COUNSEL ASSISTING
SUPPLEMENTARY SUBMISSIONS:
SERVICE PROVIDERS

Public hearing 5:
The impact of the COVID-19 pandemic on people with disability

Sydney 18 – 21 August 2020
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Part 1: Introduction

1. The fifth public hearing of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Royal Commission) was held from 18 to 21 August 2020, in Sydney (Public hearing 5) before Commissioners the Hon Ronald Sackville AO QC (Chair), Ms Barbara Bennett PSM and Dr Rhonda Galbally AC.

2. At the conclusion of Public hearing 5, the Chair directed Counsel Assisting to prepare submissions by 4 September 2020, which focus on particular areas of significance of the impact of COVID-19 on people with disability.

3. On 4 September 2020, submissions in respect of those areas were prepared and provided to the parties with leave to appear, together with an accompanying letter from Mr Markus, Solicitor Assisting the Royal Commission, stating that separate submissions relating to service providers would be provided (Main Submissions). These are those submissions.

Approach taken in these submissions

4. As was stated in the opening address by Counsel Assisting, this hearing marks the commencement of the Royal Commission’s consideration of the service providers’ preparedness for emergencies, and the challenges faced by them in the context of the COVID-19 pandemic, including their interactions with the Commonwealth Government and agencies. The Main Submissions identify areas for possible further exploration in the future, including with respect to service providers.

5. These submissions supplement the Main Submissions in respect of issues discussed therein. As will be seen, the evidence of the service providers is consistent with, and supports, the findings and recommendations proposed in the Main Submissions, and touch on some additional matters which have arisen in respect of the service providers’ evidence going to their response to the pandemic.

6. In this regard, I note that, as was made plain in the course of the hearing, the primary focus of the hearing was on the Commonwealth’s response during the pandemic. It was not on the response of service providers. These submissions bear in mind the focus of Public hearing 5.

Evidence from service providers in this hearing

7. The evidence in this hearing from service providers in that regard is comprised of:

   a. a detailed submission prepared on behalf of 33 service providers (Joint Submission) which was tendered into evidence

   1 Exhibit 5.269, ISS.001.00311_01.
b. written and oral evidence from two not-for-profit service providers, namely, Life Without Barriers and Aruma Services (Aruma)\(^2\), both of whom provided information in response to questions asked in Notices to Give Information, issued by the Royal Commission, as well as statements prepared and signed by their Chief Executive Officers, Ms Claire Robbs and Mr Andrew Richardson, respectively.

**The submission from 33 service providers – the Joint Submission**

8. In response to the Royal Commission’s Emergency Planning and Responses Issues Paper, 33 ‘for-purpose registered disability services organisations’, providing services to over 25,000 people with disability throughout Australia made a submission. The disability services organisations contributing to the submission varied in financial position, size (between 20 and 4,000) and support staff.\(^3\)

9. The Joint Submission sets out a collection of observations made by the providers relevant to the challenges which have arisen in the course of the pandemic. Several of these are discussed below.

10. It would seem likely that challenges faced by these organisations have also been faced by other service providers in the course of this pandemic.

**Aruma and Life Without Barriers**

11. Between them, Aruma and Life without Barriers provide support to nearly 11,000 people with disability, including through supported independent living. Life Without Barriers has a workforce of over 7,000 staff and annual turnover of over $550million.\(^4\) Aruma employs nearly 5,800 staff and has an annual revenue of over $344million.\(^5\) By any measure, Aruma and Life Without Barriers are large organisations, particularly in comparison to many of the service providers who contributed to the Joint Submission. Despite the differences in size of organisation, some themes which emerged from the evidence of Aruma and Life Without Barriers as to the challenges faced by service providers also emerged from the Joint Submission.

**General background regarding the evidence of Aruma and Life Without Barriers**

12. Both Ms Robbs and Mr Richardson gave oral evidence to the Royal Commission on 20 August 2020.\(^6\)

13. Ms Robbs and Mr Richardson also provided the following documents to the Royal Commission:

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\(^2\) The written evidence comprised responses in answer to Notices to Given Information and written statements attaching associated documents. The oral evidence was given by the CEOs of the service providers, Ms Robbs (LWB) and Mr Richardson (Aruma).

\(^3\) Exhibit 5.269, ISS.001.00311_01 at 0013.

\(^4\) Exhibit 5.255, Statement of Claire Robbs, 14 August 2020, at [12].

\(^5\) ARU.0005.0001.1246 at 1248.

\(^6\) Transcript of Claire Robbs and Andrew Richardson, Public hearing 5, 20 August 2020, P-275 – 305.
a. information regarding the impact of COVID-19 for Life Without Barriers and Aruma, as at June 2020

b. statements addressing related topics, including:
   - the number and circumstances of COVID-19 infections for their respective clients and workforce at various dates
   - restrictions on visitors in disability accommodation, imposed by their respective services
   - the use of technology and online services
   - communication and consultation with people with disability and their families
   - responding to COVID-19 outbreaks and testing for COVID-19
   - workforce issues
   - pandemic and emergency response planning
   - the providers’ perspectives on the Commonwealth Government’s response
   - notifications to the NDIS Quality and Safeguards Commission pursuant to rules 13 and/or 13A of the NDIS (Provider Registration and Practice Standards) Rules 2018.

