



Opening statement – Chair, Ronald Sackville AO QC

Public hearing 9: Pathways and barriers to open employment for people with disability

Welcome

Good morning everyone. This week we will be conducting the ninth Public hearing of the Royal Commission into violence, abuse, neglect and exploitation of people with disability. The hearing will examine the Pathways and Barriers to open employment for people with disability. This is an issue of great importance, as this Commission continues its work seeking to move Australia towards becoming a more inclusive society.

I extend a warm welcome to all those who will be following the proceedings over the five days of hearing. I especially welcome those people with disability who have been generous enough to come forward and give evidence of their experiences with the labour market.

Acknowledgement of Country

We begin as we do with all our hearings with an acknowledgement of country.

I wish to acknowledge the Gadigal people of the Eora Nation, the traditional custodians of this land. I also acknowledge the Turrbal and Jagera Nations upon whose lands our hearing room in Brisbane is located. I pay my respects to their elders past, present and emerging, as well as to all First Nations people viewing this hearing on the livestream.

Participants

At the hearing this week I shall be joined by Commissioner Roslyn Atkinson AO, who is in our Brisbane hearing room. Commissioner Rhonda Galbally AC is participating in the hearing from Melbourne. Commissioner John Ryan AM is present in the Sydney hearing room with me.

Ms Kate Eastman SC is the Senior Counsel Assisting the Royal Commission at this hearing. She is also present in the Sydney hearing room. Ms Eastman appears with Ms Simone Fraser and Ms Melinda Zerner, both of whom are in the Brisbane hearing room.

Emeritus Professor Ron McCallum AO, a senior advisor to the Royal Commission, was to have joined Ms Eastman in the Sydney hearing room. Professor McCallum is internationally recognised as an expert in Employment Law and Labour Relations and has contributed a great deal to the preparation of this hearing. By one of those cruel little twists of fate that have characterised 2020, Professor McCallum has been required to quarantine through circumstances entirely beyond his control. We hope he will be able to join the hearing later this week.

Legal representatives for the parties given leave to appear will participate in the hearing either in person (in the Sydney or Brisbane hearing rooms) or remotely. They will announce their appearances shortly.

This is a public hearing but because of the continuing issues with the COVID-19 Pandemic it is not possible for members of the public to be present in the hearing rooms. However, the proceedings can be followed on the webcast available on the Royal Commission's website.

As with all our hearings, an Auslan-English interpreter will be visible on the webcast. Our Auslan interpreters will be operating from both the Brisbane and Sydney hearing rooms.

Disruptions during 2020

We are approaching the end of 2020, a year that for many will be seared in our memory. This is particularly true for those who experienced the most severe impacts from the COVID-19 pandemic and the restrictions associated with it, including many people with disability. The Royal Commission has recorded the experiences of people with disability, particularly during the early stages of the pandemic in our report on Public hearing 5, which was publicly released on 30 November 2020.

The Royal Commission's proposed schedule of hearings for 2020 was severely disrupted by the advent of the COVID-19 pandemic. We had intended to hold hearings during the year in every state and territory of the Commonwealth. Before the pandemic arrived we held one hearing in February at Homebush (in Sydney) over nine hearing days, on the topic of Health Care and Services for People with cognitive Disability. The Commissioners' report on that hearing, Public hearing 4, has been published. The issues identified at the hearing were also addressed in the Royal Commission's Interim Report, which was published on 30 October 2020.

Public hearing 5: COVID-19

The advent of COVID-19 meant that we could not resume hearings until mid-August 2020, a gap of about six months. Public hearing 5 addressed the Experiences of People with Disability during the COVID-19 pandemic and was conducted over four hearing days from 18-21 August 2020. That hearing, like all subsequent hearings, was conducted remotely with the use of technology.

The Royal Commission presented the report arising from the COVID-19 hearing to the Governor-General on 30 November 2020. The 131 page report finds that there were serious failings in the response of the Australian Government to the COVID-19 pandemic, jeopardising the health, safety and well-being of many people with disability. As the report found, in the early stages of the pandemic people with disability were ‘forgotten and ignored’.

The report makes 22 recommendations designed to ensure that there is no repeat of these failings in any future emergency. At all times, even during a pandemic, the human rights of people with disability must be upheld and they must receive the protection and the services to which they are entitled.

The Report on COVID-19 is the first report of the Royal Commission to make formal findings of fact and to make recommendations for change. The report demonstrates, as we foreshadowed earlier in the life of the Royal Commission, that we do not have to wait until presentation of our Final Report to make findings and recommendations.

