COUNSEL ASSISTING SUBMISSIONS

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 (the 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.

Scope and purpose of Public hearing 5

3. Prior to the hearing, the Royal Commission published the scope and purpose of Public hearing 5. It said the Royal Commission will inquire into:

   (a) the impact on people with disability, including First Nations people, people from culturally and linguistically diverse (CALD) backgrounds and women with disabilities and the barriers and challenges they are facing

   (b) the response of the Commonwealth Government and agencies to the COVID-19 pandemic, as it relates to people with disability (noting the Royal Commission expects to examine the particular response of states and territories at a later time)

   (c) how some disability service providers have responded to the COVID-19 pandemic

   (d) the question of how the impact of COVID-19 on people with disability has developed over the period since the pandemic began

   (e) what should be done in the near, medium and long term to better protect people with disability from violence, abuse neglect and exploitation, and promote the inclusion of people with disability during the COVID-19 pandemic.

Approach taken in these submissions

4. These submissions are intended to address the particular areas identified by the Chair in his closing remarks and his directions. In addressing these areas we have considered the totality of the evidence and also the many suggestions and recommendations made by the witnesses. The submissions have been prepared in a short period of time and for this reason we have not attempted to comprehensively summarise nor analyse all the evidence.
5. Dr Mellifont QC has prepared a separate submission in relation to the evidence of the service providers Aruma and Life Without Barriers. Ms Eastman SC has not been involved in the preparation or review of those submissions.

**Context and setting**

**COVID-19**

6. COVID-19 is the name of the illness that is caused by the virus SARS-CoV-2.¹ The virus first emerged in Wuhan in China in late December 2019.² It is a highly infectious virus, which causes morbidity and death.³ It was also recognised that people with underlying illness or immunocompromised conditions were likely to experience more severe outcomes.⁴ It is called a ‘novel virus’ because it is a new virus, for which there is no effective vaccine or treatment.⁵

7. Infectious disease clinicians and infectious disease epidemiologists saw very early on the potential for COVID-19 to be a pandemic.⁶ By 11 March 2020, the World Health Organisation (WHO) declared COVID-19 to be a pandemic.

**COVID-19 and Australia**

8. Australia’s first case of COVID-19 was detected in January 2020.⁷

9. On 18 February 2020, the Commonwealth Department of Health released the Australian Health Sector Emergency Response Plan for Novel Coronavirus (the COVID-19 Plan).⁸ The COVID-19 Plan was designed to guide the Australian health sector response. The COVID-19 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.⁹

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¹ Transcript of Anne Kavanagh, Public hearing 5, 20 August 2020, P-202 [19-20].
² Transcript of Anne Kavanagh, Public hearing 5, 20 August 2020, P-202 [23-24].
³ Transcript of Anne Kavanagh, Public hearing 5, 20 August 2020, P-202 [24-25].
⁴ Exhibit 5.75, EXP.0003.0003.0001 at 0014.
⁵ Transcript of Anne Kavanagh, Public hearing 5, 20 August 2020, P-202 [28-29].
⁶ Transcript of Anne Kavanagh, Public hearing 5, 20 August 2020, P-202 [26-28].
⁷ Transcript of Anne Kavanagh, Public hearing 5, 20 August 2020, P-202 [24-25].
⁸ Exhibit 5.75, EXP.0003.0003.0001.
⁹ Exhibit 5.75, EXP.0003.0003.0001 at 0020.
10. There was no express mention or reference in the COVID-19 Plan for people with disability who were and remain part of the population at higher risk of contracting and dying from COVID-19.

11. On 26 March 2020, this Royal Commission issued a Statement of Concern\(^\text{10}\) which called on Australian governments to:

(a) seek input from people with disability

(b) develop a strategy to ensure people with disability have access to essential services

(c) 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

(d) make information accessible.

12. The Royal Commission also expressed concern about a number of matters including:

(a) reduction in oversight in closed residential settings

(b) health impacts on First Nations people.

**Surveillance data**

13. As at 17 August 2020, there were 23,559 confirmed cases of COVID-19 in Australia.\(^\text{11}\)

14. During 2020, the Commonwealth Department of Health released daily statistics identifying the number of persons infected and deaths by state or territory, by age and by sex. The daily statistics have included the number of people admitted to hospital and those treated in an Intensive Care Unit (ICU).

15. These daily updates have not identified the number of people with disability who have contracted COVID-19 or died because of COVID-19.

16. On 19 August 2020, the Minister for the National Disability Insurance Scheme (NDIS) announced the Commonwealth will commence providing data on infection rates of COVID-19 for NDIS participants and workers. The data is collated through

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\(^{11}\) Exhibit 5.95, DRC.9999.0018.0001 at 0001.
reporting mechanisms of the NDIS Quality and Safeguard Commission (NDIS Commission) and compiled by the Commonwealth’s NDIS Critical Response Group. Daily statistics are now being published but are limited to NDIS participants who comprise about 10% of the 4.4 million people with disability in Australia.\(^{12}\)

**Chronology**

17. We prepared a chronology as an aid to assist the Commissioners and the parties with leave to appear. The chronology is reproduced in Appendix A.

**Acronyms**

18. Where these submissions use acronyms and abbreviations, a list of acronyms is set out in Appendix B.

**Part 2: Outline of evidence**

19. This section sets out a brief description of evidence presented at Public hearing 5.

20. Almost all witnesses touched on topics not covered in the summaries of their evidence. The absence of a specific reference in the submissions to particular evidence does not diminish its significance to the work of the Royal Commission.

21. For ease of presentation the witnesses have been divided into four broad categories:

   (a) direct experience;

   (b) advocates and advocacy groups;

   (c) expert witnesses; and

   (d) Commonwealth Government witnesses.

22. Some witnesses could be placed in more than one category and others do not necessarily fit squarely within any single category. The categorisation adopted in these submissions should not be taken as a reflection on the standing of any of the witnesses, or on the nature or importance of their evidence.

\(^{12}\) Exhibit 5.80, DRC.2000.0002.0551 at 0558.
**Direct experience witnesses**

**Tammy Milne**


24. Ms Milne is a mother of one who lives with her husband on the North West coast of Tasmania. Ms Milne has arthrogrophosis multiplex congenita and uses splints or a motorised scooter to get around. Ms Milne has worked as an educational interpreter facilitating communication between Deaf students and their learning contemporaries, teachers and other staff using Auslan.

25. Ms Milne described living through the pandemic to be a ‘surreal experience’ and ‘like living in a sci-fi film’.

26. Ms Milne described the ‘hard lockdown’ which occurred in North West Tasmania in April 2020 and its impact on her. Ms Milne’s support worker was unable to attend to support Ms Milne due to potential exposure to COVID-19 and there was no back-up worker sent. Ms Milne described living without a support worker for four days, and the stress of dealing with the possibility that she and her husband had unknowingly been exposed to the virus:

> It was once again surreal. I had been isolating and doing all the right things, not going out, you know, staying home. My husband has a chronic illness as well. He had been staying home. And potentially we had been exposed to COVID but we hadn’t done anything to bring it on ourselves if you know what I mean. It had just been - - - it sort of invaded into our home without our consent, if you like. We had no control over it coming in because potentially it could come in with the support worker.

27. Ms Milne gave evidence of the difficulties she faced trying to source personal protective equipment (PPE). She tried to contact local chemists but was told they did not have them. She felt there was ‘nowhere’ she could source equipment such as masks, hand sanitiser and gloves. Ms Milne commented that some masks

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13 Exhibit 5.1, Statement of Tammy Milne, 3 August 2020, at [3].
14 Exhibit 5.1, Statement of Tammy Milne, 3 August 2020, at [6].
15 Transcript of Tammy Milne, Public hearing 5, 18 August 2020, P-23 [18-20].
16 Exhibit 5.1, Statement of Tammy Milne, 3 August 2020, at [8].
17 Exhibit 5.1, Statement of Tammy Milne, 3 August 2020, at [11-16].
18 Transcript of Tammy Milne, Public hearing 5, 18 August 2020, P-25 [5-11].
19 Transcript of Tammy Milne, Public hearing 5, 18 August 2020, P-25 [45-47].
20 Transcript of Tammy Milne, Public hearing 5, 18 August 2020, P-25 [47].
which were provided to her were of unknown provenance and she queried whether
they were ‘medically fit for purpose’.  

28. Ms Milne also spoke about community attitudes and how they have impacted her
during the course of the pandemic. In her statement, Ms Milne said that the
pandemic has ‘illustrated to me the lack of understanding in the community of what
people with disability go through or the complexity of disability’. In her oral
evidence, Ms Milne said that during the course of the pandemic ‘it’s been like the
curtain has been pulled back on ableism, I guess, and it is out there for everyone
to see.’ She described going into town on her scooter wearing a face mask and
being ‘looked at with suspicion’.

29. Ms Milne said that better networking and better access to information would make
a difference to her. Ms Milne also recommended changes to the casualisation of
the disability support workforce.

AAV

30. AAV made a written statement dated 6 August 2020 and gave oral evidence on 18
August 2020.

31. AAV is the mother of four children. She is the full time carer of her eldest child,
ABA, who has Friedreichs Ataxia, a genetic and neuro-degenerative disability.
Three of her children (including ABA) have been diagnosed with autism spectrum
disorder (ASD). Two of her children experience suicidal ideation.

32. AAV spoke about her life before the COVID-19 pandemic. She said ‘I am not a
stay at home mum. I am a trapped at home mum and my family is trapped with
me.’ She said that, if she is going to leave the house, she has to time it when

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22 Exhibit 5.1, Statement of Tammy Milne, 3 August 2020, at [35].
23 Transcript of Tammy Milne, Public hearing 5, 18 August 2020, P-26 [30-31].
24 Transcript of Tammy Milne, Public hearing 5, 18 August 2020, P-27 [7].
25 Transcript of Tammy Milne, Public hearing 5, 18 August 2020, P-27 [32-33].
26 Exhibit 5.1, Statement of Tammy Milne, 3 August 2020, at [49].
27 Exhibit 5.2, Statement of AAV, 6 August 2020, at [2].
28 Exhibit 5.2, Statement of AAV, 6 August 2020, at [3].
31 Exhibit 5.2, Statement of AAV, 6 August 2020, at [14].
somebody else is home – a bit like having a newborn in the house. AAV said that isolation and ‘social distancing’ are, in many ways, her usual way of life.

33. In January 2020, AAV acted swiftly to source and acquire the necessary supplies, including non-perishable foods, prescription medicines, basic equipment for physical therapies and masks.

34. AAV described the additional pressures on her during the pandemic. Her two school aged children stopped attending school after 17 March 2020. Medical appointments were moved online, cancelled or rescheduled. A support worker who came to help with domestic tasks was cancelled due to the risk of exposing ABA to the virus. All of these changes added significantly to AAV’s usual caring duties.

35. AAV also spoke about the family’s financial stress. ABA is very particular about who will support him with personal care and, as a result, AAV cannot work. AAV said her husband’s work was ‘hanging by a thread’. The older children in the family who did work had to stop working during the pandemic.

36. AAV spoke about the lack of recognition of carers. She said:

Don’t forget us. We are working our butts off and we are being pushed aside all the time, because we don’t pay income tax so, therefore, we don’t count. I couldn’t even get on to my super, because I can’t get JobSeeker, because I can’t apply for a job because I’m already working full time. We’re forgotten. We’re the forgotten members of this society.

37. AAV said that one thing that would have made a difference for her family is a regular financial payment that recognises the work that carers do. She said ‘the NDIA [National Disability Insurance Agency] needs to review its assumptions on

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32 Transcript of AAV, Public hearing 5, 18 August 2020, P-43 [35-40].
33 Exhibit 5.2, Statement of AAV, 6 August 2020, at [12].
35 Exhibit 5.2, Statement of AAV, 6 August 2020, at [20].
36 Transcript of AAV, Public hearing 5, 18 August 2020, P-46 [14-34].
37 Exhibit 5.2, Statement of AAV, 6 August 2020, at [25].
38 Exhibit 5.2, Statement of AAV, 6 August 2020, at [23], [26].
39 Transcript of AAV, Public hearing 5, 18 August 2020, P-47 [11-12].
40 Transcript of AAV, Public hearing 5, 18 August 2020, P-46 [45].
41 Transcript of AAV, Public hearing 5, 18 August 2020, P-47 [3-9].
42 Transcript of AAV, Public hearing 5, 18 August 2020, P-48 [40-44].
43 Transcript of AAV, Public hearing 5, 18 August 2020, P-48 [18-19].
what family carers are and how they administer regular payments to the caring full-
time.'

**ABC**

38. ABC made a written statement dated 11 August 2020. ABC did not give evidence in person and the Royal Commission received her written statement as her evidence. ABC’s statement was tendered as an exhibit at the hearing on 18 August 2020.

39. ABC is a mother of two children, aged 11 and 21 years old. Her daughter has Autism and attention deficit hyperactivity disorder (ADHD) and her son has Autism, anxiety and depression. ABC has multiple auto-immune diseases, Asperger’s syndrome, anxiety and a recent brain injury. ABC receives a carer’s payment from Centrelink and home schools her daughter from their home in Victoria.

40. ABC described the ways in which the COVID-19 pandemic had made various elements of her and her family’s daily life ‘very challenging’. In particular, she spoke about the impact on her children in relation to accessing formal and informal supports; the burden of home schooling, particularly for young people with autism; the financial strain that the pandemic has placed on her family’s finances; the difficulties she faced accessing medical specialists for her and her daughter; the cessation of face-to-face services for her daughter, causing an increase in challenging behaviours; and difficulties accessing essential items such as toilet paper, meat and vegetables.

41. ABC said that her family has experienced loneliness, and increased anxiety and despair during the course of the COVID-19 pandemic.

