjustifiable hardship simply means that the discrimination is left undealt with and perhaps then that defence wouldn't be reasonable. It should be included.

MR MORAN: I think the provision at section 11 really does place a very large limit on the capacity of people with disabilities to bring successful complaints. I think that's right. It's very much a second tier that they have to overcome once they've established discrimination.

MS McKENZIE: One could say in a way - it's probably an oversimplification - but the development of the various other mechanisms in the act - standards and action plans and so on - is really a way to minimise the ability to claim that unjustifiable hardship defence.

MR MORAN: The difficulty with standards is just that there aren't many of them.

MS McKENZIE: We have noticed.

MR MORAN: I'm not an expert on standards, so I don't know if there's none or there's just - - -

MS McKENZIE: There's one.

MR MORAN: There's one? And essentially what the expert evidence in the cases that we've won tries to do is to establish a standard. When you're establishing what is discrimination, then any expert evidence there is trying to say, "Well, the failure to provide services in this particular situation is discrimination," so that sets the standard. But the difficulty there, as we've raised in our submission, is that that really only applies on a case-by-case basis. It doesn't apply throughout industries.

MS McKENZIE: The complaints mechanism - you've talked about the courts and costs. My recollection is that you've had a couple of suggestions for alternatives. I think one was - all involved limiting the ability to be able to award costs against the loser. Would you suggest that there should simply be a no-costs jurisdiction, if it were possible to provide for that?

MRS OWENS: I think you mentioned the Federal Magistrates Service could be a no-costs jurisdiction.

MR MORAN: Yes, in our submission we raised two possible examples: one would be to change whichever piece of legislation - or whether it's the Federal Court Rules or the DDA - to ensure that where cases are brought in the public interest there is scope there for the court not to award costs. The alternative to that is to simply make the Federal Magistrates Court a no-costs jurisdiction. The Federal Magistrates Court has been set up to facilitate quicker and less formal justice and so it might well be, within that jurisdiction, you'd want to make that no costs as well.

I think the key point, from our perspective - as I mentioned at the beginning - that we're unable to advise our clients either way, whether they are going to have costs awarded against them. We can say that they're reasonably likely to be successful and, in that situation they would gets costs awarded for them rather than against them, but we can't provide them any guarantee. For example, if we're running a case in the Federal Court and we had a senior counsel and a junior counsel and so did the other side, you're looking at many, many thousands of dollars - tens of thousands of dollars as costs. It's very difficult for us to authoritatively advise our clients.

I think reforming the costs rules specifically I think for the DDA would again benefit complainants and assist them in bringing complaints and, in effect, it helps -

it furthers the goals of the act as well.

MS McKENZIE: And it's their choice, isn't it, whether they go to Magistrates Court or Federal Court?

MR MORAN: It is. I think the - - -

MS McKENZIE: There are some transfer of cases mechanisms, I'm aware of, I know, but - - -

MR MORAN: There are, yes. I think, speaking very roughly, probably the Federal Court considers itself the jurisdiction for more serious cases. The Federal Court does have some mechanisms which haven't really been tested for limiting costs award. I think I put in our submission that order 62A of the Federal Court Rules enables parties to apply for a costs award before the hearing, and that's only been tested in one case and that is a case that PIAC ran in a different area. So that may be a way of limiting the prospect of adverse costs award.

MRS OWENS: Can you explain what that means to me? I'm not a lawyer so when you say apply for a costs award before the hearing, that means getting some indication of which way it's going to go? What does it mean?

MR MORAN: The order 62A gives the court power to decide how much it would award to the successful party before you have a hearing. What normally happens is you have the hearing and then the court decides who gets costs. Then the level of costs is determined really between the parties.

MS McKENZIE: So the winner still gets costs.

MR MORAN: The order - - -

MS McKENZIE: It's just a question of how much.

MR MORAN: Yes. Order 62A gives the court a very wide discretion, and so they could decide that no costs be awarded; they could decide that $5000 be awarded or they could decide on whatever basis they're asked to decide, from whoever makes the application. The concern has been in some quarters that if you have a no-costs jurisdiction then solicitors and barristers are unlikely to run the cases, because there is no prospect that either they're going to get paid from their clients, or that they're going to get costs from the other side. PIAC is confronted with that same issue, because we run many cases on a basis that if our clients win we get paid, if they don't win, we won't get paid.

MS McKENZIE: Does that substantially affect your funding?

MR MORAN: We attempt to obtain a certain amount each year from costs awards, so it can be difficult because when we run cases in the public interest and if they're test cases we're not guaranteed that our clients are actually going to be successful, so if we run a lot of test cases then we may well not obtain many costs.

MRS OWENS: So there's a real risk, isn't there? You are really going to be fairly careful about when you put your toe in the water.

MR MORAN: We extensively advise our clients before we undertake litigation. It's a very careful process. We work very closely with a number of extremely experienced and effective counsel and before we undertake litigation, we'll have gone through the process of working out whether it's a good case; what evidence we need; what are the costs going to be of the case, and whether the client is willing to continue on, having been given that advice.

MRS OWENS: Is it special sorts of clients that are prepared to keep going? What is the personality? We're hearing about how difficult it is for people to get into the process because it can be stressful and confusing and so on. Do you find that it's a particular type of person who is prepared to go all the way with it?

MR MORAN: No, is the short answer. The longer answer would be that - - -

MS McKENZIE: I'd prefer the longer one.

MR MORAN: Some clients are in a situation where they have no alternative. For example, where a child wants or has to go to a certain school, that may be in a regional area and it's the only school they can go to, and that certain services aren't being provided to them and it makes their access to that school at a far lesser standard than other children in the school. In that particular case clients may just continue on because there is no alternative.

Some clients act as a matter of principle, as well as there being a necessity in their opinion to continue with the case. So they are given some - they have some particular need. The example would perhaps be Maguire v SOCOG, where a client strongly wanted to be a part of the Olympics and wanted to pursue that complaint, and I suppose there he wasn't faced with the problem of costs jurisdictions. Were he now faced, running that similar case in a costs jurisdiction, I'm not sure whether he would continue. That's a question we'd have to put to him, but I think principle can only get you so far, because where you're looking at substantial cost risks, then I think people's principles are compromised.

MRS OWENS: What proportion of your clients would decide not to go ahead because of that threat of the cost?

MR MORAN: I can't give you an exact percentage, but I would say a majority of clients don't go ahead, because the costs risks are that great; the difficulties of us - to fully advise someone you need to obtain the expert evidence and you need to then say, "Well, your case is going to be successful on these reasons; here's the evidence; the evidence is fairly clear; the law is fairly clear and we think you've got a good chance of success." Simply not being able to afford that first expert report will stop people bringing complaints.

MS McKENZIE: What about the other avenues like legal aid and the power the attorney-general has got to give certain assistance where there is hardship?

MR MORAN: Legal aid is limited - I'd say extremely limited for DDA cases. It varies, depending upon government policy at the time. The attorney-general's fund is - we have received funding for one case from that fund. My understanding of that fund is that you apply after the case has been finalised - - -

MS McKENZIE: So you've got to pay up-front basically?

MR MORAN: So the clients have to pay up-front and then they get reimbursed. There's no guarantee there that the legal representatives are going to get paid either until after the hearing, and then you make the application process. So, again, it's a lot of uncertainty.

MRS OWENS: It sort of defeats the purpose in a - it's nice that there is some money available, but if you don't know up-front you still may not be prepared to take the risk.

MR MORAN: I think that's definitely true.

MS McKENZIE: Obviously you say - you said that there has been funding for you in one case that you ran, from the attorney-general's fund, but had you made other applications? What percentage of that was that of the applications you made for funding from that fund?

MR MORAN: We've made a number of applications. Again, the attorney-general's funding only pays for our client's costs; it doesn’t protect them from adverse costs and the Legal Aid Commission doesn't protect clients from full adverse costs in Federal Court. So even if someone has legal aid, they could well be liable for substantial amounts of adverse costs.

MS McKENZIE: Would it be helpful to have - and a number of submissions have suggested there should be a power either in HREOC or other organisations to initiate complaints?

MR MORAN: I think that's extremely helpful. I think that's our last recommendation in our submission. We referred to the power of the ACCC to apply for an injunction. Given the difficulties in running complaints I think the commission is - and given the placement of the commission, such a power would be extremely important and it would further the DDA greatly, I think. That would be a very significant amendment. There has been recent discussion of the human rights intervention powers - I don’t know if you're aware of that - they have power to intervene in cases essentially which are human rights types of cases, or that relate to specific discrimination legislation.

The general feeling about HREOC is that it uses its powers responsibly, it intervenes in cases where there is a genuine need for it to intervene and I think those same beliefs can apply to a power that would give them an ability to initiate complaints.

MRS OWENS: Does it cut across their current role in terms of conciliation? Would there be a bit of a conflict there?

MR MORAN: I think that is the one difficulty. It would place them in a conflict of interest, if they are then seeking to conciliate. I don't know how they could do that.

MS McKENZIE: There would have to be an external conciliator presumably, or some kind - there must be some external mechanism.

MR MORAN: That could well be set up. It may be that you limit the power of the commission to apply for injunctions to stop discriminatory conduct continuing. So that may just be simply a power that they - rather than to go through their own complaints mechanisms, they simply make an application to the Federal Court. So essentially conciliation isn't a part of that process. Rather than it being a complaints process, or lodging a complaint, they have the power to initiate applications to the Federal Court in certain circumstances.

MS McKENZIE: But if the matter were to continue, of course, then there would have to be some kind of individual or class complaint.

MR MORAN: I'm not sure that that would be necessary. Clearly the commission would have to have evidence to support its complaint. In class actions you would have maybe one lead client and then a number of other clients who would be providing evidence to support the claim. That could be perhaps the way that HREOC applications could be run. The application could set out that the claim - and then the evidence from various individuals would be used to support that application.

MS McKENZIE: So would you be applying for some kind of permanent injunction?

MR MORAN: I suppose it would depend upon the circumstances. One of the areas - the most simple form of injunction is just to stop something occurring. For example, if a child gets expelled from a school, it may be an injunction in that case. I'm not necessarily advocating that the commission intervene in individual cases; I think this is more a systemic type of power. The more interesting use of that power would be applications for mandatory injunctions, whereby not only would conduct be stopped, but the court would be - the application would include a request to require changes to be made. For example, in access to premises cases, changes are made to premises to ensure that in the future there will be no discriminatory conduct. That's just not simply stopping conduct which is occurring, but also requiring remedial work.

MS McKENZIE: Requiring something, yes.

MRS OWENS: Would that require particular premises - you said you'd prefer it to be used in a more systemic way, or would it apply to all similar premises? How does it work?

MR MORAN: The application would have to be framed to apply to certain subjects and to then depends upon how you define that subject. For example, if you wanted to change all the footpaths in the CBD of Sydney, that's how you would frame the complaint. You'd frame the complaint saying, "This application relates to the footpaths of Sydney. The remedial work we're requiring is this, and the deficiencies at the current time are these" - and I think the court is not really there to provide advisory opinions; it's there to adjudicate on specific cases. So the application would have to be framed in that narrow sense.

MRS OWENS: How would that intersect, if at all, with the commission's current ability to undertake inquiries and systemic issues?

MR MORAN: The inquiry function is a very useful power, although it doesn't lead to enforceable decisions. The extremely useful aspect of the complaint process from a client's perspective is the prospect of the court making a final determination that's enforceable. Enforceability is a key aspect of the complaint system and that's where the - while the inquiry obtains very useful information and can lead to negotiated settlements and compromises, I think it's very important that courts continue to have the power to make enforceable decisions.

MRS OWENS: I'd just like to find out - because of all the experience you've had with complaints and particularly those that have gone through the court system - do you think the ultimate result or results have been good results in terms of the complainant, or are they results that involve some sort of compromise? Do the outcomes mean that the complainant gets what they're after, or do they just get some compensation?

MR MORAN: Sometimes definitely the clients do achieve what they're after. A difficulty is that again, Maguire is probably a good example - what Bruce Maguire wanted was that the web site changed and at the time that complaint was made through the commission and so the decision of the commission wasn't enforceable. The commission found that there had been discrimination and ordered that the web site be changed. SOCOG ignored that. I'm not sure now that they would ignore a Federal Court order made in the same terms.

However, the courts currently have power to make an order of the type of a mandatory injunction to force a respondent to make changes. That's been a very underutilised power and the results have primarily been in the nature of compensation. Clients are probably somewhat dissatisfied with obtaining compensation. In the main our clients would prefer a smaller amount of compensation but rectification. I think that's what they are really after and we have obtained that through conciliation. However, it is a more difficult argument to put to the court; that the court should force someone to change something. Courts, I think, are reluctant to do that. That history of injunctions is - - -

MS McKENZIE: It's not traditionally a remedy that they often grant.

MR MORAN: No, I think that's right. The injunctions are usually reactive; they're stopping something rather than being proactive.

MS McKENZIE: And also, more often than not, they're interlocutory - in other words, they preserve the status quo until some later stage, until the case comes on and it's determined.

MR MORAN: That's right.

MRS OWENS: I suppose there are some cases where rectification is really not going to be possible, if the person has lost their job they're not necessarily going to want to go back into that workplace.

MR MORAN: Yes. And that - sometimes litigation can sour relations to such an extent that it's not possible to continue with the relationship.

MRS OWENS: I think we've covered - yes, we have covered things. There are issues relating to standards, but I think we've just touched on that very briefly by talking about one.

MR MORAN: Yes, our experience hasn't been involved in the debate and formulation of standards, and so I don't think it's really our place to comment at length, other than that they would be very useful, if they were in place. I think it's section 32 - so that a breach of those standards is unlawful. I think that's right. They would be useful but we're just not aware of - we're now aware of one, but it's a very difficult process to have all parties within an industry, or within an area to agree on standards, and so that is perhaps why it will continue to be standards developed on a case-by-case basis through the complaint system. The political process just may be too difficult.

MRS OWENS: They're not really - they're standards in inverted commas really, through the complaints system.

MR MORAN: Yes.

MRS OWENS: They're not standards in the sense that these standards are developed under the act, but they are - - -

MR MORAN: Standards for a particular case to establish whether or not there was discrimination.

MS McKENZIE: But if, for example, the result of the case is that you've got to make some building accessible, it's going to be accessible for all; it does turn into a standard - you're not going to pull down all the particular access measures when that particular complainant leaves.

MR MORAN: No, I think that's right. Important cases will create precedents. I think the Finney case we ran has had a substantial impact throughout education service providers. We've had anecdotal evidence from schools that it was an important decision which they have taken seriously and have had to review their policies.

MRS OWENS: I think the only thing, the other recommendation you made - which was an interesting one - was to allow more time to lodge applications with the Federal Court.

MR MORAN: I suppose that stems from clients going through conciliation unrepresented and then, at the end of conciliation, they receive this notice of termination and then they have to lodge very quickly. Clients have lives. Their lives are not just simply their litigation. So often they don't get around to actually speaking to lawyers halfway through that period; lawyers then consider well, "Do you have this evidence, do you have that evidence?" "No, because there was a conciliation process that was very informal." So it's very difficult at that stage to be able to advise people.

MS McKENZIE: What do you think a fair time would be? 60 days, 90 days?

MR MORAN: I think the 28 days is fairly standard throughout federal litigation.

MS McKENZIE: Yes, it is, but there is no reason why it couldn't be changed for the reasons you've just set out.

MR MORAN: It could be. Reading through the submission this morning I think I referred also to the holding summons which, I suppose, from a lawyer's point of view - that ensures that something has to be done within the 28 days, but holding summonses are quite simple compared with filing complaints. I think the complaints have been simplified so you're not being required to file an application to the Federal Court as you may do under the Administrative Decisions Judicial Review Act, which is a very technical document. But still, when you are filing those documents, a considerable amount of thought needs to have gone into the case.

What also happens is that as soon as an application is lodged then costs begin to run. If you advise your client to file without really having totally assessed, or having all the evidence that you need to assess their case, if the client later withdraws then the liability for costs is there.

MS McKENZIE: So perhaps a notice of intention to appeal within that period.

MR MORAN: That could be - - -

MS McKENZIE: With provision to actually apply to lodge an appeal within, say - - -

MR MORAN: I think three months is a reasonable period.

MS McKENZIE: Three months, 90 days. Yes.

MR MORAN: Because that also puts on - it keeps everybody focused on the litigation, so it's not going to go away and if that 90 days elapses then the complaint has lapsed.

MRS OWENS: I suppose the counter argument to that, which has come from some people, is that these processes are too drawn out. They want to see some result quickly. I mean, there's always a trade-off with everything you do.

MS McKENZIE: But there's no reason - there's nothing to stop you lodging earlier. This is the maximum period.

