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REPORT OF PROCEEDINGS BEFORE

STANDING COMMITTEE ON LAW AND JUSTICE

INQUIRY INTO OPPORTUNITIES TO CONSOLIDATE TRIBUNALS IN NEW SOUTH WALES

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Monday 23 January 2012

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The Committee met at 9.00 a.m.

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PRESENT

The Hon. D. J. Clarke (Chair)

The Hon. P. T. Primrose (Deputy Chair)
The Hon. S. MacDonald
The Hon. S. Mitchell
The Hon. S. Moselmane
Mr D. Shoebridge

CHAIR: I welcome everybody to this third public hearing of the Standing Committee on Law and Justice's inquiry into opportunities to consolidate tribunals in New South Wales. In this inquiry, the Committee will consider what opportunities are available to rationalise the numerous separate tribunals in New South Wales in order to ensure access to justice for the New South Wales people and increase overall efficiency and effectiveness of these tribunals. Today we will be hearing from witnesses from a range of stakeholders, including the Guardianship Tribunal, the New South Wales Trustee and Guardian—and I welcome representatives who are in attendance—the New South Wales Council for Intellectual Disability, the Public Interest Advocacy Centre, the Motor Traders' Association and the New South Wales Nurses' Association. In the afternoon we will be hearing from the Medical Council, the Pharmacy Tribunal, the Queensland Civil and Administrative Tribunal, the United Services Union, the Hunter Business Chamber as well as the Local Land Boards of New South Wales.

Before we commence, I will make some comments about certain aspects of the hearing. The Committee has resolved to authorise the media to broadcast sound and video excerpts of its public proceedings. Copies of the guidelines governing the broadcast of the proceedings are available from the table by the door. In accordance with the guidelines, a member of the Committee and witnesses may be filmed or recorded; however, people in the public gallery should not be the primary focus of any filming or photographs. In reporting the proceedings of this Committee, the media must take responsibility for what they publish or what interpretation is placed on anything that is said before the Committee. Witnesses, members and their staff are advised that any messages should be delivered through the attendants or the Committee's clerks.

Committee hearings are not intended to provide a forum for people to make adverse reflections about others. The protection afforded to Committee witnesses under parliamentary privilege should not be abused during these hearings. I therefore request that witnesses avoid the mention of other individuals unless it is absolutely essential to address the terms of reference. Finally I ask everybody to turn off their mobile phones because they interfere with recording of the proceedings. I now welcome our first two witnesses, Mr Malcolm Schyvens, President of the Guardianship Tribunal, and Ms Amanda Curtin, who is the registrar.

MALCOLM DAVID SCHYVENS, President, Guardianship Tribunal of New South Wales, sworn and examined:

AMANDA JANE CURTIN, Registrar, Guardianship Tribunal, affirmed and examined:

CHAIR: If either of you consider at any stage that certain evidence you wish to give or documents you may wish to tender should be heard or seen only by the Committee, please indicate that fact and the Committee will consider your request. If there are any questions that you take on notice, or there are additional questions that we may need to forward to you, we would appreciate your response by 6 February because we have deadlines for reporting. Would either of you like to begin by making a short statement?

Mr SCHYVENS: Yes, thank you. I thank the Committee for the request to attend and provide evidence today. I note that the Guardianship Tribunal is referred to in only one of the three options identified an issues paper, that is, Option 3, which refers to the creation of a comprehensive Civil and Administrative Tribunal for New South Wales [NCAT]. I would like to provide the Committee with information about the Guardianship Tribunal, its jurisdiction and practice, by using the Committee's terms of reference, addressing the issues of access to justice, efficiency and effectiveness in meeting its statutory objectives and in delivering service to the people of New South Wales.

By way of background, the Guardianship Tribunal is a specialist disability tribunal established with bipartisan support to exercise a protective jurisdiction, concurrent with that of the Supreme Court of New South Wales. It commenced operation as the Guardianship Board in 1989. The tribunal hears and determines applications for the appointment of guardians and financial managers for people who are incapable of making their own decisions and who require a legally appointed substitute decision-maker. Guardians make personal decisions and medical and healthcare decisions. Financial managers make decisions concerning the whole or part of a person's estate. The tribunal also has the jurisdiction to review enduring powers of attorney, enduring guardianship appointments, provide consent to medical and dental treatment, and we also approve, or disapprove, clinical trials to enable the participation of people with decision-making disabilities, such as dementia.

Approximately 50 per cent of all applications are made by family members or friends of the person with the disability, and 50 per cent by service providers, such as health and disability professionals. Currently half of all applications are for people with dementia; 11 per cent of applications concern people with intellectual disability; and 9 per cent concern people with mental illness. The tribunal also received applications for people with brain injury, eating disorders, stroke and other disabilities which may affect a person's ability to make decisions. Orders made by the tribunal impact a person's most basic of human rights, such as whether or not to accept medical treatment or where to live. The Guardianship Act requires that anyone exercising functions under the Act must do so in a way that the freedom of decision and action of a person are restricted as little as possible. This guides the information the tribunal provides to the community and to parties, and it is reflected in the preparation of applications for hearing and in orders made by the tribunal.

Unlike most courts and tribunals, by the very nature of its jurisdiction the majority of people who are the subject of applications to our tribunal do not have the cognitive capacity to fully understand and participate in the legal proceedings in which they are involved, or to understand the possible outcome of the proceedings. The Guardianship Act requires that the tribunal conduct its proceedings with as little formality and legal technicality as is possible. The tribunal, whilst bound by the principles of procedural fairness, is not bound by the rules of evidence and may inform itself as it sees fit. The inquisitorial nature of the tribunal's jurisdiction has been essential to its capacity to meet its statutory obligations and support effective decision-making.

Anyone with a genuine concern for the welfare of a person with a disability has standing to make an application to the tribunal. For example, the tribunal may receive an application from the owner of a corner store who is concerned that an elderly neighbour, for example, is losing capacity to make her own decisions and is vulnerable to others to abuse and exploitation. The applicant may be able to provide only the most basic of details about their neighbour and be unable to source or gain access to crucial medical information going to her disability and incapacity. The specialised nature of the tribunal and its practices and procedures enable it to both undertake the necessary investigation and preparation of an application for hearing, identify matters which may be resolved without the need to proceed to a hearing, and, importantly, to support the understanding and participation of the person with a disability in all stages of the process.

The tribunal's member and staff have a broad range of qualifications and experience with people with disabilities across the health, disability and community sectors. This expertise is essential in balancing often competing priorities, including the protection and empowerment of the person with the disability and ensuring that all parties, including the person who is the subject of the application, are accorded procedural fairness in a jurisdiction where there is very minimal legal representation. While given the personal and emotional nature of many of our proceedings—there may be conflict between other parties, family members or friends of the person—the tribunal proceedings themselves are not adversarial. This is supported by the Guardianship Act, which requires that parties appear with legal representation only by leave of the tribunal. In the last financial year legal representatives were involved in only 2.5 per cent of matters finalised.

The tribunal's work concerns some of the most vulnerable members of our community and our workload continues to grow. It has an impact on the delivery of government services and the capacity of government agencies to meet their core responsibilities. Deloitte Access Economics' report entitled "Dementia Across Australia: 2011-2050", which was issued on 9 September 2011, predicts that by 2030 there will be in excess of 182,000 people with dementia living in New South Wales—a projected increase from around 91,000 in 2011. Its report notes that dementia prevalence growth follows the size of the population, with New South Wales expected to have the greatest prevalence in Australia in 2011 and throughout the projection period compared to other States. Utilising this data and current trends and applications, we predict that we will experience an increase in dementia-related applications of 17.6 per cent by 2015 and a further 19.8 per cent increase between 2015 and 2020.

The tribunal has recognised the need to plan for and respond to the increasing demands on its resources resulting from both social and legislative change and has initiated significant changes to enable us to address our workload whilst maintaining the quality of the service we provide. In 2005 the tribunal was the subject of a review conducted by the Council on the Cost and Quality of Government [CCQG]. The tribunal implemented the strategic recommendations of the CCQG report which were premised on an anticipated annual increase of 3 per cent in applications. Actual growth in the tribunal's workload has been significantly higher than that projected by CCQG and the growth over the five-year period 2006-07 to 2010-12 has in fact been 13.6 per cent. In the current financial year to date we are experiencing a 16 per cent growth in applications.

Over the last three years the tribunal has undertaken a comprehensive review of its entire case management procedures and practice to achieve efficiencies. This has resulted in a risk-based triage of applications to the tribunal and the management of those applications based on the risk to the person with the disability. The efficacy of those reforms can be illustrated by the following statistics: over the five-year period of 2006-07 through to 2010-11, the tribunal experienced an increase in applications of 13.6 per cent; we have experienced an increase in total matters finalised of 15.2 per cent; and we have experienced an increase in hearings conducted of 21 per cent. All of this has been achieved with a staff increase over the same period of only 4.5 per cent and a budget increase on average of 3.2 per cent per year.

In terms of our membership and staff, we have two full-time members, the President and Deputy President, and we currently have 82 part-time members. Our members are appointed for a period of up to five years. Tribunal members are appointed on the basis of their significant professional and personal experience with people who have disabilities or their legal skills and experience.

We have three categories of members: legal members, professional members and community members. The majority of all of our original applications are heard by three-member panels, comprising one member from each category. The use of this multidisciplinary panel is strongly supported by the disability sector. Whilst most protective jurisdictions in Australia have previously operated in this way, this has not been a feature that has been retained as usual practice within an amalgamated tribunal model.

Our members sit, on average, one day per week. This ensures a highly developed knowledge of the jurisdiction as it maintains skills through sitting regularly. The expertise of the multidisciplinary panel ensures that in addition to determining the legal issues of the application the tribunal also focuses on the physical, psychological, social and emotional needs of the person the hearing is about. We also have 65 full-time equivalent positions. The staff of the tribunal have a broad range of qualifications and experience in areas such as health, disability and the law, and experience in other tribunals. Their focus, like that of our members, is on the paramount interests of the person with the disability. They are skilled in communicating with people with disabilities and they are focused on the maximum participation of the person in the proceedings. They are also experienced in seeking information relevant to the application to assist parties and tribunal members and support quality decision-making.

The tribunal takes a multifaceted approach to ensuring access to justice, a main feature of this inquiry. We have flexible hearing arrangements. We achieve a successful balance in managing our hearing resources whilst retaining the capacity to be flexible in hearing procedures. We sit regularly in 17 rural and regional locations and four outer metropolitan locations in New South Wales. The hearing venue and location is chosen to facilitate the participation of the person. We sit in a range of venues, including hospitals, nursing homes and corrective facilities, to ensure the appropriate participation of the person with the disability and to enable the person to communicate directly with the tribunal. Last year we sat in 30 locations across New South Wales and we avoid wherever possible sitting in formal locations such as courtrooms.

In keeping with the protective jurisdiction there are no filing fees to lodge an application and we are required to provide written reasons for decision for most matters. This provides the person with the disability and other parties with the tribunal's reasoning and enables the parties to determine whether they have grounds for appeal. Our written reasons are also helpful to the appointed guardian or financial manager in the early exercise of their decision-making authority. We may appoint a legal practitioner to act as a separate representative of the person with a disability who will endeavour to meet with the person to seek their views about the application and to gather evidence they believe will assist the tribunal to determine what is in their best interests. Over the past five years there has been a 331 per cent increase in the appointments of separate representatives.

In terms of access to information understanding our processes, our staff responded to more than 14,000 inquiries and there were more than 98,000 hits on our disability accessible website last year alone. We are very aware of our role in a multicultural community. Our members come from a multitude of culturally and linguistically diverse backgrounds, including members who identify as Aboriginal. We used interpreter services across 51 languages last financial year and we publish de-identified selected decisions on AustLII, a legal search engine, to assist the community in understanding how the tribunal makes decisions and to assist parties in preparing for a hearing.

Another key feature of this inquiry is looking at the effectiveness or quality of the decision-making process. Decisions of our tribunal may be appealed to either the Supreme Court or the Administrative Decisions Tribunal. There is a low rate of appeal from our decisions. Over the past five years, the tribunal has finalised approximately 40,000 applications and reviews. In that time there have been 100 appeals lodged, and of the appeals determined only 23 were upheld. We also ensure quality of decision-making through our member appointment process. Every two years we undertake member recruitment. Members are appointed after a transparent and open merit-based selection process. After a period of six years appointment all members are required to compete for reappointment in a process of open recruitment. This ensures a proper renewal of members and the selection of members with the expertise required by the tribunal at that point in time. For example, we are currently experiencing greater demand for applications for financial management, so in our last round of recruitment we sought members who not only had experience of people with disabilities but also financial expertise.

Members are required to comply with the tribunal's member code of conduct and are required to participate in a comprehensive performance appraisal program. Approximately six member-training days are held each year, which update members on administrative law developments, providing skills in relation to cultural diversity and awareness on how to better engage with persons with cognitive disabilities. In the interests of people with disabilities it is important that the tribunal maintains the trust and confidence of the community. The tribunal is respected and has since its establishment received strong support from disability and health sector peak bodies and stakeholders.

The final point I would like to raise with the Committee relates to the Victorian Law Reform Commission. The tribunal was requested in early 2011 to provide detailed information as to the tribunal's practice and procedures to that commission, which is currently conducting a review of guardianship laws in Victoria. As outlined in the consultation paper to the review issued on 14 February 2011, the commission sought the views of the Victorian community as to the role and functions of the Victorian Civil and Administrative Tribunal [VCAT], Victoria's amalgamated tribunal, which has jurisdiction over guardianship in that State. The paper reports the reviews received indicating strong dissatisfaction with VCAT's processes and decisions in relation to the guardianship division with a particular focus upon the preparation and investigation conducted by VCAT leading up to a hearing; a perception of what was known as "creeping legalism" in proceedings; an insufficient emphasis on the attendance of the person subject to the application to the hearing, hearings being conducted in court-like venues; and, finally, the most consistent concern expressed related to the qualifications

and training of guardianship list members, noting there was a perception that some members have insufficient knowledge of disabilities, the disability community and the service sector.

The tribunal provided information to the commission, much of which I have summarised for you today, and I believe there is a strong possibility that the final recommendations to the Victorian Government by the commission might well include recommendations that VCAT look to introducing some of the practices and procedures our tribunal in New South Wales has adopted. I understand the commission's final report is due to be provided to the Victorian Government on 31 January 2012 and will be tabled in the Victorian Parliament shortly thereafter. I respectfully suggest that the Committee obtain and consider the commission's final report as it may well provide an independent analysis of the efficiency and effectiveness of the Guardianship Tribunal in New South Wales, as I have endeavoured to outline this morning. I would like to table the latest annual report of the tribunal and a DVD produced by the tribunal for the community to explain how we operate. I also wish to invite the Committee to visit the tribunal's premises to observe how we operate first-hand.

CHAIR: Thank you very much. Ms Curtin, do you wish to add anything?

Ms CURTIN: No.

CHAIR: Mr Schyvens, what is your view on the consolidation of the Guardianship Tribunal into a super tribunal or its being combined with some other tribunal, such as the Mental Health Review Tribunal?

Mr SCHYVENS: As I have attempted to outline this morning, my view is that there are three issues, as I understand it, before the inquiry: access to justice, a citizen focus, and efficiency and effectiveness—that is quality. As I have attempted to outline, I believe the Guardianship Tribunal has a good reputation in this State and we are currently performing in a way that satisfies those three criteria. The impetus to consolidate the Guardianship Tribunal therefore must be evidence that would improve one or all of those facets. Taking the first facet of efficiency, or savings if we wish to call it that, I am personally not aware that a super tribunal model in any other State has actually resulted in savings. I note, having had the benefit of the transcript, the evidence of His Honour Justice Chaney and that of President Crebbin from the Australian Capital Territory makes it clear there is no saving, from my understanding of their evidence. As I have already elaborated, we have managed to maintain an ever-increasing workload on a budget which is not necessarily always in step with that increase.

Obviously the most important thing would be quality of service to the New South Wales community. The Guardianship Tribunal was established just over 21 years ago to provide a forum, to use the notion of tribunals, which is cheaper, quicker and easier for people with disabilities to access justice, or should I say those who are concerned about people with disabilities to access justice to ensure that they are protected and empowered, rather than going through the Supreme Court system. Over those years our tribunal has developed immense skill and expertise, not only in the members who make the decisions but also in the staff, who have quite a different function from many other courts or tribunals. Our staff come from a range of backgrounds, be it law, social work or health fields, and their number one priority is to engage with the person who is the subject of the application. As I have stated, by the very nature of what we do the majority of people the subject of applications have a cognitive disability of one form or another. Our staff will attempt to assist them in understanding why the application is being made, who has made the application, the importance of having their say in the application and the importance of their coming along to the hearing. We have the flexibility of attempting to sit in a location or region, whether that be geographical or a nursing home et cetera, to allow that person to participate where possible. I do not know if that flexibility is necessarily going to be something that can be afforded in a super tribunal model.

The last issue is of course access to justice. That by very definition, I say with respect, is why we have a specialised tribunal. I can understand the argument that access to justice in many forums provides a one-stop shop, a forum where there are similar application forms and one portal. But by very definition the people we are there to serve and deal with their applications need added assistance and specialised attention in terms of dealing with the applications. With respect, I think we have a system now that currently caters for that.

CHAIR: I take it that with regard to access, efficiency and effectiveness you are saying you do not believe there is going to be any substantial improvement in a super tribunal?

Mr SCHYVENS: With the way in which we operate the Guardianship Tribunal in New South Wales I am not aware on the information available to me that any consolidation, whether it be part or whole, would be of benefit to people with disabilities in New South Wales facing applications before the tribunal.

CHAIR: What about being combined with the Mental Health Review Tribunal? Is your answer the same?

Mr SCHYVENS: Yes it is. Again, I have had the benefit of seeing the transcript of His Honour Greg James's evidence and I concur with him that whilst at first brush it can seem that there are great similarities between our two tribunals I think when you go a bit deeper that is not the case. The fact is that one of the main reasons behind the Guardianship Tribunal's establishment was to ensure there was a forum that allowed people to make applications turning on intellectual disability, as it was then the predominant issue—now it is dementia—rather than looking at mental health laws, or Acts of lunacy as they were then known, in those sorts of procedures. It was to take those matters out and give a separate forum. I think also there is a very big difference in the principles behind the two jurisdictions. We have one focus, which is the person with a disability. The Act tells us rightly, in compliance with the United Nations Convention on the Rights of Persons with Disabilities, that our focus is purely on the best interests of the person. We have no other mandate.

The Mental Health Review Tribunal has that, but they also have a public protection element that is totally different from us and our focus. They operate in a very different way. As His Honour explained, their orders are very much at a discrete point in time, usually around medical treatment or the location of a person to stay against their will at a certain point in time. Ours are much more comprehensive. If we make a guardianship order it can go on for many years; it can determine who will have the power to make decisions about where the person lives, who they have access to and what medical treatment they have. It is a much more expansive process. Also, we now have a great raft of work in terms of financial management, putting in place orders for people so that somebody else manages their legal and financial affairs. That is something we are built to do and designed to do and it is not something that the Medical Health Review Tribunal regularly engages in. So whilst I can understand how people would see first of all there are similarities, there really are not so many similarities to necessarily link us with that tribunal compared to any others if one was to entertain that exercise.

The Hon. SCOT MacDONALD: In your evidence you commented on the Victorian Civil and Administrative Tribunal. Can you expand on how it works? We are going to Victoria tomorrow. Guardianship matters are rolled up into that tribunal but you had some reservations or criticisms of it.

Mr SCHYVENS: Firstly, I would like to clarify that they are not my personal reservations; I was purely quoting from a consultation paper. The points I outlined were the result of community consultation to the Victorian Law Reform Commission. We became aware of that Victorian Law Reform Commission exercise early in 2011 when we were contacted by Professor Neil Rees of that commission to see whether his organisation could come to our tribunal to look at the way in which we deal with certain issues related to criticisms that were raised during community feedback on his project. As I outlined, they were around the issues of involvement of the subject persons. There were criticisms that in the super tribunal model in Victoria there was not the encouragement for the subject person to attend the hearing and have their say. There were concerns that there is not enough access to justice in terms of getting to regional areas.

There were concerns about the mode of hearing rooms, sitting in more formal rooms where a person—especially one with a cognitive disability, an intellectual disability or dementia—might feel that they have done something wrong rather than that they were attending a forum and having a say. But probably the most concerning feature was in terms of a perception raised by some in the community feedback that, given there were members sitting on guardianship matters that sat across a number of lists, as it were, so that, as it was put to me by someone once, you could be doing a retail lease matter in the morning—and I cannot recall whether the Victorian Civil and Administrative Tribunal (VCAT) actually covers that component—but you could be doing something quite distinct from guardianship and then be doing guardianship. There was a real concern that the membership may not have a sufficient knowledge of the disability sector or an understanding of how to engage with persons with cognitive disabilities in order to ensure that they feel comfortable to provide the information they wish to provide within the hearing process.

We provided the information that I have provided today. We are very different from Victoria. As I understand it, if VCAT receives an application, they have minimal registry staff and if they believe a matter needs more work or investigation before it goes to hearing then they can send the matter to the Public Advocate in Victoria, who they engage to do some thorough investigation. How we operate is, we have registry staff, the bulk of whom are experienced in triaging applications. They get the application and they look at the risk. If the risk suggests a person is at risk of losing their home or their major asset today, we have the flexibility to have a hearing today in order to ensure that even if a temporary order needs to be put in place that can be done. There

were concerns raised that that flexibility does not exist in other structures. So basically the information we provided to the Law Reform Commission was around our triaging of applications, around our staff who are able to conduct investigations and around our three-member panel.

We do still operate in the model that existed in most other States previously where we have one lawyer, one professional member, usually a psychiatrist or a mental health nurse—someone who has had experience treating and assessing persons with disabilities—and a community member or someone who has the life experience. Most often they usually have a child or a parent with a disability who they have cared for. That is the model we still hold onto and that is the model that does not exist in most other States now where, as I understand it, it is usually a single member, more often than not a legal member, presiding in those matters. So the reservations are those being received by the Victorian Law Reform Commission and that will be reported on in its final report to the Victorian Parliament shortly.

CHAIR: Arising from the answer you have just given are you saying that from the Victorian model you believe that because of the way in which it has worked out there has been a decrease in the quality of decision-making coming out of that with regard to the sorts of matters that your tribunal hears?

Mr SCHYVENS: I do not have a view on whether there has been. There has certainly been a report.

CHAIR: Is that not one of the major issues?

Mr SCHYVENS: The major issue is that there is a perception amongst the disability sector and those who are the end recipients of the services that the quality of service is diminished because there is a lack of experience in those persons making the decisions.

CHAIR: But you have not looked at these decisions yourself to any great degree?

Mr SCHYVENS: In terms of engagements?

CHAIR: Yes. You are going on a perception that you have picked up.

Mr SCHYVENS: They are again different to New South Wales. We require written reasons for a decision in the vast majority of cases whereas Victoria does not. Most of the other States do not issue written reasons for a decision but an oral decision is given at the end of the hearing and that is what the person and the parties must rely upon. In New South Wales we issue an order at the end of the hearing and we might give a general summary of the reasoning. However, we always follow up in the next few weeks with written reasons for a decision. I do not believe there is any other State that still engages in that. So apart from limited matters that have gone to appeal or have been notable cases, I would not have the opportunity anyway to examine those reasons.

CHAIR: That would be fixed by there being a requirement that reasons be given for decisions?

Mr SCHYVENS: In the other States?

CHAIR: Yes.

Mr SCHYVENS: Yes.

Mr DAVID SHOEBRIDGE: There would be no impediment to having a guardianship division with a three-member panel within a broader tribunal, would there?

Mr SCHYVENS: Correct.

Mr DAVID SHOEBRIDGE: You were saying in that detailed introduction that there would have been benefit in having a written submission beforehand so we could come to grips with that.

Mr SCHYVENS: I did make an apology in writing, I hope you received that.

Mr DAVID SHOEBRIDGE: I did not. Some of what you said was that you endeavour to have the hearings in nursing homes, prisons and out in the community wherever possible, is that right?

Mr SCHYVENS: Correct.

Mr DAVID SHOEBRIDGE: How many applications did you have last year? Was it 8,000 or so?

Mr SCHYVENS: Just under 8,000 from recollection. The figure of 7,300 comes to my mind.

Ms CURTIN: It was 7,300.

Mr DAVID SHOEBRIDGE: If I heard you correctly, you had hearings at only 30 locations around the State, is that right?

Mr SCHYVENS: Correct, 30 regular locations. We would normally sit in, say, Albury and Wagga Wagga and we would normally sit in Wollongong. I do not believe that number would capture all the nursing homes which we would call one-off hearings. We would normally sit at panel to try to attempt to get through three, four or at best maybe five matters per day. It could be the case, as I had a matter only a few weeks ago, where we might start at 9.00 a.m. at Seven Hills, at a nursing home, and deal with a person who we have been advised cannot travel but can provide a view and then come back into Balmain and continue with the balance of three days. Correct me if I am wrong but those dates do not include all those individual venues—they are regular sitting locations.

Ms CURTIN: To clarify that, each month we would sit at 17 of these regional locations and four outer metropolitan locations in addition to using the hearing rooms in Balmain. It is a regular presence throughout the State each month.

Mr DAVID SHOEBRIDGE: I assume that the bulk of the hearings are heard in the hearing rooms?

Mr SCHYVENS: Twenty-three per cent of matters are heard outside Balmain.

Mr DAVID SHOEBRIDGE: So more than three-quarters are heard in the hearing rooms?

Mr SCHYVENS: That is right.

Mr DAVID SHOEBRIDGE: So there is no doubt a real and genuine need to have well-established, well set up hearing rooms. Do you feel you have them at Balmain?

Mr SCHYVENS: We are at the stage of doing some refurbishments. They are user-friendly, in my view; they do not feel like courtrooms.

Mr DAVID SHOEBRIDGE: How do they differ from a courtroom?

Mr SCHYVENS: The presiding members are not elevated.

Mr DAVID SHOEBRIDGE: But you will find that in most administrative tribunals there will not be an elevation.

Mr SCHYVENS: Some perhaps but I have been to some where there is elevation. They are basically a meeting room—that is the best way that I can describe them—where the members will sit on one side. Sometimes we can be relaxed. However, if we are dealing with someone who has an intellectual disability and who we can tell is feeling particularly uncomfortable, it may seem trite but we will move ourselves. We might sit differently to make someone more comfortable.

Mr DAVID SHOEBRIDGE: That happens regularly in the Industrial Relations Commission and in other tribunals—they come down and conciliate. I am saying that there is perhaps more commonality between your hearing process and other administrative tribunals than your submission suggests. Can you talk about the common points between your tribunal and the Mental Health Review Tribunal, as an example? You spoke about the differences but can you tell us about the commonality?

Mr SCHYVENS: We are dealing with vulnerable members of our community, there is no doubt about that, and that is the greatest similarity between our two tribunals. Both of us need to have a membership that has

a great understanding of the issues facing persons with mental illness but there is an issue around making an assumption that a great deal of our work overlaps with the Mental Health Review Tribunal. Last year I think we had only 9 per cent of matters where there was identifiable mental illness in the application before us.

Mr DAVID SHOEBRIDGE: You had a large number—50 per cent—of dementia matters?

Mr SCHYVENS: Yes.

Mr DAVID SHOEBRIDGE: Surely the skills that your three-member panel brings to deal with guardianship issues would in most cases also be a useful panel of skills to bring to the matters that are dealt with by the Mental Health Review Tribunal? The skill sets would seem to me to have some strong commonality.

Ms CURTIN: I agree to some extent. There is a difference in how the hearings are conducted. The Mental Health Review Tribunal has a narrow focus. As Mr Schyvens described, it is a focus on considering the detention of the person for the purposes of treatment for mental illness.

Mr DAVID SHOEBRIDGE: That is more the issue than the process. You can address that issue within the same tribunal through different applications.

Ms CURTIN: It also is the process, in that in our tribunal it is uncommon to have just one or two parties. Quite often we have a range of parties and the role of the staff is to assist in the identification of those parties. So there are statutory parties. Somebody who might be a carer for the person would be recognised under the Act as being a party. In the Mental Health Review Tribunal my understanding is that quite often the proceedings are conducted with the tribunal and the person with the mental illness and on the evidence of the treating psychiatrist. I understand it is a more restricted environment in terms of the number of parties and the range of evidence considered.

