

Chapter 7: Disability Rights

7.1 STATEMENT FROM THE COMMISSIONER

In December 2006, HREOC welcomed the adoption of the Convention on the Rights of Persons with Disabilities by the United Nations General Assembly. This followed an 8th and final drafting session in August 2006 in which I was again honoured to be included as a member of the Australian delegation. I congratulate the Australian Government as well as Australian disability organisations on their contribution to the development of the Convention.



Mr Graeme Innes, AM
*Acting Disability
Discrimination Commissioner*

On 30 March 2007, we applauded the Australian Government for being among the first countries to sign the Convention on the day of its opening for signature. We are now working towards early ratification of the Convention.

This Convention is hugely important in recognising beyond doubt that 650 million of the world's people with disability are entitled to the full range of human rights. The Convention also plays a critical role in explaining to governments and societies what measures are needed to make those rights a reality – if not in every practical detail then at least in more detail than we have had in earlier human rights instruments. I believe the Convention also offers historic opportunities here in Australia to improve how our governments and other institutions deliver on human rights and equal opportunity for people with disability and their families. In particular, I believe it will provide the focus we need to start looking at those areas often described as 'unmet needs' in a new way, where we see them as rights denied or inadequately protected.

This report presents what I believe is an impressive range of work and an encouraging roll call of results from what is after all, a small human rights agency. For HREOC, as for many areas of government, the Convention provides an important reference point on how many issues remain to be addressed in promoting equal access and opportunity for people with disability.

As made clear in this report, while the Disability Discrimination Act (DDA) has enabled us to achieve much in advancing the rights of people with disability, through the processes provided by the Disability Discrimination Act, there are several areas where progress has been frustratingly slow.

In the coming year I will be dedicating major efforts, both to promoting completion of long-running processes, and to ensuring that HREOC explores all avenues for more widespread and timely progress towards an Australian society which truly does include, and fully benefits from the participation of, people with disability as equals.

7.2 RESEARCH AND POLICY

7.2.1 Employment and Disability Inquiry

HREOC has continued to follow up on its *National Inquiry into Employment and Disability* Report which was tabled by the Attorney-General in federal Parliament in February 2006.

The federal government responded positively in 2006–07 to the Inquiry's recommendations, including the launch in August 2006 of the *JobAccess* one-stop-shop information service on employment and disability. Other welcomed initiatives include reforms to the *Workplace Modifications Scheme*, and in January 2007, the commencement of an insurance cover scheme for work trials. Other recommendations, including adoption by the federal government of an accessible procurement policy, remain under discussion.

HREOC continued to convene working groups on a number of areas identified by the Inquiry, including ongoing employment supports and the relationship between occupational health and safety legislation and equal opportunity laws. HREOC has welcomed substantial work being done by the Office of the Australian Safety and Compensation Council (OASCC) to address one of the main obstacles to the employment of people with disability in the open workplace – the perception by employers that there is an increased exposure to legal and financial risks related to occupational health and safety. HREOC and OASCC issued a joint media release on 27 June 2007 launching OASCC's research report, which highlighted the lack of increased occupational health and safety risk for workers with disabilities.

HREOC also had discussions with The Hon. Joe Hockey MP, (then) federal Minister for Human Services, and the Department of Human Services, regarding accessibility of premises and services, and helped to produce an accessibility checklist for contracted service providers. With the Department's agreement, HREOC has further developed this material for use by service providers and building owners more generally.

Preparatory work was also conducted on projects related to mental health and employment and related issues, which will be pursued in 2007–08.

7.2.2 Access to electronic commerce

On 3 December 2006 the Australian Bankers' Association (ABA) released *Accessibility of Electronic Banking: Progress Report 2006*. This was the second progress report issued by the ABA since the 2002 introduction of voluntary industry standards on Automatic Teller Machines (ATMs), Electronic Funds Transfer at Point of Sale (EFTPOS), telephone and internet banking. HREOC congratulated the ABA and its members on considerable progress made in improving access to these services. On the same

day, the ABA released draft guidelines developed in consultation with HREOC to help banks and other financial institutions design and implement authentication systems to protect against fraud in ways that do not exclude customers with disabilities or older people.

7.2.3 Captioning

Cinema captioning

After discussions with HREOC, the Film Finance Corporation (FFC) announced in May 2007 that as from 1 July 2007 producers seeking funding from the FFC would have access to funds to ensure their films were captioned for both cinema release and later DVD release.

HREOC continues to discuss with industry and disability community representatives, possibilities for increasing access to the number of cinemas capable of displaying captioned movies.