MR MORAN: I think the conciliation process can take time. The Human Rights

Commission are fairly speedy in their conciliation processes; they undertake them thoroughly but also you can quickly get to the point of termination. Difficulties can arise through conciliation because offers are put backwards and forwards and at times our centre has experienced frustration with conciliation, and so we've just requested termination and go to court, because we felt that the respondents haven't really been committed to conciliated settlement.

I don't think the delay is actually going to be in the court processes. I think one period enabled someone to file, for example, a holding summons and then they can fully evaluate their case; they can get evidence to support their case and then at the end of that 90-day period they should be then ready to proceed. I would imagine that courts would say, "Well, you've had this period to prepare your case, now you should be ready to run it." What will often happen is you'll get into court after 28 days and if then you have to obtain the evidence, then it slows down the process at that stage. The former process is probably better and you may well get to finalisation quicker if someone does not lodge an application within the 90 days.

MRS OWENS: I suppose it's just that all these processes, if they go through conciliation and then they have to prepare a case and it goes to court and - you know, some of these people have got significant disabilities and they have problems and, as you said, they've also got to have a life and this could potentially just seem a very drawn out process for some people.

MR MORAN: Drag on. Yes.

MRS OWENS: And very legalistic.

MR MORAN: As soon as you're in the courts it becomes very legalistic. Many of these issues are quite complicated, though, and the legislation is reasonably complicated and when you're determining a complaint on goods and services, then there are a number of issues that have to be looked at in depth. They are complex matters. To avoid that you need both parties committed to achieving an outcome. That, on many occasions, is very successful through the conciliation process. There are very good conciliated settlements, and we've been involved in many. Those processes can take a long time as well. Often you'll turn up at a conciliation conference and the respondent on the other side doesn't have the authority to agree to anything in that conciliation. That can be frustration. So you have a number of conciliation conferences and still nothing is resolved and then you go to court.

From our perspective, I think we've seen delays more of that nature, rather than delays once you're into court and once the matter is being pursued there. I think at that stage there is a realisation on both sides that settlement can't be achieved and so you need to prepare quickly for final hearing. I must say, as well, though, that HREOC's processes have been far quicker and far shorter than in New South Wales at the state level.

MS McKENZIE: Can you explain a little about that process?

MR MORAN: In New South Wales the complaint is lodged with the Anti-Discrimination Board and then continues on from there to the Administrative Decisions Tribunal. So in essence the ADT replaces the Federal Court, Federal Magistrates Court.

MS McKENZIE: How long are you looking at, for the processes of the ADT?

MR MORAN: It is perhaps not so much the delays in the ADT as more - - -

MS McKENZIE: As the board.

MR MORAN: - - - with the board. We've had some clients who have been waiting a year to 18 months just to have their matter conciliated. When we advise clients we advise them that they can go to the state level and they're unlikely to have costs awarded if their case goes to the ADT; unlikely, but occasionally that may happen. They have to balance the delay at the state level with the prospect of no conciliation and costs at the federal level, and so again that is a difficult decision for clients to make when it's a legalistic process. They don't have all the information - they don't have all the evidence - and they have to make that determination. From that perspective I think the DDA is quite a quick process, but that may not be a good example to compare.

MS McKENZIE: It's useful to have that benchmark.

MRS OWENS: It is. I think that was a terrific discussion.

MS McKENZIE: Yes, it's a very helpful submission.

MRS OWENS: Thank you, Simon, for coming.

MR MORAN: Thank you for the opportunity.

MS McKENZIE: Thanks very much.

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

MRS OWENS: We will now break for lunch and resume at 1.30.

(Luncheon adjournment)

MRS OWENS: We will now resume. The next participant this afternoon is the Office of Employment Equity and Diversity, previously known as the Office of the Director of Equal Opportunity in Public Employment. It's a New South Wales government agency. Could you please give your name and the position with the office for the transcript.

MR JENKIN: I'm Paul Jenkin and I'm an EEO adviser and adviser on employing people with a disability to the office of the director.

MRS OWENS: Thank you. Thank you for coming and for the two submissions to date, and I understand another replacement one is in the pipeline.

MR JENKIN: That's right.

MRS OWENS: Thank you for that. Can I ask: are you a full-time - is it a full-time position?

MR JENKIN: A full-time, permanent position with the New South Wales government. We're actually attached to the Premier's Department. We answer directly to the premier; that's the relationship there.

MRS OWENS: Good, thank you. Paul, I understand that you've got a number of recommendations out of the submissions you want to highlight - about 14 recommendations, so maybe we'll hand over to you to start going through them.

MR JENKIN: Okay, thank you very much. We've made 14 recommendations. I won't go through them all in great depth. They fit into probably two major categories. I think we've got about six on definitional issues and two at least on issues to do with standards. But the first recommendation we raise is that the act be amended to adopt a more proactive and instructive model. By that we mean the act should be amended to include some proactive advice, if you like, on employers so that they actually have targets they can set for themselves, as a result of that advice.

MRS OWENS: Can we interrupt at this point?

MR JENKIN: Yes, please do.

MRS OWENS: Is "target" a softer form of a quota?

MR JENKIN: No, it's definitely not. I probably shouldn't have used the word "target". They can set themselves some directions to meet the requirements you might put on them, that is proactive requirements that you put on them in the act. In that sense, to follow the UK model, which does that - and also to some extent the New South Wales Anti-Discrimination Act does it for New South Wales government employers. We set the strategic targets for them and they then have to work to their own ways of getting there.

MS McKENZIE: In what terms are your strategic targets expressed?

MR JENKIN: Our strategic targets, in terms of clear - we set benchmarks, for instance, for people with a disability - to employ seven per cent of any given workforce with people with a disability and seven per cent of that workforce should also be people who require some form of adjustment to do the job effectively. It's up to agencies then to develop their own strategies, as to how they will achieve that kind of benchmark.

MRS OWENS: These are benchmarks, so they're not mandatory; they're just benchmarks.

MR JENKIN: That's right. The only ones that are mandatory that are operated by our office are for women, which is 50 per cent of all full-time permanent employees, and two per cent for Aboriginal people. That's a benchmark set by the Commonwealth.

MS McKENZIE: But they do have to report to you about how they are going with these benchmarks.

MR JENKIN: Yes, they do, and they do that every year and they also provide statistical data in the form of a workforce profile.

MS McKENZIE: What do you do to them if they're not going too well?

MR JENKIN: What do we do to them? What we can do is report them directly to either the premier or, more likely, we would write to their minister and suggest that the performance of that agency needed some examining. What usually happens is that an agency who might not be performing well in a particular area will receive a visit from our director and things change as a result of that. They'll put some strategies in place and there will be some changes as a result of that. There are some problems with the model; not the least of which being the high turnover in staff in agencies and also in terms of the senior executive service. There is a high turnover, so you are constantly having to renew the information and renew the requirements. So no agency is the same - well, very few agencies are the same from one year to the next, and that makes the whole business that much more complex.

MRS OWENS: Do you have problems of deciding or defining who has a disability and who hasn't for the purpose of these benchmarks?

MR JENKIN: No.

MRS OWENS: Could they squeeze in with fairly minor complaints or temporary complaints?

MR JENKIN: We use the definition of the Disability Discrimination Act as our guide, precisely because it is so broad. It's less likely to exclude people than any other definition that we could come up with. For that matter, if anybody was to take out a complaint against the state government, it would be on that basis - on the basis that that definition of disability - which is also the same definition for the New South Wales act. The New South Wales act was amended to adopt - or actually to mirror the Commonwealth definition of disability.

MRS OWENS: How well is that particular approach working?

MR JENKIN: I think very well. The second of our recommendations was to not change that definition because it does work well for us. It seems to be clear both to employers who might not necessarily have a very good understanding of the act, but once presented with it they tend to be very happy with it. When I say "happy" it has not caused problems that we're aware of.

MS McKENZIE: One of the problems - and this is almost quotas and benchmarks, but in the German experience where I gather there are some employment quotas, one of the problems that was mentioned to us in earlier submissions was that employers tended to look for people with milder disabilities, or less severe and to employ those in preference to those with more severe ones. Is that a problem here?

MR JENKIN: I believe it's the same problem here as anywhere else, but having said that I'd also have to say that of all the people from Commonwealth funded agencies, employment agencies, people with intellectual disabilities seem to do particularly well in the selection process. So while we've got the fear and the perception that that is the case, on one hand - and we hear about it a lot - it doesn't really mirror itself in the actual recruitment processes.

MS McKENZIE: That's very interesting.

MRS OWENS: Can I just ask while we're on this: is there any other state in Australia that adopts this approach? I think I saw in your submission that it was unique in Australia.

MR JENKIN: Currently it is unique. It used to be the same in Victoria. It used to be pre-Kennett. It was the same in South Australia and Western Australia. To my knowledge Western Australia almost gave up the process of having a separate agency to administer the proactive part of the act, namely the EEO part of the act and devolve that to general processes. That leaves New South Wales as the first and the last to maintain this particular system.

MRS OWENS: Why do you think New South Wales has persevered and the others haven't, even though the fact that all these states have got labour governments - I suppose we can't make that the differentiating factor any more.

MR JENKIN: No. I'm at a bit of a loss to give you a clear answer. I think the impetus for it in New South Wales has always been very strong and it's continued to be strong. It's had the support of unions, which has also been an important point in anything going through in the employment sector. I don't have a clear understanding for that. If the Victorian government was to be an example, it was thought that EEO had been done and that there was no point in continuing with an agency to monitor those things. The requirements on agencies changed dramatically as well. I think the emphasis there was on diversity. I don't see how you can concentrate on diversity as an issue if EEO hasn't in fact been done properly. The runs simply aren't on the board to say that EEO has achieved all that it was set to achieve. So I think in New South Wales there is an ongoing commitment that that should continue so that we do stand some chance of changing the employment ratios of EEO groups and the rest of the community.

MRS OWENS: Your employment ratios in New South Wales, do they look better than the other states because you've persevered?

MR JENKIN: I'm not sure they're better than the other states. We've had some problems with it, because of that changing - with the restructuring that occurred throughout the 1990s, agencies changed on a regular basis. They were either amalgamated or broken up and put in different areas, or they were downsized so there were lots of people exiting the sector, usually from the lower salary levels and that tends to be levels where people with a disability were most likely to be found. There's no clear indication that we're in a better position than any other state. I haven't looked at those stats, and it's difficult to do so because other states don't collect the stats; whereas in New South Wales if we compare one year with the next, we also have the problem of those changes. Even though we're looking at two agencies with the same name, they are simply not the same agency.

MRS OWENS: It would be really quite an interesting research exercise to do, or maybe it's something that should be picked up under the report of government service provision, as something to monitor.

MR JENKIN: Yes, in New South Wales we no longer only collect EEO data; we now collect a whole lot of data about the workforce that was never done before. There is a strong commitment for that to continue whether or not EEO continues. That will remain because the government wants to be able to use those figures to plan the workforce it needs to do its job in the future.

MRS OWENS: Okay, thank you. We've got through two recommendations so far. The second one was the definition.

MR JENKIN: The definition of disability.

MRS OWENS: Yes, and you were happy to see it stay as is.

MR JENKIN: The definition, yes; we're very happy with it the way it is precisely because it does work. The only thing we'd like to change in it is that we'd like to see something explicit about protecting genetic information, particularly in how that is used in the employment area. I know there are cases in the United States now where genetic testing is used to predict disabilities occurring and the likelihood that that will be picked up in Australia and used, is a real concern for me as an advocate for people with a disability in employment. It seems to be inherently discriminatory - not the tests themselves, but the use to which they're put. I think there needs to be something in this act which explicitly covers genetic information. I know there are legal arguments that it's already there. My argument for that is that lawyers will always argue that it's there because it answers their needs, to get to court to have an argument.

MS McKENZIE: But certainly it's ambiguous. No lawyer could say that it was certainly there.

MR JENKIN: No, and it needs to be explicit.

MRS OWENS: There are aspects of the act which talk about the use of information and so on.

MR JENKIN: Yes.

MRS OWENS: But I suppose there is the issue of how explicit this needs to be. There are issues relating to the use of genetic information for insurance as well.

MR JENKIN: Yes. We haven't touched on that - - -

MRS OWENS: Which may not be an issue. You know, it depends on your interpretation but it's certainly - - -

MR JENKIN: It's an area we can predict there is something coming. It would be nice if we were prepared for it. The following definitional issues on what we're calling work-related adjustments, unjustifiable hardship and inherent requirements really all go pretty much together. I won't go through them all. What I'll do I think is just suggest that we'd like to find some changes to the act which define the idea of making workplace adjustments. The act doesn't talk about reasonable adjustment. It doesn't talk about a combination and how it works in relation to unjustifiable hardship and direct and indirect discrimination, for that matter, or the inherent requirements of the job, but a practitioner will understand that those things go together and how they go together.

It's been an area which our office has received a lot of inquiries about, over many years. That's led us to change the way we talk about making adjustments or accommodating a person's disability in the workforce. We talk about work-related adjustments because that's precisely what we want them to do, so it becomes clear then to the employer, who is usually a line manager, what it is he or she has to do for that person. It's also clearer for the person with a disability coming on line, and their co-workers, as to what it's all about.

MS McKENZIE: So how do you formulate it if you're talking to an employee? If you're going to do it in general terms, you've got to make a work-related adjustment to do what?

MR JENKIN: Well, that will depend entirely on the individual's need. That's one of the problems we have with doing standards on employment for people with disability. It's a matter of individual differences as to what you'll talk about, and it's very difficult to have a global or a general standard which says, "This is what you do." We can give broad advice, and we do that in much the same way as the Human Rights Commission does.

MS McKENZIE: But the purpose of the adjustment - if you look at it for the minute, not at what the exact adjustment is, but its purpose, is it fair to say that the adjustment you're looking at is a work-related adjustment to enable the particular person to fully participate in whatever the defined activity is?

MR JENKIN: Yes, that's precisely what it is.

MS McKENZIE: I'm asking you for a purpose, because there are a lot of submissions to us which say in very general and vague terms, "Put in a duty to make reasonable adjustments," period, and so I've for a while been thinking of exactly what that means, and you're one of the very few submissions that's begin to try to say, while still in broad terms, with some more specificity what it might mean.

MRS OWENS: But even with your submission, you're really focusing on the workplace, and I suppose there's the issue of reasonable adjustment in other areas like education.

MR JENKIN: Yes. It's a terminology thing as much as anything for us. Calling it reasonable accommodation is to adopt an American term which arose out of, I think, the Rehabilitation Act, and that sounds a bit too much like a housing option for us.

MS McKENZIE: And it's not generally a word that - well, it doesn't seem to me to be a term that's generally used in the Australian community.

MR JENKIN: Reasonable accommodation?

MS McKENZIE: I don't know whether everyone would understand that as meaning an adjustment.

MRS OWENS: They'll think it's housing.

MS McKENZIE: Yes.

MR JENKIN: Yes. So we preferred to just make that distinction, but I think while the act may in fact make that distinction, and say so explicitly, there needs to be some clear linkage, perhaps in the way that that section of the act is drafted, between unjustifiable hardship and the inherent requirements of a job, and we've made a recommendation here that the guidelines be developed using the conciliation outcomes which the Human Rights Commission already has and which it uses. It's just that we would, I guess, like to see more use of those outcomes.

We've made similar recommendations to the Anti-Discrimination Board for their conciliation outcomes, so that they can provide a basis for people making better decisions. It's one thing for lawyers to have them and to be able to refer to them, but we'd like to see more of that information made available to people with a disability, and practitioners.

MRS OWENS: So there's two aspects to this. There's doing something within the act itself and there's also ensuring that there are guidelines which set it out clearly.

MR JENKIN: Yes, 1 is the definitional issue; 2 is tying the definitional issue to those parts of the act which support it, and there's using the conciliation outcomes to drive some change through recommendations or - - -

MRS OWENS: Is that all part of recommendation 3 or - - -

MR JENKIN: That's recommendations all the way through to 7.

MS McKENZIE: That's really a general - - -

MR JENKIN: Yes.

MRS OWENS: Your revised submission will spell these recommendations out?

MR JENKIN: Yes. We've also recommended that the indirect discrimination definition be changed, precisely because it is a really difficult one for everybody to work with, and we've taken the advice of the Anti-Discrimination Board on this, that the Sex Discrimination Act, section 5 to be precise, provides a good working definition. We've looked at their submission and it certainly does seem easier for us to adopt that particular definition, and it's also an easier definition for us to write about and provide advice on.

We have quite a bit of trouble with people wanting to know what indirect discrimination is. They come to us because they think we know. In truth, we don't, and we refer them on to the ADB. Anything that will make that part of my job easier I'll be very happy about. We tend not to offer legal advice, so if we can offer good policy advice, that would be great.

MRS OWENS: It doesn't just make your job easier. It's also easier for people out there to understand what their rights are, without them having to go to you.