Mr DAVID SHOEBRIDGE: We heard from the Mental Health Review Tribunal how important the skill and knowledge of its registry staff was in order effectively to do the triage which you say your staff do with your matters. I know they are looking at slightly different issues and concepts, but that concept of a skilled registry staff looking at the substance of the mental health and risk issues seems to be a great commonality between the two tribunals. Could you address that issue?

Mr SCHYVENS: Certainly and I would agree with you that there is definitely systemic similarities such as the need to react quickly and to be flexible.

Mr DAVID SHOEBRIDGE: And the need for smart, well-skilled staff who can assess that.

Mr SCHYVENS: Indeed. You are asking me for the commonalities but the fact is that there is not a great deal of commonality in that the Mental Health Review Tribunal is medically focused or centred on those aspects around the mental illness. Ours is a much broader jurisdiction. A person's decision-making around medical consent is just one aspect. I would suggest, whilst I cannot think of the number off the top of my head, that matters around accommodation, where a person lives and who they live with, would make up the bulk of issues in terms of guardianship before us. We must not forget that around 41 per cent of matters now—I will correct that if I am wrong—are around financial management. When the tribunal first started the bulk of our work was on guardianship and those very personal issues. Things have developed, as you would expect, with dementia rates increasing. Most of the people coming before us now have lived a long and fruitful life and have accumulated wealth, which was not the case with people with intellectual disabilities before.

Mr DAVID SHOEBRIDGE: You are happy to develop that area within your tribunal but that could be dealt with within a larger tribunal. A developing area gets skills and resources applied to it. Is that an argument for a specific tribunal or an argument for paying attention to that in the future?

Mr SCHYVENS: It is very difficult to put logical arguments against a super tribunal; I do not deny that. But the simple fact is that when I attend heads of tribunal jurisdiction meetings I make no respect to my colleagues. When we talk about the way in which we proceed, the way in which we give access to people with disabilities, I feel we offer a far superior service here. And no matter what we state in terms of how a super tribunal could exist, the simple fact is that in reality there is a lot of feedback to suggest that the specialisation is lost.

The Hon. SHAOQUETT MOSELMANE: Earlier in your introductory comments you touched on your work in regional and remote communities. Could a consolidated tribunal improve access to your services for people in regional areas? If not, why not?

Mr SCHYVENS: I would suggest that there is little improvement upon what we currently have. As I have stated, we already travel to multiple areas regularly throughout New South Wales. We have a travel matrix where we endeavour to make sure that we can have a hearing within 100 kilometres of a person's residence. Obviously, there are some locations in New South Wales where that is not possible but we will have a face-to-face hearing wherever possible, so it is provided. In terms of a super tribunal, again I can only look to other super tribunals that exist. As I have already said, I am aware from the Victorian Law Reform Commission's review that one of the criticisms is a lack of getting out into geographical areas and a focus upon coming to formal regions.

The other issue is that we have recently, last year, been transferred from the ADHAC disability portfolio into the Department of Attorney General and Justice. That within itself, if you like, has potentially opened up some room for cross-fertilisation of where we might sit in utilising other rooms. Having said that, we have always had a strong ethos—and one that I personally feel is of vital importance—to not go to formality. The very nature of our hearings are trying to involve the person with the disability. I would not want to see us going to an environment where we are utilising the same hearing facilities that might be more formalistic. At the moment we will sit in community halls if necessary. We will sit in medical centres, et cetera, to try to get away from that. I admit that you can have communal tribunal hearing rooms, and we have certainly given input to Attorney General and Justice as to how that could occur, because obviously you can have savings by having areas across New South Wales where there can be multiple use. But the system we have in place at the moment, we really do get out there into most of New South Wales.

The Hon. SHAOQUETT MOSELMANE: You said that you deal with about 40,000 applications and reviews and you have done that last year.

Mr SCHYVENS: Sorry, that is the last five years.

The Hon. SHAOQUETT MOSELMANE: In the last five years.

Mr SCHYVENS: Yes.

The Hon. SHAOQUETT MOSELMANE: Do you not think a consolidated tribunal would make it quicker, easier and cheaper for your tribunal if it was consolidated?

Mr SCHYVENS: Again I can only answer that if I had evidence to support that conclusion. As I said earlier, from having the benefit of the transcript, I can see that His Honour Justice Chaney and President Crebbin of the Australian Capital Territory have both stated that in fact a super tribunal has not been cheaper, so that is that issue. Secondly, as I have stated, in terms of access to justice, which must be an overriding feature for people with disabilities, we provide that expertise. That could well be lost in a single portal.

The Hon. SHAOQUETT MOSELMANE: We will be reporting and we will be making some recommendations. If at the end of the day consolidation happens, where would you like your tribunal to sit?

Mr DAVID SHOEBRIDGE: Outside.

Mr SCHYVENS: I am not sure that I necessarily follow the question, sorry.

The Hon. SHAOQUETT MOSELMANE: At the end of the day we may make recommendations for consolidation, or maybe not. Where would you see yourself?

Mr SCHYVENS: If we were to be consolidated.

The Hon. SHAOQUETT MOSELMANE: If you were to be consolidated.

Mr SCHYVENS: I can only answer that by saying that I do not see that we necessarily have a fit with any other particular tribunal. Given the evidence against consolidation in terms of our specialised jurisdiction, I

specifically do not have a view on where we would be situated in that. I do not see it as beneficial for me to have a view on that.

CHAIR: We are out of time but the Hon. Sarah Mitchell and the Hon. Peter Primrose have questions. I might ask that you put the questions and you might like to take them on notice.

The Hon. SARAH MITCHELL: It was just in relation to the submission that we received from the Bar Association, and you briefly touched on it in answer to the question from the Hon. Shaoquett Moselmane. In terms of the possibility of having a single registry service as opposed to a single consolidated tribunal, I would like to know your position on that but I am happy to have that on notice.

Mr DAVID SHOEBRIDGE: Registries outside Sydney may have a common registry service in more regional areas than you currently have.

Mr SCHYVENS: Certainly.

The Hon. PETER PRIMROSE: That was the identical question that I thought it worth asking and getting your thoughts on. I simply put on the record that I had cause to be personally involved with the Guardianship Tribunal and just my high regard for everyone involved in that whole process.

Mr SCHYVENS: Thank you. Thank you for this opportunity and I reiterate our invitation, if time permits on your behalf, to come to the tribunal and see how we operate.

CHAIR: Thank you for your input. We appreciate you being here today. We did receive your letter of apology.

Mr SCHYVENS: I would like to put on the record that I only became aware that we were invited to put in a written submission last Thursday so I apologise for that.

CHAIR: We understand. Thank you. Your input is of great value to us.

(The witnesses withdrew)

IMELDA MARGARET DODDS, Chief Executive Officer, NSW Trustee and Guardian, and

JUSTINE ALEXANDRA O'NEILL, Manager, Client Information and Support, NSW Public Guardian, affirmed and examined:

CHAIR: Would you like to make a short opening statement?

Ms DODDS: I will begin by apologising for the Public Guardian, who is unable to attend today due to medical treatment that could not be deferred. So Ms O'Neill is with me in his stead. Thank you for the opportunity of addressing you today. I thought it would be helpful to have a brief introduction to our professional backgrounds to be here. I have over 25 years experience in the policy, practice and development of adult guardianship legislation in Australia, principally in two jurisdictions: Western Australia, where I was the inaugural Public Guardian, and in New South Wales, where I was a part-time member of the Guardianship Tribunal between 1999 and 2007, then appointed the Protective Commissioner and Public Guardian from 2007 to 2009 and currently in my position as CEO. My policy experience dates back to 1987 in Western Australia.

Ms O'Neill, as you know, is the manager of the information and support branch but has eight years experience as a public guardian. She previously worked as a social worker with the DPP; in the United Kingdom and also in hospital social work departments here in New South Wales. Briefly, to give you a background, the Public Guardian, I think the President of the Guardianship Tribunal already described the general tenor of the role as statutory appointee, almost exclusively appointed by the Guardianship Tribunal. It is extremely rare—I think there is one case—in New South Wales where the Supreme Court has appointed the Public Guardian to make personal lifestyle decisions. Of course, the New South Wales Trustee and Guardian is the recipient of the financial management orders; 92 per cent come from the Guardianship Tribunal, 5.7 per cent from the Mental Health Review Tribunal and the residue from the Supreme Court.

It is important for us to say that neither organisation has practical experience of running tribunals. While I have tribunal member experience, it was as a part-time member. But we are the direct recipients of the work of the Guardianship Tribunal in the main and for New South Wales Trustee and Guardian to a lesser extent the Mental Health Review Tribunal. So our major relationship is if you would have it downstream from the Guardianship Tribunal, and in preparation for this we of course have read all of the relevant submissions and transcripts pertinent to those tribunals. The other important thing I think to note is that both the Public Guardian and I are statutory officers with statutory responsibilities and decision making. They are separate roles now; I cannot influence the Public Guardian's decision making and he cannot influence mine. But the Public Guardian is administratively supported by my office. That does create a little bit of confusion in the community but I just thought I would state it.

What is perhaps very relevant is that we share the same concerns in relation to the proposed consolidation of tribunals. As I said, our focus is on the Guardianship Tribunal and it has been practice experience over many years and our experience of course is that the Guardianship Tribunal has a very long, well-establish, nationally and internationally regarded focus on the individual who is the subject of the application. That is of singular importance. I think I was here for the president's evidence and absolutely agree that we are dealing with some of the most vulnerable people in the community in New South Wales. By view of the very orders that we receive from the tribunal, we are standing in those people's shoes and making the decisions for them. So the manner in which they come to us is singularly important; and the decision to take away someone's rights and give those rights and responsibilities to another party to act on their behalf is a very serious contention, and I am sure you would all personally appreciate that.

Both the Public Guardian and I also acknowledge the very difficult and real issues that your Committee has to consider and that is the importance of the efficiency in a modern justice environment. We acknowledge that. We do not back away from the focus of your inquiry. But we are concerned that the amalgamation of a human rights focus tribunal into a mega tribunal places that distinctively well-regarded and, as I said, nationally and internationally recognised focus at risk in a drive for efficiency. So we would caution, when you are considering of course at the end of your deliberations, that balance between efficiency, effectiveness, informality and flexibility. Both the Public Guardian and I are longstanding members of the Australian Guardianship and Administration Council, which is a national body that brings together all of the tribunals, the public guardians and advocates and the financial managers of State trustees.

We are both very familiar with the development of guardianship legislation and practice in Australia over the past 25 years, and in another role in another time and place I have done consultancy work looking at that very issue of adult guardianship legislation in Australia and to a lesser degree internationally. I do not claim expertise in that area but some knowledge. We would also note with some concern the practice experience in Victoria and Western Australia, and in Western Australia of course I experienced the very early version of the Guardianship Board, as it was then. When I resigned as Public Guardian in Western Australia it was still the Guardianship Board. I observed its transition into an administrative tribunal.

The major concern for us is the potential of the erosion of a three-member tribunal and the quality that that brings to the decision making. We have observed over the years that erosion in other jurisdictions where they have moved from a discrete tribunal into a broader administrative tribunal and that is of concern. We also acknowledge the very real difficulties in evaluating some of these changes. I think it is not unfair to say that all of the jurisdictions in Australia are looking with enormous interest to see the outcome of the Victorian Law Reform Commission's Review into Guardianship Legislation. Their discussion paper was extremely comprehensive. It is the first to have addressed the real issue of Australia's commitment to the UN declaration and those principles and how we do that in practice, which is a significant initiative, to which Australia is now not only a signatory to the convention but also the optional protocol, so that binds us in a different way. We are all looking to that very carefully.

I think in time over the years that I have been involved of note for me is that when I was appointed as Public Guardian in Western Australia I did a national tour. The jurisdiction that struck me as the leader in terms of its effectiveness in dealing with people with a disability in the most sensitive and appropriate way was New South Wales, and I believe that remains the same. I think it is interesting, and perhaps no accident, that the governments of Hong Kong and Singapore also sought to send their investigative teams to look very closely at the New South Wales system and, to a significant degree, Hong Kong looked more closely into its legislation. I think internationally there is a very great interest in the work that is done here.

The three-member tribunal for all new and complex matters is, as I have said, a very well respected benchmark but it also provides those of us down river, as we are, with the incredibly invaluable tool of written reasons for decision of which other jurisdictions do not have the benefit. We rely very heavily on that material to assist us in the beginning relationship that we have to have with our clients because therein we understand why the order was made, what the very particular issues are in relation to this person and it assist us in how we should respond to them going forward.

In summary, I think we would say to you that we believe you should need to be provided with very strong evidence that an amalgamated tribunal would improve the current system. It is perhaps seen as the trite comment but sometimes only too true that if it is working very well why change it? That, I think, is a question for the Committee to overcome respectfully in our opinion. We would both be happy to answer questions.

Mr DAVID SHOEBRIDGE: The Committee heard both from the Mental Health Review Tribunal and the Guardianship Tribunal that having a skilled registry staff who can do a triage early on enables priority matters to be dealt with quickly and can determine the process that happens after that. From an end-user perspective how do you see that working?

Ms DODDS: They are slightly different in the way in which they approach from the end-user perspective. The registry of the Guardianship Tribunal produces very comprehensive information which we, as parties, receive before a hearing. Even though we do not, in terms of a new application, actively participate in that hearing, nevertheless we receive all that information. We are the recipients of a wealth of background which is invaluable to assist us. A different level of information comes from the Mental Health Review Tribunal. It is not as expansive and it is absolutely and particularly, and rightly in that jurisdiction, focused on the medical evidence before the tribunal of the current status of the mental health of that person. The guardianship one is broader.

Mr DAVID SHOEBRIDGE: The Guardianship Tribunal states that many of its matters have ongoing ramifications, much of which are matters that you handle often for years after a decision is made. Do you find matters being brought back to the Guardianship Tribunal?

Ms DODDS: Yes.

Mr DAVID SHOEBRIDGE: Is that effective? Is it resource effective for your organisation?

Ms DODDS: It happens in two ways. A guardianship order must be reviewed on a regular basis, according to the legislation. The Office of the Public Guardian, if appointed as the guardian, will prepare a report in preparation for that review outlining its work in that period. If we are also appointed as financial manager, and we are in the majority of instances when a guardian is appointed, we too have to prepare a report for that review, and those reports are considered as a part of the process. A financial management order is not required at this point to be automatically reviewed, but they can be brought back on request. Both can be brought back.

Mr DAVID SHOEBRIDGE: Ms O'Neill, you may have more ongoing interaction with those regular reviews. How do you find that happens?

Ms O'NEILL: The review date is set in the initial order and processes are set up for the tribunal to send us notice. It is all fairly automated in terms of sending staff when information is needed to the tribunal and reports go. I guess we have had many years to work together to get the processes flowing.

Mr DAVID SHOEBRIDGE: What about the regional coverage of the Guardianship Tribunal and the Mental Health Review Tribunal? You must have many people with whom you are dealing from the regions and rural areas. How does the regional coverage of those tribunals operate?

Ms O'NEILL: I do not have any knowledge of the Mental Health Review Tribunal because we work only on the guardianship side of things. My team does community education for the Public Guardian so we get in New South Wales as well to talk to people. When we are talking about guardianship we always ask about their experiences of the tribunal and hearing processes and so I am aware from that work that the tribunal is a presence in the community around New South Wales. Our staff would usually attend those hearings by phone; we would not be present at most of the regional hearings.

Mr DAVID SHOEBRIDGE: Do they have good facilities for telephone interaction? Is it a meaningful process?

Ms O'NEILL: Yes.

Mr DAVID SHOEBRIDGE: Would a more sophisticated internet connection, say Skype or something superior, be a better way to interact?

Ms O'NEILL: It could be. We have started to work a bit more with Skype with visiting our own clients. I would imagine that is an area that could be developed in some situations. It will not be appropriate for all clients. Not all people who are subject to the application are able to participate in that way and for some people it might be insensitive.

Mr DAVID SHOEBRIDGE: Why would the basic structure of a three-member multidisciplinary panel with a requirement for written reasons not work within a larger tribunal?

Ms DODDS: My comments earlier relate. They are observations in other jurisdictions where the elements of a three-member panel commenced but the practice is that that has eroded over time, and that has been the concern.

Mr DAVID SHOEBRIDGE: But it is made as a statutory requirement.

Ms O'NEILL: That would be a very interesting proposition, but it has not been done anywhere else and we can only reflect on what has happened elsewhere. If you were to mandate it that would be very interesting because I think the major concern around Australia from organisations such as ourselves, and particular advocacy organisations, from whom I know you will hear, has been the erosion of that quality of decision-making.

Mr DAVID SHOEBRIDGE: That is what the statute would be about. Written reasons are a requirement as well as three-member panels.

Ms DODDS: Interesting—your call in a recommendation. We say very strongly that the retention of a three-member panel is benchmark. I can say no more.

CHAIR: You say it is interesting but would you support it?

Ms DODDS: We very much support the retention of three-member panels.

CHAIR: You mean interesting in the sense that, yes, you think that would be a good idea?

Ms DODDS: Yes, no-one else has gone near it around Australia. It has always had that other flexibility to go to one-member panels and that is precisely where it has gone.

The Hon. SARAH MITCHELL: I asked the Guardianship Tribunal about the concept of a single registry as opposed to a single consolidated tribunal. Do you have any thoughts on that?

Ms DODDS: No, and I do not feel we can have a view about that. As I said at the beginning, we do not have practical experience of the workings of a registry to really give you an informed comment. I think those comments really can only come from those who do. We do not.

The Hon. SARAH MITCHELL: I refer to access in regional areas. Do you think a consolidated tribunal would improve such access or do you share the concerns of the Guardianship Tribunal that in other examples, such as the one in Victoria, it has not been so successful?

Ms DODDS: I think the Victorian experience is of concern. I do not have a problem with the regional scope that the Guardianship Tribunal has at the moment. I think it is very good. If a consolidated tribunal can improve on that, well and good, but we do not see a problem with it. It works in practice. We do not participate physically in very many hearings because we have 9,500 people under financial management and a further 3,000 with a private financial manager. We are involved in any hearing that relates to any of those clients so we cannot do all of them but we are linked by phone, available, and that works perfectly well.

The Hon. SHAOQUETT MOSELMANE: Will you elaborate on the risks to which you referred? Are you referring to risks of an amalgamated tribunal?

Ms DODDS: The risk that I referred to is the dilution of the current experience of a three-member tribunal and its very particular focus on the persons themselves. I think that is something that distinguishes, frankly, both the Mental Health Review Tribunal, which I can speak about because we receive its orders, and the Guardianship Tribunal, both of which are very human-rights focused. When you look at the list of other tribunals you will see that their focus is quite different. The focus of the Guardianship Tribunal is absolutely on the person with the disability. The focus of the Mental Health Review Tribunal is on the person with the mental illness, their current state of health and the community. Those I think put them into a different place and space to, frankly, all the other tribunals and they need careful consideration.

The Hon. SHAOQUETT MOSELMANE: Why could not a larger consolidated tribunal focus on the human rights of the individual as you do at the moment?

Ms DODDS: Theoretically they can, and I refer to the concerns expressed about other tribunals in other jurisdictions where, over time, what has been seen has been a dilution of that expertise and effort. When we are looking at people who are so vulnerable and whose ability to understand what is going on very often in their life, let alone facing a legal process, is already compromised then I think we owe a very high level of duty to that group.

CHAIR: Earlier when you referred to Hong Kong and Singapore did they show an interest in the New South Wales Trustee and Guardian?

Ms DODDS: No, in the guardianship legislation and jurisdiction in New South Wales.

CHAIR: You said they showed an interest. Is it a model they followed?

Ms DODDS: I would like to take on notice if I could. I would not want to mislead the Committee about Hong Kong. Certainly I know that in Hong Kong they have established a similar tribunal but I would need to return to you with details about that. I am unsure about what happened as a result of the Singapore experience. It was before my time as Protective Commissioner. We could look into that for you.

The Hon. PETER PRIMROSE: This is probably a very expansive question. One of my experiences here is that particularly subnational governments often overlook the international obligations which they are also parties to. I was impressed by the fact that you made reference in your initial address to those and our international treaty obligations. Without being restricted to our international obligations, could you talk about what in your view are the overarching principles and obligations that should underpin our considerations of our terms of reference? That is a large question. Please feel free to take it on notice.

Ms DODDS: Could I do that? I am looking at my time, and knowing yours, and anyone who knows me knows that I can talk under wet cement.

The Hon. PETER PRIMROSE: And I can ask questions under wet cement. Please feel free. I am particularly interested in ensuring that the Committee will have complete awareness of those international obligations but please do not be constrained by looking at that. What are those key principles?

Ms DODDS: I am happy to do that.

CHAIR: Thank you for coming and assisting us in our deliberations today. It may be that further questions will arise as a result of what has happened today. If there are any, we will get those to you as soon as possible and we would ask you to respond to those by 6 February because of time restraints we have.

(The witnesses withdrew)

JAMES CHRISTOPHER HEATON SIMPSON, Lawyer and senior advocate, New South Wales Council for Intellectual Disability, affirmed and examined:

JEANETTE McDONALD MOSS, AM, parent of a person with a disability, sworn and examined:

CHAIR: Would either of you like to make a short opening statement?

Mrs MOSS: Yes, and I value this opportunity. I am only going to speak from direct experience, things that I have experienced as a parent and my direct experience as a member of various tribunals. I am in the fortunate situation of being able to call on direct experience as against speculating from an observer's viewpoint. I am a parent with 50 years experience of caring for and looking after the interests of my son. He suffered brain injury at birth causing intellectual disability. Then, in early adulthood, he suffered a major injury at his workplace, resulting in severe brain injury, loss of memory and ongoing health issues. That brief introduction will give you a picture of what life has been for my son, for me, for my late husband and for my other children. Disability introduced us to a life, along with families in similar situations to our own, that is never normal and a life where there will be constant ongoing worries until the day I die.

In years gone by, I and other parents in similar situations were often considered to be uninformed and not able to have a rational or reasonable view on what should happen or be provided and, most importantly, our children with disability were not seen, not asked how they felt and what they wanted, and often not listened to. It is because disability came unexpectedly into my life through my son's disability that I have been involved with other families and people with intellectual and other disabilities for about the past 40 years or so. Therefore, I have a very good idea of what works and what is needed.

In the late 1970s and early 1980s, and certainly when I was a director and chair of the New South Wales Council for Intellectual Disability during the first half of the 1980s, we were concerned about the lack of an appropriate forum for people with intellectual disability. The limited avenues available at law then meant that others generally made decisions for a person with a disability, particularly where people with intellectual disability were concerned. For years I was told of the distress felt by parents whose sons or daughters lived in large government-run institutions where the medical superintendent made the decisions without reference to the family and certainly without reference to the person living in their institution.

At that time we looked at a mental health law and decided we could not see anything which could be developed appropriately through that that would meet the needs of people with a disability. We knew the essential components we wanted if people with intellectual disability and their families were to have confidence in a place which had the authority to appoint a guardian or a financial manager to make decisions about some aspects of the life of a person with a disability. The guardianship legislation of 1987 is the result of that strong advocacy contribution and from the advocacy from other disability sectors, and it comes from a commitment that crossed both sides of the Houses of New South Wales Parliament at that time.

Having good legislation is not the end of the matter; it is the means. Since the Guardianship Tribunal commenced in 1989 I have had countless opportunities to support people with intellectual disability and their families, understand where there is a need for guardianship and/or financial management and then to help them in their preparation and applications. I have been through that process myself with respect to my own son. I have listened to the worries of so many people about what is ahead when it is appreciated that some sort of decision-making authority is needed. I have been able to walk and talk with them about their apprehensions about a tribunal which, in the eyes of many families, can equate to a court and having done something wrong.

I have heard them talk of the helpfulness of tribunal staff and the getting together of information and other people who need to contribute to a hearing before the tribunal. I have heard those people confirm that what I told them was true, that the tribunal members were human beings and that they were able to tell them what they wanted and, most importantly, their son or daughter or loved friend was able to express their views directly to people who listened and seemed to be very knowledgeable about their disability. Most importantly, it had not turned out to be the frightening experience they had first thought it would be and they knew at the end of the hearing what decisions had been made. That is direct experience, very personal and amplified many times over by what I know from others.

In addition to that direct experience of the law and the way it is being implemented to the satisfaction of a very considerable number of people with disabilities, I must add that I have direct experience also from the

other side of the table. I was a member of the guardianship Tribunal for 19 years in the community membership category. I have strong views about the qualification relevance of members. I believe the balance I was able to bring to the tribunal, based on my experience as a parent and advocate, my close relationship to so many people with disability and their families, my knowledge of government disability bureaucracies and service systems, made me a useful, understanding and relevant member.

My membership of tribunals is not confined to the Guardianship Tribunal. In the past I have been a member of the New South Wales Medical Tribunal, a really interesting and valuable experience working with judges and the medical profession; a member of the Community Services Appeals Tribunal, hearing mostly appeals about how government disability services operated regardless of the law; and, until very recently, a member of the Administrative Decisions Tribunal in the Community Services Division and occasionally assisting the president on complex appeals in the Protective Division; and for a number of years I served in a voluntary capacity as a member and chair of the Consumer Committee of the Health Care Complaints Commission.

So, in the matter that concerns this Committee I am in the position of being able to draw on a wide range of experiences. I can draw on my Guardianship Tribunal experience and contrast that with how other tribunals and systems operate. I can look from a parent's perspective and how a tribunal whose only focus is on disability and the person with disability and which is able to specialise and focus and build up experience and, most importantly, feel no discomfort from talking directly to a person with, say, a cognitive disability, whether that person is a young person or an older person with a dementia diagnosis. I compare that total package with the systems in place in other tribunals. I absolutely know, based on my varied experiences, which system works best for people with disability.

Every one of us is either the son or daughter or friend of someone who may need a substitute decision-maker. A number of us would have elderly parents who could need limited guardianship or financial management issues sorted out according to the New South Wales Law and in the least intrusive manner possible. Without hesitation I believe that the well-informed, well-prepared processes that lead to an informally conducted and sympathetic hearing before a tribunal that has relevant qualifications and experience as developed by the Guardianship Tribunal is what our family members and friends will be most comfortable with.

After all, what we are about and what I believe the Government of New South Wales wants advice on is what is the best tribunal system for New South Wales citizens. When it comes to disability and the special needs of people with disability, young or old, I believe the Government wants particular advice on how to enhance and improve the experience for those people when the law is involved. Merging the Guardianship Tribunal into a super tribunal, for many reasons, is not the way to improve the current Guardianship Tribunal process. The New South Wales Government—both major parties—has good reason to be proud of what has been developed and which runs now. As an earlier witness said, what's working, why change it?

The Hon. SHAOQUETT MOSELMANE: You have clearly outlined your experiences with the tribunals.

Mrs MOSS: Yes.

The Hon. SHAOQUETT MOSELMANE: What do you fear most will happen if the tribunals were consolidated?

Mrs MOSS: A number of things. From my experience, I fear the loss of direct experience and comfortableness of people who perhaps have that range of experience will be lost as super tribunals seek to be more efficient and cross use of personnel. That is one major thing. I have been a strong agitator within the Guardianship Tribunal over the years about the role of particularly the community member, the person with the direct experience, often with a person with a disability and a very comfortable manner. That was hard fought for. When guardianship legislation was being looked at, the Supreme Court and Justice Street were around in those days. Certainly the categories of membership in those days that they were looking at initially were a legal member and a professional member such as a psychiatrist or other professional. It was a hard-won battle to Justice Street, who saw the benefits of people with direct experience sitting on tribunals and their expertise in a practical way being an advantage to make good decisions based on their knowledge. I would really be worried about that happening. I know on other tribunals I have sat on where it is said that the person with a disability is the focus and in gathering information it is generally very limited knowledge that members have of the direct

personal circumstances of the person with disability or the organisational structure before them. That would be the major concern.

