by
Dr Sev Ozdowski OAM,
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1.0 Acknowledgments

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2.0 Introduction

Allow me to start by congratulating the Human Rights Commission of Sri Lanka, and in particular its Chairperson Dr Radhica Coomaraswamy and Commissioner Ameer Zainudeen, for their pioneering work in the area of disability rights. It is my pleasure and privilege to have been invited here to address this important conference. It is so good to see the heads of so many different government agencies and members of civil society here today and working together to advance the standing of people with disabilities in Sri Lanka.

Disability a Significant Part of Diversity
In Australia we prefer to define disability as an important part of human diversity, which characterises any human society. Disability, from the point of view of Australian public policy, is viewed like any other social characteristics such as gender, age, race, and ethnicity, and needs to be taken carefully considered within government policies and programs. In public policy, we focus on action to transform the experience of disability, and recognise that disability really is a normal part of life, not something that should exclude people from the life of our nation.

People with disabilities constitute a significant proportion of any society. The size of the proportion depends on many factors: In countries with aging populations like Australia or in post-war countries like Sri Lanka, the proportion of people with disability is usually higher.

For example, the proportion of people with disabilities in Australia is about 20%. This is according to figures from the Australian Bureau of Statistics (based on self-reporting of disability in a national census). However, more recent analysis indicates that the numbers are likely to be substantially larger, considering evidence that either of the categories of hearing impairment or mental health issues affect 20% of our population just by themselves. And I particularly want to emphasise mental health issues here - Because it seems to me that very
often people with mental health problems get left out of the picture, even among those of us discussing disability.

In addition to the 20% (and above) of those who have a disability, there is another 8% of the community who act as caregivers for family members or friends/loved ones with disabilities on a daily basis.

**Disability Associated with Disadvantages and Poverty**

When one looks at these statistics it is remarkable to think that for so long people with disabilities were pushed to the margins, or completely overlooked in major social decisions. They were pushed to the margins of society because their special needs were overlooked or given a lower priority in budgetary allocations for social services, and in expenditures relevant to them and their needs within the infrastructure.

In fact, in all countries I have surveyed, even in the most advanced countries, disability continues to be associated with disadvantages and poverty.

People with disabilities and their families have much smaller incomes, participate less often in the workforce and are more often unemployed. They face difficulties with accessing education, housing, transportation, communication, health and social services and other services. In fact, they are one of the most marginalised groups in our society.

Some groups within the disability community, namely people with mental or psychiatric disabilities, often suffer daily violence, intimidation and denial of their basic civil rights, in addition to economic disadvantages.

Furthermore, many people with disabilities suffer unfair stigmatization and typecasting. The negative attitudes towards people with disabilities constitute a major factor in determining their disadvantages.

The National Policy on Disability for Sri Lanka adopted by the Sri Lankan Ministry of Social Welfare is a good example of solid policy on disability and it clearly documents that all of the general statements mentioned previously apply to Sri Lanka as well. It is a very important first step and congratulations are well deserved to everyone who has been involved with the development of this paper. Establishing such policy, however, does not automatically imply budgetary or legislative follow-up. At this stage it is only an important statement of good intention. I hope that we will see soon an effective legislative and budgetary response by the government.

**Government’s Responsibility**

In traditional societies the family was the key institution looking after people with disabilities. Some role was also played by local community, religious institutions and charitable organisations.

In contemporary societies however the role of family care has declined and the responsibility of the state for caring for people with disabilities is on the increase. This is often explained by reference to factors such as:

- emergence of nuclear family and decline of the extended which was dominant in the past;
- shift of responsibilities between the community and individuals; and
- the emergence of modern welfare state.
There are also country specific factors that influence the level of government involvement with the care for people with disabilities. In Australia, for example, the government disability services are particularly well developed because of:

- Australia’s significant participation in the WW I and WW II and the need to care for associated casualties
- relative wealth because of healthy economy; and
- very sophisticated civil society with disability NGOs being able to capture “high moral ground” with general public for people with disabilities.

In fact, when making international comparisons, one would conclude that Australia is a good “best practice” example in the way it cares for people with disabilities.

Whatever historical or country specific reasons may be, there is however no doubt that it is a major responsibility of any government to deliver at least equal playing fields for all citizens and to ensure that every citizen, regardless of individual characteristics, receives fair and equal treatment.

This can be achieved by a range of appropriate government policies combined with strong budgetary and regulatory measures. National budgets usually contain various measures pertaining to people with disabilities. Two measures that are of key importance are the so-called ‘welfare net’ and ‘special’ disability-related programs.

First, the so-called official ‘welfare net’ is provided through budgetary allocations for people whose income is below the national minimum income standard. Those disabled who fell below the defined minimum income standard may be entitled to special pensions from these governments. As part of this generally available higher or lower ‘welfare net’, in some countries there are specific pensions designed for people with disability on a low-income level. In Australia, for example, the Disability Support Pension provides ‘a payment for people whose physical, intellectual or psychiatric impairment prevents them from working, or for people who are permanently blind’. A single pension rate per fortnight is $488.90.

Second, there are also a number of ‘special’ budgetary measures that directly relate to the specific needs of persons with disabilities. These include assistive devices (for example, wheelchairs, prostheses or hearing aids), access to information technology, taxi vouchers for travelling to employment and back, etc.

The availability of ‘welfare net’ and ‘special’ measures depends very much on both the budgetary situation of a given country and on its policy priorities.

Third, there is a need for disability discrimination laws. In fact, people with disability were often failed in the past because often no adequate regulatory regimes and effective implementation mechanisms were put into place. The lack of proper regulation and laws denies people with disabilities their human rights and equal standing in society. Without proper regulation, social environments were built that essentially discriminated against people with disabilities and denied them the opportunity to participate equally in community life. Disabling environments were common in our buildings and streetscapes, in our systems for public transportation, education, communications, and even political participation.

Thus, in addition to budgetary measures, there is a need for government regulatory measures expressed in the form of different laws and standards that combat discrimination and disadvantages associated with disability. Some of these aim at providing equal opportunities
to people with disabilities, including access to goods and services and equality before the law. Others address problems within the infrastructure and attempt to ensure that an equitable share of national resources is provided to people with disabilities.

These regulatory measures give individuals certain rights and a legal redress in case of discriminatory behaviour or practice. They usually require lesser budgetary commitment from the government since the cost of their implementation is spread more widely among a broader community, including employers, builders, service providers, educational institutions and so on. In Australia, the *Disability Discrimination Act 1992* provides such a measure.

**Focus of the Paper – Disability Discrimination Legislation**

As experience shows, the building of an inclusive and equal society is a difficult and lengthy (long-term) task because the exclusion of people with disabilities is so well entrenched. Discrimination against people with disabilities often has been deeply built into many aspects of the way society works. To change it, we need to have a multi-pronged approach focusing on a range of different measures including budgetary measures, and measures designed to change outdated laws, policies and programs, as well as attitudes and expectations.

As Sri Lanka is planning its own *Disability Rights Bill*, the organisers of this National Conference have asked me to assist you in putting the disability rights on a national agenda for action. They asked me to talk about practical measures that delivered change in my home country of Australia.

Therefore, this paper will focus on the Australian (federal) *Disability Discrimination Act* and its practical operation. It will try to show areas where progress was made and how, over the last 12 years, difficulties were identified and managed, and where further work needs to be done.

I am fully aware that any significant reform agenda cannot be implemented simply by passing new laws or by changing existing ones. Still, it is clear that the laws against discrimination have been an important part of the positive changes that occurred in Australian society over the last few decades.

### 3.0 The Australian Disability Discrimination Act 1992

In the early 1980s, states that already had anti-discrimination legislation covering grounds such as race and sex discrimination began adding coverage of disability. This was largely in response to community activism around the *International Year of Disabled Person* in 1981.

The national *Disability Discrimination Act* (DDA) was passed with bipartisan support on 15 October 1992 and came into effect on 1 March 1993. It supplemented the already existing state and territory legislation, and provided consistent and comprehensive coverage nationwide. The goals of the act were to eliminate disability discrimination in various areas of life (as much as possible), ensure equality before the law for people with disabilities, and “promote gradual structural reforms and attitudinal change”.

**Definition of Discrimination**

DDA defines both discrimination and disability in very broad terms. Discrimination happens when a person with a disability is treated less fairly than a person without a disability. It also happens when someone is treated less fairly because they are a relative, friend, caregiver, co-worker or associate of a person with disabilities.
The concept of discrimination includes both direct and indirect discrimination.

Disability is defined as one that affects an individual’s physical, intellectual, sensory, psychiatric, neurological and learning abilities. It also includes physical disfigurement, as well as the presence in the body of disease-causing organisms, such as the HIV virus.

It encompasses disabilities that are permanent, episodic or temporary, or those that people are simply suspected of having. Whether a person's disability is severe, moderate or apparently trivial, discrimination on the basis of that disability is covered by the DDA.

Discrimination is unlawful in education, employment, public transportation, sports, clubs and associations, living and working accommodation, finance and banking, insurance and superannuation, access to premises and to goods, services and facilities, and in administration of Commonwealth laws and programs.

Harassment because of disability, such as insults or humiliating jokes, is against the law if it happens in a place of employment or education, or from people providing goods and services to the disabled individual.

**Key Features of the DDA**
Although the Disability Discrimination Act is typical anti-discrimination legislation, there are a number of differences between the DDA and other Australian federal anti-discrimination laws - the Racial Discrimination Act, the Sex Discrimination Act and the recent Age Discrimination Act.

