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LAW REFORM COMMITTEE

Inquiry into vexatious litigants

Melbourne — 13 August 2008

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Mr C. Wheeler, deputy ombudsman, New South Wales.

The CHAIR — Chris Wheeler, thank you very much for coming all the way down here from New South Wales to share your information with us, and thank you also for the submission, both the interim manual that you supplied and the paper that came as well. We were very appreciative of that. As you heard me say before to the previous witnesses, this hearing is being reported by Hansard staff and you will get a copy of the transcript. The evidence you give is subject to parliamentary privilege. You have 45 minutes or just under, so it is over to you.

Overheads shown.

Mr WHEELER — There are a few things I thought I should say today. I am interested in this issue in the public sector context and in its similarities with the problems we are trying to address in relation to unreasonable complainant conduct. One of the things that jumps out immediately about this issue is the terminology. We used to refer to the problem as being 'difficult complainants'. Our first guideline, which was published in 1998, I think, was called 'Dealing with difficult complainants', but more recently we have realised that we need to move away from a focus on the person to a focus on their behaviour and to move away from prejudicial terms that seriously annoy the people we are dealing with to terms that are more descriptive — that is, referring to somebody or somebody's conduct as being unreasonable is something that you can actually discuss face to face with a person in a very transparent manner. You might say, 'You might believe you are acting reasonably, but from our perspective you are not'. But to say to somebody, 'We find you a difficult complainant' or 'We think you are vexatious' is not likely to lead to any very quick resolution of the problem!

From our perspective we start off with two questions. Firstly, are there circumstances where rights of members of the public to exercise statutory rights should be fettered and is it appropriate to fetter them, and what exactly is the nature of the problem that needs to be addressed? From our perspective it is more than just an issue of vexatiousness; it is a much broader issue.

In the public sector context there are three aspects, to my mind, of the problem caused by what we will call vexatious litigants or unreasonable complainant conduct. The first is an unreasonable diversion of public resources; the second is inequitable distribution of public resources, particularly where one person exercising their rights means that the capacity of other people to exercise their rights is impacted on; and thirdly, there are occupational health and safety issues that can arise.

In a bit more detail, from our research, between 2 and 6 per cent of our complainants, for example, in an ombudsman's office, might take up between 20 and 25 per cent of our resources. In talking to complaint handlers across Australia and in other countries, largely similar figures come out. With equity problems, as I was saying, what you are looking at is that, if you are putting a massive amount of resources into certain complaints and complainants from a limited quantity of resources, that means there is less available to other people. We also have absolute occupational health and safety obligations for our staff and for visitors to our premises.

Another problem is the change-of-focus problems. Complainants who fall into this category quite commonly will start off with a particular issue — it is normally one issue that they start with — and over time the focus of that issue will change. I will get onto some slides in a moment that demonstrate that. What we have been looking at is how to prevent those sorts of problems from occurring or to address them if they do in a way that is fair and reasonable to all complainants.

Given I have only a short time I will not go into too much detail about certain bits and pieces. If we look at the traditional formulation of the vexatious litigant provision that you have in Victoria and we have got in New South Wales, the problem we see with those sorts of provisions is that you have either got to prove the intention of the litigant or the complainant with sufficient certainty for a court to make a decision or all of the proceedings that are instituted by that person have to be without merit. For us that is a problem, particularly when you look at the equity and resource issues.

Firstly, on the test which says that they have to be absolutely groundless, no distinction is made between, for example, merit issues and procedural issues. If you take one of our people who uses our Administrative Decisions Tribunal to take actions against agencies in relation to FOI applications, one of them so far has 55 judgements of our ADT. That is the record by far. That includes something in the area of 31 of the General Division. Most cases he loses he would appeal to the Appeal Panel, and many of the cases he loses in the appeal panel he will take to the Supreme Court, so there are six Supreme Court judgements. There is about a fifty-fifty split between merit issues and procedural issues, and he has won some primarily on the procedural issues — jurisdiction: does the tribunal

have jurisdiction or not, and those sorts of questions. You might say, 'Fair enough. He should have the right to do that', but if you put him with one other FOI appellant, since 2004, 30 per cent of the decisions of the tribunal in its FOI jurisdiction has just been those two.

