

Chapter 7

Disability Rights

7.1 STATEMENT FROM THE COMMISSIONER

Sixty years ago this year, the world affirmed in the Universal Declaration of Human Rights that human rights had to be universal – for everyone, everywhere, every day.

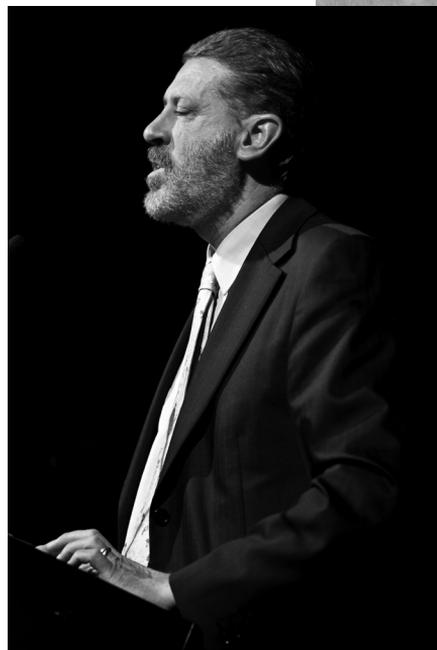
The *Convention on the Rights of Persons with Disabilities*, adopted by the United Nations in 2006, gives long overdue recognition that, if human rights and freedoms are to be truly universal, they have to include people with disability.

In 2008 we are able to celebrate the achievement of all involved in securing Australia's ratification of this Convention – the fastest ever Australian ratification of a major human rights treaty.

Disability truly is a normal part of the diversity of human experience and the life of our community. More than one in five Australians have some kind of disability, and this is only expected to increase with the ageing of our population. This means more and more of us will have reason to hope, for ourselves and our families, that our society really does put universal access and inclusion and respect for human rights for people with disability into practice: that all of us are able to fully use and access housing, public transport and buildings, and even basic consumer appliances; to enjoy equal opportunity in employment and education, and access to all the 'extras' in life like sport, recreation, arts and entertainment.

We also need to see redressed the unjustifiable hardships that continue to affect so many people with disability, and their families, who too often do not receive the relatively modest levels of support or services they need so they can be equal participants in and contributors to Australian society.

We have made some great advances in disability law and policy in Australia in recent years. Particularly encouraging has been the commencement this year of development of a national strategy on employment and disability – in line with the recommendations of HREOC's National Inquiry two years ago – and a broader National Disability Strategy, based squarely on the *Convention on the Rights of Persons with Disabilities*.



Mr Graeme Innes AM
Disability Discrimination Commissioner

There remains much to do. Ratification of the Convention is a powerful symbol of commitment to equal enjoyment of human rights for Australians with disability. I urge all Australian governments to continue to work together, and in partnership with the community, to make that commitment a reality.

7.2 RESEARCH AND POLICY

7.2.1 Convention on the Rights of Persons with Disabilities

During the reporting period, HREOC worked closely with disability community representative and advisory bodies, the Attorney-General's Department, and both the previous and the current Attorney-General, to promote early ratification by Australia of the *Convention on the Rights of Persons with Disabilities*.

HREOC welcomed the indication by the government of its intention to base a new National Disability Strategy on the Convention and has been contributing to a reference group on the National Disability Strategy convened by the Parliamentary Secretary for disability issues, the Hon. Bill Shorten MP. HREOC also reshaped its own work plan in the disability rights area by reference to the Convention.

In addition, HREOC has been working with the Asia Pacific Forum of National Human Rights Institutions and the Pacific Disability Forum to assist nations in the region to work towards ratification of the Convention.

7.2.2 Employment and Disability

The principal recommendation of HREOC's *National Inquiry into Employment and Disability*, the report of which was tabled in February 2006, was the development of a national disability employment strategy.

HREOC welcomed the government's commitment to develop such a strategy and has participated in government consultations with the disability sector, employers, employment service providers and other interested parties.

HREOC participated in a number of related reviews. These included reviews in relation to job capacity assessments, models of employment services and support, and minimum wage setting. HREOC also conducted research into issues and barriers to employment for Indigenous people with disability.

HREOC continued collaborative work with the Office of the Australian Safety and Compensation Council and interested parties to address employer concerns regarding disability and occupational health and safety, including the release of fact sheets for employers. Work has commenced on specific resources about accommodating people with mental illness in the workplace.