14. In addition, Life Without Barriers provided written responses to two questions which were asked during the hearing, which Ms Robbs agreed to take on notice. Similarly, Aruma provided a written response to a question for which Mr Richardson was not in a position to respond and undertook to provide that information to the Royal Commission, and provided a response following the hearing.

15. Ms Robbs described some of the impacts of the pandemic, including:
   - heightened anxiety for people with disability and their families
   - the barriers accessing information
   - restrictions and cancellation of activities
   - changes to health practices
   - additional costs.
16. Mr Richardson also noted some of the negative impacts of the pandemic including the loss of activities with the restrictions on external activities and socialising and the impact of isolation. Reference was also made to confusion arising from different messaging, increased costs of groceries, staffing changes and the drop in availability of supported employment.\(^{13}\) Aruma’s response also referred to the challenges in accessing PPE, and increasing anxiety around additional hygiene practices, drastic changes to shared support, community based supports and respite.\(^{14}\)

17. These issues will be discussed in further detail below.

**Part 2: Submissions directed to the areas identified by the Chair**

18. At the close of the hearing, the Chair directed Counsel Assisting to prepare submissions focussing on 18 specified areas of interest or significance arising out of the evidence presented at the public hearing. This part of the submissions sets out aspects of the service providers’ evidence which are relevant to, and indeed, support the findings and recommendations proposed in the Main Submissions with respect to these areas.

**Data**

(1) **The systematic collection and reporting of data on the impact of COVID-19 on all people with disability and on disability support workers.**

19. The Joint Submission observed that the absence of timely and accurate reporting of data created difficulties for service providers, noting that disability sector organisations were receiving information at the same time as the general public, resulting in ‘incomplete information to make informed decision-making, and inevitable delays in responsiveness to emerging evidence.’\(^{15}\)

**Outreach, oversight and standards**

20. The Chair directed consideration of a number of issues relevant to outreach and oversight by NDIS agencies, including the NDIS Quality and Safeguards Commission (NDIS Commission) and Community Visitors during the COVID-19 pandemic, as follows:

(5) **Whether the responses of the NDIA and the NDIS Quality and Safeguards Commission to the circumstances presented by the pandemic appropriately address the needs of participants in the NDIS, including whether family members should be eligible to be paid as support persons for people with**

\(^{13}\) Exhibit 5.251, ARU.9999.0001.0016 at 0018.

\(^{14}\) Exhibit 5.251, ARU.9999.0001.0016 at 0019 and 0020.

\(^{15}\) Exhibit 5.269, ISS.001.00311_01 at 0011.
disability during the pandemic and the circumstances in which NDIS participants should be able to change their plans.

(6) Whether there needs to be greater outreach and auditing of disability services to ensure that they are operating safely in the time of the pandemic.

(8) Measures needed to address the increased isolation experienced by people with disability in closed residential settings during the pandemic.

(9) Whether specific consideration needs to be given to ensuring the continued access of official community visitors, or advocates to people with disability and supported residential care during the pandemic.

NDIS Commission

21. A number of concerns were raised during the evidence about the response of the NDIS Commission to the COVID-19 pandemic. They are set out in the Main Submissions. In short, those submissions set out concerns by witnesses, for example, Professor Kavanagh, about the apparent lack of directives from the NDIS Commission in relation to whether service providers could continue to operate, as distinct from the provision of information,16 which in turn resulted in the onus being on providers themselves to make the decision as to whether they could continue to provide the service.17

22. It is also worth noting that the NDIS Commission’s powers and functions are limited by statute and statutory rules, which provide the context for how it operates in its regulation of service providers. The Royal Commission will continue to consider the actions and effectiveness of the NDIS Commission in different programs in its future work.

23. As observed in the Main Submissions, Ms Taylor confirmed that the NDIS Commission did not issue specific advice about what disability services could be provided safely and in what form, but said that the NDIS Commission did issue some publications directly relevant to the safe provision of NDIS supports.18 She explained in her witness statement that ‘responsibility for determining the risk factors … must be determined by the providers themselves, given the diversity of the NDIS market and the plethora of support arrangements in the NDIS’.19 Ms Taylor also confirmed that advice to providers from the NDIS Commission did not focus on specific support or service activities or settings.20