- **The Inherent Requirements**
First, there is the concept of inherent requirements, which are of major importance as they relate to employment, education and other areas. The opportunities to hold a job or obtain an education are extended to a person with a disability only if she or he is able to perform the main activities (inherent requirements) of the job or education curriculum.

- **The Reasonable Adjustment**
The DDA encompasses, although it does not yet explicitly spell out, a requirement to make reasonable adjustments to remove features of the workplace that have discriminatory effects. It also encompasses features relating to education and other areas of the act. In other words, an employer or educational facility is expected to make reasonable adjustments in their environment that make the surroundings accessible to a person with disabilities. For example, this may require installing a ramp for an individual confined to a wheelchair, or providing an enlarged computer screen that can be operated by a visually impaired person.

In response to the Productivity Commission's review of the legislation, the Australian government decided earlier this year to include an express duty to make reasonable adjustments in the DDA. It will provide helpful clarification in this area.

- **Unjustifiable Hardship Defence**
In recognition of the fact that eliminating disability discrimination can sometimes be more difficult and expensive than eliminating other areas of discrimination, the DDA provides a defence of ‘unjustifiable hardship’.
It is only the Australian Federal Court or Federal Magistrates Service that can determine what constitutes ‘unjustifiable hardship’, but the DDA states that all relevant circumstances of the particular case are to be taken into account. This includes the nature of any benefit or detriment likely to be experienced, technical limitations, the estimated costs of the work and the financial circumstances of the person claiming the hardship.

- **Exemptions**

Section 55 of the DDA also gave power to the Human Rights and Equal Opportunity Commission (HREOC or Commission) to grant temporary exemptions, for up to five years at a time, to help manage the transition to equal and accessible systems and facilities. 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, as well as publication of submissions from interested parties.

For example, an exemption from the provisions of DDA was given to a small bus tour operator who has had one of his three buses not wheelchair accessible. The exemption was given only for two years, i.e. until 1 December 2007. The exemption was granted on condition that on or before this date, wheelchair access would be provided by replacing or refitting the vehicle. Another exemption was granted for a period of 18 months, regarding disability access to bathroom facilities at a proposed bed-and-breakfast facility. The exemption was granted on condition that within 12 months of the date of this decision the operators would begin work to provide accessible bathroom facilities, and would complete that work within 18 months of the date of the exemption.

### 4.0 Key DDA Implementation Mechanisms

The Disability Discrimination Act of 1992 provides a range of effective mechanisms that HREOC could use to improve disability related infrastructure and provision of goods and services and to effectively handle individual grievances because of alleged discrimination. It is for you to judge if any of the mechanisms on the Australian menu are of relevance to Sri Lanka.

Some of the measures were designed to have a systemic impact, for example, by setting out nationwide mandatory standards. Others were designed to deliver individual redress. It is important to notice that they are not ‘empty’ laws, but instead, effective laws with courts, in most cases, having the final say about their interpretation and implementation.

The following key mechanisms and their application and effectiveness will be discussed in this paper:

- National Inquiries
- National Standards
- Disability Plans
- Complaints
- Intervention in Legal Proceedings & Amicus Curiae
- Public Education
This paper does not deal with a range of other mechanisms available to HREOC such as the ability to participate in Parliamentary and other inquiries (e.g. by the Productivity Commission) and policy development and legislative reform function.

5.0 National Inquiries

The HREOC has the power to investigate acts and practices that may be contrary to human rights or that may be discriminatory. The reports of such inquiries are tabled in Parliament, but the government is not obliged to provide a formal response.

In addition, the Disability Discrimination Commissioner may undertake public inquiries into some complaints when the subject matter requires consideration of interests beyond the immediate parties to a complaint, and when it involves issues of public policy, rather than allegations regarding individual behaviour and which can be investigated openly. The commissioner can also undertake inquiries into major human rights and disability issues that require national focus and major paradigm shift.

During my term of office as the Disability Discrimination Commissioner I have conducted the following inquiries:

- Follow-up to the 1997 Inquiry into the Sterilization of Girls and Young Women with Mental Disability in Australia (2001).
- Inquiry into the Access to Electronic Commerce and other New Services and Information Technology by People with Disabilities and Older Australians (2000).

Some of the inquiries were initiated by a complaint, while others were initiated by the Disability Discrimination commissioner himself. Only the National Inquiry into Employment and Disability used the joint powers of both the Human Rights and Equal Opportunity Commission Act and Disability Discrimination Act and resulted in formal Parliamentary report.

Different methodologies were used for different inquiries. In some cases the methodology was limited to the use of the Internet to distribute notices of inquiry, and for receiving and publishing submissions. In other cases, inquiry methodology involved inviting formal submissions and conducting open hearings and/or consultations in different locations across Australia.

The major strengths of the commission's inquiry process are that it is independent of government or any interest group, and it will allow anyone with constructive ideas and solutions to present them for consideration.

The inquiry can:
- Put a matter of concern on the national agenda.
• Contribute to an informed debate.
• Provide a public forum for the disadvantaged to voice their concerns.
• Develop practical policy alternatives and options for implementation.
• Impact government priorities and public opinion.

The following section focuses on the two most recent inquiries. These inquiries were significantly different in their stated goals, methodology and the level of cooperation from significant stakeholders.

5.1 A National Inquiry on Employment and Disability: ‘Workability’

Background
In March 2005 HREOC launched a National Inquiry into Employment and Disability. The inquiry was decided upon because of significant evidence emerging from:

• The 2003 HREOC evaluation of ten years of operation of DDA.
• The Productivity Commission evaluation of DDA in 2004 that employment of people with disability is the area where the least progress has been made since the introduction of DDA.

In fact, employment is one of the areas where there has been the least progress since the adoption of the DDA. This is ironic since improving employment opportunity and outcomes for people with disabilities was a large part of the original motivation for introduction of the Disability Discrimination Act in 1992. It was meant to contribute to making a difference to employment outcomes overall for people with disabilities in Australia.

And yet, after more than 12 years of experience in implementation of the DDA - and after more than two decades of similar legislation in a number of states including NSW - the employment position for people with disabilities does not seem to have improved – if anything, it has gotten worse.

Since 1993, the labour force participation rate of people with disabilities in Australia has fallen, while the rate for people without disabilities has risen. In 2003, 53.2 % of people with disabilities participated in the labour force as compared to 80.6% of those without a disability. The workplace participation rate for people with a psychiatric disability receiving disability support payments is only 29%. Among people in the labour force - that is, working or looking for work - the unemployment rate for people with disabilities in 2003 was 8.65%, compared to 5% for people without disabilities. When employed, people with disabilities also earn lower wages, on average, than workers without disabilities.

This inquiry was established to redress this situation and to find ways to make it easier for people with disabilities to participate in the open workplace; and for employers to hire people with disabilities. It focused on finding practical solutions and was conducted in a context of public debate about welfare reform and a growing awareness of skills and labour shortages emerging in the Australian economy. It aimed to ensure that people with disabilities can participate and contribute their abilities in the workforce.

Methodology
The methodology focused on close collaboration of all those involved in the employment process. It involved ongoing consultation with a large variety of stakeholders, including individuals with disability, NGO’s representing people with disability, unions, employment
service providers and their peak bodies, employers and their peak bodies, and government agencies. The process included publishing a number of papers and *Interim Reports*, gathering and publishing written submissions, conducting roundtable discussions and individual meetings, conveying four working groups and researching international models.

An important part of this inquiry was close and constructive cooperation with the Department of Employment and Workplace Relations.

**The Evidence**
The written submissions and consultations to this inquiry have raised many different issues, concerns and ideas. However, the three main issues emerged:

- **Information** - People with disability and employers were concerned about the absence of easily accessible and comprehensive information that could assist in their decision-making processes and support their ongoing needs.
- **Cost** - People with disability were concerned about the costs of participation, and employers were concerned about the costs of employing a person with disability.
- **Risk** – People with disability and employers were concerned about the financial and personal impact of participating in the workplace, especially if a job does not work out.

**The Report and Recommendations**
On 19 August an *Interim Report* was released for consultations and the final ‘*WORKability Report*’ was tabled in Parliament in February 2005. The report contains 30 recommendations to the Government.

The following key recommendations were made:

- **The creation of a one-stop shop for information** accessible to employers, people with disability, employment services, relevant government services and community groups.

- **A review of employer incentives - including the Workplace Modification Scheme**, with a view towards extending its eligibility to people with disabilities working from home (self-employed, consultants, etc.) to work on a part-time or casual basis; expansion of types of modification covered by the scheme; increased funding for modifications; and the facilities to transport funded equipment to a new workplace.

It is interesting to note that the above two recommendations were picked up by the government Department of Employment and Workplace Relations during the inquiry for immediate implementation.

Other recommendations include:

- **Accessible Procurement and Universal Design**: Countries such as the United States and Canada have laws and policies in place requiring that when the government purchases facilities, such as information and communications technology, it must wherever possible ensure that these facilities are accessible to people with disabilities. The European Community has adopted a high-level directive on accessible procurement and is now moving to fill in the details.
The inquiry recommended that Australia follow the above examples. If facilities, systems and technologies are built to be accessible from the outset, when an employee acquires a disability or a person who has a disability applies for a job, it will not be too difficult to make adjustments to the workplace. Building an accessible environment reduces the chances of having to make adjustments later or imposing unjustifiable hardship upon both employer and employee.

- **Flexible Workplaces**
  Universal design thinking is not only relevant to buildings and equipment, but also to how work is organised. It seems increasingly clear that workplace flexibility can be important for a range of reasons, some of which relate to disability. One worker may need flexible working arrangements because of unpredictable and episodic impact of a mental illness. Another may need the same flexibility because of transportation requirements, such as bus or taxi departures and arrivals. Still another may need flexibility because of the unpredictable and episodic impact of parental responsibilities, as many of us here can perhaps confirm.