In the privacy area there is one person who has 23 decisions. Put her with another, and between them they have got 38 decisions — 40 per cent of the ADT's privacy jurisdiction work since 2004 is two people. Okay, the lady with the 23 decisions actually had a couple of good wins — I think she got the first award of damages by our ADT in a privacy matter — but then you say, 'What is fair and reasonable in terms of the ability of other people to access that tribunal within a reasonable period?'. Anybody can lodge an application. It is $55; that is it. If you are self-represented, that is your total outlay, but how long is it going to take you to get a hearing and how long is it going to take you to get a judgement when 40 per cent of the work of the tribunal in its privacy area is just two people and 30 per cent in the FOI area is two people?

Mr DONNELLAN — That is a difficult process, compared to us, and I mean that in a very nice way. It seems as though you have got some real recidivists there.

Mr WHEELER — In a few slides I have tried to show graphically the types of situations that you will get in relation to complaints, FOI applications and that sort of issue. The dots basically represent an event. Something happens and the person will make a complaint or a FOI application to an agency, and the usual thing is that one person might make a complaint to a couple of agencies over time. Some journalists and MPs, quite correctly — that is their job — make lots of applications to lots of agencies about a whole range of issues.

Then we have got the scattergun. This is the sort of person who has an issue and is just trying to find information about it, sort of like a forensics investigation, and they will go to every agency that they think has some information. It is a logical, as I say, forensic sort of examination asking 'What facts can I gather from the government?'.

Then we have got the obsessional — one event that will lead to a series of matters with either the one agency or with two agencies possibly. These are taken from real life. They will just keep it going on and on about the same issue. They might reframe it and they might change the details slightly, but they will just keep coming back on the same issue.

Then we have got 'rolling thunder'. Basically what you have here is that there is one event at the start and then it broadens out. Then complaints about the complaint handlers are made to other bodies. And then complaints are made about those other bodies to whoever can take complaints about them. If that does not work, then when there are hearings, complaints will be made about the legal representatives of those bodies to the legal services commission and the bar council. In the tribunal complaints will be made about the tribunal members, saying that they must be biased, to the head of the tribunal and then to, in New South Wales, the judicial commission.

This is the sort of problem that has huge resource implications, not just for the agency concerned. May I say that in one particular case we have got one agency that is the subject of 31 appeals to the ADT by the one person, and then they have taken that person on six times as well, so it is 37 decisions. Now this is not all the actions, there are still lots of actions on the go, but I am just trying to explain that it is not just whether somebody is motivated to cause harm to an individual that should be a deciding factor in determining whether they are exercising their rights reasonably, and if not, what steps should be taken to make sure that public resources are not wasted.

When you look at vexatious litigation provisions, you see they were basically brought in to help the courts to prevent abuse of their processes. When you read the literature, sometimes it talks about them being to help the courts manage their resources. On rare occasions you will hear talk about the poor defendant who has to come back again and again and again. But the fact is also that it is public resources, so it should not just be about courts, it should be about any organisations — tribunals, courts, complaint handlers — that are dealing with a problem that is taking up their resources. We need to be quite clear about what it is we are trying to do. Are we trying to just stop people from bothering the courts or are we trying to have a more holistic approach to making sure that public resources are properly managed in a way that is fair and reasonable to all?

Looking at another issue that comes up quite a lot, it is about motivation and mental illness. From our perspective there are a whole range of reasons why somebody might be engaged in unreasonable complainant conduct and often they will also be vexatious litigants. I actually took the names of, I think it is 13 vexatious litigants in New South Wales, and ran them through our database to see how many had made complaints to the ombudsman. It was

interesting, I think seven had made complaints to the ombudsman, of which one had made 25 and the others had averaged about 4 or 5.