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44 Transcript of AAV, Public hearing 5, 18 August 2020, P-48 [20-22].
45 See Transcript, Public hearing 5, 18 August 2020, P-87 [45]-P-88 [16].
46 Exhibit 5.15, Statement of ABC, 11 August 2020, at [3].
47 Exhibit 5.15, Statement of ABC, 11 August 2020, at [4].
48 Exhibit 5.15, Statement of ABC, 11 August 2020, at [5].
49 Exhibit 5.15, Statement of ABC, 11 August 2020, at [19], [23].
50 Exhibit 5.15, Statement of ABC, 11 August 2020, at [7].
52 Exhibit 5.15, Statement of ABC, 11 August 2020, at [31] – [34].
Clifford Stephens

42. Clifford Stephens made a written statement dated 12 August 2020. Mr Stephens did not give evidence in person and the Royal Commission received his written statement as his evidence. 58

43. Mr Stephens lives in Melbourne with his family. His adult son acquired a severe physical disability in the early 1990s following neurosurgery. He was just 18 years old at the time. Mr Stephens’ son has normal cognition and intellectual abilities however he has great difficulty in being able to communicate due to his physical impairments. He is non-verbal and requires a Lightwriter to communicate. He is completely dependent and has 24 hour personal support. 59 Most personal support requires actually touching or being as close as 200mm. 60 He resides in a Melbourne hybrid model of disability residential support. 61

44. Mr Stephens said his son is particularly susceptible to respiratory infection complications and he was concerned about how his son would be supported during the COVID-19 pandemic. 62 Mr Stephens’ statement addressed the steps he had taken to address these concerns with his son’s service provider, particularly with respect to physical distancing and the use of PPE. 63

45. Mr Stephens said the pandemic has highlighted that the disability sector is often neglected by all levels of government and safeguards are not in place to address this issue. 64 He pleaded for service providers to determine individuals who may be at risk, saying ‘one size fits all should not be the norm.’ 65

46. Mr Stephens summarised his views as to the primary concerns regarding COVID-19 and the disability sector as follows:

(a) there has been no federal funding to service providers for extra measures such as temperature monitoring and purchasing PPE

(b) there has been no guidance from the Department of Health on assessing people with disability for vulnerability

58 Statement of Clifford Stephens, 12 August 2020; The Royal Commission intends to tender Mr Stephens’ statement as an exhibit of the Public hearing (see Transcript, Public hearing 5, 18 August 2020, P-87 [21-43]).

59 Statement of Clifford Stephens, 12 August 2020, at [4-7].

60 Statement of Clifford Stephens, 12 August 2020, at [15].


63 Statement of Clifford Stephens, 12 August 2020, at [14-30].

64 Statement of Clifford Stephens, 12 August 2020, at [35].

65 Statement of Clifford Stephens, 12 August 2020, at [36].
(c) the focus has always been on protecting workers, not people with disabilities
(d) that service providers have poor communication about what measures they are taking
(e) that service providers have a lax attitude to protecting people with disabilities, particularly when it comes to implementing measures.66

Ricky Buchanan

47. Ricky Buchanan provided a written statement dated 4 August 2020. She did not give evidence in person. Ms Buchanan’s written statement included a video of her interview with SBS ‘Insight’. The video was played at the hearing with the permission of both Ms Buchanan and SBS ‘Insight’.67 Ms Buchanan’s statement and the video were tendered as exhibits at the hearing on 19 August 2020.68

48. Ms Buchanan is a 45 year old woman who lives in Melbourne and describes herself as bedridden.69 She relies on paid support workers to take care of her daily and do things like cooking, cleaning and shopping.70

49. Part of Ms Buchanan’s evidence addressed planning for disasters. Ms Buchanan used the Collaborating 4 Inclusion, Person Centred Emergency Preparedness resources.71 She also identified that VIC had a centrally held Vulnerable Persons Register (VPR), however the only way to get your name on it if you are under 65 years old is if your service provider gives your name to your local council with your permission.72

50. At the start of the pandemic Ms Buchanan used her disaster plan and applied it to COVID-19. She noted, however, that she was trying to undertake risk management when none of the variables were known. She didn’t know how likely it was that her support workers would have been exposed; how likely she was to get sick; how likely it was that masks would help; or how severe it would be if she got sick.73

51. Ms Buchanan put various measures in place to protect herself, and was forced to put her plan to the test when her housemate received news in April 2020 that he

66 Statement of Clifford Stephens, 12 August 2020, at [37].
67 Exhibit 5.3.5, IND.0035.0001.0081.
68 See Transcript, Public hearing 5, 19 August 2020, P-90 [12-27].
69 Exhibit 5.3, Statement of Ricky Buchanan, 4 August 2020, at [2], [4], [6].
70 Exhibit 5.3, Statement of Ricky Buchanan, 4 August 2020, at [2-4], [9].
71 Exhibit 5.3, Statement of Ricky Buchanan, 4 August 2020, at [10-11].
72 Exhibit 5.3, Statement of Ricky Buchanan, 4 August 2020, at [12-26]; Exhibit 5.3.1, IND.0035.0001.0070.
73 Exhibit 5.3, Statement of Ricky Buchanan, 4 August 2020, at [27-28].
had potentially been exposed to someone with COVID-19.\textsuperscript{74} Ms Buchanan’s plan had included putting herself into a hotel temporarily if required to keep her safe. At her request, her service provider allowed her to use her NDIS funding to send her housemate to a hotel for quarantine instead.\textsuperscript{75} Her service provider also sent her masks and aprons for the support workers.\textsuperscript{76}

52. Other aspects of Ms Buchanan's evidence talked about the personal impact on her and her life. She said that the COVID-19 outbreaks in aged care have been scary because disability support workers often work in both aged care and disability services.\textsuperscript{77} During the second wave, she said that she has had four of her support workers’ shifts cancelled due to potential exposure to COVID-19.\textsuperscript{78}

53. Ms Buchanan described a number of positive outcomes of the pandemic thus far. She said that overall she thinks she is better off than she was before COVID-19. She has had access to ‘[t]elehealth, NDIS webinars, film festivals, expos, musical concerts, free online courses, the zoo and so much more.’\textsuperscript{79}

54. Ms Buchanan said that ‘[t]his is stuff I have been asking for, for years’\textsuperscript{80} and that her worry is that these will all go away once the pandemic is over. She said that people like her will still be isolated and home-bound so it would just be ‘heartbreaking’ if all of these opportunities became unavailable again.\textsuperscript{81} She describes her recent experience like this:

   Everything I have been campaigning for, for 20 years, has now been dropped in my lap and I'm so scared they are going to go. I keep doing so much but it is all up there in my computer. I feel I've been starved for 20 years and then dumped in an all-you-can-eat buffet restaurant and of course you will eat everything. This means I'm so ill I can't pace myself.\textsuperscript{82}

55. Ms Buchanan said that she would like to see telehealth services continue for people with a disability and consistent COVID-19 information helplines across states where staff are trained in, and have the authority to arrange, home testing.\textsuperscript{83}

\textsuperscript{74} Exhibit 5.3, Statement of Ricky Buchanan, 4 August 2020, at [23-33], [39].
\textsuperscript{75} Exhibit 5.3, Statement of Ricky Buchanan, 4 August 2020, at [43].
\textsuperscript{76} Exhibit 5.3, Statement of Ricky Buchanan, 4 August 2020, at [45].
\textsuperscript{77} Exhibit 5.3, Statement of Ricky Buchanan, 4 August 2020, at [74].
\textsuperscript{78} Exhibit 5.3, Statement of Ricky Buchanan, 4 August 2020, at [74-75].
\textsuperscript{79} Exhibit 5.3, Statement of Ricky Buchanan, 4 August 2020, at [80]; Transcript of Ricky Buchanan, Public hearing 5, 19 August 2020, P-94 [40-45].
\textsuperscript{80} Exhibit 5.3, Statement of Ricky Buchanan, 4 August 2020, at [80]; Transcript of Ricky Buchanan, Public hearing 5, 19 August 2020, P-94 [40-45].
\textsuperscript{81} Transcript of Ricky Buchanan, Public hearing 5, 19 August 2020, P-95 [5].
\textsuperscript{82} Exhibit 5.3, Statement of Ricky Buchanan, 4 August 2020, at [81].
\textsuperscript{83} Exhibit 5.3, Statement of Ricky Buchanan, 4 August 2020, at [84-86].
Sheree Driver


57. Ms Driver lives in Melbourne, is a disability support worker and has several years of experience working in community services.\(^4\) Ms Driver has a sister in her 40s who lives alone in Melbourne, is an NDIS participant and has a ‘psychosocial disability with complex support needs.’\(^5\) Such needs include frequent in-person contact and prompting for daily routines such as getting out of bed, personal hygiene, having regular meals, and having social contact. Without these supports, her sister would ‘totally withdraw, stay in bed all day and her mental health would seriously decline.’\(^6\)

58. Ms Driver said that due to her sister’s hypervigilance with COVID-19, she applied to the National Disability Insurance Agency (NDIA) for special consideration to be her sister’s support worker during the pandemic.\(^7\) The request was declined 7 days later and on that same day Ms Driver’s sister felt her first symptoms of COVID-19.\(^8\)

59. Ms Driver’s sister and her regular support worker both tested positive for COVID-19 days apart. The support worker spent a considerable amount of time in the ICU in an induced coma. Ms Driver’s sister has a very close relationship with her support worker and this caused her significant anxiety.\(^9\) Ms Driver was also required to self-isolate but fortunately tested negative to COVID-19.\(^10\) When asked to describe the impact on her family, Ms Driver said ‘…our lives just stopped. We couldn’t do anything. We just supported each other on the phone, supporting my sister, trying to keep strong.’\(^11\)

60. Ms Driver notified the NDIA that her sister had tested positive to COVID-19 and pleaded with them to reconsider the decision not to allow her to be her sister’s support worker during the COVID-19 restrictions. She told them that her sister would only allow Ms Driver to be near her now. Ms Driver’s intention was to support her sister via Zoom, which she was already doing, until it was safe to see

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\(^4\) Exhibit 5.4, Statement of Sheree Driver, 12 August 2020, at [3-4].
\(^5\) Exhibit 5.4, Statement of Sheree Driver, 12 August 2020, at [7-8].
\(^6\) Exhibit 5.4, Statement of Sheree Driver, 12 August 2020, at [7-8].
\(^7\) Exhibit 5.4, Statement of Sheree Driver, 12 August 2020, at [16-19].
\(^8\) Exhibit 5.4, Statement of Sheree Driver, 12 August 2020, at [22].
\(^9\) Exhibit 5.4, Statement of Sheree Driver, 12 August 2020, at [25].
\(^10\) Exhibit 5.4, Statement of Sheree Driver, 12 August 2020, at [22].
\(^11\) Transcript of Sheree Driver, Public hearing 5, 19 August 2020, P-117 [5].
her in person. Her sister’s support coordinator and counsellor provided written support for Ms Driver’s request. The request was again rejected by the NDIA citing their policy on not allowing family members to replace support workers. Ms Driver has since submitted an appeal of her sister’s NDIS plan in an attempt to obtain some flexibility with support for her sister during the pandemic.

61. Ms Driver said that her sister has not had the support she needs since she tested positive for COVID-19. She queried whether it is ‘the expectation from the NDIS that my sister just doesn’t get a support person there throughout the duration of COVID? In Victoria, we don't know when that ends, you know.’ Ms Driver asked the NDIA to focus on ‘participant needs’ instead of existing policies and approve paid family member support on a temporary basis. She said ‘[t]here is no one closer than family. They will take the utmost measures to keep their family safe.’

Kalena Bos

62. Kalena Bos made a statement dated 6 August 2020 and pre-recorded her oral evidence on 7 August 2020. Senior Counsel Assisting intended to present Ms Bos’ recorded evidence during the hearing on 21 August 2020 but regrets that due to time constraints, we were unable to do so. Ms Bos’ statement and pre-recorded evidence were tendered as exhibits at the hearing on 21 August 2020.

63. Ms Bos has a learning disability and lives in North West Tasmania. Ms Bos lives with her husband. She has part-time employment. She is a self-advocate and member of the Speak Out Association of Tasmania (Speak Out).

64. Ms Bos said that during COVID-19 she stopped watching the news because she found what the Premier was saying on television was very confusing. Instead she relied on Facebook Live sessions run by Speak Out to tell her what she could and could not do.

65. Ms Bos shared a particularly frightening experience that occurred in April 2020, when she wanted to have her sister-in-law visit her during lockdown. Ms Bos’ husband called a family friend for advice however the family friend ‘took it to the

92 Exhibit 5.4, Statement of Sheree Driver, 12 August 2020, at [39].
93 Exhibit 5.4, Statement of Sheree Driver, 12 August 2020, at [20], [40].
94 Exhibit 5.4, Statement of Sheree Driver, 12 August 2020, at [38-39].
95 Transcript of Sheree Driver, Public hearing 5, 19 August 2020, P-119 [25-30].
96 Transcript of Sheree Driver, Public hearing 5, 19 August 2020, P-119 [25-30].
97 Transcript of Sheree Driver, Public hearing 5, 19 August 2020, P-119 [25-30].
98 See Transcript, Public hearing 5, 21 August 2020, P-400 [45]-P-401 [5-25].
99 Exhibit 5.16, Statement of Kalena Bos, 6 August 2020, at [3-8].
100 Exhibit 5.16, Statement of Kalena Bos, 6 August 2020, at [11-12]; Exhibit 5.16.3, DRC.9999.0012.0002.
next level’, saying that Ms Bos was not allowed to leave the house or visit her parents and, if she did, she would face a $16,000 fine or 6 months jail. This particular friend also called the police on her after finding out she had left her home.\textsuperscript{101} This made Ms Bos ‘upset and scared.’\textsuperscript{102}

66. An advocate from Speak Out provided assistance to Ms Bos, taking her to a local police station where she was able to confirm what rules were in place. What followed was inconsistent messaging from a female detective who called Ms Bos two days later and told her that police were watching her.\textsuperscript{103} This caused Ms Bos to feel ‘afraid.’\textsuperscript{104}

67. A few weeks later, the Acting Commander for Tasmanian Police (Western District) visited Ms Bos at her home to personally apologise on behalf of the North West regional police for being told she was unable to leave her home.\textsuperscript{105}

**Anthony Mulholland**

68. Anthony Mulholland made a statement dated 10 August 2020 and pre-recorded oral evidence on 10 August 2020.\textsuperscript{106} Mr Mulholland’s statement and pre-recorded evidence were tendered as exhibits at the hearing on 21 August 2020.\textsuperscript{107}

69. Mr Mulholland is a First Nations man living on his own in Western Sydney. Mr Mulholland has an intellectual disability and has an NDIS plan which includes assistance from a support worker.\textsuperscript{108}

70. Mr Mulholland said that during COVID-19 he was confused both by the news because ‘every day they were changing the rules’\textsuperscript{109} and ‘by there being multiple chief medical officers.’\textsuperscript{110} He said there were different messages from the Prime Minister and the Premier and he didn’t know who was in charge.\textsuperscript{111} In his pre-recorded oral evidence, Mr Mulholland said that over time information came more
quickly, there was no consistency, and that in the end he ‘didn’t know which way to turn.’