Television captioning

Subscription television

An agreement reached in 2004 between HREOC, the Australian Subscription Television and Radio Association (ASTRA) and disability organisations, aimed for an initial 20 channels to caption five percent of programs in year one, increasing by five percent each year for five years to reach 25 per cent captioned. A further 20 channels were to start adding captions within two years.

In July 2006, HREOC was able to congratulate ASTRA on a report which indicated that average captioning levels already exceeded the 25 percent required by the end of the five-year agreement.

ASTRA is due, under the terms of the temporary exemption granted to ASTRA's members, to conduct a review of possibilities for further increases in captioning on subscription television during 2007–08 and to present a further plan for captioning to HREOC in June 2008.

Free to air television

Under an agreement reached in 2003 between HREOC, Free TV Australia (FTVA) and disability organisations, FTVA was required to implement staged increases in captioning levels (reaching 70 percent of programming between 6am and midnight by December 2007). FTVA was also required during 2006 to commence a review of possibilities for further increases in captioning when the current exemption granted in 2003 expires in 2008. FTVA has advised that the review has started and they expect to be in a position to consult with disability community organisations on a proposal in the latter half of 2007.

DVD captioning

Early in 2007, HREOC hosted a *DVD Access Roundtable* which has established working groups to improve the availability of captioning and audio description on DVDs.

Agreement has been reached with the DVD industry body, the Australian Visual Software Distributors Association (AVSDA), over access feature information that will be placed on the DVD covers to ensure consistency among AVSDA members. AVSDA has also agreed to prepare an industry protocol setting out expectations that their members would use their best endeavours to locate and make available access features on DVDs where they were available or technically able to be included. It is encouraging that some AVSDA members have already initiated improvements in their products as a result of the discussions taking place.

7.2.4 Accessible consumer electronics products

In June 2007 HREOC commenced work towards a discussion paper on access issues affecting people with disability in using a range of consumer electronics products as well as identifying possibilities for addressing these issues.

7.2.5 Electoral access

Following discussions between HREOC, the federal government, the Australian Electoral Commission and representatives of people with disabilities, federal Cabinet approved a trial of electronically assisted voting in August 2006. HREOC continued to help develop the details of the trial, with locations due to be announced in July 2007.

HREOC also reminded political parties and candidates that it was important in the lead-up to a federal election for them to ensure their information was accessible and that disability issues were taken into account in their policies.

7.2.6 Health access

Following discussions involving HREOC, the Minister for Health and Ageing, the Royal Australian College of General Practitioners (RACGP) and disability representatives, HREOC was able to welcome in February 2007 changes to Medicare rebates to facilitate longer consultations for people with intellectual disabilities. This was a particularly important development as it addresses one severe disparity between health outcomes for people with intellectual disability and other members of the Australian community. HREOC will continue to work for progress on other aspects of equal access to health services and information for people with disability.

HREOC has continued to work with the RACGP and disability advocacy organisations to improve the availability of height-adjustable examination beds and improve information for health care addition by the RACGP of a new criterion to its *Standards for General Practices*, which includes an advisory reference to adjustable-height examination beds. HREOC will continue to work with the disability sector and the RACGP to encourage general practices to provide adjustable-height examination beds and will continue to advocate for these to become mandatory under the *Standards for General Practices*.

7.2.7 Telecommunications

HREOC participated in the development of a code, registered in October 2006 by the Australian Communications and Media Authority (ACMA), to require the manufacturers or importers of all phones to advise telecommunications companies of the disability access features of their products.

HREOC also worked with the telecommunications industry body, the Communications Alliance, to develop an industry voluntary guideline for payphone accessibility. This was released in December 2006.

7.2.8 Web access

Website accessibility continues to be a significant concern for various groups of people with disabilities. The World Wide Web Consortium continues to work on revising its *Web Content Accessibility Guidelines, Version 1.0*. HREOC refers to these guidelines as the accepted international benchmark in *Web Accessibility Advisory Notes* which offer guidance on the level of accessibility required for compliance with the DDA. HREOC is continuing to discuss the proposed version 2.0 of the guidelines with the developers.

7.3 EDUCATION AND PROMOTION

Most of HREOC's awareness and compliance promotion work in the disability area is connected to policy work and legislative development and is reported on under those headings accordingly.

The Commissioner has worked successfully during 2006–07 to achieve increased media coverage of positive initiatives by government and industry bodies on disability issues where HREOC has been involved, including access to voting, health services, banking access, captioning, and a range of initiatives regarding employment.

Public use of the disability rights section on HREOC's website continues to be strong, with 1 705 260 page views recorded in this period. Information is continuously being added to, for example with advice answering frequently asked questions and information on recent complaint outcomes. Publications are also distributed in print and other formats on request.