7.2.3 Captioning and media access

In September 2007, HREOC welcomed the announcement by the former government of its intention to conduct an investigation into captioning and media access. The commencement of that investigation by the new government, took place with the release of a discussion paper by the Department of Broadband, Communications and the Digital Economy in 2008.

HREOC has been consulting with the Department in the conduct of this investigation. Pending the results of this review, HREOC has also continued its own work on media access issues in collaboration with representatives of industry and of the disability community. This has included discussion of:

- means for increasing the number of cinemas equipped to display captioned movies;
- possibilities for further increases in captioning of free to air and subscription television beyond the levels agreed in the context of temporary exemptions previously granted under the Disability Discrimination Act; and
- frameworks for accessibility features on DVDs released in Australia.

During 2007-08, HREOC also drew attention to the need for improvement in procedures to ensure accessibility of material produced or funded by the Commonwealth. This followed the release of a federally funded parent information DVD in 2007 which, on initial release, lacked any access features.

7.2.4 Access to electronic commerce

HREOC assisted the Australian Bankers' Association in the development of Guiding Principles on Accessible Authentication, which was released on 3 December 2007 to mark the International Day of People with Disability. These principles are intended to ensure that adoption of stronger authentication technologies by financial institutions, and related service providers, will not exclude effective and convenient access for people with disability.

7.2.5 Accessible consumer electronics products

In September 2007, a discussion paper was released about the access issues that affect people with disability when they use a range of consumer electronics products. The discussion paper also looked at possible ways to address these issues.

7.2.6 Electoral access

HREOC welcomed the inclusion of a trial of electronically assisted voting in the 2007 Federal Election. This initiative finally provided the opportunity to exercise a fully secret ballot to people with a print disability. It followed several years of discussion between HREOC, government, electoral authorities and disability representatives.

In HREOC's submission to the Joint Standing Committee on Electoral Matters Review of the 2007 Federal Election, it recommended that permanent and more widespread provision of electronically assisted voting be made. HREOC also recommended making the facility available to all voters who experience difficulty exercising the right to a secret ballot using pencil and paper, rather than restricting it to people who are blind or have a vision impairment.

7.2.7 Health access

HREOC continued to work with the Royal Australian College of General Practitioners to promote wider provision of adjustable-height examination beds. Provision of these beds will reduce one set of barriers to effective and equal access to health care, which is currently experienced by people with disability.

7.3 PROMOTION OF AWARENESS, UNDERSTANDING AND COMPLIANCE

Most of HREOC's awareness and compliance promotion in the disability area is closely connected to policy work and legislative development.

Two particularly successful resources, aimed at improving understanding about the importance of access in the built environment, were launched in July 2007. Revised editions of both were made available in April 2008. They are:

- *Access to Buildings and Services – Guidelines and Information*. This resource is designed 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 also helps service providers to look more generally at whether their provision of goods and services is accessible to people with a range of disabilities;
- *The Good, the Bad and the Ugly*. This resource is designed 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. It is also designed to demonstrate correct practice and common mistakes.

Public use of the disability rights area of the HREOC website continues to be strong, with 74 760 page views recorded on the disability rights web pages in this period. Publications are also distributed in print and other formats on request.

7.4 LEGISLATIVE REFORM AND ASSESSMENT

7.4.1 Amendments to the Disability Discrimination Act

In 2006, the former government decided 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. These amendments included express provision for a duty to make reasonable adjustments. They also included a number of associated reforms regarding recognition of assistance animals. HREOC advised the new government of its continued support for these amendments and has been consulted by the Attorney-General's Department in work towards introduction of a Bill in the second half of 2008.

7.4.2 Disability Standards

The Disability Discrimination Act 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 has continued to assist in the development of Disability Standards that advance the objects of the Act by increasing certainty and clarity of rights and responsibilities.

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The Good, the Bad and the Ugly is one of two resources released during the reporting period that promotes the importance of access in the built environment



7.4.3 Access to premises

Along with the Australian Building Codes Board, industry, community and government members of the Building Access Policy Committee, which was established by the Board, HREOC continued intensive work toward finalisation of *Disability Standards on Access to Premises*.

HREOC also continued to work with industry and regulatory bodies to promote actions that address the current and growing need for universal design in housing.

7.4.4 Education

HREOC continued to respond to requests for advice about the application of the *Disability Standards for Education*, adopted in August 2005. It also commenced preliminary consideration of issues which might be raised in the initial five year review of those Standards.

7.4.5 Public transport

HREOC participated in consultations for the initial five year review of the *Disability Standards for Accessible Public Transport*. The report of this review is currently being finalised for submission to the Attorney-General and the Minister for Infrastructure.