71. Mr Mulholland shared his experience of isolation during the lockdown, saying:

I missed Easter with my family. I was so depressed around Easter. My mental health was bad. I had a nervous breakdown. I couldn’t see my parents over Easter. It upset me so much. I was alone. I felt so isolated. I was not coping well.

72. Mr Mulholland said that although he could speak to his parents by phone, technology is not easy for him and said ‘[n]ot all persons with disability have smart phones and good internet.’

73. Mr Mulholland said that when he went out, he saw people getting fined and he was worried about getting caught out. He said that people were staying away from him, keeping their distance and it felt like people didn’t want to talk to him. This made him feel upset and sad because he is a sociable person. This happened particularly at shopping centres, and it made him feel very nervous so he started going shopping at night. Mr Mulholland said that on one occasion when he was going grocery shopping, he was stopped and questioned by police which was ‘so scary.’

74. Mr Mulholland explained that it was difficult for people with disabilities to understand social distancing and comprehend what was going on. He said that people with disabilities like routine and that their ordinary routines had changed due to COVID-19, resulting in behavioural issues. For example, they were no longer able to go on train trips and this ‘made them feel upset like they’ve done something wrong and they were in trouble.’ Mr Mulholland said that people with disabilities need to be reassured that they are not going to be punished. It was

112 Transcript of Anthony Mulholland, Public hearing 5, 19 August 2020, P-151 [20-25].
113 Exhibit 5.6, Statement of Anthony Mulholland, 10 August 2020, at [21].
114 Exhibit 5.6, Statement of Anthony Mulholland, 10 August 2020, at [23-24].
115 Transcript of Anthony Mulholland, Public hearing 5, 19 August 2020, P-152 [10-15].
116 Exhibit 5.6, Statement of Anthony Mulholland, 10 August 2020, at [27-28].
117 Exhibit 5.6, Statement of Anthony Mulholland, 10 August 2020, at [27], [29].
118 Exhibit 5.6, Statement of Anthony Mulholland, 10 August 2020, at [30-31].
119 Exhibit 5.6, Statement of Anthony Mulholland, 10 August 2020, at [37-38].
120 Exhibit 5.6, Statement of Anthony Mulholland, 10 August 2020, at [39].
121 Exhibit 5.6, Statement of Anthony Mulholland, 10 August 2020, at [41].
122 Exhibit 5.6, Statement of Anthony Mulholland, 10 August 2020, at [42], [45].
also suggested that things could be better explained to people with disability by using pictures and symbols.\(^ {123} \)

**Samantha Dwyer**

75. Samantha “Sam” Dwyer gave evidence to the Royal Commission by way of a statement dated 28 July 2020 and video which was recorded on 3 August 2020.\(^ {124} \) Ms Dwyer’s statement and pre-recorded evidence were tendered as exhibits at the hearing on 19 August 2020.\(^ {125} \)

76. Ms Dwyer and her twin sister were diagnosed with Friedreichs Ataxia at a young age. At the time of Sam’s appearance at the Royal Commission, Ms Dwyer and her sister had recently moved from a group home into their own apartments in the same building. Ms Dwyer said that the move to her own apartment has ‘been amazing’ and that since the move, she has had ‘much more choice and control’ over things ‘like being able to choose our own support workers’ and ‘own food’.\(^ {126} \)

77. Ms Dwyer’s disability places her at a higher risk to COVID-19 than others.\(^ {127} \) In the early stages of the pandemic, she had to self-isolate for three months which she found to be very lonely.\(^ {128} \) Ms Dwyer was concerned that people without a disability were not taking the pandemic and risk management measures seriously.\(^ {129} \) She felt she had to distance herself from these people as ‘they weren’t worried about getting themselves sick’.\(^ {130} \) In some cases, Ms Dwyer’s support workers were not taking the pandemic seriously so she had to have them banned from her apartment.\(^ {131} \)

78. Ms Dwyer said that one positive to come out of the pandemic is that ‘people understand what it’s like to have to stay home for something that’s out of your control’.\(^ {132} \) She prefaced this with the phrase ‘Welcome to our world’ and said:

> Many people with disability spend a lot of our time at home. Getting up and showering in the morning might take an able-bodied person ten minutes, but for a

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\(^ {123} \) Exhibit 5.6, Statement of Anthony Mulholland, 10 August 2020, at [42], [48]; Transcript of Anthony Mulholland, Public hearing 5, 19 August 2020, P-153 [20-30].

\(^ {124} \) Exhibit 5.7.1, DRC.9999.0012.0003.

\(^ {125} \) See Transcript, Public hearing 5, 19 August 2020, P-144 [19-31].

\(^ {126} \) Transcript of Sam Dwyer, Public hearing 5, 19 August 2020, P-145 [44-47].

\(^ {127} \) Transcript of Sam Dwyer, Public hearing 5, 19 August 2020, P-146 [8-11].

\(^ {128} \) Transcript of Sam Dwyer, Public hearing 5, 19 August 2020, P-146 [8-11].

\(^ {129} \) Exhibit 5.7, Statement of Samantha Dwyer, 28 July 2020, at [9]; Transcript of Sam Dwyer, Public hearing 5, 19 August 2020, P-146 [11].

\(^ {130} \) Exhibit 5.7, Statement of Samantha Dwyer, 28 July 2020, at [9].

\(^ {131} \) Exhibit 5.7, Statement of Samantha Dwyer, 28 July 2020, at [14].

\(^ {132} \) Exhibit 5.7, Statement of Samantha Dwyer, 28 July 2020, at [19]; Transcript of Sam Dwyer, Public hearing 5, 19 August 2020, P-147 [9-10].
person with disability it might take 3 hours. During the pandemic, I felt like because everyone else was being told to stay home, now they know what it’s like for people with disability.  

79. Ms Dwyer’s message for the broader community was:

… even though [people] are healthy and able-bodied, they need to make sure they are not carrying the virus because they could carry it to an elderly person or just someone with an underlying health condition. So, unless you want to be responsible for accidentally killing someone, you need to take this seriously.  

Sarah Yahya

80. Sarah Yahya provided a written statement to the Royal Commission and gave oral evidence on 19 August 2020.

81. Ms Yahya is 25 years old. She was born in Iraq and arrived in Australia as a refugee at the age of 13. She is part of an ethnic minority group known as Mandaeanism (an ethno-religious group from the Mesopotamia region). Ms Yahya is profoundly hearing impaired and uses hearing aids to communicate and participate fully.

82. Ms Yahya has experience working in communications for Disabled People’s Organisations (DPO). She is currently employed as a MediaLink Reporter at Multicultural NSW where she translates and summarises news items in Arabic to English.

83. Ms Yahya spoke about the difficulties she has faced with communication during the pandemic saying that since the introduction of social distancing and the use of face masks, she has found communicating with other people to be ‘incredibly difficult’ and described this time as ‘a very, very lonely experience’ which has ‘brought feelings of alienation’. While she is ‘supportive of these measures to keep [the] community safe,’ she expressed her wish that ‘members of the

133 Exhibit 5.7, Statement of Samantha Dwyer, 28 July 2020, at [17-19]; Transcript of Sam Dwyer, Public hearing 5, 19 August 2020, P-146 [40-45].
134 Exhibit 5.7, Statement of Samantha Dwyer, 28 July 2020, at [20-21]; Transcript of Sam Dwyer, Public hearing 5, 19 August 2020, P-147 [16-20].
135 Exhibit 5.8, Statement of Sarah Yahya, 10 August 2020, at [3].
136 Exhibit 5.8, Statement of Sarah Yahya, 10 August 2020, at [3].
137 Exhibit 5.8, Statement of Sarah Yahya, 10 August 2020, at [3].
138 Exhibit 5.8, Statement of Sarah Yahya, 10 August 2020, at [4].
139 Exhibit 5.8, Statement of Sarah Yahya, 10 August 2020, at [6].
140 Transcript of Sarah Yahya, Public hearing 5, 19 August 2020, P-154 [5-11].
community understood that there are many of us who rely on cues, touch, contact and guidance to travel, shop and do our everyday tasks'.

84. Ms Yahya referred to the endless social media commentary asserting that COVID-19 is about ‘the survival of the fittest where our elderly, chronically ill people and people with disability are the ‘unfortunate’ loss and may not be prioritised if the healthcare system is overwhelmed’. She said that:

    We talk so often about making positive steps towards inclusion and accepting people but when a crisis like this happens… people with disability automatically take a back seat. And it just makes me feel incredibly vulnerable… Am I able to be open about my disability if this is what they think, if this is how they think.

85. Ms Yahya said these feelings ‘keep festering inside of you’ and were further exacerbated by being a person from a CALD background. Ms Yahya said ‘there have been a lot of things that make you feel low, being a refugee… being a woman… and then on top of that being a person with disability’.

86. Speaking more broadly about the experiences of CALD communities during the pandemic, Ms Yahya said there has been ‘a lot of uncertainty about what is going on’. She said that this uncertainty was compounded for people from a torture and trauma background who find it difficult to take ‘in a vast amount of information and to remember that information’.

87. Ms Yahya’s biggest concern is that people, particularly those from a refugee background, ‘might take it to the extreme and isolate themselves and their families completely’, not getting the support they need that they would still be permitted to access. In response to a question by the Chair, Ms Yahya said that the most effective way to communicate with Arabic communities is to ask them what their concerns are and tailor the messaging to the values of the community such as faith and family.

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142 Exhibit 5.8, Statement of Sarah Yahya, 10 August 2020, at [14]; Transcript of Sarah Yahya, Public hearing 5, 19 August 2020, P-154-155.
143 Transcript of Sarah Yahya, Public hearing 5, 19 August 2020, P-154-155.
144 Transcript of Sarah Yahya, Public hearing 5, 19 August 2020, P-155 [6-18].
145 Transcript of Sarah Yahya, Public hearing 5, 19 August 2020, P-155 [6-18].
146 Transcript of Sarah Yahya, Public hearing 5, 19 August 2020, P-155 [15-16].
147 Transcript of Sarah Yahya, Public hearing 5, 19 August 2020, P-156 [15-22].
148 Transcript, Sarah Yahya, Public hearing 5, 19 August 2020, P-156 [42-46]; Exhibit 5.8, Statement of Sarah Yahya, 10 August 2020, at [23].
149 Transcript, Sarah Yahya, Public hearing 5, 19 August 2020, P-158 [11-38].
ABB

88. ABB made a written statement dated 7 August 2020 and pre-recorded her oral evidence on 7 August 2020. ABB’s statement and pre-recorded evidence were tendered as exhibits at the hearing on 19 August 2020.

89. ABB is a mother of two children. ABB’s daughter is 12 years old. She has Down syndrome, her speech is limited and she has a sensory processing disorder. ABB’s daughter likes going to school and is ‘usually quite excited to put her uniform on in the morning’.

90. ABB decided early on that she wanted her daughter ‘to have a fully inclusive life in the family, the community and especially at school’. ABB’s daughter has just started high school in a mainstream setting and ABB spoke about the gatekeeping and lack of preparedness which she has faced.

91. In relation to the school, ABB gave evidence that ‘most conversations were around the lack of funding rather than the supports they could provide’. ABB felt as though the school’s lack of preparation was ‘evident in the work which was coming home’. When ABB questioned the nature of the tasks that her daughter was being set, which were ‘mostly colouring activities, very low level tasks’, ABB was ‘told to be patient and wait for the school to settle all the students’.

92. ABB said that these experiences were exacerbated by the pandemic and that the school closure ‘was quite a difficult time for us, especially in the early stages where I felt that my daughter was an afterthought’.

150 Exhibit 5.10.2, DRC.9999.0012.0006.
151 See Transcript, Public hearing 5, 19 August 2020, P-165 [32-47].
152 Transcript of ABB, Public hearing 5, 19 August 2020, P-166 [27].
153 Transcript of ABB, Public hearing 5, 19 August 2020, P-166 [31].
154 Exhibit 5.10, Statement of ABB, 7 August 2020, at [5].
155 Transcript of ABB, Public hearing 5, 19 August 2020, P-166 [38-39].
156 Transcript of ABB, Public hearing 5, 19 August 2020, P-166 [32-34].
157 Transcript of ABB, Public hearing 5, 19 August 2020, P-166 [34].
158 Transcript of ABB, Public hearing 5, 19 August 2020, P-166 [41-44], P-167 [9-12].
159 Transcript of ABB, Public hearing 5, 19 August 2020, P-167 [17-20].
160 Exhibit 5.10, Statement of ABB, 7 August 2020, at [16].
161 Transcript of ABB, Public hearing 5, 19 August 2020, P-167 [22].
162 Transcript of ABB, Public hearing 5, 19 August 2020, P-167 [29-30].
163 Transcript of ABB, Public hearing 5, 19 August 2020, P-168 [22-23].
93. ABB had to ‘explicitly ask’ for her daughter to be added to the Google Classroom,\(^\text{164}\) which did happen within a few days,\(^\text{165}\) and took it upon herself to modify the work which was provided in order to show teachers what kind of activities they could be doing.\(^\text{166}\) Once her daughter was included in the Google Classroom, ABB noted that this provided some insight into the class curriculum and ‘really reaffirmed that there’s a real disconnect between my daughter’s learning and what happens in the classroom.’\(^\text{167}\)

94. When asked for any final comments on the topic of education, ABB said:

…I think one of the biggest issues was the obvious lack of preparation in terms of supporting my daughter’s learning, especially during the COVID shutdown. I think at the core of this there is some deeply rooted ableism where there is a view that students with disability are an add-on, a burden, that they belong somewhere else.\(^\text{168}\)

95. ABB has recommended continued online engagement to offer transparency around the nature of work being assigned and provide a direct means of communicating with teachers.\(^\text{169}\) ABB also suggested that teachers undertake some training to better understand inclusive learning.\(^\text{170}\)

96. ABB said that when her daughter is included she observes her becoming ‘more confident and more independent’ and ABB sees ‘a sense of pride on her face’.\(^\text{171}\)

**Tim Chan**

97. Tim Chan made a written statement dated 5 August 2020 and a video which was recorded on 4 August 2020.\(^\text{172}\) Mr Chan’s statement and pre-recorded evidence were tendered as exhibits at the hearing on 19 August 2020.\(^\text{173}\) The Royal Commission was also granted permission to show a part of Mr Chan’s talk at the TEDxMelbourne forum.\(^\text{174}\)

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\(^{164}\) Transcript of ABB, Public hearing 5, 19 August 2020, P-168 [32].  
\(^{165}\) Exhibit 5.10, Statement of ABB, 7 August 2020, at [21].  
\(^{166}\) Transcript of ABB, Public hearing 5, 19 August 2020, P-168 [35-37].  
\(^{167}\) Transcript of ABB, Public hearing 5, 19 August 2020, P-169 [15-17].  
\(^{168}\) Transcript of ABB, Public hearing 5, 19 August 2020, P-171 [21-28].  
\(^{169}\) Exhibit 5.10, Statement of ABB, 7 August 2020, at [29].  
\(^{170}\) Exhibit 5.10, Statement of ABB, 7 August 2020, at [30].  
\(^{171}\) Transcript of ABB, Public hearing 5, 19 August 2020, P-171 [37].  
\(^{172}\) Exhibit 5.9.1, DRC.9999.0012.0005.  
\(^{173}\) See Transcript, Public hearing 5, 21 August 2020, P-161 [12-28].  
\(^{174}\) Exhibit 5.9.2, DRC.9999.0012.0004; Transcript of Tim Chan, Public hearing 5, 19 August 2020, P-161 [42]-P-162 [16].
98. Mr Chan is 25 years old. He was diagnosed with autism at the age of 3 and has been non-speaking since he was 14 months old. Mr Chan uses assisted typing to communicate.