  The report recommends development of guidelines on flexible workplaces building on the work that has already been done on family-friendly workplaces. It also recommends the sharing of information from businesses that already have experience in creating flexible workplaces regarding what does and does not work.

- **Recruitment and Support Needs for People with Mental Illness**
  A large proportion of submissions to our inquiry had a particular focus on mental illness, and a range of practical recommendations was made in this area.

  It was recommended that measures to address needs in this area should avoid as much as possible further stigmatising people with a mental illness as ‘problem cases’. The inquiry was also told that adjustments made in the context of mental illness could have benefits for many other groups of people. For example, a workplace that has flexible working hours will benefit people with mental illness, and people with multiple sclerosis, and HIV/AIDS. It could also benefit working parents who have episodic demands on their time. Similarly, a workplace with access to a mental health hotline would not only benefit those with a chronic mental illness, it can also benefit other employees who go through a stressful period during their lives.

  The inquiry has made a whole range of recommendations aiming at:
  - The reduction of costs and risks incurred by both the employer and the employee that associated with participation in employment by person with disability, such as tax initiatives, transport and health concessions, adjustments to health and safety industrial relations laws to remove ‘zero-risk’ principle.
  - Development of robust government-supported work trial schemes and transition-to-work schemes.
  - Much greater public sector leadership, including development of a comprehensive national strategy to increase public sector employment of people with disabilities.
  - Establishment of the National Disability Employment Strategy.

**The Outcomes**
There is yet no formal government response to the report, so it is difficult to judge how many of its 30 recommendations will be implemented. However, a range of recommendations has already been acted upon by the Department of Employment and Workplace Relations, and some of them are fully implemented.
The Public Service Commission has already established a taskforce to increase the percentage of people with disabilities in the Australian Public Service.

5.2 Inquiry into Human Rights and Mental Health Care ‘Not for Service’

Background
In 1975, Australia agreed to become a party to the International Covenant on Economic Social and Cultural Rights, which is a binding treaty, and which provides in its Article 12:

‘The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.’

More detailed guiding principles for ‘the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care’ were agreed to by the United Nations General Assembly in 1991.

The UN Mental Health Principles reinforce the rights enshrined in the International Covenants and provide valuable guidance as to how those rights ought to apply to people with mental illness.

- Principle 8(1) makes it clear that people with mental illness have the right to the same standard of health care as other ill persons.
- Principle 14 states that mental health facilities should have the same level of resources as any other health facility.
- Additionally, Principle 7 emphasises the right to be treated and cared for as far as best as possible in the community.
- Principle 9 emphasises the importance of ‘the least restrictive alternative’ in relation to treatment.

Australia also is a party to the Convention on the Rights of the Child, which also recognises the right to the highest attainable standard of health and to facilities for treatment of illness and rehabilitation of health.

HREOC has a longstanding interest in mental health. Back in 1993, my predecessor as Human Rights Commissioner, Brian Burdekin, released the report of the Human Rights and Equal Opportunity Commission’s National Inquiry into the Human Rights of People with a Mental Illness. This inquiry was carried out over several years including hearings conducted around Australia, hundreds of submissions, and extensive research. The 1993 inquiry found that people affected by mental illness suffered from widespread systemic discrimination and were consistently denied the rights and services to which they were entitled.

Governments did make major responses to the Burdekin inquiry. The Burdekin inquiry clearly contributed to the development of the first national mental health strategy. In particular, the Commonwealth Government allocated funds for the first time specifically for mental health services, and became involved in providing some leadership in the area through a collaborative National Mental Health Strategy, rather than just leaving it all to the states. There were also substantial law reform initiatives.

But from the time I commenced as Human Rights Commissioner in 2000, I continued to see evidence indicating an ongoing crisis in access to effective mental health services. Increasing
concerns were also being communicated to me by community members. Although I was reluctant to commence yet another inquiry in this area and add to the pile of reports, I decided that it was necessary in order to:

- Put the issue of mental health on the national agenda again and to draw public and political attention to this experience as a means of promoting accountability.
- Refocus debate in this area as involving matters of human rights.

**Methodology of the 2004-05 Inquiry**

The inquiry was designed to increase public exposure and facilitate discussion of the failures of the mental health system in Australia. It sought to actively engage with the media and the public, as well as with governments. This methodology was adopted because of attitude of resistance to any change adopted by the Federal Department of Health and by the state health authorities.

First, the terms of reference were released and the stakeholders were invited to provide written submissions. Approximately 400 submissions were received and placed on the web.

Following that, consultations with people in the mental health sector were conducted all over Australia. One of the inquiry’s objectives was to provide a forum for the experience of people affected by mental illness, as patients, families, or caregivers, together with the community and professional service providers. Some of the initial mental health consultations involved the convening of 20 open-community forums in each state and territory from July to October 2004. Forums involved consumers, caregivers, general members of the community, advocates, clinicians and other service providers (such as general health and accommodation providers), emergency personnel (for example police), academics and administrators.

The inquiry team also conducted individual meetings with specific community, professional and non-government groups, and received around 360 submissions.

**The Evidence**

The evidence we received suggested that:

- Those with a mental illness are still being blamed for being sick.
- Resources provided are simply inadequate to match the level of unmet needs and ensure access to treatment and services when they are needed.
- Accountability for money allocated to mental health services is seriously lacking.
- The most frequently mentioned gap in mental health services was the absence of early intervention and other specialist services, in particular for young people.
- All too often people are being told, in effect, to come back when they are really ill. It is a good time to look at prevention and early intervention, rather than face the high cost of the treatment, in the future. Australian mental health experts lead the way in developing early intervention programs for the mentally ill. They are being implemented overseas, but not in Australia.
- Despite increasing evidence of links between drug use and mental illness, Australia still lacks adequate mental health facilities to cope where a person also has an addiction.
- Australia still lacks adequate facilities able to respond appropriately where a person has other forms of ‘dual diagnosis’ such as an intellectual disability together with a mental health problem.
- In all states reports were received of children and young people being admitted to inappropriate adult facilities.
• Emergency services are overburdened and often inaccessible. Acute care services are too often simply missing, especially in regional Australia, resulting in fatalities that could otherwise have been prevented.
• Community supports likewise are seriously overburdened and unable to cope with the existing demand.
• A key priority is increased availability of supported accommodation and housing options. Secure accommodation is an important pre-condition of restoring good mental health.
• While deinstitutionalisation has continued, there still has not been an increase in support systems for people with mental illness who now must live in the community.
• The lack of adequate mental health services is proportionally greater in rural and remote areas.

The Report
The over 1000 page long ‘Not for Service’ report was released by the Minister for Health in November 2005. The report contained analysis of material provided in submissions and during the consultation process, together with comments from Australian governments on draft reports provided to them.

Key conclusions of this evaluation were:
• While there has been growth in mental health expenditure, this has simply mirrored overall health expenditure trends and is not sufficient to meet the level of unmet need for mental health services.
• While community treatment and support services have been strengthened, community treatment options are, even now, often unavailable or inadequate, with growth in resources to the non-government sector in particular not having kept pace with their increased role.
• Although access to mental health care has been improved, consumers are still frequently unable to access mental health care when they need it.
• In particular, follow-up care into the community after hospitalisation for an acute episode is often lacking.

Recommendations
The following recommendations were made:
• There must be more money put on the table and far better accountability systems introduced for money already allocated.
• There must be more early intervention programs established, especially focusing on young people.
• Higher priority for mental health care needs to be given by both the state and Commonwealth levels of government.
• Better collaboration is needed between government, non-government and private sectors, and the participation of consumers and caregivers.
• Additional programs and resources are required to attract and retain staff in mental health care services, particularly in rural areas.
• Better integration and training is needed between the drug and alcohol and mental healthcare workforces.
The Outcomes

So far the inquiry has achieved the following outcomes:

- It put the issue of mental health on the national agenda and turned the failures of mental health services into a political issue.
- Provided forums for the voices of people who are disadvantaged and have difficulty in being heard and being included.
- Forced most of the state and territory governments to put additional resources into mental health budgets.
- Forced the federal government to show national leadership on the issue and put the mental health on the agenda of the meeting of the Council of Australian Governments to be held in February 2006.
- Contributed to informed debate and combating of the stigma associated with mental illness.

6.0 National Disability Standards

People seeking to build accessible transport systems, information and communications facilities or buildings, and educators, need more information to guide them in addition to a general obligation not to discriminate. It appears that eliminating disability discrimination is a far more complex business than eliminating sexual harassment, for example. Although that has proved to be easy either, in the end the message is a fairly simple one—Just don’t do it. In recognition of the different context provided by disability discrimination and the more complex and long-range tasks in eliminating it, the DDA provides for development of standards.

The DDA provides for ‘Disability Standards’ to be made by the Attorney General in areas of accommodation, administration of Commonwealth laws and programs, education, employment; and public transport. Contravention of a disability standard is unlawful under the Act. The standards are usually developed in sometimes very lengthy consultations with the state and territory governments. The DDA requires disability standards to sit before each House of Parliament for 15 sitting days before they can commence. Once they are approved by the Federal Parliament, they apply nationally.

The purpose of standards is to provide a clearer delineation of what actually must be done to ensure access and equity than what is provided for in the Act itself, which only broadly states the requirements for equal access for people with disabilities. This type of open-ended legislation has its advantages, but is limited in its capacity to effectively and consistently achieve equality for people with disabilities.

