

Chapter 7: **Disability Rights**

Statement from the Commissioner

With my appointment as Human Rights Commissioner in December 2005, I also took over from Dr Sev Ozdowski as Commissioner responsible for leading the Commission's work to eliminate disability discrimination and promote equality for people with disabilities in Australia.

Two major disability rights projects completed under Dr Ozdowski's leadership during 2005–06 are discussed in this report.

A joint venture with the Mental Health Council of Australia and the Brain and Mind Research Institute Australia resulted in a very comprehensive report *Not for Service: Experiences of injustice and despair in mental health care in Australia*. This report has been very influential in gaining commitments from governments to improve the delivery of mental health services, and so promote more equal and effective participation in social and economic life (including in employment) for Australians affected by mental health problems. We will continue to follow issues in this area as closely as possible.

Also completed under Dr Ozdowski's leadership and conducted very much at his personal initiative was the National Inquiry into Disability and Employment, the report of which was released in February this year. There has already been a welcome degree of acceptance and implementation by the Commonwealth of some of the recommendations of this inquiry. We will continue to pursue the implementation of other recommendations.

In particular, the Commission called for the Commonwealth to adopt an 'accessible procurement' policy for the equipment and facilities it uses (similar to those adopted in the US) so that accommodating disability becomes part of the ordinary way things are done, instead of having to be worked out each time with extra expense and delay. It has been encouraging to see the Victorian Government embark on the development of such a policy and I hope to see other Australian governments follow suit.



Mr Graeme Innes, AM
*Acting Disability
Discrimination Commissioner*

We also hope to see progress in clarifying the interaction between equal opportunity and occupational health and safety requirements so that fear and uncertainty in this respect does not continue to present a major barrier to employment opportunities.

During the Inquiry, people with disabilities raised major concerns over the costs of participation in employment and the impact of the 'welfare to work' changes now being implemented nationally. The Commission has expressed similar concern to the federal government.

It appears that many people with disabilities who want to participate in employment have been using income support payments to meet some of the extra costs associated with the work, such as transport, added health costs or the costs of personal support services. Unfortunately much of the public discussion of this issue seems to suggest that these payments are acting as an incentive to *avoid* working. For these people reducing eligibility for income support may well reduce the ability and incentive to work rather than increasing it as the Government intends. We hope to see this concern addressed in further refinement and review of the Government's reforms in this area.

One of the important features of the DDA, which makes it very different from other Australian discrimination laws, is its provision for disability standards, to define in more detail what access and equality mean and when they have to be achieved.

This year saw entry into force of standards for education, and standards on access to premises moving close to completion after more than ten years of negotiation and consultation. I commend the Government for its continued support of the long and demanding process of developing disability standards.

Experience has shown that with many disability issues it isn't enough for the law just to tell people not to discriminate. An individual right not to be discriminated against is, in many areas under the DDA, not really much good at all in itself, until it is translated into broader and more detailed specifications and actions.

Standards are one way of doing that work of translation. The power to grant temporary exemptions with conditions designed to promote movement towards improved access and equality has been another means to the same end.

In common with each of my predecessors having responsibility for disability discrimination issues at the Commission, a central theme in my approach is to look for ways to achieve greater cooperation and involve as many people as possible in sharing knowledge and resources and finding a common interest in situations which start from conflicting positions. My background as a mediator and conciliator leads me to that approach. So too does an awareness of the complexity and scale of the task we are engaged in when seeking to eliminate discrimination as far as possible. This report shows continued progress in that task and I am confident that with your cooperation we will see still more progress in the next few years towards a society fit for all of us.

Promotion of awareness, understanding and compliance

Most of the Commission'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.

Public use of the disability rights area of the Commission's website continues to be strong, with 961 653 page views recorded on the disability rights web pages in this period. Information is continuously being added, for example with answers to 'frequently asked questions' and information on recent complaint outcomes. Publications are also distributed in print and other formats on request.

An important feature of the Commission's work is in seeking partnerships with industry bodies to promote improved access. In April 2006 the Commission launched a guide developed together with peak industry body, Meeting Events Australia (MEA), for event organisers to make their events more accessible to Australians with a disability. The guide covers issues such as: choosing a venue; transport to and from the venue; promoting and registering for events; catering; staff training; the use of technology, and contacts for people looking for more detail. It also discusses the legal responsibilities event organisers have under anti-discrimination law.