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16 Exhibit 5.30, Statement of Professor Anne Kavanagh, 12 August 2020, at [103] – [117].
17 Transcript of Anne Kavanagh, Public hearing 5, 20 August 2020, P-215 [26-30].
18 Exhibit 5.48, Statement of Samantha Taylor, 12 August 2020, at [76].
19 Exhibit 5.48, Statement of Samantha Taylor, 12 August 2020, at [111].
20 Exhibit 5.48, Statement of Samantha Taylor, 12 August 2020, at [83].
24. As to managing outbreaks, it was observed in the Main Submissions that:
   a. Ms Taylor confirmed that service providers have primary responsibility for NDIS participants in the event of an outbreak\textsuperscript{21}
   b. other than the provider alert and fact sheet on 13 May 2020 (since updated), the NDIS Commission did not issue any other specific advice about the difference between disability accommodation and aged care facilities to assist providers to determine how the Guidelines applied to disability services\textsuperscript{22}
   c. the NDIS Commission also did not issue any specific advice about when providers may need to engage infection control nurses\textsuperscript{23}
   d. Ms Taylor said that ‘nothing has changed in the course of the pandemic in terms of how provider obligations must be met under the NDIS Code’.\textsuperscript{24}

25. As such it is clear that the service providers were left largely to their own discretion in terms of how and whether they continued to provide services, within their existing obligations as providers, despite the very significant changes in circumstances wrought by the pandemic.

26. The Joint Submission spoke of the need for:
   a. greater support for disability service providers, particularly the smaller organisations, including in particular the disability service workforce;\textsuperscript{25} and
   b. greater outreach and auditing of disability services to ensure they are operating safely.

27. In this regard, the Joint Submission noted the challenges associated with accessing PPE across the disability sector\textsuperscript{26}, and what they regarded as being the lack of proactive engagement’ leading to potential safety concerns. Their opinion was that there was a failure of timely and visible leadership from Government,\textsuperscript{27} including the NDIS and the NDIS Commission.

**Consultation and coordination with Commonwealth health bodies**

**Notifications by providers**

28. The Main Submissions set out the evidence in respect of notification by providers to the NDIS Commission. They observe that although the NDIS Commission had been notified of 124 worker COVID-19 infections and 76 participant COVID-19 infections

\textsuperscript{21} Transcript of Samantha Taylor, Public hearing 5, 21 August 2020, P-381 [43]-P-382 [5].
\textsuperscript{22} Exhibit 5.48, Statement of Samantha Taylor, 12 August 2020, at [107].
\textsuperscript{23} Exhibit 5.48, Statement of Samantha Taylor, 12 August 2020, at [133].
\textsuperscript{24} Transcript of Claire Robbs, Public hearing 5, 20 August 2020, P-384 [37-38].
\textsuperscript{25} Transcript of Claire Robbs, Public hearing 5, 20 August 2020, P-384 [37-38].
\textsuperscript{26} Exhibit 5.269, ISS.001.00311_01 at 0006.
\textsuperscript{27} Exhibit 5.269, ISS.001.00311_01 at 0015.
(as at midday on 13 August 2020), Ms Taylor said that the Commission had conducted only three investigations, these being of ‘residential settings’ in Victoria.28

29. Ms Robbs and Mr Richardson each gave evidence confirming that each of their organisations had submitted reports of COVID-19 infections amongst their clients and workforce.29 Both witnesses confirmed that the NDIS Commission had not provided specific advice in response to those notifications.30

30. This evidenced is broadly consistent with the observations of 33 disability organisations contributing to the Joint Submission, which noted that ‘NDIS field based investigatory and auditing functions were limited or postponed’ and ‘practice audits were reduced or not undertaken.’31 The 33 disability organisations expressed concern that:

> ‘During a time of crisis, rather than withdrawing or scaling back external scrutiny and investigation, such activity should be increased to hold providers, families and carers to account. While welfare checks by phone were instigated by the NDIS, it was disappointing to observe the lack of proactive engagement with the sector to physically ensure the wellbeing of individuals who are unable to voice their concerns.’32

31. Importantly, Ms Taylor provided a supplementary statement to the Royal Commission following her evidence to the Royal Commission, on the topic of the NDIS Commission’s responses to COVID-19 related notifications made by Aruma and Life Without Barriers. The Royal Commission asked that the NDIS Commission provide a statement outlining, in response to COVID-19 related notifications made by Aruma and Life Without Barriers:

a. what actions did the NDIS Commission take

b. what advice did the NDIS Commission give to the service provider

c. what instructions did the NDIS Commission give to the service provider

d. what interactions, including communications, did the NDIS Commission have with the service provider.33