Of course there must be an evidentiary basis for findings and recommendations. Parties that may be adversely affected by any such findings and recommendations must have an opportunity to make submissions and, if appropriate, to bring forward evidence to support their case. But subject to these requirements we shall be prepared to make recommendations during the life of the Royal Commission if they are necessary to protect people with disability from violence, abuse, neglect and exploitation.

Public hearings 6 and 7

Public hearing 6 was held from 22-25 September 2020 and addressed “Psychotropic medication, behaviour support and behaviours of concern”. Psychotropic medication is a form of chemical restraint used to control certain behaviour of people with disability, especially people with cognitive disability. Detailed submissions arising out of that hearing have been prepared by Counsel Assisting the Royal Commission and responses to the submissions have been received from parties given leave to appear at the hearing. In due course the Commissioners’ report of that hearing will be prepared and published.

Public hearing 7, held over five days from 12-16 October 2020, was our second hearing on the theme of Inclusive Education. It examined the barriers to accessing a safe, quality and inclusive school education and life course impacts. Evidence at the hearing demonstrated the gap between the goal of achieving inclusive education in mainstream schools and the reality so often experienced by students with disability.

Public hearing 8

Our terms of reference require us to have regard to the multi-layered forms of violence, abuse, neglect and exploitation experienced by First Nations people. Consistently with that direction, we had intended to hold a hearing in the Northern Territory in May to examine the multiple forms of discrimination and disadvantage experienced by First Nations people with disability.

That hearing had to be postponed, but Public hearing 8, held from 23-27 November 2020, addressed the experiences of First Nations people with disability and their families coming in contact with child protection systems. This is a topic of particular significance because First Nations parents and children are heavily over-represented in the child protection systems of the states and territories. The evidence also suggests that First Nations parents and children with disability are also both heavily over-represented in the child welfare systems of the states and territories.

Public hearing 8 heard evidence of the indelible historical events that have made the interactions between First Nations people and child protection systems in Australia such a blight on Australia's modern history. We heard of the consequences of: colonialism, dispossession, oppression, and inter-generational trauma associated with the Stolen Generation. These are themes to which we shall return in later hearings. In due course we shall formulate recommendations intended to forestall, so far as possible, history repeating itself.

Lessons from hearings

We have learned great deal from the five public hearings held so far during this year. (As I shall explain, in addition to this week's hearing, we shall be holding the seventh hearing for the year next week).

First and foremost the Public hearings have provided an opportunity for people with disability to recount their own experiences and to tell their own stories. This is not the only means of doing so – there are other opportunities for people with disability to share their experiences through submissions, responses to Issues Papers, private sessions and various forms of public engagement with the Royal Commission. But evidence at a public hearing from people with lived experience of disability is central to our work.

Their evidence bears witness to the violence, abuse, neglect and exploitation that people with disability experience on a daily basis. Allowing their voices to be heard complies with our obligations under the terms of reference to ensure that people with disability engage with the Royal Commission's inquiry, provide evidence and share their experiences.

Evidence from people with disability leaves a lasting impression.

One memory among many that stands out is the messages conveyed at Public hearing 7 by Quaden – a boy with disability who had been severely bullied at school and subject to discrimination by reason of his disability. When asked what he would like to tell the children who had been responsible for bullying him he said:

“Just don’t be rude to kids who have disabilities, and just be kind and nice.”

Secondly, the subject matter of the hearings conducted to date confirms what we have said from the beginning: our inquiry is extraordinarily wide, extremely complex and very challenging. By the end of this year we will have held hearings addressing violence, abuse, neglect and exploitation in the context of: education; group homes; the health system (specifically in relation to people with cognitive disability); the responses to the COVID-19 pandemic; chemical restraints applied to people with disability; First Nations people with disability and child protection systems; open employment; and the training of health professionals. Next year, 2021, will be comparable in breadth and variety.

This is one reason why we have asked the Australian Government to extend the life of the Royal Commission until September 2023, four and a half years from its establishment. Another is the interruption to our work caused by the pandemic. We hope to have a response to our request shortly.

Thirdly, the hearings have attempted to expose the systemic issues that must be addressed in Australia to make progress towards (in the language of the terms of reference):

“a more inclusive society that supports the independence of people with disability, and their right to live free from violence, abuse, neglect and exploitation.”

Identifying the issues is a necessary first step towards proposing reforms to legislation and official policies and practices and also bringing about a transformation of attitudes of the wider community towards people with disability. Much of our work will be designed to bring about the attitudinal changes that are essential if we are to achieve the objective of a more inclusive society.