Research and policy

Mental health and human rights

In October 2005 the Minister for Health launched *Not for Service: Experiences of injustice and despair in mental health care in Australia*, a report of consultations conducted by the Mental Health Council of Australia and the Brain and Mind Research Institute in association with the Human Rights and Equal Opportunity Commission (HREOC). At the launch, Human Rights Commissioner Dr Sev Ozdowski said:

More than 10 years ago, HREOC conducted an inquiry into the rights of Australia's mentally ill and found multiple breaches of basic human rights ('The Burdekin Report'). In particular, the inquiry found that people were being inappropriately locked up in mental asylums and mistreated while they were there. In the interim, the mental health system has moved away from institutionalisation to care predominantly occurring in the community. While it is hard to disagree with this approach, the fact is that while institutions are being closed down, community supports are not being adequately built up.

Commonwealth, State and Territory bureaucrats routinely report that work is underway to improve mental health services, but I have seen little real progress in the past three years in my role as federal Human Rights



Commissioner. Governments are not sufficiently matching their words with dollars and accountability for the money they do allocate to mental health services is seriously lacking. It is also clear that there is a lack of political and departmental leadership on the issue. Federal, State and Territory Governments and their departments need to stop the blame game and start working together to drive real change and make mental health care an urgent priority.

In February 2006 the Council of Australian Governments (COAG) issued a communiqué recognising the need for leadership and additional resources from all governments to address mental health problems in the Australian community and asking senior officials to prepare a national action plan to be brought forward for its consideration no later than June 2006. HREOC welcomed this, noting that the community would be watching eagerly to see COAG's discussions translated into specific commitments backed by substantial resources and that it was encouraging to see that Australia's governments were now picking up the same themes which people with a mental illness, their families and other experts in the field had been speaking about for some years.

In April 2006 HREOC welcomed funding announcements of an additional \$1.8 billion over 5 years, while looking forward to more detail from the Commonwealth and additional funding from states and territories.

Employment and Disability Inquiry

The Final Report of the Human Rights and Equal Opportunity Commission's National Inquiry into Employment and Disability was tabled by the Attorney-General in Federal Parliament on 14 February 2006.

People with disability represent a significant proportion of Australia's working age population (16.6%), yet they participate in the workforce at lower rates, they are less likely to be employed when they do attempt to participate, and they will earn less if they do get a job.

The Inquiry found that governments needed to do more to provide support, services and incentives to employers and to people with disability to ensure true equality of opportunity. Governments also needed to provide leadership to the private sector, and the community at large, by improving public sector employment practices and developing clear information strategies to address employer concerns about potential costs and risks associated with employment and disability.

HREOC has been encouraged by the positive response shown by the Commonwealth Government to many of the ideas raised during the inquiry – including the forthcoming launch of a one-stop shop information and advice service on employment and disability, reform of the Workplace Modifications Scheme, and commencement of a scheme of insurance cover for work trials –

and looks forward to further constructive work with government, employers and disability community representatives in advancing equal opportunity and more effective participation in the labour market for Australians with disabilities.

Discussion of possible international convention

Significant progress was made during 2005–06 in work towards a possible international convention on human rights and disability through a working group of the United Nations General Assembly. HREOC has continued to participate in the sessions of this working group as part of the Australian Government delegation. In August 2005 Commissioner Sev Ozdowski commented:

These negotiations have been a good model for how UN processes can be more participatory and effective than they have sometimes been in the past. The process and its outcomes so far show that reform of UN activities on human rights doesn't mean you have to throw the baby out with bathwater. Organisations representing people with disabilities have been able to participate extensively in the process, rather than this being restricted to governments only. Contributions from Australian disability organisations in particular have been widely recognised as important and constructive. National human rights institutions, including Australia's Human Rights and Equal Opportunity Commission, have also worked together to contribute innovative ideas on monitoring of human rights.

Work towards the forthcoming session in August 2006, at which it is hoped a draft Convention may be finalised for transmission to the General Assembly, has focused on developing innovative models for monitoring and implementation rather than simply reproducing models from existing human rights instruments.

Access to electronic commerce

In July 2005 the Commission released a report on the progress banks have made towards ensuring their electronic financial services are accessible for customers with disabilities. The review shows that while industry is clearly making considerable progress and committing resources to improving access, customers with disabilities are not yet fully aware of, or benefiting from, the changes taking place.

In 2002, following an inquiry conducted by the Commission into access to electronic commerce and related issues, the Australian Bankers' Association released voluntary industry standards about how to make ATMs, internet, telephone and EFTPOS financial services more accessible to people with disabilities. This included detailed specifications on how to make internet banking accessible for blind people and how to design ATMs so that people using wheelchairs can use them.

As a follow-up to this review the Commission has been seeking more information from individual financial institutions on how customers with disabilities can keep abreast of developments and find out information such as the location of their nearest accessible ATM.

The Commission has also been working with the banking industry on access issues raised by the move towards improved authentication and security systems.

Cinema Captioning

The Commission has continued to work with industry and disability community organisations to promote increased access to captioning at cinemas and has also been discussing with the Film Finance Corporation possible measures to promote captioning of Australian produced films.