Mr SIMPSON: Could I take that little bit further. To me, the other key feature, going back to questions that Mr Shoebridge has asked of other witnesses, certainly you could amalgamate the Guardianship Tribunal with other tribunals and include specific legislative guarantees that there would be three members and so on, but what I do not think you could guarantee through legislation and what I think are great dangers are the quality and expertise of those members and the kinds of advantages talked about in the issues paper.

For example, an advantage of a super tribunal is greater flexibility in the allocation of workloads and resources. So you have a panel dealing with residential tenancy cases or professional disciplinary cases in the morning, they do not have anything on in the afternoon. What are we going to get them to do? We will get them to do guardianship cases. That may well be quite inappropriate expertise being moved over to the afternoon, especially in the legal member. The legal member often is the person who can either have great respect for their colleagues as equal participating members of the tribunal or, as it is sometimes colloquially put in legal circles, see the other members as bookends and treat them in that way. There is just one example of the real danger, irrespective of what the legislation with the best of aspirations might say.

Secondly is the matter of the investigative staffing the tribunal has. Absolutely essential, and it has been touched on already today, to getting the case to the point where the person with disability and their family members know what is going to happen, feel reasonably comfortable about the fact what is going to happen in this hearing and that they are going to have their say is those investigative staff. Also to gather information together—this is something the Mental Health Review Tribunal, unfortunately, does not have the staffing to enable it to do—to ensure the tribunal has all sides of the story, not just the information that the health service or the hospital provides, but the broader range of evidence that the person with disability inherently and their family members often have difficulty in gathering. Simple budgetary pressures, budgetary allocations within a super tribunal there is every danger that that would lead to that investigative staffing being reduced in numbers, being diluted across the whole of the super tribunal not having the expertise that is needed to deal with guardianship matters.

The Hon. SHAOQUETT MOSELMANE: Perhaps this is a continuation of what you are saying, but on page 5 of your submission you say, "We have no confidence that the Guardianship Tribunal would retain its key features if it was absorbed into a broader tribunal." From where do you draw these examples? Do you have an example that supports your argument?

Mr SIMPSON: Certainly. We draw it from a number of things. Let me go back a little bit. I am a lawyer who was a partner in a mid-city firm when Mrs Moss here said to me, "Hey, look, this Guardianship Act is being developed, would you represent the New South Wales Council for Intellectual Disability on the process?" Since then I have worked in the disability field and I should just mention that I am a sitting member of the Guardianship Tribunal and, for that matter, the Mental Health Review Tribunal. So what I am basing what I am saying on is 25 years' experience in the disability world observing what happens in practice in other tribunals, on the Guardianship Tribunal and contrasting that with the experience that I had as a partner in a firm in private practice and immediately seen, when I was going to represent CID on this guardianship working party, that most existing legal mechanisms are simply inaccessible to people with disability. We have got to have something completely different.

When you come to create a super tribunal inevitably and, quite rightly, given the broad nature of the jurisdiction and some of the specific aspects of the jurisdiction, you will have a judge to head that tribunal who, of course, will bring his or her traditional legal approaches to the matter. Those procedures inevitably, I would say, are going to seep through the tribunal. You might say, well, this is just one person's opinion. What has happened in the other States I think is the evidence that draws that out. The other thing I would like to do, and I meant to do this at the beginning, was to table a position statement, which is a joint position statement of our organisation and Alzheimer's New South Wales. The Committee will see that the views and concerns that we are expressing are shared broadly across the range of disability peak groups, across bodies like the College of Psychiatrists, across a very broad range of leading individuals in this State who have touched on the guardianship and disability/dementia fields. Very interestingly, that includes a number of very senior lawyers, including retired judges, who have had to squarely grapple with guardianship issues—retired judges from the Supreme Court and so on.

The Hon. SCOT MacDONALD: You seem fairly adamant that the tribunal should remain separate. If we did go down the path of a super tribunal, is there no scope to have a division almost like a silo so that you retain those aspects, hopefully to maybe even incorporate three members of a tribunal and all that speciality? Is that not possible?

Mr SIMPSON: Theoretically it is possible, certainly, but that is what has been tried in the other States and that is what the Victorian Law Reform Commission is now commenting on adversely about how that has worked in Victoria. It is what the Western Australian inquiries have shown problems with in that State; anecdotally and more recently, similar problems in Queensland. Theoretically, it is possible; in practice I find it very hard to envisage that it would work.

The Hon. SCOT MacDONALD: What are the major drawbacks, if you had to nominate one, two or three major drawbacks that the Victorians are starting to find out about, if that is what you are saying?

Mr SIMPSON: This would come down again to budgetary issues and culture. The Victorian Law Reform Commission's existing paper reports on a very low rate of people with disability even attending hearings.

The Hon. SCOT MacDONALD: Because of that fear of that over-judicial aspect?

Mr SIMPSON: No. That may be part of it, but I think a large part of it is the lack of investigative staffing, the lack of culture in the tribunal to say, hey, this is really important that the person that this case is about actually comes to the hearing and participates as best they can in these vital decisions about their own rights and lives.

Mr DAVID SHOEBRIDGE: Thank you both for attending and particularly you, Mrs Moss, for sharing your personal experience. It is always valuable, sometimes more valuable than hearing from the relevant experts. I am not denying your expertise either. One issue is about consistency in decision-making and the prospect of a tribunal having an appeal division within it, which imposes greater consistency on decision-makers, so that those coming before a tribunal can know in advance what the most likely outcomes are. Do you see any benefits of a larger tribunal having an appeal division or even perhaps putting one within the Guardianship Tribunal?

Mr SIMPSON: I certainly agree with the premise that there needs to be an accessible appeals mechanism. That did not exist in the early days. It was only appeal to the Supreme Court, which is expensive and only as of right on questions of law.

Mr DAVID SHOEBRIDGE: But we have heard today that there have been only 100 appeals?

Mr SIMPSON: That is right but, interestingly, the big change that occurred after about the first five or 10 years of the Guardianship Act and one that we totally supported was to have a right of appeal to the appeals panel of the Administrative Decisions Tribunal. They sit as three members with some degree of expertise. I think that really answers that question. Personally, I would be equally happy to have an appeals division within the Guardianship Tribunal itself.

Mr DAVID SHOEBRIDGE: Within a broader structure might there not be some benefit if you had an appeals structure within a broader tribunal ensuring that one of the members hearing the appeal came from the Guardianship Tribunal so that you retain that expertise on appeal, which you do not get with the current Administrative Decisions Tribunal or the Supreme Court?

Mr SIMPSON: I certainly think that having expertise in the guardianship jurisdiction is important. What we see on the ADT at present is that a number of the members who sit on appeals are former members of the Guardianship Tribunal—for example, judicial member Julian Millar, who is a barrister. Certainly that issue of expertise is important. I do not see there is any legal reason why you could not specifically allow for people to have co-appointments to both. Senior members of the Guardianship Tribunal could also be appointed to the appeals panel of the Administrative Decisions Tribunal.

Mr DAVID SHOEBRIDGE: My next question is probably to both of you. We have heard many people come before us and say that they have had multiple appointments: they sit on this tribunal, that tribunal, the other tribunal and this tribunal. Obviously, that person has the same skill package, yet they are applying it in

different tribunals. Do you not see that such cross-pollination of membership of the current tribunals is a reasonably cogent argument for suggesting there is a great deal of commonality in the process and structures of administrative tribunals? Or do you disagree and, if so, why?

Mrs MOSS: I can think of a very pertinent comparison. When I was sitting on the Administrative Decisions Tribunal over and over when people knew I was a member of the Guardianship Tribunal it would be, "We wish we had the supports and the expertise that the Guardianship Tribunal has built up." Certainly at the Administrative Decisions Tribunal there is not the registry staff, there is no preparation before a hearing. You go in blind with a bunch of papers and as tribunal members you work out what to do. The enormous advantage of that pre-hearing preparation of the Guardianship Tribunal, the comfortableness of the people with the disability, is something to be treasured, honoured and kept sacred. We do not have that in the Administrative Decisions Tribunal. Whilst there might be members sitting on various tribunals, certainly I would be surprised if there is a person who does not envy the sorts of supports that have been built up around getting the right answers and the right structures and the right involvement for people with disability, as exists in the Guardianship Tribunal.

Mr DAVID SHOEBRIDGE: We are looking beyond the Guardianship Tribunal. One of the great benefits that might be available would be bringing that kind of expertise and skills within the larger tribunal. You are looking at it from a position of fear. Do you see any potentials of benefit in having a larger tribunal with this element, which respects community members and which has better hearing preparation? Rather than looking at it as the glass half full, could you look at it from that perspective, cross-fertilising into an administrative tribunal?

CHAIR: Is it not the situation that you are on two tribunals, Mr Simpson?

Mr SIMPSON: Correct.

CHAIR: Do you feel that you have the expertise to properly serve on both of them even though it has been pointed out that there are quite distinct features about each tribunal? So following on from Mr Shoebridge's question, does not your own example establish that that is a principle that can be pursued?

Mr SIMPSON: I think there are particular similarities between the Mental Health Review Tribunal and the Guardianship Tribunal. Certainly they are dealing with people with limited capacity to protect their own interests. In my personal case, yes I have the experience that makes me, I feel, well qualified to sit on both those tribunals. But if you look at the membership of the Guardianship Tribunal, which has been very fortunate over the decades—I think Mr Primrose may be able to attest to this—to have been able to have its members selected by a rigorous merit process over the 22 or so years of its life. It would be only a small proportion of those members who sit on other tribunals because of other expertise they have, certainly. I think that would largely be the legal members or at least people on the Mental Health Review Tribunal. The notion of increasing the accessibility and sensitivity of all tribunals to vulnerable people and people with disabilities is noble, but unless you were going to increase the budget of all of those other tribunals very considerably and make someone like—I should not in any way personalise it— the person who you appoint as president of the Guardianship Tribunal president of the super tribunal, then those changes would not flow. So the aspiration I agree with. If the Committee could come up with the resources and the political decision that we are going to make all these other tribunals as much as possible like the Guardianship Tribunal, then that might be very laudable, and certainly would make the whole world much more accessible to people with disabilities.

But what our experience shows us is that mainstream bodies do not tend to be accessible to people with disabilities. That is why we are seeing the need at present to have a mental health commission, for example, to squarely do something about the fact that health services are not properly addressing the needs of mentally ill people. We need to have another specialist body.

The Hon. PETER PRIMROSE: I have briefly gone through the position statement you have tabled. My very broad question, which is what I seem to be asking today, is: How do you think that a proposal to consolidate the Guardianship Tribunal into a larger entity relates to the current policy enunciated in Stronger Together II?

Mr SIMPSON: I think amalgamation would run quite counter to a number of current initiatives in New South Wales, Australia and internationally. Stronger Together II, which is a bipartisan approach initiated with your central involvement, Mr Primrose, and which Minister Constance is carrying forward, is very much about person-centred approaches—working out what is going to work for this individual, which calls for

expertise and sensitivity to people with disabilities in something like a tribunal. If you look more broadly at the national field, we have movements towards the National Disability Insurance Scheme—again, bipartisan—which is along the same sort of track.

The United Nations Convention on the Rights of Persons with Disabilities is very much about access to justice on an individual basis and about minimum intrusion on the lives of people with disabilities and their maximum participation in processes that might seek to take away their rights. I think all of those things are much better served by the existing specialist approach than they might be in an amalgamated tribunal which would not be nearly as sensitive and, I suspect, not as well resourced because of the breadth of demands on it to achieve that.

Mrs MOSS: And would water down the focus on the person with disability—would go against that.

The Hon. SCOT MacDONALD: I am sorry, I did not hear that. I did not hear what you said there, I am sorry. I missed it, I am sorry.

Mrs MOSS: And would water down the focus on the person with disability. That was the addendum that I put to Jim's statement.

Mr SIMPSON: Just very briefly—one other point is that I think is very important is in relation to the Mental Health Review Tribunal. The really big difference is that it has an overt community protection focus. The Guardianship Tribunal, consistent with the United Nations convention, is about the rights and interests of the person squarely. That, to me, is the central danger of thinking of merging those two tribunals.

CHAIR: Thank you very much. We have come to the end of our time for this part of our inquiry. There may well be some further questions that will arise and we will get those to you as quickly as we can.

Mr SIMPSON: Certainly.

CHAIR: We would ask you to respond, if you could, by 6 February because there are time constraints on us.

Mr SIMPSON: Certainly.

CHAIR: Once again, thank you very much. Your assistance has certainly been a great help to us.

Mrs MOSS: Thank you.

(Short adjournment)

PETER GEORGE DODD, Solicitor—Health Policy and Advocacy, Public Interest Advocacy Centre, affirmed and examined:

CHAIR: Ladies and gentlemen, I welcome our next witness, Mr Dodd, who is a solicitor dealing with health policy and advocacy from the Public Interest Advocacy Centre. Mr Dodd, would you like to commence by making a short opening statement?

Mr DODD: I will, Mr Chairman, thank you. The Public Interest Advocacy Centre [PIAC] is an independent non-profit law and policy organisation. The Public Interest Advocacy Centre identifies public interest issues and works through legal advocacy and systemic advocacy to achieve public interest outcomes. As you will note, the submission by the Public Interest Advocacy Centre concentrates mainly on the health disciplinary tribunals and proposed amalgamation between the Mental Health Review Tribunal and the Guardianship Tribunal. We certainly have prior expertise in these areas and certainly, in terms of advocacy on health consumer issues, that goes right back to the days of the Chelmsford royal commission and the formation of the Health Care Complaints Commission [HCCC] in New South Wales.

The Public Interest Advocacy Centre does see a public interest in establishing inefficiencies in terms of tribunals in New South Wales, in particular if these efficiencies lead to greater access for disadvantaged groups and people in rural and remote areas. However, the Public Interest Advocacy Centre strongly believes that where tribunals have been set up for a clear public purpose and have developed a particular level of expertise, it is not in the public interest to merge these tribunals with other tribunals: By that I mean merging with tribunals with different expertise and tribunals that apply different bodies of law and practice. There is a public interest in having tribunals with highly developed skills, consistent decision-making, adequate funding and accessibility to disadvantaged groups. Somebody is here from the Aboriginal Medical Service who was talking to me earlier and seeks to have an input. It is important that, for example, Aboriginal and Torres Strait Islander people have maximum access to tribunals. And, of course, if those tribunals have particular programs that are targeted at those groups, then it would not be in the public interest to put those in jeopardy.

Having those criteria in mind, the amalgamation of the existing health professional tribunals meets those criteria. There are highly developed skills in terms of some tribunals. Certainly it would be an advantage if those skills were spread out across all health professionals. I think there is a need for more consistency, especially in terms of outcome of health practitioner tribunals. In some respects, certainly in previous years, some of the smaller tribunals have been a little bit more loath to deregister health professionals when it was appropriate. There needs to be consistency of outcome across the tribunals. As our submission suggests, if we had one amalgamated health professional tribunal, it would be much more accessible. Except for the medical tribunal, the public really cannot access tribunal hearings currently. They are, in effect, behind closed doors.

But in the case of the amalgamation of the disciplinary tribunals, a larger health disciplinary tribunal body with the Industrial Commission and the case of the proposed amalgamation between the Mental Health Review Tribunal and the Guardianship Tribunal, the Public Interest Advocacy Centre does not think that that would be in the public interest. In relation to those amalgamations, you are putting tribunals together which have very different skill sets required for participation and very different sets of legal principles. One of the outcomes of that may be that, in effect, there may be more cost. In particular, if you get people without the expertise, there is a tendency to have more appeals, which in the long run is going to cost everybody concerned. We do not support those two propositions. I can elucidate that in response to questions.

CHAIR: I will start by asking the first question. What about a new single registry service as opposed to a separate one for each tribunal? What do you say about that, as the Bar Association is suggesting?

Mr DODD: I do not think there is any difficulty with that. I think that one goes with the other. I think you will find we have recently gone through a process where—

Mr DAVID SHOEBRIDGE: No, just the single registry service, but then keep the tribunals operating separately.

Mr DODD: Oh, I see.

Mr DAVID SHOEBRIDGE: I think that was the Chair's question.

Mr DODD: I do not think that would resolve some of the issues that I am talking about. I think you will find that some of them operate—for example, the nurses' tribunal and the psychologists' tribunal—in some ways in tandem. I think that as a separate idea is not a bad one, but I do not know whether that necessarily would negate the need to have an amalgamated tribunal. I think there are advantages in an amalgamated tribunal that are not just to do with what services the registry would provide.

CHAIR: But that is a specific instance referred to by the Bar Association.

Mr DODD: Okay.

CHAIR: You are not opposed to that?

Mr DODD: No, I am not opposed to it, but I think there are particular advantages that flow from an amalgamated tribunal as distinct from the registry. I was about to say we recently had an amalgamation, you know, involving the national registration scheme. The Productivity Commission in 2005 made recommendations in terms of amalgamating boards, registries and all those sorts of things across all professions. I think there are strong reasons why health professionals should be dealt with as one group rather than being split up.

Mr DAVID SHOEBRIDGE: But I think the Chair's question is this: You could on the one hand crunch together the health professionals into one single tribunal, but then the registry that you use for that maybe-amalgamated tribunal is also the same registry that an administrative board or an administrative organisation would use, and that the Guardianship Tribunal and the Mental Health Review Tribunal may use. I think they are probably separate questions.

Mr DODD: Sorry, my misunderstanding. The answer is yes, to an extent, although the arguments about expertise also go to the registries themselves. It comes back to the accessibility question. Talking very broadly about tribunals, a consumer coming in off the street needs to get advice from the registry and if the person they deal with does not have that expertise that is a distinct disadvantage to the consumer—the public. Again, I refer to Aboriginal and Islander issues. If a tribunal or body has developed particular expertise in dealing with Aboriginal and Islander people and suddenly the tribunals are amalgamated and that expertise is lost I do not think that is in the public interest.

The Hon. SCOT MacDONALD: Could you further explain your comments about a lot of the medical tribunals being held behind closed doors? Why is the medical profession entitled to less scrutiny?

Mr DODD: I am sorry, you have misunderstood. The medical profession hearings are not behind closed doors. The Medical Tribunal consists of a District Court judge, two health professionals and a lay member and the hearings are generally held in the District Court in Goulburn Street and you can walk in and out. However, the Nurses and Midwives Tribunal and all the other tribunals are generally held in places that are hard to get to. You need a pass and whatever. Witnesses get there but it is not accessible. The Medical Tribunal is accessible. You and I and anyone else can walk in and look at the Medical Tribunal in operation.

The Hon. SCOT MacDONALD: Would the sky fall in if the nurses and others you mentioned had more public scrutiny?

Mr DODD: I think it would be excellent if there was more public scrutiny. There are privacy issues but the tribunal can handle those with non-publication orders, which all those tribunals make. That is the problem. You will not find these tribunals in the newspaper where other court hearings are listed. I think that is a disadvantage. I think all courts—PIAC would take this view—should be open subject to particular issues such as privacy, which are in the control of the courts. It would be wrong to say they are deliberately held in secret; it is just that that is the nature of them. The same applies to an extent to the Mental Health Review Tribunal. It is not exactly open out there in Gladesville, but again there are privacy issues involved.

Mr DAVID SHOEBRIDGE: What about the Guardianship Tribunal?

Mr DODD: I am not as familiar with that. Clearly there are arguments when human emotions and very important issues are involved for tribunals to have the power to say a hearing will be restricted, but I think the general principle should be that tribunals are open and accessible.

The Hon. SHAOQUETT MOSELMANE: In your submission, in point 2.2, you make reference to a model. Can you explain what model you are talking about? You say, "...depending on the model for reform adopted by the Government". What type of model do you see as appropriate and that you would support, and is the Victorian model an acceptable way to go? It is under "Caveats to support of proposed changes".

Mr DODD: It is the question of a tribunal having particular levels of expertise. I hasten to use the word "firewalls" but if a tribunal has a particular set of personnel and support staff and is part of a larger tribunal but quite separate we do not have as much concern. Once you start mixing them you create problems. I understand—and this is anecdotal—that judges of the Industrial Commission are operating on the Medical Tribunal and in our view that is just not appropriate. There are very different criteria that apply. Again this is anecdotal but I have heard there are more appeals arising from those judges of the Industrial Commission for that reason. If you had a tribunal that was quite separate but there were economies of scale in terms of registries and things like that then there clearly are some advantages and we would have less objection to that.

The Hon. SHAOQUETT MOSELMANE: Do you have any comments on the Victorian model?

Mr DODD: Neither PIAC nor I have great expertise on the Victorian model. I was looking at some of the evidence that the Council of Social Service of NSW [NCOSS] gave before this Committee and I think they referred to suggestions that that sort of amalgamation in Victoria had not led to more accessibility for disadvantaged groups or for people in rural and remote areas.

CHAIR: That is not a situation you have looked at?

Mr DODD: No. We sometimes stray outside New South Wales but for practical concerns we are a New South Wales organisation so we do not have any direct expertise about that committee. I reiterate that I have seen some indication that there has not been—

The Hon. SHAOQUETT MOSELMANE: Your submission says that a major consolidation of tribunals may have adverse impacts on Aboriginal, Islander and non-English speaking background communities understanding the system.

Mr DODD: It has that potential. I emphasise—we always make this submission and say this—that anything like this has to have adequate funding. It depends on how much funding it has. If something like this is implemented as a cost-saving measure and corners are cut then obviously it will create access problems. If there was an existing program tailored towards Aboriginal and Islander people and it was continued because there was sufficient funding to do that of course there would be less objection. It comes down to that. I have a feeling—I do not have direct experience—that that has been the problem in Victoria: there has not been that commitment to funding and therefore that access is not available.

Mr DAVID SHOEBRIDGE: You referred in your submission to some benefit in realigning the Guardianship Tribunal and the Mental Health Review Tribunal and said it might reduce the duplication of specific functions. What were you referring to?

Mr DODD: Under the New South Wales Trustee and Guardianship Act, believe it or not, the tribunal has power to make orders that affect people who have been found to be involuntary patients under the Mental Health Act. They are broad powers in the sense that they can go beyond the time that someone is under an order under the Act. The average time that people stay in hospital may be a week or two weeks but the tribunal makes an order—

Mr DAVID SHOEBRIDGE: Which tribunal are you talking about making an order?

Mr DODD: The Mental Health Review Tribunal makes an order that can go for three or four months and it continues unless that person makes an application to have it withdrawn. I think there is probably a need for the Mental Health Review Tribunal to have power to make short orders because it makes sense when someone is under an involuntary order, but that order should not go beyond the period that that person is kept in—

Mr DAVID SHOEBRIDGE: What class of orders are you talking about?

Mr DODD: I am sorry, I should have explained. They are financial management orders.

Mr DAVID SHOEBRIDGE: Which are ordinarily dealt with in the Guardianship Tribunal, which has a great deal more expertise.

Mr DODD: That is right. They are ordinarily dealt with in the Guardianship Tribunal but if someone becomes an involuntary patient under the Mental Health Act there is a clear need sometimes to make short orders to manage that person's affairs, but the expertise should be there. Another issue is that the Mental Health Review Tribunal makes orders relating to forensic patients. I am not sure what the logic of that is. Why should the Guardianship Tribunal not make those orders for forensic patients? I think they have more expertise.

Mr DAVID SHOEBRIDGE: So in some regards if you joined those two organisations together would that be one way of dealing with that?

Mr DODD: I think it would be the wrong way to deal with it, with respect. It is a small problem. The Mental Health Review Tribunal deals with a very different set of issues from the Guardianship Tribunal. It may deal with the same people from time to time but that does not necessarily mean there are the same principles.

Mr DAVID SHOEBRIDGE: So you think they are more subject to, say, tinkering at the edges with their jurisdiction rather than—

Mr DODD: That is right. The Guardianship Tribunal deals with people with physical disability from time to time. It is a very different sort of tribunal.

CHAIR: Except we had a witness give evidence this morning who sat on both tribunals, quite successfully it appears. Do you have any response to that?

Mr DODD: I guess that person may have two sets of skills. It does not necessarily mean there are not some persons with those two sets of skills, but it also does not mean that someone from the Industrial Commission or somewhere else may have those skills. It is possible to have those two sets of skills.

Mr DAVID SHOEBRIDGE: One of the goals of any legal system or administrative system should be consistency and at the moment with an array of different tribunals, often with ad hoc and different approaches, there is a concern among some that that produces idiosyncratic outcomes. Would there be some benefit, even with modest degrees of consolidation of tribunals, in having one tribunal that is a common appeal point for all of them and which might then impose some kind of consistency and enable a ready and easy access to appeal?

Mr DODD: I will answer that in two ways. I think generally that makes sense. I would be reluctant, however, to advocate that, for example, the Supreme Court's overall power in relation to mental health issues be taken away. That has existed for a very long time and it is a very important power although one they do not exercise very much, but it is there because it is taking away people's liberty.

Mr DAVID SHOEBRIDGE: That is a separate statutory review power as opposed to just the appeal position.

Mr DODD: They probably have inherent powers as well, but we will not go into that.

Mr DAVID SHOEBRIDGE: That is right.

Mr DODD: They certainly have that power. What you say makes sense to an extent. An appropriate appeal process is an essential part of any tribunal.

Mr DAVID SHOEBRIDGE: In terms of the goals we are looking at in our terms of reference about consistency, efficiency and access, if you had a central appeal point that was cheap, accessible and easy that might be one way of getting consistency in New South Wales. What are the Public Interest Advocacy Centre's thoughts on that?

Mr DODD: I would have to think about that. It is not an issue—

Mr DAVID SHOEBRIDGE: You could take it on notice.

Mr DODD: We will take that on notice because it is an issue we have to think about. I say that because I would reluctant to take away the Supreme Court's power relating to mental health when there are questions of law. I am not sure whether we would be saying that universally that is an appropriate model.

Mr DAVID SHOEBRIDGE: It may come with an ability to challenge that on law in the Supreme Court.

Mr DODD: Yes.

The Hon. SARAH MITCHELL: One of the suggestions in option 3 of the Government issues paper is to consolidate the Mental Health Review Tribunal and the Guardianship Tribunal. In your submission you state you would not support that. That has come up this morning. There has been some discussion about retaining in the legislation the three-member tribunal and the provision of written reasons for decisions. If there was some way to enshrine that would it alleviate some of the concerns you have about the protective division?

Mr DODD: Yes but I do not think they would totally because I think they deal with different things. I think there is a temptation to say that because they sometimes deal with the same people that they deal with the same issues. The Mental Health Review Tribunal has a balance between the important issue that you do not take away people's liberty without good reason and health issues—the right to health and things like that. The Guardianship Tribunal deals with capacity issues and decision-making. They are different things. They have different tests and different sets of principles and there is no logic in putting them together, in terms of those arguments about expertise or consistency, because they are just such different issues.

The Hon. SARAH MITCHELL: So regardless of whatever model was proposed it is something that you would feel, on principle, is something that would not work?

Mr DODD: That is right. This is the difficulty when you are talking about this. I used the word "firewalls". If there was a division that dealt with mental health issues and a division that dealt with capacity issues and some sort of economy of scale created by a general registry, then there are still concerns that have been expressed but we would have less objection. It is putting apples and oranges together that we do not think makes sense and puts in jeopardy consistency and the expertise that is in existence now. I do not think the outcomes would be good for the people that go before the tribunal.

CHAIR: Thank you, Mr Dodd. There may be other questions sent to you.

Mr DODD: The questions on notice? Will I wait to get all of them?

CHAIR: Yes. We will get those to you as soon as we possibly can. We would appreciate it if you could get a response to us to any such questions by 6 February.

Mr DODD: Thank you very much.

(The witness withdrew)

DAVID SMITH, Senior Manager, Divisional Services, Motor Traders Association, sworn and examined:

CHAIR: Would you like to make a short opening statement?

Mr SMITH: Our submission is restricted to the Consumer, Trader and Tenancy Tribunal. As our submission states, the industrial relations proposals are largely going to be inconsequential to our members because it is all Federal now. So whilst it will have some effect that is not the basis of our submission. By their nature, motor vehicle disputes are emotional matters. I have spent a lot of time in the tribunal, as have some of our members. For a lot of what we call easy disputes, they are managed well by the tribunal. Some of the more complex matters are of concern, in terms of the consistency of approach by the tribunal. Particularly in rural areas it is difficult for me to advise our members on what to expect in the tribunal because different members in different towns take an individual approach. That is the nature of a tribunal that can set its own process and we do not have a problem there.