There are common problems, not just in the courts but in complaint-handling bodies.

Looking at the causes, I would break them up into various subheadings. The first is 'attitudinal': that is, dissatisfaction with a person, agency, the government, life in general — they have just got an attitude. The second is 'aspirational': they are seeking justice, they are seeking a moral outcome, a rigid focus on the principle of the thing. In a complaint-handling situation, when you hear somebody say, 'It is the principle of the thing', you sit there and your perspective goes out in front of you thinking, 'This could go a number of ways, and some of them do not look good'.

'Emotional' or 'psychological': say an unreasonable refusal to accept an outcome that is unfavourable; a crusade seeking vindication or retribution — and that is quite common, where people will want somebody fired, or they will want a million dollars compensation. When you look at what the issue was that caused this demand, there is a certain lack of proportionality there. An unreasonable sense of entitlement would be in there; inability to accept responsibility — but mental disorder.

Then you have got 'recreational'. Basically for some people, particularly some retired people, it is a hobby, a fascinating hobby and an all-consuming hobby. There is no mental issue there; they have just started a bit of a crusade on a particular issue because it interests them. That might involve all sorts of complaints — massive numbers of complaints on some occasions — and then leading to FOI applications to try to get the records about how the complaints were dealt with, and then there are appeals to the tribunal et cetera.

Another way of looking at this would be personality types. You could go down that path. You have your querulants, which is from the research of Dr Grant Lester; you have the high-conflict people, who are the subject of a book by Bill Eddy called *High Conflict People in Legal Disputes*; obsessives; paranoids; and people with low anger thresholds and control issues. But what we need to remember here in regard to the sorts of people who engage in unreasonable conduct with complaint handlers is that not all of them have any sort of psychiatric or behavioural issue.

Certainly from our perspective, we are complaints handling bodies and courts are interpreters of the law. We are not psychiatrists; we are not social workers. Even if we were psychiatrists, we do not have enough face-to-face contact and enough knowledge of their background to be able to psychoanalyse a complainant. This is why we have moved away from a focus on the person being difficult or vexatious to focusing on the actual behaviours. As you will see in the Interim Manual, we have identified five specific behaviours. Each has its own management strategy, because everybody is different. Our old approach was basically classing them all as the one thing: 'You are a difficult person, therefore we will show you the door', whereas that is not necessarily the correct answer. I think the approach the UK has adopted of a stepped and measured approach to address the particular issues that are arising is far better than a one-size-fits-all approach, particularly if it has a prejudicial title where you are labelled something forever. The UK approach of moving away from the label, I think, is a very positive step.

I have also looked at the figures for how many people came to us with massive numbers of FOI complaints and how many went to our tribunal with massive numbers of appeals in the FOI jurisdiction. While most of the people who make numerous applications to the tribunal have made complaints to the ombudsman, they are not necessarily the same people. I mean, the people who have made the most complaints to the ombudsman have made few appeals to the tribunal; the ones who have made most appeals to the tribunal have made few to the ombudsman. However, both of us know the same people — I mean, they have tried both. I have not been able to work out precisely the sequence — whether it is sequential or concurrent. I think there is a bit of an overlap, but primarily I think probably people would come to the ombudsman first in most cases, and if they are not happy with the outcome, then they will go to the tribunal.

Then I have also put down on a slide a range of possible tests that might be more appropriate than the current ones, which is that the intention was to harass and annoy or that there were habitual et cetera actions that have no grounds. I do not know whether I sent this sheet up to you — I think I did, but just in case I have not, I will hand it out now. That lists the sorts of problematic behaviours, content and conduct of complainants under three headings: motive, conduct and content. In my mind tests that are based on motive are very problematic, and for courts/complaint handlers to be able to effectively implement anything that allows them to manage, as opposed to

just bar, behaviour that is resource intensive and unreasonable, really they need to be able to focus on content issues and conduct issues.