Copyright and access to written materials

In January 2006 the Commission wrote to the Attorney-General to recommend that amendments to the Copyright Act to permit practices of format shifting, already widespread among consumers in such areas as copying CDs to MP3 players, should extend to removing restrictions on translating materials into formats accessible for people with disabilities.

It is very pleasing to note that the Attorney-General acted swiftly to accept this approach, as indicated in his press release of Sunday 14 May. The Commission welcomed this while noting that further measures are needed to secure truly equal information access for people with print disabilities. The Commission intends to pursue further discussions with industry and government of possibilities for expansion by publishers of direct access to copyright material in accessible formats, including through a central repository or network as is now available in the United States.

Electoral access

The Commission wrote in February 2006 to Ministers responsible for electoral matters to recommend that the forthcoming trial of electronic voting include a specific focus on disability access issues, in view of the potential for technology in this area to make possible access to secret ballots for people with disabilities, in particular people with a vision impairment, consistent with our human rights obligations. Further constructive discussions have been held between Government, the Australian Electoral Commission, representatives of people with disabilities and the Commission on these issues in recent months.

Health access

Following from the national forum on access to health services for people with disabilities convened by the Commission in May 2004, and a further meeting in June 2005 with the Royal Australian College of General Practitioners, the Commission has been working with the College and with disability advocacy organisations on projects aimed at improving the availability of height-adjustable examination beds, and improving information for health care providers on service to people with different types of disability. The Department of Health has also been discussing options for acting on the proposal which came out of the Commission's 2004 forum for promoting and funding an annual health check for people with intellectual disabilities. The Commission also met with the Minister for Health to brief him on access issues which have been raised by the disability community.

Telecommunications

Code on disability information: During 2005 and early 2006, the Commission participated in the development of a code that will require manufacturers and importers of telecommunications equipment to provide standardised information about features of their equipment that will assist people with disabilities. Such features include adjustable volume controls, high-contrast displays, selectable screen fonts, and buttons and controls that are easy to use by people with disabilities. The code was developed by a Committee established by the Australian Communications Industry Forum (ACIF) that included representatives from industry, the disability sector, and regulators. The Code was recently registered by the Australian Communications and Media Authority (ACMA) and compliance with it is mandatory. Although the Commission was hoping that the Code would require the provision of more comprehensive and detailed information that would assist people with disabilities choose telecommunications equipment that best meets their needs, it does represent a good starting point for further work in this area and its development provided an opportunity for increased understanding for the issues involved in improving access to telecommunications.

Payphone accessibility: As at June 2006 the Commission was close to release (with ACIF) of guidelines on accessibility of payphones. Despite the rapid uptake of mobile phones, payphones are still an important communications tool, especially for people in rural areas where there is poor mobile coverage and for people on low incomes. People with disabilities are represented in both groups and recent reports have highlighted a range of significant barriers to access that currently exist.

Web access

Website accessibility continues to be a significant concern for various groups of people with disabilities. The WorldWide Web Consortium is presently revising its *Web Content Accessibility Guidelines*, Version 1.0 which are referred to (as the accepted international benchmark) in the Commission's *Web Accessibility Advisory Notes* and which seek to provide guidance on the level of accessibility required for compliance with the DDA.

The Commission has indicated concerns regarding our ability to give similar endorsement to proposed version 2.0 of the Guidelines both in terms of content and the process of consultation adopted to date. Although the Commission does not have the power to certify codes such as this for the purposes of compliance with Australian law, which would add further weight to our views on issues such as this with standard setting bodies, it is expected that our views will have some influence.

Exemptions

Under section 55 of the DDA, the Commission has power to grant temporary exemption from provisions of the Act which make discrimination unlawful. The exemption applications policy is available on the Commission's website or on request.

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

Exemption processes are open to public participation through online publication of the Commission's notice of inquiry and details or text of applications, and also publication of submissions from interested parties.

Airport Direct

On 15 February 2006 the Commission decided to refuse 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. The Commission was not satisfied in this matter that the application went beyond a request for certification of unjustifiable hardship which has not been regarded as the appropriate purpose of the temporary exemption power.

AirNorth

On 15 February 2006 the Commission decided to grant a further exemption concerning access to aircraft operated by AirNorth, for a period of two years, regarding lack of access to aircraft seats for people requiring wheelchair access, where this is prevented by limited aisle width; lack of access to aircraft or seats for passengers requiring lifting, where this cannot be performed in compliance with the requirements of applicable occupational health and safety laws due to space constraints of the particular aircraft; and requirements for notice of disability access requirements, where these requirements are reasonable in the circumstances. The exemption is conditional on AirNorth continuing to provide its *Greater Freedom Fare* (as detailed in its application) where a person would not be able to travel without an assistant; reporting to the Commission on any instances where a passenger has been unable to travel or has been required to travel with an assistant because of restrictions permitted by this exemption; and reporting on any feasible technical solutions to difficulties faced by passengers with disabilities boarding and being seated safely, and in particular on consideration of solutions being trialled by other aviation operators in Australia.