28 Transcript of Samantha Taylor, Public hearing 5, 21 August 2020, P-389 [7].
29 Transcript of Claire Robbs and Andrew Richardson, Public hearing 5, 20 August 2020, P-292 [20–35].
30 Transcript of Claire Robbs, Public hearing 5, 20 August 2020, P-292 [40]; Transcript of Andrew Richardson, Public hearing 5, 20 August 2020, P-292 [45], P-293 [5].
31 Exhibit 5.269, ISS.001.00311_01 at 0013.
32 Exhibit 5.269, ISS.001.00311_01 at 0013.
33 Exhibit 5.48A, Supplementary statement of Samantha Taylor, 26 August 2020.
32. In her supplementary statement, Ms Taylor outlines the NDIS Commission’s response to COVID-19 related notifications, explaining how the NDIS Commission:
   a. contacted the provider to verify the information and gather any additional information to make a risk assessment
   b. established an alert protocol
   c. conducted follow up calls
   d. shared information certain other agencies (in the case of Victoria).34

33. Ms Taylor also explained, that, in her experience providers will have differing requirements for advice from the NDIS Commission, depending on factors including the ‘size and experience of the provider,’ noting her expectations that providers of the size or experience of Aruma or Life Without Barriers would not require ‘any significant advice.’35

34. Ms Taylor’s reflection that the size of organisations such as Life Without Barriers and Aruma may explain why the NDIS Commission did not provide specific advice must be considered alongside the Joint Submission, which also specifically noted the limitation on the investigatory and audit functions and perceived withdrawing or scaling back of external scrutiny and investigation, that was apparent to much smaller providers.

35. The evidence of the service providers is consistent with, and supports, the findings proposed in the Main Submissions (at paragraphs 476(a)-(c) and (e)-(f)).

**Community Visitors**

36. The Royal Commission has previously received evidence of the importance of Community Visitors as a protective mechanism.36 The Royal Commission heard evidence that the oversight provided by Community Visitor programs had been disrupted during COVID-19, for example, in disability residential facilities in Victoria37 and forensic disability units.38 The Joint Submission also observed that some Community Visitor scheme visits had been suspended.39

37. The Main Submissions also observe that the Royal Commission will return to consider the effect of COVID-19 on Community Visitors and other oversight mechanisms as part of its future work. Doing so is also consistent with the evidence

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34 Exhibit 5.48A, Supplementary statement of Samantha Taylor, 26 August 2020, at [25-32].
35 Exhibit 5.48A, Supplementary statement of Samantha Taylor, 26 August 2020, [34-35].
36 This was traversed in Public Hearing 3.
37 Transcript of Fiona Downing, Public hearing 5, 18 August 2020, P-69 [45-46].
38 Transcript of Ross Joyce, Public hearing 5, 18 August 2020, P-59 [25-26].
39 Exhibit 5.269, ISS.001.00311_01 at 0012 and 0014.
of Ms Robbs and Mr Richardson who agreed that both Community Visitors and advocates have an important role to play in providing oversight.\textsuperscript{40}

38. Ms Robbs and Mr Richardson were asked about changes to arrangements for about Community Visitor programs and advocate visits, and the need to adopt different arrangements in the circumstances of the ongoing COVID-19 pandemic, including using telephone and video calls in place of in person visits. They were also asked about whether those interactions could continue ‘confidentially and privately’ using those channels. Both Ms Robbs and Mr Richardson said that were not aware of any oversight mechanism to ensure those important channels of communication were protected.\textsuperscript{41}

\textbf{Recommendation}

39. It is submitted that the Royal Commission consider making the following recommendation: That service providers ensure that Community Visitor attendances and attendances by advocates are conducted in a way that ensures the privacy and confidentiality of attendances, whether they are conducted by telephone or video calls, or in person.

\textbf{Testing and screening}

(7) \textbf{Whether systemic changes are needed in the approach taken to suspected COVID-19 or positive COVID-19 tests among residents in supported residential accommodation settings.}

40. The Joint Submission made a number of pertinent observations. This included:\textsuperscript{42}

a. clients being refused testing or unnecessarily hospitalised

b. testing being conducted in manner which was neither sensitive to nor appropriate for their welfare

c. failure to provide customised protocols.

41. The Joint Submission recommends Home In-Reach services to be enhanced to provide appropriate testing and disease support to disability clients outside a public hospital setting.\textsuperscript{43}

42. This evidence supports the submissions as to findings and recommendations contained within paragraphs 507-509 of the Main Submissions.

\textsuperscript{40} Transcript of Claire Robbs, Public hearing 5, 20 August 2020, P-289 [40], P-290 [5]; Transcript of Andrew Richardson, Public hearing 5, 20 August 2020, P-289 [30].

\textsuperscript{41} Transcript of Claire Robbs, Public hearing 5, 20 August 2020, P-290 [5-10]; Transcript of Andrew Richardson, Public hearing 5, 20 August 2020, P-290 [6].

\textsuperscript{42} Exhibit 5.269, ISS.001.00311_01 at 0004.

\textsuperscript{43} Exhibit 5.269, ISS.001.00311_01 at 0021.
Disability workforce

(10) Whether the disability support workforce should be recognised as an essential workforce and whether disability support workers should be entitled to pandemic leave, paid pandemic leave, during the current emergency.