Disability standards can reduce some of the uncertainty arising out of open-ended discrimination provisions, and, more importantly, can reduce the burdens of time, staff resources, expense, uncertainty, and personal stress and anxiety involved both for students and for education providers. In fact, the standards fill out the details of existing rights and responsibilities, rather than creating new ones.

Compliance with the relevant standard provides protection from a complaint of unlawful discrimination under the general anti-discrimination provisions of the DDA.

The Human Rights and Equal Opportunity 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. The commission also is able to grant temporary exemptions from the requirements of the standards, in appropriate cases, to ensure that the system operates in a fair and balanced manner.

Early in the life of the DDA there was some community concern about standards as being wrong in principle, as taking away people's rights to pursue individualised outcomes through the complaint process under general anti-discrimination provisions. This general concern about standards possibly displacing individual rights under general anti-discrimination provisions has largely dissipated as people have seen the positive results achieved through the transport standards. In fact, establishment of the standards has shown that governments and infrastructure providers are clearly prepared to do more if they can have some certainty about what is required to achieve compliance with their obligations. Disability community concern now rightly focuses not on opposition to standards per se, but on what the content of standards should be.

The following standards were developed under the DDA:

- Education Standards
- Transport Standards
- Access to premises standards

6.1 Disability Standards for Education

Background
Equality of opportunity in education is an essential foundation for equal opportunity and participation in social and economic life more generally. The Disability Standards for Education are the newest disability standards adopted by the Federal Parliament. They were adopted despite the opposition from some states, which were concerned about the cost of implementation of the standards.

Work on the development of Disability Standards for Education 2005 has been underway since 1995. The primary purpose of the standards is to clarify and make more explicit the obligations of all government and private education and training service providers under the DDA. The standards were developed through extensive consultation with education, training and disability stakeholders, as well as the involvement of the HREOC.

On 18 August 2005 the Attorney General and the Minister for Education Science and Training announced that more than 210,000 Australian students with disabilities will benefit from the commencement of the new Disability Standards for Education. The standards are accompanied by Guidance Notes to provide additional explanation. Unlike the accessible public transport standards, the education standards do not set out timelines and specifications for making facilities and systems accessible, but apply immediately.

They are based on the position that all students, including students with disabilities, should be treated with dignity and enjoy the benefits of education and training in an educationally supportive environment that values and encourages participation by all students, including students with disabilities. Importantly, the standards aim to overcome discrimination based on stereotyped beliefs about the abilities and choices of students with disability.
Application
The standards apply to government and non-government providers in all education sectors, including the pre-schooling, schooling, vocational education and training, higher education, and adult and community education sectors. They also apply to providers of educational services, including curriculum and accreditation bodies.

DDA Section 34 provides that if a person acts in accordance with the standards, they comply with the DDA. The other side of the coin is that under DDA Section 32, an education provider must comply with the standards or it will be acting unlawfully.

The standards contain obligations with which education and training providers must comply. They also set out measures accompanying each statement of obligation. These provide examples of actions that providers may take to ensure compliance with their legal obligations.

Compliance with some or all of the measures may be relevant to a defence against a complaint, but providers may also choose to take different measures to achieve compliance with the same obligations.

Reasonable Adjustment
To achieve compliance, education providers are under a positive obligation to make reasonable adjustments to accommodate the needs of students with a disability. An adjustment is a measure or action taken to assist a student with a disability to participate in education and training on the same basis as other students. Adjustments must be made if they are reasonable and do not impose unjustifiable hardship.

In assessing whether a particular adjustment is reasonable for the student with a disability, the education provider should take the following into account:

- The nature of the student's disability.
- Information provided by, or on behalf of, the student about how the disability affects the student's ability to participate.
- Views of the student, or an associate of the student, about whether a proposed adjustment is reasonable and will enable the student with a disability to access and participate in education and training opportunities on the same basis as students without disabilities.
- Information provided by, or on behalf of, the student about his or her preferred adjustments.
- The effect of the proposed adjustment on the student, including the student's ability to participate in courses or programmes and achieve learning outcomes.
- The effect of the proposed adjustment on anyone else affected, including the education provider, staff and other students.
- The costs and benefits of making the adjustment.

The education provider should act upon information about an adjustment in a timely way that optimises the student's participation in education or training. The fact that a student's preferred form of adjustment is impracticable does not relieve an education provider of the responsibility to seek another effective form of adjustment, if possible.

Obtaining Disability Information
When considering an adjustment for a student with a disability, a provider is entitled to information about the student's disability and individual requirements if that information is directed towards:
• Providing the adjustment, including assessing the nature and extent of the adjustment needed and assessing the provider's capacity to provide the adjustment.
• An assessment that is intended to clarify the student's ability to comply with any non-discriminatory requirements of a course or training program.

Any confidential information given to education providers for the purposes of making adjustments should not be disclosed except for the purposes of the adjustment, or in accordance with other lawful requirements.

Education providers will only be held responsible for making adjustments when they are informed of the need for adjustment or become aware of this need within sufficient time for the adjustment to be made.

What constitutes a reasonable notice is likely to depend on the individual circumstances. In some circumstances, an education provider might reasonably be expected to be aware of and accept the need for an adjustment without a specific request or without detailed independent evidence of this need. For example, a large university ought to expect that some students will require wheelchair access. In other circumstances, it may be reasonable to require that a request for adjustment be made in advance or that it be supported by medical or other expert evidence.

Students or parents should be prepared to meet reasonable requests for information and evidence about the nature or existence of a disability. In some circumstances they may need to take the initiative in providing information and evidence.

**Academic Integrity of Courses and Adjustments**
Changes that involve lowering academic standards or a change in what the assessment is designed to measure are not required. The Education Standards state that in making reasonable adjustments, the education provider is entitled to ensure that the integrity of the course or program and assessment requirements and processes are maintained.

It also indicated that if a course is designed to teach and test abilities that are based on the entry requirements for a profession, the DDA does not require changes to the course requirements, even though a less professionally focused course might have been open to a wider range of students with disabilities.

Some adjustments, such as provision of course materials in alternative formats, would not appear to raise any issues of academic standards. However, others, such as being excused from performing a practical task, could well call into question whether the student has mastered and demonstrated the skills that the course is designed to teach and test, depending on the nature of the course.

In some cases it may not be clear in advance whether a student with a disability can or cannot meet course requirements until the student and the university have discussed possible difficulties and adaptations.

**Unjustifiable Hardship**
Consistent with the DDA, an education provider does not have to comply with a requirement of the standards to the extent that compliance would cause ‘unjustifiable hardship’.
The provider may consider all costs and benefits, both direct and indirect, that are likely to result for the provider, the student, and any associates of the student, and any other persons in the learning or wider community, including:

- Costs associated with additional staffing, the provision of special resources or modification of the curriculum.
- Costs resulting from the student's participation in the learning environment, including any adverse impact on learning and social outcomes for the student, other students and teachers.
- Benefits deriving from the student's participation in the learning environment, including positive learning and social outcomes for the student, other students and teachers.
- Any financial incentives, such as subsidies or grants, available to the provider as a result of the student's participation.

In determining whether a requirement would cause 'unjustifiable hardship', the guidance notes indicate that it is good practice for an education provider to:

- Take into account information about the nature of the student's disability, his or her preferred adjustment, any adjustments that have been previously provided, and any recommended or alternative adjustments. This information may be provided by the student, an associate of the student, or independent experts (or a combination of those persons).
- Ensure that timely information is available to the student, or an associate of the student, about the processes for determining whether the proposed adjustment would cause unjustifiable hardship to the provider.
- Ensure that these processes maintain the dignity, respect, privacy and confidentiality of the student and the associates of the student, consistent with the rights of the rest of the community.

In cases where a provider decides that an exception applies, it is the responsibility of the provider to demonstrate how the exception operates. If the provider decides to rely on unjustifiable hardship, it is good practice for the provider to ensure that a notice stating the decision and the reasons for the decision is given to the student, or an associate of the student, as soon as practicable after the decision is made.

**Harassment and Victimisation**

The standards also address issues of harassment and victimization of a student with a disability. Education providers are obliged to put into place strategies and programs to prevent harassment and victimization of persons with a disability or their associates. The education provider must ensure that staff and students are aware of the obligation not to harass or victimise students with disabilities or students who have associates with disabilities. The standards require the education provider to take reasonable steps to ensure that the staff and students are aware of appropriate actions to be taken if harassment or victimisation occurs.

**Ensuring Compliance**

If a person considers that he/she has been aggrieved under the DDA, then the person may make a complaint to the Human Rights and Equal Opportunity Commission. Complaints may also be made to HREOC on a representative basis. The President of HREOC is responsible for inquiring into the complaint. Where a complaint is unable to be conciliated, it can be terminated by the commission and proceedings alleging unlawful discrimination can be instituted in the Federal Court of Australia or the Federal Magistrates Court.
Both courts are able to make a wide range of orders if they are satisfied that there has been unlawful discrimination (including an order requiring the payment of damages or an order requiring the performance of a reasonable act). A respondent to a complaint is required to comply with any order of the court. Any discrimination issues not covered by the standards remain subject to the provisions of the DDA.

Education providers can also establish their own alternative grievance or complaint resolution procedures.

**Liability for Acts by Employees or Agents**
Under Section 123 of the DDA, an education provider is liable for unlawful conduct by the provider's employees or agents unless the provider can establish that it took reasonable precautions and exercised due diligence to avoid the unlawful conduct. This includes instances where employees or agents of a provider fail to comply with the standards.