MR JENKIN: Yes. Well, their rights are indeed what advice we can provide to employers and human resource managers about how they put together, for example, a job description and how the selection process is conducted. Everybody understands direct discrimination quite well. One can argue all kinds of things about that, but the unlawful practice of indirect discrimination is not well understood, so people are discriminating in that way without even realising that they're doing it. That's it for the definitional matters.

There's two matters on the standards. The first is fairly easy. We've recommended that the Uniform Building Code be called up as a standard for people with a disability. We've made that recommendation. It seems self-evident. Just to add to that point, though, the definition of disability in access to premises that currently exists has been a real driving force behind access to public buildings, public-use buildings. If the Building Code is brought in as a standard, we'd be greatly strengthening the trend for developers to put access into buildings from the outset, and it also provides the kind of advice that they will look to in the first instance rather than the last.

MS McKENZIE: And are you thinking this should apply to more than just public-use buildings?

MR JENKIN: Private dwellings?

MS McKENZIE: Yes.

MR JENKIN: As a person with a disability I'd probably say yes.

MS McKENZIE: What would you say in your capacity with the Office of Employment Equity and Diversity?

MR JENKIN: In my capacity as an employment adviser in the Office of Equal Opportunity, I'd have to say it's none of my business, unfortunately.

MS McKENZIE: Perhaps we should go back to your individual capacity.

MR JENKIN: It would be nice, it would be really good if some basic standards were adhered to, simple things like doorway widths. Why put in steps when you're building a new housing development if you don't have to? We've got an ageing population, so why make barriers for it?

MS McKENZIE: It is a real issue, I think.

MR JENKIN: It certainly is.

MRS OWENS: Actually, we've been talking to one or two councils where they have set I suppose benchmarks for new housing to determine that X per cent of new housing should have these features, but I think it might be left up to individual councils to do this.

MR JENKIN: Yes, state environment planning regulations require that a certain amount of public housing be set aside and specifically set aside for people with a physical disability, and I think they have in mind people in a wheelchair, because all the provisions are sort of the maximum provisions for a person with a physical disability in a wheelchair. It's not necessarily the case that a person with a disability wanting accommodation in one of those places will be a person in a wheelchair. It may be a blind person, for instance - a different set of requirements. So I think a more general standard of access is probably a better way to go.

MRS OWENS: It's going beyond public housing. The idea is to think about what you do about new private housing as well.

MR JENKIN: Yes, and given that most developers are project developers - they develop a complex, they never build a house, they build the neighbourhood - if they are going to build a neighbourhood, then the quality of housing that they build should be appropriate for the future.

MRS OWENS: Yes. They had to think of it when they built the Olympic Village here, I think.

MR JENKIN: Yes. That's probably the only place I can think of where they did.

MRS OWENS: But SOCOG didn't get everything right, but apparently that aspect - - -

MR JENKIN: They got much of it right, I think.

MS McKENZIE: It's arguable in many ways that the Paralympics have had an enormous effect in the altering of attitudes and sometimes designs. This is not the only time that the Olympics and Paralympics have been mentioned.

MR JENKIN: That's true. The Olympics have generated an awareness that people with a disability (1) have money in their pocket and they want to spend it, and they're not going to spend it where they can't get in, or where they have felt unwelcome. So I think the federal budget - something like $300 million for people with a disability - its allowances for pensions, so that's a significant budget. It's certainly something to drive change with. If you take into account that all those people with a disability also have families and friends who are also going to be in a position to spend money or not spend money, as the case may be, that's another powerful incentive to drive change. I go to some lengths in the submission to talk about the standards for employment. We, the Office of Employment Equity and Diversity, as we know it.

MRS OWENS: You've had a whole, what, how many weeks to get this right - one or two?

MR JENKIN: Two, yes - I'll get there eventually. We reviewed the Human Rights Commission's submissions on having employment standards and at a government level it sounds like a really good idea. We had some concerns that any standard that was put in place also ran a significant risk of losing as much as it took on board. We weren't happy at all that the standard that was being proposed answered a lot of the questions that we raise, both about the potential loss if the standard should be adopted over section 15 of the act- because, you know, the standard would take on the responsibilities of that section. It would be a court of law.

We are concerned there might be some loss there and we are also concerned that the award system legislation around the award system also provides significant barriers, if you like, or hurdles for such a standard to jump and - - -

MS McKENZIE: Because of inconsistency?

MR JENKIN: Possibly - possible inconsistencies and possible losses along the way.

MRS OWENS: What are the sort of losses that you are talking about?

MR JENKIN: I think we'd probably need to have a look at the awards. If I could just grab my notes here.

MRS OWENS: Sure.

MR JENKIN: If you look at section 15 of the act it currently protects how a person with a disability or their associate gets a job, what selection procedure should be used including the method for advertising a vacancy, selecting applicants for interviews, setting criteria for determining who can get the job. It protects what happens once a person with a disability is offered a job, what are the terms and conditions of employment offered, including hours of work, wages, superannuation, work practices.

It protects what happens once a person with a disability starts work and continues working, how the terms and conditions of employment apply in practice, employing the provisions if necessary of work-related adjustments; what happens when the person with the disability looks for advancement, how to ensure an employee has equal access to opportunities of promotion, transfer of training or to other benefits associated with employment or when a person with disability can be lawfully dismissed.

MRS OWENS: So are you saying that the standard is not going to cover those areas?

MR JENKIN: I am saying it would have to. The standard that was presented did not, or the proposed standard did not. We're very loathe to endorse anything that would see a loss of what already exists.

MS McKENZIE: And yet your worry is that once a standard is there it might somehow prevail over, or leave no room for that section?

MR JENKIN: It would prevail over. It would have the force of law. How it would deal with the differences in states' legislations about employment practices, I think, is another matter that needs to be taken up. They differ fairly broadly between different states. It's a bit of a minefield, I guess, is what I'm trying to say. We are wary of that minefield and don't feel comfortable at this stage that the standard would address the matter appropriately or fully. There may be some aspects of the employment which would lend themselves very nicely to a standard. One area I'd suggest might be the area of adjustments.

MRS OWENS: The other area that I think you expressed concern about was what would happen in terms of associates or carers of people with disabilities under the standard.

MR JENKIN: Yes, at the moment I think the minister does not have the power to - I forget what I wrote here. It's some time ago now. One of the things I did say was:

> The award system provides a model of how a standard should work. Perhaps that needs to be looked at as well.

MRS OWENS: You say in your submission that:

> If the draft employment standard was accepted as law there would be one law for people with a disability in employment and a different law for carers and associates of people with a disability in employment -

which seems to infer that the standards wouldn't pick up those people. You've said that section 31(1) does not currently provide for the minister to make standards in relation to the employment of associates of people with a disability. I haven't got a page number so I can't - this is in your submission towards the end of it - three pages from the end.

MR JENKIN: Yes, but for some reason I can't find it here. I must have lost a page because it isn't numbered.

MS McKENZIE: But maybe one of the things that you are worried about is that if there were a standard in those terms that it may well be quite different from the kind of coverage that's given by awards to non-disabled workers and not always better.

MR JENKIN: Yes, I think we were concerned about the minister's power to make that ruling. I'm sorry, I'm lost, because I've completely lost that page for some reason.

MS McKENZIE: No, no.

MRS OWENS: Never mind.

MS McKENZIE: No, that's fine. We certainly get the general drift and understand your concerns.

MRS OWENS: So you are recommending what about the standards? You recommend hesitation about adopting the employment standard?

MR JENKIN: Yes, we think there's far too much work to be done, and probably across the country, in order to get a standard that would meet the minimum criteria of the award system. It may be that if you look at the award system and look to how you could effect that rather than bringing in a standard. I don't know that that's been looked at. That's a possibility.

MS McKENZIE: That's a really interesting question. Perhaps terms that are put into each of the awards.

MR JENKIN: Yes, because that's one of the things I talk about, coming up, is that if that's the appropriate jurisdiction for everybody else, why is it not the appropriate jurisdiction for people with disabilities?

MS McKENZIE: The only problem of course is that wouldn't govern those who are not subject to awards and there are some people who are not. Maybe then that might have a much more minimalist employment standard which would only deal with those people but in the same way as the extra terms that have gone into awards perhaps.

MR JENKIN: Yes.

MS McKENZIE: It's a very interesting perspective.

MR JENKIN: I think the next one is recommendation 12. It's about migration. I'm aware that this really isn't within the jurisdiction of the inquiry but it's one we felt quite strongly about.

MRS OWENS: Well, certainly the exemption for the Migration Act comes in. I mean, it's part of the act so it's part of the inquiry.

MS McKENZIE: Correct.

MR JENKIN: Okay. Well, we felt most strongly that the current limitation on the act whereby a person with a disability from overseas cannot migrate was grossly inequitable. We'd like to see that the act be amended to extend the same human rights to non-citizens who are applying for citizenship or just to migrate before they get citizenship - be approved.

Recommendation 13 was about the powers of the commissioner to initiate complaints. We've simply asked that the decision to remove that power be reversed and be given back to the commissioner since the conflict no longer exists with making determinations.

Finally, there's the jurisdictional issues that come up again and that's the part I've just added to our submission. In New South Wales, if a person has a complaint and they have a choice, they can go to either the Human Rights Commission, they can go to the Anti-Discrimination Board to lodge their complaint about discrimination in employment, but in New South Wales they can also go to the Industrial Relations Commission. The New South Wales Industrial Relations Act was amended in 1996 and that amendment gave the president of the Anti-Discrimination Board the power to intervene in proceedings before that tribunal and has done so on a number of occasions.

MRS OWENS: Before the IR Commission?

MR JENKIN: Yes, that's right, and the Industrial Relations Act has also adopted some EEO principles as well which they imported from us. So it's a very broad based act now to do with the employment and we're very happy with that. We're also happy that it is able to hear complaints very quickly and to proceed with them very quickly which isn't the case, for example, with the Anti-Discrimination Board which can have complaints backed up for about six months. I understand the Human Rights Commission has a better record.

MRS OWENS: We've heard longer. This morning we heard that they could be longer than six months.

MR JENKIN: Yes, I think they've brought them down fairly significantly but at one stage it was certainly six months. I think they're hearing them every few months now. If the Industrial Commission is in fact the jurisdiction, again, then that should be the jurisdiction that hears discrimination complaints in employment. We're suggesting that if there are jurisdictions such as that at the Commonwealth level or federal level, then perhaps, looking at how that legislation might be amended to include discrimination against people with a disability, then that should probably proceed. We think it's a good model. We'd like to remove - no, sorry, we wouldn't like to remove things from the act. What we'd like to do is broaden the constituency of the act.

MS McKENZIE: Give people extra choice, in other words?

MR JENKIN: Absolutely - and also to speed up the process. More people using an industrial commission means that there's less of that work that either the Anti-Discrimination Board or the Human Rights Commission has to deal with so the load is spread.

MS McKENZIE: It's not just that. I notice in the state field, and I would assume it would be the same with the Commonwealth as well, that many complaints that concern discrimination in employment also concern things like unfair dismissal and it would be very helpful if the one body could deal with both complaints because they're different. The unfair dismissal jurisdiction and provisions are different from the ones in our Victorian anti-discrimination legislation and it would be much more sensible for the one body to be able to deal with both.

MR JENKIN: Yes, absolutely. I mean, it's more efficient and I think it's more effective.

MS McKENZIE: Yes.

MR JENKIN: And we can't knock that model, I don't think, so maybe you would want to look at something like the Workplace Relations Act at a Commonwealth level and see how that might be changed to take on some of the responsibilities of administering the DDA.

MRS OWENS: Yes, okay.

MR JENKIN: That wraps up what I had to say, unless there are questions you would like to ask.

MRS OWENS: Just coming back to this last point that you made: I suppose the other aspect of that is that it's really putting people back into the mainstream, which is also one of the desirable things you may want to do.

MR JENKIN: Yes, absolutely. I mean, that system already exists, so you're not creating anything. The ADA itself exists because these jurisdictions that did exist before were failing and not doing their job properly, so the DDA was brought into being. If you can hive off part of that responsibility back to the system, general system, then it's better than doing anything else or trying - I'm lost for words, but it belongs in that jurisdiction and I think it should probably be used in that jurisdiction. I mean, the DDA is like any other process, I think - it should be working towards making itself redundant - and this, it seems to me, is at least one area where it can do that.

MRS OWENS: It's very interesting.

MS McKENZIE: I've only got one more question. One of the matters we've struggled with is, what suitable measures might there be to judge the effectiveness of the operation of the DDA. It's an extremely difficult matter.

MR JENKIN: Yes.

MS McKENZIE: Do you have any suggestions - since you have just offered us such an interesting one about employment - if you hadn't done that I wouldn't have asked you the question.

MR JENKIN: I don't know that I can make your job any easier.

MRS OWENS: We've been trying to think of ways to make your job easier, so you can reciprocate.

MR JENKIN: It will give me something to think about. One of the things I'd probably just like to say in general is that there's a lot of argument and a lot of concerns come my way about the cost of employing a person with a disability. In my experience there is no cost to employing a person with a disability which doesn't exist anyway for anybody else. Where a cost is thought to be - there is usually a government program offering cash to offset any perceived additional cost for the employer; for instance, if you want to employ a person today who has a disability you can go to any number of Commonwealth agencies which are paid to conduct an employment agency basically and find an applicant from one or more of those agencies.

That person brings along with them a lot of wage subsidies. They bring along with them moneys to do reasonable adjustment or workplace adjustments, and there are similar measures all the way along the line, so at least in this country - as opposed to the United States - you're going to find there are more incentives to employ a person with a disability than they have for a person who does not have a disability.

MRS OWENS: I suppose employers have to know those incentives are there.

MR JENKIN: Yes.

MRS OWENS: But do you think there should be more incentives; taxation incentives, for example?

MR JENKIN: Tax incentives would be fine, but I think what really is required is that employer organisations be the ones to advocate about all these changes, these incentives. I mean, to have it go through Centrelink and expect that that is going to achieve something is a strange idea. It will help the person with a disability who is applying through there to feel good. It does not help change perceptions in the workplace. It does not help the line manager, who is probably overworked and probably doesn't know what their real needs are, except to lighten their own workload.

MS McKENZIE: Yes.

MR JENKIN: They've heard that it's expensive to employ a person with a disability. They go with that and the door is closed. If, on the other hand, an employer agency is advocating that it's a really good thing to tap into say the Commonwealth new apprenticeship scheme because there are all sorts of incentives that go along with people recruited through that system, that's an incentive; that's something they will run with. It's a matter of how you market it, I think, to bring about the change.

MRS OWENS: You did cite in your initial submission just some of the work that's being done to measure the cost of adjustment, where you have made the point that it can be quite low - and again maybe there is a perception issue out there that it's going to cost a lot of money when it may not necessarily be the case.

MR JENKIN: Yes. I think employers hear the disaster stories, where somebody hired somebody else and it cost them $10,000 in adjustments. My argument to that would be that they probably chose the wrong person for the job - if they can't do the job without huge costs involved. They probably had other reasons for employing that person rather than the fact they thought they could do the job well. Most adjustments that we're aware of fall well under the $500 range and in fact most of them don't even get counted as adjustments. They're just simply done and nobody knows they've been done. We can't find out either. If we were in the United States we probably could because over there an employee has to put their hand up and say, "I want this adjustment, please," and fill out a form, which somebody puts into a computer and they know about it, but over here that is not required. It's unlikely we're going to require it.

MRS OWENS: Thank you for coming today and thank you for the two submissions so far. As I said at the outset, I found them very useful.

MS McKENZIE: Excellent - both excellent - submissions and the discussion has been very helpful. We’ve been able to range across even more topics than - - -

MR JENKIN: That's great. Thank you very much.

MS McKENZIE: Thank you very much.

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

MRS OWENS: The next participant this afternoon is the International Society of Augmentative and Alternative Communication, Australian Chapter, otherwise known as ISAAC Australia. Welcome to the hearing. Would you each please give your names and your position with the society, for the transcript.

MS HEMSLEY: I'm Bronwyn Hemsley. I'm the president of ISAAC Australia.

MS GIVEN: I am Fiona Given. I am on the executive of ISAAC Australia.

MRS OWENS: Thank you, and thank you for coming. I think we're only a little bit behind at this stage of the day, which is a miracle. Now, I understand you'd like to introduce your submission, and then we can just have a short discussion. So thank you.

MS HEMSLEY: ISAAC Australia really put together this submission in order to provide information to the inquiry, I guess, raising awareness on the issues about people who have complex communication needs; also previously termed people with severe communication impairment, or people who are unable to speak - not due to hearing impairment and not due to English as a second language. So primarily those people who have communication needs and who may require access to augmentative and alternative communication, which can be any form of communication, such as gesturing, signing, using picture communication boards, using voice output communication aids, spelling aids - there's a whole range of different types of augmentative and alternative communication. So we really wanted the submission to highlight how people who don't have access to a functional communication system may be more prone to be discriminated against or open to abuse, and the importance of, I guess, their issues being raised with the commission - the inquiry.