43. Concerns surrounding the recognition of the disability support workforce as an essential workforce and whether they should be entitled to paid pandemic leave arose throughout the evidence heard by the Royal Commission.

44. As stated in the Main Submissions:

   The Royal Commission heard from service providers that disability support work must be recognised as an essential service.\(^{44}\) This would ensure access to PPE, priority testing for staff and customers, ease of travel during lockdowns, and ability to purchase essential supplies when there is rationing.\(^{45}\)

45. The Joint Submission made the observation that the failure of government in recognising the disability sector as an essential service, (compared to the situation with, for example, ‘bottle shops, barbers, shopping centres and allied health centres’\(^{46}\)) led to confusion, poor access to essentials, and delays in testing results.

46. In his written statement, Mr Richardson expresses the view that the recognition of disability services as an essential service would have allowed for easier transition of the workforce to and from work, provided better access to PPE, and less anxiety for staff.\(^{47}\)

47. An important consequence of disability workers not being recognised as essential workers relates to access to PPE.

48. The Main Submissions spoke to the challenges faced by people accessing PPE. That challenge presented itself for service providers as well.

49. While Ms Robbs did not consider that Life Without Barriers’ service delivery was impacted by lack of access to PPE,\(^{48}\) Ms Robbs and Mr Richardson spoke about the lack of availability of a national stockpile of PPE and related challenges of prioritising disability service organisations,\(^{49}\) including the related issue of disability services not being recognised as an essential service.\(^{50}\)

50. In his oral evidence, Mr Richardson gave evidence that it was very difficult to get advice from government as to whether his organisation would be able to access

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\(^{44}\) Transcript of Mr Andrew Richardson, Public hearing 5, 20 August 2020, P-298 [36-38].

\(^{45}\) Transcript of Mr Andrew Richardson, Public hearing 5, 20 August 2020, P-298 [40-43].

\(^{46}\) Exhibit 5.269, ISS.001.00311_01 at 0003.

\(^{47}\) Exhibit 5.250, Statement of Andrew Richardson, 16 August 2020, at [148].

\(^{48}\) Exhibit 5.255, Statement of Claire Robbs, 14 August 2020, at [182].

\(^{49}\) Transcript of Andrew Richardson, Public hearing 5, 20 August 2020, P-286 [10-15].

\(^{50}\) Transcript of Claire Robbs, Public hearing 5, 20 August 2020, P-287 [16-20].
PPE from the National Medical Stockpile.\textsuperscript{51} Both witnesses also agreed that part of the challenge appeared to reflect the fact that disability services were not regarded as an ‘essential service’ and accordingly, supplies for disability services were not prioritised.\textsuperscript{52}

51. Mr Richardson gave evidence that, in his view, disability support work must be recognised as an essential service – ‘it is fundamentally disrespectful to people with disability to think otherwise’.\textsuperscript{53}

52. The Joint Submission observed that there were challenges associated with accessing PPE across the disability sector, noting that the:

‘lack of access to PPE and the absence of supported and proactive governmental systems and processes to support disability services during the COVID-19 pandemic put disability services organisations in the same circumstances as private business….a stark reminder of the disadvantage that exists for persons with disability.’\textsuperscript{54}

53. Thus, the evidence of the service providers supports the findings and recommendations made at paragraphs 523(a) and (c) and 524(a) of the Main Submissions.

\textbf{Casualisation of the disability workforce}

54. As stated in the Main Submissions, the casualisation of the disability workforce presents challenges. The evidence referred to therein includes the evidence from Professor Kavanagh who examined the preparedness of the disability workforce during COVID-19\textsuperscript{55} and referred to the disability workforce as a ‘highly transient and casualised workforce’ which creates a risk factor because casual, low paid workers have greater incentive to attend work when they are sick.\textsuperscript{56}

55. Both Mr Richardson and Ms Robbs spoke about workforce challenges, their evidence indicating that a significant proportion of their workforce are employed on a casual basis.

56. Ms Robbs referred to the challenges of having sufficient flexibility for staffing balanced with continuity of care, noting that in cases of suspected infections, there is a need to isolate up to 12 staff members, creating the need to rely on casual staff.\textsuperscript{57} In her statement, she stated that over 30% of her organisation’s staff are

\begin{footnotes}
\item[51] Transcript of Andrew Richardson, Public hearing 5, 20 August 2020, P-286 [10–15].
\item[52] Transcript of Claire Robbs, Public hearing 5, 20 August 2020, P-287 [20]; Transcript of Andrew Richardson, Public hearing 5, 20 August 2020, P-286 [35–40].
\item[53] Transcript of Andrew Richardson, Public hearing 5, 20 August 2020, P-298 [35].
\item[54] Exhibit 5.269, ISS.001.00311_01 at 0006.
\item[55] Exhibit 5.30, Statement of Professor Anne Kavanagh, 12 August 2020, at [132-145].
\item[56] Exhibit 5.30, Statement of Professor Anne Kavanagh, 12 August 2020, at [140].
\item[57] Transcript of Claire Robbs, Public hearing 5, 20 August 2020, P-294 [40-48].
\end{footnotes}
casual, with a turnover rate of 40%. Ms Robbs spoke of her organisation’s intention of seeking to reduce the risks posed by casual staff working across a number of agencies, including by limiting the number of its agencies any one casual staff member can be employed at. Ms Robbs also noted that the average hours worked by permanent workers is 85%, suggesting that despite the proportion of casual workers ‘they don’t represent a large percentage of the hours worked across our group living program.’