In such cases, the education provider bears the onus of demonstrating that reasonable precautions had been taken and due diligence has been exercised. The DDA does not define due diligence or reasonable precautions. However, the guidance notes recommend consideration of the following elements of an effective strategy:

- Making all relevant staff aware of the need to avoid discrimination. This might include issuing a formal policy statement on compliance with the DDA and the Standards and more direct advice to staff.
- Taking reasonable measures to ensure that staff members have sufficient information and expertise concerning non-discriminatory methods of service delivery. This may include the following:
  - Provision of formal training.
  - Establishing or using and promoting existing complaint procedures in relation to discrimination.
  - Ensuring that complaints are properly and effectively dealt with.
  - Implementing other reasonably available monitoring strategies in addition to complaint mechanisms, including internal monitoring through supervisory and management responsibilities and external monitoring through customer reference groups.

**Conclusion**
I do not think the Disability Standards for Education should be either feared or excessively celebrated as something that will create a revolution overnight. As I said earlier, they are intended for the much more practical purpose of filling in the details of rights and responsibilities that have been in place under the DDA for nearly 13 years, as well as under state legislation.

There is, however, a real revolution that has been going on: the movement towards a society that really includes its members who have a disability, and in particular that affords people with disabilities better opportunities in education.

This is not a process being unilaterally imposed by the Disability Standards or by legislation. It is a process that students, parents and educators have, in different ways and sometimes to different degrees, been working on together for the last 20 years or more. I hope that the new standards will perform their intended role in assisting everyone to carry that process forward.
6.2 Disability Standards for Accessible Public Transport

Access to public transportation is crucial for people with disabilities, and enables them and their families and caregivers to participate fully in community life. The standards also benefit many older Australians and parents with infants in prams who use public transport services.

The Disability Standards for Accessible Public Transport commenced on 23 October 2002. The standards clearly outline the obligations of transport operators and providers under the Act. The information in these standards enables operators to eliminate (to the extent possible) discrimination in their provision of public transport services, on the ground of a person’s disability.

The standards establish minimum accessibility requirements to be met by providers and operators of public transport in accordance with the standards' compliance timetable. The standards take into account the range of disabilities covered by the DDA and apply to the full range of public transport premises, infrastructure and conveyances, with some limited exceptions.

The standards prescribe detailed requirements in relation to accessibility issues such as access paths, manoeuvring areas, ramps and boarding devices, allocated spaces, handrails, doorways, controls, symbols and signs, the payment of fares, the provision of information, belongings etc.

All conveyances, premises and infrastructure brought into use for public transport after the commencement of the standards must fully comply with them. A compliance timetable allows between 5 to 30 years for existing facilities to be made compliant. For example, 10 years after the standards commence, operators and providers must ensure full compliance with the relevant requirements in relation to surfaces; handrails and grabrails; gateways and vending machines, as applicable to conveyances, premises and infrastructure. After 20 years, all buses must be fully compliant with the standards.

Discussions have commenced 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 to complete, or at least well under way, by the five-year point in 2007.

6.3 Disability Standards on Access to Premises

Section 23 of the DDA makes it unlawful to discriminate on the grounds of disability in providing access to or use of premises that the public can enter or use. Building access issues also arise under other DDA provisions, including in relation to employment, access to services, and accommodation.

The DDA definition of ‘premises’ is very broad and includes:

- Existing buildings, including heritage buildings.
- Proposed or new buildings.
- Car parks.
- Open air sports venues.
- Pathways, public gardens and parks.
In fact, any part of the ‘built environment’ that the public is entitled, or allowed, to enter or use falls within the definition. In addition, because the DDA refers to the ‘use’ of premises, it also covers issues such as fit out design (for example, the height of service counters) and the way premises are maintained and managed (for example, ensuring accessible toilets are not used as storage spaces, or overgrown vegetation, such as tree branches, do not result in a barrier on a path of travel).

The DDA recognises that in certain circumstances, providing equal access for people with disabilities could cause ‘unjustifiable hardship’ for an owner or operator of premises. The DDA does not require access to be provided to the premises if it would impose an ‘unjustifiable hardship’ on the person who would have to provide the access.

However, since DDA came into force in March 1993 complaints to HREOC have shown significant inconsistencies between anti-discrimination laws and current building laws in Australia. These inconsistencies cover both the level of access required (for example the area of coverage of a hearing augmentation system in a conference room), and the amenity of the access provided (for example the location of unisex accessible toilets and location of accessible doorways).

Progressive changes to the national building code – the Building Code of Australia (BCA) - have been made since 1995 to address these inconsistencies, but in 2000 significant momentum was given to the process when the Commonwealth Government amended the DDA to allow for the development of Disability Standards for Access to Premises (Premises Standard). This amendment allows for a mechanism that will clarify accessibility requirements under the DDA and ultimately ensure consistency between building laws and the DDA.

The effect of a premises standard would be that owners and developers of buildings used by the public would be able to meet the objectives of the DDA (as they apply to buildings) by meeting the requirements of the premises standard. In the absence of a premises standard, people with disabilities, owners and developers would continue having to rely on the individual complaints mechanism of the DDA as the only means of defining compliance.

Rather than develop a premises standard as a separate and additional code to be followed by the building industry, agreement was reached to change the BCA so that it could be picked up and referenced within the premises standard. The consequence of this would be that compliance with the new BCA would ensure compliance with the DDA.

The process of the development of building standards started as early as in 1996. In fact, for a considerable period of time, HREOC 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 the development of Disability Standards on Access to Premises. This would permit adoption under the DDA of content developed by the mainstream building regulatory regime and would provide industry, local government and other parties with a clearer and more coherent set of rights and responsibilities.

In 2000 the Commonwealth Government asked the ABCB to develop proposals for changes to the BCA which, if adopted, would allow the BCA to be referenced as part of a premises standard.
Because of the definition of ‘Premises’ in the DDA, a premises standard could cover all parts of the built environment used by the public, including:

- The parts of buildings currently covered by the BCA's access provisions, including areas such as access to and within sanitary facilities, paths of travel in buildings, lifts, ramps, hearing augmentation systems and signs.
- The parts of buildings not currently covered by the BCA’s access provisions, such as furniture and fittings, or not dealt with extensively for people with disabilities, such as emergency egress and warning systems.
- The parts of the built environment outside of buildings not covered by the BCA, such as parks, street furniture and pathways.
- Management, maintenance and staff service issues that could have a significant effect on the use of premises.

However, the government decided on an incremental approach and at this stage has asked the ABCB to limit the current premises standard to those areas covered by the BCA.

The premises standard will essentially reference the revised BCA and will therefore set out specific accessibility requirements for developers, owners and operators of premises. This means that, for new buildings and new building work covered by the revised BCA, meeting its provisions will be sufficient to meet the requirements of the premises standard and therefore satisfy the objectives of the DDA.

Those parts of buildings or the broader built environment not covered by the scope of the BCA or premises standard, and existing buildings not undergoing new building work, are beyond the scope of the current project. The existing provisions of the DDA will continue to apply to these matters.

The task of developing the draft changes to the BCA and premises standard was given to the ABCB's Building Access Policy Committee (BAPC). This committee includes representatives from the disability sector, regulators, property owners and operators, government, building certifiers, design professionals and the commission.

The BAPC was also responsible for undertaking the required RIS on the draft and coordinating changes to the Australian standards that are referenced in the BCA to reflect decisions made by the BAPC on issues as far-ranging as circulation spaces, ramp design, signage and accessible toilet facilities.

The Building Access Policy Committee completed its discussions in April 2005, and its final report was considered by the Australian Building Codes Board in May 2005. The committee was not able to reach a consensus on a number of issues, including access to small low-rise buildings, location of accessible toilets and certain aspects of circulation spaces. The final meeting of the committee also included discussion about the inclusion of Class 2 (flats and apartments) and Class 1b (holiday homes) buildings in the proposed premises standard.

Issues of expense to industry are real and need to be taken seriously. On the other hand, of course, in suburban and regional Australia these buildings constitute most of the building stock, where people are employed and services are provided. I have been arguing that any exceptions need to be as narrowly targeted as possible to avoid excluding people unnecessarily from access to services and from employment opportunities, particularly in regional areas.
The stakes are high since standards are not simply guidelines. The standards will define conclusively what access people are entitled to, as well as what they cannot expect. But I remain confident that the standards will move access forward from where we are now.

Even if the standards do provide that small two- and three-story buildings in general need not be accessible, there are likely to be separate provisions for some situations where an exemption is less justified. One obvious area of this kind would be premises used for the administration of government programs.

In my view also, there does need to be more consideration throughout government of the requirements in contracts to ensure that accessibility is delivered and that the government provides real leadership in inclusive employment and service delivery.

6.4 Recognition of Other Codes and Standards

The process of developing standards under the DDA itself is not the only possible means of establishing what rights and obligations mean and how they should be implemented.

In response to a review of the DDA by the Productivity Commission, the government decided early this year that HREOC should have power to certify other codes or standards for the purpose of compliance with the DDA. HREOC has been asked to provide the government with recommendations on how this might be implemented.

Standards to be recognised under such a function could include codes developed by industry bodies or by joint industry/consumer bodies. It could also include standards developed by other regulatory bodies.

Potentially, it might include recognition of international standards (such as the World Wide Web Consortium guidelines on accessible websites) or overseas standards (like those from the United States Access Board on accessible information and communications technology for the purposes of government procurement).

The adoption of existing standards is all for the future as it awaits discussion within the commission and the government, including discussion of possible affects certification could/should have and what processes of consultation and assessment might be appropriate to include.

7.0 Disability Action Plans

Background

The provision for voluntary development of action plans is another distinctive feature contained in the DDA to assist organisations in structuring their own compliance. Currently, the DDA states that an action plan may be lodged by a service provider. However, last year the government accepted a recommendation from the Productivity Commission to amend the law to clarify that action plans can be developed and registered by any organisation or person covered by the Act.