So if we look at motive, you could still have a motive issue in there if you based it on things like 'the presiding officer' or 'the complaint handler had reasonable grounds to believe' that the substantive purpose, not the dominant but something less than that, was to harass and annoy; you might be able to come at that, but it is another matter to try to read somebody's mind and say, 'Your sole purpose here and in each of your cases is to actually harass and annoy'. Often it is not; it is a firmly held belief that justice has not been done and justice needs to be done. But it might be based on a false premise or it might be delusional.

There is one example in New South Wales where there was an appeal to the ADT by a man seeking tapes from a police station. He had gone to the police station to report a robbery. In the public area there had been CCTV coverage. He wanted the CCTV tape to prove that while he was there a phone call was received at the police station from the Prime Minister who wanted to talk to him, and who after talking to him passed him on to the Minister for Foreign Affairs. He wanted the tape under FOI to prove that the Prime Minister had rung him at the police station. When the police said, 'Well there is no such tape because there was no such conversation' and the tribunal said, 'They did a sufficient search', this then went to appeal. So there is an appeal on this same issue based on those facts. I would have thought that there were some circumstances where a tribunal/registry should be able to say, 'Sorry, on its face this is absurd' or 'Totally irrational, and we will not waste public resources'. There was a significant cost to the New South Wales police of getting the affidavits prepared, having legal representation, going to the hearing, fighting the hearing and then the appeal. You have got to sit there and say, 'There has to be a balance here somewhere'. The sheer fact that someone has $55 should not mean that they can put the public purse to that expense, unless there is the possibility of something there.

I am not talking about removing people's rights to a fair hearing et cetera. What I am saying is that there are some matters where it is just quite clear that there is not going to be a resolution that will favour the applicant, and in those circumstances it might be nicer to say at the outset, 'I cannot help you'. To do that there needs to be a power that is available. If we move on to content issues, particularly with complaints that are false or misleading, if there is false or misleading material in the complaint, then to my mind that is grounds for declining that complaint and refusing to take any further action. 'Repetitious' would be both complaints and litigation without reasonable grounds. Then there are the delusional, imaginary, irrational or absurd.

Then there are the conduct issues. The first is the substantial and unreasonable diversion of resources. This is something you will find in FOI legislation, which normally relates to one FOI application — that it would be an unreasonable diversion of public resources. I think it is quite valid to say that you should be able to look at a series of matters, to say, 'Taken together — they all relate to each other, they are all about the same thing — dealing with these matters further is an unreasonable diversion of resources'.

Again, if there are conduct issues that raise significant health and safety problems — and I think there should not be any consideration of whether there is a history of such actions, that initial consideration of frequently and persistently instituted proceedings — and there is a danger to registry staff, then the tribunal should have the ability to manage it. The managing might be to say the hearing will be in the absence of the appellant or the litigant. You can have the legal representative or it can be by conference call, but the person cannot enter the premises. Again, this is the thing where you might not have a one-size-fits-all approach of saying, 'No, your action is out'. You might say, 'Right, you can litigate, but you cannot appear here, because you are an unreasonable threat to the safety of our staff because of demonstrated conduct'.

There are people in this world who have very low anger thresholds, very low anger management. Certainly with complaint handlers, we will quite regularly instruct somebody not to enter our premises any more and say that we will only communicate in writing and that if the written communications are abusive or pornographic or whatever they will be sent back unread. Those sorts of steps are to manage — not necessarily closing the door, as I say — the interaction. The fact that somebody might be acting quite unreasonably or vexatiously does not necessarily mean that there is no valid point that they have got. They might actually have quite a valid issue, but they have presented it inappropriately or have run with it in ways that are not really that practical in terms of getting the outcome they want. I will leave it there — if you have any questions.