99. Mr Chan spoke of the unprecedented changes to his routine which have caused his anxiety to skyrocket. Mr Chan gave evidence of the uncertainty as to what is best practice and pointed to a number of ‘ambiguities surrounding understanding and following health guidelines’.

100. Mr Chan also spoke of missing his connection with people while in isolation. He also gave evidence about disruption to his support network. While acknowledging that this is likely true for people both with and without disability, Mr Chan observed:

…because I use non-conventional communication (assisted typing) it’s not easy to connect as it takes trained facilitators, especially those with whom I have a personal relationship, before I can output typing. Zoom is also hard for me as it’s tiring to see people’s faces as well as listening to them. So I am feeling especially alone and vulnerable.

101. Mr Chan sees that the pandemic has placed a heavy toll on his mother, who assists with care and supervision of Mr Chan’s daily routines and activities. Mr Chan is experiencing more seizures, due to a lack of sleep and increased anxiety, and is worried that he will hurt his mother if he falls.

102. Mr Chan spoke about his experience as a Melbournian having to wear a mask:

I am hypersensitive to touch as well as other things, and face masks are uncomfortable at best and almost invasive at worst. I continue to go for walks each day. I wear a protective helmet at times, when I can tolerate this. Going for walks remains the main means for managing my anxiety.

103. Mr Chan also shared his thoughts around the term “masking” and how this may have an impact on how autistic people come to terms with the concept of wearing a mask. He said ‘the term “masking” has negative connotations within the autistic

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175 Exhibit 5.9, Statement of Tim Chan, 5 August 2020, at [3].
176 Exhibit 5.9, Statement of Tim Chan, 5 August 2020, at [5]; Transcript of Tim Chan, Public hearing 5, 19 August 2020, P-162 [30-31].
177 Exhibit 5.9, Statement of Tim Chan, 5 August 2020, at [9].
178 Exhibit 5.9, Statement of Tim Chan, 5 August 2020, at [10].
179 Exhibit 5.9, Statement of Tim Chan, 5 August 2020, at [13].
180 Exhibit 5.9, Statement of Tim Chan, 5 August 2020, at [12].
181 Exhibit 5.9, Statement of Tim Chan, 5 August 2020, at [16].
182 Exhibit 5.9, Statement of Tim Chan, 5 August 2020, at [17], [19].
183 Exhibit 5.9, Statement of Tim Chan, 5 August 2020, at [20].
community because this is the process of how we try to hide or suppress our autistic traits to blend in with others to be socially acceptable'.

104. Mr Chan said that the pandemic has made him feel as though he has been ‘walking on a tight rope, in a precarious balancing act’. In terms of improving things for people moving forward, Mr Chan has suggested the establishment of support groups for different disability needs and for parental support.

**Dr Dinesh Palipana OAM**

105. Dr Dinesh Palipana OAM made a written statement to the Royal Commission dated 4 August 2020 and gave oral evidence on 20 August 2020.

106. Dr Palipana has a spinal cord injury as a result of a motor vehicle accident in 2010. The injury caused quadriplegia, affecting his fingers, parts of his arms and everything below the level of the chest. He uses a wheelchair for mobility.

107. During his oral evidence, Dr Palipana spoke of the concern held by the disability community about presenting to hospital for fear of contracting the virus. He spoke about a friend with disability who, due to a very difficult set of social circumstances including limited access to caregivers, general isolation from the community and a mounting health complication, delayed presentation at the hospital so long that he required intensive care, a situation which could likely have been avoided had he presented earlier.

108. Dr Palipana expressed his concern that people with disability are ‘missing out on their regular care and regular follow-up[s]’ due to elective surgeries and clinics being ‘cancelled’. He said ‘[f]or that reason, people with disabilities needing follow-up for their chronic conditions were neglected’, the consequences of which ‘still remains to be seen’. He spoke of his own experience attending a private radiology clinic to obtain a routine surveillance scan. He attended the clinic with two support workers to help him onto the scanning bed but was told that two

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184 Exhibit 5.9, Statement of Tim Chan, 5 August 2020, at [23].
185 Exhibit 5.9, Statement of Tim Chan, 5 August 2020, at [24].
186 Exhibit 5.9, Statement of Tim Chan, 5 August 2020, at [26].
187 Exhibit 5.13, Statement of Dr Dinesh Palipana, 4 August 2020, at [9].
188 Exhibit 5.13, Statement of Dr Dinesh Palipana, 4 August 2020, at [9].
189 Exhibit 5.13, Statement of Dr Dinesh Palipana, 4 August 2020, at [9].
190 Transcript of Dr Dinesh Palipana OAM, Public hearing 5, 20 August 2020, P-235.
191 Transcript of Dr Dinesh Palipana OAM, Public hearing 5, 20 August 2020, P-235.
192 Exhibit 5.13, Statement of Dr Dinesh Palipana, 4 August 2020, at [35].
193 Exhibit 5.13, Statement of Dr Dinesh Palipana, 4 August 2020, at [33].
194 Exhibit 5.13, Statement of Dr Dinesh Palipana, 4 August 2020, at [34]; Transcript of Dr Dinesh Palipana OAM, Public hearing 5, 20 August 2020, P-240-241.
support people was against the clinic’s COVID-19 policy.195 The clinic gave him no solution to get on to the bed and his scan was ultimately cancelled.196 He also identified a number of practical problems faced by people with disabilities presenting to hospital affected by COVID-19.197

109. Dr Palipana observed that strict infection control measures demanded by COVID-19, such as social distancing and isolation, create particular difficulties for people with disability who depend on caregivers for daily care.198

110. In the future, Dr Palipana hopes to see ‘more aggressive data-gathering on how COVID-19 affects specific disabilities; not just medically, but socially as well’.199 Gathering this data ‘will allow us to build more research and better methods to protect people’.200 Dr Palipana stressed the importance of developing initiatives ‘to increase the amount of data and literature available to inform the medical management of people with various disabilities’.201

Dr Kirsten Harley

111. Dr Kirsten Harley made a written statement dated 30 July 2020. A video of Dr Harley reading her statement through assistive technology was played on day 4 of the hearing, being 21 August 2020.202 Dr Harley’s statement and pre-recorded evidence were tendered as exhibits at the hearing on 21 August 2020.203

112. Dr Harley is a 51 year old woman who was diagnosed with Motor Neurone Disease (MND) or Amyotrophic Lateral Sclerosis (ALS) in 2013.204 She is unable to move or speak and has been on a ventilator since she had a tracheotomy and laryngectomy in 2018.205 Dr Harley has been an honorary lecturer in the Faculty of Medicine and Health at the University of Sydney since 2014 and has been a board member of MND NSW since 2013.206
113. Dr Harley lives with her husband and 14 year old daughter and receives round-the-clock care from a team of 10 support workers.\textsuperscript{207} Dr Harley said that ‘in effect, our household contains 13 people, 10 of whom spend time in at least one other household, and some travel to other workplaces, and interact with other families and carers’.\textsuperscript{208} She said that ‘this continued even when social distancing restrictions were at their strictest’.\textsuperscript{209} She said that while some carers have taken (unpaid) time off, others have ‘assured [her] that their sniffs and throat clearing are a result of hay fever or sinus issues’.\textsuperscript{210} She has ‘to hope they are right’.\textsuperscript{211} Commenting on the casualisation of the disability workforce in the context of the COVID-19 pandemic, Dr Harley said that the ‘soldier on’ mentality is ‘structurally supported by both the limited supply of carers and their casual work conditions without paid sick leave’.\textsuperscript{212}

114. Dr Harley also spoke about the challenges she and her support workers experienced in sourcing face masks.\textsuperscript{213} She also experienced ‘disruptions, delays and shortages’ in the supply of other essential items such as PPE, disinfectant, hand sanitizer and paper towels.\textsuperscript{214}

115. Dr Harley’s main concern was what would happen if she or someone else in her position required treatment or acute care during the pandemic, at a time when hospital resources were stretched.\textsuperscript{215} She asked whether, if her 2018 episode of pneumonia and carbon dioxide narcosis had happened during the pandemic, her life would have been saved.\textsuperscript{216}

116. Dr Harley was also concerned about the way in which messaging during the pandemic had been ‘implicitly addressed to the able-bodied’.\textsuperscript{217} She asked ‘what are we to make of the message to keep physical distance when this is impossible?’ She went on to say that while she appreciates the importance of ‘imploring healthy, young people to follow rules to protect elderly/unhealthy loved ones…this can feel

\textsuperscript{207} Exhibit 5.14, Statement of Dr Kirsten Harley, 30 July 2020, at [4].
\textsuperscript{208} Exhibit 5.14, Statement of Dr Kirsten Harley, 30 July 2020, at [17].
\textsuperscript{209} Exhibit 5.14, Statement of Dr Kirsten Harley, 30 July 2020, at [17].
\textsuperscript{210} Exhibit 5.14, Statement of Dr Kirsten Harley, 30 July 2020, at [18].
\textsuperscript{211} Exhibit 5.14, Statement of Dr Kirsten Harley, 30 July 2020, at [18].
\textsuperscript{212} Exhibit 5.14, Statement of Dr Kirsten Harley, 30 July 2020, at [19].
\textsuperscript{213} Exhibit 5.14, Statement of Dr Kirsten Harley, 30 July 2020, at [38] – [39].
\textsuperscript{214} Exhibit 5.14, Statement of Dr Kirsten Harley, 30 July 2020, at [40].
\textsuperscript{215} Exhibit 5.14, Statement of Dr Kirsten Harley, 30 July 2020, at [27].
\textsuperscript{216} Exhibit 5.14, Statement of Dr Kirsten Harley, 30 July 2020, at [27].
\textsuperscript{217} Exhibit 5.14, Statement of Dr Kirsten Harley, 30 July 2020, at [45].
marginalising, strongly compounded by some of the early statements internationally that those at risk were going to die anyway’.218

Advocates and advocacy groups

Nicole Lee


118. Ms Lee is a disabled woman and a family violence survivor and advocate.219

119. Since July 2019, Ms Lee has been a board member of the Safe Steps Family Violence Response Centre (Safe Steps), VIC’s state-wide first response service for women, young people and children experiencing family violence.220 Safe Steps operates the 1800 RESPECT telephone service, undertakes immediate assessments, operates refuges and refers people to the services they need.221

120. Ms Lee said that the COVID-19 pandemic has increased the risk for people with disability experiencing family violence for a number of reasons,222 including the increased likelihood of violent partners working at home; the heightened stress levels affecting households as a result of the health and economic impacts of the pandemic;223 and the significant reduction in opportunities to access help through interactions with people outside of the home.224

121. Ms Lee said that, in response to a significant reduction in the number of calls made to its helpline, Safe Steps established a web chat service, enabling access to their service in a discrete manner.225 Ms Lee noted, however, that while this service has opened up opportunities for the Deaf and hard of hearing it is currently not accessible to people experiencing extreme anxiety or who have low literacy or a cognitive disability.226 Ms Lee said she would like to see Federal Government funding of family violence services so that initiatives like the web chat service could be developed to make it accessible to everyone.227

218 Exhibit 5.14, Statement of Dr Kirsten Harley, 30 July 2020, at [45].
219 Exhibit 5.18, Statement of Nicole Lee, 10 August 2020, at [3].
220 Exhibit 5.18, Statement of Nicole Lee, 10 August 2020, at [4], [6].
221 Exhibit 5.18, Statement of Nicole Lee, 10 August 2020, at [11].
222 Exhibit 5.18, Statement of Nicole Lee, 10 August 2020, at [7].
223 Exhibit 5.18, Statement of Nicole Lee, 10 August 2020, at [7].
224 Exhibit 5.18, Statement of Nicole Lee, 10 August 2020, at [8].
225 Exhibit 5.18, Statement of Nicole Lee, 10 August 2020, at [12].
226 Exhibit 5.18, Statement of Nicole Lee, 10 August 2020, at [14], [16].
227 Transcript of Nicole Lee, Public hearing 5, 18 August 2020, P-21 [4-6].
122. Ms Lee said that access to funding for support services is vital in helping women with disabilities or families with children with disabilities to escape family violence. She spoke of her own experience escaping such violence with the financial support made available by the Victorian Department of Health and Human Services (DHHS) through the Disability Family Violence Crisis Response.\(^{228}\) This initiative enables women with disability to access up to $9,000 over 12 weeks for family violence crisis accommodation with support workers or to fund disability supports to remain safe in their own home.\(^{229}\) Ms Lee said this initiative is not available outside of Victoria and, even in Victoria, does not have ongoing funding.\(^{230}\)

123. Ms Lee said she would like to see the Federal Government make emergency funding available to disabled women to access supports so they can escape to safety while waiting for the review of their NDIS plans.\(^{231}\)

**Ross Joyce and Patrick McGee (AFDO)**


125. Mr Joyce is the CEO of the Australian Federation of Disability Organisations (AFDO).\(^{232}\) Mr McGee is the National Manager – Policy, Advocacy & Research at AFDO.\(^{233}\) AFDO is a Disabled People’s Organisation (DPO), a cross-disability representative organisation and the national voice representing people with disability in Australia.\(^{234}\)

126. There was a concern within the disability sector during March-April 2020 about the representation for people with disability in the Government plans.\(^{235}\) In order to ensure that people with disability were considered in plans at all levels, AFDO and other advocacy organisations had to be proactive. AFDO was one of more than 50 organisations across Australia who endorsed an Open Letter to National Cabinet which highlighted ten immediate actions required for Australians with disability in response to the COVID-19 pandemic.\(^{236}\) AFDO also participated in the roundtable discussion.