As of 30 June 2005, 337 plans were registered with the commission (increased from 320 in June 2004), comprising 40 business enterprises, 40 non-government organisations, 35 federal government, 45 state and territory government, 135 local government organisations and 44
education providers.

The register of action plans, and those plans provided electronically to the commission (295 of the total), are 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 organizations have also submitted revised plans or implementation reports.

In addition to those registered plans, the commission is aware of many hundreds of plans addressing access issues that are not formally lodged with us. This is particularly so in the state and territory government area. In some states, access plans are mandatory under state law or policy, but registration with the commission is not required.

For brief comparisons, 15 South Australian state departments or agencies have registered action plans. As well as the Department of Premier and Cabinet, these include the Transport Department and transport agencies; a health service and a major women and children's hospital. NSW has 13 registered action plans from state departments or agencies, including transport; police and the Attorney General's department. In Victoria there has been a particular focus on action plans in local government, and 52 local government areas have registered plans with HREOC. From Tasmania, there are two state government departments, the Department of Vocational Education and Training and Forestry Tasmania, and five Tasmanian local governments: Hobart, Glenorchy, Launceston, Devonport, and Kingsborough.

Why Do Organizations Develop Action Plans?
Our experience has shown that action plans are developed for a number of reasons including:

- Organisational leaders initiate their development because of a desire to ‘do the right thing’ or as part of the organisations general corporate citizenship commitments.
- Key individuals within organisations see an action plan as an appropriate means of managing risk.
- State or commonwealth government policy decisions lead to a requirement that they are developed.
- Organisations develop them as a result of agreements reached in the conciliation process arising from complaints.
- Advocates with a passion for equity within the organisation successfully lobby for their development.
- Community advocacy organisations campaign for support with key organisations that they be developed.
- Organisations develop them as part of an application for Temporary Exemptions.
- Organisations develop them as a means of managing change over a period of time.

Benefits
For people with disabilities and their families, friends and associates the benefits are obvious. Barriers to participation and opportunities are progressively removed without the need for individuals to lodge complaints.

For an organisation to benefit from the work involved in developing an action plan, however, the plan must do more than merely meet the requirements of Section 61 of DDA. I would suggest it must be effective in meeting the objects of the DDA and the expectations of your organisation. Essentially the process of developing an effective DDA Action Plan involves:

- Understanding your organisational environment.
• Creating a favourable climate for implementation.
• Undertaking effective consultation.
• Developing an effective evaluation, monitoring and review strategy.
• Structuring and writing your plan clearly and accessibly.

A well constructed and implemented action plan provides benefits to an organisation by:
• Eliminating discrimination in an active way.
• Improving services to existing consumers or customers.
• Enhancing organisational image.
• Reducing the likelihood of complaints being made.
• Increasing the likelihood of being able to successfully defend complaints.
• Increasing the likelihood of avoiding costly legal action.
• Allowing for a planned and managed change in business or services.
• Opening up new markets and attracting new consumers or customers.

Ultimately an action plan will be effective in the event of a complaint if it convinces potential complainants (or if necessary the courts) that it:
• Demonstrates commitment to eliminating discrimination.
• Shows clear evidence of effective consultation with stakeholders.
• Has priorities which are appropriate and relevant.
• Provides continuing consultation, evaluation and review.
• Has clear timelines and implementation strategies.
• Is in fact being implemented.

What Are the Benefits of Registering an Action Plan?
The commission sees a number of benefits from registering a plan:
• The process provides an opportunity for internal education and promotion of the plan.
• Registering makes a positive public statement about commitments to eliminating barriers.
• A public statement enhances the image of the organization.
• It may have an effect on possible complainants.
• From the commission’s perspective it increases the visibility of the DDA and allows for better public and internal accountability.

What Factors Lead to an Organisation not Registering Their Plan?
As we know, not all organizations choose to register their plans with the commission and, of those organisations I am aware of, the reasons for that include:
• A concern that making public statements about eliminating barriers that exist might make the organisation a ‘target’ for complaints. Note: I am not aware that this has ever been the case in practice.
• A concern that if implementation strategies are behind the times or change because of organisational change, the organization will lose ‘public face’.
• A concern that the plan, if made public, might give some benefit to competitors.
• Some organisations integrate their access plans into broader organisational, employment or business plans that are not appropriate for registration as a standalone.
8.0 Complaints

Background
Voluntary strategies such as action plans can be very effective. But the driving force for change through the DDA is still often the possibility of being found liable for unlawful discrimination through the complaint process.

Complaints can be made by:
- A person directly affected by discrimination.
- A person acting on behalf of another person who has been discriminated against.
- A person on behalf or him or herself and on behalf of other people who have experienced the same discrimination (this is what is meant by a representative complaint or class action).
- An organisation acting on behalf of members or constituents who have been discriminated against.

A complaint can be made in any language. The commission can arrange to provide an interpreter in any language and provide sign language interpreters if required. The commission will also arrange to have the complaint translated into English if it is submitted in another language. If a person is unable to put the complaint in writing, the commission will provide appropriate assistance.

HREOC will investigate any complaints received that are within its area of responsibility. When a complaint cannot be resolved by conciliation, a complainant who chooses to can go to the Federal Court or the Federal Magistrate’s Court for an enforceable ruling. I should stress that only a very small proportion of complaints end up in the court. Of the complaints that are found to be within our jurisdiction, a large majority are resolved by conciliation.

Complaints under the DDA
HREOC annually receives about 10,000 inquiries (mostly via telephone) and over 1,200 formal complaints. Complaints under the DDA constitute about 45% of all complaints received by HREOC. In the fiscal year 2004-05, HREOC finalised 530 complaints.

See Attachment A for the tables reproduced from the HREOC Annual Report 2004-2005 that provide detailed information about the nature and distribution of complaints received.

Conclusions
In a number of areas the complaint process and other mechanisms under the DDA have worked well in moving towards the social transformation needed to address the experience of disability in Australia in transportation and telecommunications. I believe that there may still be a significant amount of progress to be made to ensure full equality of opportunity in education.

The complaint statistics yet again indicate that employment is the area where there was the least progress since the adoption of the DDA. More complaints are received on employment issues than any other area under the DDA. In the last financial year, 44% of all DDA complaints were about employment matters. A high proportion of these complaints have been resolved by conciliation. But it must be obvious after 12 years of the DDA and over 20 years of similar state legislation that we are not achieving equal opportunity for millions of
Australians with disabilities one complaint at a time. Around 32% of complaints relates to discrimination in provision of goods and services, 9% to education and 6% to access, while 9% relates to other areas.

**Conciliation Case Studies**

For conciliation case studies copied from HREOC published materials see Attachment A. The studies clearly illustrate the nature and breadth of issues dealt by HREO in its conciliation process.

**9.0 Intervention in Legal Proceedings and Amicus Curiae**

The commission has a number of statutory powers enabling the commission or individual commissioners to play a role in certain court proceedings as an intervener or as *amicus curiae*, that is, a friend to the court. The function may only be exercised at the discretion of the court. The commission has had the function of acting as an intervener in certain court proceedings since the Human Rights and Equal Opportunity Act 1986 (Cth) commenced on 10 December 1986. However, the amicus role given to the Disability Discrimination Commissioner is a relatively new one and was introduced by an amendment in 1999.

When a relevant disability discrimination issue arises in a case and the commission could provide expert assistance that would otherwise not be available to the court, the commission may seek leave of the court to intervene in the proceedings. The commission will then make submissions on the issues that relate to the commission's powers. The commission has developed guidelines which guide the commission when to intervene.

In summary, the commissioner/s may seek leave to appear as amicus where:

- The commissioner thinks the orders may affect to a significant extent the human rights of persons who are not parties to the proceedings.
- The proceedings, in the opinion of the commissioner, have significant implications for the administration of the relevant Act(s).
- The proceedings involve special circumstances such that the commissioner is satisfied that it would be in the public interest for the commission to assist the court as amicus.

In deciding whether to seek the leave of the court to appear as amicus, the commissioner must also be satisfied that one or more of the statutory requirements in s.46PV of HREOCA are met. Examples of cases in which the statutory requirements may be met include cases involving a new area of the law; cases clarifying a disputed interpretation of the law; cases having significant ramifications beyond the parties to the proceedings, or cases affecting the human rights of a significant number of people.

In addition, in deciding whether to seek the leave of the court to appear as amicus in circumstances where one or more of the statutory requirements are met, the commissioner shall have regard to the following factors:

- Whether the court would be assisted by amicus and, in particular, whether the commissioner will be able to raise issues not otherwise before the court or to offer a perspective not raised by the parties.
- Whether amicus would detract from the efficient conduct of the litigation.
- Whether the court has indicated that it would be assisted by amicus.
- Whether any party has requested the commissioner to seek leave to appear as amicus and whether any party would oppose the application.
• Whether any other person or organisation is seeking leave to intervene or appear as amicus.
• The reason the complaint was terminated.
• Whether the matters sought to be put before the court will not otherwise be adequately and fully argued, including whether the parties are represented.
• Whether the issue is an interlocutory one or will result in a final determination.
• Whether the proceedings are in the Federal Court or the Federal Magistrates Court.
• The resource implications of running the litigation.
• The integrity of the commissioner's amicus role in the particular case and in future cases.

