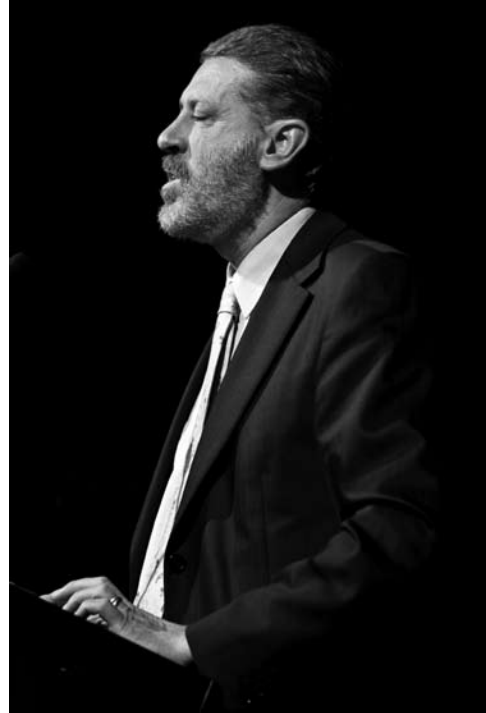


Chapter 7: Disability Rights



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Mr Graeme Innes AM
Disability Discrimination
Commissioner

7.1 Statement from the Commissioner

The Commission's policy work on issues of human rights and disability has involved sustained focus, and engagement with government, disability community experts and representatives, and industry bodies over many years, and particularly since the passage of the Disability Discrimination Act in 1992.

This policy focus – clearly appropriate and necessary, since nearly half the complaints received by the Commission concern disability – has produced very significant results on particular issues (such as accessibility of public transport and communications). But it is clear that even more comprehensive social change is required, and possible, for the full and equal enjoyment of human rights and social and economic participation and inclusion for people with disability in Australia.

This year has seen significant progress in mapping out the journey from exclusion to equality.

Australia ratified the *Convention on the Rights of Persons with Disabilities* (the Disability Convention) – which Australia, the Commission, and the Australian disability community made major contributions in developing.

The Australian Government has begun the process of developing a National Disability Strategy to implement the Disability Convention. There are promising similar developments well under way in several states. The Government has also moved to put into practice the provisions of the Disability Convention, calling for international cooperation on disability rights.

The Commission has received funding through AusAID to conduct a project, in partnership with the Pacific Disability Forum to build the capacity and knowledge of disabled people's organisations and government representatives in nine Pacific island countries to progress disability issues in the Pacific.

The Attorney-General has added the Disability Convention to the international instruments by reference to which the Commission's statutory functions are defined – recognising a major role for Australia's independent national human rights institution as part of Australia's framework for implementation and monitoring of the Disability Convention. We will be working with government and the community to develop that role further in the coming year.

Some of the improvements to the Disability Discrimination Act, recommended by the Productivity Commission in 2004, have at last been made, with the passage of the Disability Discrimination and Other Legislation Amendment Bill – including confirmation that the Disability Discrimination Act includes duties to make reasonable adjustments.

Adoption of Disability Standards on Access to Premises is now very close with the tabling of draft Standards on Access to Premises and a bipartisan Legal and Constitutional Affairs Committee recommendation for the Standards to proceed – subject to a series of improvements which very closely reflect the Commission's submissions. This follows many years of effort by governments, the Australian Building Codes Board, the Commission, and building industry and disability community representatives working in partnership. This project has been under discussion for almost a decade, during which thousands of buildings have been built or renovated without sufficient access for people with a disability. The Committee has now delivered a thorough and realistic set of recommendations which should allow government and its partners to move forward quickly to complete this vital project. This is another area of progress in human rights law reform, with potentially even larger impacts for social inclusion in practice than the Disability Standards for Accessible Public Transport. These Standards will provide certainty for industry, and promote better access for all of us (particularly as we grow older, as individuals and as a community), through a nationally consistent framework which harmonises building laws and discrimination laws.

Substantial progress has also been made in a number of other areas as detailed in this report. However, it remains all too clear that, for many people with disability, their experience remains one of disadvantage for them and their families; of exclusion from participation and opportunity; in many cases an experience of abuse or neglect; an experience, in short, of denial of human rights.

I hope, and believe, that the Disability Convention will give Australian governments fresh impetus and opportunity to change these unacceptable realities to the benefit of all of us in Australia.