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\(^{228}\) Exhibit 5.18, Statement of Nicole Lee, 10 August 2020, at [28]; Transcript of Nicole Lee, Public hearing 5, 18 August 2020, P-20 [11-25].

\(^{229}\) Exhibit 5.18, Statement of Nicole Lee, 10 August 2020, at [25].

\(^{230}\) Transcript of Nicole Lee, Public hearing 5, 18 August 2020, P-20 [32-39].

\(^{231}\) Transcript of Nicole Lee, Public hearing 5, 18 August 2020, P-21 [20-23].

\(^{232}\) Exhibit 5.20, Joint Statement of Ross Joyce and Patrick McGee, 11 August 2020, at [3].

\(^{233}\) Exhibit 5.20, Joint Statement of Ross Joyce and Patrick McGee, 11 August 2020, at [8].


\(^{235}\) Transcript of Ross Joyce and Patrick McGee, Public hearing 5, 18 August 2020, P-52 [46-47].

convened by the Commonwealth Department of Health on 7 April 2020. Mr Joyce saw this as the start of a process of representative organisations ‘having a much greater involvement… to ensure that the voice of people with disability was heard as part of the pandemic considerations’.  

127. Mr Joyce and Mr McGee referred to the Statement of Concern entitled COVID-19: Human rights, disability and ethical decision-making, released on 15 April 2020 and signed by internationally recognised Australian experts in the areas of human rights, bioethics and disability. The Statement of Concern ‘was to ensure that people with disability weren’t just triaged out of appropriate medical care’. These concerns were as a result of ‘what was happening in the overseas experience in a number of countries’, leading AFDO and other organisations to consider it ‘really important to have a document that reflected what is the correct framework for human rights principles and for ethical decision-making in terms of healthcare’.  

128. In their evidence, Mr Joyce and Mr McGee addressed a number of significant areas of concern and noted that ‘the issues raised by the pandemic seem to have caught every government jurisdiction unaware’. Mr Joyce and Mr McGee also made a number of recommendations for immediate actions which could be brought about to improve the lives of people with disability during the pandemic.  

129. The provision of PPE in the community was identified as a significant issue for people with disabilities, their families and the service providers.  

130. Amongst other recommendations in relation to PPE, AFDO recommended that the Federal Government undertake an ‘urgent review’ in relation to the PPE stockpile, noting that ‘service providers that support people with disability in the sector weren’t eligible to access’ the stockpile in the early days of the pandemic. While acknowledging in oral evidence that disability service providers could now access this stockpile, Mr Joyce noted that this ‘doesn’t take into account people with disability that are maintaining and providing their own supports’. This remains to
be one of the ‘number of issues that need to be unpacked’ to ensure that there is a ‘better PPE supply chain mechanism’. 248

131. Mr Joyce and Mr McGee also gave evidence of their concern over the fact that many Australian Disability Enterprises (ADEs) continued to operate during the pandemic and queried whether they could be classed as an essential service. 249 Amongst a number of other immediate actions, Mr Joyce and Mr McGee recommend that the Federal Government define ‘what constitutes an “essential service” for people with disability in any emergency response and policy context’. 250

132. Mr Joyce and Mr McGee also spoke of impacts on education in terms of the ‘lack of planning in terms of how the education system can assist children and young people with disability when it comes to accessibility and support’. 251 Mr Joyce and Mr McGee consider that ‘this pressure and lack of supports has put children and young people with disability at a more considerable disadvantage and created the opportunity for family breakdowns or greater violence or abuse within the home’. 252

133. Looking to the future, Mr Joyce and Mr McGee see that a ‘key strategy to strengthen the voice of people with disability’ would be to ‘include them as a group of people with equal status, to other key population groups who may be affected by COVID-19, requiring bespoke and targeted strategies’. 253 The development of a ‘crisis communication strategy’ which would be ‘co-designed by people with disability, civil society and Government’ and ‘funded by Government’ would ensure that people with disability can participate as equals for the remainder of the pandemic crisis and in any future crises. 254

Fiona Downing (DJA)


135. Ms Downing is the Senior Disability Advocate of Disability Justice Australia Inc (DJA). 255 DJA is federally funded by the Department of Social Services (DSS) under the National Disability Advocacy Program (NDAP) to provide individual and

248 Transcript of Ross Joyce and Patrick McGee, Public hearing 5, 18 August 2020, P-63 [9].
249 Exhibit 5.20, Joint Statement of Ross Joyce and Patrick McGee, 11 August 2020, at [45].
250 Exhibit 5.20, Joint Statement of Ross Joyce and Patrick McGee, 11 August 2020, at [95].
251 Exhibit 5.20, Joint Statement of Ross Joyce and Patrick McGee, 11 August 2020, at [95].
252 Exhibit 5.20, Joint Statement of Ross Joyce and Patrick McGee, 11 August 2020, at [37].
253 Exhibit 5.20, Joint Statement of Ross Joyce and Patrick McGee, 11 August 2020, at [91].
254 Exhibit 5.20, Joint Statement of Ross Joyce and Patrick McGee, 11 August 2020, at [93].
255 Exhibit 5.21, Statement of Fiona Mary Downing, 12 August 2020, at [3].
legal advocacy support across Melbourne to people of all ages with any disability, and systemic advocacy at the state, federal and international levels.256

136. Ms Downing emphasised the importance of advocacy services and gave evidence about the present state of advocacy services in Melbourne. She noted that despite the importance of advocacy; the fact that the NDIS is shifting disability supports from a state-based system to a federal-based system; and huge increases in demand (much of which has arisen due to the roll out of the NDIS), there has been no real increase in NDAP advocacy funding over the last decade.257 Ms Downing said that ‘inadequate funding means advocacy organisations do not have the resources to proactively respond to the COVID-19 pandemic.’258

137. Ms Downing said there has been no emergency funding for advocacy in Melbourne, despite the issues that have arisen, and that this financial year DJA had their NDIS appeals funding cut. This has resulted in DJA having to close their waitlist and constantly turn people away.259

138. Ms Downing said that the sort of issues that were brought to their attention during the first wave in Melbourne were about draconian measures in group homes, where residents were subjected to restrictions that were far harsher than for other people in the community.260 Ms Downing said there have also been a lot of issues around the use of PPE equipment for disability workers and council home help staff who provide care for people with disability who are not on the NDIS. This includes service providers advising that the staff can choose whether or not they use PPE, even when the participant specifically requested the staff do so. Ms Downing observed about a particular service provider’s policy regarding PPE that ‘it was clearly written from the perspective of how to protect staff rather than the residents.’261

139. Ms Downing said that even though there are now legislative requirements to wear masks in the workplace, her view is that it is clear that many of the disability support staff either do not understand the rules or do not recognise that disability accommodation is actually a workplace. Ms Downing said that in one video conference, she saw a support worker who spent the whole meeting without a mask on. Another worker came in and was within about 1 metre of the other

256 Exhibit 5.21, Statement of Fiona Mary Downing, 12 August 2020, at [6].
257 Exhibit 5.21, Statement of Fiona Mary Downing, 12 August 2020, at [8].
258 Exhibit 5.21, Statement of Fiona Mary Downing, 12 August 2020, at [8].
259 Transcript of Fiona Downing, Public hearing 5, 18 August 2020, P-69 [45]-P-70 [5-10].
260 Transcript of Fiona Downing, Public hearing 5, 18 August 2020, P-68 [45]-P-69 [5].
261 Ms Downing was referring to evidence given by her client Clifford Stephens, who also gave evidence by way of a statement, see Statement of Clifford Stephens, 12 August 2020; Transcript of Fiona Downing, Public hearing 5, 18 August 2020, P-69 [5-20].
worker and, even after she raised concerns about this in the next meeting, they again appeared without masks.\textsuperscript{262}

140. Ms Downing recommended that emergency advocacy funding be made available to advocacy organisations servicing people with disability subject to Stage 3 and 4 coronavirus restrictions.\textsuperscript{263} She also called for the NDIA to show compassion and flexibility regarding approving family members to be paid support workers during the COVID-19 pandemic.\textsuperscript{264}

**Eleanor Gibbs (PWDA)**

141. Eleanor Gibbs gave evidence to the Royal Commission in both a personal and professional capacity by way of a statement dated 12 August 2020 and oral evidence, in a panel with Fiona Downing, on 18 August 2020.\textsuperscript{265}

142. Ms Gibbs is the Director, Media and Communications of People with Disability Australia (PWDA).\textsuperscript{266} Ms Gibbs has a disability and gave evidence that, because she is immunocompromised and due to the nature of her impairments, she is at greater risk both of contracting COVID-19 and of the consequences of contracting COVID-19 being extremely serious.\textsuperscript{267} In March 2020, her General Practitioner (GP) gave her clear instructions to stay at home.\textsuperscript{268} This was several weeks before the community-wide lockdown.\textsuperscript{269} Ms Gibbs described this as ‘a scary and difficult time’ for her, particularly because the different systems she used to sustain her life vanished in March, some of them overnight.\textsuperscript{270}

143. Ms Gibbs said that she could no longer get food, groceries or medication; healthcare became difficult; and her disability support people could not come to help her at home.\textsuperscript{271} This made her feel very alone and very anxious during the lockdown.\textsuperscript{272} It had very significant impacts not just on her physical health but also

\textsuperscript{262} Transcript of Fiona Downing, Public hearing 5, 18 August 2020, P-69 [15-20].
\textsuperscript{263} Exhibit 5.21, Statement of Fiona Mary Downing, 12 August 2020, at [24]; Transcript of Fiona Mary Downing, Public hearing 5, 18 August 2020, P-63-P-73.
\textsuperscript{264} Exhibit 5.21, Statement of Fiona Mary Downing, 12 August 2020, at [24]; Transcript of Fiona Mary Downing, Public hearing 5, 18 August 2020, P-63-P-73.
\textsuperscript{265} Transcript of Eleanor Gibbs, Public hearing 5, 18 August 2020, P-63-P-73.
\textsuperscript{267} Transcript of Eleanor Gibbs, Public hearing 5, 18 August 2020, P-67 [10-15].
\textsuperscript{268} Exhibit 5.22, Statement of Eleanor Gibbs, 12 August 2020, at [7].
\textsuperscript{269} Exhibit 5.22, Statement of Eleanor Gibbs, 12 August 2020, at [7].
\textsuperscript{270} Exhibit 5.22, Statement of Eleanor Gibbs, 12 August 2020, at [8].
\textsuperscript{271} Exhibit 5.22, Statement of Eleanor Gibbs, 12 August 2020, at [8].
\textsuperscript{272} Exhibit 5.22, Statement of Eleanor Gibbs, 12 August 2020, at [9].
on her mental health.\textsuperscript{273} Ms Gibbs said that there was very little information about what to do and she cried, more than once, on the phone to her GP, while her GP helped her figure it out.\textsuperscript{274} It took nearly eight weeks for her to be able to find ways to get around things and to identify different ways of getting food. She is not on NDIS so she could access priority home delivery through the major supermarkets.\textsuperscript{275}

144. Ms Gibbs acknowledged that she was fortunate because she was employed, which meant that she could solve some of these issues by paying extra for different deliveries, paying more people to help, and buying more expensive groceries.\textsuperscript{276} She could afford internet, and knew where to go to get updates and filter through news and information.\textsuperscript{277} But even though that was the case for her, she gave evidence that it was ‘extremely distressing, incredibly scary and it was quite fast how those systems collapsed.’\textsuperscript{278} She noted that this was happening to many people, saying ‘and for what we were experiencing to be so invisible in the conversations from Government, the media, was extremely challenging at the same time.’\textsuperscript{279} Ms Gibbs expressed concern about those people with disability who live in poverty and cannot manage the increased expenses or the reduction of disability supports.\textsuperscript{280}

145. Ms Gibbs also gave evidence about PWDA’s response to COVID-19 pandemic. In particular, in May 2020, PWDA conducted a survey of people with disability, which found that many had shared the same experiences. People with disability talked about how alone and scared they had felt; that they had a fear of being exposed to COVID-19 and being abandoned or left behind; that they had faced increased expenses and at the same time, changes or reductions in disability supports; and that they had been using telehealth to access medical and allied health services.\textsuperscript{281}

146. Ms Gibbs emphasised the need for people with disability to have a seat at the table in all emergency planning and to ensure they are genuinely consulted and listened

\begin{footnotes}
\footnote{273}{Transcript of Eleanor Gibbs, Public hearing 5, 18 August 2020, P-67 [15-20].}
\footnote{274}{Exhibit 5.22, Statement of Eleanor Gibbs, 12 August 2020, at [9].}
\footnote{275}{Transcript of Eleanor Gibbs, Public hearing 5, 18 August 2020, P-67 [20-25].}
\footnote{276}{Exhibit 5.22, Statement of Eleanor Gibbs, 12 August 2020, at [10].}
\footnote{277}{Exhibit 5.22, Statement of Eleanor Gibbs, 12 August 2020, at [10].}
\footnote{278}{Transcript of Eleanor Gibbs, Public hearing 5, 18 August 2020, P-67 [25-30].}
\footnote{279}{Transcript of Eleanor Gibbs, Public hearing 5, 18 August 2020, P-67 [30].}
\footnote{280}{Exhibit 5.22, Statement of Eleanor Gibbs, 12 August 2020, at [11].}
\end{footnotes}
to.282 She said that ‘this must include a diversity of disabled people’s voices’ to capture all people with disability.283

Leonie Jackson (The Deaf Society)


148. Ms Jackson is the Executive Manager, Advocacy and Strategic Partnerships of The Deaf Society and Deaf Services Ltd.284

149. Ms Jackson explained that there are three main subgroups within the Deaf community and highlighted that these groups have different communication needs in the pandemic.285 The first group are people who are bilingual, meaning that they are able to communicate either in Auslan or English and move between both languages quite easily.286

150. The second group are monolingual Deaf people, meaning they rely on getting information in Auslan only.287 Often, people in this group will not understand the sophisticated language used by government representatives on television broadcasts.288

151. The third group are people who have particular communication needs because they have an additional disability, including people who are deafblind.289

152. Ms Jackson said that having Auslan interpreters appear on television screens during media briefings is important because people in the Deaf community rely upon receiving information in Auslan to understand what is going on.290

153. Ms Jackson highlighted some of the challenges presented by the widespread use of face masks for people who rely on lip-reading, particularly in the context of accessing health care.291

283 Exhibit 5.22, Statement of Eleanor Gibbs, 12 August 2020, at [23].
284 Exhibit 5.23, Statement of Leonie Mary Jackson, 11 August 2020, at [3].
285 Transcript of Leonie Jackson, Public hearing 5, 18 August 2020, P-77 [13-28].
286 Transcript of Leonie Jackson, Public hearing 5, 18 August 2020, P-77 [14-16].
287 Transcript of Leonie Jackson, Public hearing 5, 18 August 2020, P-77 [19-20].
288 Transcript of Leonie Jackson, Public hearing 5, 18 August 2020, P-77 [33-39].
289 Transcript of Leonie Jackson, Public hearing 5, 18 August 2020, P-77 [24-25].
290 Transcript of Leonie Jackson, Public hearing 5, 18 August 2020, P-76 [31-32].
291 Exhibit 5.23, Statement of Leonie Mary Jackson, 11 August 2020, at [29] – [34].
154. Ms Jackson said that many people in the Deaf community have experienced extreme isolation during the pandemic. This has been particularly problematic during the lockdown period for Deaf people who do not have good communication with their own family members or who do not have internet access at home.