MRS OWENS: I suppose another issue is that even if you've got a Disability Discrimination Act, it may be more difficult for people in that situation to be able to get access to the act, understand the act, get people to understand what their concerns are, putting in complaints, and so on.

MS GIVEN: I'm working on it at the moment as part of my law degree.

MRS OWENS: Working on this issue of access to your rights under the act?

MS GIVEN: Justice.

MS HEMSLEY: I guess one of the points that we wanted to make was that there are a whole range of people in their skills and abilities and in their needs, and a whole range of issues that feed into successful participation. That might be - people have mentioned before - attitudes and perceptions about communicating with someone who can't talk. Some of these perceptions might be that the person is not capable of making an informed decision, or has an intellectual disability as well as a communication disability. So there's perceptions and there's attitudes in those issues.

There are issues around access to education and training and knowledge; access to resources such as assessment teams that design communication systems, training in how to use the system, which can take sometimes many hours, as well as the money to buy the system. Also knowledge about communication in general, and what people know about communicating with someone who speaks and how they apply that to communicating with someone who doesn't speak, but who uses a different mode of communication. So there's a whole range of issues that feed into whether the person will have access to the job that they wish to apply for, how will they go in an interview situation, how would they put an application together - this type of thing.

MRS OWENS: Do you think the act does a reasonable job of covering people with complex communication needs - for example, the definition in the act? Is that sufficiently broad to deal with people with these particular needs?

MS HEMSLEY: I think it's broad in defining the person and the person's disability or impairment. But communication between two people, one of whom uses a different mode of communication or not natural speech, also involves the environment and the situation and the knowledge and skills and awareness of the other person. So, in that we felt the social model of disability was relevant, if there could be some addition to it.

It does cover specific things like access to an interpreter for people who use sign language, people with hearing impairment, but there's also access for people with complex communication needs sometimes, to not only the device or the communication aid, but also behaviours in the environment that facilitate their participation. So, for example, in the classroom, it might not be enough just for the child to have the device, but also the teacher may also have to use communication strategies themselves - visual communication supports for the child.

MRS OWENS: And the other children have got to be made to understand that they've got a role to play as well.

MS HEMSLEY: Yes, and the person has a right to having a turn in the conversation and to answer for themselves and to ask a question in the classroom; to be assessed on the same tests, say, for example, higher school certificate - that they have access to those same measures of assessment as other people who write and speak. But, Fiona, maybe you want to comment on it, having been through mainstream education.

MRS OWENS: Yes. I'd be interested in what Fiona has got to say about the education system, now doing the law degree - what's happening at the university.

MS GIVEN: As you can see with me, communication is slower. I am considered to be fast, but I still cannot keep up the normal pace of conversations, which has implications in the classroom.

MS HEMSLEY: Where we see that having an impact is that the pressure of time might mean that they're not given a chance to formulate a response to a question, or they're not given the participation component of learning in the classroom. Because human interaction and conversation relies so much on give and take, that usual flow is a little bit unnatural for people, and to become comfortable with that is something people learn through doing it and through having maybe some demonstration and guidance or information about how you can do it.

MRS OWENS: Yes. I presume often conversations just get truncated because - I just got a "yes", a nod - because people move on, and they're moving on to the next topic of conversation.

MS HEMSLEY: And there's so much more that people could say if they had time, and it's always the case - time is one thing, but also the opportunity in having been given the forum, being given that turn in the conversation.

MS GIVEN: I'm still formulating a response, and the conversation has moved on.

MRS OWENS: We'll try not to do that now. But I was interested, Fiona - I'm interested in what sort of adjustments have been made at the university for you, if any.

MS McKENZIE: Or in your schooling as well.

MS GIVEN: The lecturers generally are good in helping me participate in class. I normally put my hand up.

MRS OWENS: Do you think it's been better at the university than it was at school? Did the schoolteachers also do that?

MS GIVEN: Yes, university is much better.

MRS OWENS: What about doing examinations?

MS GIVEN: That is a really bad problem for people with complex communication needs. We can use the screen but talking is difficult and some of us get a lot of pain. So no, the issue has not really been addressed adequately.

MRS OWENS: So there are issues relating to just how people are treated at school and at university and making those people that are working in the universities and schools understand those needs, and there's also the issue of then, once a student is in the system, making sure there are appropriate arrangements for examinations. Fiona has got to get from A to B too, in the wheelchair.

MS HEMSLEY: Physical access too, yes.

MS GIVEN: To be honest, most people with complex communication needs don't even get to university, so please don't take my case here as the norm.

MS HEMSLEY: People like Fiona and like the somewhat more famous Stephen Hawking, they are I guess the exception to the rule, where they have had access to the resources and education and a whole host of factors interplaying, and I guess Fiona's point is that there are many other people who have capacities to do further education and to learn and to progress through tertiary education who don't have similar access issues.

MRS OWENS: Should special arrangements be made to open up those opportunities for people?

MS HEMSLEY: One way we see that opening up opportunities from a very young age, having access to functional communication at an early age and becoming a functional communicator to the level of your capacity and meeting your potential in your learning environment all throughout life - and part of that is having access, for some people, to an augmentative and alternative communication system which might be either low-tech or high-tech, and we've gone, in our submission, through a bit of what a low-tech and high-tech system is. But it's very self-explanatory, with Fiona here, that this is the type of high-technology end of AAC, and that there's a whole host of things in your development that lead you towards further education and employment and many people, through my work, in working with people with life-long disability, are limited in what they are able to do not because of their abilities but because of their communication.

MRS OWENS: You mentioned, I think, in your submission that about five people are in full-time open employment that are using augmentative and alternative forms of communication. That doesn't seem to be very many; this is across Australia.

MS HEMSLEY: Yes, across Australia. And this is why ISAAC, being a national body, has members all around Australia, and we are getting more of a picture of the national differences across the state. Access to communication aids in Victoria is different to New South Wales. Even within New South Wales where you live might influence whether you get funding for a communication device or not. There is no uniform mechanism for gaining access to the required system that you have been assessed as needing.

MRS OWENS: So the people that are in jobs, are they in the states where there are more proactive policies and early intervention? Is there any direct relationship?

MS HEMSLEY: It's very hard to see, with those numbers, and not having background information on all those people and what has led them there. But it is rather startling to think that there is only five in full-time open employment and some in supported employment situations run by disability services or other organisations. And it's something ISAAC Australia is looking to redress, I guess, is bringing these issues forward and highlighting that there is a great need for more awareness of that.

MRS OWENS: I presume from your members there would be other people within that group - there are about 70 members?

MS HEMSLEY: There are about 70 members of ISAAC in Australia.

MRS OWENS: I presume there is potential there among quite a number of those members, if they had had the right sort of early intervention or ongoing opportunities - - -

MS HEMSLEY: At the moment I guess the membership tends to reflect the professional aspects of AAC, because most of the members are professionals working in the area who are natural speakers. But the aim of ISAAC is not to be tailored towards professionals but to be an organisation that really improves things for people who use AAC. So the membership alone is reaching out to the people that they are working with.

MS McKENZIE: So is it fair to say that funding assistance for people who use AAC varies across the states as far as their criteria and provision are concerned?

MS HEMSLEY: Yes.

MS McKENZIE: Do the Commonwealth also have a role?

MS HEMSLEY: I think the Commonwealth does have a role, but there is no particular mechanism for gaining funding through the Commonwealth system for a communication device. There are other instances; say, for example, in the hospital setting, in New South Wales. It might vary from state to state, but working here in New South Wales an example of what can be viewed as indirect discrimination might be where the person who is in hospital and can't speak, and has a physical disability and can't use the call button to get the attention of the nurse, doesn't have a means for gaining the attention of the nurse or isn't provided with an alternative mechanism for getting the nurse's attention.

We do have a lot of information now, through research into hospital experiences, of people with complex communication needs that many of them rely upon an unpaid carer, being a parent or a relative or a friend, to be there all the time. And to gain access to a drink, to have any information about their treatment or care requirements, such as positioning or moving in the hospital. So this places a great deal of a load upon unpaid carers in the hospital setting, but also is potentially discriminatory against the person in the hospital who can't speak.

MS McKENZIE: Yes.

MS HEMSLEY: There's another example where many people who have complex communication needs also have swallowing difficulty through a physical problem with their muscles of their mouth and the neck, and gaining access to suitable hospital assessment is problematic if the hospitals say, "We don't have experience in doing these particular tests with people who have disabilities, so therefore we can't do the test."

MRS OWENS: If the hospital can't do it who does it? People who specialise in this?

MS HEMSLEY: The thing is that if the hospital can use knowledge about disability, per se, as a reason not to do a test, that would seem to be inadequate. The hospital staff should be getting knowledge and experience about disability because of the range and diversity of people who turn up for tests in hospitals. So at the moment they might expect someone like me, who is more specialised in disability, to come with them, whereas another person who may not have a disability but may have a swallowing problem, they wouldn't need that. So that is funnelling people more into a smaller system to gain access to a test that really may be quite useful for them.

MRS OWENS: What about transport? Going in taxis and so on.

MS HEMSLEY: Yes.

MRS OWENS: Would it be possible to get around without having a carer? Do you go to university without a carer?

MS GIVEN: I can. But it sometimes (indistinct) on me to communicate where I am going.

MRS OWENS: Are you aware of any members or others that have felt the need to go through the act, the Disability Discrimination Act, and put in a complaint? Has anybody gone that route?

MS HEMSLEY: I know there are members who felt that they have been discriminated against by communication difficulties, but really felt, I guess - it's very hard to be sure that you have been discriminated against on the basis of your communication. It would be very hard to know whether it was that or something else. But there are certainly some who felt that that's what it was, that if they could speak they would have had further advancement in their work, as opposed to their colleague who might have been advanced and been a natural speaker. Sometimes it's very hard to have firm evidence of that, if it's not overt.

MRS OWENS: Is there any sense that things have improved, in terms of community attitudes, for you, Fiona? A little? Over the last 10 years, under the act?

MS GIVEN: Yes. I don't feel in a position to speak for everyone.

MRS OWENS: The challenge for us is to try and see - we've been asked to look at the effectiveness of the act, and it's a matter of how you answer that question. Some of it is just people's perceptions about attitudinal change, and it's quite difficult to get objective evidence on what's happening.

MS HEMSLEY: I think Fiona's example in the submission of a requirement of the job being sound oral communication skills, where it might particularly in that job actually be communication skills - - -

MRS OWENS: Yes.

MS HEMSLEY: And even subtle wording of job ads like that may be in fact discriminatory against people who use other modes of communication.

MRS OWENS: I just wonder about jobs where you don't necessarily need oral communication, and there must be a number of jobs out there where it's not an inherent requirement of the job. Some people spend their life in front of a computer screen and not having to communicate too much to their fellow workers at all.

MS HEMSLEY: And where it is a requirement, if the person has access to voice output communication, then why should that be nominated oral communication if it really is communication? So having a functional communication system enables Fiona to speak to the group without an interpreter. It enables her to use a telephone to call a taxi to go out to ask questions of the lecturer, and it enables her to show what she thinks, so it's very powerful.

MRS OWENS: Absolutely, but then, Fiona, you mightn't want to go and get a job as a telephone operator, for example, because there's probably much better uses of your talent.

MS McKENZIE: I think as a lawyer you might be able to contribute more.

MRS OWENS: I mean, Cate doesn't want to go out and become a bus driver or an airline pilot.

MS McKENZIE: I think the community might agree with that.

MS HEMSLEY: I guess - while Fiona is composing a message - that you develop your skills and your attributes and you match them to what you'd like to do for a job, and I guess having the two match, of what's available and what you'd like to do, is the ideal.

MRS OWENS: Yes, it's the ideal for everybody.

MS HEMSLEY: Yes, that's right, but what I guess we're saying is that communication modes shouldn't be a discriminatory factor in how they do that.

MS GIVEN: For example, I don't see why I shouldn't be able to advocate in court.

MRS OWENS: No.

MS GIVEN: For example, I don't see why I shouldn't be able to advocate in court.

MRS OWENS: Exactly. I think you'd be a very good advocate in the court.

MS HEMSLEY: And I guess we're saying that that should be an opportunity that starts well on in someone's life, and having access to communication is something we think is a right, not a privilege, and in the States it's protected with the Communication Bill of Rights, and therefore in the States many many more people have access to communication devices than in Australia.

MRS OWENS: Well, thank you for that.

MS HEMSLEY: Thank you.

MRS OWENS: Is there anything else that you'd like to add?

MS McKENZIE: We've asked you all the questions that we've wanted to raise, and it's been a really excellent both written submission and discussion, but anything else you'd like to add we'd love to hear.

MS GIVEN: It's just so huge.

MS HEMSLEY: So huge.

MRS OWENS: We know.

MS HEMSLEY: I guess communication crosses so many areas and it's so central to all interaction that we feel it's very important that it's considered, that these people who don't have a voice, traditionally - that people do make efforts to give them a say, and when they have something to say, that they have the opportunity to do so.

MRS OWENS: Yes. Thank you very much indeed. We'll now break and we will resume at about 3.30.

MRS OWENS: The next participant this afternoon is the National Ethnic Disability Alliance. Hello, once again, and thank you for coming. Could you each give your name and your position with the organisation, for the transcript.

MS LIND: My name is Lou-Anne Lind, I'm the executive director of NEDA.

MS RICCI: My name is Cristina Ricci. I'm the systemic advocate at the Multicultural Disability Advocacy Association, which is the New South Wales body of NEDA.

MRS OWENS: Good, thank you. Thank you for your submission, which we have read with interest. I'll hand over to Lou-Anne. I think you said you were going to make some introductory comments for us.

MS LIND: Yes, and as I go through if there are any points you'd like to pick up on and talk through, we're obviously more than happy to do that. Cristina is with me today and, as she said, MDAA is NEDA's New South Wales member. Cristina has also done a bit of research into people with high support needs and their issues relating to the DDA.

I'd like to thank you, commissioner, for the opportunity to appear here today in these public hearings and I certainly hope you'll be able to take away with you some information about NESB disability issues. It's my understanding that some of our other state members, such as EDAC in Western Australia and MALSA in South Australia have also given some evidence, so we certainly hope that there is a lot of expertise coming through to you about the needs of our people in relation to the act.

It's been estimated in Australia that 19 per cent of all Australian people have a disability. NEDA represents the 25 per cent of people with disabilities who come from non-English-speaking backgrounds. We also represent their families and their carers. For people with disability who come from a non-English-speaking background, the DDA is a crucial tool to ensure that rights are not only protected but also enhanced. At this point in time Australia does not have a bill of rights and there are no rights based declarations within our current constitution. NEDA very much supports the DDA in that it is the only legislation in Australia that actively seeks to promote equal rights and equal opportunities for people with disability and makes direct and indirect discrimination unlawful.

We believe that the DDA not only has benefits for people with disabilities, but it also has indirect benefits for other members of the community, including older people with mobility difficulties and mothers with small children. Therefore, any advancement in equality made for people with disabilities, using the DDA, has positive repercussions for other members of the community. We do not support in any way initiatives or changes that will water down the effectiveness of the act. In fact, our position is to argue for initiatives needed to strengthen the DDA, so that it can better meet the needs of people from NESB who have a disability.

The act has certainly been very useful in achieving systemic change for people with disability in particular areas of everyday living, including public transport, building design, banking and finance and telecommunications. These changes would not have taken place if it was not for the tireless campaigning by the disability sector and the existence of the DDA as an integral tool for change. Away from the issue of legal rights and responsibilities and standards, the DDA is also an important tool because it communicates what kind of society Australia wants to be; a society that promotes inclusion and one that does not tolerate the exclusion of people with disability in areas of social, political and economic life.

There are many barriers facing people from NESB with disability, including lack of accessible information and knowledge about rights, essential services and supports. There is also a gross lack of culturally appropriate services and supports in this country and we estimate that three out of four people from NESB with disabilities currently miss out on receiving Commonwealth funded disability services. This is in addition to the current unmet need.

MS McKENZIE: That is three out of four people who are eligible?

MS LIND: Yes, that's right. Three out of four people who can or should be able to access the service are not getting their foot in the door, and it's on the basis of their ethnicity. There are also a number of myths, misconceptions and negative stereotypes about disability and ethnicity in both the NESB and Anglo-Australian communities. There is also prejudice against people with disability from both the NESB and Anglo-Australian communities.

Another issue facing our constituents is also the government's current emphasis on mainstreaming without the acknowledgment of the current inequities that exist in relation to ethnicity. People from NESB often don't understand the concepts used to describe their situations and ethnic communities often do not have the capacity to advocate for their own needs. It's been our experience that discrimination relating to both ethnicity and disability is interdependent and does not follow any logical order of preference. The prejudicial attitudes and misconceptions regarding disability that are present in mainstream society, are just as prevalent in NESB communities.

