



# Opening Address Senior Counsel Assisting – Kate Eastman SC

## Hearing on the experiences of people with disability during the ongoing COVID-19 Pandemic

**18 August 2020**

Royal Commissioners, I appear with Dr Kerri Mellifont QC and we are Counsel Assisting the Royal Commission at this 5<sup>th</sup> public hearing.

We also acknowledge and pay our respects to the traditional custodians of the lands on which we are meeting today. We pay our respects to First Nations elders, past, present and emerging as well as to all First Nations people attending or watching this public hearing.

When this Royal Commission commenced in April 2019, it was not in anyone's contemplation that the Commission would conduct a hearing into the impact of a global health pandemic, the likes of which has not been experienced since the Spanish Flu in 1918. But over the past 6 months, as a community have carefully watched the daily number of infections, learnt to socially distance and understand the meaning of the 'flattening the curve'.

As at 17 August 2020, over 500,000 tests have been conducted in Australia. There have been 23,559 confirmed cases of Covid 19. 421 people have died, of which 334 are in Victoria. The daily statistics tell us about the age and sex of people who have died or are infected. The daily statistics tell us about the number of people admitted to hospital and those in Intensive Care Units. But, no data or statistics tell us about the rate of infection or the impact on people with a disability in Australia.

However, the risks of Covid 19 for people with disability were recognised in Australia very early. One of the witnesses who will give evidence today, AAV, will tell the Royal Commission she anticipated the seriousness of the coronavirus in January 2020 and

acted swiftly to acquire the necessary supplies for her family. She will tell the Royal Commission that at that time, masks were impossible to source.

On 7 February 2020, the National Disability Insurance Scheme Quality and Safeguards Commission issued a Provider alert. The alert warned the NDIS providers about a 'novel coronavirus outbreak'.

By 17 February 2020, the Commonwealth Department of Health released the Australian Health Sector Emergency Response Plan for Novel Coronavirus (the COVID19 Plan). The Royal Commission will hear more about this Plan from the witnesses attending the hearing.

The COVID19 Plan was designed to guide the Australian health sector response. The COVID19 Plan said at "*all levels, planning will consider what is needed to protect the most vulnerable members of our communities, and address the needs of special groups, such as the aged care sector and Aboriginal and Torres Strait Islander peoples.*"

There was no express mention or reference in the COVID19 Plan for people with disability. The Royal Commission will hear evidence this week that people with disability and their advocates watched and waited to hear the Commonwealth Government's plan for people with disability.

On 25 February 2020, the Commonwealth Department of Health released its "*Emergency Response Plan for Communicable Disease Incidents of National Significance: National Arrangements for coronavirus*" activated at the request of the Chief Medical Officer.

This National Plan did not refer to or address the needs of people with disability.

The National Plan did note the importance of communication strategies and source to be [quote] "*tailored to meet needs ranging across our community, particularly those in vulnerable groups. Support for mental health needs of the community as a whole should also be considered. Channels of communication should be carefully selected to ensure messages are received broadly across the community.*"

Some people with disability assumed the reference to 'vulnerable' groups may have been a reference to them.

By 11 March 2020, the World Health Organisation declared COVID-19 to be a pandemic.

By 15 March 2020, leading disability researchers, including Professor Anne Kavanagh (who will give evidence this week) and Professor Julian Trollor (who has provided a statement for this hearing), called on Australian governments to develop a targeted response to COVID-19 for people with disability, their families and the disability service sector. They said:

*Australians with disability are a vulnerable population in the COVID-19 pandemic because they are at elevated risk of morbidity and death due to underlying health conditions. This is frightening because:*

- *The health sector is under-prepared to meet the urgent health care needs of people with disability.*
- *The disability service sector will not be able to meet the care needs of people with disability.*
- *Information on what to do is not easily accessible. For example, some people may not understand why there is disruption to their usual daily care routines.*

*The Government has a targeted response for the aged care sector, but not for the disability sector. Both sectors have many similarities including congregated settings, a precariously employed and inadequately trained care workforce, and families and carers who may face significant challenges meeting the care needs of people with disability in Australia.*

They recommended:

- Rapidly scale up the health care sector's capacity to care for people with disability;
- Rapidly increase capacity of the disability care workforce to response to the pandemic and its consequences.