155. Ms Jackson described the circumstances of a deafblind woman in her early 60s, who she referred to as ‘Fiona’. Fiona can only communicate through a form of tactile sign language. Due to her dementia and mobility issues, Fiona lives in an aged care facility. For six weeks during the lockdown, Fiona was unable to leave the aged care facility and her support worker from the Deaf Society was prevented from visiting. Fiona had ‘no idea why the lockdown was occurring and what was happening with coronavirus’. When a support worker was eventually able to visit, her ‘mental health had suffered a serious decline due to six weeks of no communication.’

156. During Ms Jackson’s oral evidence, three videos prepared by the Deaf Society were played.

157. The first video featured Naomie Hayman, a bilingual person who works in a professional capacity as a Literacy teacher for adult deaf students. Ms Hayman described her experience of taking her 11 year old son, who was unwell, to see a doctor during the pandemic. The doctor refused to lower his mask and required Ms Hayman’s 11 year old son to translate. Ms Hayman said:

I’m the mother, I need to communicate with the doctor, not my son. He’s 11, he’s not responsible for my communication. Also, is he going to interpret 100% accurately? No. He’s not a professional interpreter, he’s 11!

158. The second video featured Desley Lynn Donnell, who described her difficult experience of being prevented from visiting her deaf husband, who is the only deaf resident in an aged care facility. When COVID happened, no one told her that

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292 Transcript of Leonie Jackson, Public hearing 5, 18 August 2020, P-79 [10-13].
293 Transcript of Leonie Jackson, Public hearing 5, 18 August 2020, P-79 [13-18].
295 Transcript of Leonie Jackson, Public hearing 5, 18 August 2020, P-80 [30-31].
296 Exhibit 5.23, Statement of Leonie Mary Jackson, 11 August 2020, at [48].
297 Transcript of Leonie Jackson, Public hearing 5, 18 August 2020, P-81 [4-5].
298 Transcript of Leonie Jackson, Public hearing 5, 18 August 2020, P-81 [10-12].
299 Exhibit 5.23.6, DRC.9999.0012.0010; Exhibit 5.23.7, DRC.9999.0012.0011; Exhibit 5.23.8, DRC.9999.0012.0009.
300 Exhibit 5.23, Statement of Leonie Mary Jackson, 11 August 2020, at [42].
301 Exhibit 5.23, Statement of Leonie Mary Jackson, 11 August 2020, at [42].
302 Exhibit 5.23, Statement of Leonie Mary Jackson, 11 August 2020, at [42].
303 Exhibit 5.23, Statement of Leonie Mary Jackson, 11 August 2020, at [43].
visitors were unable to enter.\textsuperscript{304} They were only able to communicate through a glass window, but the reflection made it really difficult to sign to each other.\textsuperscript{305}

159. The third video featured Sue Frank, a Torres Strait Islander currently working for Deaf Services as Service Access Facilitator in Far North Queensland.\textsuperscript{306} Ms Frank describes her interactions with a Deaf Indigenous person from the Cape York Peninsula during the pandemic. The man told Ms Frank he was bored while isolated at home and that he wanted to move from Cape York. She tried to support him using video but the signal was poor in that region and it kept freezing. Eventually, the man moved to Cairns and is much happier there and is now having access to Deaf Services.\textsuperscript{307}

160. Ms Jackson said that Deaf people around Australia are at risk during the pandemic because they have very limited access to information.\textsuperscript{308} Most people get their information from radio, television and the internet but for many Deaf people, those modes are simply not accessible.\textsuperscript{309} Indigenous Deaf Australians are particularly at risk because the sign language used by interpreters on television broadcasts is not the same as the sign language that Indigenous people use.\textsuperscript{310}

161. Ms Jackson recommended that government establish a panel of expert people, which includes Deaf leaders and Deaf organisations, so that they can support the government and advise the government on how to ensure that their outreach is appropriate and how to contact people with different communication needs, such as Deaf Indigenous people.\textsuperscript{311}

Mary Sayers (CYDA)

162. Mary Sayers made a written statement to the Royal Commission and gave oral evidence on 19 August 2020.

163. Ms Sayers has been the CEO of Children and Young People with Disability Australia (CYDA) since July 2019.\textsuperscript{312} She has more than 20 years of experience

\textsuperscript{304} Exhibit 5.23, Statement of Leonie Mary Jackson, 11 August 2020, at [43].
\textsuperscript{305} Exhibit 5.23, Statement of Leonie Mary Jackson, 11 August 2020, at [43].
\textsuperscript{306} Exhibit 5.23, Statement of Leonie Mary Jackson, 11 August 2020, at [54].
\textsuperscript{307} Exhibit 5.23.5, EXP.0030.0001.0012 at 0013.
\textsuperscript{308} Transcript of Leonie Jackson, Public hearing 5, 18 August 2020, P-82 [21-26].
\textsuperscript{309} Transcript of Leonie Jackson, Public hearing 5, 18 August 2020, P-82 [24-26].
\textsuperscript{310} Transcript of Leonie Jackson, Public hearing 5, 18 August 2020, P-82 [30-31].
\textsuperscript{311} Transcript of Leonie Jackson, Public hearing 5, 18 August 2020, P-82 [38-44].
\textsuperscript{312} Exhibit 5.28, Statement of Mary Sayers, 12 August 2020, at [3].
working as an advocate for children and young people across research, policy and advocacy.\textsuperscript{313}

164. CYDA is the national representative organisation for children and young people with disability aged 0 to 25 years.\textsuperscript{314} CYDA’s vision is that children and young people with disability are afforded the opportunity to thrive and achieve their potential.\textsuperscript{315} CYDA serves to advocate systemically for the rights and interests of all children and young people with disability living in Australia, as individuals, members of a family and their community, at the national level.\textsuperscript{316}

165. Five days after the WHO declared the pandemic on 11 March 2020, CYDA conducted a survey to capture the experiences of children and young people with disability and their families in the first five weeks of the COVID-19 pandemic and identify unmet needs for resources and information.\textsuperscript{317} More than 700 people responded to the survey.\textsuperscript{318} The findings were published in CYDA’s report, \textit{More than isolated: The experience of children and young people with disability and their families during the COVID pandemic}.\textsuperscript{319} A key finding of the survey was that 82\% of survey respondents said they lacked information targeted at children and young people and their families, ‘and that this lack of information really exacerbated the stress and uncertainty’.\textsuperscript{320}

166. Other prominent themes identified in the responses were:

(a) an uncertainty about education, including school closures and the challenges from learning from home, with a concern that the progress gained by students with disability would be lost during the period\textsuperscript{321}

(b) an inability to access essential supplies ‘which were critical for the support of [a] child or young person’, including personal hygiene and incontinence products, special dietary products, groceries and special dietary products\textsuperscript{322}

\begin{enumerate}
\item Exhibit 5.28, Statement of Mary Sayers, 12 August 2020, at [3].
\item Exhibit 5.28, Statement of Mary Sayers, 12 August 2020, at [7].
\item Exhibit 5.28, Statement of Mary Sayers, 12 August 2020, at [10].
\item Exhibit 5.28, Statement of Mary Sayers, 12 August 2020, at [10].
\item Transcript of Mary Sayers, Public hearing 5, 19 August 2020, P-164 [27-31]; Exhibit 5.28, Statement of Mary Sayers, 12 August 2020, at [14].
\item Transcript of Mary Sayers, Public hearing 5, 19 August 2020, P-164 [35].
\item Exhibit 5.28.1, DRC.2000.0003.0219.
\item Transcript of Mary Sayers, Public hearing 5, 19 August 2020, P-164 [40-44]; Exhibit 5.28, Statement of Mary Sayers, 12 August 2020, at [16].
\item Transcript of Mary Sayers, Public hearing 5, 19 August 2020, P-164-165.
\item Transcript of Mary Sayers, Public hearing 5, 19 August 2020, P-165 [12-16]; Exhibit 5.28, Statement of Mary Sayers, 12 August 2020, at [17].
\end{enumerate}
(c) households feeling uncertain about the best ways to act and this having a detrimental impact on the mental health of all family members\(^{323}\) and

(d) the cancellation of services, supports and educational programs, ‘all of which generated additional caring responsibilities’.\(^{324}\)

167. CYDA conducted a second survey over seven weeks, across April to June 2020, which focused on ‘the educational experiences of students with disability, before and during the pandemic’.\(^{325}\) The results of this survey were published in a July 2020 report entitled *Not even remotely fair: The experience of students with disability during COVID-19*.\(^{326}\) More than 700 people responded to the survey, in addition to over 1,100 text comments.\(^{327}\) One of the key findings of the report was that ‘72% of students with disability were more socially isolated than their classmates’.\(^{328}\) They heard stories of students with disability being excluded from working with their peers or not being included in Zoom or virtual classrooms.\(^{329}\) Ms Sayers said that there was a significant reduction in the usual supports provided for students with disability, most notably supervision, social supports and individual support workers.\(^{330}\) In addition, 61% per cent of respondents said that students with disability had not received adequate educational support during the pandemic.\(^{331}\)

168. Ms Sayers said that the evidence of ABB reflects a story they had heard ‘time and time again,’ where the needs of the other students in the class were attended to before those of the student with disability, leading to ‘social isolation and disconnection from their peers’.\(^{332}\) They heard stories of low expectations being placed on students with disability, ‘things like worksheets being sent home, like wash the car, clean your room, do the dishes’ as well as students being sent home with complicated, unmodified work and being left to try and work it out for themselves.\(^{333}\)

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\(^{323}\) Transcript of Mary Sayers, Public hearing 5, 19 August 2020, P-165 [9-12]; Exhibit 5.28, Statement of Mary Sayers, 12 August 2020, at [15].


\(^{326}\) Exhibit 5.28.2, DRC.2000.0003.0121.

\(^{327}\) Transcript of Mary Sayers, Public hearing 5, 19 August 2020, P-172 [42].

\(^{328}\) Transcript of Mary Sayers, Public hearing 5, 19 August 2020, P-172 [6-7].

\(^{329}\) Transcript of Mary Sayers, Public hearing 5, 19 August 2020, P-172 [7-9].

\(^{330}\) Transcript of Mary Sayers, Public hearing 5, 19 August 2020, P-172 [6-11].

\(^{331}\) Transcript of Mary Sayers, Public hearing 5, 19 August 2020, P-172 [13-18].

\(^{332}\) Transcript of Mary Sayers, Public hearing 5, 19 August 2020, P-172 [20-22].

\(^{333}\) Transcript of Mary Sayers, Public hearing 5, 19 August 2020, P-172 [27-30], [32-37].
169. Ms Sayers said there was an ‘absolute lack of planning’ across governments for children and young people with disability.\(^{334}\) She also said that ‘ableist attitudes’ were informing the public narrative that students with disabilities and their families were to blame for their inability to cope with the remote learning situation.\(^{335}\)

170. Ms Sayers’ statement set out a significant number of recommendations for future emergency planning and responses, specifically in relation to the COVID-19 situation.\(^{336}\)

**Leah van Poppel (WDV)**

171. Leah van Poppel made a written statement dated 13 August 2020 and gave oral evidence, in a panel with Kirsten Deane, on 19 August 2020.