57. Mr Richardson also gave evidence regarding workforce issues. In his oral evidence, he outlined similar challenges to Ms Robbs. He also referred to an additional challenge is that State (Victorian) Government hiring freezes and early retirement programs, which have increased the reliance on casual staff. He also noted that one of the additional challenges around reliance on casual staff is that casual staff are not legally obliged to inform Aruma where they may have worked.

58. In his statement, he stated that 26% of Aruma’s staff are casual, with a turnover rate of 32%.

59. The Joint Submission stated that the heavy reliance on a casualised workforce, compounded the issues arising from lack of centralised planning.

**Training**

60. The Main Submissions observe that on 16 March 2020, the Department of Health published online infection prevention and control training for care workers across the health, aged care, disability and other sectors. As at 21 August 2020, Mr Cotterell said that there had been no evaluation of the effectiveness of the online training program since its release. Recommendations in paragraph 524 of the Main Submissions address this.

61. Both Mr Robbs and Mr Richardson agreed, when asked in evidence, that there was no specific training provided by Commonwealth agencies or government, other than some online training as to appropriate use of PPE, and using appropriate ‘donning and doffing’ of equipment. Their evidence marries with comments made in the Joint Submission.
Accessible pandemic information

(18) Whether the Commonwealth should take responsibility for creating and coordinating a single source of accessible pandemic information for people with disability.

62. The Main Submissions speak to the evidence calling for a source of collated information.68 This call is echoed by the service providers.

63. The Joint Submission contends that ‘a fundamental lesson is that when the nation or when the States declare a health State of Emergency, that must be coupled with a state-wide social services sector coordinated central emergency response in which disability is explicitly included.’69

64. In this respect, the 33 service providers echo the observations made by a number of witnesses in this hearing as to the critical importance of governmental response which includes specific focus on people with disability and the disability sector.

65. Both Ms Robbs and Mr Richardson spoke of the challenges of the lack of a central source of information.70

66. Ms Robbs and Mr Richardson also spoke of the absence of a response targeted towards disability, echoing observations made in the Joint Submission about how the sector cannot simply replicate the response from the aged care sector71 and the need for a ‘bespoke’ response for the disability sector, noting that it was not a subset of the aged care sector.72

67. For example, in his oral evidence, Mr Richardson emphasised the uniqueness of the disability sector, noting the importance of ‘choice, control, human rights in all aspects of life’, needing a ‘different policy approach’.73 He indicated that organisations like his would value helpful guidance, and a ‘disability sector-specific nationally consistently, well-resourced response to this and any future pandemic’, noting the importance of a ‘single source of truth and information’, ‘guaranteed access to appropriate PPE, priority access to testing for staff and customers.’74

68. The Joint Submission stated that the absence of Government explicitly targeting a response for people with disability, and/or providing a central emergency response, resulted in the organisations themselves having to coordinate amongst themselves to share information, resources and seek access to PPE. In respect of the absence

68 See Main Submissions, at paragraphs [566] – [573].
69 Exhibit 5.269, ISS.001.00311_01 at 0002.
70 Transcript of Andrew Richardson, Public hearing 5, 20 August 2020, P-298 [23-25], Exhibit 5.255, Statement of Claire Robbs, 14 August 2020, at [172].
71 Exhibit 5.255, Statement of Claire Robbs, 14 August 2020, at [172-174].
73 Transcript of Andrew Richardson, Public hearing 5, 20 August 2020, P-296 [2-14].
74 Transcript of Andrew Richardson, Public hearing 5, 20 August 2020, P-296 [24-41].
of a single source of accessible pandemic information for people with disability, the
submissions described how organisations were:

‘cobbling together strands of information, writing letters, seeking information,
disseminating information obtained from multiple sources and establishing protocols
and supply chains for PPE’,

and

‘trying to make sense of funding changes, workplace laws, establishing from
contradictory information whether day services were expected to be open or closed,
and plan, without the benefit of complete information, for workforce shortages and
deep cleaning protocols in the event of COVID-19 outbreaks’.²⁷⁵

69. The submission also observed that the organisations were ‘highly reliant on
disability peak bodies and each other to disseminate information’, noting ‘it would be
far preferable for disability services to have a reliable source of current information
in order to make evidence-based and proactive decisions on behalf of clients.’²⁷⁶

Part 3: Other matters

NDIS funding

70. The Main Submissions refer, at various points, to witnesses speaking to challenges
presented by the lack of flexibility of NDIS funding. Service providers also expressed
concerns about lack of flexibility.