Whilst there are differences in the perception of disability amongst different ethnic groups, the relative degree of stigma attached to disability appears to be similar across NESB and English-speaking communities. By and large NESB communities have missed out on education campaigns about people with disability because those conducting those campaigns have failed to seek out or consult with NESB people. At the same time there have been a number of consultations with people from NESB with disabilities but those consultations have not resulted in concrete strategies.

Generally our people are reluctant to use the DDA for a number of reasons. The first is the complexity of the process involved. A high degree of English literacy and comprehension of the Australian legal and service system is required to be able to use this act. There is also a fear of reprisal amongst people from NESB with disability and this is a very real fear for those who originally come from countries under harsh dictatorships. There is also the cultural perceptions of making complaints. Complaint-making doesn't really sit well within a number of cultures where it's not seen to be appropriate to make a complaint or to speak out against something that is not right.

There is also the associated costs. By and large people from NESB with disability are generally poorer than their Anglo-Australian counterparts. The adversarial nature of making complaints also is a reason why people from NESB don't access the act, the burden of proof that currently rests with the complainant and that not all people have or are offered services of an advocate to support them through the process. People from NESB with disability experience discrimination on both the basis of their disability and their ethnicity. Given that people from NESB with disability experience multiple layers of discrimination, it becomes very difficult to separate the different forms of discrimination experienced especially given that discrimination can take on very subtle forms.

I'll give you an example that we use a lot within hearings such as this. If somebody calls someone "a crippled Wog" have they been discriminated against on the basis of their ethnicity or their disability? Unfortunately the DDA - like many pieces of Australian legislation - is not able to cope with that intersection. Currently the DDA and its various processes are not accessible to people from NESB. The primary reason for this is that most of the information is produced in English. Unfortunately many of the DDA processes are not known to people from NESB with disability. There used to be a guide called A User's Guide to the Disability Discrimination Act that was produced in different community languages but unfortunately this document is no longer in print.

As I mentioned before, a certain degree of English literacy is needed to understand the workings of the DDA. NEDA constituents come from non-English-speaking backgrounds, and for some people from NESB, developing the English language skills actually takes some time. Government funding, in terms of English classes has been extremely low and most of the times these classes are not accessible to people with disabilities. So if you're in a wheelchair, you can't get in the door, or if you have an intellectual disability the teacher has not been given the skills to be able to teach a class with some diverse learning needs.

Whilst English literacy can be an issue for our people, there is also an issue with comprehension of the DDA, of disability rights, of the Australian service system and that sort of thing. You actually have to have an understanding of these things before you are empowered enough to lodge a DDA complaint. Information provided to the community about issues like rights and like services, is also not accessible. Either the information is only in English or in formats that are not accessible to people with disabilities, or is in a very complex and bureaucratic format that is not accessible to anybody. My first language is English and sometimes I have a hard time understanding a lot of the brochures and information that comes out.

To be able to use the DDA and to use it effectively, an individual must at least have a decent comprehension of Australian law, policies and services. In addition, a person must also have an understanding of rights, given that the DDA is a rights based piece of legislation. For people with disabilities, and especially people from NESB, the idea of disability rights is actually quite a new thing.

I suppose what I've just spoken about has been about the issues relating to NESB and disabilities specifically. There are also a number of issues outlined in our submission, just around the DDA in general. I'm not going to spend a lot of time on this because I think a lot of my colleagues would have covered this already and I'm assuming that what you want to hear from us is more the NESB stuff, rather than the generalist disability issues.

The first issue is obviously around the resourcing of the Human Rights and Equal Opportunity Commission, which is currently the body that administers the DDA. We believe this is very appropriate - that HREOC does administer this act - but we are extremely concerned that since 1996 HREOC has lost 55 per cent of its funding and this has severely reduced the commission's ability to conduct work in the areas of disability discrimination. The role that HREOC plays is fundamental to the effectiveness of the act in combating discrimination.

It's our position that the commission needs to have its funding increased to ensure that all people with disability can enjoy the protection offered to them by the DDA. I think, too, if we're serious about rights and we're serious about the DDA working, then we really need to resource the body that administers it, otherwise it is nothing more than a tokenistic gesture. So we're really strong in our position that HREOC does need the resources given to it, to be able to conduct its work.

Unjustifiable hardship is also an issue we have here at NEDA. It's been a fundamental criticism of the act, that it has a provision for unjustifiable hardship, which can - from a philosophical point of view - be viewed as contradicting the intent of the act. This is because a concept of equitable citizenship does not sit comfortably with the notion of unjustifiable hardship. It's our understanding that the DDA is the only piece of anti-discrimination legislation that contains such a clause.

What we're concerned about is that the act doesn't seem to be very clear on what constitutes an unjustifiable hardship and, in practice, unjustifiable hardship seems to be the first line of defence against a complaint of discrimination. This does not really result in discriminators being encouraged to think more annotatively about how to combat discrimination and provide access for people with disabilities.

Another issue for us is that the DDA is currently a complaints based piece of legislation and this means that the onus is on the person with disability to prove that there was some form of discrimination against them and usually this is done in quite an adversarial legal environment. A more suitable model, we believe, would have been a rights based model, which requires a provider to ensure that a service or a program does not discriminate against potential users in the first place, and we point to the American Disabilities Act which currently adopts this particular model.

We are also concerned that a complaints based model actually excludes people with multiple or high support needs, whose voices will rarely be heard through this process, particularly given that representative complaints cannot be made. We take this one step further in our belief, that the act's success should ultimately be measured against a level of protection it can offer to those who are most vulnerable, most marginalised, most exploited and often forgotten.

Whilst we're concerned about that, I suppose our concerns around the complaints based model is in relation to accessibility and appropriateness to people from NESB. Whilst we recognise that the threat of a DDA complaint can be just as effective, what we're saying is that this current model is actually really culturally inappropriate for our people and that's one of the primary reasons they're not using the processes available to them. In saying that, though, we see that complaints have achieved quite a bit in lots of ways. Unfortunately, most of the complaints seem to be resolved through conciliation and unfortunately this does not lead to the creation of case law which means that it can't be used to set any precedents.

I suppose a big issue for us is also the issue of exemptions in relation to the DDA, particularly the exemption of the current Migration Act. Section 52 of the act exempts the Migration Act from the DDA, and people with a disability are often ineligible to immigrate to Australia because of the disability. Visas are often rejected on the basis of a person's disability. There are specific sections within the Migration Act which give the Australian Minister for Immigration and Multicultural Affairs, discretionary power to grant admittance into Australia.

It's our experience that this process does not allow for consistency or fairness and encapsulates the squeaky wheel syndrome, which means that sometimes the loudest or the most desperate, provided they are aggressive enough, get what they want, while others miss out. The exemption of the Migration Act from the DDA epitomises the two-tiered value system afforded to people with disabilities living in

Australia on one hand, and potential migrants with disabilities on the other. The presumption that is continually made is that people with a disability would put an undue burden or hardship on the Australian community, because they make no contribution to society.

The contradiction is that the federal government enacted the DDA to remove these very barriers and discrimination on the basis of disability. This contradiction could be seen to portray at best a lack of understanding and at worst a lack of commitment by government to the very objectives of the DDA. It's also our experience that the current immigration practices have their greatest impact on families. The reality is - and what we see all the time through the NEDA agencies - is that families migrate to Australia, leaving behind with a relative - a grandmother, an uncle or somebody like that - a member with a disability, because they know that if the person with a disability is to apply with them the entire visa is going to be affected and the family could potentially be rejected from coming here. They tend to migrate to this country - they leave the person with the disability behind - once they are settled here they then apply for this member to immigrate to Australia.

As you can imagine, this process is extremely traumatic for the family and extremely traumatic for the individual who gets left behind and whose mum and dad, brothers and sisters, move away from them and they're left with a relative, and they are quite isolated because their immediate family just isn't there. That's obviously an issue that NEDA deals with quite a lot. As far as exemptions go, this is probably the one that causes us to come unstuck a number of times. The last issue I wanted to talk about was a disability action plan.

The DDA currently authorises HREOC to retain the disability action plans produced by state and federal departments, as well as other legal entities - I know Telstra and some other corporations also undergo this - who want to develop some sort of partial defence against discrimination complaints. We actually believe that the requirement to develop disability action plans has had a positive effect. Unfortunately there is no process to ensure that the plans are developed to any sort of acceptable quality or, more importantly, that they are adequately monitored with suitable action taken if they are not adhered to.

We have a real risk that this becomes nothing more than a tokenistic gesture and I think through our recommendations we make a suggestion that perhaps an independent monitoring body would be effective - and perhaps with that disability action plan, as well, some cultural competency components are also included - and we think that that would make a big difference for people from NESB with disability. In conclusion, we believe that the DDA has had a significant impact on the lives of people with disabilities over the past 10 years.

In terms of people from NESB with disability, the act has had a very limited impact and more work needs to be done to ensure that the rights of NEDA's constituency are protected to the same degree as anyone else with a disability. We have therefore made a number of recommendations to this inquiry - which you'll find contained in our submission - which we believe will assist people from NESB with disability to receive an equitable level of protection. However we also believe that for people from NESB with disability to receive outcomes under the DDA, the Human Rights and Equal Opportunity Commission must be adequately resourced to be able to conduct this work and work in partnership with NEDA - and again this is reflected in the recommendations we have made.

MRS OWENS: Good. Thank you.

MS McKENZIE: Thank you very much.

MRS OWENS: You answered that very, very efficiently. Do you want to add to that - it's Cristina, isn't it?

MS RICCI: Yes. No, no, no. Lou-Anne and I had discussed it beforehand, so Lou-Anne's submission contains most of that.

MRS OWENS: Because at some stage we should come to the research you are doing on people with high support needs.

MS McKENZIE: Do you want to talk about it now?

MRS OWENS: Do you want to talk about it now or will we talk about these other issues first?

MS RICCI: Okay. We'll do high support needs. Just in general, Lou-Anne and I were even discussing earlier that aspect about a way that we think the DDA should be used to measure its impact for people with disabilities is to really see whether it is assistive and does help and does protect the level of discrimination of people with really high support needs as they are generally the most forgotten people - were people who don't have a voice, as Lou-Anne was saying.

What we generally tend to find is that in that kind of notion of discrimination - because it operates on so many levels across the whole life spectrum, is that they generally aren't seen. They often generally don't have the kind of communication to raise the complaints. We see that across in a whole lot of different areas of life like, for example, even just with the notion of discrimination about the really high levels of abuse that are inflicted upon people with high support needs, whether that be physical abuse, domestic violence.

Why that generally happens and why they generally don't end up lodging complaints is that the services are provided or are being provided in a discriminatory way, so that their lives - they're not kind of afforded - and accommodation which is safe and protective - services aren't out there - knowing what their needs are - or they're run on complaints-based mechanisms within services that are provided to these people. We would like to see that the DDA's notion of discrimination could possibly be broadened to address that kind of issue.

Another way we see that it fails people with high supports needs is maybe that the quota system could be introduced in order to increase employment rates of people with high support needs, so that they could - it's that same notion of being able to contribute to society and possibly - you know also not to be seen as such a burden on the government as well. Maybe that could be assistive and, at the same time, also increasing the living wage - often their salaries for working full-time are really quite low.

Possibly other ways we could see that targeted would be tied in with the quota system and the living wage - people with high support needs - mechanisms and programs to assist employers to cover costs associated with employing people with intellectual disability; also financial incentives. The other one that is also tied in is that notion of unjustifiable hardship - is that we realise that often to employ - whether to employ or to assist someone with high support needs to be included within society and to live as full a life as possible is that for certain kinds of organisations or businesses - like schools for example - the hardship that might be endured by that one particular organisation might be quite high and it might be unjustifiable for that particular organisation to have to meet those resource and finance costs to accommodate that person. But maybe we would like to see something enshrined within the legislation that - who should bear that cost in order to ensure that that person is included; therefore maybe the act could stipulate what is justifiable, what is unjustifiable, and whether it be for either small businesses or organisations or large government departments as to who should actually bear the costs in order for that person - is actually included - just because we know that for people with high support needs the resourcing behind that is actually quite high as opposed to people with much smaller support needs.

The other issue is also about trying to address a lot of the problems that we come across on an individual basis - which we have found that the DDA has often been quite slow in the sense that they are individual mechanisms - is that possibly the DDA could address problems or allow representative complaints, especially for people with high support needs. The fact that those issues don't generally come up or are quite hard to get up and it would be quite effective if the DDA could be amended to allow systematic change that arises from complaints or allow representative complaints to be made; also in order that those kinds of complaints can be brought forward to generalist legal centres or other kinds of - or even HREOC be allowed to be able to assist and provide that support for people to bring those claims.

MS LIND: I suppose what we are really concerned about is - you know through the submission that NEDA lodged it's quite broad, and that's okay because that was our job - was to introduce the NESB disability issues. That's fine. I suppose what we get really concerned about is, there's a whole bunch of people there that are just not getting their voices heard through this and, under the current model, that isn't likely to happen, so we believe that's a really good benchmark to measure the effectiveness of the act.

When we talk about people with high support needs - who are often living in institutionalised environments - particularly then if you add people with some sort of complex communication need - we're just really concerned that those voices are just not going to come up and that, whilst the DDA - it's great to have it there and it makes it unlawful and that's terrific, the onus is still very much on the individual, and if you do have multiple or very high support needs, if you have trouble communicating, what is the reality that you're ever going to get a complaint up and then follow it through because, as Cristina said, it could take three to five years. If somebody is in crisis does the act have the capacity to actually address that? These are the sorts of things we wanted to throw up and just start thinking about because, if this act is about all people with disabilities, then it needs to be also about those with either complex, multiple or high support needs, as well.

MS RICCI: And that whole thing about it also taking quite a long time to be resolved for people with high support needs or for people from non-English-speaking background and all those cultural elements and communication barriers and issues, and issues about people with both high support needs and people from many non-English-speaking backgrounds, not knowing that they either have a right and how to access services, is that they generally - we have found that people wait for the crisis to really have mounted to quite a high point and only at that last minute do they try to lodge a complaint. It's generally too late and they're in that state of crisis.

The DDA just isn't effective in being able to cope - resolve an issue in a very short period of time. We have found that to be quite a large issue. Also, for example, even if it was a complaint in the employment area - I mean, most with a disability from a non-English-speaking background or with high support needs will probably have found it quite difficult to have found a job in the first place and then to run the risk of losing that job and lodging a complaint and waiting multiple years for some resolution of that - because they don't then have the luxury and the option to say, "Well, even if I lose this job I will still lodge the complaint and get another job elsewhere," and then with all the other complicated life issues and crises that are probably also happening simultaneously in many of our clients' lives, they might either just decide to drop it or just not see it, or it really has just become quite a crisis and the DDA is ineffective at that point to resolve the issue.

MS McKENZIE: Is this what you were thinking about when you said in the submission - and also in your oral submissions - that the complaint-based system is culturally inappropriate?

MS LIND: It is. In many cultures complaint making just doesn't sit well within cultural values and norms and practices.

MS McKENZIE: That's a matter which has been raised with us also in relation to the indigenous community.

MS LIND: That's right. I mean, it's just not there. If you talk about conciliation, if you talk about sitting at a table and trying to get some outcome collectively, that's a whole different thing but, for many people - I mean, outside of the NESB stuff, for many people with a disability being empowered enough to say, "This is just not bloody okay," is quite a huge leap. If you then put the cultural values into that it's virtually impossible, particularly because I think the way disability is perceived by the broader community and by people with disabilities themselves, and being under-valued so much at a systemic and at an individual level is then being empowered enough to stand up and say, "This is not okay and something needs to be done."

MS McKENZIE: I'll ask you about this in a minute, but even if you got to the basis of complaining would it be better for example in the conciliation stage to have a much more wide-ranging kind of conciliation, because normally conciliations are with the person with the disability - or their representatives - and the respondent, the one that has had the allegations made against it - - -

MS LIND: Yes.

MS McKENZIE: Would it be better to involve the family or some wider community group, as well.

MS LIND: If that was the person's wishes - and that would vary, depending on culture and - - -

MS McKENZIE: Of course, depending on - - -

MS LIND: Depending on a whole range of things, then if you can work it in that way, yes, that's a better thing because, at the end of the day, people with disabilities - like everybody - have a whole range of people in their lives - people with disabilities more so, but generally speaking from a NESB point of view, yes, the family is quite involved in that person's life, so if conciliation can - particularly for those complaints that can simply be resolved by sitting down and saying, "This is illegal. This is not okay. You need to do something about this," and then it is about the process of trying to figure out what that something is. Yes, that works. Our only concern with conciliation at times is that it really does not allow for case law to be built, and I think that's important from a precedent point of view, but not every issue has to become case law by any means and I think it is about HREOC having some sort of discretion around that - - -

MS McKENZIE: To make public the important - - -

MS LIND: Yes, and all parties agreeing that that's the right thing to do, but yes, I do agree with you in terms of, if you can involve some other players and it's not so adversarial - because at the moment I know what you're saying. You sit at one end of the table and they sit at the other end of the table. You could cut the air with a knife, and it's not pleasant. If you can broaden it out and try and encourage discriminators to think more innovatively and to be able to sit down and work that through, then I think that is a valuable thing for our people, yes.