172. Ms van Poppel is the CEO of Women with Disabilities Victoria (WDV). She is also the Chair of the National Disability and Carer Alliance, responsible for overseeing the Every Australian Counts (EAC) campaign.\(^{337}\)

173. WDV is a peak organisation that is made up of, and for, women with disabilities.\(^{338}\) The organisation provides systemic advocacy to create positive changes for women with disabilities in Victoria, as well as working to increase the social connection of women with disabilities and ensure that violence against women with disabilities is addressed, prevented and responded to appropriately.\(^{339}\)

174. Ms van Poppel spoke about the experiences of women with disabilities during the COVID-19 pandemic which had been brought to her attention through her role at WDV and through her networks in disability advocacy and in the disability community. These experiences included increased isolation among women with disabilities;\(^{340}\) impacts to employment;\(^{341}\) issues of safety in public spaces;\(^{342}\) restrictions imposed in congregate settings, meaning, in turn, that informal safeguards are falling away;\(^{343}\) access to health services; and the loss of face-to-face support and services.\(^{344}\)

\(^{334}\) Transcript of Mary Sayers, Public hearing 5, 19 August 2020, P-174 [38-40].  
\(^{335}\) Transcript of Mary Sayers, Public hearing 5, 19 August 2020, P-174-175.  
\(^{336}\) Exhibit 5.28, Statement of Mary Sayers, 12 August 2020, at [106-125].  
\(^{337}\) Exhibit 5.27, Statement of Leah van Poppel, 13 August 2020, at [4].  
\(^{338}\) Transcript of Leah van Poppel, Public hearing 5, 19 August 2020, P-132 [24-27].  
\(^{339}\) Transcript of Leah van Poppel, Public hearing 5, 19 August 2020, P-132 [29-43].  
\(^{340}\) Transcript of Leah van Poppel, Public hearing 5, 19 August 2020, P-134-135.  
\(^{341}\) Transcript of Leah van Poppel, Public hearing 5, 19 August 2020, P-136-137.  
\(^{342}\) Transcript of Leah van Poppel, Public hearing 5, 19 August 2020, P-136 [9-26].  
\(^{343}\) Transcript of Leah van Poppel, Public hearing 5, 19 August 2020, P-136 [28-42].  
\(^{344}\) Transcript of Leah van Poppel, Public hearing 5, 19 August 2020, P-135-136.
175. Ms van Poppel said that one of the key issues for women with disabilities is isolation from services, informal supports like family and friends, and ‘a general lack of connection… to the outside world’. She said that ‘women with disability experience higher than average levels of social isolation and it is isolation which is one of the drivers of violence and abuse against women with disability’. Ms van Poppel explained that this is not because women are inherently vulnerable but because ‘perpetrators might choose to target women who are more isolated and more dependent on perpetrators or potential perpetrators for support, to do day-to-day things or for an emotional connection’. She said that isolation for women with disabilities is a ‘general issue before you even begin to talk about COVID’.

176. Ms van Poppel referred to a ‘known unknown’ around whether and how family and domestic violence has escalated during the COVID-19 pandemic. She said:

> Anecdotally what we understand is that family violence hotlines for women who do and don’t have disabilities are actually experiencing a lower number of calls at the moment. Lines that are set up to support men who are perpetrating violence have seen an increase in calls. But the general understanding across the board, before you bring disability into the picture, is that women are not feeling safe to make a phone call because they are in such close contact with their perpetrators at this point in time.

177. Ms van Poppel called for greater information sharing and data collection relating to COVID-19 and people with disabilities. She said that information sharing of this nature will ensure that the wider community understands the level of impact the pandemic has had, and will continue to have, on people with disability. Ms van Poppel also stressed the need to address the underlying drivers of violence against women and people with disability, with particular reference to resourcing supports, advocacy and attitudinal discrimination.

**Kirsten Deane (EAC)**


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345 Transcript of Leah van Poppel, Public hearing 5, 19 August 2020, P-134 [38-42].
346 Exhibit 5.27, Statement of Leah van Poppel, 13 August 2020, at [10].
348 Transcript of Leah van Poppel, Public hearing 5, 19 August 2020, P-135 [1-2].
349 Exhibit 5.27, Statement of Leah van Poppel, 13 August 2020, at [12].
350 Transcript of Leah van Poppel, Public hearing 5, 19 August 2020, P-135 [23-29].
351 Transcript of Leah van Poppel, Public hearing 5, 19 August 2020, P-142.
352 Transcript of Leah van Poppel, Public hearing 5, 19 August 2020, P-142 [8-18], [20-26].
353 Transcript of Leah van Poppel, Public hearing 5, 19 August 2020, P-142 [28-35].
179. Ms Deane is the Campaign Director of EAC. She has more than 25 years of experience in the disability sector as an academic, policy adviser and campaigner.\textsuperscript{354} Ms Deane previously served as a member, Deputy Chair and Co-chair of the National People with Disability and Carer Council.\textsuperscript{355}

180. EAC is a grassroots campaign that was initially launched in 2011 to fight for the introduction of the NDIS.\textsuperscript{356} Ms Deane said the EAC keeps people up-to-date and informed about how the NDIS works, gathers feedback about people’s experiences with the NDIS and uses this information to push the NDIA to make the changes people would like to see.\textsuperscript{357}

181. Between the end of April and the beginning of June, EAC conducted a short survey of people with disability and family members about changes to the NDIS during the first lockdown in Victoria.\textsuperscript{358} More than 700 people completed the survey including a small number of responses from people who work in the disability sector.\textsuperscript{359}

182. Ms Deane said the survey responses carried three ‘very strong messages’.\textsuperscript{360}

183. First, many people with disabilities and their families felt forgotten.\textsuperscript{361} Ms Deane said many respondents felt that the very real challenges they were facing were, at best, misunderstood or, at worst, ignored and dismissed as unimportant.\textsuperscript{362} By way of example, Ms Deane noted that the coronavirus supplement was not made available to the recipients of the Disability Support Pension (DSP) and the Carers Payment,\textsuperscript{363} notwithstanding that many people were facing significantly increased costs for NDIS aids, equipment and consumables and new costs associated with the purchase of PPE.\textsuperscript{364}

184. Secondly, many respondents spoke of their anxiety, stress and sense of being overwhelmed in trying to manage the impact of COVID-19 on their own disability or the disability of a family member without any additional assistance.\textsuperscript{365}

\textsuperscript{354} Exhibit 5.26, Statement of Kirsten Deane, 12 August 2020, at [3].
\textsuperscript{355} Exhibit 5.26, Statement of Kirsten Deane, 12 August 2020, at [5].
\textsuperscript{356} Exhibit 5.26, Statement of Kirsten Deane, 12 August 2020, at [9].
\textsuperscript{358} Exhibit 5.26, Statement of Kirsten Deane, 12 August 2020, at [19].
\textsuperscript{359} Exhibit 5.26, Statement of Kirsten Deane, 12 August 2020, at [20]; Exhibit 5.71, CTD.9700.0001.0020.
\textsuperscript{360} Exhibit 5.26, Statement of Kirsten Deane, 12 August 2020, [21].
\textsuperscript{361} Exhibit 5.26, Statement of Kirsten Deane, 12 August 2020, at [22].
\textsuperscript{362} Exhibit 5.26, Statement of Kirsten Deane, 12 August 2020, at [26].
\textsuperscript{363} Exhibit 5.26, Statement of Kirsten Deane, 12 August 2020, at [27].
\textsuperscript{364} Exhibit 5.26, Statement of Kirsten Deane, 12 August 2020, at [29] – [30].
\textsuperscript{365} Exhibit 5.26, Statement of Kirsten Deane, 12 August 2020, at [33] – [36].
185. Thirdly, many respondents were ‘frustrated by confusing and inconsistent information, an inability to use their funds in a way that worked for them and lack of support in trying to navigate the changes the pandemic had made to their lives.’\textsuperscript{366} For example, Ms Deane said in early April 2020, the NDIA encouraged participants to use their NDIS plan to purchase smart electronic devices to access therapies online. However, when the final policy was announced three weeks later, participants were now required to obtain a letter from a provider confirming their need for such a device.\textsuperscript{367} Ms Deane said people were frustrated and confused by the changes to the policy and concerned they would be forced to pay back funds already spent following the initial announcement.\textsuperscript{368}

186. Finally, Ms Deane called for increased funding for the disability advocacy sector, including for both systemic and individual advocacy.\textsuperscript{369} She noted that many advocacy organisations have ‘closed their books’ and some have closed their waiting lists.\textsuperscript{370} Ms Deane said this is unacceptable in the middle of a global pandemic when people urgently need help.\textsuperscript{371}

\textbf{Christian Astourian}


188. Mr Astourian is the Manager of the Diversity and Disability Program (\textbf{DnD}) at the Migrant Resource Centre, North-West Region, Victoria (the \textbf{Centre}).\textsuperscript{372} DnD is a disability self-advocacy program which provides support to people with a disability from a CALD background to speak for themselves and achieve their full potential as valued citizens of society.\textsuperscript{373}

189. Mr Astourian’s main role at the Centre is to coordinate support groups for people with a disability from CALD backgrounds.\textsuperscript{374} Since the commencement of the pandemic, the support groups have moved online through Zoom, although the number of groups they were able to run reduced from 5 to 2.\textsuperscript{375} Mr Astourian said that while it was good that these groups were able to operate online, not everybody

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{366} Exhibit 5.26, Statement of Kirsten Deane, 12 August 2020, at [44].
\item \textsuperscript{367} Transcript of Kirsten Deane, Public hearing 5, 19 August 2020, P-142 [22-23].
\item \textsuperscript{368} Transcript of Kirsten Deane, Public hearing 5, 19 August 2020, P-142 [31-36].
\item \textsuperscript{369} Transcript of Kirsten Deane, Public hearing 5, 19 August 2020, P-141 [28-29].
\item \textsuperscript{370} Transcript of Kirsten Deane, Public hearing 5, 19 August 2020, P-141 [31-33].
\item \textsuperscript{371} Transcript of Kirsten Deane, Public hearing 5, 19 August 2020, P-141 [33-34].
\item \textsuperscript{372} Exhibit 5.32, Statement of Christian Astourian, dated 29 July 2020, at [6].
\item \textsuperscript{373} Exhibit 5.32, Statement of Christian Astourian, dated 29 July 2020, at [8].
\item \textsuperscript{374} Exhibit 5.32, Statement of Christian Astourian, dated 29 July 2020, at [10].
\item \textsuperscript{375} Exhibit 5.32, Statement of Christian Astourian, dated 29 July 2020, at [13].
\end{itemize}
\end{footnotesize}
has been able to access them.\textsuperscript{376} Many people within these support groups ‘are very vulnerable’, ‘do not know how to use devices and technology’ or do not have access to the necessary technology such as a ‘fast internet connection’.\textsuperscript{377} As a result of this, ‘people who are already isolated before the pandemic have become even more isolated’.\textsuperscript{378}

190. Mr Astourian told the Royal Commission that people with disability from CALD backgrounds often do not ‘have access to important information from the government or organisations’.\textsuperscript{379} Throughout the course of the pandemic, information from the Federal Government has been translated from English into community languages.\textsuperscript{380} Mr Astourian said that messaging should first be translated into Easy English and then into community language.\textsuperscript{381} He says this would ‘simplify the language’, particularly considering that ‘there are people within the community who cannot read in their own language’.\textsuperscript{382}

191. Mr Astourian identified the main issues faced by people with disability during the COVID-19 pandemic as follows:

(a) the decrease in availability of disability support workers
(b) isolation, meaning that people with disability rely on few or one person for their support which can create situations of abuse and neglect
(c) disability support workers not being considered to be essential health care workers and, as such, having had to wait 5 to 7 days for COVID-19 test results
(d) the casualisation of the disability support workforce and probability of support staff working for more than one provider
(e) limited access to PPE and lack of training for staff in how to support people with a disability infected with COVID-19
(f) COVID-19 testing stations being inaccessible and often limited to people who have a car
(g) the supermarket community hour being unsuitable for people with disability

\textsuperscript{376} Exhibit 5.32, Statement of Christian Astourian, dated 29 July 2020, at [15].
\textsuperscript{377} Exhibit 5.32, Statement of Christian Astourian, dated 29 July 2020, at [15].
\textsuperscript{378} Exhibit 5.32, Statement of Christian Astourian, dated 29 July 2020, at [17].
\textsuperscript{379} Exhibit 5.32, Statement of Christian Astourian, dated 29 July 2020, at [23].
\textsuperscript{380} Exhibit 5.32, Statement of Christian Astourian, dated 29 July 2020, at [25].
(h) the increased police presence meaning that people with disability do not feel safe in their local community for fear of police questioning.383

192. Mr Astourian described what he understood to be the biggest issue at both government and community levels as:

…the very low expectation they have of people with a disability as citizens who achieve everyday life’s goals. As long as this attitude doesn’t change, people with a disability will never be considered as equals and have the same opportunities in life as ordinary citizens.384

Rachel Spencer (CID)


194. Ms Spencer is the Senior Manager, Inclusion Projects for the New South Wales (NSW) Council for Intellectual Disability (CID).385

195. Ms Spencer said that following the development of the Commonwealth Department of Health’s Management and Operational Plan for People with Disability: Australian Health Sector Emergency Response Plan for Novel Coronavirus (COVID-19) (Management and Operational Plan), CID held consultations with people with intellectual disability. The purpose of the consultations were to understand the experiences of people with intellectual disability during the COVID-19 pandemic, and to get feedback on the Management and Operational Plan and inform the revision and implementation of it.386

196. Ms Spencer said that key issues highlighted through the consultation process included various health concerns, employment issues, difficulties with access to information and extreme restrictions placed on people living in group homes.387 Ms Spencer said that the ‘real standout’ for them was the impact on people’s mental health, their sense of self-worth and their relationships with family members and people in their community.388

197. Ms Spencer said that the people they spoke to who lived in supported accommodation or group homes, or whose lives are dominated by service

383 Exhibit 5.32.1, IND.0039.0001.0004; Transcript of Christian Astourian, Public hearing 5, 20 August 2020, P-245-247.
384 Exhibit 5.32.1, IND.0039.0001.0004.
386 Exhibit 5.25, Statement of Rachel Spencer, 11 August 2020, at [13].
388 Transcript of Rachel Spencer, Public hearing 5, 19 August 2020, P-125 [25].
provision, perhaps through an employment service or a day program, experienced ‘massive impacts’. This was a result of a lot of shutdown and blanket restrictions being brought in on people’s movements within their homes and out in the community, and in terms of visitors they were or were not allowed to have.

198. Ms Spencer said that the findings from the consultation process were published in a final report which made 12 recommendations, many of which were directed at ensuring that information was available in an accessible and appropriate format for people with intellectual disability. She said that access to information and being able to get local and accurate knowledge about their situation and their location is really important. The amount of information that is out there, and the reliance on internet and devices, is something that a lot of people with intellectual disability struggle with, in a range of areas.

Natalie Wade

199. Natalie Wade made a written statement dated 10 August 2020, to be read in conjunction with a submission provided to the Royal Commission on 6 April 2020, and gave oral evidence on 21 August 2020.

200. Ms Wade is the founder and principal lawyer of Equality Lawyers, a law firm based in Adelaide, South Australia (SA) which provides access to justice for people with disability. Ms Wade is also an expert advisor to AFDO.