71. The Joint Submission spoke of a lack of flexibility in NDIS funding, noting that while
there were increases, the increases ‘were not aligned to the service profiles of the
Organisations nor to those services that incurred unavoidable costs’.²⁷⁷

72. Ms Robbs and Mr Richardson echoed concerns that there was a lack of flexibility in
NDIS funding.²⁷⁸

Pandemic planning

73. Ms Robbs and Mr Richardson also gave evidence regarding their organisations’
preparedness for infectious diseases. They both outlined what their organisations
had done to rapidly develop and implement plans at the commencement of the
pandemic.

74. Ms Robbs conceded in her evidence that Life Without Barriers had only developed a
pandemic plan earlier this year. Ms Robbs’ statement confirms that her organisation

²⁷⁵ Exhibit 5.269, ISS.001.00311_01 at 0002.
²⁷⁶ Exhibit 5.269, ISS.001.00311_01 at 0011.
²⁷⁷ Exhibit 5.269, ISS.001.00311_01 at 0015.
²⁷⁸ Transcript of Andrew Richardson, Public hearing 5, 20 August 2020, P-294 [34-39]; Transcript of Claire Robbs,
Public hearing 5, 20 August 2020, P-297[15-18]; Transcript of Andrew Richardson, Public hearing 5, 20 August
2020, P-299, [5–10].
developed its plan in March 2020, developing it from the existing Emergency Response Plan, and explaining how her organisation has since ‘tested’ that plan.\textsuperscript{79}

75. Mr Richardson also conceded in his evidence that Aruma had only developed a pandemic plan in March 2020. His statement confirms that Aruma developed its plan in March 2020, also developing it from the existing Emergency Response Plan, and explaining how Aruma has ‘continuously used and refined since.’\textsuperscript{80}

76. What flows from this is that in spite of the previous swine flu pandemic in 2009, neither organisation had prepared such a pandemic specific plan until late March 2020.

77. Both Mr Robbs and Mr Richardson agreed that there has been no auditing or oversight mechanism of such planning by the NDIS Commission.\textsuperscript{81} Similarly, the Joint Submission indicates that organisations ‘acted independently of NDIS and before NDIS and shared information in the compilation and publication of organisation pandemic plans by mid-March 2020.’\textsuperscript{82}

\textbf{Finding}

78. It is open for the Royal Commission to find that neither Aruma nor Life Without Barriers had a pandemic specific plan in place prior to the COVID-19 pandemic, despite the fact that Australia had experienced the swine flu pandemic in 2009.

\textbf{Number of infections}

79. Ms Robbs’ statements and oral evidence provided details around the number of infections in Life Without Barriers facilities. In her oral evidence she confirmed that she understood that between the date of the commencement of the pandemic and 20 August 2020, there were a total of 37 clients or staff members having been infected.\textsuperscript{83}

80. Mr Richardson’s statements and oral evidence provided details around the number of infections in Aruma’s facilities. He confirmed that between June and August 2020, there had been a total of 19 confirmed COVID-19 cases, including 5 ‘customers’, 11 employees and 3 agency staff.\textsuperscript{84}

\textsuperscript{79} Exhibit 5.255, Statement of Claire Robbs, 14 August 2020, at [155-165].
\textsuperscript{80} Exhibit 5.250, Statement of Andrew Richardson, 16 August 2020, at [139-141].
\textsuperscript{81} Transcript of Claire Robbs, Public hearing 5, 20 August 2020, P-290 [35–45], P-291 [5] [40]; Transcript, Andrew Richardson, Public hearing 5, 20 August 2020, P-291 [10–35].
\textsuperscript{82} Exhibit 5.269, ISS.001.00311_01 at 0017.
\textsuperscript{83} Transcript of Claire Robbs, Public hearing 5, 20 August 2020, P-281 [33-42]; Exhibit 5.255, Statement of Claire Robbs, 14 August 2020; Exhibit 5.256, LWB.1003.0002.0013.
\textsuperscript{84} Exhibit 5.250, Statement of Andrew Richardson, 16 August 2020.
81. While neither Life Without Barriers nor Aruma were expressly critical of the Government in this respect, the following is noteworthy:

   a. the apparent absence of a response providing specific guidance, from the NDIS Commission in response to COVID-19 notifications\textsuperscript{85}

   b. similarly, the apparent absence of any regulatory oversight in respect of whether providers have made plans for infectious disease outbreaks. This is so despite recent history of such outbreaks, noting Ms Robbs confirmed that the only Commonwealth oversight was a request from the Commonwealth Department of Home Affairs requesting details of a pandemic plan for the support of an unaccompanied minor placement in WA.\textsuperscript{86}