7.4 LEGISLATIVE REFORM AND ASSESSMENT

7.4.1 Disability Standards

The DDA provides for 'Disability Standards' to be made by the Attorney-General in specified areas. These currently include: accommodation; administration of Commonwealth laws and programs; education; employment; and public transport. Contravention of a Disability Standard is unlawful under the Act.

HREOC supports adoption of Disability Standards as offering potential to increase certainty and clarity of rights and responsibilities for relevant parties, and thereby

advance the objects of the Act. HREOC has a function under the DDA to advise the Attorney-General regarding the making of Standards, and to date, has performed this function by practical participation in Standards development processes rather than by formal reporting.

7.4.2 Access to premises

HREOC has continued to work intensively with the Australian Building Codes Board and industry, community and government members of the Board's Building Access Policy Committee, towards finalisation of Disability Standards on access to premises. This work has occurred in conjunction with upgrading of the access provisions of the Building Code of Australia, to promote improved access for people with disabilities and to provide industry, local government and other parties with a clearer and more coherent set of rights and responsibilities. As at June 2007, Ministers were still considering revised proposals from the Australian Building Codes Board taking into account the results of the Regulation Impact Statement process on the draft standards issued in 2005.

While awaiting progress towards Standards, HREOC has commenced a number of initiatives aimed at improving understanding about the importance of access in the built environment. These include:

- improving access on our website to local and overseas information dealing with issues such as recreational facilities, playgrounds, public footpaths and fitout matters;
- preparing *Access to Buildings and Services – Guidelines and Information* (due for release in July 2007) to assist building owners and service providers to identify issues that might affect the level of access provided by their current building, or a building they are thinking of buying or renting. It will also help service providers to look more generally at whether the goods and services provided are accessible to people with a range of disabilities; and
- preparing a guide (also due for release in July 2007) to assist designers, builders, certifiers and planners to better understand the importance of applying the access features already required by the Building Code of Australia and its referenced Australian Standards, and demonstrating correct practice and common mistakes.

HREOC also continues to contribute to the work of Standards Australia, in particular, its review of standards covering the interior fit-out of buildings. HREOC also continued to work with industry and regulatory bodies to promote actions to address the current and growing need for more accessible housing.

7.4.3 Education

Following the entry into force of Disability Standards for Education in August 2005, HREOC has continued to discuss with the Attorney-General's Department and the Department of Education, Science and Technology, possible further measures for promotion and implementation of the Standards.

7.4.4 Public transport

The first five-year review of the Disability Standards for Accessible Public Transport commenced in March 2007. The review is being conducted by independent consultants on behalf of the Minister for Transport and Regional Services and the Attorney-General and is expected to report in October 2007. HREOC will contribute its expertise and experience to the review.

Significant issues regarding aviation access continued to be raised during 2006–07 through complaints under the Disability Discrimination Act. HREOC has met with the Department of Transport and Regional Services, workplace and aviation safety regulators, aviation industry participants and disability community representatives to seek to resolve these issues. As at June 2007, however, several complaints regarding capacity of people with disability to travel independently had been unable to be resolved by HREOC and were proceeding to the Federal Court.

7.4.5 Productivity Commission review

The federal government decided in 2006 that a range of amendments should be made to the Disability Discrimination Act in response to the review of the Act by the Productivity Commission, and to identify any associated amendments to the DDA which might appropriately be pursued as part of the same process. HREOC supports those amendments being made as soon as possible and looks forward to the presentation of a Bill to the federal Parliament.

7.5 CONSULTATION

Close consultation with disability community representatives and with relevant industry bodies is a feature of all HREOC project and policy work in the disability rights area. HREOC uses an extensive email list together with its website to notify interested parties of policy and project initiatives and to seek comments.

As detailed above, specific consultative structures have been maintained to continue the work of HREOC's *National Inquiry on Employment and Disability* in a number of areas.

HREOC hosted a workshop on 27–28 June on the new Convention on the Rights of Persons with Disabilities for representatives of disability peak organisations, disability advisory bodies and state and territory equal opportunity agencies. The workshop was opened by federal Attorney-General Philip Ruddock, who expressed his strong support for prompt movement which would enable the government to consider ratification of the Convention. He also indicated commitment to continuing consultation with disability organisations in those processes.



Commissioner Innes and Federal Attorney-General Philip Ruddock MP at the workshop hosted by HREOC on the new Convention on the Rights of Persons with Disabilities in June 2007.

7.6 EXEMPTIONS

Section 55 of the DDA gives HREOC the power to grant temporary exemption from provisions of the Act which make discrimination unlawful. (The exemption applications policy is available on HREOC's website or on request.)