The CHAIR — I am sure we will. That is a very useful analysis. In the material that you presented you presented us with that interim manual. Could you just talk to us a bit about that analysis — how you developed

that, how you think that should be used and how you put that together? You just happen to have another handout there?

Mr WHEELER — It is another handout. This is to quickly try to summarise the key elements of the approach that we have come up with. The history of it is, as I mentioned earlier, that we started off looking at this problem because of the resource implications for our office and the problems that were being experienced by agencies that would come to us saying, 'We have a complainant who sends in a letter of complaint each day — a new one, raising a new issue. All of the issues have some substance. We must answer them. We cannot not. The person is going to the media all the time. The work involved is enormous. We are a small country council' — this sort of thing — 'what can we do?'. We had our own internal guidelines about how to handle issues of that nature, so we decided to publish them, which we did. They were called 'Difficult complainant guidelines'. These were very popular, but over time we realised that the approach we were advocating, while better than what was there before, was certainly not the most appropriate way to proceed.

One of the issues that kept confronting us was how you communicate with an individual that their conduct, that their behaviour, that the content of their complaints, is quite inappropriate or unreasonable when using terms like, 'You are a difficult complainant' or labelling them as a vexatious complainant just inflames the whole situation. A fair bit of thought was put into this, and we realised that we had to move away from focusing on the person to focusing on their problem. We then had a lot of discussions with complaint handlers in our office and in other ombudsman offices. We identified basically the five categories, the five different types of difficult behaviours that can arise, often all together but quite regularly separate things happen. We looked at what management strategies we could identify to address each one.

We also realised that we needed to have a totally different perspective on the issue. When I first joined the ombudsman's office many years ago — I left and came back, but when I first joined as a new member of staff — I was given 40 files on my first day. The method by which these 40 files were selected was to go around all the existing staff and say, 'What do you want to get rid of?'. The new boy was given the 40 worst files. We have come to realise that the more problematic matters need to be dealt with by people with more skill and experience than somebody who has just walked in the door. It was a realisation that unreasonable complainant conduct is not something that happens that we wish would not and we would just like to ignore it and make it go away. It is actually a core part of our work and it should be dealt with properly. Instead of seeing it as an unnecessary and inappropriate interference with the performance of our core work, we really have to see it as an integral part of our core work. We will have people acting unreasonably. It is going to be there; it will continue. We need to be able to manage that appropriately in ways which do not penalise those people and which make sure that, if they have got an issue, it is properly addressed and they do not suffer because of the way they have presented it or the way they have interacted with our office.

As you will see in that list on the page I have just given you, we have broken it down into objectives, approach and responsibilities. The objectives are to have an equitable and fair system that is efficient, that is safe for staff, where we recognise that managing or dealing with unreasonable conduct is part of core work and where we realise, and we explain to our complainants, that we own the complaint. This comes as a bit of a surprise even to many complaint handlers. We own the complaint. They own the issue. Once they have brought a complaint to an ombudsman, the ombudsman decides whether it will be taken up; how it will be taken up; what resources will be put into it; how quickly; which person will investigate; and what the outcome will be. The complainant owns their issue, unless it is a public interest issue, in which case it is a shared ownership of the complainant and the agency itself, but we own the complaint.

The trigger for most unreasonable conduct of complainants is an attempt to take control of that process. It is a misunderstanding or a refusal to understand or a lack of knowledge that we control the process, not them, and it is people trying to make you take a matter up that you do not think there is any value in, people wanting to make you change your mind about the merits of their case, people wanting more resources put in or a different investigator or whatever it might be. It is all about that issue of who controls the process, and we recognise that we need to be very clear in our own minds and make it very clear to complainants at the outset. Once they have given that complaint to us, it is ours. We deal with it as we believe appropriate given the statutes under which we operate. They still own their issue. It they want to take it somewhere else, they can go for their life. There is nothing that stops them. It is a different thing if you go to court. If you go to court, you still own your issue. If you do not prosecute your case, it falls over, but in a complaint-handling context, the complaint handler owns the complaint.