MS McKENZIE: What about the complaint itself? You've talked about people really just being disempowered from making complaints for a number of reasons, so you'd favour HREOC being able to initiate a complaint itself in these situations?

MS LIND: I mean, I think HREOC should have that ability to instigate complaints. I know that that was something recently we appeared before the Human Rights and Equal Opportunity Inquiry as well, just down the road, where we were talking about that to the senate inquiry: that, you know, that would be a useful thing, along with the ability to lodge representative complaints. If you had that, then you would probably see more outcome certainly from our point of view, because people could be represented that way as well.

MRS OWENS: Can we just come back to this issue about complaints based systems being culturally inappropriate and that conciliation could work with the right sort of supports and so on; but you mightn't even get to that point. If people feel that it's culturally inappropriate to complain, you mightn't even get round the table in the first place.

MS RICCI: A lot of the work that we also do is actually kind of providing rights education to a lot of - you know, various ethnic community groups and people with disabilities. Often we find, which is an important point - one of the recommendations was about providing increased resources to HREOC to do that community education and education about rights. As Lou-Anne indicated, many communities do not have that rights based framework or the countries from which they came, those kind of frameworks and systems and services weren't there. So one of the ways also around that, of cultures not having that culture of complaining, is to say that it actually is a separate issue: it's actually about your rights and that you have a right to lobby for them and have your rights recognised. One of the ways that we do that at our organisation is by providing the rights training then also ensuring that there are those supports. That's one of the other recommendations, that there are appropriate supports for people to lodge the complaints, make the complaints and actually have that support through that whole process and not just being left on your own. That could also be another - - -

MS LIND: Yes, the empowerment stuff works. It works really well. It's about people understanding that this is okay, you have a right to do this. That primarily works through education, we find.

MRS OWENS: But this idea of supports too, I think there's probably a whole range of things you have to do. It's a multi-prong attack, tackling this problem.

MS LIND: Sure.

MRS OWENS: Again, you've got a lot of recommendations in your submission about resourcing, which I'll come to in a minute; but one issue to think about is resourcing, adequately resourcing, those people or organisations that can provide that sort of support. I know you're not going to sit there and make a plea for your own organisation, but you may.

MS LIND: Can we?

MRS OWENS: But that is an issue, about the adequacy of the resourcing of advocacy groups and legal aid organisations and so on, so it's not just about - - -

MS RICCI: And language, like interpreter support.

MRS OWENS: It's not just about resourcing HREOC to do things.

MS LIND: No, and I think also resourcing is great if it can be increased, but it's also then about targeting that appropriately, which is why together with the recommendations around resourcing we talk about things like access and equity audits and being culturally competent and working with an agency like NEDA and MDAA for that expertise to be translated and implemented, so I do agree, Helen. At the end of the day, it's never going to be enough because it never is, but if HREOC does get some injection of resources, it can then better target those, I think, towards ensuring that people from diverse backgrounds actually get an outcome out of all of this.

MRS OWENS: There is the issue of what the Human Rights and Equal Opportunity Commission does with those resources, which roles it focuses on, whether it focuses more on its educative role or getting involved in conciliation or supporting people or initiating complaints or running inquiries. Lots of people that we've been talking to during these inquiries keep thinking of new things for HREOC to do - becoming an advocate and so on. We raised this with HREOC on Tuesday and I suppose it's a matter of thinking very clearly about what should HREOC's role be? Where can it best use its own resources and what is best undertaken by advocacy groups and so on? So it's a matter of thinking about it holistically.

MS LIND: Yes, absolutely.

MRS OWENS: I was going to ask you about the Migration Act recommendation that you have, recommendation 11. You said:

> That HREOC be resourced to initiate an inquiry into the current exemption of the Migration Act from the DDA.

I don't know whether that's HREOC's role, to run an inquiry on an exemption. It's probably more our role in reviewing the DDA more generally.

MS LIND: Yes. I wasn't sure where that one sat, actually, but as long as the gist of it gets through.

MS McKENZIE: The exemption should be reconsidered, by whoever.

MS LIND: Yes, it should be re-looked at. Yes, now.

MRS OWENS: We need to be thinking about all the exemptions and of course the Migration Act is the obvious one to talk to you about.

MS McKENZIE: In fact for the minute I don't think there's one that hasn't been raised. I think every single one has been raised as something we should be reconsidering.

MS LIND: And is that something that you'll do through the course of this review?

MS McKENZIE: Well, yes. It falls within our review.

MRS OWENS: Everything falls - we're reviewing the act.

MS LIND: Yes, it's broad, isn't it?

MRS OWENS: It's very broad. The review is very broad. I mean, some people say, "You're more interested in looking at national competition policy and competition principles," because that's one aspect of our terms of reference, but we're certainly looking at the act. We ask the fundamental questions, why do you need exemptions at all? If you start from that point, are there other aspects of the act that can serve the purpose of those exemptions? You know, are other aspects sufficiently strong? If not, in which areas do you have exemptions? Then I think you need to be able to justify each and every one of them.

MS LIND: Absolutely, because I think you run the risk of saying, "We think people with disabilities shouldn't be discriminated against except in these areas where we think it's okay." So I agree with you, I think it does need to be thought through. We understand why that's happened. Like I said, it's because of the two presumptions: (1) people with disabilities are a huge burden; and (2) they don't contribute anything. That's where that comes from.

It seems to be quite clear on that, particularly if you look at the fact that generally speaking when people with disabilities undergo an assessment to see how much - like, a cash figure is actually attached to a person and they say, for example, "Person A is going to cost the country 1 million dollars worth of support," or whatever the figure is. My advocates tend to tell me that generally that's grossly overestimated and there's never a question about your skills, your education, what you can contribute. It's seems to be on the basis of what you're going to take away from everybody else. We think that that thinking has just got to go. We've got to really - - -

MRS OWENS: You might argue that that's discriminatory thinking.

MS LIND: Absolutely.

MRS OWENS: Which we're not meant to be doing with our own population that's already in this country.

MS LIND: Plus, we can't as a nation honestly stand up and say, "It's not okay to discriminate against people with disabilities, people with disabilities need to be valued," and all the lovely rhetoric that we get; and then say, "But we're not letting you into this country." I mean, it's really difficult to make those things mesh.

MS RICCI: Coming back to that kind of discriminatory thinking, that same thinking is never applied to a whole lot of other people that apply for immigration into the country. There's no looking at their previous health records as to how much they- you know, they may appear kind of healthy. The presumption is, if they appear healthy - but there's no looking at their risk-taking behaviour or maybe white-collar crime activity or a whole lot of other things to see whether they would cost the Australian community any kind of particular figure; but there's always that presumption that just because you have a disability you will incur a cost. As you say, that's kind of discriminatory thinking from the outset.

MS LIND: There's also a confusion between health and disability, I think. Cate may be healthier than me, you know. I might go to the doctor every week.

MRS OWENS: Cate is healthier than everybody I know. Not at the moment, she's got a cold.

MS McKENZIE: Otherwise, I'm still pretty healthy.

MRS OWENS: Apart from that, she's fine.

MS RICCI: Yes, but that's that thing of just because you have a disability you will therefore automatically incur costs.

MS McKENZIE: You'd be unhealthy, yes.

MS LIND: I suppose the thing that needs to be looked at in this particular issue is just around process: what is the process? There's even huge inconsistencies. For example, Centrelink assesses you at 20 per cent incapacity. Centrelink says, "You are a person with a disability and you can qualify for the disability support pension." Health Services Australia, which is the body that does, obviously, the health assessments, says, "You need to be 30 per cent incapacitated."

MS McKENZIE: This is for the Migration Act, for the person - - -

MS LIND: Yes, to be considered a person with a disability. So there's just some basic stuff around that that doesn't seem to match up. As we alluded to in our submission and when I was giving my statement, around the fact the process allows for a lot of inconsistency, if you can get yourself an advocate, if you can really push your issue, you'd probably get in. But what kind of a process is that, really?

MS McKENZIE: That's right. That just leaves it to chance, basically.

MS LIND: Pretty much, yes.

MS McKENZIE: Or to those who are in a better position to find these people.

MS LIND: Yes, sure.

MRS OWENS: Then isn't there an issue that there's two sorts of groups of people? There's the people that are already disabled and can't get in because they don't get - or if they do get in they've got to wait something like 10 years to get onto a pension?

MS LIND: Yes.

MRS OWENS: But if something happens to you after you enter the country, then you have only a two-year wait. Is that right?

MS LIND: Yes, you're right. Currently if you're a migrant you have to wait two years to access social security benefits and that's if you don't have a disability. If you do have one, you're right, Helen, you have to wait 10 years.

MS McKENZIE: So you have to wait longer? If they don't let you in, that's one thing. Even if they do let you in and you've got a disability, you've got to wait more than everybody else?

MS LIND: It's 10 years. If in that time your disability has deteriorated rapidly, that's a really big problem, particularly given that particular services and programs require you to get a DSP as a prerequisite to get in. So if you don't have this pension, then in some cases it's difficult for you to access publicly funded programs and services which require a DSP.

MS McKENZIE: That's also a problem, presumably, with those who - is that also a problem, if you come and you're not disabled and you get hit by a car and suffer some massive injuries and then become quite severely disabled - - -

MS LIND: I think that's okay. You still only require the two-year waiting period.

MS McKENZIE: You've still got the two-year waiting period?

MS LIND: Yes, I'm fairly sure.

MS McKENZIE: So also that potentially could be another extremely difficult problem for that person.

MS LIND: It's a really confusing area and it's something that we would like to see a little bit more cleaned up so that it is a bit more consistent. At the moment, like I said, it's very much down to the minister's discretionary power.

MS McKENZIE: And basically during that two years or that 10 years, whatever the period is, the supports for that person come from the family. Is that how it works?

MS LIND: Predominantly from the family, yes. They absorb those costs.

MRS OWENS: Another issue you raised was this issue of not being able to deal very well with the intersection between disability and ethnicity. I was just wondering what your solution is to that issue. Are you attracted to omnibus acts as they've got in different states to solve that problem? How would you deal with it?

MS LIND: I think that could work. As I was thinking about this in the car on the way here, I was thinking that I'm not sure if it is the role of the DDA to cope with that intersection. I don't know. Maybe the way around this is that - as I said, the crippled wog example is the best one I can think of, because you can't split yourself in two, and look at it that way. I think if we're talking about the DDA, then we're talking about disability discrimination.

The arguments that Cristina and I made before around empowering NESB people in communities - as to what that actually means, could be just as effective in terms of people from an NESB pursuing those claims through the DDA and then if they wanted to, be able to pursue it through the Racial Discrimination Act. Now, I know that's difficult. I know you're having to go through it twice. But if the empowerment and the supports and the education and all those bits and pieces are in place, maybe you can actually get through that.

MS McKENZIE: I can't see why it wouldn't be possible to make a complaint, if you like a joint complaint, a complaint which is under both acts and simply deals with both relevant grounds.

MS LIND: Yes. Those acts were developed separately for obviously separate reasons.

MS McKENZIE: Yes.

MS LIND: And that's okay. I think the argument we make is about educating our constituency to recognise a disability discrimination, and at the same time of course recognise racial discrimination when it happens; but if you've gotten to at least that point, then they can get a foot in either via the DDA or the RDA. It doesn't really matter at that stage.

MS McKENZIE: But it must be possible. If both acts are constitutionally valid, which is - - -

MS LIND: It's my understanding that there's nothing opposing running dual complaints.

MS McKENZIE: There can be nothing to stop you having a system where you can make a complaint jointly under them.

MS LIND: I think you can do that. I'm going on record as this, but I'm not aware of anything that says you can't do that.

MS McKENZIE: It doesn't seem to be. It hasn't certainly been raised with us that this happens. There would have to be some arrangements, presumably, within the commission about who dealt with them.

MS LIND: Yes. Of course.

MS McKENZIE: But that should be an administrative matter, surely.

MS LIND: Well, a lot of the stuff we argue is around the administration, rather than the act itself. I mean, there's issues that are contained within the act that we have difficulty with, but I think the stuff we're talking about and the access needs that we're looking at, is particularly around the administration of the act, and we think that could be improved. Obviously it's NEDA and EMDA and our agency's roles also to work in conjunction with HREOC, but at the same time ensuring they have the capacity to follow through on that, given their resourcing is very limited.

MRS OWENS: Yes. I think I've got this right - about eight of your 17 recommendations are about resourcing in one way or another, and you put heavy emphasis on that.

MS LIND: Yes. I mean, we don't mean you write a blank cheque, by any means. I mean, that could be around expertise, it could be around some capacity-building; it could be around a whole range of things. Money, yes, is an obvious one, but I think it's also about empowering the commission to be able to undertake its work, and at the same time I take Helen's point before, about being clear about what falls back to advocacy agencies and what actually falls within HREOC's jurisdiction, and being perhaps clearer on that. I think that's a good point.

MS McKENZIE: You said there used to be a multi-language guide?

MS LIND: Yes. I suppose that's just an example of what I'm talking about, in that that guide, whilst it was useful, had some issues in that it was very chewy, it was very detailed; you kind of really had to wade through it. But there was a - - -

MS McKENZIE: Did you say "very chewy"?

MS LIND: "Chewy".

MS McKENZIE: That's a really good way of putting it.

MRS OWENS: Some of our reports are quite chewy.

MS LIND: Well, yes. As you would know, they're about a mile high, some of them. I mean, whilst I can argue about accessible information and all that sort of stuff, at least at that point there was an obvious commitment, or there was available resources to be able to do that - which we believe was really good. Obviously that has not gone into print, and I think also the guide is out of date now. So, I mean, there's a whole range of reasons attached to it. But I think it's really important that we get out there some meaningful information that actually makes sense to the people reading it, and makes sense to the advocates that have to pick it up and explain it to people.

MRS OWENS: So it has to be simply read. I mean, we talk about plain English guides for people who can read English, but it's the equivalent of a plain English guide, in multiple languages.

MS LIND: Yes, or what we like to call "real English" - not the bureaucraticspeak but actually something that says, "If this has happened to you, then this is what you can do, and here are 10 steps that you follow." The Physical Disability Council of New South Wales put out a very good guide which actually helped people with disabilities to make complaints. I would refer the commission to that, if they can find it. PDCN will still have a copy of it. It was just like a booklet that people went through, and it helped them to formulate their complaints. It was very good.

MRS OWENS: Do you think you need to do more than that? Is there a need in the media, the ethnic press and so on, to have advertisements or articles?

MS LIND: I think it would help, yes. I think one thing you would need to do with the ethnic media - which is what you need to do with ethnic communities in general, but this is just a huge task - is around educating them about disability, the same way that we've educated Australian communities about that, the same way we've developed language.

We don't use the words "handicapped" any more, or "crippled" or "infirm" or whatever the language used to be. Even just really basic language development around that with ethnic communities - go right back to basics around education: "What is a disability? What does that mean? No, your life isn't over. This is where you can go" - all that stuff that we've done here for 25 years in the Australian community. We need to actually go back and start again and do that within the ethnic community. The problem we have is that people keep saying, "That's not our problem, that's disabilities' problem." The disabilities sector says, "No, that's not our problem. Go to the Ethnic Affairs Commission." The Ethnic Affairs Commission says, "No, bugger off." Back to disabilities. So you're constantly sort of running between - - -

MRS OWENS: Yes, just moving between the - - -

MS LIND: Yes. So I think at some point we need to bite the bullet and say, "We're going to do this" and that could be through joint initiatives.

MS McKENZIE: Yes, and it may be better if it were a joint initiative.

MS LIND: I would, yes, absolutely advocate for that.

MRS OWENS: I was just going to say, it seems to be less of an issue if you're talking about people accessing workers compensation benefits. Maybe it's because people have got union representation and so on, to explain their rights there.

MS LIND: Sure.

MS McKENZIE: And also because the employer is required to put in quite a lot of the material.

MS LIND: Yes. There is an onus on the employer, and a very clear onus on them, to deliver. The DDA tends to put the onus on the individual, and that's the issue, so we just need to share that responsibility a lot more.

MRS OWENS: I think I've covered everything.

MS McKENZIE: Yes. I've covered all the questions I wanted to ask.

MRS OWENS: I was just going to ask Cristina - this research you're doing, is that going to be published in some form or another? I was just wondering, while the inquiry was going on, whether there would be - - -

MS McKENZIE: One day maybe?