It can be difficult sometimes when the tribunal member is questioning both applicant and respondent and we are not sure whether we are having a hearing, a mediation or a discussion. Certainly in rural areas, from a mediation point of view—and this is not a criticism of the tribunal members by any stretch—when the tribunal member says, "This is the approach of the tribunal and we must use our best endeavours to have the parties resolve the dispute. Please go outside and see what you can sort out", the reason the parties are there is that they are in dispute. We believe that, even in the city, with mediation—which is a very good mechanism for resolving disputes—appropriate resources need to be provided to that process to allow a full examination of the facts. Sometimes one party needs to be told, "You need to do this or that." In my experience the mediators tend to say, "We need to resolve this, so what is a cash payment that we can make?" That is then the whole discussion, regardless of the merits of the case.

I have been involved in some difficult hearings. I have to say that some tribunal members are very good; they nail the decision and hit it right on the head. Some others though, particularly where it is a technical issue and there are technical reports involved that cost a lot of money for both parties, sometimes I feel that the tribunal members may not be able to interpret those technical reports as well as they could and apply the appropriate weight to them. We have had instances where so-called experts or people engaged as experts, knew less than the respondent. So there is a technical person—somebody from a workshop, for instance—as a respondent, who knows a particular model of car very well and the expert, because they call themselves an expert, is accepted as having a better opinion and therefore the case may be determined on those principles.

We also believe that any merging of tribunals should allow for consumer claims to be heard in a form where they are given the appropriate weight. There were 1,320 applications last year. We are not a big division but we are a specific division. If there is any merging we would like our matters to be handled in a way that allows members with specific knowledge, and certainly from a mediation point of view, appropriate mediation to be applied to those matters as well.

CHAIR: Would the position be that you are not opposed necessarily to consolidation as long as sufficient expertise is maintained?

Mr SMITH: Yes.

CHAIR: That would be your general position?

Mr SMITH: Correct.

The Hon. SCOT MacDONALD: Appeals are only a rehearing, which is a merits or judicial thing I would imagine. If there was a merging of tribunals I think one of the suggestions is that we have a structure like the Administrative Appeals Tribunal or something like that sort of formal structure. Do you have many appeals or requests for a rehearing?

Mr SMITH: I forgot to mention that in my opening. A section 68 application for rehearing—I tell people not to bother. I will not even type them up any more; they are not worth the time. One of the hurdles you have to get over is substantial injustice. I simply do not know how that is applied at all. I have had a case in which no matter which way we crunched the numbers to arrive at the figure we could not make head or tail of it

and we sent a request through for a better explanation and were told, "You have your explanation. That is all you are getting."

The Hon. SCOT MacDONALD: So the way in which the merits appeal system works at the moment is not great?

Mr SMITH: Not with the current Consumer, Trader and Tenancy Tribunal. With section 68 I do not bother because the process is that our members will ring up and say, "I have this application against me. I have been here 20 years and I have never had one of these before. What do I do?" I talk them through the process and, if needed, I will attend with them. But I tell them that they get one bite of the apple and once it is over it is over.

The Hon. SCOT MacDONALD: Do you have many judicial reviews requested through the District Court?

Mr SMITH: We have had a couple. The problem is that the claims may be $1,000 or $2,000 and for a two-man workshop that is a lot when you apply their hourly rate. But in reality that is a cost and also a matter of time. Those people are there to run businesses not to go through the courtrooms and one claim in 20 years. Sometimes you have to grin and bear it.

The Hon. SCOT MacDONALD: Conceivably, this appeal could be an improvement?

Mr SMITH: Definitely.

Mr DAVID SHOEBRIDGE: The appeals would not only give you that individual access to a more just outcome; potentially that would deal with some of the inconsistencies that you see in rural and regional decisions. So you might have a set of appeal decisions you can refer to when you are appearing before people.

Mr SMITH: The appeal to the courts is on a question of law, as I am sure has come up before. We have looked at a couple of cases where we say, "This will have an effect on the industry, whatever that outcome may be." That is not really process driven. The inconsistency comes from the process. We do not get a lot of legal inconsistencies. Our issue is that with technical reports or a broken bolt, for instance, it is the way the material is applied rather than the way the law is applied.

Mr DAVID SHOEBRIDGE: A cheaper more accessible internal appeal, which did not have the costs of the District Court, would be preferable?

Mr SMITH: Yes, like a judicial review where we could say, "This is a specific legal question that has arisen or an inconsistency. Could that be reviewed?" I have had a section 68 in which we have raised an issue and the answer that came back was, "That is a legal question and your appropriate course of action is through the Supreme Court." They will not go near it.

Mr DAVID SHOEBRIDGE: What about the actual accessibility of the Consumer, Trader and Tenancy Tribunal? You seem to suggest it is more accessible in metropolitan areas than it is in regional and rural New South Wales. Can you expand on that?

Mr SMITH: In metropolitan areas there are Fair Trading offices and tribunal offices, so you can pretty well drive to them. Some of the rural ones, the only issue I have had with that is that they may be held in the next town, which might be a 45-minute drive. In fairness to our rural colleagues that is taken on the chin; they are aware of that. But other than that—I am thinking as I am talking—with the exception of where a contract takes place, say, in Sydney and the consumer lives in Dubbo, the application will always be heard in the nearest location to where the contract was formed, so we go to telephone appearances. My advice to people generally is that they are better off to be at the hearing, rather than to do it on the phone.

Mr DAVID SHOEBRIDGE: You are not a tiny player but your industry is a substantial part of the business of the Consumer, Trader and Tenancy Tribunal. Is it about 1,300 applications a year?

Mr SMITH: Correct.

Mr DAVID SHOEBRIDGE: What is your access to the Consumer, Trader and Tenancy Tribunal—to sit down with them and talk about these issues? For example, in the issue involving experts do you sit down and ask, "Can we fix this?" How do you find that?

Mr SMITH: We can sit down and talk and certainly the chairperson, Kay Ransome, has been good to us in terms of accessibility from an industry association point of view. The translation of that into changes, certainly we do not get everything we ask for, but we have raised the technical aspects for some time.

Mr DAVID SHOEBRIDGE: Have you raised with them the concept of maybe a single joint expert where the parties either agree or the tribunal imposes an expert on them to take some of the partisan nature out of the expert?

Mr SMITH: Yes. There is a provision in the Act for assessors which I believe is used more in the home building area. From our point of view we have asked for that and, no, we have not got it.

CHAIR: Was any reason given for you not getting that?

Mr SMITH: Off the top of my head, no, but I could have a look and see. I think it is more—and I am going from memory so I will definitely be corrected on this—from a cost to the tribunal point of view. I know the assessors, I have said there is a provision of assessors. It is just not being favourably looked at. I have asked for—

Mr DAVID SHOEBRIDGE: The parties can share the cost.

Mr SMITH: In an ideal world. I have people who, for a $2,500, $3,000 claim, are looking at $1,500 worth of expert reports. The way the tribunal applies expert reports, they will always take precedence over someone, say, a respondent workshop. The expert will always be heavier weighted or have more weight applied to it. With the home building, for instance—and I am going on how I understand it—there is a conference to assess the issues and see what can be resolved on site. I know the value of those claims is quite substantial compared to some of ours. But at least there is an expert going through the issues with them, spending time with the parties to see what they can agree on, see what they do not agree on and perhaps even, without advising but just say, "Look, this is how that is and that is how that is". Certainly for a new motor vehicle claim, you can get into quite some heavy money there. There is an open case at the moment—this one has not been determined—but it must have had several hearings, if not eight or nine, and I know on at least two or three of the orders it has had "no further extensions will be given" and then six weeks later there is another extension. No substantial evidence has even been provided to date on that one. A kangaroo could not even jump over the evidence that has been put in on that one. It is terrible.

CHAIR: On the question of this expert evidence, if you have a case for $1,000 there is also a question of proportion involved in these things.

Mr SMITH: Certainly.

CHAIR: At some stage someone has to make a decision. You talk about a claim of a few hundred dollars or $1,000. How far do you go with automatic appeals on facts?

Mr SMITH: Certainly, on those lesser claims, they are the ones like, I think statistically—and I am going from memory once again—I think 60 per cent are resolved at a first hearing. They are the easy ones, like less than $1,000. Business people can make a business decision and say, "I don't want to be here. I will just sort this out." Once you start getting to failed engines and transmissions, where you are up $5,000 and $6,000 that sort of twists it just a little bit, where you go, "I really have to protect something here." So, no. The issue with the technical ones is more—and I hate to put dollar figures on these but you are sort of getting into the couple of thousand plus. I mean, a couple of thousand for some businesses is not as much of an impost on a sole trader, for instance. At $1,000 that is 100 working hours that they have to find.

CHAIR: So your solution?

Mr SMITH: One solution would be where there is a complex technical nature, so not just these little cases, either an assessor be appointed or members with specific or demonstrated technical knowledge where they can interpret reports or be able to see, without the reports, just where things sit and what has happened here,

as opposed to a tribunal member who—when applying the law, that is great. They all can do that. But we want to look at the technical side of it. For a start the mediation or alternative dispute resolution, better resourced with people who can interpret mechanical things preferably, tribunal members who can interpret technical evidence and on the bigger cases or the messy expensive cases have an assessor appointed.

CHAIR: This is an issue that will be faced by a single tribunal or—

Mr SMITH: A multi-tribunal. That will come up.

CHAIR: So that is—

Mr SMITH: That is correct. I mean, they are disputes. They are messy. People get emotional. It is just a way that these have to be done.

CHAIR: That is just the way it is.

Mr SMITH: That is right. That is exactly right.

The Hon. SHAOQUETT MOSELMANE: In relation to the submission on page 3 under the summary you say, "It is the view of the MTA that there would be some real benefits achieved to both governments probably by merging some or all tribunals in New South Wales in some form with the Industrial Relations Commission." Can you expand on this? What are the benefits that you foresee? What if the Industrial Relations Commission's powers have been diluted in the process? Would that change your position in the comments that you make here?

Mr SMITH: No, and I will qualify that with I am not an industrial relations person. In the submission we are registered both State and federally and I sought advice from our deputy CEO on industrial relations on that and he said—they are his words—this is going to be largely inconsequential to us or our people. The benefits come from two things: cost—if the State can save the public's money obviously there is a benefit there—and also done correctly people would have almost a single port of entry where they could go. When I say "done correctly" I mean where their case or their application or their problem is put into the right division or area or place within a merged tribunal where that could be dealt with appropriately.

The Hon. SHAOQUETT MOSELMANE: So you assume that a consolidated tribunal will have different divisions?

Mr SMITH: No. It would have to have something, I would imagine, because if every case went into one big melting pot and a person had to make a decision on that, I think that would be pretty difficult for them. And also from an access point of view to the public it would probably be a bit difficult for them just to, even with the legislation, which bit of legislation are we working on here?

The Hon. SHAOQUETT MOSELMANE: Is the current system you are operating under working?

Mr SMITH: For us, for the CTTT?

The Hon. SHAOQUETT MOSELMANE: Yes.

Mr SMITH: It is working and better outcomes could always be achieved with better management or better resources. I probably should not say management. I have a good relationship with the chairperson and certainly, as I said earlier, from an access point of view I have never got an issue there. It is just some things getting the change through that just can be a bit difficult but that happens.

The Hon. SARAH MITCHELL: I want to turn briefly to how other State jurisdictions have handled the consolidation of their tribunals, such as Victoria and Queensland. I do not expect you to have extensive knowledge. I just wondered whether you have had any conversations with your colleagues from other States about how your industry has found the consolidated system is working in places like Victoria.

Mr SMITH: In Victoria, there is generally—and I have not had a formal discussion on this—the talk across the table is that it is like ours, it is working well. It is a system that needs to be in place. I actually attended a hearing in Victoria some time ago. One of our members was a respondent in a case. Certainly from a

where are we up to point of view it was much more difficult to get information from them. With ours we know we have our initial hearing or directions hearing and then we know what to expect, blah, blah. But with the Victorian one we attended a hearing. So we flew down to Melbourne. Like a court, we got called in a list, so we just had to be there at, for instance, 1.30. We got called in at about 2.30 or 3 o'clock and the member sat down and the first thing she said was, "We're not going to hear this today."

The Hon. SARAH MITCHELL: Just to clarify, this was when Victoria was under the merged tribunal?

Mr SMITH: This was only six months ago. Then when we went back—we had a big gap; we did not get any paperwork—we actually wondered whether it was still alive, so to speak. Then we got a hearing day. We just went in and they heard it and it was despatched. I think my view at the time was because this is so big the VCAT then—ours just goes through the list and no-one is sort of paying any attention to it, which it was just in the list, so to speak, not that we wanted special attention. The Australian Capital Territory, once again within the past six months one of my colleagues attended a hearing, and he said the mediation was just brilliant. He has been to New South Wales hearings and the Australian Capital Territory and he said the mediator actually sat down and spent the time and discussed the issue and interpreted or went through the evidence and things like that. So he had a very good experience down there with that one.

CHAIR: But that was the mediator. There are mediators and there are mediators.

Mr SMITH: That is exactly right.

CHAIR: That does not establish the principle one way or the other.

Mr SMITH: No. He said they had more time to spend on that matter. If you go into the Sydney registry on Friday morning or Friday afternoon there will be eight to 10 cases listed as a first hearing and you will have I think it is one mediator, and I might be corrected on that to two. But you have one mediator. Even if you had two mediators running around, if they spend half an hour with one party then there is a lot of the time gone because I think they only list them for about an hour and a half or two hours anyway. There is always those group lists. The Sydney registries will always have those group lists. The metro ones will have a group list. If, for instance, they had four hearings and two mediators, then that would allow a bit more time to be spent with the parties.

The Hon. PETER PRIMROSE: In terms of the various options put forward in the Government's issues paper, do you have any additional comments to those you have already made about how you view the various options?

Mr SMITH: Not in addition to what we have already said. Some of those issues—I notice some of the professional review tribunals are not our area at all. I think it would be almost unfair to them for us to comment. We certainly do not have a drama with a super tribunal. We are not opposed to that.

The Hon. PETER PRIMROSE: Just to allow you to expand it if you wish even more, are there any things that are not covered in that position paper or any options other than those you have already alluded to that you would like to comment on?

Mr SMITH: The only comment I would have on that, and it is more the legislation behind a particular tribunal, we have had a position for a long time where business to business contracts should be able to be determined in a lower cost forum like a tribunal as opposed to the Supreme Court and things like that. Examples may be—and I am just talking off the top of my head—oil companies and service stations, for instance, and commercial leases. I am not sure if commercial leases are even dealt with in the commercial division of the CTTT but smaller issues like that where if there was some legislation behind I think would take away the ability of big business to crush small business simply by saying, "That's the way it is. What are you going to do about it?" We will not mention names but if you think of the bigger players in our commercial world, that is the answer a lot of the time: "What are you going to do about it?" Frankly, what are they going to do about it? To walk through the Supreme Court you are talking $50,000 on some of those bigger cases just to walk through the door and that is not even an appeal or anything like that.

The Hon. SHAOQUETT MOSELMANE: That is very valuable, thank you.

CHAIR: Thank you very much for being with us today. You have certainly been of great assistance to us in our deliberations. There may well be some further questions to come. If there are any we will get them to you as soon as possible, and we would ask that you get responses to those back by 6 February if possible because of our time constraints.

Mr SMITH: Certainly. If you would like me to come back just let me know and I am more than happy to come back.

(The witness withdrew)

BRETT HOWARD HOLMES, General Secretary, New South Wales Nurses Association, affirmed and examined, and

LINDA MARY ALEXANDER, Legal Officer, New South Wales Nurses Association, and

STEPHEN HURLEY-SMITH, Industrial Officer, New South Wales Nurses Association, sworn and examined:

CHAIR: Do you want to make an opening statement?

Mr HOLMES: Thank you for making a special effort to fit the Nurses Association into the Committee's agenda. This matter is important to the association. We do operate across a number of the areas of interest. I have brought along Ms Linda Alexander whose area of practise is within the health tribunals and who represents our members, nurses and midwives in the Nurses and Midwives Tribunal and the Professional Conduct Committee, and Mr Stephen Hurley-Smith from our industrial team who represents our members in front of the New South Wales Industrial Relations Commission and Fair Work Australia.

Nurses are a group who face both the Industrial Relations Commission in terms of work-related matters and the health tribunals as a result of their professional conduct. Both those obviously can have similar devastating results on their ability to continue in their career. Critically, removal from a professional register is very devastating to a nurse and, of course, it takes away their licence to practice and can take away their licence to earn money in a way that they have been used to. The difference, I suppose, if you get terminated in the Industrial Relations Commission it does not necessarily mean that you have lost your ticket to earn living, you can go out and get another job. If you have been affected by the Nurses Tribunal and they decided that you have been unprofessional and they take you off the register then your ability to earn at the level before is removed: you cannot go and get another equivalent job to the one for which you are qualified. They are critical issues and ones which the Nurses Association has regular and constant involvement with.

Our submission is fairly simple in that we believe that the importance of the Industrial Relations Commission should be maintained in whatever option is suggested but we also identify that there are considerable differences in how those jurisdictions operate and the process. I might call upon my colleagues to outline where they see those particular differences. I refer first to Ms Alexander about the process within the tribunal.

Ms ALEXANDER: The difference I see between the two tribunals industrially and professionally is, as already pointed out by Mr Holmes, in that there is a chance that a nurse who goes before the tribunal will come off the register and will not be able to practice for a number of years or a period of time. Following that, under the legislation, they are allowed to make an application to get back onto the register but under the new national health law there is now a cost issued involved, and a nurse who has not been working will find it very difficult to pay for that if they are not successful. As a member of the association we pay for their defence. I also see that the time between matters being referred to the Health Care Complaints Commission which end up before the tribunal can take up to two to three and sometimes, as in the past, five years in coming to fruition with a hearing whereas it is a totally different matter before the Industrial Relations Commission.

I think also that before such a tribunal there have to be people who know what the profession is and know the intricacies of how a complaint comes about. Sometimes they are not true and the person making the complaint is vexatious and has not understood what is required. If the Committee wants to hear more about what I think the differences are between the two and why we should adhere to the submission that we have already put in, I am more than willing to answer questions. But that I see as the major difference.

Mr HURLEY-SMITH: I do not know whether I can add much more that my colleagues have not already said. One point that is worth making is that the Industrial Relations Commission is very good at resolving disputes in a very timely manner. We have heard in relation to the disciplinary tribunals that matters can take a long time. I think it is in the interests of employers and employees for matters to be resolved in a timely fashion by the Industrial Relations Commission. Ultimately we are talking about work that is to be performed for this State and if a dispute has the potential to disrupt that then it is in the interests of the State as well as the employer and the employee to have that matter resolved very quickly. I think that is an important point.

CHAIR: It is fair to say that disciplinary matters, by their very nature, normally are going to take longer than the other matters to which you referred. Do you agree with that?

Mr HURLEY-SMITH: Yes, I think that is right.

The Hon. SCOT MacDONALD: An earlier witness referred to the nurses profession and said that some of those disciplinary matters are held behind closed doors and are less than transparent and accessible. Do you agree? If a professional tribunal was rolled into a wider professional tribunal body could that situation improve with more streamlined processes and overcome some of the two-year to five-year delays? Is there room for improvement?

Ms ALEXANDER: I would expect that the previous speaker was discussing a professional standards committee.

The Hon. SCOT MacDONALD: I think it was.

Ms ALEXANDER: Prior to the new legislation which came into effect on 1 July 2010 they were confidential hearings, and only those involved were permitted, and the decisions were not published, and only given to the parties who had been involved. The new legislation has changed that. One of the other things that was part of the previous legislation was that nurses that appeared before a Professional Standards Committee could not have legal representation. If they had a legal officer or a solicitor with them that person could not speak on their behalf. That too has changed with the new legislation. I think it can be streamlined between the two professional standards committees and tribunal hearings.

Even though they are for different reasons, the Professional Standards Committee hears matters of complaint that under the legislation amount to unsatisfactory professional conduct, whereas a tribunal hears conduct that amounts to—or could if found guilty—professional misconduct, is the more serious of the two and can then see the nurse taken off the register. That is basically the difference between the two. But now that they are allowing the legal profession to speak on behalf of a nurse before a Professional Standards Committee one wonders then why the difference. That can also be a very turgent experience. A lengthy hearing can amount to a cost that is, I think, unnecessary. I do not know why that cannot be streamlined.

The Hon. PETER PRIMROSE: I refer to page 6 of your submission. The Nurses Association opposes option 3 in the Government's issues paper. Would you further expand on your principal objections to that proposal?

Mr HURLEY-SMITH: The reasons why, in our view, that option is not desirable is we would not want to see a situation where the main arbiter for employment disputes, at least for the public sector in this State, is subsumed into a mega structure or a mega tribunal. We believe it is important for the independent umpire to have not only independence but also the perception of independence and have the reputation and authority that all parties, as well as all citizens in this State, respect. If you were to subsume the Industrial Relations Commission into a mega structure we believe that that authority and reputation will be lost, or at least there is the very real risk that it may be lost.

As well, there is a lack of synergy, in our view, between the matters that are dealt with by the Industrial Relations Commission and those that are dealt with by, say, the Consumer, Trader and Tenancy Tribunal. You are not just talking about employment matters. Any lawyer, for example, can tell us that industrial relations law is a strange creature; it is not easily pigeon-holed into other areas of law, for example. But apart from the legal aspects we are also talking about the livelihoods of people. You are not talking about commercial contracts or anything like that and so because of the special employment relationship, and the effect that it has upon an individual employee, and the importance that it has to an employer, we believe it is important for there to be a dedicated employment tribunal. The final point outlined in our submission is that we would not to see the specialised knowledge of the members of the Industrial Relations Commission and the Industrial Court being lost. If the commission is subsumed into a mega structure then we see a greater chance of that occurring.

CHAIR: You mentioned the "perception of independence". Is there a perception in the community that other tribunals are not independent?

Mr HURLEY-SMITH: No, I would not say that at all. I am saying that the Industrial Relations Commission and the Industrial Court have a significant level of respect within the community. We believe that

that is something that has been established over a long time. Taking that body and putting it into a larger superstructure has the potential, at least in the short to medium term, to cause perhaps some people in the community to either not know what that body is and perhaps not give it the respect that they may have given to the Industrial Relations Commission of New South Wales or the Industrial Court of New South Wales.

Mr HOLMES: I reiterate that a mega tribunal with a mix of the people sitting clearly represents a body of expertise within the Industrial Relations Commission about industrial law and employment law. We then look at some of the tribunals such as the health tribunals that have a body of professional expertise that is developed by the judicial members who sit on those tribunals. Obviously those in the health tribunals rely on getting some professional advice from the professional members who sit on those tribunals so that there is a nurse or two nurses and a lay member on each of those tribunals. It is important that we not assume that anyone can sit across a range of expertise. Even in our legal system judges have areas of expertise and practice and two groups with which we are involved, we believe, have differing levels of expertise and practice. Both groups are given very high levels of responsibility within that area of practice. We believe that that should be respected and preserved.

The Hon. SHAOQUETT MOSELMANE: Following my colleague the Hon. Peter Primrose's question earlier, are there any alternatives beyond those contained in the issues paper that should be considered in your view?

Mr HURLEY-SMITH: There is one option that we put forward in the position paper, and that is a consolidation which simply consolidates the administrative functions, for want of a better word perhaps, the back room or registry functions, and then effectively keeps the tribunals themselves separate. We floated that in the submission because it would lead to the economies of scale advantages that are outlined in the issues paper and certainly would not lead to any of the concerns we have raised in our submission.

The Hon. SHAOQUETT MOSELMANE: Your comments earlier that one of the advantages of the Industrial Relations Commission is that it deals with matters in a timely fashion. Do you think that in a super tribunal that would be lost?

Mr HURLEY-SMITH: Yes, I think there is the potential for that to be lost. We do not know what that superstructure would be at this stage. Certainly, if you are mixing a whole heap of different matters in one mega tribunal, as it were, there is potential for that timely advantage to be lost.

The Hon. SHAOQUETT MOSELMANE: Does that happen in, say, Victoria or in other jurisdictions that you know of?

Mr HURLEY-SMITH: I do not know.

Mr HOLMES: No, we are not aware.

Mr DAVID SHOEBRIDGE: This is probably a question to you, Ms Alexander, but anyone can answer it. One of the options being proposed is a consolidation of the health disciplinary tribunals. Currently there is the physiotherapist's tribunals, pharmacy tribunal, medical tribunal, nurses and midwifery tribunal. What would be your organisation's position about a consolidation of those tribunals provided it was clear that when a nursing matter came before the tribunals a nurse was part of the panel to provide that particular professional expertise, or some other structure? What is the view about the consolidation of the health disciplinary tribunals?

Ms ALEXANDER: I cannot see a problem with that type of consolidation as long as there was a nursing expert on the panel that heard a matter involving a nurse.

Mr DAVID SHOEBRIDGE: Much of your submission says that the nursing matter should go to the Industrial Relations Commission. I accept that. What is your day-to-day experience in the current nursing and midwifery tribunal? Is it functioning well? Are there improvements? Are their appeal issues? Give us a frank view.

Ms ALEXANDER: We do have appeals from the tribunal but they are not often. We have them and there is one on foot at the moment.

Mr DAVID SHOEBRIDGE: Where do you take those at the moment?

Ms ALEXANDER: To the Supreme Court.

Mr DAVID SHOEBRIDGE: Is that cost-effective?

Ms ALEXANDER: No, it is very costly. But the association deals with the defence and we only take matters to the Supreme Court and we can only do that on a point of law. We can only do it if I think it affects or as a potential to affect the nursing fraternity as a whole, but we do do them.

Mr DAVID SHOEBRIDGE: How is the current tribunal working?

Ms ALEXANDER: It is rather effective at the moment. It is not the tribunal, it is the getting to the tribunal that takes the time and it is the investigative process that the Health Care Complaints Commission deals with. Sometimes that takes quite a long time.

Mr DAVID SHOEBRIDGE: What about a structure whereby you had a consolidated health disciplinary tribunal and you then had an appeal where you could establish error, a less costly internal appeal, to a broader administrative tribunal? So, you had your health care discipline tribunal sitting over here and if you are dissatisfied you could at the first instance have a relatively low-cost appeal to a broader administrative tribunal. Do you have any view about that kind of structure?

Ms ALEXANDER: Yes, I think that would assist greatly.

The Hon. SCOT MacDONALD: Can I just clarify that question? Is there a merits appeal possibility?

Ms ALEXANDER: No, not at the moment. It is to the Supreme Court.

Mr DAVID SHOEBRIDGE: And it is only on a question of law, at the moment?

Ms ALEXANDER: Yes, that is correct.

Mr HOLMES: Could I just add about the tribunal, I have had representations from the barristers who work with us saying that the health tribunal, particularly the nursing tribunal, is the toughest place they ever see justice handed out. They would prefer not to operate in that tribunal because they find it so difficult. The judgements are harsh and it is often the case that in particular nursing professionals tend to judge each other very harshly and the penalties are strong.

Mr DAVID SHOEBRIDGE: So, at the moment your members face basically the loss of their professional career without a merits appeal that they can access?

Ms ALEXANDER: That is correct.

Mr DAVID SHOEBRIDGE: I assume you think that should be remedied?

Ms ALEXANDER: Yes, definitely.

The Hon. SARAH MITCHELL: One of the key principles that keeps coming up across a range of witnesses relates to access to justice and particularly in rural and regional areas. Do you have any comment to make on the way the current system is working for your members who live outside metropolitan New South Wales, in terms of access?

Ms ALEXANDER: Yes. Nurses tribunal first: Say, for example if they come from far-flung regions of the State, they have to travel to Sydney unless on rare occasions the tribunal has gone to the location where the complaint has taken place. That only happens when there are a lot of witnesses involved and the witnesses come from the same place. That is not always the case, so usually the member has to come to Sydney to have the hearing. That poses financial difficulties. They also have to stay in Sydney while the matter is being heard and sometimes that can be up to five days, so accommodation is required.

The Hon. SARAH MITCHELL: Obviously it would be difficult in some circumstances for them to come to Sydney?