7.2 Research and policy

7.2.1 *Convention on the Rights of Persons with Disabilities*

In July 2008, the Commission welcomed Australia's ratification of the Disability Convention, and commended both the current and the former Government for their support in this area. The Commission has continued to work with government and with disability community experts to assist in development of effective implementation strategies for the Disability Convention. This has included contribution to development of the forthcoming National Disability Strategy, work to develop options for increasing awareness and understanding of the Disability Convention amongst disability advocates and relevant policy makers, and contributing to development of the Australian Government Overseas Aid Program's disability strategy.

7.2.2 Employment and disability

During 2008, the Commission welcomed the commencement of work towards development of a National Disability Employment Strategy, which was the principal recommendation of the Commission's National Inquiry into Employment and Disability. The Commission's Inquiry report emphasised the importance, in addressing this critical aspect of economic and social inclusion for people with disability, of adopting a coordinated whole-of-government approach – including in removing economic barriers to participation. The Commission has been providing advice through the National Mental Health and Disability Employment Strategy Advisory Committee, both to inform the shape of the final National Disability Employment Strategy and to provide input on specific initiatives on employment, including provision of employment related services and supports. The Commission has also continued to contribute to work on disability employment issues by the Department of Education, Employment and Workplace Relations, the Australian Fair Pay Commission and Safe Work Australia (formerly the Office of the Australian Safety and Compensation Council).

In view of the continuing under-representation of people with disability in the Australian Public Service, and a continuing decline of employment of people with disability in the Australian Public Service, the Commission has emphasised the need for Government to lead by example on employment of people with disability. It has also outlined a series of possible strategies by which employment of people with disability in the Australian Public Service could be improved, drawing on the Commission's *Final Report of the National Inquiry into Employment and Disability*, and the Australian Public Service's own Management Advisory Committee report (*Employment of People with Disability in the APS*).

7.2.3 Captioning and media access

The Commission has continued to contribute to the investigation, by the Department of Broadband, Communications and the Digital Economy, into media access issues, including captioning. Pending the results of this investigation, the Commission has assisted government and industry bodies and community representatives in negotiating for practical progress in this area in several respects:

- *Free to air television captioning:* Broadcasters have agreed, through the temporary exemption process administered by the Commission, to further increases in captioning levels on free to air television. Broadcasters have agreed to increase captioning levels to reach 85 percent of programming during the broadcast day over the next three years, and to review and report

on possibilities for further subsequent increases. The outcomes achieved through the Commission's processes in this area are clearly a significant advance on the current requirements of the *Broadcasting Services Act 1992* (Cth), which apply only to news, current affairs and prime time programming. Accordingly, this has been estimated to require between 38 and 40 percent captioning. The Commission has also assisted in discussions between industry and consumer representatives on quality of captions.

- *Subscription television captioning:* Subscription television broadcasters are not currently subject to any specific captioning targets under the Broadcasting Services Act, but have submitted a proposal for further increases in captioning through the Commission's temporary exemption process.
- *Cinema:* The Commission welcomed the announcement by the Minister for Ageing, earlier this year, that funds would be made available to assist a number of independent cinemas to improve access. The Commission is assisting in discussions between the larger cinema chains and disability community representatives on possibilities for further expansion of cinema access, including trials of new technologies.

7.2.4 Electoral access

The Commission has commenced discussion with government and with disability community experts on options for ensuring that this fundamental civil and political right to voting in a secret ballot is respected and ensured for all people. These discussions commenced following the recommendation by the Joint Standing Committee on Electoral Matters. The Committee recommended that the trial of electronically assisted voting, undertaken in the most recent Federal Election, not be persisted with on financial grounds. This recommendation was made despite this being the only means to date offered for achieving a secret ballot for Australians who are blind or have other print disabilities.

7.2.5 Health access

The Commission has continued to work with government and with the Royal Australian College of General Practitioners to promote the provision of effective and equitable access to primary health care. One ongoing project concerns the wider provision of adjustable-height examination beds to reduce one of the many barriers to health care outcomes experienced by people with disability.

7.2.6 Universal housing design

By 2050, more than 26 percent of the population will be over 65, and almost 8 percent will be over 85. As people live longer, they are living a greater part of their life with a disability – on average for almost 20 years. The Commission has continued to work with governments, industry and community advocates towards a national action plan on lifetime housing, which would include the adoption of a nationally consistent set of low cost and no cost universal design features. Such an outcome would improve the accessibility of housing and enable people to remain living in their own homes as long as possible, while they age, rather than being forced to move because of inadequate access features.

Promising initiatives to respond to these emerging social, economic, and human rights issues have occurred in 2008-09 at state government level, including through the Victorian Government's *Build for Life* program which will include consideration of mandating greater accessibility in new housing developments. Discussions of further national initiatives are well advanced.