MS RICCI: If I do, I shall send you a copy soon.

MS McKENZIE: Yes, we'd love to have it.

MRS OWENS: I won't hold you to it.

MS LIND: As NEDA, I'm happy to do some work with - a lot of the research Cristina has done was in preparation for a few other things but - - -

MS RICCI: To just put some stuff together, if you would like.

MS LIND: Yes, if you would like. It's not that difficult.

MRS OWENS: That would be very nice.

MS McKENZIE: That would be fantastic.

MRS OWENS: You can do it as a supplementary submission.

MS LIND: Yes. All right.

MRS OWENS: It doesn't have to be very detailed.

MS LIND: Okay.

MRS OWENS: It sounded very interesting, and it sounds complementary to some of the other messages that we've been getting from other groups.

MS LIND: We can work on an addendum.

MRS OWENS: Okay. Well, thank you very much for coming.

MS LIND: Thank you for having us.

MRS OWENS: We'll now break until our next participant arrives.

MRS OWENS: We will resume. The last participant today is the Mental Health Coordinating Council of New South Wales. Welcome to our hearings, and thank you for the submission. Would you like to each give your name and your position with the council for the transcript.

MS MacLOCHLAINN: I'm Ann MacLochlainn, the acting executive officer of the Mental Health Coordinating Council. The Mental Health Coordinating Council is the peak body that represents non-government organisations working in mental health in New South Wales. We have over 130 members and we act as a go-between between our members and the state and Commonwealth departments. We distribute information to our members, we lobby on their behalf and we give out a lot of information in the form of newsletters, et cetera.

MRS OWENS: Thank you.

MS MEAGHER: And I'm Janet Meagher. I'm here representing the membership of the Mental Health Coordinating Council. I'm a person with a psychiatric diagnosis. I should say schizophrenia, just to put you right. And I'm a person who is currently director of employment for the Psychiatric Rehabilitation Association, a member organisation of the Mental Health Coordinating Council, and I'm currently serving my second term as secretary of the World Federation for Mental Health, and represent consumers worldwide of mental health services.

MRS OWENS: You'll have a lovely broad perspective for us, won't you? That sounds great. Thank you both for coming. If we could just get straight into talking about some of the issues that you've raised: you've said that there's been wider acceptance of people with disabilities. We're hearing from others that there are disabilities and disabilities. You talk about acceptance in larger organisations, such as TAFE and government departments, but the impression that we're getting as we go around is that there's wider acceptance of certain groups than others, and that there are what people are calling sexy disabilities, like children with physical disabilities, and then there's other disabilities, where people in the community are less likely to understand that disability, or it's not so visible.

MS MacLOCHLAINN: Yes, that's a problem for people with psychiatric disabilities. It's not as visible. I think it's often easier for people to understand and make adjustments for someone who's in a wheelchair because it's obvious and the person is obviously disabled, whereas if it's someone who's got a psychiatric disability, it's often not obvious, and quite often people with a psychiatric disability can function very well a lot of the time, but if their illness is episodic or cyclical in nature, as is often the case, there may be times when they're not as well as they are other times, and people can find that hard to understand, and it's not obvious, and the disability may be things like having a higher level of anxiety, feeling difficulty with concentrating, perhaps feeling overwhelmed at times and not able to work as long as they can at other times.

All these things are of course not a visible thing. It's something the person is experiencing. Or they may have extra fears or sometimes they may have feelings of paranoia, where they feel that people are plotting against them or harming them, and of course they feel fearful, but none of this is obvious. It's not something you can see, like you can see someone in a wheelchair. So I think that makes it harder.

MS MEAGHER: I'd like to make a few comments here. I think when we first welcomed the DDA we all felt that at long last there was recognition by government that there was in the community forms of discrimination that were both subtle and overt. I think what has happened since is the discrimination has become subtle, and there's very little redress for subtlety under the current act. However, it means a lot of discrimination has gone underground and people overtly like to support the sexy disability groups, the sexy disabilities and, in doing so, those who are less sexy, for whom it's seen that it's very much our own fault that we are disabled, that by our conditions, whatever they are, that's less worthy of empathy or positive discrimination.

MS McKENZIE: And, conversely, there's that other stereotype which says that you can cure yourselves.

MS MEAGHER: "Well, you can look after yourself. You're perfectly fit, aren't you? You're perfectly able; you're just lazy."

MS MacLOCHLAINN: Or you just need to pull your socks up.

MS MEAGHER: Pull your socks up, yes. So those types of lacking of acceptance are still very rife in the community, but they're much more subtle than they ever used to be, and I don't think that was ever the intention of the legislation, to send discrimination underground. But if you look in the USA, it's been exactly that issue that's now festering quite actively, both within the racial area as well as the disability area, and I think it's starting in Australia to be quite noticeable as well, and I think this inquiry has come in a very timely way to actually address it before it gets too bad.

MS McKENZIE: And is another part of that discrimination going underground - and it's been mentioned in a few submissions - people saying that the subtlety of the reasons for what is in fact discrimination is increasing, so that people give some other reason and it's very difficult to show that in fact that other reason isn't the true reason.

MS MEAGHER: Yes. "So you're not as qualified as the person who got this job, I'm very sorry to say." How do you know? How can you prove or how can you disprove? Or the other person had a certain quality about their persona that we were looking for.

MRS OWENS: You can't prove that because you usually don't know the other person.

MS MEAGHER: And what is that quality, and we don't even know if that was included in the criteria, because how do we define whatever that quality was. It's very devious.

MRS OWENS: Is that what you were referring to when you said it's festering in the United States - - -

MS MEAGHER: Yes.

MRS OWENS: - - - in the context of people getting jobs, or broader?

MS MEAGHER: Not only getting jobs, but access to facilities within the community. You know, we have 17 places for someone for instance at this dinner. It just so happens when we come to the people with psych disabilities, we don't have any places left - you know, that sort of thing. I mean, it's not just psych disability, of course, but it's happening with racial discrimination as well, and when your particular racial characteristic comes to the door, "Sorry, we're filled," or "We can't accommodate any more people," or whatever the circumstance. I think people are just getting smarter, more understanding.

MS McKENZIE: How might the DDA be changed to try to cope with that problem, do you think? It's a question I have no answer to, and I'm not going to think it's terrible if you haven't got have an answer either. It's a really difficult question, I realise.

MS MEAGHER: I find that very hard to answer. I think if I put my mind to it, I'd probably come up with something, but whether it would be acceptable - - -

MS McKENZIE: If you do, would you like to make another suggestion.

MS MEAGHER: Mine are probably more radical solutions than most average people would come up with.

MRS OWENS: Well, go for it.

MS MEAGHER: I think there are laws against what I'm suggesting.

MRS OWENS: But we're here to look at the nature of the act, of course. We can have a special provision for it.

MS MEAGHER: Because of my disability. No, I don't think it would wash, actually.

MS McKENZIE: But it is a real problem, because of course at the moment the act is, as many people have said, based on a complainant proving - - -

MS MEAGHER: Well, that's the weakness. It would be nice if we could all just attain to a better form of practice, to a more inclusive form of understanding of the abilities of people with a range of disabilities, instead of concluding that because of the medical model, all of us have some form of physiological problem, whether it's physical, sensory, psychiatric or intellectual. It's all based on some physiological weakness in us that just overrides every other aspect of who we are, and all the potentials that each of us has, but it's just too difficult to see.

So I'd love to see, if we could, to have an example for instance of the act itself changing its name. Subtle, aren't I? I think it's a very negative terminology, the name of the act. We were talking about this. Why not have something - I mean, this is just probably garbage, but, anyway - Facilitation of Participation Act for Persons with Limiting Factors? And then you'd put in brackets the disabilities that it covers, or the usual groupings that it covers.

MS MacLOCHLAINN: Yes, just trying to change it to a more positive, affirmative, inclusive thing, rather than a negative. You know, you may be prosecuted for discriminating against someone with a disability, but try and change it, rather, to being more affirming and this is how you can work with and this is how you can accommodate people's limiting factors to facilitate them to participate. Do you see the point we're making? A positive focus, rather than a negative.

MS MEAGHER: So you'd be blocking facilitation of participation by such-and-such an act, you know, by doing something like that.

MS McKENZIE: Yes.

MS MEAGHER: Whether that would work legally, I have no idea.

MRS OWENS: Are you trying to move from that medical model to a social model?

MS MEAGHER: Yes.

MRS OWENS: A lot of people have suggested that's what needs to happen, but we haven't managed to pin down very many suggestions as to how you would achieve that.

MS MacLOCHLAINN: I think more education and awareness programs would help. Before I did this job I'm doing now, I worked for quite a long time in hospitals and in mental health, as a clinical nurse consultant, and I really think that there was not a lot of knowledge there about things like the Disability Discrimination Act. That's my feeling, you know, just amongst people working in the hospital sector, for example.

MS McKENZIE: Let alone the general community.

MS MacLOCHLAINN: Yes, let alone the general community. So I think a lot of work needs to be done on awareness raising and education.

MS MEAGHER: With the Disability Discrimination Act we've developed standards around now, education, we've developed standards around transport and disability service standards. It seems anomalous that those sorts of linkages with education and transport and services have just forgotten about the entire health sector, which is probably the one sector that most discriminates against people as a whole and creates a medical framework for everything that people with disabilities experience, so it seems to me that would be a very excellent place to start, in an awareness campaign of what the Disability Discrimination Act tries to achieve.

MS McKENZIE: You said earlier that it's very hard to complain if you had to make complaints under the DDA. Do you want to expand on that a bit? We talked a little bit about proof.

MS MacLOCHLAINN: Yes, if you've got a mental health problem it's hard to - I mean, if you haven't got a mental health problem it's hard to initiate a complaint. Many people would find it intimidating and be unsure how to proceed and be unsure whether they may be ridiculed or made to feel stupid or inadequate or whatever, so all those things are magnified if you've got a mental health problem or a mental illness.

What I said in my submission too was that to me it seems a bit illogical to have an act because it's recognised that people need assistance but then to expect those same people to be able to make the complaint themselves. I think if you've got a mental illness it's harder still because sometimes the venue could seem more intimidating, just the whole process. If a person has got a higher level of anxiety and fears than most people do, then there's a lot more to be anxious and fearful about. They may fear repercussions from it. I think there needs to be more advocacy and assistance. Do you want to talk about that too, Janet?

MS MEAGHER: Well, about the complaints process being difficult and costly I probably am reiterating what most people with disabilities here have said, I don't imagine I'm not, when I say that it's really anomalous that the cost falls on the individual making the complaint. That is an onerous cost if you are a pensioner on a low income and generally as a rule people with psychiatric disabilities fall into those categories.

I feel that a great deal of the discrimination burden does fall on people with psychiatric disabilities just going by my own experiences, not only the dollars but the delays and the problems with venues, seeking help and so on and, for many, they don't understand what the problems with venues are because we don't really need ramps and we don't need special guides or anything like that but what we really need is to address our fears and anxieties and things that probably are with other people anyway when they go to hearings. So with a venue I'd think the thing we could do is, if there's going to be a hearing around a particular complaint, that there be a preview session with one's advocate or person nearest to you so that the venue doesn't seem a cause of anxiety on the day of the hearing itself. The process needs to be explained in a very clear outlined way and perhaps a document to back that up - - -

MS MacLOCHLAINN: Or even a video of a typical session that people could look at before.

MS MEAGHER: The forms need to be shown, if any forms have to be filled in, and perhaps the discussion should be around the level of confidentiality - who has access to information gained at that venue and is there any likely repercussion on an individual for making a complaint; if so, what it is likely to be. In pointing out access to advocacy I suppose I'm going off the point here but it's a really critical point for people's psychiatric disabilities.

By the time people actually have a fully-fledged psychiatric disability rather than just a psychiatric disorder, people usually have lost access to friends and family by that stage. We do tend to alienate those nearest and dearest to us because of our behaviours and anti-social attitudes. So we really are left at that point in our lives in greatest need with very few people who would be willing to act as supports, yet when trying to gain advocacy for such things as a hearing or whatever, the only place I know of you could come to for an advocate is People with Disabilities in New South Wales and they have a very long waiting list. So there are real problems about accessing advocacy for people with psychiatric disabilities.

The issues I have around venues, you mightn't be aware, but for some people they can't be in a room without an external view because of a feeling of claustrophobia. They develop anxiety. Their self-esteem might be a factor in why they mightn't continue with a complaint because they may not have adequate or appropriate clothing or grooming to actually go into a public area with sophisticated people or people who seem to be professional and together. So things like that can really cause problems for the individual making a complaint apart from all the other things that go with it. They're just some of the barriers that we see.

MS MacLOCHLAINN: People who are feeling paranoid too, just the whole fit-up can be intimidating. I mean, just like where we are here, you know, if you're feeling - I mean, the fact that there's microphones and all this recording equipment - - -

MS MEAGHER: And it is closed.

MS MacLOCHLAINN: - - - and people sort of sitting there looking and listening, it could really make people feel very agitated. So I think that's another reason for letting them see it before and explaining it and maybe seeing a video, letting them know, okay, whatever is being recorded, what's going to happen to it, who has got access to it, who are these people and why they are here - that sort of thing.

MS MEAGHER: Even what's under the tables. I've had to restrain myself from looking under the tables but it's an urge I have, I can assure you - and behind all these doors.

MRS OWENS: I think there's cause.

MS MEAGHER: There probably is but it's something that's ingrained when you are paranoid generally. Little things like that that you may not be aware of. Even in someone like myself who gives a good impression of being together there are may things about this room that's very frightening.

MS McKENZIE: So can you tell me - you've talked about it being closed and the microphones.

MS MEAGHER: Yes, I'll give you a lesson in being paranoid, if you like.

MS McKENZIE: Please do.

MRS OWENS: Do you want to do it on the transcript or are you happy - - -

MS MEAGHER: I don't mind.

MRS OWENS: Okay.

MS McKENZIE: I just think - I'm asking you not just for this commission but I think it would be very helpful for tribunals, for example - some members to read what you are saying. There's a lot of ignorance, I think - a lack of understanding.

MS MEAGHER: When you are paranoid you believe that other people can see your innermost thoughts, so if I'm sitting here and I'm really worried that I don't fit with this group socially- you know, I might be a pensioner or I might be this or that - that's overriding a lot of other stuff but also that's feeling totally inadequate that you're all far superior to me so therefore I'm at a disadvantage to start with. Then I come in the room and there's exotic paintings on the wall so already that proves that you're rich cows and that you probably laugh at people like me because you can see right through me that really I don't know how to put my make-up on, I don't know how to deal socially with people like you and this is all wrong, I know it's wrong, but you can't help feeling it.

Not only that, these people that are not here - look at all these empty chairs - the people that are not here knew I was coming and wouldn't associate with the likes of me, so therefore I just walk into this room and think, "Oh, my God." Then I look around the room besides the paintings and the people - now, I've painted you all in a terrible picture but this is how I'd see it - then I see this lady over here with all this black equipment and things poking out under that table that look very ominous. She's probably recording my thoughts so no matter what I say here she knows the truth, whatever that is, and often in myself I don't even know what that truth is but it's awful and it's all those awful things you've ever done that other people don't really need to know about.

So, you know, I might have dirtied the toilet seat when I went to the toilet and forgot to clean it. Now, you'll all know that as a matter of fact or I might, you know, not have changed my shoes before I came in and I'm in my daggy work shoes and you'll all know that I don't own a pair of good shoes and so I'm embarrassed by that. So all this gets overwhelming and I look around the room - now, I'll paint a visual picture. All these lights - and between the lights there's these vents that are just blank canite sheets. I don't know what their purpose is. There's one right above you and there's various little parts of the ceiling with what look to be speakers set into the ceiling plus airconditioning vents and there's some fire smoke alarm things and various things like that. When I'm paranoid, even the sprinkler system could be microphones.

MS McKENZIE: Could be anything, couldn't it?

MS MEAGHER: There could be videos hidden in the airconditioning ducts or those funny little panels in the ceiling and, I said to you earlier, I find it really hard not to look under the tables and I'm going to give in now because - - -

MS McKENZIE: What's under there?

MS MEAGHER: Some tape holding some - probably the hearing loop together - but I have this obsession with microphones funnily enough even though I know there's no harm in it here, logically I know that, and because I'm in control it no longer matters that much but I still have the urge to pick them up and look at them and see if they're working and all sorts of things because I'm frightened deep down in what they're picking up. Anything that's hidden is frightening because I'm frightened of myself, I'm frightened of society deep down, and this is terribly frightening because that takes away all your self-esteem if the whole world knows every secret thought you have and, in my case, it's schizophrenia so the thoughts get confused when you're unwell or distressed.

So you get paranoid thoughts like I've been describing to you - under your chairs - I've already felt under my chair and it's quite frightening. There could be all sorts of things hidden under your chair. Feel under your chair - feel under it. Can you see those little lumpy bits - - -

MS McKENZIE: Yes, there's all sorts of things.