Ms ALEXANDER: Yes, it is. Recently there has been a professional standards committee hearing where the Health Care Complaints Commission had counsel, had a barrister briefed in the matter, and the three nurses were heard together. This was from Broken Hill, and one nurse could not attend and evidence was taken over the phone. But that is not always the best way to give evidence

The Hon. SARAH MITCHELL: So I guess one of the suggestions raised, I think in the Bar Association's submission, was the possibility to have a single registry service, and we have had discussions about shared resources and shared hearing rooms that perhaps the different tribunals could use. Do you think that would be an improvement for your members if something like that was to occur?

Ms ALEXANDER: Within the metropolitan area or across the State?

The Hon. SARAH MITCHELL: Well, across the State?

Ms ALEXANDER: Yes, it would assist. One of the problems I have heard tribunal staff talking about is can they get somewhere to have the hearing. That is always difficult because courts are not always available, there is not always a room. We have had one that was in a hotel.

The Hon. SARAH MITCHELL: So there is obviously some room for improvement in that area?

Ms ALEXANDER: Yes.

CHAIR: One thing arising out of something you said, Mr Holmes. Did I understand you correctly to say with the nurses tribunal, other nurses who sit on that tribunal tend to be harsher than normal to those before the tribunal in a general sense?

Mr HOLMES: In a generality, nurses tend to be harsh on their profession.

CHAIR: One line that comes through from those opposed to super tribunals is that there would be this loss of expertise and understanding within the different professions. What you just put seems to go counter to that. You are virtually saying that people who come from the same profession tend to be harsher in a general sense of those in the profession?

Mr HOLMES: That is my general view of how nurses treat each other but I think that is balanced against the need for a professional understanding of what the standards are, what are the expectations. It is true that people who get to sit on tribunals as professional nurses and midwives are most likely not the average, run-of-the-mill nurse who was working on a ward. They have probably spent some time in administration, education or management. It is my perception that they certainly hold those standards very high and they are there to protect the public. Of course, that is another differentiator; the Industrial Relations Commission is there to resolve matters between the employer and the employee. The health tribunals are obviously there for the purpose of protecting the public, so they take a much broader view about how to deal with an issue.

CHAIR: Factoring all that in, you are talking about harshness. In a way you are seeing that as a defect. Am I misunderstanding what you are saying?

Mr HOLMES: In a way it can be but I suppose one of the reasons that nursing remains highly respected is that nurses do not hold back when making judgements about each other. Other professions allegedly take a different approach. However, it has been the culture of nursing that there is little room for compromise about professional standards. I would hate to see that it is a complete criticism; it is an observation about the culture of the professions.

CHAIR: It is a tendency that you have noticed. Would that be a tendency you do not think would be there if it was, say, a legal representative on that committee? Would nurses, in general terms, get a fairer outcome?

Ms ALEXANDER: Can I just answer that question. I reiterate that harshness, when it is applied to nurses, is of the profession as a whole, not those who sit on tribunals. I think we do need the expertise on any committee that hears allegations of disciplinary matters, because they are the ones who understand. It can be bad for the outcome depending on how the case is presented. Nurses who sit on those hearings understand the

nuances and just how people interact in the day-to-day workings of a nurse, and I think it is very important that nurses maintain that position. As far as nurses being harsh, yes they are. We would often request references from nurses who work with a particular nurse who is before the tribunal and the answer often is I do not want to get involved. It is that profession. It is not the same in the medical profession and I do not think it is the same with lawyers, not that I have come across the legal profession. But it is something that is necessary to have on the committee, those with the expertise of nursing understand it.

Mr DAVID SHOEBRIDGE: If you have a profession that is being particularly harshly self-judged, maybe there is scope for that appeal, for a broader community standard to review the harshness of those initial decisions? That might be one benefit of having an appeal to a broader tribunal?

Ms ALEXANDER: I do not think that would be the case because I think people who have heard nurses have done something wrong are astounded. That is their first thought. You go to a hospital to be cared for, not to be set upon, basically, or to have advantage taken of you. Sometimes while that is the allegation that is not what has happened. That is why nurses need to be on the committee rather than somebody who does not understand in toto what it is all about. There are two nurses, the chairperson and a lay person who sit on tribunals. That lay person is there for the public interest and, as far as I am aware, they have input into the decision that is made.

Mr DAVID SHOEBRIDGE: If there was any consolidation of health disciplinary tribunals, you would want to ensure you maintain that basic mix? You have a legal person, at least one from the nursing profession when dealing with nurses and then a member of the lay community, to give that balance of views and opinions when hearing matters, is that right?

Ms ALEXANDER: Yes.

The Hon. SHAOQUETT MOSELMANE: We have a question relating to comments in the submission of the NSW Bar Association outlining the possibility of single registry services.

The Hon. SARAH MITCHELL: I asked that question.

The Hon. SHAOQUETT MOSELMANE: I was curious because it goes outside the options we have and I wanted to hear your views on it.

Mr HOLMES: When you look at page 6, we see the possibility of economies of scale through single registry services or those sorts of administrative combinations. But as my colleague Mr Hurley-Smith said, we really want to see the integrity of each individual tribunal, be it the Industrial Relations Commission or court and the health professionals, kept separate. But certainly there is the possibility to make, I suppose, savings from the combination of some of the administrative supports. However, whilst acknowledging that, there are some levels of expertise that have been developed within the nurses and midwives board, registry and tribunal processes that obviously would need to be transferred. I would hate to see that expertise lost.

Mr DAVID SHOEBRIDGE: Certain decisions are being made in the Industrial Relations Commission that seem to have a totally different flavour to other administrative decisions. I am thinking about award-making powers of the commission as well as dispute-resolution decisions by the commission. Do you have any view about how or if those kinds of decisions would fit within a broader administrative tribunal, or would they not fit?

Mr HOLMES: Firstly, yes, we used to have award-making decisions in the industrial commission. They have obviously recently been very much trimmed back. We see that as an area of expertise as well where we have had the opportunity to use the Industrial Relations Commission over many years to try to get some salary justice for our members. Work-value cases have been one area where we previously were able to do that. That avenue is now closed. They are different approaches but we believe, given the expertise in the Industrial Relations Commission, they should be maintained separate from trying to spread that into a wider tribunal. As I said, there are areas of expertise for anyone in the professions, no matter what profession you have, that should be respected.

Mr HURLEY-SMITH: I add my agreement to that. I think those award-setting and dispute-resolution functions are very different when compared to other perhaps more legalistic functions of other tribunals. Those functions work and I think that historically one of the wonderful things about the Australian industrial relations

system has been the system of arbitration and conciliation and dispute resolution. Australia has been a beacon to the rest of the world in that regard and I think it is important that the powers of the commission in that regard remain unfettered.

The Hon. SCOT MacDONALD: Can you come back to us with the number of disciplinary hearings that are heard annually?

Ms ALEXANDER: I could give you a rough idea now.

The Hon. SCOT MacDONALD: Yes, even a rough idea would be good.

Ms ALEXANDER: Two years ago I did about 16 matters and with my colleagues there might have been a total of 19 of our members, not just what goes before the tribunal. We only go there when there are our members and we represent them. This year has seen a fall-off of hearings. I have one set down for May but they have been very busy with appeals from APRA. I have quite a number of matters that are waiting for hearing. I am not very good at maths. I could not give you an average number.

CHAIR: How many matters did the tribunal have before it last year?

Ms ALEXANDER: Last year about 12 of our members. I cannot give you a figure on the number of matters before the tribunal in toto, only what we have dealt with.

CHAIR: Unfortunately, we have run out of time. Thank you for attending today. You certainly have been of assistance to us in our deliberations. There may be further questions that arise and we will forward those to you as quickly as possible. We would like a response by 6 February because of time constraints on us.

Mr HOLMES: Could I request that they also be directed to Mr Hurley-Smith as I am on leave at the moment.

CHAIR: Certainly.

(The witnesses withdrew)

(Luncheon adjournment)

GREGORY JOHN KESBY, Deputy President, Medical Council of New South Wales, and

AMEER TADROS, Executive Officer, Medical Council of New South Wales, sworn and examined:

CHAIR: I welcome our witnesses, Dr Greg Kesby, the Deputy President of the Medical Council of New South Wales, and Mr Ameer Tadros, executive officer of the council, and thank them for attending.

Dr KESBY: I am a specialist obstetrician-gynaecologist and I appear as Deputy President of the Medical Council.

CHAIR: Would either of you like to make a short opening statement?

Dr KESBY: Yes, I would, thank you. Actually, I am very grateful for the opportunity to make a statement. I have been asked by the President, Associate Professor Peter Procopis, to formally submit his apologies. He is away at present. The Medical Council of New South Wales is the regulatory body for the 27,686 medical practitioners registered in New South Wales. It functions to maintain professional standards and protect the public. It does so in a co-regulatory way with the Health Care Complaints Commission. As you know, the Health Care Complaints Commission is an independent body. Part of its role is to prosecute complaints against medical practitioners for the purposes of protecting the community and maintaining confidence of the public in the profession.

Prosecution of medical practitioners can occur in a Professional Standards Committee, where matters go to unsatisfactory professional conduct, and may result in reprimands, fines or conditions placed on practice. But if behaviour is more egregious, then prosecution can occur before a Medical Tribunal which has all the powers of the Professional Standards Committee [PSC] but has the added power of being able to suspend or deregister a medical practitioner. The Professional Standards Committee is constituted by a lawyer appointed by the council to act as the Chair, two medical practitioners and a lay member, and is independent of the Medical Tribunal process. It is not clear whether this Committee has any intention with regard to the Professional Standards Committee, but the council would submit that the current arrangements should be left in place in order to ensure the prosecution of complaints before a Professional Standards Committee continues informally, is uncomplicated and remains effective. I think that position is endorsed by the Health Care Complaints Commission.

The Medical Tribunal process has been around since 1938. Presently it is constituted by a Chair or Deputy Chair who is a District Court judge or an Industrial Relations Commission justice, two practitioners and a lay member. In the last financial year it considered approximately 30 matters at a cost of just under $1 million—$643,612, to be exact, of which covered the cost of maintaining the tribunal. That was paid to the Attorney General to cover the cost of the tribunal, in part for the appointment of District Court judges and more recently some Industrial Relations Commission justices. This level of judicial involvement in the tribunal process is seen as essential to effective medical regulation and, again, that is the view of the Health Care Complaints Commission in its submission.

In its deliberations, we would ask that the Committee is mindful that the Medical Council is self-funded through the receipt of fees paid by New South Wales practitioners. It does not draw on Consolidated Revenue to discharge its statutory functions. In the council's view, any temptation to view incorporation of medical tribunals into a new structure, in part to access a new income stream from the doctors of New South Wales, should be resisted unless the change is (a) formulated in response to an identified problem within its process; (b) wanted by the stakeholders; and (c) accompanied by a clear cost savings, or clearly identifiable benefits to the medical governance procedure. The Medical Council submits that its disciplinary tribunal processes are mature and respected by the profession, the New South Wales Board of the Medical Board of Australia, on which I also sit, the Health Care Complaints Commission, the Health Professions Councils Authority; the medical defence organisations; the Australian Medical Association; and the public.

The medical profession in a sense owns and is intimately involved in and respects this process, and there is currently no identifiable problem that will be positively addressed by the structures being considered by the Committee. The council cannot conceive that there are substantial cost savings to be made in transitioning to a new arrangement. In holding protection of the public as its overriding consideration, the council is also concerned that each of the proposed structures outlined in the papers has the potential to be to the detriment of the Medical Tribunal process. The tribunal includes in its composition experienced medical practitioners who

assist in fact finding and deliberations. These practitioners play an important role in maintaining professional standards and commenting on the appropriateness and enforceability of any orders that the tribunal may make. The council has spent considerable time and effort in order to educate members of the Medical Tribunal so that orders or conditions are appropriately drafted, enforceable in practice, and meet their desired objectives.

Presently the council is able to select medical practitioners to sit on a tribunal who are suitably qualified, experienced, and free of conflict of interest, be they from New South Wales or interstate. It is essential, or considered essential by the council, that it continue to be able to do so in its current arrangements or in any future arrangement. The importance of this to the tribunal cannot be understated. It is rare for Medical Tribunal decisions to be disappointing in New South Wales as the standards to which medical practitioners are held accountable are not only high but also are consistently maintained under current arrangements. The involvement of District Court judges and the highly selective and targeted selection of lay people as Medical Tribunal members underlie why New South Wales decisions are often used as benchmarks in the Australian medical regulatory environment.

The council is concerned, having taken into account the arrangements in Victoria, Queensland and Western Australia with respect to their administrative tribunals, that any consolidated tribunal in New South Wales in all likelihood will result in an inflexible appointment model where medical practitioners will be chosen from a fixed panel of tribunal members who may not necessarily practise in the same specialty as the respondent medical practitioner. This misunderstands, and therefore undermines, the principles of good medical governance and would not be acceptable to the council. Other considerations that the council has relate to the negative ramifications of any changes to the current policy of awarding costs to successful parties in the Medical Tribunal and the need for this to be maintained in order to minimise the cost burden of unmeritorious claims being initiated on appeal. We have seen the substantial negative cost and workload implications of not having this in place in the setting of other New South Wales tribunals.

The Committee will recall that, after much debate, New South Wales opted out of the regulatory side of the National Registration and Accreditation Scheme. This was a bold move. New South Wales is the only jurisdiction to do so. It is worth considering or reflecting on why that occurred. The government of the day recognised that the maturity of processes with regard to regulation was such that they could not confidently be seen to be enhanced by entering into a new scheme of arrangement. The proposed new national arrangements did not demonstrably understand or protect the continuum of health, performance and conduct pathways within medical regulation. The proposed new system appeared to be simultaneously both cumbersome and inadequate. In essence, it was not considered best practice.

The Medical Council does not fear change. However, it is risk averse, and the council perceives significant risks in the proposed changes to Medical Tribunal arrangements being considered by this Committee. The council submits that the proposed changes being considered by the Committee do not constitute best practice and in no way appear superior to current arrangements. The council therefore prospectively submits that the Committee excludes the Medical Tribunal from being considered in any new arrangement. The stakes are just too high in medical regulation and protection of the public at present. Alternatively, if the Committee feels that the council's request cannot be acceded to, the council would appreciate the Committee considering that, at a minimum, the Medical Tribunal's inclusion into any new structure be deferred for a period of at least five years, and subsequently considered once the new structure is established, has had an opportunity to mature, and the appropriateness or otherwise of the arrangements relating to effective regulation are able to be assessed. Thank you. I am happy to take questions.

Mr DAVID SHOEBRIDGE: What is the rationale for the five-year deferral? Where is that founded?

Dr KESBY: It basically gives us more of an assurance that the system can be bedded in, matured and then assessed for what it is in practice rather than entering into a new system in an atmosphere at the moment where we have a system that works and is quite effective and respected.

Mr DAVID SHOEBRIDGE: In terms of the options this Committee is considering, as far as I can tell this Committee has an open mind about how to proceed with the terms of reference. One thing that has been raised is the possibility of combining health disciplinary tribunals into a single health disciplinary tribunal that retains the mixture of legal, professional and lay membership. What is your position on a consolidated health disciplinary tribunal?

Dr KESBY: It is a good starting point. The concern for the council is that if you can take what we have at the moment it and simply transplant it into a new system that is fine, but if you are talking about a structure where there is a panel of medical experts who have applied after advertisement for a position and appointment to the tribunal and you do not have the flexibility to allow targeted, highly specialised practitioners, be they from New South Wales or from interstate, to be appointed that would be to the detriment of the way the tribunal functions at present.

Mr DAVID SHOEBRIDGE: So even if you set up a broader super tribunal, if I can describe it that way, with a health disciplinary division, provided you had the ability for the profession to be consulted and the capacity to appoint the appropriate expert to some extent it really does not matter whether it is within a super tribunal or standing aside—provided you have a person with legal expertise and the capacity for the profession to have some control over the right expert rather than a panel. It is the way the panel is formed.

Dr KESBY: I think it does matter. The elements of our tribunal process at the moment which make it effective—it is a very highly respected tribunal across Australian health regulation and we have experienced and clearly watched decision-making processes in other States within structures like super tribunals—the elements that are essential for us are that we have the judicial knowledge of someone of the standing of a District Court judge, not someone who is just an employment relations justice but someone who is dealing with the complexities of dispute and has experience in looking at clinical issues, opinions and assessments and weighing up the veracity of different—

Mr DAVID SHOEBRIDGE: A senior judicial mind as part of the panel.

Dr KESBY: Quite senior, and we are happy to pay for that. We have a self-funded regulatory model and at the moment we are happy to go to the cost of a senior judicial mind for that.

Mr DAVID SHOEBRIDGE: I hear what you say: a senior judicial mind together with—

Dr KESBY: The other element you need to maintain is the flexibility of appointing suitable medical practitioners to the tribunal. That is not an easy process; that is actually a very hard process.

Mr DAVID SHOEBRIDGE: I assume that requires a body that can consult with the profession to nominate the appropriate person?

Dr KESBY: It would in part require that.

Mr DAVID SHOEBRIDGE: If that structure was in place and you had a division that had a senior judicial mind—

Dr KESBY: If you can replicate what we have, we would have no objection whatsoever. I do not care if the title changes as long as the process is not meddled with.

Mr DAVID SHOEBRIDGE: The key point your submission is not so much the practice of the tribunal once a hearing starts but the membership of the tribunal and how it is selected. Is that the key point you are making?

Dr KESBY: That is certainly a key point.

Mr DAVID SHOEBRIDGE: What about the practice of the tribunal hearing? Is there something special about that that needs to be replicated or would it fall out of getting the membership right?

Dr KESBY: I do not think the conduct of the actual hearing would be a main concern for us as long as the membership is right. Remember that most if not all of the lay and medical members of the tribunal at present are involved in other activities of the council—the other hearings or interviews that occur in the council. They are very familiar with the council's processes and the interaction of the tribunal with the PSC and the other non-prosecutorial avenues available to the council in effecting its role.

Mr DAVID SHOEBRIDGE: What about the lay membership? Would it be more acceptable for the lay membership to come from a broad panel of respected community persons who can bring a lay perspective to it?

Dr KESBY: There is certainly attraction in that, and we do that, but the added attraction is that they are also involved in the other activities of our council. They understand our processes and they understand when formulating conditions, for example, what is possible and what is not possible. They understand the current guidelines within the Medical Council at any point in time. The familiarity with our process is extremely important. They are all little pieces of a jigsaw that slowly get put together so that we get very sensible decisions and, secondly, orders from tribunals that are enforceable by the council. As I said, we are not averse to change but we have lived through all the maturation processes of getting all the bits of the system to work correctly so that when we get a decision and orders we know they are in keeping with the council guidelines and the professional standards and that they can be monitored and effected appropriately by the council.

Mr DAVID SHOEBRIDGE: What is the position with appeals? If a doctor or the council disagrees with the merits of the outcome from the tribunal is there a merits appeal?

Dr KESBY: The appeal process for a tribunal, because it is presided over by Industrial Relations Commission justices of the Supreme Court or by District Court judges, is that by definition it must go through the Court of Appeal.

Mr DAVID SHOEBRIDGE: Is it only a question of law?

Dr KESBY: Just a question of law.

Mr DAVID SHOEBRIDGE: What would the council's position be on having an intermediate appeal on merit that goes to an appeal division in an administrative tribunal? Have you turned your mind to that?

Dr KESBY: My legal mind is not as developed as my medical mind. We can take that on notice and get back to you.

The Hon. SHAOQUETT MOSELMANE: My impression of your position is that you rejected all options before us for examination. I am interested in the conversation you had with Mr Shoebridge, in particular your comments in relation to the potential for detrimental impact on the Medical Tribunal processes. Can you expand on what you mean by potential detrimental impact?

Dr KESBY: It goes back to previous answers. Having a super tribunal with a panel of medical practitioners who have the time to attend to these matters does not necessarily give you the appropriate medical practitioner to hear a Medical Tribunal complaint. If we require the expertise of the head of oncology at a Melbourne hospital because of the issue that is at the crux of a complaint then we will seek and appoint the head of oncology from the Melbourne hospital. If it is an issue of, say, ethical behaviour then of course it lends itself to a wider panel of hearing members. The other issue is that nowhere in the papers is there a confidence that there would be cost savings from moving to a new structure. It is self-funded; the doctors pay for this and the doctors respect what we have. At the moment the doctors and all the stakeholders, be they on one side or the other, see this as a system that is not broken and that does not need tampering with. As I said, even though there is no fear of change there is a fear of change in the sense that if you have something that is not broken why fiddle with it? I think you have heard that from other witnesses. The other thing is time lines. There is no certainty about time lines when it comes to hearings. At the moment we have some sort of confidence about time lines within our existing structure. All these things constitute threats to the effective functioning of the tribunal under the three proposed options put forward in your issues paper.

The Hon. SHAOQUETT MOSELMANE: I would also be interested to hear, given your suggestion of a five-year waiting period for you to determine whether to be involved or for the Government to involve you in the process, the experiences of other jurisdictions, such as Victoria. Are you aware of any impacts there arising from the consolidation of the tribunals and particularly on the medical council, if they have one?

Dr KESBY: I have thought about this question and how to answer it diplomatically.

Mr DAVID SHOEBRIDGE: Now is your chance.

Dr KESBY: There is a desire in medical regulation to have consistency. We know that the bar in New South Wales is high and we know that it has consistently been maintained at that high level. When surprising

decisions come to our attention with regard to medical regulation and disciplinary matters they do not come from New South Wales. We perceive a difference in standards between different jurisdictions.

The Hon. SHAOQUETT MOSELMANE: I can see why you wanted to be diplomatic.

The Hon. SCOT MacDONALD: Going back to what Mr Shoebridge asked, are many of these professional decisions challenged? Are people generally happy with them?

Dr KESBY: I think they are generally happy but equally the issue of costs is important. Remember we were talking about certainty of costs being awarded to a successful party. That allows the medical defence organisations, for example, to look at the decision and say, "We have to have good grounds to appeal this", because there is a cost involved. That obviously has work flow implications as well.

The Hon. SCOT MacDONALD: So it is pretty uncommon to seek to challenge a decision?

Dr KESBY: It is uncommon to seek to challenge it and when they are challenged they are more often than not unsuccessful, in the few challenges we have had.

The Hon. SCOT MacDONALD: I missed the figure you quoted in your opening statement as the amount paid to the Attorney General.

Dr KESBY: We pay $1 million to cover the tribunal; $643,612 goes to the Attorney General to cover the judges and the maintenance of the registry within the District Court, by Justice Blanche, I think.

The Hon. SCOT MacDONALD: So the judiciary, the registry service and anything else the Attorney General might provide come to $643,612?

Dr KESBY: Part of that will trickle down to cover the registry costs. The other $300,000-odd goes to the hearing members. Again, within that, you have to remember we pay our hearing members $1,300 a day.

The Hon. SCOT MacDONALD: That is the oncology professor from Melbourne or whoever?

Dr KESBY: Sure. Under these other structures and looking at other jurisdictions you will see that the amounts paid are significantly less because they tend to draw just from panels of experts who have accepted those terms. For a super expert to give up their day's practice to come they need to have reasonable remuneration. Again, the profession pays for that.

Mr DAVID SHOEBRIDGE: $1,300 would hardly cover the costs for an oncologist for a day ordinarily.

Dr KESBY: Exactly right, but you have to remember that doctors also behave professionally and see it as part of their duty to contribute to maintenance of standards. I am losing money by appearing in front of you now.

The Hon. SARAH MITCHELL: On a slightly different tack, one issue that keeps coming up with a range of witnesses relates to access to justice, particularly for those people in rural and regional areas across the State. How do your members outside the metropolitan area find the current process if they have to deal with the council?

Dr KESBY: We do not see it as a problem. We do not have difficulty with getting our people to Sydney, for example, even for lesser issues such as counselling interviews of monitoring interviews. The doctor who feels terribly aggrieved by the process that is occurring will raise a voice saying, "I work in Bourke and you are taking me away from my practice et cetera", but frankly we are talking about tribunals at the pointy end of medical regulation. To me that is not an issue of concern.

The Hon. SARAH MITCHELL: My question following from that is: One of the suggestions that has been put forward is to have a consolidated tribunal with a shared single registry service where you can share hearing rooms or staff across a wide range of tribunals. If something like that were put in place, that could potentially improve the situation for some doctors who might not want to leave their practice in Bourke to come down. Would that be something of which you would be in favour?

Dr KESBY: It does not immediately sound attractive. We use the District Court registry at present but I cannot see much in the way of savings there. Are you thinking in terms of convenience?

The Hon. SARAH MITCHELL: I have asked that question of a few of the witnesses to ascertain whether any particular industry feels it would be beneficial.

Dr KESBY: We are talking about 30 to 40 matters a year. The overarching issue for us is the issue of effective medical regulation and whether or not the Committee really believes that it will enhance things by changing them.

Mr DAVID SHOEBRIDGE: Dr Kesby, much of what you say comes from the doctor's perspective and the profession's perspective. I accept that is naturally where you come from. To what extent are you able to speak on behalf of that much broader perspective—the patient's view—about how your tribunal responds to the needs of patients, which is the bigger interest that this Committee would have?

Dr KESBY: I cannot represent the patients but if you think of what the tribunal deals with, it deals with the pointy end of prosecutions and egregious behaviour. If you look at the outcomes of the tribunals, very uncommonly is there no action taken at the end of the tribunal. There usually is some action taken, be it a fine or conditions on practice or a suspension or deregistration.

Mr DAVID SHOEBRIDGE: Do you ever test your outcomes? Often there are a couple of people who have had their lives egregiously affected by a breach of professional standard. Do you ever go back and test your outcomes against them and say, "What did you think of the process? Do you feel like we have achieved something here for you? How do you feel now?"

Dr KESBY: I do not think we have formally gone down that pathway. Remember that the outcomes have been quite severe.

Mr DAVID SHOEBRIDGE: Also their engagement in the process. You say that doctors can come to Sydney. What about the other witnesses? Who pays for their expenses and how are they involved in the process?

Dr KESBY: I am told the commission pays for the expenses of other witnesses.

Mr DAVID SHOEBRIDGE: In the area of costs, is it a costs jurisdiction from the outset so that if the prosecution fails the doctor receives costs of the prosecution and if the prosecution wins the doctor pays it?

Dr KESBY: The costs normally follow the event.

Mr DAVID SHOEBRIDGE: Is it full costs recovery or partial costs recovery?

Dr KESBY: It is usually full costs recovery but there is discretion for partial.

Mr DAVID SHOEBRIDGE: What are we talking about in the quantum of costs for these 30 or 40 cases? You may want to take that question on notice**.**

Dr KESBY: We will take it on notice. If the commission is appearing before the Committee it would have that information.

CHAIR: That brings us to the end of this part of the proceedings. Thank you both for being with us. Your input will be of assistance to us. There may be some more questions that we may send to you. If so, we will get them to you as soon as possible and if possible we would like a response by 6 February because of time constraints that we have.

Dr KESBY: I undertake to do that.

(The witness withdrew)

PETER DWYER, Chairperson, NSW Pharmacy Tribunal, sworn and examined:

CHAIR: In what capacity are you appearing before the Committee?

Mr DWYER: I am a barrister and a nationally accredited mediator. I hold appointment also as a conjoint associate professor at the University of New South Wales, Faculty of Medicine, School of Medical Sciences in the teaching of Law and Ethics, components in the post graduate studies program in Pharmaceutical Medicine and Drug Development. I am also the Chairperson of the NSW Pharmacy Tribunal and a Deputy Chairperson of the Dental Tribunal.

CHAIR: Do you have an opening statement?

Mr DWYER: I have a few points. My submission is dated 9 December 2011 before the Committee, together with a summary form of curriculum vitae, so I will not pay any more attention to that. I may well emphasise some points of my submissions to be considered, in my view, over others. I also have experience appearing as counsel for complainants and for the respondents in a variety of health professional tribunals over some years. I am grateful for the opportunity to make submissions and I will do the best I can to assist the Committee today. I have read and considered the submissions of the New South Wales Health Professional Councils Authority [HPCA] and I respectfully agree with and support its analysis and the points made in its submissions. I need not bother the Committee by going back to them. I am minded to say that I understand from the previous evidence on costing that the HPCA is providing further submissions in relation to costings which would include the health professional tribunals.