Australasian Railways Association

On 29 July 2005 the Australasian Railways Association (ARA) lodged an application for temporary exemption for its members from a range of provisions of the Disability Standards for Accessible Public Transport, on condition that its members meet a proposed set of revised compliance requirements seen by ARA as clearer and more certain, and/or more appropriately adapted to circumstances of rail public transport operations, than those provided by the existing terms of the Standards. In accordance with the Commission's policy on exemption applications a notice of inquiry and call for submissions on the ARA's application was published in August 2005 together with a copy of the application. The application and the body of submissions received (69 in number) is large and more complex than other applications received to date. In response to issues raised by submissions, ARA lodged a revised application in February 2006. The Commission convened a meeting in April 2006 between ARA, the Accessible Public Transport Jurisdictional Committee (comprising representatives of Federal, State and Territory Departments of Transport) and disability community representatives to discuss the revised application. As at June 2006 the Commission is preparing a paper for further public consultation on this matter.

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 2006, 368 plans were registered with the Commission (increased from 337 in June 2005), comprising 41 business enterprises, 46 non-government organisations, 36 Commonwealth Government and 52 state and territory Government departments and agencies, 143 local governments and 50 education providers. The register of Action Plans, and 329 individual plans provided electronically to the Commission, is available on the website. This register assists other organisations interested in developing their own plans and 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.

Legislative reform and assessment

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.

The Commission 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. The Commission has a function under the DDA to advise the Attorney-General regarding the making of Standards. To date, it has performed this function by practical participation in Standards development processes rather than by way of formal reporting.

Access to premises

The Commission has continued to work intensively with the Australian Building Codes Board and industry, community and government members of the Building Access Policy Committee established by the Board, 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 2006 Ministers were 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.

Education

The Disability Standards for Education came into effect in August 2005. The Commission has been discussing with the Attorney-General's Department and the Department of Education, Science and Technology possible further measures for promotion and implementation of the Standards.

Public transport

Discussions have continued through the Accessible Public Transport National Advisory Committee of processes and issues for the five-year review of the Disability Standards for Accessible Public Transport. The Commission has stated its view that the aim should be to have this review complete, or at least well under way, by the five-year point in 2007. The Commission has been encouraging jurisdictions to make public the results of their monitoring of progress in implementing the Standards as the first five-year compliance targets approach.

In addition to work on the Australasian Railways Association exemption application in relation to the Standards, significant issues regarding aviation access have arisen during 2005–06 including through complaints under the Disability Discrimination Act. As at June 2006 the Commission had asked the Department of Transport and Regional Services to convene a meeting involving aviation industry participants and regulatory bodies and disability community representatives to seek to resolve these issues.

Productivity Commission review

The Commission met with the Attorney-General's Department during 2005–06 to assist in developing amendments to the Disability Discrimination Act in implementation of the Government's 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.

Speeches

Following is a selection of speeches made by Commissioners Ozdowski and Innes during 2005–06. Speeches and papers are available on the Commission's website at: www.humanrights.gov.au/disability_rights/speeches/speeches.html

Advancing human rights of children and young people with disabilities, ACROD NSW Sub-committee on Children, Young People and their Families, Sydney, 5 June 2006, Commissioner Innes

Roundtable on Information Access for People with Print Disabilities, Brisbane, 22 May 2006, Commissioner Innes

National Deafness Sector Summit, Perth, 20 May 2006, Commissioner Innes

Adaptable Departments – disability action plans and what makes them work, A DACV, EOCV, HREOC forum: Royal Australasian College of Surgeons, Melbourne, 17 May 2006, Commissioner Innes

Opportunity knocks; Workers with a disability, University of Southern Queensland, Toowoomba, 24 November 2005, Commissioner Ozdowski

Deafness forum of Australian 2005 Captioning Awards, North Ryde, 12 November 2005, Commissioner Ozdowski

Round table on Disability Action Plans with State Government Departments, Hobart, 3 November 2005, Commissioner Ozdowski

Launch: *Not for Service*, Brain and Mind Research Institute, University of Sydney, October 19 2005, Commissioner Ozdowski

ABCB Conference, Building Australia's Future, Adelaide, 13 September 2005, Deputy Disability Discrimination Commissioner Innes

3rd National Conference on Human Rights and Mental Health, Thursday 8 September, Parliament House Canberra, Commissioner Ozdowski

Advancing equality in education and beyond, Eastern Metropolitan Region Student Disability Conference, 1 September 2005, Melbourne, Commissioner Ozdowski