7.2.7 Violence against women

The Commission has worked to promote more effective inclusion of disability issues in national strategies and structures intended to reduce violence against women and children. This work has been undertaken in view of clear evidence of higher rates of violence and abuse of women and girls with disability, as well as gaps in existing strategies and services for preventing and responding to women and girls with disability experiencing violence.

7.2.8 Indigenous people with disability

The Commission has commenced work to identify the impacts of hearing impairment and deafness in Aboriginal and Torres Strait Islander communities. Initial research conducted by the Commission indicates the impacts are wide-ranging, significant and inhibit the enjoyment of many human rights. A project is now under way, which will culminate in the production of a research paper. The paper will collate evidence about the extent to which hearing impairment and deafness, as one form of disability, can affect the rights of Aboriginal and Torres Strait Islander peoples, as well as identify possible solutions and opportunities for action.

7.3 Exemptions

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

Under the Commission's temporary exemption policy, exemption processes are open to public participation. This can be done through online publication of the Commission's notice of inquiry and details of applications, and publication of submissions from interested parties. Further information about the temporary exemption policy is available on the Commission's website at: www.humanrights.gov.au/disability_rights/exemptions/exemptions.html

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

7.3.1 Free to air television captioning

Through the temporary exemption process under the Disability Discrimination Act, free to air broadcasters – metropolitan and regional, including public sector, as well as commercial broadcasters – have committed to providing for further increases in captioning levels. The commitment is to reach an average of 85 per cent of programming, between 6 am and 12 midnight on free to air television, by the end of 2011. This builds on commitments, under an earlier exemption granted by the Commission in 2003, which required captioning levels to reach 70 per cent by 2008.

7.3.2 Subscription television captioning

In 2004, the Australian Subscription Television and Radio Association (ASTRA), on behalf of its member broadcasters, was granted an exemption, subject to conditions. The conditions included the implementation by ASTRA members of a plan for providing increasing levels of captioning during the exemption period, and the submission to the Commission of a proposal for a further plan for captioning.

ASTRA has reported the required captioning levels as having been met or exceeded and has submitted a proposal for further increases pursuant to a second exemption application, which is currently being considered by the Commission through a public inquiry process.

7.3.3 Queensland and Western Australian Taxi Councils

Taxi industry representative bodies in these two states have applied for their member radio co-operatives to be exempted from the Transport Standards requirement that accessible cabs and other taxis have equal response times. A decision on this matter has been deferred, pending further discussions on possible alternative compliance measures with industry, government and community representatives.

7.3.4 Regional Express Airways

In October 2008, the Commission granted Regional Express Airways (REX) temporary exemptions: permitting REX to require reasonable notice of requirements for disability related assistance and reasonable advance check-in periods; exempting REX from being required to assist passengers by manual lifting where this is unable to be performed safely, on condition that REX undertake and report on trials of improved access procedures; and permitting REX to require passengers to be accompanied by an assistant where unable to understand safety instructions.

7.3.5 Australian Railways Association

During 2007-08, the Commission decided to grant 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 Disability Discrimination Act. These temporary exemptions were granted on condition that its members meet a set of revised compliance requirements and report to the Commission 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 the Commission.

The ARA had indicated that its application was, in part, a response to delays in addressing areas of uncertainty through the first five-year review of the Disability Standards for Accessible Public Transport. With the continuation of this delay the ARA has been working, in consultation with the Commission and community representatives, on a compliance code for accessibility in rail services. It has advised that it will consider submitting a further exemption application based on this code.

7.3.6 WizzBus

The Commission received an application from WizzBus Bus and Coach for a temporary exemption under section 55 of the Disability Discrimination Act. The application was in regard to a bus service to be established between Moorabin airport and Melbourne under a contract being sought with the Victorian Department of Infrastructure. The application indicated that WizzBus had not, to date, been able to acquire an accessible 30 seat capacity bus to suit its service. The application sought an exemption for five years, being the anticipated initial contract period, to enable the service to commence and enable WizzBus to verify the economics of operating a low floor route bus.

The Commission refused the application. While the objects of the Disability Discrimination Act may be promoted by granting exemptions in return for commitments to improve access over time, in this instance the application did not provide any specific commitments, seeking simply to have five years during which the Disability Discrimination Act need not be complied with. The Commission noted that this decision prevented the applicant seeking to establish a defence of unjustifiable hardship in response to complaints. However, the Commission considered that the exemption process was not the appropriate vehicle for seeking to establish such a defence.