I have also read and considered the submissions to the Committee by my tribunal colleague, Mr Nick O'Neill, whose knowledge and experience in tribunals in New South Wales I respect and I agree especially with his submissions relevant to maintaining the current system of health professional tribunals, given their proven efficient and cost-effective operation. I adopt and strongly support Mr O'Neill's submission at page 13, that the cost benefits in substantially consolidating existing New South Wales tribunals "must first be established by adequate and appropriate research"—I emphasise the words "adequate and appropriate"—"before any such decision is taken." Additionally, I emphasise and agree with Mr O'Neill's submissions at page 7 concerning the obvious and significant cost efficiency of professional health tribunals as to the remuneration of their chairpersons and deputy chairpersons and other members of tribunals which result in considerable savings compared with other decision-making entities, as far as I understand them.

Also, in these opening remarks I want to re-emphasise what I describe as the unique nature and purpose of such tribunals, whose jurisdiction is exclusively protective of the community, pursuant to the Health Practitioner Regulation National Law [the National Law], directed as it is to "protection of the public by ensuring that only health practitioners who are suitably trained and qualified to practise in a competent and ethical manner are registered." I wish also to stress the wide range of matters that may come before a health professional tribunal for the exercise of its jurisdiction in conducting inquiries into a range of complaints and ultimately whether a person is suitable to hold registration.

It occurred to me before I came today to take a recent decision which is now on the website of the Australasian Legal Information Institute [AustLII] concerning a pharmacist and the catchwords at the commencement of that decision probably demonstrate the range I am talking about. I am quoting from the catchwords in that decision. What it concerned was: unsatisfactory professional conduct; professional misconduct; not a suitable person to hold registration; impairment; a failure to comply with statutory requirements concerning restricted substances; unlawful diversion of anabolic and androgenic steroids for the purposes of illegal supply; creation of false prescriptions; providing knowingly false and misleading information; fraudulent alteration of documents; misappropriation and unlawful self-administration of restricted substances. Amongst all of that, there was the issue of impairment and the causal connection, if any, and to what extent.

The issues that come before the Pharmacy Tribunal are not invariably complex and that may be in a legislative sense or in drug interactions, dosages and the like. It emphasises also the importance of having the two professional members, skilled in the profession, able to assist the tribunal in coming to grips with the complexities and to ultimately reach a decision as to the subject matter of the complaint. Appeals can also come before a health tribunal from a range of decisions, including impairment matters. I think Mr Shoebridge asked or perhaps it was you, Mr Chairman, about appeals to the Supreme Court. Eighteen months ago there was an

impairment issue and an appeal to the tribunal by the professional—a sad case, they always are—and in such a proceeding as that, the professional was represented legally and was present at the hearing but there was no opponent because it was an appeal. Now, in such a circumstance as that—and it was the first one that I had done under the new legislation, the National Law—it was very important to get the full picture in evidence. I think there were three psychiatrists: there was one treating, one professional expert psychiatrist and the complainant's or the Pharmacy Council's expert and I directed that they give their evidence concurrently or as it is described from time to time, "hot tubbing". That was very effective.

At the end of it, the finding was made and the professional did appeal to the Supreme Court on an aspect of that, but at the end of the day there was no real change to the decision of the tribunal. The process also reflects the protection of the community and the public interest, the public safety and the importance of one tribunal member being a lay person. I think Mr Shoebridge asked about that, and that is terribly important because it provides a perspective from a lay person's point of view, which is representative of the community and should always be taken into account, and it is. I also emphasise what I have included in my submissions at paragraph 7 concerning the procedure adopted by professional tribunals in carrying out their statutory functions, including assistance to an unrepresented respondent at an inquiry and impairment matters. I emphasise that they are inquiries; they are not like courts' adversarial proceedings. Nor are they punitive.

Often in court decisions and in other places they are referred to as penalties but there are no penalties imposed; they are orders. As Justice Kirby said some years ago, although those proceedings are not punitive an order may well have a punitive effect if somebody's livelihood is taken away from them, but the paramount objective is protection of the community. They have no dispute resolution function as may be needed, for example, to resolve a commercial, industrial or consumer type altercation. The system of professional tribunals, in my submission, has achieved their intended purpose effectively and efficiently in protection of the community which they serve. Quite apart from the necessity for adequate research, as I referred to a few moments ago, before any change is considered, there must be, in my respectful submission, very good reasons before any change is made to the system of health professional tribunals that continues to serve well the people of New South Wales.

Finally, considering paragraph 8 of the issues paper, the conclusion, it is my respectful submission that the "citizen focused" approach therein described "whereby a single point of contact is established for all tribunal-related dispute resolution functions, regardless of the source of that dispute" and that it is inappropriate to health professional tribunals, given their protective public safety functions. Such tribunals already have proven high-quality decision-making capacity, efficacy, efficiency and delivery of decisions in a timely manner.

Mr DAVID SHOEBRIDGE: The issue about consolidating health disciplinary tribunals, putting together maybe all of the health disciplinary tribunals within a separate division of an administrative body, or even a standalone health professions tribunal, which then allowed each of the professions to nominate the appropriate expert to complete a three- or four-member panel. What is your position on that?

Mr DWYER: I did hear you ask that question of the previous witness. I was looking to, if you did ask it, how I would respond. I think that what occurred to me immediately was that where the tribunals are, the nine out of the 10 at the moment, is in close proximity to the HPCA where all the councils for those nine tribunals are located. As I mentioned in my written submissions, that provides an opportunity for a tribunal chairperson like myself, when considering orders after a matter has concluded, as to whether the proposed conditions—sometimes you might get up to 10 conditions; somebody might be suspended or not suspended but there are conditions on their practice. That proximity provides an avenue whereby hypothetically, and not with reference to the particular case, but I can ascertain whether proposed conditions are working in the view of a council, able to be monitored and therefore to be, as intended, protective of the community.

Mr DAVID SHOEBRIDGE: But any new tribunal would be able to have the same in principle consultation with the health professionals, with those—

Mr DWYER: Councils.

Mr DAVID SHOEBRIDGE: —councils.

Mr DWYER: They would all have to be there if they were going to be like it is today.

Mr DAVID SHOEBRIDGE: Is it just simply geographic proximity that allows that to happen?

Mr DWYER: It means that at a moment's notice one can seek any sort of information that one requires, not only on conditions which might be imposed but also matters relevant to practice issues that may well occur during the course of an inquiry, for example, if there was—I am thinking of one recently—an application for registration. If that needed to be accessed reasonably quickly, then that could be done because the councils are nearby. It does not happen often but it is a way of establishing it and to me, I suppose in response to your question, because it is such a comfortable reassuring situation currently, I just am a little bit doubtful as to whether that, wont of a better word, collegiality would be obtained if it was in another manner even thought that might all be under the one roof.

Mr DAVID SHOEBRIDGE: What about putting in place an administrative merits appeal to review the merits of a decision of a health disciplinary tribunal? What are your thoughts on that?

Mr DWYER: Respondents go to the Supreme Court on questions of law but they can also be challenging orders, for example, that the finding was not available on the evidence.

Mr DAVID SHOEBRIDGE: That is a question of law.

Mr DWYER: Yes. And also there is a lot of law on—as you would probably know, is it a question of law? Is it a question of fact?

Mr DAVID SHOEBRIDGE: Yes, a difficult question of fact that.

Mr DWYER: But if people aggrieved, I know, going back under the old system, then the appeal was to the District Court.

Mr DAVID SHOEBRIDGE: Given that people are already challenging this question of fact and law, in some ways that is a de facto attempted merits appeal on many occasions. What is your view about putting in place a merits appeal at a higher administrative level? It is only in the appeal on law.

Mr DWYER: I just wonder about the absolute necessity. I think the previous witness referred to numbers. I do not have the numbers available from tribunals but they are not a common event.

Mr DAVID SHOEBRIDGE: The only appeal at the moment is on a question of law to the Supreme Court. That might explain that.

Mr DWYER: Perhaps.

Mr DAVID SHOEBRIDGE: What is the situation on costs in the Pharmacy Tribunal? Is it the same as the medical tribunal?

Mr DWYER: Costs awarded by the tribunal?

Mr DAVID SHOEBRIDGE: Yes. Do they follow the event?

Mr DWYER: The answer is that there is a discretion to award costs as the tribunal considers appropriate. I have ordered costs to be borne by, for example, the respondent and always in the decision there is—

Mr DAVID SHOEBRIDGE: In short, it is a discretion though, not an automatic event.

Mr DWYER: The wording in that recent decision is "the respondent is to pay the costs of the complainant as agreed or, if agreement cannot be reached, either party may have the matter of costs relisted for assessment by the tribunal". I have not had any approach to the tribunal saying that we cannot reach agreement on costs.

Mr DAVID SHOEBRIDGE: I just wonder whether a respondent, a pharmacist, who has had orders issued against them, is the ordinary event that they pay costs?

Mr DWYER: Yes. One's mind would move that way. Much depends again on whether all of the complaint had been, for example, proven. There might be only some points which are—

Mr DAVID SHOEBRIDGE: To the extent that they lose, they ordinarily pay the costs of their loss.

Mr DWYER: The complainant?

Mr DAVID SHOEBRIDGE: Yes.

Mr DWYER: Yes.

Mr DAVID SHOEBRIDGE: Is that a principle behind it for costs? Is it to restrain pharmacists in how many cases they defend? Is there a principle that informs that costs position?

Mr DWYER: I think costs is just part of our legal system. I have no idea whether there was any debate on it in the Parliament when it was introduced but it just seems to be part of the make-up.

The Hon. SHAOQUETT MOSELMANE: In your submission on page 2 you suggest that because the jurisdiction of the professional disciplinary tribunal is protective, not punitive, they must exist separately. Can you elaborate on that point? I think you touched earlier on the question of whether it is protective or punitive as well.

Mr DWYER: Yes. I tried to draw a distinction between person-to-person disputes and the issue of public safety because every one of these involves a health profession to which patients have recourse. The health of the community is paramount and registration, when granted by a registering Act, is a privilege which is accorded to certain people who satisfy the requirements. Because of that public protection and not punitive in the sense that it is not like a criminal court, no penalty—even though penalty is used from time to time; it should not be, in my view, because of the nature of that relationship between health professionals and the community, and the need to ensure that the community—obviously the community has varying capacities of understanding and appreciation and so forth and capacity to challenge.

That is why there is the Health Care Complaints Commission to take these things up on behalf of a patient. Then it deserves a special place in the community. In saying that, I do not wish in any way to diminish the importance of all other tribunals in this State and I do not wish to diminish the importance to people in Fair Trading and the like, but health is such an important issue in the community and one which the community generally does not understand a lot about or necessarily understand a lot about. Because of the composition of the tribunals and that public protection, it seems to me that they do justify separate treatment. I hope that answers the question.

The Hon. SHAOQUETT MOSELMANE: Yes, thank you. What is your view on how other State jurisdictions have handled consolidation of tribunals? Are there any lessons that New South Wales could learn from those experiences?

Mr DWYER: I have not made any particular study of the others. I have heard from time to time anecdotal criticisms of VCAT but I have not researched them myself. As I mentioned, in Mr O'Neill's submissions, I agree with him in respect of those three options. I do not seem to be able to get past firstly seeing the research for any change, costs and benefits of any change, but I cannot seem to get past the inappropriateness of having health professional tribunals within that system, even though I know that that does happen in other States. The previous witness did indicate that there was a—I forget the point he made but it was something about one of the, might have been VCAT, I am not sure. It does not matter.

The Hon. PETER PRIMROSE: You mentioned that there had been no research indicating a need for change. Can you point us to any external research that has been undertaken which indicates that you are meeting the objectives that you have set yourself?

Mr DWYER: I understand that the HPCA is providing further submissions on costings and timeliness of decisions.

The Hon. PETER PRIMROSE: Has there been any research? I am turning this on its head slightly but I have been listening intently and I cannot think of any tribunal that has not indicated, "It ain't broke so why

try to fix it?" I would like someone, other than the people situated within the tribunal, to say that they are sufficiently satisfied and proud of what they are doing and they have had an external agency review it. That is standard for most agencies. Have you or any of the other tribunals of which you may be aware done that?

Mr DWYER: I do not know of any specific research. Secondly, the best research, if I can put it that way, would be confidential research that would come from the councils that make up the health professions. As you know, tribunals are independent bodies, not appointed by councils but by the Governor. I would expect that councils would be a very good source, going back over decades as to the merits or demerits of the tribunal situation. If there were any real concerns I feel confident that they, acting in the best interests of the profession, would be looking to analyse that and do something about it.

The Hon. PETER PRIMROSE: Can you recall any external independent research that has been undertaken?

Mr DWYER: No, I cannot.

Mr DAVID SHOEBRIDGE: The Workers Compensation Commission had an external consultant.

Mr DWYER: I am sorry; I thought you meant health professional tribunals. It has just occurred to me that for many years, taking the profession of pharmacy in the United Kingdom—I think one submission mentioned the United Kingdom—registration and professional representation was always looked after by the Royal Pharmaceutical Society of Great Britain. About two years ago the regulatory arm, the tribunal, and professional misconduct and all the rest of it were hived off from that society to the General Pharmaceutical Council, very much like the General Medical Council which looks after doctors. I do not know what the basis of that decision was and why it went to a General Medical Council, but that may be something as well that the Committee might be interested in looking at. The website and its decisions are available. I would suspect that there would be some information there which might help, but I cannot take it any further.

The Hon. SCOT MacDONALD: I want to put all my questions on notice. Will you advise the Committee how many complaints you normally deal with per annum?

Mr DWYER: I think that information is being assembled for the Committee by the Health Professional Councils Authority [HPCA].

The Hon. SCOT MacDONALD: The Medical Council had a fairly good handle on the costs—at around about $1 million per year—and it was self-funded through, I assume, some sort of doctor levy. Do pharmacists also contribute an industry levy?

Mr DWYER: Yes, of course they were not from a tribunal and I do not have access to all the cost issues, but I am aware that the professions, through their registration fees, pay what is required for tribunals. The profession pays through the registration.

The Hon. SCOT MacDONALD: It is self-funded?

Mr DWYER: Yes, but I am not the best one to ask about that. I understand that there will be some detailed information coming from the Health Professional Councils Authority on that costing and also the other questions as well concerning the number of matters and so forth.

Mr DAVID SHOEBRIDGE: And the timeliness of dealing with them?

Mr DWYER: Yes, and I think also the number of matters per year, and that sort of thing. A colleague recently said to me, "How long does a complaint inquiry last?" The answer is the traditional one—"How long is a piece of string?" Much depends on the nature of the complaint and whether there is an admission of the complaint or whatever.

CHAIR: We appreciate you making yourself available and giving us your input on this issue. The Committee may have further questions which will be sent to you shortly. If we send you some we would appreciate receiving a response by 6 February because of the time constraints.

(The witness withdrew)

(Short adjournment)

ALAN WILSON, President, Queensland Civil and Administrative Tribunal,

FLEUR KINGHAM, Deputy President, Queensland Civil and Administrative Tribunal, and

MARY SHORTLAND, Executive Director, Queensland Civil and Administrative Tribunal, before the Committee:

CHAIR: Have you any opening comments on the issue we are requiring into?

Mr WILSON: Members of the Committee, as you probably know, the Queensland Civil and Administrative Tribunal [QCAT] is the youngest State super tribunal. We opened our doors on 1 December 2009, absorbing about 18 tribunals and being invested with jurisdiction in several hundred matters. There are distinct similarities between us and the Victorian and Western Australian tribunals with a couple of notable exceptions. In particular, we have no industrial relations jurisdiction and, unlike Victoria and Western Australia, we also have no jurisdiction in planning or environmental matters. Largely, however, we absorb all the Queensland tribunals except the mental health tribunal although one of our major jurisdictions is the guardianship jurisdiction.

We have been functioning now for a little over two years. Last year we had something over 30,000 matters. We have two permanent judicial members, four permanent senior members, nine permanent members and about 90 sessional members throughout Queensland. I think it is fair to say that the tribunal has been a success. We were able to measure that very quickly because in our first year we received something approaching 40 per cent more applications than all our constituent tribunals combined. It is clear that providing Queenslanders with a single gateway to a tribunal of this kind and publicising it effectively as it was initially by the Government of the day has been of benefit to our citizens. I think that is probably all I can tell you at the outset.

CHAIR: Have there been any public criticism up there of the tribunal?

Mr WILSON: We have had, I suppose, the usual range of complaints. I think it is fair to say that we have not been the subject of any wide-ranging or significant criticisms. We have struggled a little bit in the current economic climate in providing people with hearings as quickly as we would like to or as the legislation envisages we will, but I do not think there is anything else you could say that has attracted major criticism.

The Hon. SCOT MacDONALD: Some of the common wariness that we heard from the health people especially was the high degree of specialisation needed to hear, whether they be disciplinary matters or whatever. Have you been able to address that in Queensland? The pharmacist people have the top pharmacy man, the medical people can access the range of specialists they need, and all that sort of thing?

Ms KINGHAM: It might be best if I answer that. I tend to do all the health work, although the President could also sit on health matters, but he is fully occupied with a few things and legal disciplinary matters. It is a requirement in Queensland that the tribunal is constituted by a judge of either the District Court or the Supreme Court. It has largely fallen to me. The model in Queensland has us sitting with assessors who are drawn from panels. There are two types of panels. One is a specialist panel of practitioners of the type being disciplined—so there is a medical practitioner's panel, a pharmacist panel, et cetera. There is also a public panel. I sit on all my matters, whether it is a registration issue or a disciplinary issue, with two specialists and one member of the public panel. We maintain continuity in the system that applied in Queensland before and after QCAT commenced. I understand assessors also sit with legal members in most of the New South Wales health disciplinary tribunals. That might be an option open to you as well.

The Hon. SCOT MacDONALD: I kept wondering through all the evidence we heard that matters are appealed or referred or whatever to the Supreme Court. Was there any impact on the Queensland Supreme Court when QCAT came into being? Did it improve the efficiency of the higher courts at all?

Ms KINGHAM: Are you asking that question in relation to the health disciplinary jurisdiction or the appellate work generally?

The Hon. SCOT MacDONALD: I think I mean the appellate work generally. There seemed to be appeals going to the Court of Appeal, the Supreme Court. Did the QCAT streamline that and take a bit of the workload off, particularly, the Supreme Court?

Mr WILSON: Absolutely. I should perhaps have mentioned in my opening statement that one other major point of distinction between us and Victoria and Western Australia is that we have an internal QCAT appeals tribunal. The legislation envisages that that tribunal will be comprised of judicial officers. It has jurisdiction to hear appeals effectively from almost all members' decisions. It has generated a vast amount of work for the judges, much more than we saw coming initially and which kept us very busy. We are only now beginning to get on top of it and find ways to manage it. It is true that that work which, in those other States, still goes to the Court of Appeal has been removed from the Queensland Court of Appeal although the figures we have seen suggest that the actual number of appeals from tribunal matters was never very large, but as part of a single gateway concept, allowing people to seek leave to appeal to an internal appeals tribunal is something that they find attractive, and we had something over 400 appeals in our first year and that has continued to grow.

Mr DAVID SHOEBRIDGE: In terms of those internal appeals, is there both a leave requirement and a requirement to establish error before an appeal can be granted or, once leave is granted, is it simply a fresh rehearing of the matter?

Mr WILSON: Yes. Leave is interposed as a significant hurdle. Parties really need to show a significant question or error that effectively initiates the position.

Mr DAVID SHOEBRIDGE: Do you have any figures on what proportion of those 400 appeals have been granted leave?

Mr WILSON: Yes, a very small proportion. I do not have it in front of me, but it will certainly be less than 10 per cent.

Ms KINGHAM: I can indicate that the research drew a distinction between the minor civil dispute jurisdiction and the rest of our work. In the minor civil dispute jurisdiction, the success rate in securing leave is about 7 per cent of matters. It is higher than that in some of the other jurisdictions, but we have fewer appeals so I suppose they are more substantial matters that have been taken on appeal in the other jurisdictions. If you want more precise figures we have some information we can provide subsequently.

Mr DAVID SHOEBRIDGE: From your experience—and probably the two judicial members who are dealing with most of the appeals are here—is it an effective tool that allows the tribunal to manage the number of appeals?

Mr WILSON: Probably not, in the sense that we were overwhelmed with applications for leave to appeal and we still receive a very large number in matters involving minor civil disputes. We took over the small claims jurisdiction of the Queensland Magistrates Court and about half of our matters are tenancy disputes and that sort of thing. In the vast majority there is never any inkling on a sound basis upon which leave ought to be granted, and we have approached the Government here for reforms to the Act, perhaps placing some kind of monetary limit on it.

Mr DAVID SHOEBRIDGE: Do you see some kind of combination of monetary limit and a leave requirement would potentially be a way of not overwhelming any new tribunal with appeal matters?

Mr WILSON: I think that is a sensible approach, but the other important thing is to understand, as our experience suggests, if you advertise these facilities extensively when you set up a new tribunal, you need to resource them sufficiently to deal with what will certainly be a tsunami of applications for leave to appeal.

Mr DAVID SHOEBRIDGE: Judge Kingham, you say that when you are dealing with the health disciplinary aspect of your work there is a panel you select from. We have heard from some witnesses earlier today that in complex medical matters, often having a panel is not sufficient; often you may have a detailed question on oncology where you need to draw in an expert, say, from interstate, who is the only person who can really address or meet the difficult questions. Do you have any observations about that?

Ms KINGHAM: I have not encountered any difficulties myself in the matters I have dealt with in the two years I have been doing it, but we have a number of mechanisms we can draw upon to ensure that the

tribunal is properly informed. One is the usual approach in a civil litigation process of the parties themselves calling relevant experts. We use a process that we call an experts conclave and I am aware that a similar process is used by some of your health tribunals where the parties' experts are brought together and a member of the tribunal, usually not me, will sit with the experts and work through a series of questions with a view to concluding a joint report of the experts that demonstrates what they agree upon, where they disagree and, to the extent that they disagree, why they disagree. That is one way of ensuring that the tribunal is appropriately informed.

Another mechanism we have that I have not needed to draw upon yet, although I have flagged it in health matters, is the appointment of an assessor to assist the tribunal. There is a part in the QCAT Act that enables the president to appoint a person with particular expertise to assist the tribunal in any number of ways. One of them could be fact finding and providing an expert report. Another could be giving evidence before the tribunal or seeking to resolve some particular specialist issue. It is a very useful process that we have used to ensure that there has been appropriate expertise in other matters. We have used it in an anti-discrimination case where it was an action between the Government and an individual. The individual did not have the resources to engage an expert assessor. The Government was not willing to call expert evidence on the particular point, but within the tribunal membership we had a person who possessed that expertise and the president appointed that person to sit with the legal member and to provide advice on specific questions that were worked out with the parties before the hearing commenced. I think that is a very useful procedure that you might consider if you do establish an amalgamated tribunal.

The Hon. SHAOQUETT MOSELMANE: I am interested in what jurisdictions were considered but ultimately left out of the QCAT consolidation, and why?

Mr WILSON: We were the product of an independent panel of experts comprised of a retired Queensland Court of Appeal judge, the chair of one of the larger tribunals and a man who was then a senior member of the Queensland bar. Their remit did not include the Planning and Environment Court of Queensland, which is part of the District Court. So that was not considered at all. The Mental Health Tribunal was considered. I do not think there was anything else at that time.

The Hon. SHAOQUETT MOSELMANE: What was the reason for leaving out the Planning and Environment Court?

Mr WILSON: It simply was not within the remit of the independent panel. They were told that it would not be included in the new tribunal, so not to bother thinking about it.

The Hon. SHAOQUETT MOSELMANE: How does QCAT ensure access to justice for people living in remote and regional parts of Queensland?

Mr WILSON: We have just been through a process of reappointing our sessional members. We have sessional members in every major regional city from Cairns down to Brisbane. We do not have any west of the Great Divide, but we managed to build up a body of effective and competent members in certainly the larger towns, and I am speaking of Cairns, Townsville, Rockhampton, Hervey Bay, and the Sunshine and Gold coasts. Those members are available to sit on a wide range of matters. We have embarked upon training programs for them. We visit. We also recently appointed as members retired judges, including a retired Supreme Court judge in Townsville and retired Court of Appeal and District Court judges in Brisbane, and I am hoping also to appoint one to another area outside Brisbane.

The Hon. SARAH MITCHELL: I have three questions that I will direct to you, Justice Wilson, but I am happy for your colleagues to answer. In respect to the logistics of setting up QCAT could you outline for the Committee the process from the decision or determination to form the consolidated tribunal through to its establishment and then its operation? Roughly how long did that process take?

Ms KINGHAM: I might answer that as I was appointed a little before the president was. So I saw the tail end of the implementation process. My understanding is that once the commitment was made to establish, the legislation commenced at the end of July 2009 and the tribunal commenced operations on 1 December 2009. But the implementation team was in the process of consolidating the tribunals for a good year or so before that. I think it is important also to recognise that prior to QCAT's commencement there had been over a period of, say, five or six years various steps taken that facilitated an amalgamated tribunal. The first round involved gathering together like tribunals into clusters. So for example the commercial and consumer tribunal was an amalgamation

of half a dozen or so pre-existing tribunals. There was a process that successive governments engaged in to rationalise what had been a much larger number of tribunals before they got to the 18 that preceded QCAT. The other thing that the Government did was to co-locate as many tribunals as it could in the building that we now occupy. They started to move those tribunals onto common IT platforms. Whilst there were still major logistic issues in the last 18 months that the implementation team had to deal with, a great deal of work had been done even before then.

The Hon. SARAH MITCHELL: My second question follows on from the questioning by the Hon. Shaoquett Moselmane regarding regional areas. Justice Wilson, in your opening statement you said that there had been an increase of about 40 per cent more matters for the super tribunal. Do you have a breakdown—I am happy for you to provide the answer to the Committee at a later date—of whether there was more of an increase in rural and regional areas or if it was more in the metropolitan areas?

Mr WILSON: Unfortunately, I do not think I can answer that. So I will take it under advisement, as they say.

The Hon. SARAH MITCHELL: That will be great.

Mr WILSON: There is one other thing I should have said earlier, and that is that outside south-east Queensland the minor civil disputes are adjudicated by regional magistrates. Of course, they are all over Queensland, including west of the divide and they are also ordinary members of QCAT. So in truth, as our executive director has pointed out to me, we do have members in Mount Isa, Longreach, on Emerald and on Cloncurry, Charleville, Quilpie and all that sort of thing.

The Hon. SARAH MITCHELL: I suppose one matter this Committee is trying to ascertain is whether that one-stop shop approach will have an increased benefit to people in regional areas. Your figures would be interesting certainly for that, if and when you can provide them.

Mr WILSON: Mary does have a figure for you.

Ms SHORTLAND: I can say that 50 per cent of our applications are actually minor civil disputes. So we do get a large coverage and across region for minor civil disputes.

The Hon. SARAH MITCHELL: My final question is a bit general. I believe that Judge Kingham mentioned appointing assessors but is there anything you would change or do differently if you were again to go through the task of setting up a super tribunal? I appreciate that it is a bit of a loaded question.

Mr WILSON: No, it is a good question. We all might have a carrot. I will ask Judge Kingham to go first.

Ms KINGHAM: I would have to say following on from the president's comments about the appeal jurisdiction that some specific resourcing to the appeal jurisdiction would be helpful. In terms of the logistics of commencement, I think the lead-in before the implementation process actually commenced served QCAT very well. I know that in Western Australia they did it a little bit differently. They appointed quite a few of the members, certainly the president, the deputies and a few members, and various staff to the tribunal. They gave them a year to establish the tribunal and all its rules and procedures and then they commenced. They brought in all of the applications to that new tribunal. A year later they went through a review and quite dramatically changed some of their processes. I do not know that a longer lead time in terms of policies really assists. I think specific funding for training of the members who are being brought into the tribunal is important. We had the advantage of starting on day one with 120 experienced tribunal members. The issues for us revolved around their experience and the culture of their former tribunal. So we had a lot of very good and very experienced members, but they all had a view, a large number had a view, that the way they had done things in the past was the best way to do it. So our focus in that first phase was to build a new culture—a QCAT culture—of what being a QCAT member entailed and training them as far as possible across our jurisdiction. So I think some thought to the resources and time needed to really effectively prepare your members would be my other recommendation.