In addition to these guidelines, the special-purpose commissioners also consider a number of practical issues when considering whether to seek leave to appear as amicus. These include:
• The resource implications for the commission of the proposed amicus role.
• The degree of the commissioner’s involvement in the proceedings, that is, whether it would be appropriate to file only written submissions or whether submissions should be limited to a particular aspect of the matter.
• Whether the commissioner is able to supplement, rather than repeat, submissions made in an earlier amicus role.
• The risk of a costs order against the commission.

The intervention power has been used by the commission in several DDA cases, including: Catholic Education Office & Anor v Clarke [2004] dealing with indirect discrimination in education and in Re Katie (1996) dealing with sterilisation of young women with disabilities.

The amicus curiae function has been used by the disability Discrimination Commissioner in a number of cases including the case of Access for all Alliance (Hervey Bay) Inc v Hervey Bay City Council that was heard between 2 - 6 June 2003, and which dealt with the concepts of indirect discrimination and unjustifiable hardship.

10.0 Public Education

Last but certainly not least, the HREOC has an important education function that is also a very important mechanism in combating disability discrimination. HREOC believes that the appropriate approach to human rights education is one that is engaging, relevant and discursive. If human rights are about human experiences, human rights education programs should draw students into real-life situations relevant to their own experiences. It must be:

• Contextual: human rights are discussed in social contexts relevant to the learners.
• Skills-oriented: human rights education develops skills, and is linked with literacy, numeracy and decision making skills.
• Cross-curricular: human rights, as human experience, are relevant to all aspects of learning.
• Discursive: learning is based on discussion, exchanging ideas and values, understanding human communication.
• Inclusive: allow all students, regardless of their learning styles/abilities, to participate.

HREO has developed a structured online human rights education program for teachers of upper, primary and secondary school students, which includes a range of interactive, resource-rich, web-based learning modules for use in the classroom. The program has been developed
as a direct response to increased demands for human rights education resources in schools and the relative absence of relevant published material, which can be incorporated into current Australian education curricula. HREOC's human rights education program has detailed links to the curricula of each state and territory and includes strategies for teaching about international instruments and domestic laws, but most importantly, encourages students to explore the relevance of human rights to their own experiences and communities.

The Youth Challenge Program includes a website, CD-Rom, videos and teaching strategies and worksheets for use in the classroom and assists students to focus on real life issues such as sex, race and disability discrimination, and sexual harassment and rights in the workplace. It encourages them to explore the relevance of human rights to their own experiences and communities. The Youth Challenge Program developed a special unit dedicated to disability

The commission uses a web statistics system that tracks the number of visitors the site has and how visitors are using the site. This allows the commission to identify materials that are particularly useful or popular. Usage of the site has increased significantly over the year with approximately 5,515,999 page views on the server during 2004–05. This equates to approximately 56,971,558 hits on the site overall. This is an increase of 25% in website usage since the previous financial year. Public use of the disability rights area of the website continues to be very strong; with approximately 300,000 page views recorded on the disability rights web pages each month. However, most of the commission’s awareness and compliance promotion work in the disability area is connected to policy work and legislative development. The Inquiry into Disability and Employment and in particular the Inquiry into Human Rights and mental Health has delivered an enormous educational impact.

In November 2004, the Disability Discrimination Commissioner launched ‘Missed Business’, a guide for small business on ways to be more accessible to customers with disabilities. The guide was developed jointly with Marrickville Council in NSW. Other local governments have been invited to use the material to produce guides for their own local businesses and a number have already done so. Publications are also distributed in print and other formats upon request. The publication ‘Don’t judge what I can do by what you think I can’t: Ten years of achievement using Australia’s Disability Discrimination Act’ has proved to be enormously successful and has required reprints.

Currently, work has commenced on a similar guide to assist people who organise events such as conferences, festivals and AGM’s, to make these accessible for people with a range of disabilities. This work is being done in partnership with the peak body Meetings and Events Australia.

11.0 Final Remarks

In conclusion, the nature of Australian society with its economic wealth, ‘fair go’ ethos and well established democratic system combined with the range of different mechanisms available to HREOC through DDA make the protection of disability rights effective, and deliver solid outcomes for Australians with disabilities. Yet much remains to be done. Employment is one of the areas that improvement has been regrettably slow.

The advancement of rights people with disabilities could be hastened if the commission would be given the right to initiate complaints and/or legal proceedings under the legislation itself, and if the enforcement of DDA and relevant standards was not mainly dependent on complaints individually lodged by people with disabilities.
It is now up to the Conference participants to determine which of the Australian experiences and DDA implementation mechanisms are of relevance to Sri Lanka and its people with disabilities.

It was a pleasure to participate in this important seminar and to share with you the Australian experience. I wish the Sri Lankan disability community well in its struggle to deliver a fair society—A society free of discrimination to all people with disabilities.
ATTACHMENT A

The nature and distribution of complaints received by HREOC in 2004-05

Table 1: Nature Of Complainant's Disability

<table>
<thead>
<tr>
<th>Disability Discrimination Act</th>
<th>Total</th>
<th>Percentage (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Physical disability</td>
<td>211</td>
<td>22</td>
</tr>
<tr>
<td>A mobility aid is used (e.g. walking frame or wheelchair)</td>
<td>88</td>
<td>9</td>
</tr>
<tr>
<td>Physical disfigurement</td>
<td>16</td>
<td>2</td>
</tr>
<tr>
<td>Presence in the body of organisms causing disease (HIV/AIDS)</td>
<td>9</td>
<td>1</td>
</tr>
<tr>
<td>Presence in the body of organisms causing disease (other)</td>
<td>12</td>
<td>1</td>
</tr>
<tr>
<td>Psychiatric disability</td>
<td>175</td>
<td>18</td>
</tr>
<tr>
<td>Neurological disability (e.g. epilepsy)</td>
<td>53</td>
<td>5</td>
</tr>
<tr>
<td>Intellectual disability</td>
<td>29</td>
<td>3</td>
</tr>
<tr>
<td>Learning disability</td>
<td>48</td>
<td>5</td>
</tr>
<tr>
<td>Sensory disability (hearing impaired)</td>
<td>22</td>
<td>2</td>
</tr>
<tr>
<td>Sensory disability (deaf)</td>
<td>21</td>
<td>2</td>
</tr>
<tr>
<td>Sensory disability (vision impaired)</td>
<td>45</td>
<td>5</td>
</tr>
<tr>
<td>Sensory disability (blind)</td>
<td>23</td>
<td>2</td>
</tr>
<tr>
<td>Work related injury</td>
<td>102</td>
<td>10</td>
</tr>
<tr>
<td>Medical condition (e.g. diabetes)</td>
<td>81</td>
<td>8</td>
</tr>
<tr>
<td>Other</td>
<td>50</td>
<td>5</td>
</tr>
<tr>
<td>Total*</td>
<td>985</td>
<td>100</td>
</tr>
</tbody>
</table>

* One complainant may have multiple disabilities.

Table 2: Disability Discrimination Act - Complaints Received By Ground

<table>
<thead>
<tr>
<th>Disability Discrimination Act</th>
<th>Total</th>
<th>Percentage (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Disability of person(s) aggrieved</td>
<td>924</td>
<td>92</td>
</tr>
<tr>
<td>Associate</td>
<td>17</td>
<td>2</td>
</tr>
<tr>
<td>Disability – person assisted by trained animal</td>
<td>26</td>
<td>3</td>
</tr>
<tr>
<td>Disability – accompanied by assistant</td>
<td>2</td>
<td>-</td>
</tr>
<tr>
<td>Disability – use of appliance</td>
<td>1</td>
<td>-</td>
</tr>
<tr>
<td>Harassment</td>
<td>21</td>
<td>2</td>
</tr>
<tr>
<td>Victimisation</td>
<td>3</td>
<td>-</td>
</tr>
<tr>
<td>Aids, permits or instructs</td>
<td>8</td>
<td>1</td>
</tr>
<tr>
<td>Total*</td>
<td>1 002</td>
<td>100</td>
</tr>
</tbody>
</table>

* One complaint may have multiple grounds.
Table 3: Disability Discrimination Act - Complaints Received By Area

<table>
<thead>
<tr>
<th>Disability Discrimination Act</th>
<th>Total</th>
<th>Percentage (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employment</td>
<td>485</td>
<td>49</td>
</tr>
<tr>
<td>Goods, services and facilities</td>
<td>304</td>
<td>30</td>
</tr>
<tr>
<td>Access to premises</td>
<td>33</td>
<td>3</td>
</tr>
<tr>
<td>Land</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Accommodation</td>
<td>24</td>
<td>2.5</td>
</tr>
<tr>
<td>Incitement to unlawful acts or offences</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Advertisements</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Superannuation, insurance</td>
<td>10</td>
<td>1</td>
</tr>
<tr>
<td>Education</td>
<td>102</td>
<td>10</td>
</tr>
<tr>
<td>Clubs, incorporated associations</td>
<td>24</td>
<td>2.5</td>
</tr>
<tr>
<td>Administration of Commonwealth laws and programs</td>
<td>18</td>
<td>2</td>
</tr>
<tr>
<td>Sport</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Application forms, requests for information</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Trade unions, registered organisations</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Unlawful to contravene Disability Standard</td>
<td>2</td>
<td>-</td>
</tr>
<tr>
<td>Total*</td>
<td>1 002</td>
<td>100</td>
</tr>
</tbody>
</table>

* An area is recorded for each ground, so one complaint may have multiple and different areas.
HREOC CONCILIATION CASE STUDIES

Alleged Disability Discrimination in Employment

The complainant had been employed by the respondent state government department for a number of years. During that time the complainant had developed a heart problem that required him to undergo surgery and be fitted with a pacemaker. When his partner's employment was transferred interstate, the complainant applied for the same position with a similar department in that state. In his application for the position, the complainant provided medical evidence that indicated he was fit to perform the duties of the position. The medical advice also confirmed that the complainant had performed his duties without incident for a number of years after his initial surgery. The complainant's application was rejected because of concerns about the effects of the pacemaker on his ability to perform the inherent requirements of the position. The complainant alleged that he had been discriminated against on the grounds of his disability.