MS MEAGHER: Anything could be hidden under there. Imagine me on a plane next to you.

MRS OWENS: I was going to say I've found some chewing gum under there.

MS MEAGHER: Well, that might be - - -

MRS OWENS: You might prefer not to look - - -

MS MEAGHER: - - - plastic explosive in my head. So, you know, you can start to see what a scary world this is when you're paranoid.

MS MacLOCHLAINN: I think that gives a good example of when I said before it's not obvious. You know, if someone is in a wheelchair, they're obviously disabled but if someone is experiencing things the way Janet is describing, it's not obvious.

MS MEAGHER: And you come out in a bit of a lather and you can't put two thoughts together because it all overwhelms you. Even if you've been quite well up until that point, the actual confusion of the venue can confuse your thoughts that were originally quite rational and sane.

MS McKENZIE: So if you went to conciliation - some conciliation of a complaint - and found it like that, what - - -

MS MEAGHER: I'd fall apart.

MS McKENZIE: Worst still, if you went to a court, which is often more formal anyway, for a hearing and it was like that, then it would be really difficult to - - -

MS MEAGHER: I'd probably not go through with it, walk away, and that's why a lot of people with psych disabilities walk away from their issue because it's just too hard. So that gives you a little glimpse.

MS McKENZIE: That's really tremendous that you've felt that you could tell us all that because it's not that easy.

MS MEAGHER: It's not but it's quite nice that other people are interested to ask that in my life because that's the first time I've been asked.

MS McKENZIE: Well, I meant it. When I asked you I meant it. I didn't ask for some irrelevant reason. I think it's really important that - that's why Helen asked you whether you are happy that you mentioned this because it will go on to our web site and I would like to suggest that the members of the tribunal where I come from, where my other job is, read it. I mean, lack of understanding is a problem for us all and if they can understand more I think that would be helpful.

MS MEAGHER: Yes, thank you.

MS MacLOCHLAINN: In those education programs we were talking about and more awareness programs, I think, combined with that if people are actually given useful strategies or tips or guidelines on how, you know, perhaps to approach people or deal with people or just what to say, what's helpful to do, et cetera, then they feel a bit more - because a lot of people are not actually vicious or anything, but they feel uncomfortable, they don't know what to do, and I think if they can be given some guidelines, that would probably be helpful - and for employers as well.

MS MEAGHER: I think when people are internally distressed, they do tend to lash out, and that's why a lot of people with psych disabilities are seen as volatile or aggressive. Usually in my situation, where I deal with people all the time, it's usually more a sign of distress than aggression.

MS McKENZIE: In your submission you talk about some of the requirements that are very difficult, like requirements for drivers licences, where there's not a real need for them in jobs.

MS MacLOCHLAINN: Yes.

MS McKENZIE: Do you want to talk a bit more about that?

MS MacLOCHLAINN: Well, I think these days there's a big emphasis on multi-skilling and jobs, and so people just put down almost everything they can think of in job descriptions, as essential criteria. Quite often they'll just put down things like "current driver's licence". That's much more so now than it was, say, 10 years ago.

Most jobs you look at now, they've got "current driver's licence", even if it may not really be essential, or it could be worked around, or it would be okay if just some people in the job had it and others didn't. That immediately puts a lot of people with a mental illness out, because maybe because of their medications it's difficult for them to drive and so they don't drive. I mean, someone who has epilepsy, for example, they're not supposed to drive, so they don't usually have a licence and don't drive.

A lot of these people possibly could do the job quite well, and probably could get around without driving - you know, the job could have taxi vouchers or they could get public transport. I mean, in a lot of jobs, you go with someone else anyway, who drives. So, yes, I just think that that is a way that causes inadvertent discrimination. I think people are not aware that they are knocking out a whole lot of people who could perhaps be quite good employees. They're just trying to cover all eventualities, and say, "Yeah, that may be useful, so we'll put it down," but in the process they're knocking out a lot of people, and I don't think they realise that.

MRS OWENS: The submission also raises the issue that simply because of the way psychiatric illness is treated, some people simply don't disclose it, because they know what will be the result if they do - for example, applying for jobs.

MS MacLOCHLAINN: That's right. Some of our members - we've got over 130 members, and some of them work in employment areas where they're helping people with a mental illness to develop a resume and develop some employment skills and job interview skills, et cetera, to improve their job interview skills. What they've found is that up to 90 per cent of people with a mental illness do not disclose this to a prospective employer, for fear of discrimination. They've usually found that out the hard way; they have disclosed that and they haven't got the job, and that may have happened on a few occasions, and then when they don't disclose it, they do get the job. Of course, that does put an extra strain on them then, because they feel they've been a bit dishonest in getting the job, they're worried that if they do get sick, and they hadn't disclosed it - it puts an extra strain on them, which of course isn't good for them.

MRS OWENS: It's also difficult for the employer, who may have otherwise - the right employer may have made proper adjustments for them, or recognised that they were having problems and give them the sick leave, or just say, "Go home early" or whatever.

MS MacLOCHLAINN: Yes.

MRS OWENS: That means that does put the strain on them, and potentially the strain on the employer if something goes wrong later.

MS MacLOCHLAINN: Yes. No, it's not a good situation. The people I was talking to were concerned about it as well.

MS MEAGHER: I run an employment service for people with psychiatric disabilities, and my whole department is manned, or personned, by people with psychiatric disabilities, and we've made a concerted effort to only employ, in a positive discrimination way, people who have psychiatric disabilities.

MRS OWENS: What sort of accommodation do you do in your workplace?

MS MEAGHER: I was just going to say what I consider to be reasonable adjustment of the workplace. Number one, I believe in disclosure, because I think the only way we'll ever educate other employers is to be good employers ourselves. Firstly, we have to have more flexible conditions of work, namely, accommodating people who have cyclic or episodic disorders.

There are certain types of psychiatric disorders that are uniquely cyclic, where for a period of time, every so many months or years, the person experiences a fairly severe episode of their disorder and for the rest of their lives, except for that period, they are fairly chronically affected, but the rest of their life goes on relatively normally. That might require using two or three years' worth of sick leave in one fell swoop, and then not using it again for another three or four years, or whatever the cycle is. However, our current industrial awards don't make provision for that kind of cyclic disorder, so I am not entirely sure that that's going to suit a lot of people who have cyclic disorders.

The other types of disorders or disabilities usually require other variations, such as hours of work. People on anti-psychotic medication, for instance, usually find mornings abominable, as they come down off their medication. They can usually work late morning until evening, but find an 8 o'clock or 9 o'clock start almost impossible to deal with. So they're really forced into part-time work, because of that type of limitation on their ability to participate.

However, part-time job share is fine, but why not look at late start, late finish work for those sorts of people? You can't get that anywhere. If you do, you're usually on a roster, which means at some point in time your medication is going to totally impact on your ability to work, because you need your nights to be able to have the medication to work.

MS McKENZIE: But that sort of flexible time rostering would also be of help to other people - for example, parents with children.

MS MEAGHER: Absolutely

MS MacLOCHLAINN: Definitely.

MS MEAGHER: So I'm suggesting that a lot more work be done in flexibility of hours of work, in jobs that that is able to be done in. We do that in my workplace. There are certain provisions we make to allow for the effects of medication and to enable the job to be done. I worry that we don't make reasonable adjustments in the same way with this factor: if I'm taking medication, which means my morning is a dead loss, people tend not to be able to make that sort of accommodation, but if I needed a ramp, they can see it, they understand it, they're prepared to put the ramp in because they know the actual cost of a ramp.

But when they interview me for a job, they still can't see beyond the 9.00 to 5.00. They can't see that that flexibility of, say, 11.00 until 7.00 or something, is going to work better. They can't see that that's reasonable accommodation. So I think the effects of medication versus the ramp is my major issue in that one. Then, fourthly, access to leave when it's required because of the nature of the disability - not for leave purposes, but for dealing with a return of the ogre.

So they're my major points, and I think they're around conditions of work, and the other ones are about reasonable adjustment, is about public education, especially about employers, to educate them about what "reasonable adjustment" really could mean for various types of disabilities. It's not that onerous, and it could actually enhance their workplace to actually have someone there until 7 pm or whatever the provision is. It might actually enhance what they're doing.

Also I would love to see, in any revision of the act, some form of reward for affirmative action, in employing people with psych disabilities, physical, sensory or intellectual disabilities, because I feel that this has been a part of our disability discrimination that we really haven't seen tackled seriously in this country. The public service did a bit of a token job on affirmative action way back then, and it never really got past go. I would really love to see some very strong affirmative action campaigns, modelled by government, but also by funded organisations. I think part of their contracts with departments or grant-givers ought to be that there be active affirmative action programs.

MRS OWENS: We had Paul Jenkin just after lunch today, from the Office of Employment, Equity and Diversity which comes in, he said, under the Premier's Department here. He said there are targets that government departments are meant to meet - 12 per cent people with disabilities and 7 per cent for people that may require adjustments made. Can you say anything about those - any experiences?

MS MEAGHER: I can say that I worked for a - a form of government, I'll say, I won't get too specific here - and the personnel section had to determine what proportion of our workforce was, in inverted commas, "disabled". They sent around a list for every employee to tick boxes, "if you have high blood pressure", "if you have diabetes", "if you consider yourself overweight", "if you have" - I shouldn't say it, but "a pimple on your nose" - you virtually fit the category. They then proudly produced a memo determining how many people with disabilities worked in that particular area, and virtually every single one of us was right off, you know? I thought, "How dishonest and how manipulative."

MRS OWENS: So it was 100 per cent.

MS MEAGHER: Almost. It was an extraordinary number of us, considering our age and fitness, that met their criteria for disablement. So I don't know that there's an incredible - I'm not saying that department is like that. All I'm saying is there is a feeling out there that a lot of the statistics are not very honest. So be that as it may - that's a personal view, not that of MHCC, by the way.

MRS OWENS: So you're not necessarily advocating that model?

MS MEAGHER: I am not advocating that model. I think the act has to define "disability" very clearly, and to ensure that the actual subdefinitions of the various groups and groupings of individuals with disabilities is quite clearly defined, because I am of the opinion that many medical conditions are being regarded as disabling, when the evidence for such is far from proven.

MRS OWENS: Most others that we've spoken to have supported having a broad definition to avoid some of the complications - one can confront the legal argy-bargy about whether that's in or that's not in - so most people have said that having a broad definition is a good thing in the context of this act.

MS MEAGHER: I don't think it is a good thing. I really am a great believer in the act protecting those who need protection, not every other Tom, Dick and Harry, who has a need, because I'm very much aware of how people with serious and ongoing issues are being constantly overridden by creaming-off of positions and of participation by people who have what I call elemental sort of issues, rather than significant issues. So I'm fairly firm on that one. I don't know actually - - -

MS McKENZIE: Can I just go back to what you said about a scheme of rewards for those who do employ people with mental illness or psychiatric disability. What sort of rewards were you thinking about?

MS MEAGHER: I was talking about conditions and reasonable accommodation for that within award-based wages systems, not a big certificate to say you are a wonderful person.

MS McKENZIE: But actually included in - - -

MS MEAGHER: In awards.

MS McKENZIE: - - - awards and certified agreements and so on.

MS MEAGHER: That there be provisions for people with specific disability characteristics. That would make some accommodation for that.

MS McKENZIE: That's quite close to something Paul Jenkin also was discussing; you know, it makes sense to have this as part of the whole industrial relations framework.

MS MEAGHER: Yes, it would be wonderful. I'm thinking of people with specific needs having provision made for that. I believe that those provisions were made in some awards for people with HIV AIDS. I have heard that, but I don't know whether that's valid or not; that they had far more liberal provision for sick leave in some awards, but I couldn't tell you any more than that.

MRS OWENS: Coming back to definitions - we're just hopping backwards and forwards like hopscotch - if there was going to be a clearer definition in the act, or a more specific definition, is it possible to do that? If we're talking here today about mental illness, is it possible to get a clear definition of what that is? Are there grey areas?

MS MEAGHER: No, I think it's very possible to get a clear definition because I'm not talking about mental illness, I'm talking about psychiatric disability. At the present time I don't regard myself as psychiatrically disabled. I have a mental illness but I am not currently psychiatrically disabled.

MRS OWENS: But the act has other provisions - - -

MS MEAGHER: When my functioning is affected and my ability to participate in life - - -

MS McKENZIE: Then you have a disability.

MS MEAGHER: - - - is severely affected, then I have become disabled by this condition.

MS McKENZIE: Yes.

MS MEAGHER: I think there are definitions around that which are quite clear. I think it's really important to be discussing psychiatric disability rather than mental health problems and - - -

MRS OWENS: But you might get discriminated against because people might say - - -

MS MEAGHER: Perceive me as disabled.

MRS OWENS: Yes. You say you have a mental illness but they might say, "She's had occasions in the past where she has had to - - -"

MS MEAGHER: Yes, "She's been in an institution for 10 years." You know, "Who would trust her?"

MRS OWENS: If you were to have a definition that just focused on your psychiatric disability, it may mean that anybody that is discriminating against you on the broader condition would get away with it.

MS MEAGHER: I don't believe they would, because if someone discriminates because they believe I have a condition or disorder that is a defined disability, they have still broken the law, whether I have that disability or not.

MS McKENZIE: If we put it in terms of the positive way that you were looking at the act earlier, that's a barrier to participation.

MS MEAGHER: That is a barrier to participation.

MRS OWENS: The only other issue we were going to ask you about was whether you have been involved in the memorandum of understanding between the Mental Health Council and the insurance industry? Did you have any involvement in that?

MS MEAGHER: I was. I was also involved probably about nine or 10 years ago when the Australian National Association for Mental Health raised the same issues and I do believe that regardless of the memorandum of understanding, the insurance industry is still quite actively discriminating. I travel a lot overseas; I still can't get travel insurance. I’m actually leaving next Wednesday for a trip and I travel all the time now uninsured, because I just can't get it.

MS McKENZIE: We've had submissions also of a complaint of a woman who had had breast cancer who also was refused travel insurance, even though - for everything, not just for everything except breast cancer, but for everything.

MS MEAGHER: Yes. If I get insurance I have to lie. Like most people who get jobs, who have psychiatric disorders, they have to lie and I refuse to lie. I believe

I’m a spokesperson and I can't lie any more. To gain access to a visa to some countries you also have to admit a past history of sort of feloniously having a psychiatric disorder, so it can be quite horrendous to travel and to run the risk of losing luggage or losing passports or whatever, but you have to take that risk because even though they've signed the memorandum of understanding, it tends mainly to equate to personal income insurance and things like that which - most don't have an adequate income, or enough to insure against anyway, so - - -

MRS OWENS: That's right. The memorandum of understanding is with the Investment and Financial Services Association, which does cover income protection and disability insurance and life insurance, but it's not covering members who are general insurers.

MS MEAGHER: No. I'd love to see the exemptions taken away from the insurance industry and to have them be able to insure people for everything bar the stated thing that is the risk.

MRS OWENS: Potentially they can.

MS MEAGHER: I would be happy to travel - but they won't because - you know - - -

MRS OWENS: Have you ever thought of putting in a complaint?

MS MEAGHER: I did once, and it just bounced. I’m not a fit person to lodge a complaint.

MRS OWENS: It bounced before you got to first base.

MS MEAGHER: I was told I was wasting my time because I was a person with a psychiatric disorder.

MRS OWENS: Was this through the human rights - - -

MS MEAGHER: Not reliable No, I didn't do it through them; I went to the Insurance Council.

MRS OWENS: And you weren't tempted to pursue it under, say, the Disability Discrimination Act?

MS MEAGHER: How much energy do you have, when you spend half your life making complaints? You have to learn to give up sometimes and I think this is - and I'm a fairly outspoken and energetic advocate, I just get so sick of this sometimes. You know, the last 30 years of my life I've spent fighting systems. It gets a bit boring and people see you as, "All you ever do is whinge."

MS McKENZIE: Is this - because you've got the international dimension in your experience - a problem internationally as well as here?

MS MEAGHER: Yes. The insurance industry is a very big industry. They very much protect their own interests and they will discriminate as broadly and as widely as they possibly can. They don't want the likes of people who might make claims and we're seen as a very high risk area for some reason.

MRS OWENS: Thank you for that. You should have probably been here this morning when we were talking to the insurers. We had seven - - -

MS MEAGHER: My God, it would have been a shooting gallery.

MRS OWENS: Thank you very much. I think we have finished for today.

MS MEAGHER: Thank you very much.

MRS OWENS: That concludes today's proceedings and we will now adjourn until tomorrow morning, which is 18 July, at 9 am.

AT 5.43 PM THE INQUIRY WAS ADJOURNED UNTIL
FRIDAY, 18 JULY 2003

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