CHAIR: Can I put a theoretical situation to you? I want you to imagine a jurisdiction where there is a Consumer, Trader and Tenancy Tribunal that deals with thousands of cases each year on the whole quite adequately, and at the same jurisdiction has a Workers Compensation Commission that deals with thousands of

cases quite adequately. What could such a jurisdiction look forward to that would bring an improvement of such magnitude that it would be a good thing for them to combine into a super tribunal? What could you foresee in that situation would be the improvements that would make it worthwhile for them to be combined into one tribunal?

Mr WILSON: It is a good question. I suppose the closest simile I can draw is between what we call the minor civil disputes tribunal, which is much the same as your CTTT, and our guardianship jurisdiction, which are very unalike. I think the advantages have been that you have one institution administering a wide pantheon of jurisdictions but with shared expertise and ongoing shared experience. What we have found, for example—following on from what Judge Kingham said a moment ago—is that we had very experienced members, but with experience in particular jurisdictions. It has taken time, but we have been able to train those people to spread their wings as it were and to use their talents in other jurisdictions and learn them.

What it means in a practical sense, one involving both economics and accessibility, is that we can move people from one jurisdiction to another as pressures arise. That of course adds to our accessibility. For example, I mean we have had in recent times something of a blitz on our minor civil disputes jurisdiction, and we have been using members to sit with adjudicators. In south-east Queensland we have adjudicators as well as magistrates outside south-east Queensland who do those16,000 or so matters a year. We have been able to use members to sit in the minor civil disputes jurisdiction as well. That reduced the backlog.

CHAIR: Let me add this ingredient to that equation. Let us assume that the two tribunals I have just mentioned have sufficient personnel, they do not have a shortage of trained staff, and they are handling the workload quite adequately. There is not a backlog. It is being dealt with adequately. From the point of view what you have just mentioned, what benefit would then flow to them in that situation?

Mr WILSON: I cannot think of any, except this matter of accessibility. Our experience confirms that if you tell Queenslanders that any kind of dispute within a wide range of jurisdictions can all come to one place, they will use it. Mary has just pointed out to me the advantages of a single point of contact. We have, of course, many tribunals that live somewhere in the inner city of Brisbane and open their offices sometimes on Tuesday afternoon and that were very hard to find and file documents in. There is no doubt that the combination of a single point of entry and wide publication of its creation enhances the accessibility of all of those jurisdictions.

Ms KINGHAM: I just add that as well as, I suppose, some potential that no doubt you will be looking at as well as some economies in delivery of justice services, I think there are a couple of things that flow for the development of the tribunals and in the jurisdictions if you bring them together. I think if you establish a tribunal with a broad brief and also a range of tools with which to deal with their caseload, you will get a simplicity of process, a flexibility in process, a facility to adapt to changing conditions whether it is caseloads or whether it is the way in which the parties want to bring their matters to the tribunal, and you will encourage innovation within the tribunal.

I think there is a tendency within a specialist body to think that you have achieved some state of perfection in the way in which you deal with the matters if they are being dealt with relatively efficiently. But if you bring different jurisdictions together, what we have discovered with our member training is that the cross-pollination of ideas reaps rewards in innovation. I think also you promote the professionalism of tribunal members and tribunal services generally by creating a critical mass of people who, as part of their roles, have to reflect on the way they do their work and engage in continuous professional development.

Ms SHORTLAND: I would like to add that I think what Judge Kingham is saying is the same within the registry. The feedback we get from clients is that they like the one point of contact coming into the registry. They like the fact that the staff are multiskilled and understand different jurisdictions. We also see it as a very big development opportunity for the staff because they get experience in different jurisdictions, and there is an economy of scale longer term. There are lots of positives from having one super tribunal.

CHAIR: Except that we heard some evidence that people liked going into a registry that had particular expertise in the particular type of matter they were going in there for. They were going into a particular registry because it dealt with their issue and they knew that the staff there would be specialists in answering their questions. What would your response be to that proposition?

Ms SHORTLAND: That is not the feedback we have had. We actually completed a client survey back in May last year and a stakeholders' survey. The feedback is that the stakeholders and the clients like the fact that the people are across jurisdictions and it was not identified as an issue at all.

Mr WILSON: We have developed specialist client service officers. I mean no disrespect to the wide range or the complexity of a large number of these jurisdictions, but in terms of intake it is not all rocket science. There is no doubt that those people have been able to acquaint themselves and develop sufficient expertise in a wide range of jurisdictions.

The Hon. SCOT MacDONALD: Thank you for that. I did have two questions, but you have answered the question about the registrar, so that was good. The second question is: As I understand it, a lot of the health professions fund their own professional disciplinary tribunals by way of a doctors' or pharmacists' levy, or whatever. Did you continue with that ability to raise funds through the profession to then finance that work?

Ms SHORTLAND: We have a funding model where we have what we call a memorandum of understanding. For any agency or any area that we have additional jurisdictions for, we have a memorandum of understanding in place. Effectively, it is like a fee for service. So if they use us, they pay for us.

The Hon. SCOT MacDONALD: Right. You are not getting a regular fee from the doctor or the pharmacist or the psychiatrist, or whatever?

Ms KINGHAM: As I understand it, the funds that come through from AHPRA are derived from registration fees. I meet with the heads of the health tribunals and also with the in-house counsel from AHPRA twice a year. The arrangements for funding are broadly the same: whether the dollar figures are the same, the considerations and the structure are the same. AHPRA is funded through the registration fee paid by medical professionals in each State.

The Hon. SCOT MacDONALD: So basically there is no adverse impact on Treasury?

Ms KINGHAM: Not that we have heard, and I imagine we would have.

Ms SHORTLAND: We have a memorandum of understanding in place with AHPRA and get reimbursed.

Mr DAVID SHOEBRIDGE: The benefit of the transcript, can we unpack the acronym AHPRA?

Ms KINGHAM: AHPRA is the Australian Health Practitioner Regulation Agency. It is the agency that was established under the national health system as the service body for the national practitioner board.

Mr DAVID SHOEBRIDGE: Thank you. There were some questions from the Chair about whether people appreciate the level of expertise of your registry staff. It seems to me from some of the initial answers from Justice Wilson that simply having that one point of contact was important in so far as people with a grievance knew there was somewhere to go, and that might have been one of the reasons you had that surge of 40 per cent increase in applications. Previously people had grievances and it was kind of hard to navigate where to take them whereas now in Queensland there is one obvious point.

Mr WILSON: I think that is beyond argument, actually, just as I think that the creation of an appeals tribunal and the statutory obligation upon us to tell everybody who gets one of our 30,000 or so opinions each year that there is an internal appeals tribunal are things that enhance our workflow.

CHAIR: It has that great 40 per cent increase that you got in the first year been maintained since then?

Ms SHORTLAND: No. Last year we probably only had about a 6 to 7 per cent growth, so it has plateaued out.

Mr DAVID SHOEBRIDGE: But from that high level, you have retained that initial surge and then continued a more steady growth after that?

Ms SHORTLAND: That is right, yes.

Mr DAVID SHOEBRIDGE: Can I ask you about people from culturally or linguistically diverse backgrounds? How do you go about ensuring they have fair access to the tribunal and also fair processes once they are in the tribunal?

Mr WILSON: We have statutory obligations to provide people with whatever assistance is necessary, combined, of course, with a strong statutory emphasis on self-representation. From day one we have looked hard at the provision of things like interpreter and translator services. We also have a statutory obligation resting upon all members in all matters to ensure that parties understand the nature of the proceedings, what is alleged by the other side, and what they must do to meet that case. The combination of those elements means a heavy and continuous burden to ensure that anybody under any kind of disadvantage has their needs met.

Mr DAVID SHOEBRIDGE: They are statutory obligations that seem very worthy, but briefly, how do you exercise or live up to those statutory obligations?

Ms KINGHAM: In terms of regulatory processes, we have a system whereby early on a case manager will flag if there are special needs of any party—whether it is a disability issue or a language issue or a cultural issue. Those are flagged so that they can be taken into account, practically and logistically, in the way in which we set up the hearing. So, for example, if an interpreter is needed, that would be flagged early so that when the hearing is scheduled, there will be an interpreter made available. That is one half of it.

The other half of it is that, a matter having been flagged, the member is then made aware that they are dealing with a matter where they have a party who has special needs. Then it is up to the member to deal with that on a case-by-case basis. As you can imagine, in our guardianship jurisdiction, every matter is a special needs matter. We do obviously encounter the same language issues that are encountered by courts and tribunals throughout the country, and I suppose our processes are fairly similar to those that you would expect to find throughout the justice system. It is something that the tribunals before we commenced were used to dealing with and I think we have probably given a sharper logistic focus to it than there might have been in the past. I have a responsibility for the scheduling side of things so I tend to hear if something has gone wrong and I can say that it seems to go wrong on very few occasions. The President might be able to comment on whether this has been a subject of complaint to the tribunal.

Mr WILSON: Indeed, the legislation effectively attracts all complaints about members and the decision-making process to me so I see all of them. There are a significant number but I am pleased to say only one of several hundred so far has actually involved an expression of concern by a party that because of a language problem they did not feel they were able to adequately present their case and did not receive the necessary justice.

CHAIR: You spoke about the 40 per cent increase in applications. Were these all valid applications for matters in which you had jurisdiction or did they involve large numbers of applications that had to be referred to other bodies, such as an ombudsman?

Ms KINGHAM: We have jurisdiction for them.

Mr WILSON: I am sure there were one or two instances where the excitement of the new body and the publicity surrounding it might have attracted an application that lacked jurisdiction or had no sound basis under our legislation, but that certainly was not a factor in that figure.

The Hon. PETER PRIMROSE: This is an unfair question but I will ask it. Since your establishment two or three years ago has any party suggested that in that time anything has been lost to the people of Queensland by the consolidation of tribunals into the Queensland Civil and Administrative Tribunal [QCAT]?

Mr WILSON: There is only one jurisdiction that I am aware of in which there is occasional publicity and that is the jurisdiction involving the racing industry. There have been newspaper articles and a little bit of flak on the internet about our practices and procedures. We took over that jurisdiction from a specialist tribunal. I think it is fair to say that those concerns have largely evaporated. The only other matter that has received a little bit of publicity in last Friday's legal pages in the *Australian* was a concern expressed by the Queensland Law Society that lay parties were disadvantaged in the tribunal because of the emphasis on self-representation. We hear a vast number of applications for leave to be legally represented and of course we have to address them under the criteria the Act gives us. I am not aware of a reasonable basis for complaint that we have exercised

that jurisdiction inappropriately in the face of the legislation but it may be that the Law Society, and in particular the deputy president who was quoted in that article, may have different views.

The Hon. SHAOQUETT MOSELMANE: To follow up on Mr Primrose's question, has there been a review of QCAT since its establishment in 2009 or is one planned in the future?

Mr WILSON: There is one planned for this year, our third year. The Act requires the Minister to review the Act at that interval.

CHAIR: Thank you very much for your time. Your comments have been very valuable and important for our deliberations.

(The witnesses withdrew)

RICHARD HENRY ANICICH, President, Hunter Business Chamber, sworn and examined; and

KRISTEN LOUISE KEEGAN, Chief Executive Officer, Hunter Business Chamber, affirmed and examined:

CHAIR: Thank you for assisting us in our deliberations. Would you like to make a short opening statement?

Mr ANICICH: I thank the Committee for entertaining our submission and inviting us to be here today. Briefly, it is clear from the terms of reference that the Committee is required to consider the opportunities for reform of various tribunals, with some focus on the Industrial Relations Commission. If I refer to "the commission" in my comments I am referring to the Industrial Relations Commission and not the Workers Compensation Commission. That is in the context of the workload of that commission as a result of recent changes to the occupational health and safety legislation and the introduction of the Fair Work Act.

It is important for the Committee not to overlook clause 2 (a) (iii) of its terms of reference, which require the Committee to have regard to "opportunities to make tribunals quicker, cheaper and more effective". Other submissions to the Committee and evidence before the Committee have dealt with a range of points relevant to the operation of the commission on a statewide basis and the other tribunals referred to in the issues paper. The focus of the submission from the Hunter Business Chamber is to draw to the attention of the Committee the effective operation of the Industrial Relations Commission in the Hunter region and the contribution that has made to the investment climate and the economic prosperity of the region over the past 20 to 30 years.

In our view it would be a mistake to focus just on savings that might be made in administrative costs resulting from amalgamation of various tribunals. We suspect that those savings would be insignificant in terms of the productivity gains resulting from the efficient and effective operation of the commission in the Hunter and the beneficial impact that has had on the delivery of major infrastructure projects in the region. I appreciate that it may be difficult to measure that in pure economic or dollar terms, but I suspect that if that exercise were done it would be significant.

We have made brief reference in our submission to the coal loader expansion projects but there is a much greater list of relevant projects that I see are annexed to a submission from the Newcastle branch of the Industrial Relations Society of New South Wales, which in fact detail 25 projects at a value of many billions of dollars. Despite the current global economic uncertainty the pipeline of investment projects in the Hunter remains strong, particularly in relation to the resources sector. That has a flow-on to further development around the port and other transport and logistical infrastructure projects. A recent quarterly employment expectations survey to the end of 2011, produced by the Hudson Investment Group, is intended to capture the expectations of employers on a national basis about hiring permanent staff over the next three months. The survey is produced on a statewide basis and there are only two regions in that survey, one being the Hunter Central Coast and the other being greater western Sydney. It is interesting to see the results. The survey suggested that in New South Wales as a whole there is a 23.2 per cent expectation. Western Australia, which we know is booming because of the resources sector, is 45.1 per cent; Queensland is 34.5 per cent; and, very interestingly, the Hunter Central Coast is 48.9 per cent. As I understand the survey results, 48.9 per cent of employers are predicting they will be hiring more full-time employees in the next three months. That is also interesting in the context of the current employment rate in the Hunter of 2.5 per cent compared to a much higher figure in New South Wales and nationally.

We have also referred in our submission to the benefits in the Hunter flowing from the delegated authority under the Fair Work Act and it is very important that the Committee not overlook that. I understand from some figures provided to me that of 64 matters listed to be dealt with in country New South Wales under the Fair Work Act pursuant to the delegated authority since 11 November 2011, 47 are listed to be dealt with in Newcastle, which is a significant proportion. If that delegation were to be lost there are matters that obviously would be dealt with by Fair Work Australia in Sydney, to the detriment of the parties involved in those matters and with potential delays and cost increases. In that regard I come back to clause 2 (a) (iii) of the terms of reference of this Committee, which refers to quick and effective dispute resolution.

In summary, our submission favours option 1, but whatever changes are made to the structure and operations of the Industrial Relations Commission they must recognise the requirements of section 629 (3) of the Fair Work Act so as not to put at risk the possibility of dual appointments or delegated authority under

section 629 (2) of that Act. In other words, the commission should retain its current powers and opportunity to deal with matters under the Fair Work Act in the Hunter and other parts of regional New South Wales. Our understanding is that whilst there are not permanent members of the commission based in Wollongong, as a result of the success, if you like, of the Hunter experiment since the early 1980s the commission has established a registry in Wollongong and deals with matters in the Illawarra for the very same reasons that have proved to be so successful in the Hunter over the past 30 years. That concludes our opening comments. Ms Keegan and I are happy to answer any questions. I note there is an opportunity to take questions on notice and provide any further responses within 14 days. We may have to take that up if needs be.

The Hon. SHAOQUETT MOSELMANE: In your recommendations in the second paragraph on page 7 you say the loss of delegation from Fair Work Australia by the abolition of the Industrial Relations Commission as we know it could prove disastrous for the region. Can you elaborate on that?

Mr ANICICH: It is relevant to look at the projects that have been successfully dealt with through the intervention of the commission and its officers in the Hunter. While this is not my field of expertise—I am a lawyer and I do not get involved in this jurisdiction—from what I understand and have been told, the site agreements that have been effectively negotiated for the major infrastructure projects in the Hunter over the past 20 to 30 years have resulted in a significant benefit from industrial harmony so that those projects, which are worth many billions of dollars, have come in under time and under budget. The concern is that if that flexibility, presence on the ground and the knowledge of all participants in those projects, from employers to developers and union participants is lost, the harmony that we have worked so hard to develop compared to the situation in the past will also be lost and will put in jeopardy a lot of economic development and benefit for this State. I remind the Committee of the benefit of the contribution from the Hunter region to the State and the national economy, which is not insignificant by any means. It is very important to try to preserve that goodwill and harmony. It would be a retrograde step if that were lost.

The Hon. SHAOQUETT MOSELMANE: That, in a nutshell, is the reason for you supporting option one?

Mr ANICICH: Yes.

Mr DAVID SHOEBRIDGE: What is important for you is the footprint in the Hunter. You have a member and a resourced tribunal there, and that member has the dual appointments and the physical presence. What about the expertise, the fact that the member there has industrial expertise? Do you feel that is part of what has made it successful?

Mr ANICICH: It is. I think it was in 1981 that the first—

Mr DAVID SHOEBRIDGE: I am not talking about any individual member.

Mr ANICICH: For the last 30 years we are talking about three individuals I think. But, yes, there is that expertise resident in the Hunter and needless to say at some point in time those individuals may move on or retire. But there is a body of expertise there that can be replaced from people within the Hunter or outside the Hunter. The important factor is that it is a facility that is available on the ground in the Hunter and able to respond quickly—within matters of hours on occasions, I understand—to intervene and get the parties together to avoid protracted and costly disputes.

Mr DAVID SHOEBRIDGE: Accepting fully that you appreciate and you want to retain the existing Industrial Relations Commission with the capacity to undertake fair work delegation, putting that to one side for the moment what about other aspects of administrative tribunals? The Consumer, Trader and Tenancy Tribunal [CTTT] has civil elements and other elements that must involve your membership. Do you have any other position to put about those broader aspects?

Mr ANICICH: Yes, we do and adopting that broader and not just business but community perspective as well, the Consumer, Trader and Tenancy Tribunal does have a significant presence and a high workload in Newcastle and other surrounding areas and other tribunals will sit in Newcastle from time to time. Without running the risk of trying to hedge our bets, we say in the submission that a broader tribunal could lead to other benefits to the Hunter region and beyond to the lower North Coast and mid North Coast regions. The reason I say that is that if there is an expanded range of matters which are able to be dealt with in an expanded tribunal I suspect that there is the workload. I admit I have not done any analysis to work out what would be the leakage

of discrimination matters or other matters from the Hunter and northern regions to the tribunals sitting in the Sydney region but I suspect that, if that analysis were done, there would be a reasonable element of work that could be dealt with in the Hunter area, in a tribunal with broader powers.

Mr DAVID SHOEBRIDGE: Concentrating a number of those jurisdictions together may well easily justify a significant on-the-ground, full-time presence in the Hunter.

Mr ANICICH: Yes it could and the facilities are there and coming as well. The Committee members might be aware that the Government is committed to the redevelopment of the State court complex in Newcastle. That process is underway and my understanding is that construction and commission handover will be completed sometime in 2014. There are 10 courtrooms on the current planning, so there is capacity for the physical facilities associated with an expanded tribunal to be based in Newcastle as well.

The Hon. SHAOQUETT MOSELMANE: Your submission on page 4 states that an important benefit of having the Industrial Relations Commission in the region is the delegated authority held by the deputy president and the commissioner under the Fair Work Act (2009). Can you elaborate on this point?

Mr ANICICH: To an extent, that is what we have been talking about because, as is clear from the issues paper, a good deal of work has been removed from the State jurisdiction to Fair Work Australia. One of the problems, as I understand it, with the Fair Work Australia legislation is that it does not address the concept or issue of regionalisation at all, so that matters before the fair work body are dealt with in Sydney or in a capital city. With the benefit that we have in the Hunter of the current members—the deputy president and commissioner—having that delegated authority they are able to deal with matters that would otherwise come within the jurisdiction of Fair Work Australia.

The number of fair work matters listed in country areas since mid-November that I quoted a moment ago is indicative of the volume of work that is flowing to Newcastle in just the last few months—to the benefit of participants involved in those matters in the Hunter region. They are the numbers I have been given for the last two or three months and I assume they are indicative of the general flow of work. We state in our submission that it is important that that delegation flows because of section 629 (3) of the Fair Work Act. So the delegated authority would cease if those people who hold that authority ceased to be a member of a prescribed State industrial authority. That is why it is so critical that in any changes made to the Industrial Relations Commission those changes recognise and reflect the need for that body—whether it be a separate division of some new tribunal or whatever it may be—to retain that prescribed authority as a State industrial authority, otherwise that delegation will be lost.

Ms KEEGAN: In terms of some of the anecdotal evidence coming through the media at the moment in relation to cost overruns for major infrastructure projects and projects in other States, for some projects we are looking at in the vicinity of 40 per cent cost overruns. We do not see that in the Hunter. Certainly in the dual role of the commissioners and their delegation under the Fair Work Australia Act, that attests to what we are seeing being produced in the Hunter. It is very difficult to put a dollar value on the worth of the facilitation and conciliation they do in that region.

The Hon. PETER PRIMROSE: Following on from that generally, and I know you have already answered this question, but your submission on page 2 emphasises that the Industrial Relations Commission, in its current form, has brought a stable industrial environment to the Hunter and that stability should not be overlooked. You have indicated a couple of instances already. Can you elaborate on two things? Firstly, can you give a couple of other examples of where that stability and the ability to intercede faster has been of benefit and, secondly, what do you think would be the effect of changing that?

Mr ANICICH: In a general sense I would refer the Committee to that extensive list of projects attached to the other submission. I think there is plenty of evidence to show that those projects have been delivered ahead of time and under budget, because of the site agreements that have been able to be negotiated by people on the ground. Another example—again I understand the details of this only anecdotally—there was a potential dispute in the last 12 months or so, with a new tug operator intending to operate in the port. My understanding is that the members of the Maritime Union of Australia [MUA] were intending to strike and that would have closed down the port. It was a matter to be dealt with under the fair work legislation because they were not State-based employees. Maritime Union of Australia officials were able to make contact with the commission offices in Newcastle.

Through the quick intervention of commission personnel on the ground they were able to arrange for the matter to be lodged with the Fair Work Registry in Sydney and a commissioner or deputy president of the commission was able to deal with that matter in Newcastle on the following day. As I understand it, it was because assurances had been given that the matter would proceed expeditiously in those circumstances that the union delegates were able to prevent their membership calling a strike and closing the port. It is that sort of rapid response and having people who know the participants, know the issues, know the industries and who are able to quickly respond on the ground which are of great benefit. In our submission, it would be a significant retrograde step if that ability was lost.

Ms KEEGAN: Just adding to the numbers anecdotally to that particular example, we were looking down the barrel of between a $100 million and $200 million flow-on effect if the port was closed for between 24 and 48 hours.

The Hon. SARAH MITCHELL: I want to come back to a question that probably relates to some answers you have already given. On page 7 of your submission you state that there might be some merit in establishing a tribunal with the ability to provide an expanded range of legal dispute resolution services and you speak of how that might benefit not only the Hunter but also the mid North Coast and New England. Do you think that there is a need to expand the range of services that are available, or is it more a case of: If we are going to go down that path then perhaps it is an opportunity to improve on what is already working well?

Mr ANICICH: What I had in mind there was that in my view the services provided in Newcastle are presumably more accessible and convenient for people in the mid North Coast, lower North Coast and New England districts, than travelling to Sydney. It is for that reason that I think there is a tangible benefit in providing an expanded range of services in Newcastle. There are court facilities in many centres within that region and my understanding is that from time to time members of the Industrial Relations Commission who are resident in Newcastle will travel to Port Macquarie or Coffs Harbour to deal with matters. There is no reason why there could not be regional sittings on a regular or semi-regular basis in places like Armidale, Tamworth, Port Macquarie or Coffs Harbour, by members of a tribunal who are otherwise based in the Newcastle region.

The Hon. SCOT MacDONALD: You mentioned before that there could be some advantages to bringing a consolidated tribunal body into existence in the Hunter. Do you feel now that small businesses in the Hunter are missing out a bit because they may have to travel, or it is expensive?

Mr ANICICH: Clearly, there is a cost impediment to accessing services when they are outside the region and that can include not only the physical or hard travel costs; it can also mean an extra day or two. If you have a matter before a tribunal in Sydney, depending on where you are travelling from, you may have to travel the day before, you have the day dealing with the tribunal and then you travel back the following day. You can lose three days away from a small business and most small business operators cannot afford the time to do that. If they were able to have something dealt with in a day or less by a tribunal that was operating from the Newcastle region, quite clearly there is a time and costs saving associated with that and less disruption to business. Many of these matters are dealt with by people who are self-represented but if they engage professional help there are some cost savings, in terms of the cost of those services as well, by being able to engage someone local.

The Hon. SCOT MacDONALD: Ms Keegan, do you pick up many frustrations from that, and I am thinking of the smaller end of the matters, the motor trades matters or those sorts of things? Do you pick up on much of that sort of thing?

Ms KEEGAN: We have around 900 members and a lot of those are the small and medium enterprises. There is certainly a lot of frustration in that regard and other frustrations to do with red tape and small business and so forth. People in the Hunter and in regional New South Wales are pragmatic and understand that they have to travel to Sydney from time to time. However, if we are looking at growing the economy and the capacity of New South Wales as a whole, we would like to see the services provided in key regional centres as hubs that these businesses can access more readily.

Mr DAVID SHOEBRIDGE: Referring to the quality of current decision-making, have you had any feedback from your members about the quality of the decisions made by the Consumer, Trader and Tenancy Tribunal in particular?

Ms KEEGAN: Not at this point. However, we can take that question on notice.

CHAIR: There may be some further questions that we may wish to send to you. If there are we will endeavour to get those to you quickly and we would be looking at receiving a response by 6 February.

(The witnesses withdrew)

PHILIP LESLIE BOYCE, Senior Chairperson, Local Land Boards of New South Wales, sworn and examined:

CHAIR: Would you like to make an opening statement?

Mr BOYCE: I would like to make a short statement just to highlight some of the matters I put in my submission. Firstly, I thank the Committee for giving me the opportunity to make the submissions and for the invitation that has been extended to me today to address you. Local land boards are constituted under the Crown Lands Act. They have been around since 1884. Not many people know that they exist but they perform a very useful task in resolving disputes throughout New South Wales in relation to land use and to allow administrative review of decisions made in respect of land-related issues. Importantly—and I have had the opportunity of sitting in on the last two witnesses who came before the Committee—they give members of country, regional and metropolitan communities an opportunity to have decisions made about their disputes in their local area. Rather than parties coming to the local land boards, the local land boards go to them.

Currently, the local land boards are the oldest and longest-serving continuous tribunals in New South Wales. There are 110 land districts in New South Wales. That is the central and eastern part, plus one large land district which is the western division. The land boards service all those land districts. I as the Senior Chairperson sit on every hearing. I have one assistant chairperson who covers for me when I am unable to hear matters. We hear about 180 matters a year. Last year we sat in 98 different locations throughout the State. Twenty-five per cent of those hearings were conducted in the metropolitan, Richmond, Picton or Penrith land districts. I have been the Senior Chairperson for the past 5½ years and before that time I was a part-time judicial member of the Administrative Decisions Tribunal.

When I was first appointed to the local land boards the Minister asked me to undergo a minor form of review of the operation of the land boards. The deficiencies I noticed, having worked on them and travelled around with the land boards, is that there was no effective appeal mechanism, and having the background from the Administrative Decisions Tribunal and its internal appeal mechanism there is a crying need for an appeal mechanism for local land boards. The Crown Lands Act says that there is a right of appeal to the Land and Environment Court provided the jurisdictional legislation that grants jurisdiction to the particular part says that there is a right of appeal. A significant amount of our work is under the Dividing Fences Act and there is no right of appeal under the Dividing Fences Act except for a review of a matter of law and that must be conducted by the Supreme Court.