7.4 Promotion of awareness, understanding and compliance

The Disability Discrimination Act provides that the Commission promote an understanding and acceptance of, and compliance with, the Act. Since the International Year of Disabled Persons in 1981, there have been a wide range of government, community-based and commercial sources of disability awareness and information provision. The Commission has sought to avoid duplicating this work, and has instead concentrated on:

- bringing together and making available practical information on how to achieve non-discriminatory outcomes
- compliance promotion efforts which are closely connected to policy work and legislative and regulatory development, principally reported on under those headings in this report.

7.4.1 Website

The disability rights section of the Commission's website continues to be the area of the Commission's information and education materials that is used the most, with 1 355 896 page views recorded in 2008-09. This level of usage reflects a particular effort made to provide as much practically useful information as possible and to gather and act on user feedback.

7.4.2 Resource for employers on mental health issues

The Commission is currently developing a resource for employers, which provides practical guidance on a range of workplace adjustments or accommodations for workers with mental illness. The resource aims to enhance successful participation and productivity for these workers in the workplace. It has been prepared jointly with Safe Work Australia (formerly the Office of the Australian Safety and Compensation Council) and is now in the final stages of preparation for release.

7.4.3 Resource for business and local government

The Commission has continued to encourage local government and community organisations to use, adapt and distribute its resource materials on access and inclusion. This applies in particular to the *Missed business* resource for small business. The Commission has re-issued the CD, *The good, the bad and the ugly*, which provides information and guidance about ensuring accurate application of design and construction requirements for access. More than 8000 copies of this CD

have been distributed to building professionals and access consultants. Plans to finalise a partnership with a number of local government bodies, to provide a copy of the CD to all commercial development applicants in their areas, are well advanced.

7.4.4 Work with Commonwealth agencies on accessibility issues

Physical access issues

The Commission has worked with the Department of Education, Employment and Workplace Relations and the Department of Families, Housing, Community Services and Indigenous Affairs to ensure that information on access issues is available to participants in the Building the Education Revolution and Housing Affordability funding programs. The Department of Education, Employment and Workplace Relations has issued a fact sheet, with Commission input, which has been circulated to all bodies accessing funds under the Building the Education Revolution program.

The Housing Affordability Fund program has advised that recipients, whose infrastructure projects include the construction of homes, will be expected to complete a checklist which includes a number of access design features.

Information access issues

In September 2008, the Commission established a WebWatch page on its website to highlight web accessibility issues on government websites. When a website is listed on the WebWatch page, the Commission notifies the heads of the agencies or departments concerned, as well as the relevant Minister and the Australian Government Information Management Office (AGIMO). The Commission also asks to be advised of the remedial measures taken, so that the listing can be removed, if appropriate. WebWatch is available at: www.humanrights.gov.au/disability_rights/webaccess/webwatch.htm.

This initiative has led to positive discussions with a number of Commonwealth Departments, and with AGIMO, about strategies for improvement of accessibility. These discussions have taken the recent release of the second edition of the World Wide Web Consortium's Web Content Accessibility Guidelines into account. The Commission has also commenced considering revisions to the Commission's own guidelines in this area.

7.5 Legislative reform and assessment

7.5.1 *Convention on the Rights of Persons with Disabilities:* Addition to Commission statutory roles

On 24 June 2009, the Commission welcomed the Attorney-General's announcement of the declaration of the Disability Convention as a relevant international instrument under the Human Rights and Equal Opportunity Commission Act. This declaration formally includes the rights recognised in this Convention as part of the definition of human rights under which the Commission operates, and gives the Commission important roles in monitoring and promoting implementation of the Disability Convention. It is anticipated that further discussions will be held with the government, about the Commission's role as part of Australia's national framework for the monitoring and implementation of the Disability Convention, including issues of resourcing.

7.5.2 Amendments to the Disability Discrimination Act

On 24 June 2009, the Commission also welcomed the passage of the Disability Discrimination and Other Human Rights Legislation Amendment Bill 2008 by both houses of Parliament and with bipartisan support.

The Commission has identified further possibilities for improvements to the Disability Discrimination Act. In conjunction with recommendations for similar improvements to the Sex Discrimination Act, and in the context of harmonisation of anti-discrimination laws nationally, the Commission will continue to pursue opportunities to see these improvements made.

7.5.3 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.

The Commission supports development 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.

Access to premises

As noted in the Commissioner's statement in this report, the House of Representatives Standing Committee on Legal and Constitutional Affairs delivered its report on the draft Disability Standards for Access to Premises on 15 June. The Committee recommended that the Standards proceed promptly to authorisation, subject to a series of improvements consistent with the Commission's recommendations. These included: improved access features on stairways; improvements in relation to new small holiday type accommodation such as B&B and cabins; clarification regarding the unjustifiable hardship provisions; continuing work on emergency access provisions; and consideration of the Disability Discrimination Commissioner being given the power to investigate non-compliance with the Premises Standards and to bring a complaint where there is non-compliance.