In April 2008, Commissioner Innes and Parliamentary Secretary for Disability, the Hon. Bill Shorten MP, co-chaired a forum specifically relating to aviation issues. Two main actions arose from the forum. A request was made for the Department of Infrastructure, Transport, Regional Development and Local Government to convene an ongoing forum to facilitate co-operative work between industry, relevant government

departments and agencies, and representatives of people with disability. The forums would specifically discuss access issues at airports. Additionally, HREOC and the Civil Aviation Safety Authority will convene a working group for the interaction between safety requirements and independent travel.

7.5 CONSULTATION

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

As noted above:

- HREOC worked in close consultation with disability representative and advisory bodies towards ratification by Australia of the *Convention on the Rights of Persons with Disabilities*
- specific consultative relationships have also been maintained with employer, industry, disability and service provider organisations to continue the work of HREOC's *National Inquiry into Employment and Disability*.

During 2007-08, HREOC has also had a particular focus on consultation about issues affecting women with disability. This consultation has included the Listening Tour, conducted by the Sex Discrimination Commissioner, and participation in forums on freedom from abuse.

7.6 EXEMPTIONS

Under section 55 of the Disability Discrimination Act, HREOC has power to grant temporary exemption from provisions of the Act that make discrimination unlawful.

The exemption applications policy is available on HREOC's website or on request.

HREOC sees the temporary exemption mechanism as an important means of managing the process of transition from discriminatory and inaccessible systems and environments to inclusive, accessible non-discriminatory systems and environments over time.

Exemption processes are open to public participation through on-line publication of HREOC's notice of Inquiry and details of applications. Submissions from interested parties are also published.

7.6.1 Tiger Airways

In February 2008, HREOC granted a very brief (one month) exemption from liability to Tiger Airways for failure to provide access for persons unable to board or disembark using passenger boarding stairs. The exemption was granted pending delivery of their passenger lifting devices, and on the condition that they work with disability representative organisations to address access issues more broadly. Tiger have advised they have complied with the conditions of the exemption.

7.6.2 Queensland and Western Australian Taxi Councils

In December 2007, Taxi industry representative bodies in Queensland and Western Australia applied for their member radio co-operatives to be exempted from the requirement, under the transport Standards, to ensure the same response times for accessible cabs as for other taxis. A decision on this matter is pending.

7.6.3 Queensland Rail Tilt Train

In December 2007, Queensland Rail were granted an exemption for five years, permitting them to maintain current levels of provision of allocated spaces on their tilt train services. The exemption was granted largely on the basis that it was highly likely that the applicants were already complying with applicable requirements of the *Disability Standards for Accessible Public Transport*, but were prepared to commit to additional measures in return for certainty on this point.

7.6.4 Regional Express (REX)

In October 2007, REX Airways applied for temporary exemptions that would permit the airline to place a range of restrictions and requirements on the carriage of passengers with specific disabilities on its SAAB aircraft. Following consideration of issues raised in public submissions made in response to the application, REX submitted a revised application in April 2008, which is currently being considered by HREOC.

7.6.5 Australasian Railways Association

In January 2007, HREOC granted a series of temporary exemptions to members of the Australasian Railways Association (ARA) in relation to provisions in the *Disability Standards for Accessible Public Transport* and of the Disability Discrimination Act. The exemptions were granted on the condition that its members meet a set of revised compliance requirements and report to HREOC on the implementation of the revised obligations. Decisions were deferred on a number of other issues on which the ARA had also applied for exemption, pending further consultation between ARA, community representatives and HREOC.

During 2007-08 decisions were made to grant exemptions to ARA on three deferred issues, outlined below.

Assistance animals: In September 2007, HREOC granted ARA an exemption until January 2010 in relation to assistance animals. The exemption permits operators to require passengers accompanied by an assistance animal to present evidence that: the animal has been trained to alleviate the effects of a disability which the passenger has; the animal is of an appropriate breed and temperament to be used as an assistance animal in public places; and the animal has been trained to meet appropriate standards of behaviour.

Boarding ramps: In November 2007, HREOC granted ARA an exemption for a period of six months such that staff assistance would not be required for people ascending or descending boarding ramps with a slope greater than one in eight, pending review of measures for safe and accessible boarding.