On 26 March 2020, this Royal Commission issued a Statement of Concern which called on Australian governments to:

- Seek input from people with disability.
- Develop a strategy to ensure people with disability have access to essential services;
- Develop measures in place to reduce risk of infection; as far as possible people with disability are not forced to accept help from support workers, family members or friends who are themselves unwell.
- Make information accessible.

The Royal Commission also expresses concern about a number of matters including:

- Reduction in oversight in closed residential settings
- Health impacts on First Nations people.

On 2 April, over 70 national, state and territory disability organisations issued an Open Letter to the National Cabinet imploring governments that [quote] *"Now is the time to act on pandemic measures for people with disability"*.

On the same day, an Advisory Committee on Health Emergency Response to Coronavirus (COVID 19) for People with Disability (Advisory Committee) was formed to

develop the Management and Operational Plan for People with Disability. Advisory Committee was chaired by Mr Simon Cotterell, FAS COVID-19 Primary Care Response, Department of Health, who will give evidence on Friday.

By 16 April 2020, the Commonwealth Department of Health's Management and Operational Plan for COVID-19 for People with Disability was approved.

During this hearing we will examine the Covid19 Plan for People with Disability and the extent to which it has addressed the rights and needs of people with disability over the course of the pandemic.

This hearing will focus on the Commonwealth government's response and actions. It will examine the actions taken by the Commonwealth Department of Health and key agencies such as the NDIA in the administration of the NDIS and the NDIS Quality and Safeguards Commission.

Commissioners you have deferred examining the responses of State, Territory and local government for a possible future hearing.

You will hear evidence from witnesses who will give us a window into how the pandemic has affected their lives. These witnesses live with disability, have children with disability or are advocates for people with disability.

The witnesses will tell you about the stigma associated with being labelled as 'vulnerable'. Such language suggests the vulnerable are less valued and expendable.

The witnesses will tell the Royal Commission about the difficulty in accessing basic health care, accessing testing and PPE. They will tell the Commissioners about their fear of having to compete for admission to Intensive Care Units and a fear of health rationing because they may have a lesser chance of survival than those considered less 'vulnerable'.

You will hear evidence of people with disability being left without support for their most basic needs of food and hygiene. Witnesses will tell you about the issues they have experienced with their support workers and engaging with the NDIS over the period of the pandemic.

You will hear evidence about the impact on the education of children and young people with disability.

You will hear that inadequate accessible and consistent information can have dramatic consequences. You will hear evidence of a deaf blind woman who lives in an aged care facility who was left without any means of communication for 6 weeks. She did not know about the reasons for the lockdown or why her support workers were unable to visit her or why she was unable to leave the facility.

During the pandemic there has been an increase in the violence against women with disability.

The Australian Institute of Criminology conducted a nationally representative online survey of 15,000 women, including more than 1700 women with disability (11 per cent).

Among women with disability who were in a current relationship:

- One in four (23 per cent) said they had experienced physical violence during COVID-19
- One in six (16 per cent) said they had experienced sexual violence during COVID-19
- Two in five (42 per cent) said they had experienced emotional abusive, harassing, or controlling behaviours during COVID-19.

Three in four women with disability who reported domestic violence said this was either the first time it had happened in their relationship, or that the violence had escalated in frequency or severity relative to the six-month period prior to February 2020.

Compared with other women, women with disability were significantly more likely to experience the onset or escalation of domestic violence during the initial stages of the COVID-19 pandemic.

The risk of domestic violence was not evenly distributed. First Nations women, and women from non-English speaking backgrounds were more likely to have experienced recent domestic violence than non-Indigenous women and women from English speaking backgrounds.

This pandemic has given many within Australia just a taste of what it is like to live in isolation and unable to attend work or participate in the community. As one witness Samantha Dwyer observes that people without disability have experienced some form of social isolation for the first time. She says “Welcome to my world.” People who were already isolated to a significant degree, found further restrictions on interactions with people has been crushing to their physical and mental well-being.

The evidence will hear from advocacy groups. They have been instrumental in providing accessible and timely information. Many advocacy groups have been inundated with calls for help – ranging from people needing get access to essential personal requirements – people who simply couldn’t get incontinence pads, people who couldn’t get food; to trying to navigate and understanding the publicly available information – to wanting to know what they can do to try and make sure their child, a student with a disability, is provided accessible education, and is simply not left to fall so far behind there is no hope of catching up.