Fourthly, we have used the hearings to identify further lines of inquiry and, in some cases, to flag possible recommendations or at least proposals for consideration. This approach can be seen, for example, in Chapters 12-14 and 19 of the Interim Report. A reading of those Chapters and indeed of the Interim Report as a whole will indicate the directions in which the Royal Commission is heading. As I have said before, this is not a sprint but a marathon. Stamina and a certain amount of patience are required.

Fifthly, Public hearings play a critical part in informing the whole community of violence, abuse, neglect and exploitation experienced by people with disability. Much of the evidence consists of accounts that mirror the experiences of virtually all people with significant disability. They already understand. It is the understanding and attitudes of

people without disability, including decision-makers that need to change for social inclusion to be an attainable goal.

The challenge for the Royal Commission is for these stories and the reasons for the institutional failures to reach people throughout the Australian community. It is here that the media have an indispensable role. Unless the hearings are widely reported, there is a risk that the Royal Commission and people with disability will be talking mainly to those who already appreciate the problems and challenges.

It is no part of the Royal Commission's function to comment on the culture wars that form such an entertaining part of the country's intellectual fabric. However, it is appropriate to commend the ABC for its outstanding coverage of the public hearings. There are other outlets which have been prepared to devote resources to reporting in the hearings and their role is also important. I hope that during 2021 more mainstream media outlets will consider the work of the Royal Commission to be worthy of public attention, not in the interests of the Commission but in the interests of people with disability and Australian society as a whole.

Next year

In the course of 2021 our hearings will include investigations into the experiences of people with disability in the Criminal Justice System; the role of service providers in the National Disability Insurance Scheme; the interactions between First Nations people with disability and out-of-home care; the use of restraints on children with disability; and the health and safety of women and girls with disability. While Public hearing 9 is focussed on open employment, the Royal Commission intends to consider the experiences of people with disability in segregated employment settings in future hearings.

As the Royal Commission moves towards a Final Report, even if it is still nearly three years away, there will be a greater concentration on exposing violence, abuse, neglect and exploitation of people with disability through detailed case studies. We intend to examine the conduct of service providers and others who come in regular contact with people with disability.

We shall also be working towards formulating proposals that after further consultation and refinement can provide the foundation for firm recommendations. There is still a long way to go.

This hearing

This week is the first time a public hearing of the Royal Commission is investigating the barriers to the economic participation of people with disability.

The statistics relating to workforce participation of people with disability are sobering. We will hear that Australia has one of the lowest employment rates for people with disability in the OECD. A survey in 2018 by the Australian Bureau of Statistics (**ABS**) reported that 10.3 per cent of people with disability were unemployed, compared with 4.6 per cent of the general population.

According to the Australian Institution of Health and Welfare (AIHW) people with disability not only experience higher rates of unemployment, but they are unemployed for longer and have higher rates of under-employment than the general population. The Human Rights Commission reports that nearly half of people with disability who are employed experienced unfair treatment or discrimination by employers in the previous 12 months.

During this week people with disability will relate their experiences of attempting to find and to keep jobs in open employment, their transitions into and out of the workforce and the ways in which they have been subjected to discrimination, neglect and in some cases exploitation. Ms Eastman will outline in her opening in more detail the issues to be examined at the hearing, but they include the systemic barriers to people with disability obtaining rewarding employment and receiving the support to which they are entitled as part of their employment.

As Ms Eastman will explain, barriers are **attitudinal** (such as prejudicial assumptions made by prospective employers about the capability of people with disability); **environmental** (such as physical inaccessibility of premises or the absence of communications facilities); **organisational** (such as the lack of assistance or adjustment to allow for a smooth transition to employment); and **structural** (such as the lack of integration between income support programs and the labour market for people with disability).

The evidence will highlight a fundamental point that has made in previous hearings but I suspect is not generally understood by the wider community, including by many employers. Discrimination obviously includes conduct that treats a person with disability less favourably than a person without disability in circumstances that are not materially different. A simple example is where an applicant is denied an interview for a position for which she is qualified because the prospective employer knows that she uses a wheelchair. Under the *Disability Discrimination Act 1992* (Cth), this known as 'direct discrimination'.

Discrimination also occurs when someone such as an employer requires a person with disability to comply with a requirement, but the person with disability can only comply if the employer makes reasonable adjustments for that person and the employer fails to do so. An example is where the person with disability is perfectly capable of performing a

role, but cannot do so because the employer fails to provide an accessible bathroom in circumstances where it is not difficult to do so. This is known as 'indirect discrimination'.

Once this fundamental concept is grasped, the nature of discrimination experienced by so many people with disability becomes clear. What needs to be done to eliminate that form of discrimination also becomes much clearer. That is where we are heading.