The complaint was settled at conciliation without admission of liability with the respondent agreeing to provide the complainant with a statement of regret and $20,000 in compensation.

Accommodation of Visual Disability by Education Institution

The complainant, who has a visual impairment, claimed that he was discriminated against by the respondent educational institution. The complainant stated that despite advising the institution of his disability at enrolment and being given assurances that his disability would be accommodated, the institution did not provide sufficient assistance to enable him to undertake his studies. The complainant claimed he was required to answer questions written on the blackboard in class and during weekly examinations even though he had previously advised the teacher that he could not read from the board. The complainant stated that his teacher made comments about his abilities in front of other students. The complainant also claimed that his request for an oral examination was rejected. The complainant discontinued his enrolment two weeks after commencement.

The respondent denied the complainant had requested accommodation for his disability and claimed that the complainant had not advised his teacher that he could not do the in-class examinations.

The matter was resolved by conciliation with the respondent agreeing to provide the complainant with an apology and $5,000 in compensation. The respondent institution also agreed to implement disability awareness training for staff and review procedures for the enrolment of people with disabilities.

Access to Theatre

The complainant lodged the complaint on behalf of her daughter who has quadriplegia. The complaint alleged that her daughter went to see a play at a local theatre but on arrival was told that it was not possible to accommodate her wheelchair in the theatre. The complainant's daughter was informed that this was because the space normally allocated for people in wheelchairs was required as part of the stage set for this particular show.

The respondent confirmed that for the performance in question, the area of the theatre usually set aside for people in wheelchairs was required as part of the stage set. The respondent advised that the issue of wheelchair access had been addressed and incorporated in a draft master plan to implement physical improvements to the theatre, as funds become available. The respondent also advised that additional access improvements had already been incorporated in the theatre's 'Access Strategic Plan' & 'Project Plan'.

The complaint was resolved by telephone negotiations between the parties. The respondent agreed to arrange a meeting between the complainant, her mother and the Chief Executive Offer of the Theatre Trust to discuss the 'Access Strategic Plan' and proposed future improvements to the theatre. The respondent also offered the complainant's daughter two complimentary tickets to a performance of her choice at the theatre with a pre-show dinner at an associated restaurant.
Access to Local Bus Service

The complainant has a mobility disability and uses a wheelchair. The complainant uses the local bus service and his wife assists him to get on and off the bus. The complainant and his wife alleged that they had been harassed and discriminated against when trying to use the bus service. The complainants claimed that on three separate occasions a driver was abusive toward them and refused to let them board the bus. They also alleged that on one occasion the driver closed the door on the complainant's wife's hands, damaging her ring. The complainants claimed that bus company management refused to assist with their complaint against the driver.

The respondent advised that it had interviewed drivers on the bus route and obtained statements but could not identify the driver in question. The complaint was resolved by conciliation. The respondent company wrote a letter, to be carried by the complainants, which confirmed that the complainants were to be provided with access to the bus service. The respondent company also issued a directive to all staff regarding provision of services for people with disabilities. The respondent provided the complainants with a statement of regret and $700 in compensation which included costs for repair of the complainant's ring.

Access to an Educational Institution

The complainant has a mobility impairment requiring him to use a mobility aid. The complainant is unable to use stairs and alleged that he could not attend classes held on the first floor of the educational institution as this floor could only be accessed by stairs. The complainant also claimed that he had difficulty accessing the educational institution because designated parking spaces for people with disabilities were not policed and accordingly, were often used by students without disabilities.

The respondent advised that it had attempted to address the complainant's concerns by moving some of the complainant's classes to the ground floor. The respondent stated that all of the complainant's classes could not be moved to the ground floor as some class required specialist equipment which was kept in class rooms on the first floor.

The complaint was resolved by conciliation with the respondent agreeing to install a lift which would provide access to the first floor of the building and other areas of the campus. The respondent also agreed to make efforts to ensure that the accessible parking spaces were available for people with disabilities.

Alleged Dismissal on the Ground of Mental Illness

The complainant was employed as a senior chef at a holiday resort. The complainant had worked there for a number of years achieving awards and citations for excellence as a chef. The complainant alleged that his employer terminated his employment after he suffered an anxiety attack and was hospitalised for a short period. The complainant stated that this anxiety attack occurred at the end of the busiest period of the year when the manager had unexpectedly taken leave, kitchen equipment had broken down and new staff were on duty in the kitchen and restaurant.

The respondent company denied that it had discriminated against the complainant because of his mental illness and claimed that the complainant's employment had been terminated because of concerns about his performance.

Without any admission of liability, the respondent agreed to provide the complainant with a written apology and a reference and to pay the complainant $55,000 in compensation.

Alleged Failure to Accommodate Back Injury

The complainant was employed by a large retail corporation and her duties included customer service and other administrative tasks. The complainant claimed that she had worked in the retail position for nine years and for four of these years had used a stool at the counter to alleviate her back pain. The complainant stated that the respondent had advised that for occupational health and safety reasons, stools were not to be used by staff in customer service roles. The complainant was informed that on expiry of her leave credits her employment would be terminated. The complainant stated that she therefore reluctantly agreed to accept retirement on medical grounds.
The respondent denied discriminating against the complainant and stated that standing to attend to customers was an inherent requirement of the job. Both parties agreed that the complainant's performance and attendance had been exemplary and that no other employee had objected to her using the stool.

The complaint was resolved by conciliation with the respondent agreeing to pay the complainant $15,000 to compensate her for the loss of her job. This included an amount for retraining and an amount for the entitlements she had lost by retiring before her leave credits expired.

**Provision of Auslan Interpreter by Health Service**

The complainant and her husband are profoundly deaf. The complainant's husband accompanied her when she was admitted to hospital for the birth of their second child. The complainant requested that an Auslan interpreter be available for her but no interpreter was provided. The baby was delivered by emergency caesarean section. The baby sustained an injury during the surgery and was taken away to be assessed for surgery. The complainant stated that she and her husband had no idea what was happening and the process was terrifying for them. Eventually, a doctor wrote a note which explained why the baby had been taken away. On another occasion the complainant attended the outpatient department of the same hospital and no interpreter was provided. The complainant alleged that the hospital had discriminated against her on the ground of her disability.

In responding to the complaint, the hospital stated that staff were of the understanding that the complainant had sufficient lip-reading skills to ensure effective communication. The respondent claimed that staff did not rule out getting an interpreter but due to the emergency circumstances surrounding the birth there was insufficient time to make such arrangements. The hospital acknowledged that the process would have been frightening but said that had an interpreter been present there would have been minimal communication between staff and the complainant as staff were focused on the surgery.

The complaint was resolved by conciliation with the respondent agreeing to pay the complainant $7,500 in compensation and to introduce a policy whereby interpreters would be provided at every consultation with deaf patients.

**Access to Government Department Website**

The complainant, who is blind, complained that he could not access the website of a government department because the website did not have a text only version with appropriate links for blind and visually impaired people. The complainant stated that as the operator of a small business, he had reason to access this particular website on a regular basis.

After discussions with the complainant and his advocate the respondent department agreed to upgrade its website in accordance with the W3C Web content Accessibility Guidelines. The department expressed gratitude to the complainant for drawing its attention to the existence of these guidelines and for outlining in detail the difficulties he had experienced.

**Complaint of Discrimination on the Ground of Imputed Disability**

The complainant has haemochromatosis, a condition that requires regular removal of blood to reduce her iron levels. The complainant alleged that on advising the respondent that she had previously used intravenous needles the respondent refused to take her blood as he claimed she was a person in a risk category for HIV. Blood tests revealed that the complainant did not have Hepatitis B, Hepatitis C or HIV.

The complainant alleged that the respondent discriminated against her on the basis of an imputed disability in refusing to provide her with treatment. The complaint was settled by conciliation with the respondent agreeing to provide the complainant with treatment and undertaking to change its policy in relation to patients with haemochromatosis.
Access to Taxi Service

The complainant has a mobility disability and uses a motorised scooter. The complainant claimed that the taxi service in his area did not have a vehicle that could appropriately accommodate his motorised scooter.

The complaint was resolved by conciliation with the respondent agreeing to purchase a van that could be modified to accommodate the complainant's mobility aid.

Alleged Discrimination in Terms and Conditions of Employment

The complainant worked for a large financial institution that provided employees with benefits such as reduced mortgage rates, low interest loans and discounted insurance products. The employer decided to outsource some of its functions, including the employment area in which the complainant worked, to an external service provider. All staff who wished to continue in employment were able to transfer employment to the external service provider and maintain similar terms and conditions of employment. Due to the different nature of its business the external service provider was unable to provide the same employment benefits in the same way and instead offered to pay for those benefits to be provided through standard policies and products available from other financial institutions. In order to access those benefits the complainant was required to undergo medical assessments as a pre-condition to provision of insurance.

The complainant alleged he could not comply with this requirement or condition because of a medical condition he had not disclosed, and had not been required to disclose, to the original employer. The complainant alleged he was unable to access the benefits of employment in the same way due to his disability and would be disadvantaged by the transfer of functions to the external service provider.

The matter was resolved at conciliation with an agreement that the complainant would be provided with an alternative position with the original employer on the same terms and conditions. The second respondent and potential employer also agreed to provide the complainant with $20,000 in compensation.