



OPENING ADDRESS OF THE CHAIR

Public Hearing 1 on Homes & Living Melbourne, 2 December 2019

This is the third public hearing conducted by the Royal Commission. The first was the one day Opening Hearing held in Brisbane on 16 September 2019. At that hearing Senior Counsel Assisting the Commission and I explained the background to the establishment of the inquiry and set out our approach to the very large tasks entrusted to us by the Terms of Reference - that is the document that defines the responsibilities of the Royal Commission.

The terms of reference

At the Opening Hearing in Brisbane I made a number of observations about our Terms of Reference. I do not want to repeat what was said then (the transcripts may be read on the website) but I do want to reiterate two significant points.

First, the Terms of Reference are extraordinarily broad. We are required, among other things, to expose violence against, and abuse, neglect and exploitation of, people with disability **in all settings and contexts**. We are to do this by means that include the sharing of individual experiences. We are also directed to inquire into what should be done to promote a more inclusive society that supports the independence of people with disability and their **right** to live free from violence, abuse, neglect and exploitation.

Since we are required to encourage people with disability and their families and carers to share individual experiences, we have a responsibility to provide a forum in which people can share their experiences of violence, abuse, neglect or exploitation. And since we must inquire into what must be done to promote a more inclusive society, inclusion of people with disability within the Australian community will be a constant theme in all our hearings.

The **second** significant point is that the Terms of Reference expressly recognise that Australia has obligations under the **UN Convention on the Rights of Persons with Disabilities** to promote the human rights of people with disability. The express recognition of Australia's obligations under the **UN Convention** means that the Royal Commission must have a rights-based focus. We therefore must take as our starting point the rights under international law that Australia is required to recognise and protect.

I have referred to the Opening Hearing in Brisbane. The Commission's second public hearing was held over four days in Townsville from 4 to 7 November 2019 on the subject of inclusive education of children with disability. The selection of this topic for the first public hearing on a matter of substance reflects the fundamental importance of education to the life opportunities of people with disability, just as it does to people without disability. In the words of the **UN Convention**, education is critical to:

“the development by people with disability of their personality, talents and creativity, as well as their mental and physical abilities, to the fullest possible extent”.

Today's hearing

The hearing commencing today will focus on the living arrangements for people with disability, in particular the role of group homes. By “group homes” we mean

accommodation in which services and support are provided, usually to between four and six long-term residents with disability. As we shall hear, one estimate is that about 17,000 people with disability live in group homes in Australia. Roughly one third of these people have some form of intellectual disability.

The selection of this topic reflects the centrality of living arrangements to the dignity, independence and autonomy of people with disability. The General Principles stated in Article 3 of the **UN Convention** include:

- “a. Respect for inherent dignity, individual autonomy, including the freedom to make one’s own choices, and independence of persons; [and]
- c. Full and effective participation in society.”

As we shall also hear, these General principles are carried further by Article 19 of the **UN Convention** which requires all States Parties (including Australia) to recognise the equal right of all persons with disability to live in the community with choice equal to others. Article 19 also requires Australia to take effective and appropriate measures to facilitate the enjoyment by people with disability of this right, including measures to ensure that people with disability have the opportunity to choose their place of residence and where and with whom they live. Article 19 specifically states that people with disability are not to be obliged to live in a particular living arrangement.

The emphasis in the UN Convention on independent living and freedom of choice would be reason enough to give priority to investigating accommodation arrangements for people with disability. An equally compelling reason is that people’s homes or places of living are settings where violence, abuse, neglect and exploitation are apt to occur.

As the UN Committee on the Rights of Persons with Disabilities noted in General Comment No 5 (2017), people with disability have historically been denied personal and individual choice and have been presumed unable to live independently in their chosen communities. This has led all too often to institutionalisation, isolation, segregation and even abandonment.

It is certainly true that community attitudes and practices have changed from the days when people with a range of different disabilities were typically placed in large institutions, long known as asylums, in conditions that were extremely harsh, if not barbaric. From about the late 1970s, largely the result of advocacy by the disability rights movement, a process of what is known as deinstitutionalisation has occurred. The enactment of the *Disability Services Act 1986* (Cth) encouraged the process by recognising the importance of people with disability participating in the life of the general community. In consequence, very many people with disability were relocated from large institutions to alternative forms of accommodation, notably group homes. Although some remain in institutions, such as relatively young people who are accommodated in aged care nursing homes.

The focus in this hearing on group homes is an acknowledgement that, as a number of witnesses will tell us, since deinstitutionalisation began in the late 70's small group homes have been the dominant option for people moving out of institutions and for people no longer able to live at home with their family. The focus on group homes also acknowledges the argument made by disability advocacy organisations that group homes create an environment conducive to violence, abuse, neglect or exploitation. It is important that the Royal Commission examine evidence relevant to these claims.

Although the principal subject matter of this hearing – group homes – is different from the principal subject matter of the Townsville hearing – inclusive education – the approach we take will be similar.

As I have explained, it is part of our function to provide a forum for people with disability, to share their experiences of violence, abuse, neglect or exploitation.

At the Inclusive Education hearing it was parents of students with disability who recounted the experiences of their children. We also heard evidence of the experiences of Queensland schools implementing a philosophy of inclusive education.

In the course of this hearing people with disability will give evidence and provide accounts of their own experiences in group homes and other settings. Special care has been and will be taken to ensure the safety and wellbeing of each of these witnesses.

Some evidence may be distressing to people present in the room or following the proceedings. It is important to appreciate that the purpose of eliciting this evidence is not to shock. Nor is it an invitation to portray the witnesses as victims in need of sympathy. As has sometimes been said, people with severe disabilities do not seek **sympathy**, but **empathy** – that is, the ability of one person to put himself or herself in the position of another person.

Each witness is someone who has had the courage in difficult circumstances to exercise the freedom that every person should enjoy – to make his or her voice heard. Giving

evidence to this Commission is a manifestation of the dignity, autonomy and independence of people with disability.

Evidence from people with lived experience of disability is designed not only to tell their individual stories but to use those stories to identify the policy and regulatory issues that the Royal Commission must address. In our public hearings we intend to go beyond examining specific cases of abuse, violence, neglect and exploitation – important as that is – and to consider what can be done to give practical effect to the principles underlying the UN Convention and the rights Australia is obliged to recognise and protect under international law.

Therefore we will be examining the very bad things that have happened and continue to happen all too often to people with disability. But we shall also be exploring policies and practices that offer the most promising prospects for eliminating all forms of abuse, violence, neglect and exploitation experienced by people with disability.

New ways you can engage with the Royal Commission

Finally let me draw attention to two documents which are available on the Royal Commission's website. The first is an **Issues Paper on Group Homes**. This is a short document which asks a number of questions to assist people wishing to make submissions on the topics that will be addressed during this hearing.

The idea is not to require answers to any or all the questions, nor is the idea to prevent people making submissions in the form most convenient to them. It is purely a guide. The Issues Paper is available in easy read format. We encourage people with experiences to share or opinions to offer to respond to the Issues Paper.

The second document is a statement in plain English explaining how the Commission will protect the privacy and confidentiality of people who do not wish to disclose their identity or reveal the information they provide. The statement should alleviate the concerns some people understandably have had about engaging with the Commission. I encourage people to read the document or speak to someone who has.