Dr Jason Agostino, is an epidemiologist, specialising in health in First Nations communities, who will assist the Royal Commission in understanding some of the particular health issues which have a higher than general prevalence in First Nations People, how access to support services have been compromised during this pandemic, how telehealth services need to have patient-end support to be effective for FN communities, and how privacy restrictions on information sharing with ACCHO's – Aboriginal Community Controlled Health Organisations – can inhibit the efforts of contact tracing.

Damian Griffis and June Riemer, will give evidence of the particular barriers some FN PWD have faced, and some recommendations for change, including a dedicated 1800 number for FNPWD who have questions relating to the pandemic, and for comprehensive data collection and mapping across Australia of FNPWD, done in consultation with ATSI communities, which is done inclusive of local cultural protocols and languages. Ms Riemer observes 'If we don't have the correct data of disability needs in regions, how can we enact an emergency response plan to support the most vulnerable?' (Statement, para 44)

This hearing also marks the beginning of the examination of the level of preparedness of service providers for an emergency such as this, the actions taken during the pandemic, and the challenges faced by service providers and their interaction with the Commonwealth government and agencies. Notifications to the NDIS Quality and Safeguards Commission has revealed the enormous challenges faced by service providers in accessing sufficient and appropriate quality PPE, accessing rapid testing for their staff and customers, workforce issues and access to information.

On Thursday, the Royal Commission will hear evidence from two service providers, Aruma and Life Without Barriers, in those respects.

The evidence in this hearing exposes how existing inadequacies in supporting the needs for people with disability, and inequities – the constant world for some people with disability can become exacerbated in emergencies if focus in emergency planning and execution of such plans is not given to the particular needs of people with disability. How particular needs for some PWD can crystallise into adverse outcomes, unless properly recognised and planned for.

The Royal Commission will hear evidence about the importance of a human rights, inclusive and person centre approach to planning for emergencies. Associate Professor Michelle Villeneuve, from the Centre for Disability Research and Policy, will speak about the need for emergency action plans. You will hear a specific example of how the wellbeing of a PWD was significantly enhanced in consequence of having and implementing such a plan. She will speak of the need to ensure that disability-inclusive and person-centred approaches are used in planning, with a focus on function, not impairments or diagnoses.

The Royal Commission will also hear evidence from an international perspective. Catalina Devandas Aguilar, the United Nations Special Rapporteur on the Rights of Persons with disabilities, will give evidence that in conflict and emergency situations, PWD are often the most adversely affected, sustaining disproportionately higher rates of morbidity and mortality. Her evidence reflects the themes emerging through other witnesses – that the pandemic is revealing and deepening pre-existing inequalities, and exposing the structural discrimination and exclusion experienced by persons with disabilities.

We wish to observe that for those watching, or later reading the hearing on our website, may find some of the evidence deeply distressing. The content of a hearing such as this can be very upsetting, and viewers might wish to take such steps as are available to them to have support around them.

The public hearing will be web streamed. The Royal Commission encourages those watching to be mindful that topics might be upsetting and we encourage you seek to support if you want or need it.

The Royal Commission has counsellors and support services team who are made up of social workers and counsellors who are able to provide counselling and support to people engaging with the Commission over the phone.

We also note Blue Knot Royal Commission's hot line number - 1800 421 468.

Blue Knot provides professional short-term professional counselling and support, a gateway to front line counselling services, advocacy and legal support services, information and referrals about other useful services and psycho-education. They have extensive, nation-wide referral networks to support those who require longer term support.

There are provisions of the *Royal Commissions Act* which have the very clear object of protecting witnesses who give evidence before the Commission. In particular, I want to draw attention to section 6M of that Act, which provides that any person – any person who uses, causes, or inflicts, any violence, punishment, damage, loss or disadvantage to any person on account of the person having appeared as a witness before the Royal Commission, or given evidence before the Royal Commission, or producing documents to the Royal Commission, commits an indictable offence.

The maximum penalty for committing such an offence is imprisonment. I note the breadth of what that prohibition prevents. It extends to any damage, loss or disadvantage. So it is important that any person who might be minded to engage in conduct, whether in person or by use of social media or any other cause, that might cause disadvantage, damage or loss to a witness of this Royal Commission, are extremely mindful of that very important legislative provision which makes it an offence.