Education

The Commission has continued to respond to requests for advice on the application of the Disability Standards for Education, adopted in August 2005, and has commenced planning for contribution to the initial five-year review of those Standards.

Accessible public transport

Pending further progress in the initial five-year review of the Disability Standards for Accessible Public Transport, the Commission has participated in initiatives in relation to specific modes of transport for improved accessibility.

- *Aviation:* The Department of Infrastructure, Transport, Regional Development and Local Government has convened an ongoing forum in response to the forum on aviation access issues in April 2008, convened jointly by the Commission and the Parliamentary Secretary for Disability. This ongoing forum facilitates cooperative work between the aviation industry, representatives of people with disability, and relevant government departments and agencies, including the Commission. This working group has made good progress towards improved industry and regulatory approaches to aviation access.

- *Bus stops:* Draft guidelines on accessible bus stops have been prepared and circulated to an expert reference group, with wider circulation due early in 2009-10.
- *Rail access:* As noted in the exemptions section of this chapter, the Commission has been assisting the Australasian Railways Association in relation to its development of a rail access code.

7.6 Action Plans under the Disability Discrimination Act

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

As at 30 June 2009, 602 plans were registered with the Commission (increased from 554 in June 2008), comprising 55 business enterprises, 69 non-government organisations, 37 federal government and 82 state and territory government departments and agencies, 170 local governments and 189 education providers.

The Register of Action Plans, and those plans provided electronically to the Commission (581 of the total), are available on the Commission website at: www.humanrights.gov.au/disability_rights/action_plans/Register/register.html. 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 during 2008-09.

The Commission has been involved in work by several state governments on more effective use of disability action plans, including in relation to development of cross government frameworks for disability issues in response to the Disability Convention.

7.7 International activities

To progress disability issues in the Pacific, the Commission, in partnership with the Pacific Disability Forum, has received funding through AusAID's Pacific Governance Program to build the capacity and knowledge of disabled people's organisations (DPOs) and of government representatives in nine Pacific nations.

The overall objective of the initiative is to improve quality of life for people with disability living in the Pacific by: promoting the rights of people with disability (including ratification and implementation of the Disability Convention); and building the capacity of DPOs and governments to respond to the numerous barriers preventing people with disability from enjoying all their human rights, including freedom from violence and abuse, and full and effective participation in society on an equal basis with others.

The Commission, in partnership with the Pacific Disability Forum, is developing a three-day training program. Tailored for each country, the training program focuses on the Disability Convention, policy development, successful approaches to advocacy and improving governance of each DPO, including building the capacity of women with disability to participate in all DPO activities.

During 2008-09, the Commission also attended international disability conferences to discuss the use of the Disability Convention as a tool for progress.

7.8 Speeches

A selection of speeches on disability rights issues, made by Commissioner Innes and Commission staff during 2008-09 are listed below. Full speeches and papers are available on the Commission website at: www.humanrights.gov.au/disability_rights/speeches/speeches.html.

Going for Gold – Implications of the Convention on the Rights of Persons with Disabilities for Australian Law and Social Policy – Human Rights Indicators Seminar, Queensland Advocacy Incorporated, Brisbane, 20 August, 2008.

Keeping Disability Action Plans on Track – Victoria statutory authorities workshop, Melbourne, 26 August 2008.

Employment of People with Disability in the Australian Public Service – Employers Network on Disability Forum, Canberra, 24 September 2008.

Keynote address – Disability, Disadvantage and Development Conference, Canberra, 29 September 2008.

City of Sydney Access Inclusion Plan launch – Sydney, 1 December 2008.

International Day of People with Disability – Breakfast Meeting, High Court of Australia, Canberra, 1 December 2008.

Presentation to Western Australian State and Local Government CEOs – Perth, 2 April 2009.

Keynote address – Creating Welcoming School Communities Conference, Perth, 3 April 2009.

Rights Denied – Seminar towards a national agenda on abuse, neglect and exploitation of persons with cognitive disability in Australia, Sydney, 22 May 2009.

Using the Disability Convention for Practical Change – Australian Federation of Disability Organisations Conference, Melbourne, 29 May 2009.

Matt Laffan Memorial Address – Sydney University Law School, 23 June 2009.

The following speech was also given by Bruce Maguire from the Disability Discrimination Unit, Australian Human Rights Commission:

Telecommunications Access and the Convention on the Rights of Persons with Disabilities – Signposts Telecommunications and Disability Forum, Melbourne, 16 February 2009.