The next one is we focus on observable conduct and content and steer away completely from any attempt to analyse the mental state or the motives of the individual. We focus on our strengths. We are a complaint handler, and we leave the other stuff to people who may have more expertise in that area and far more face-to-face contact with the person concerned.

There are various other bits that are in there. One of the key ones, of course, is managing complainant expectations. If complainants walk in the door and they have an expectation that they are going to get a lot of money and somebody fired or whatever it might be, then you have got a problem waiting to happen. One of the things we try and emphasise with our staff is that you need to communicate with the complainant, find out what they think and what they expect to happen, both in terms of the outcome and in how long it is going to take, what their involvement is going to be. If their expectation is unrealistic, to clarify at the time: 'This is what we can do. This is what we cannot do. This is what we will do. This is what we will not do.' So they know from the outset.

In the past we used to do complainant surveys. We would get a company to come in and survey our complainants to find out how satisfied they were with the service they received, and one of the key issues that came up every time if their expectations were unrealistic, was that they were unhappy little vegemites, and there was no way of dealing with that. That is one of the ways, of course, that can lead to people slowly — because it does not happen overnight; they do not walk in the door to the ombudsman's office generally as a querulant or as a high-conflict person who walks in and starts yelling and screaming. At the first contact, if they are angry, it is with the agency that they have the substantive problem with. It is normally one letter of complaint. It is from that point things change as that control issue kicks in.

What else have we got in there? The rest is — —

The CHAIR — I am conscious of the time. Any questions?

Mr DONNELLAN — Sounds like what happens in Dandenong dealing with constituents. It is very similar and very applicable in the same way. It was just an indulgent comment.

Mr O'DONOHUE — I want to make a comment more than a question. That expectation management point is something we have heard from other witnesses. It is interesting that it keeps coming up in different contexts. I have also experienced that. Your statistics showing that 40 per cent of the ADT privacy jurisdiction has been consumed by just two people are quite amazing. Do you think that with the sorts of things you are talking about, if they were implemented in the tribunals and in the courts, that sort of expectation management and seeing people early, could assist to reduce — —

Mr WHEELER — One of the problems is that if people start from a false premise, no logic is going to turn them around. Some of the people that I have dealt with over the years whom I would classify as being quite unreasonable, towards querulent, are quite logical, intelligent people who reason very well and represent themselves in courts very well, but their starting point is false, so everything from that point is just slightly bizarre almost. They are intelligent, rational people, but because their starting point is false and that is their belief system and is the foundation on which everything rests, you cannot touch that, you cannot reason with that, so logic is not going to make any difference. And as Professor Mullen has said in the past, if it is somebody who is, say, a querulant, which is one of the types of people who engage in unreasonable conduct, if you can identify them early on it is best to stop the whole process immediately, because it is not going to help. You are not going to reach a solution that they are happy with, because the closer you get to it, the further they will move the goalposts.

The CHAIR — But when you said if the person is a querulant — —

Mr WHEELER — If they were, but you cannot identify it in a complaint-handling context.

The CHAIR — I was going to take you to task on that.

Mr WHEELER — It would be lovely if we could. There are certain things that they have identified which we see quite regularly. I use as an example the underlining and highlighting in different colours as well as bold et cetera. Even writing in the margins, which I find fascinating when I see it. I was worried that we would lose that with the advent of email because you would not be able to see the colours. But we had somebody the other day who managed to get three different colours on the page and actually managed to write up and down in the margin in an email, which I did not know you could do.

Mr DONNELLAN — Scanned it in.

The CHAIR — With that oblique observation I have forgotten what I was going to ask you. Part of the tension has been about personality disorders or mental health issues on one side, and then another view which says, 'No, all these are social constructions. They are not a basis for running a justice system or a responsive bureaucracy'. We have been advised by people of that view to leave it alone because it is misguided in its construction. It is embedded in a lot of what you have said to us today. What is your advice to us on how to respond to this criticisms?