So we have a conflict or a tension between our jurisdictional grants that on one hand a simple dividing fence, if someone wants to appeal the decision that is made by a local land board must go to the Land and Environment Court, at significant cost with all the cost, delay, time, expertise needed to conduct a matter in the Land and Environment Court. One of the attractions of the local land boards is that we conduct our hearings somewhat informally. We are not bound by the rules of evidence, although we do hear evidence and we make our decisions based on the evidence before us. When I looked at the terms of reference of this Committee it appealed to me to have an opportunity to be able to make a submission to the Committee on the deficiencies I find with my own tribunal, and that is firstly the lack of appeal and I think there is a need for people, particularly many of our dividing fence parties are fairly persistently querulous, as you can imagine. They come before the board, a decision is made, but the dispute is not resolved because it is usually not about the dividing fence. And the next morning they have to get up and face their neighbour and continue to live next door to their neighbour.

I think that as a matter of policy there ought to be some right of appeal for those people. If they go before an internal appeal, as I have suggested, such as the ADT internal appeal mechanism, then they will have the opportunity of having their matters ventilated and an authoritative decision made in relation to what they bring before the ADT appeal division. The other problem that we have with the local land boards is that we were very decentralised and there are lands offices all around New South Wales. There used to be in a number of those land offices registrars of the local land boards. They were Crown land employees and last year they were consolidated into two permanent full-time registrars who are both located at Parramatta.

One of the interesting things that we have found is that the number of applications coming before the board has not changed. So the effect of that decentralisation has not impacted on accessibility to the board. However, I have some concerns that the registrars are employees of Crown lands and particularly when the other part of our jurisdiction is to conduct administrative reviews of decisions made by the department. That is why I am agitating for the Government to look at whether the local land boards could be taken across as a silo within the ADT because we would have the opportunity of having a fully experienced and independent registry

services to support us in the conduct of our hearings. The other matter I should raise is that the boards are constituted either by myself sitting alone in relation to residential dividing fence matters or for inquiries under the grant of licences under the 1912 Water Act or some road matters.

At other times it is constituted by two lay members who are appointed from usually rural communities with some knowledge of land use. I might add that a lot of my lay members are now in their late 70s and 80s and there is a need for those to be replaced. I would see, if we could have the opportunity of going to the Administrative Decisions Tribunal, the ADT would be able to appoint lay members under the current system that they have of appointment of lay members, which would also solve the problem that I see in identifying suitable people to be lay members.

The Hon. SCOT MacDONALD: At the end of last year the Minister for Primary Industries tabled a bill—and correct me if I am wrong—to take the rural tenancy tasks out of the DPI and put them into the CTTT. Are you aware of that? How does that affect you?

Mr BOYCE: I was not aware of that.

The Hon. SCOT MacDONALD: That might be superseded if we do something else. I am a little confused as to how that fits in.

Mr BOYCE: Yes. I was not aware of that.

Mr DAVID SHOEBRIDGE: What proportion of your work is dividing fences work?

Mr BOYCE: About 90 per cent. On sheer volume, dividing fence matters can be usually residential. We do two a day because we go on site and look at them. We conduct a hearing in a courtroom and then we go on site and take a view and make the decision on the spot. Rural dividing fences, which are not insignificant—we are talking sometimes $50,000 to $100,000 or more for a rural dividing fence. They can take a day or two. Our inquiries can last up to four days. That is inquiries under opening or closing Crown roads, inquiries under the Water Act. I have a matter currently before me that is probably going to run to about eight days.

Mr DAVID SHOEBRIDGE: But the bulk of your work is under the Dividing Fences Act.

Mr BOYCE: Yes.

Mr DAVID SHOEBRIDGE: Do you share some of that with the Local Court?

Mr BOYCE: We do. There is a shared jurisdiction. I have recently assisted law access, which is part of the Attorney General's Department, where they were writing a website on how you go about resolving disputes about dividing fences. They could not find a Local Court to sit in on and hear a proceeding conducted. They contacted me and we took them to eight in a week. In discussions with magistrates, because we share courts when we travel around, magistrates say they rarely come up.

Mr DAVID SHOEBRIDGE: I am sure magistrates would love you doing every dividing fence application.

Mr BOYCE: They do. They have an opportunity to refer them to me, and they do.

Mr DAVID SHOEBRIDGE: You are about the only tribunal that has come forward and sort of acknowledged there might be some merits in being rolled up into a broader tribunal. Do you picture that as a division?

Mr BOYCE: Yes, I do.

Mr DAVID SHOEBRIDGE: Would that be so that the appointees to that division have the particular skills to deal with mainly dividing fences, it would appear, but other rural issues outside of that?

Mr BOYCE: Yes. It is a certain expertise that is required. I am a solicitor of 35 years practice. I have alternative dispute resolution qualifications. I come from a country area. I come from a rural background. If you did not have a rural background it would be quite difficult to be able to conduct this matter, because a lot of the

matters are very practical solutions to problems. I might add, before I started this role I did not realise there were so many different dividing fences. Every different area has a different type of dividing fence and I think I have heard just about every argument that could be put up about a dividing fence.

Mr DAVID SHOEBRIDGE: And that accumulated expertise because you keep dealing with it.

Mr BOYCE: That is right.

Mr DAVID SHOEBRIDGE: It enables you probably earlier on to cut to a solution in some cases?

Mr BOYCE: Yes, it does.

The Hon. SHAOQUETT MOSELMANE: If a super tribunal were established which incorporated the Administrative Decisions Tribunal would it be as effective as you are suggesting to merge the local land boards into the Administrative Decisions Tribunal?

Mr BOYCE: I think it would. Provided the expertise in any division were to be preserved, I think that it would. There are other advantages as well. The Administrative Decisions Tribunal provides a collegiality, if you like, of judicial members. There is an opportunity to share some of your work with them. It also allows for training. I am my own person at the moment; I do my own training. Basically I have to keep up to date and do that. I am a member of the Australian Council of Administrative Tribunals so I do have that opportunity. I believe that we would be well supported by being part of the Administrative Decisions Tribunal or a super tribunal which could provide, certainly, the backroom support that we lack at the moment.

The Hon. SHAOQUETT MOSELMANE: At least from that perspective it is a plus?

Mr BOYCE: Yes, it is.

The Hon. SHAOQUETT MOSELMANE: Are there alternatives to the options contained in the Government's issues paper that you think should be considered?

Mr BOYCE: I looked at option three as the option that appealed to me most based on my experience with local land boards. I am going to distinguish the Consumer, Tenancy and Trader Tribunal that has a huge caseload and a huge volume of work. One of the things that I have in common with the Administrative Decisions Tribunal and that is why I am opting for option 3 with some slight variation, I suppose, which creates the silo effect, is that I am required under the Crown Lands Act to give written reasons for every decision I make, including one panel of Colorbond fence. The effect of that is that it explains to the parties how I came about making my decision.

Quite clearly before them they understand why—they might not like it—you have made a decision and that is an application of the facts and the law in order to make that decision. I think that goes a long way towards satisfying the parties that they have had a fair and proper hearing, and they understand why that decision was made. I think with the Consumer, Trader and Tenancy Tribunal, because of the volume of work, I do not think it is required to give written reasons for its decision to that extent. But certainly from experience with inquiries that are conducted over many days there are fulsome reasons for the decision and the examination of the evidence that comes before me.

The Hon. SHAOQUETT MOSELMANE: Does having written reasons create opportunities for appeal?

Mr BOYCE: In 5½ years I have had one matter appealed and that was in relation to a determination by Crown rent for land below the high-water mark, which was quite a contentious issue that came before Parliament. It was to do with the recommendations of the Independent Pricing and Regulatory Tribunal about an increase in rent. The matter started in the Local Land Board and it was elevated to the Land and Environment Court. I am pleased to say that the judge supported the decision that we had made that there was no power to increase the rent based on the Independent Pricing and Regulatory Tribunal formula. The only other matter is a contentious matter which is a Crown road which has been to the Supreme Court and is being considered by the Court of Appeal. That matter is still ongoing. Dividing fence matters tend not to go appeal I think because of the deterrence of the cost.

The Hon. PETER PRIMROSE: On page 7 of your submission you detail that boards deal with the granting of licences under the Water Act and that hearings are conducted in the community that will be affected, somewhat like a public forum. Will you describe to the Committee how those hearings work?

Mr BOYCE: Usually they arise about an applicant who has made an application for a licence under the Water Act. That applicant could be a public body. There was one that I have conducted that comes to mind that involved Wyong City Council. Notice is given that a public inquiry is going to be conducted. It can either be conducted by me or by a magistrate. I have not heard of any magistrates conducting any of these inquiries. The parties come before the board and are invited to give evidence or make submissions to the board, usually orally, and we then make a recommendation on how the matter should be dealt with. In the Wyong City Council matter I think about 15 people gave evidence in relation to it, including some community organisations. Usually it involves people downstream who are going to be affected by the grant of any licence. Environmental groups and hydrologists come before the board. So we have a full range of people who come and give their opinion of how the licence will impact on them and on the community.

The Hon. SARAH MITCHELL: Obviously in relation to water a matter can be very contentious with people downstream. In your experience does your process with community hearings work well? If a super tribunal were established would you like to see that?

Mr BOYCE: Yes, I would because I think it is almost a circuit breaker. When there are highly charged emotional issues in a community it allows it to be ventilated in an orderly way. It is not a free for all. It is up to the board to maintain control and allow the matter to be considered properly whereas, quite often, public meetings, as no doubt members of the Committee would appreciate, get out of hand. It allows proper evidence to be considered and put before the board. I think it really does have a great value to the community to be able to ventilate their concerns in that kind of an environment.

The Hon. SARAH MITCHELL: And to be part of the process?

Mr BOYCE: Yes, and being part of the process.

The Hon. SARAH MITCHELL: The Committee has been trying to ascertain whether a one-stop shop would help to improve access to justice in the different tribunals in operation in New South Wales, particularly with a focus, for me, on regional and rural areas. Do you have any comments or thoughts on that?

Mr BOYCE: You have probably determined from the tone of my submissions and evidence that I am quite in favour of the Administrative Decisions Tribunal option. My experience is that since the centralisation of the registrars of Local Land Boards there has been no appreciable decline in the quantity of work coming to us. I think that a registry of a super tribunal could provide the same service, with much greater expertise. I really believe that for members of the community, particularly regional—and with communications the way they are now—it is very easy for them to access that registry and get the service and expertise on being able to bring a matter before a board for airing.

The Hon. PETER PRIMROSE: Are you aware of where land board equivalents in other jurisdictions are located?

Mr BOYCE: There are none; it is unique. It was really sort of the junior Land and Environment Court. If you trace the history of the boards you find that the original role of land boards in New South Wales was for the orderly distribution of land. A lot of the land ballots were conducted by the Local Land Board. For instance, the Coleambally Irrigation Scheme was conducted by ballot. The Local Land Boards conducted the ballot to ensure that fair process took place. I am often contacted by my interstate counterparts about dividing fences. No-one seems to know what to do with dividing fences. I understand that the Queensland Civil and Administrative Tribunal [QCAT] has taken dividing fences into its jurisdiction. It resides with the Magistrates Court in Victoria. I think in Western Australia it still resides with the Magistrates Court.

The Hon. PETER PRIMROSE: I was looking at where the functionalities of what you deal with were located.

Mr BOYCE: What has happened is that because of the expertise of land use, if you like, the Local Land Board has taken on the Dividing Fences Act, only under the 1991 Act. It was not in the previous Act. I think that the advantage is that magistrates are so busy these days they do not have an opportunity to leave the

bench to go out and look at a fence, whereas we will go out and have a look and it is amazing how much assistance that is.

The Hon. SHAOQUETT MOSELMANE: A submission from the New South Wales Bar Associations suggests the possibility of a single registry service as opposed to a single tribunal. What do think of that idea?

Mr BOYCE: I was not aware of that submission. I suppose that really reflects on what I am saying. I would be quite happy for my tribunal to be part of a super tribunal but protected by its silo, and to have the advantage of a super registry. Personally for this tribunal I think I will get the same benefit out of having either a super registry where all inquiries went to, and the boards were administered from that registry. But certainly from my own perspective as the principal chairperson of the Local Land Boards of my tribunal, I would welcome an opportunity to have some contact with other judicial members to provide the support that you need at times. I do not know anything about the medical tribunals but it seems to me that they have a number of tribunal members and they are able to have that professional development within that particular expertise, whereas my tribunal does not have that opportunity.

Mr DAVID SHOEBRIDGE: In any event you see one of the key issues as getting rid of that perceived potential conflict between having the registrars employed by what often is a litigant before your—

Mr BOYCE: That is right.

Mr DAVID SHOEBRIDGE: That is probably irrespective of the merits or demerits of the super tribunal and is something that should be remedied?

Mr BOYCE: Yes. It is a matter that has been in place since 1884.

Mr DAVID SHOEBRIDGE: With modern expectations about impartiality—

Mr BOYCE: The expectations of the contemporary community have changed dramatically in my 35 years in legal practice. I would think that there has to be a transparency and procedural fairness, and there could be the suggestion that I am reviewing a decision. I am independent. I am a statutory appointment but the registry is not.

Mr DAVID SHOEBRIDGE: When litigants are prosecuting their case against the department and they hand their application to a departmental officer as the registrar, I can see how that—

Mr BOYCE: Absolutely yes.

CHAIR: We are at the end of our time allocation. Your evidence has been of great assistance and will be taken into account in the Committee's deliberations. Further questions may arise and if there are the Committee will endeavour to get them to you very quickly. We would be seeking a response, if possible, by 6 February.

Mr BOYCE: I am sure I can do that. I am back on circuit that week.

(The witnesses withdrew)

NOEL ROBERT MARTIN, Northern Industrial Officer, United Services Union, sworn and examined:

CHAIR: Would you like to start with an opening statement?

Mr MARTIN: Yes. I thank the Committee for the opportunity. I had the opportunity to listen to the Hunter Business Chamber, the people before the last, and it is very unusual for a union official to be saying I agree with them. There seemed to be a common thread—and I had never met either of those people until just now in the hallway. I intended to put the human element to the evidence today so I have not delved too much into the provisions of the Act.

Having lived in Newcastle, in the suburbs of Newcastle, the far western suburb of Beresfield, growing up there all my life, Newcastle is certainly a different town to what it was when I was growing up. My parents left the mid-North Coast after generation after generation of dairy farmers in circumstances that were very much beyond their control. They had four children, one of them severely developmentally disabled. They ended up in Newcastle. My dad left school at the age of 11 to work on the dairy farm and he got a job with BHP. He was ecstatic. They are the true Aussie battlers.

However, when he went to work for BHP there was a problem. That problem, as a labourer at BHP back in the 1960s and 1970s, was that they were always on strike. He had four children, a mortgage and bills to pay. He had, and still has to this day—he is nearly 80 years of age today—a strong work ethic and a strong ethic about paying his bills. He cannot pay his bills if he is on strike. There were lengthy delays in the resolution of those disputes in those days, which led to more strike action. The cost to the economy of New South Wales, the cost to the company and the cost to my father was huge. When I was growing up, going to school with a public school education in Beresfield, it was common school talk—whose dad was on strike. It was a working-class area and every second day somebody's dad would be on strike.

We move forward in my life to 1982, and I was fortunate enough when I left school to obtain an apprenticeship with Maitland City Council. I started that apprenticeship in February 1982. In March 1982 as I was an apprentice did not go out on strike. I stayed at work but could not work because I had no supervision. The employees of Maitland City Council were on strike for six weeks. The cost to the community was huge. In those days pans were still being picked up and those pans were not picked up for six weeks. Septic systems were not pumped out for six weeks. Garbage was not picked up for six weeks. Potholes were not repaired for six weeks in Maitland while those people were on strike.

We move forward to 1992. In local government from 1992 to today there have been consent awards with the assistance of the New South Wales Industrial Commission. Those awards have been made by consent between the employer organisations and the unions, with the Industrial Commission members presiding over those award negotiations. We move to today. In our submission we show that the union filed 123 disputes in the New South Wales Industrial Commission last year. Not one of them had a six-week strike—at most, a bare minimum, a one-day strike action. The reason is that is the dispute resolution process in the award—where everyone has sat around the table and held hands and the awards have not been a pushover; negotiations have been robust but they have been civilised out of respect between the employer organisations and the unions and out of respect for the commission. They have been robust but they have a procedure that has to be followed. That dispute resolution process involves while the dispute is happening the status quo provisions prior to the dispute have to apply. So, work continues as normal so there is no external or additional cost to the employer, to the family or to the economy.

I want to bring to the Committee's attention and probably reiterate what has already been said by the Hunter Business Chamber about section 629 of the Fair Work Act, and the dual appointments. If the New South Wales Industrial Relations Commission is abolished, it is the institution recognised by Fair Work Australia that does give rise to dual appointments. There is no guarantee that the Federal Government would have dual appointments and we could lose both the dual appointments in Newcastle. Having dual appointees works well in Newcastle. It means that it does not matter whether the dispute is in Fair Work or in the New South Wales system, it is about getting access to a third person to mediate and to put in place those dispute resolution procedures. The other thing I want to bring to the Committee's attention is that the Federal system is about penalties. Like it or hate it, the Federal system is about penalties for employers and penalties for employees or unions. It is not about resolving the issues that both the employers and the employees want fixed. The emphasis of the New South Wales Act is about the resolution of the dispute, and it would be an absolute shame for New South Wales to lose that.

The last thing I would to say in my opening statement—and I am trying to be brief—is that to diminish the Industrial Relations Commission in New South Wales and to diminish access to dispute resolution to the broad community—and I am responsible for all the Industrial Commission work from the Hawkesbury River to Tweed Heads, out to nearly Broken Hill. We have officers on the ground for the day-to-day issues but if the matter goes to the Industrial Commission, I am the person on the issue who represents that area. Twelve months previously I had 12 months overseeing the whole of the State. If we require or the employer requires assistance of a third party at Bourke, at Tweed Heads or out at Hay, the commission will go there if it is genuinely about resolving issues. They will not just jump in a plane and go for a joy flight out there but they will go if the issue is genuine and it is about genuine resolution. That means it does not matter whether we live in the Sydney central business district or we live in Bourke; we have equality across New South Wales for employment-related dispute resolution.

The Hon. SCOT MacDONALD: So you are not addressing the consolidation of other sundry tribunals; your focus is on maintaining the Industrial Relations Commission, particularly the dispute resolution process?

Mr MARTIN: I did not touch in my opening remarks—personally we would like to see the Industrial Relations Commission remain as it currently stands. If that is not going to be, we would be supporting option 1. We are saying that the architecture is for employment-related matters, the IRC and, if anything, the IRC should be enhanced and built of what was employment related matters such as bringing in employment-related anti-discrimination, et cetera.

The Hon. SCOT MacDONALD: The point of the inquiries there may be excess capacity within the IRC because it is no longer determining the annual public sector wage rate. You do not see any merit in the idea of the IRC—I am not aware of anybody saying anything about the diminution of dispute resolution but you say that the IRC should be a stand-alone body and not concern itself with any of the other tribunal-like activities?

Mr MARTIN: In the last 12 months I have had the opportunity to appear in the Consumer, Trader and Tenancy Tribunal, whilst working out of Sydney. My experience is the Consumer, Trader and Tenancy Tribunal is not equipped to handle employment-related matters. There is no doubt its case workload is huge. The difficulty with the Consumer, Trader and Tenancy Tribunal, if you put a one-stop shop under an umbrella, call it whatever you want to call it with matters that the Consumer, Trader and Tenancy Tribunal is handling, employment-related matters will become lost by sheer number and the prompt, efficient response to employment-related matters could well be delayed and could well be a cost to the community and the economy of the State.

The Hon. SCOT MacDONALD: From what you are talking about there, is the IRC handling big picture, significant disputes, things that could escalate. How does it handle the relatively minor matters, underpayment or minor disputes with your employer?

Mr MARTIN: To the person who has been underpaid it would not be minor. The industrial commission is pretty matter of fact. The United Services Union has probably been driven by what has happened in Newcastle, but we have been at the forefront within our organisation about ensuring that it is driven by a process. We do not have a lot of underpayment of wages go to the IRC because when we are driven by process we are not running off willy-nilly and the industrial commission knows that when we take a matter for an underpayment we are not going there with an ambit claim. We are going to have the facts and be able to present those facts. For example, I have not had an underpayment wages claim for about five years.

Mr DAVID SHOEBRIDGE: I take it that the nub of your submission is that in your industry it is essential that you have the skills and the speed of response from the existing commission in order to smooth through the industrial troubles that you might otherwise face?

Mr MARTIN: Certainly we are for a stand-alone industrial commission.

Mr DAVID SHOEBRIDGE: Essentially, from what I can tell, you say you have had more than 100 disputes, they are handled enormously efficiently and extremely competently at the moment and, ideally, that would stay the same?

Mr MARTIN: Yes.

Mr DAVID SHOEBRIDGE: Have you had discussions with the employer organisation with whom you deal?

Mr MARTIN: Yes.

Mr DAVID SHOEBRIDGE: I assume that you have a cordial relationship?

Mr MARTIN: A very good relationship because we are about dispute resolution. Whilst we might be robust and might have different or opposing points of view, we have mutual respect.

Mr DAVID SHOEBRIDGE: Basically, civilised industrial relations before a competent tribunal producing civilised outcomes?

Mr MARTIN: Yes, which is to the betterment of the community.

The Hon. PETER PRIMROSE: Taking up the same point, just to confirm that while you favour a stand-alone Industrial Relations Commission, of the options presented in the Government's position paper you favour option one?

Mr MARTIN: Yes.

The Hon. PETER PRIMROSE: Page 5 of your submission states that the United Services Union is of the view that the commission would benefit from additional ongoing resources to attend to the existing workload. How do you reconcile that statement with the loss of most of the Industrial Relations Commission's employment jurisdiction to Fair Work Australia?

Mr MARTIN: To start with, since Fair Work Australia came into play there has been a significant amount of commissioners retire or go to Fair Work. So we are not talking about 12 commissioners. I think we are down to about five now. The industrial commission had the two people from GREAT—that is what they call it.

Mr DAVID SHOEBRIDGE: Government and Related Employees Appeals Tribunal?

Mr MARTIN: Yes. Their tenure finished in June or July last year. Why we say that in metropolitan Sydney, for example, where the resources are lacking is because there has been no replacement of those commissioners and the skills and expertise that has been lost, particularly for local government, has been huge. We have not lost it so much in the regions with Newcastle, particularly in the northern part, because we have the deputy president and commissioner who do that north run.

The Hon. SHAOQUETT MOSELMANE: I can attest to the great work that the USU has done with local government. As an elected local government member I have been involved and am aware of the professional and congenial approach that the USU uses to resolve issues. Having said that, your submission highlights on pages 3 to 6 that the USU greatly values the work of the Industrial Relations Commission in resolving industrial disputes. Can you elaborate why a satisfactory resolution of industrial disputes could or could not be achieved through the creation of an employment list within a super tribunal?

Mr MARTIN: Simply that it is a specialised industry. Employment-related matters are specialised. If you lose that and you end up in, say, a CTTT, I personally would be horrified.

The Hon. SHAOQUETT MOSELMANE: Is that because the CTTT does not have the skills and experience?

Mr MARTIN: Simply from the matters in which I appeared in the last 12 months. We started at a tribunal room—I am not from Sydney, so I was horrified—at Bankstown. Then when we got to a hearing, I am sitting in the waiting room, I went and said, "I'm here for the hearing" and sat in the waiting room and the hearing was in Penrith. It was just like a sausage factory. For example, Cessnock local government has been renowned for taking strike action at the drop of a hat. The guys at Cessnock City Council were renowned for it. The wind would only have to blow the wrong way. If I had to take the delegates and some of those members to a hearing set up like the CTTT, they would laugh at me. Whereas you take them to a structured process that

happens now and it has the respect. It is a court room. It is a proper court. There is a proper process. A conciliation room, such as the CTTT use, I think the people at Cessnock, and it has not been unknown, would spit on my car.

The Hon. SHAOQUETT MOSELMANE: It seems to me that the core aspect of your argument is that you have built a relationship of respect and a working relationship with employers. If the Industrial Relations Commission's powers were withdrawn, that established relationship may be destroyed. You are saying to us that this will have a real detrimental impact not only on the workers but also on the relationship between you and the employer?

Mr MARTIN: Of course it is going to diminish because it would become adversary and it will go back 30 years. The reason why I put the personal comment is because 30 years ago was not helpful to my family, my parents. It was not helpful to the employer, BHP. It was not helpful to the economies of the State. The other thing is, particularly more so in Newcastle, and we heard from the Hunter Business Chamber, that the people under the Federal arena have made a number of arrangements in a lot of agreements to access 146B and that is disputes back to the State system. When we talk about Federal people coming back to the State system, you are talking about a system that works: that does not only work for the employees, it works for the employers and it works for all levels of government—Federal, State and local. And most of all, at the end of the day, it works for the communities.

Mr DAVID SHOEBRIDGE: Section 146B effectively are those provisions within a certified agreement or other that allows a dispute on a federally registered agreement to be dealt with in the State IRC, is that correct?

Mr MARTIN: Yes.

The Hon. SARAH MITCHELL: I want to ask for your opinion on how other State jurisdictions have handled the consolidation process, particularly in relation to industrial relations matters. I do not expect you to have extensive knowledge, but have you had discussions with colleagues, say, in Victoria or Queensland as to how they found the process?

Mr MARTIN: Yes.

The Hon. SARAH MITCHELL: For a union similar to yours?

Mr MARTIN: Yes I have. I am actually part of a working party for the Australian Services Union. I actually have a meeting in Melbourne next week. I have had several discussions with colleagues from Western Australia, South Australia and Victoria. They say it becomes a nightmare to administer, to be able to resolve the issues. Obviously, my colleagues in Victoria find it extremely difficult. They find it hard to get quick, responsive resolution. It is hard to get judges or commissioners from Fair Work out into the regions because, as you are well aware, the New South Wales IR Act provides for recognition of the regions. It is not so prominent in Fair Work. They do have a couple of little lines about the regions but, certainly, if you want Fair Work, take Newcastle out of the equation, if you want dispute resolution in an employment-related matter and you are in Fair Work at Sydney, Canberra or Melbourne, more likely Sydney and Melbourne. If we lose, particularly, the IRC in Newcastle and Fair Work then says, "Well, the agreement is in respect to the institution of New South Wales IRC and it is abolished, then Fair Work implements 6 to 9 and says that we are not going to have dual appointees, dispute resolution then will move to Sydney or Melbourne and it will be on case allocation. So it could well be that we have a commissioner or senior deputy president of Fair Work in Melbourne trying to resolve a dispute that is in Newcastle.

CHAIR: Have you had any feedback from your members in Queensland?

Mr MARTIN: Yes.

CHAIR: What feedback did you get?

Mr MARTIN: They said oppose the super tribunal whatever you do.

Mr DAVID SHOEBRIDGE: The Queensland one does not have IR though?

Mr MARTIN: No.

Mr DAVID SHOEBRIDGE: Nor does the WA one?

Mr MARTIN: No.

Mr DAVID SHOEBRIDGE: They have remained separate, have they not?

Mr MARTIN: Yes. Queensland I am not as familiar with, but when you talk about WA, they have councils side by side. Some are dealt with in the State system and some are dealt with in the Federal system. It is a juggle. In some cases they have Federal registered agreements in councils that are in the State jurisdiction. So it just becomes a dog's breakfast.

CHAIR: Was the feedback you received from Queensland specifically in regard to its tribunal?

Mr MARTIN: That was just in general conversation. We had discussions around the table before Christmas and their comment was to just avoid any super tribunal.

Mr DAVID SHOEBRIDGE: But your submissions today are not based upon those throwaway conversations; your submissions today are based on your history working in the current New South Wales one, is that right?

Mr MARTIN: That is correct.

Mr DAVID SHOEBRIDGE: For how many years?

Mr MARTIN: I have been in local government since I was 15 years of age.

Mr DAVID SHOEBRIDGE: You can now tell us how many years, if you like?

Mr MARTIN: I am now 45. I have spent my life in local government. I became an official with the previous municipal employees union about 15 years ago.

CHAIR: That concludes our time. Thank you for attending this afternoon and for your assistance in our deliberations. There may be some more questions for you. If so, we will forward them to you quickly. We would like a response by 6 February.

Mr MARTIN: That will be fine.

(The witness withdrew)
(The Committee adjourned at 5.00 p.m.)