Stowing mobility aids: In November 2007, HREOC granted ARA an exemption until January 2010 in relation to mobility aids such that:

- operators are not required to carry or stow mobility aids on booked services if the mobility aid does not comply with the 'Assumptions for Mobility Aids' set out in the Guidelines to the Disability Standards for Accessible Public Transport;
- where a passenger requires assistance with folding and/or unfolding of a wheelchair, or disconnecting and/or re-connecting batteries, operators may require that the passenger, or a person on behalf of the passenger, is able to provide directions for the procedure involved; and
- operators are not responsible for transferring passengers by lifting to or from mobility aids where an access path to an allocated space is available, but the passenger chooses instead to transfer to a fixed seat.

7.6.6 Buchan Bus 'n Freight

In June 2008, HREOC granted Mr D. Beaven, trading as Buchan Bus 'n Freight, an exemption to 31 December 2010 from the effect of the provisions of the *Disability Standards for Accessible Public Transport*. The effect of the exemption is to permit the continued use for public transport of a vehicle which is not wheelchair accessible and which was acquired second hand in 2004. The Standards require accessibility of 25 per cent of services from 31 December 2007, subject to the defence of unjustifiable hardship.

7.6.7 Subscription television captioning

The Australian Subscription Television and Radio Association (ASTRA), on behalf of its member broadcasters, was granted an exemption by HREOC on 2 June 2004, which is due to expire on 4 June 2009. This exemption was granted subject to conditions. ASTRA members must implement a plan for increasing captioning during the exemption period. They must also submit a proposal to HREOC by 4 June 2008 for a plan to further increase captioning.

During the reporting period, ASTRA sought an extension of the time for submission of the proposal until 30 June 2008. HREOC decided that this request should be met. It re-issued an exemption to the same effect, and on the same conditions, as its decision of 4 June 2004, changing the date for submission of a proposal for a further plan for captioning to 30 June 2008.

7.6.8 Free to air television captioning

In May 2008, HREOC received an application from Free TV Australia on behalf of the major commercial and public free to air television broadcasters. In effect, Free TV sought a 6 month extension of a temporary exemption granted by HREOC in May 2003. The exemption had been granted on the condition that captioning levels measured over a broadcast day from 6 am to midnight would reach 70 per cent by the end of the exemption period. However, the applicants sought permission to maintain the existing levels pending further progress in the investigation of captioning and other media access requirements being conducted by the Department of Broadband, Communications and the Digital Economy. This application is currently under consideration by HREOC.

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 2008, 554 plans were registered with HREOC (increased from 516 in June 2007), comprising 49 business enterprises, 61 non-government organisations, 36 federal government and 68 state and territory government departments and agencies, 161 local governments and 179 education providers.

The register of Action Plans, and those plans provided electronically to HREOC (528 of the total), are available on the HREOC website. This 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 during 2007-08.

7.8 LEGISLATIVE DEVELOPMENT

The Disability Discrimination Unit also contributes to legislative development, including 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

A selection of speeches made by Commissioner Innes on disability rights issues during 2007-08 are listed below. Speeches and papers are available on the HREOC website at www.humanrights.gov.au/disability_rights/speeches/speeches.html

Getting It Right – A Baker's Dozen, presented by Senior Policy Officer Michael Small, Australian Institute of Building Surveyors State Conference, HREOC, Sydney, 20 July 2007.

Towards Ratification of the Convention on the Rights of Persons with Disabilities, Parliament House, Hobart, 20 August 2007.

Deafness Forum Captioning Awards – Presentation of award for Free to air TV, Sydney, 23 August 2007.

Accessible Procurement: A Market Driven Approach which Benefits All Australians, Institute of Public Administration Australia, Perth, 20 September 2007.

Access to the Arts: Being Discriminating Rather than Discriminatory, Arts Activated Conference, Sydney, 26 September 2007.

Education and the Convention on the Rights of Persons with Disabilities: Des English Memorial Lecture, Australian Association of Special Education Annual Conference, Coogee, 28 September 2007.

The UN Convention, the Rights of People with Disabilities and Domestic Violence, Domestic Violence, Disability and Cultural Safety National Forum, Sydney, 8 November 2007.

Making Rights Relevant, National Disability Services conference, Canberra, 28 November 2007.

International Day of People with Disabilities Keynote Speech, Parramatta, 3 December 2007.

'Signing up' – Toward Ratification of the UN Convention on the Rights of Persons with Disabilities, Deafness Forum Conference, Canberra, 24 May 2008.

Towards a National Mental Health and Disability Employment Strategy, ACE Annual Disability Employment Network Conference, Canberra, 5 June 2008.

Special Education Leaders Conference, Parramatta, 6 June 2008.

Launch of Disability Strand, Sydney Film Festival, Sydney, 6 June 2008.