Mr WHEELER — Research that has been done by Mullens and Lester and by Eddy and various others has helped to demonstrate aspects of the problem. What we are focusing on with the approach we have in the manual is how to manage the problem without trying to identify whether people fit within any of those particular characterisations that people have come up with. As I have said, we try to focus solely on the conduct and the content. Whether or not they have a mental issue is irrelevant to us, and what the nature of it might be is irrelevant. It might impact on us, but the decision is based on objective evidence.

A person has made 25 complaints about the same matter, and they will keep complaining about it and asking for reviews. We have brought in a policy which says, 'One complaint, one review that the Ombudsman will sign off on'. Then if you do not raise an entirely new matter we will not respond to you. If they have a new matter that is fine, all bets are off and off we go again. But if they want to keep coming back to the same issue that they rephrase and reframe, 'No, we do not have time'. We get close to 10 000 written complaints and notifications a year. We get 20 000 inquiries. We do not have time for people who keep coming back and back and back.

One of the people who is just starting to use the tribunal at the moment has previously made 25 complaints to us about the same issue of getting access to medical records in a forensic facility. Basically every week a new FOI application goes in to see if there is any change from the previous week. We organised for a system to be brought in whereby the person was shown the record every week, but FOI applications are still being made. It gets back to what I was saying before — —

Mr FOLEY — The secret files you were not telling them about!

Mr DONNELLAN — Is this behaviour management system — that is what I will call it — helping you to deal with those recidivists that you were talking about?

Mr WHEELER — Yes.

Mr DONNELLAN — Obviously you were mentioning one of them. There are several ways of dealing with it other than showing them the record every week, but is it dealing with the conspiracy theorists and things like that? People who believe the government may be — —

Mr WHEELER — We can never address the conspiracy theory. You cannot answer it. If somebody has a conspiracy theory no amount of evidence is going to change their mind. All we can do is manage our interaction with that person. We cannot change their mind; we cannot stop them doing things, but we can manage our interaction. We can say, 'That is enough. We will not deal with any further matters'. Or if they come in and they are abusive or dangerous to staff we will say to them, 'You will not enter our premises any more. You will only contact our office in certain hours and talk to one person'. You name a person, and that person will be the only one that they are able to talk to which will avoid forum shopping around the office to get somebody to say something different so they can then come back and say, 'Somebody else said this'.

We have done a one-year project to analyse how it worked around Australia, because each ombudsman's office brought in the same approach at the same time. We had all the staff of all the parliamentary ombudsmen trained up on the new approach. We have done a one-year trial and the results are very positive about the benefits that staff felt from having the authorisation and the support to implement what we are recommending.

The CHAIR — Have you had any relationship with the courts in how a model like this might be usefully applied?

Mr WHEELER — The courts in New South Wales are reasonably interested in the topic. Certainly we have had a lot of people coming along to training. We have done two in-house workshops for the Supreme Court

staff. All the staff of the Guardianship Tribunal came through, and 20 staff of our ADT came through. We have done a number of court staff over in New Zealand, and we are booked to do some workshops with one of the federal courts in the next couple of months as well. The tribunals in particular — the ADT — have shown a lot of interest in this. There is an organisation of tribunals called COAT, which has also been looking at adopting or adapting the material that we have come up with to assist their registry staff in dealing with unreasonable complainant conduct. I note that the chairman's message in the ADT's annual report for 2006–07 spent a lot of time talking about unreasonable conduct by applicants, and the project we were working on was of relevance to that.

The CHAIR — That has been incredibly valuable.

Mr WHEELER — It is a fascinating topic.

The CHAIR — Thank you very much again. You will receive a copy of the Hansard transcript, as we said earlier, and I am sure you will not mind if Kerryn and/or Susan gets in touch with you or your office for any other matter.

Mr WHEELER — Not a problem. Thank you.

Witness withdrew.