**Limitations on use of online services and technology: isolation**

82. In her statement, Ms Robbs also outlined how her organisation made use of online services and technology during the pandemic, noting that whilst there was additional use of technology, there were real limitations as to how effective it was in reducing isolation for people with disability, noting factors such as the availability and/or stability of internet connection, the lack of familiarity with technology for some users, and the lack of familiarity with technology for families of people with disability.\textsuperscript{87}

83. In his statement, Mr Richardson also outlined how Aruma had made some use of technology, but noted the cost was at times prohibitive and not in line with customer’s choices. Aruma used other methods to keep its customers connected with family, including through outings, outdoor activities, phone calls and other activities.\textsuperscript{88}

84. Paragraph 590 of the Main Submissions state that:

   > The impact of COVID-19 on the mental health across the community is an ongoing issue of concern. Many witnesses gave evidence about the impact of COVID-19 on them with respect to feeling isolated, frightened and anxious. This public hearing did not explore the specific initiatives to address mental health for people with disability. It is an important issue and we suggest it warrants further consideration by the Royal Commission.

85. This, it is submitted, should include whether service providers are taking sufficient steps to guard against adverse mental health impacts for people with disability to whom they provide services.

\textsuperscript{85} Transcript of Claire Robbs, Public hearing 5, 20 August 2020, P-293 [9-14]; Transcript of Andrew Richardson, Public hearing 5, 20 August 2020, P-293 [25]. See also Exhibit 5.48A, Supplementary statement of Samantha Taylor, at [28-34].

\textsuperscript{86} Transcript of Claire Robbs, Public hearing 5, 20 August 2020, P-291-292 [31-46], P-292 [1-15], and recently confirmed in response to a Question on Notice.

\textsuperscript{87} Exhibit 5.255, Statement of Claire Robbs, 14 August 2020, at [38-42].

\textsuperscript{88} Exhibit 5.250, Statement of Andrew Richardson, 16 August 2020, at [31-49].
Communication and consultation

86. Ms Robbs set out the attempts of Life Without Barriers to provide appropriate communication and consultation to its service recipients, and their families and support. She observed that they had developed a communication plan, noting that much of the information that needed to be communicated relied on local staff communicating with clients noting the importance of the existing relationships between clients and staff.89 She also noted that her organisation set up a hotline for clients and their families.90

87. In her oral evidence, she frankly conceded, that with the benefit of hindsight her organisation ‘could have done better to put consultation mechanisms in so that we actually better balanced consultation and communication with our clients and their families.’91 Ms Robbs also conceded that Life Without Barriers had room to improve in its communication with culturally and linguistically diverse clients, noting that Life Without Barriers ‘have had lower than expected requests for information and we’ve produced lower than expected variations in language material, which tells us that we’re not offering that in as helpful a way as people might need us to offer.’92

88. Mr Richardson addressed the issue of communication to its stakeholders. In his written statement, he outlined various methods Aruma employed including direct email, SMS alerts, dedicated COVID-19 information hub on its website, through social channels, and through social stories, directed towards customers with cognitive disability. As with Life Without Barriers, communication also depended on local staff, and the relationships between staff and Aruma’s clients.93

89. In his oral evidence, he also frankly conceded that ‘there are lessons around communication to minority groups and to Aboriginal and Torres Strait Islander people, and also striking a balance between communication and consultation.’94

Recommendation

90. It is open for the Royal Commission to recommend that service providers review their communication plans to ensure that consideration is given to ensuring that communication to CALD and First Nations people is culturally appropriate.

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89  Exhibit 5.255, Statement of Claire Robbs, 14 August 2020, at [48-54].
90  Exhibit 5.255, Statement of Claire Robbs, 14 August 2020, at [57].
91  Transcript of Claire Robbs, Public hearing 5, 20 August 2020, P-295 [12-14].
92  Transcript of Claire Robbs, Public hearing 5, 20 August 2020, P-279 [35-38].
93  Exhibit 5.250, Statement of Andrew Richardson, 16 August 2020, at [52-75].
94  Transcript of Andrew Richardson, Public hearing 5, 20 August 2020, P-282 [30-34].
Oversight to ensure restrictions not more severe than appropriate

91. The Joint Submission observed that there was a ‘concerning lack of guidance’ from government, including around isolation and restrictive practices, and visiting practices for families.

92. Both Ms Robbs and Mr Richardson gave evidence about how their respective organisations imposed any restrictions on the lives of people with disability living in group homes, confirming that while both organisations endeavoured to respect clients’ choices by not imposing greater restrictions than would apply to the community more broadly, they also agreed that there was no particular oversight mechanism (other than internal oversight) to ensure that more severe restrictions were not imposed.95

93. It is submitted that the issue as to whether restrictions being imposed by service providers are more severe than what is appropriate is a topic worthy of further investigation by the Royal Commission.

Dr Kerri Mellifont QC

9 September 2020

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