The temporary exemption mechanism is an important way to manage the process of transition over time from discriminatory and inaccessible systems and environments to more inclusive ones.

Exemption processes are open to public participation through online publication of HREOC's notice of inquiry and details or text of applications. Submissions from interested parties are also published.

7.6.1 Hervey Bay RSL

On 25 May 2007 HREOC granted a temporary exemption from the operation of relevant provisions of the Disability Standards for Accessible Public Transport and the DDA, to Hervey Bay RSL Club. This exemption concerned physical access to the club's newly acquired courtesy buses and was granted on condition that the club replace or retrofit the buses to provide access by 31 March 2008.

7.6.2 Australasian Railways Association

On 22 January 2007 HREOC granted a series of temporary exemptions to members of the Australasian Railways Association (ARA) in relation to provisions of the Disability Standards for Accessible Public Transport and of the DDA. These exemptions were granted on condition that ARA members meet a set of revised compliance requirements and report to HREOC on implementation of the revised obligations. This decision followed lengthy consultation between HREOC and industry and community representatives following an application in July 2005 by the ARA for a range of exemptions. In each case, the exemptions granted were supported by the Accessible Public Transport Jurisdictional Committee, with which HREOC is required to consult on exemptions relating to the Disability Standards for Accessible Public Transport.

Decisions were deferred on a number of other issues for which the ARA had also applied for exemption, pending further consultation between ARA, community representatives and HREOC.

7.6.3 Airport Direct

On 15 December 2006 HREOC granted an application for a temporary exemption from the operation of relevant provisions of the Disability Standards for Accessible Public Transport and the DDA, to permit deferral of provision of wheelchair access on a public transport service to be known as Airport Direct, operating from Shepparton to Melbourne. This followed refusal of an earlier application, in February 2006, where HREOC was not satisfied that the application went beyond a request for certification of unjustifiable hardship – considered an inappropriate purpose for the temporary exemption power. The successful application differed significantly from the initial one in that it did not simply seek permission to operate an inaccessible vehicle indefinitely,

but rather sought protection pending the replacement of the inaccessible vehicle within a defined and short period.

7.7 ACTION PLANS UNDER THE DISABILITY DISCRIMINATION ACT

Action Plans under the Disability Discrimination Act provide an important mechanism for organisations to structure their own compliance efforts.

As at 30 June 2007, 516 plans were registered with HREOC (an increase from 368 in June 2006). These comprise: 43 business enterprises, 54 non-government organisations, 36 federal government and 58 state and territory government departments and agencies. There are also 154 local government plans and 171 from education providers.

The register of Action Plans, and those plans provided electronically to HREOC (467 of the total), are available on the website. The register assists other organisations interested in developing their own plans as well as individuals interested in assessing the effectiveness and implementation of an organisation's Action Plan. A number of organisations have also submitted revised plans or implementation reports.

7.8 LEGISLATIVE DEVELOPMENT

The Disability Discrimination Unit also contributes to legislative development by making written and oral submission to Parliamentary and other inquiries. A list of these submissions can be found in Chapter 3 of this report, *Monitoring Human Rights*.

7.9 SPEECHES

Listed below is a selection of speeches made by Commissioner Innes during 2006–07. Speeches and papers are available on HREOC's website at: www.humanrights.gov.au/disability_rights/speeches/speeches.html

Keynote speech: NSW Department of Education and Training Teacher Consultants Conference, Sydney, 17 May, 2007.

Deafness forum presentation to Princess Alexandra Hospital, Brisbane, 20 March, 2007.

Spinning an Accessible Web: Presentation to E-Accessibility Forum, Adelaide, 6 March, 2007.

Launch of Westpac Accessibility Action Plan, Sydney, 11 December, 2006.

Disability and Information Technology: Forum on Engaging Canadian and Australian Information Technology Companies in Inclusion and Accessibility, Sydney, 4 December, 2006.

Housing, Human Rights and Sustainability: Australian Network for Universal Housing Design forum, Sydney, 8 November, 2006.

Presentation to Australian Association of the Deaf national conference, Adelaide, 3 November, 2006.

The Disability Standards for Accessible Public Transport where are we? Bus Industry Confederation Conference, Canberra, 31 October, 2006.

Pathways to employment: NSW Council for Intellectual Disability / NSW Council of Social Service conference, Sydney, 18 September, 2006.

Presentation to Queensland Taxi Council forum, Toowoomba, 12 September, 2006.

Presentation to Sydney City Access Forum, Sydney, 6 September, 2006.

Occupational Health and Safety and HREOC's National Inquiry on Employment and Disability: Discrimination Alert and Occupational Health News Conference, Sydney, 1 September, 2006.