201. Ms Wade gave evidence to the Royal Commission about her client, ABE, and her client’s son, ABD. ABD lives with a number of disabilities including ASD, intellectual disability and complex post-traumatic stress disorder. For the previous 5 years, ABD lived in respite accommodation. Due to fears around coronavirus and the service provider wishing to close its premises, during the pandemic ABD was faced with forcible removal from his accommodation. Ms Wade said that ABD ‘lived in an archaic version of Disability Services accommodation’ which had ‘extinguished all of his tenancy rights’. As a lawyer Ms Wade found she ‘had no legal recourse to be able to stop the service provider...

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389 Transcript of Rachel Spencer, Public hearing 5, 19 August 2020, P-123 [30-32].
390 Transcript of Rachel Spencer, Public hearing 5, 19 August 2020, P-123 [30-35].
391 Exhibit 5.25.1, IND.0033.0001.0001.
392 Transcript of Rachel Spencer, Public hearing 5, 19 August 2020, P-127 [17-18].
393 Transcript of Rachel Spencer, Public hearing 5, 19 August 2020, P-129 [15-35].
394 Exhibit 5.5.1, SUB.100.00625.
395 Transcript of Natalie Wade, Public hearing 5, 21 August, P-371 [28-29].
396 Transcript of Natalie Wade, Public hearing 5, 21 August, P-371 [35].
397 Exhibit 5.5.1, SUB.100.00625 at 0003.
398 Transcript of Natalie Wade, Public hearing 5, 21 August, P-372 [28-29].
forcibly removing him’.399 Ultimately Ms Wade’s client found a private rental accommodation for her son and paid six months’ rent upfront.400

202. Ms Wade explained that during the COVID shutdown the ‘disability rights movement had snapped back at least 15 years’.401 Although Australia had seen a gradual ‘progression of the recognition and promotion of human rights and people with disabilities… when COVID hit… human rights were immediately disintegrated [to the extent that her client’s son] couldn’t choose where he lived’.402 She stated:

The pandemic has shown a real flaw in how we are able to respect, acknowledge and promote the rights of people with disability in the community. Without a public emergency we may never have realised how close to the surface the faults in the system are, the faults that the disability community and sector thought were in decades gone by. It has been particularly disturbing to see the intuitive tendency to revert to policies or institutionalisation.403

203. In terms of what she thought could make a real difference to people with disability during a pandemic, Ms Wade advocated for greater autonomy for people with disability to manage their NDIS plans, in particular with respect to purchasing of PPE.404 A further recommendation from Ms Wade was for the NDIS to have specific practice standards to be used during times of national emergency.405 This, she said, could be done with a view to ensuring the NDIS Commission ‘could properly investigate and respond to providers who fail to keep people with disabilities safe and privy to the quality of life expected of all Australians’.406

204. Following the hearing, Mr Graeme Head AO, Commissioner of the NDIS Commission provided a supplementary statement in response to Ms Wade’s evidence.

Damian Griffis (FPDN)

206. Mr Griffis is the Chief Executive Officer of the First Peoples Disability Network (FPDN), a role he has held since 2010. Mr Griffis is a member of the Royal Commission’s First Nations People Strategic Advisory Group. FPDN is a national organisation representing Aboriginal and Torres Strait Islander people with disability and their families, that is entirely owned and operated by Aboriginal and Torres Strait Islander people with disability. FPDN also endorsed the Statement of Concern and co-signed the Open Letter to the National Cabinet.

207. Prior to giving oral evidence, Mr Griffis had read the statement of the Deputy CEO of FPDN, Ms Riemer, together with the transcript of her pre-recorded evidence. He stated that he is in agreement with the evidence of Ms Riemer.

208. Mr Griffis spoke of the ‘double disadvantage’ experienced by Aboriginal and Torres Strait Islander people with disability, saying ‘they often face discrimination based on their disability and discrimination based on their race’. Mr Griffis gave evidence that the ‘vast majority of Aboriginal and Torres Strait Islander people with disability live in poverty’ and that ‘Elders and First Nations people with disability are especially vulnerable to the COVID-19 pandemic, due to co-morbidities, compromised immune systems and because of the poverty that many… experience’. From the outset of the pandemic, FPDN was very concerned about the particular vulnerabilities of Aboriginal and Torres Strait Islander people with disability. This was especially so for those living in remote communities.

209. FPDN also noted the need for a specific focus on the unique needs of First Nations people with disability in responding to the pandemic. This included through the provision of effective and accessible messaging; the creation of a framework detailing principles and recommendations regarding ethical decision-making in health care settings for First Peoples living with disability; and the need for the

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407 Exhibit 5.34, Statement of Damian Griffis, dated 11 August 2020, at [4].
408 Exhibit 5.34, Statement of Damian Griffis, dated 11 August 2020, at [7].
409 Exhibit 5.34, Statement of Damian Griffis, dated 11 August 2020, at [8].
410 Exhibit 5.20.3, FPD.9999.0001.0001.
411 Exhibit 5.20.4, FPD.9999.0001.0018.
412 The evidence of Ms Riemer is set out below.
413 Transcript of Damian Griffis, Public Hearing 5, 20 August 2020, P-255 [21-23].
414 Exhibit 5.34, Statement of Damian Griffis, dated 11 August 2020, at [9].
415 Exhibit 5.34, Statement of Damian Griffis, dated 11 August 2020, at [9].
416 Exhibit 5.34, Statement of Damian Griffis, dated 11 August 2020, at [16].
417 Exhibit 5.34, Statement of Damian Griffis, dated 11 August 2020, at [14].
418 Exhibit 5.34, Statement of Damian Griffis, dated 11 August 2020, at [14].
419 Exhibit 5.34, Statement of Damian Griffis, dated 11 August 2020, at [15].
210. Mr Griffis stated that, in FPDN’s experience, what is most often lacking is resources - ‘things like access to appropriate wheelchairs in remote communities; food security; responsive, flexible services; accessible footpaths and vehicles; accessible online environments’. He stated that this lack of resources is an issue which has been brought into sharp focus by the pandemic.

211. Overall, Mr Griffis said that the pandemic has ‘really exacerbated the issues that Aboriginal and Torres Strait Islander people have trying to navigate three worlds – the world of Aboriginal justice; the world of disability justice; and the world of everybody else.’

Mr Griffis made a number of recommendations seeking to address the issues he has highlighted.

June Riemer (FPDN)

212. June Riemer made a statement dated 5 August 2020 and pre-recorded her oral evidence on 6 August 2020, part of which was shown to the Royal Commission during the public hearing on 20 August 2020. Ms Riemer’s statement and pre-recorded evidence were tendered as exhibits at the hearing on 20 August 2020.

213. Ms Riemer has been the Deputy Chief Executive Officer of FPDN since 2011. She has over 40 years’ experience in the Community Care and Disability industry, as an Aboriginal Development Officer, an Aboriginal Homecare Manager and in program development. Ms Riemer also represents Aboriginal and Torres Strait Islander people with disability internationally at the United Nations, as a board member for the Commonwealth Disabled Peoples Forum and the Pacific Disability Forum.

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423 Exhibit 5.34, Statement of Damian Griffis, dated 11 August 2020, at [49].
424 Exhibit 5.34, Statement of Damian Griffis, dated 11 August 2020, at [49]
425 Exhibit 5.34, Statement of Damian Griffis, dated 11 August 2020, at [50].
427 Exhibit 5.33.1, DRC.9999.0012.0013; Exhibit 5.33.3, DRC.9999.0012.0001; Exhibit 5.33.4, DRC.9999.0011.0013; Exhibit 5.33.2, DRC.9999.0011.0001.
428 See Transcript, Public hearing 5, 20 August 2020, P-249 [23-41].
429 Exhibit 5.33, Statement of June Riemer, dated 5 August 2020, at [4].
430 Exhibit 5.33, Statement of June Riemer, dated 5 August 2020, at [4].
431 Exhibit 5.33, Statement of June Riemer, dated 5 August 2020, at [7].
214. Ms Riemer described the FPDN’s partnership with the Al-Ihsan Foundation, which is an international foundation who approached FPDN as they saw that ‘Aboriginal and Torres Strait Islander communities were particularly disadvantaged during the pandemic’. This partnership resulted in the distribution of emergency care packages throughout NSW to people living with disability and other vulnerable individuals such as those affected by recent bushfires. This was particularly important in the context of the pandemic as people had difficulty obtaining food and other essentials, particularly in rural and remote regions.

215. Ms Riemer gave evidence of the systemic issues which have been exacerbated as a result of the pandemic. Ms Riemer said ‘this crisis has exacerbated the extreme poverty, lack of education and lack of support which many Aboriginal and Torres Strait Islander communities deal with on a day to day basis’. Ms Riemer spoke of the difficulties of some First Nations people accessing basics such as food. Ms Riemer said that in the early days of the pandemic she heard of community members who would make at times lengthy trips to larger regional centres only to find that ‘all the basic utilities or food supplies that they needed were gone’.

216. As to education, Ms Riemer stated that particularly in remote communities some ‘Aboriginal and Torres Strait Islander children are now well behind academically because they did not have support networks or infrastructure to learn from home’. She observed that this may be ‘for a range of reasons, for example, because children do not have secure housing; their parents were not able to be in the home with them during the day because of work or caring responsibilities; or because they did not have facilities such as a laptop or strong internet connection’.

217. Ms Riemer spoke of the Tennant Creek Community Hub (Community Hub) which was established by FPDN in 2018 and has come to be an important source of cultural knowledge and a culturally safe space where everyone is welcome within the community. The Royal Commission heard that the Community Hub was ‘there from the beginning of the pandemic helping people with disability understand things such as the appropriate way to wash their hands and other ways to protect themselves without essential PPE.’ The Community Hub is also a crucial

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433 Exhibit 5.33.2, DRC.9999.0011.0001 at 0004 and 0005.
434 Transcript of June Riemer, Public hearing 5, 20 August 2020, P-252 [24-25].
435 Exhibit 5.33, Statement of June Riemer, dated 5 August 2020, at [16].
436 Transcript of June Riemer, Public hearing 5, 20 August 2020, P-253 [4-5].
437 Exhibit 5.33, Statement of June Riemer, dated 5 August 2020, at [17].
438 Exhibit 5.33, Statement of June Riemer, dated 5 August 2020, at [17].
439 Exhibit 5.33, Statement of June Riemer, dated 5 August 2020, at [23].
440 Exhibit 5.33, Statement of June Riemer, dated 5 August 2020, at [23].
resource for people in Tennant Creek, offering access to community advocates, clean drinking water, and internet and telephone facilities amongst many other things.\textsuperscript{441} Despite these positive outcomes the Community Hub had to be closed, almost entirely, during the pandemic as a lack of funding meant that appropriate resources of PPE could not be provided in order for the Community Hub to continue operating safely.\textsuperscript{442} This meant that an important place for Elders and people with disability was lost during this time.\textsuperscript{443}

218. Ms Riemer also spoke of the important role of the media during the pandemic. She gave evidence about ‘cracks in the system’\textsuperscript{444} when looking at media coverage from a disability perspective, noting that there was ‘no concerted coverage or narrative about including people with disability in the national conversation’.\textsuperscript{445} Ms Riemer said that media which includes more visual content would assist people who engage with and relate to oral and visual material, making them ‘stop and listen and think this is for me, you know, rather than everyone in the community’.\textsuperscript{446} This is about ‘individualising needs that are culturally appropriate’.\textsuperscript{447}

219. Looking towards the future, Ms Riemer would like to see a change in policy at all levels of Government and in non-government programs to ensure ‘better education and training around the needs of Aboriginal and Torres Strait Islander people with disability’.\textsuperscript{448}

**Expert witnesses**

**Catalina Devandas Aguilar**


**The impact of COVID-19 on people with disability**

221. Ms Devandadas said the COVID-19 pandemic is revealing and deepening pre-existing inequalities and barriers experienced by people with disability, exposing

\textsuperscript{441} Exhibit 5.33, Statement of June Riemer, dated 5 August 2020, at [23-26].  
\textsuperscript{442} Exhibit 5.33, Statement of June Riemer, dated 5 August 2020, at [28].  
\textsuperscript{443} Exhibit 5.33, Statement of June Riemer, dated 5 August 2020, at [30].  
\textsuperscript{444} Exhibit 5.33 Statement of June Riemer, dated 5 August 2020, at [33].  
\textsuperscript{445} Exhibit 5.33 Statement of June Riemer, dated 5 August 2020, at [34].  
\textsuperscript{446} Exhibit 5.33.2, DRC.9999.0011.0001 at 0010.  
\textsuperscript{447} Exhibit 5.33.2, DRC.9999.0011.0001 at 0010.  
\textsuperscript{448} Exhibit 5.33, Statement of June Riemer, dated 5 August 2020, at [45].
the extent of their exclusion.\textsuperscript{449} It also showed that there is a lack of a strong human rights-based framework for people with disability, which has resulted in either a lack of response or inadequate responses, and at worse discrimination causing direct damage to people with disability.\textsuperscript{450}

222. Ms Devandas described the impact of COVID-19 in the area of health.\textsuperscript{451} She gave evidence that people with disability’s health may be disproportionately affected due to serious disruptions to the support services they may rely on\textsuperscript{452} and discrimination in accessing emergency health services.\textsuperscript{453}

223. Ms Devandas also spoke about the impact of COVID-19 on the education of people with disability.\textsuperscript{454} She said there was an increased risk of students with disability being excluded from education, and the gap in their education increasing.\textsuperscript{455} She noted this might heighten the risk of these students being consequently educated in segregated educations settings, which was said to be against the Convention on the Rights of Persons with Disabilities (\textit{CRPD}).\textsuperscript{456}

224. In the area of employment, Ms Devandas said that people with disability are more likely to lose their job and experience greater difficulties in returning to work.\textsuperscript{457} She said they also have reduced access to social insurance.\textsuperscript{458}

225. Ms Devandas described the situation of people with disability living in institutional settings, which she described as one of the gravest outcomes of the pandemic.\textsuperscript{459} She said that in these settings people with disability are locked in and are more vulnerable to contracting the virus.\textsuperscript{460} She told the Royal Commission that institutions, including group homes, nursing homes and psychiatric facilities, have

\textsuperscript{449} Exhibit 5.29, Statement of Catalina Devandas Aguilar, 10 August 2020, at [18].
\textsuperscript{450} Transcript of Catalina Devandas Aguilar, Public hearing 5, 19 August 2020, P-189 [25-29].
\textsuperscript{451} Exhibit 5.29, Statement of Catalina Devandas Aguilar, 10 August 2020, at [20]; Transcript, Catalina Devandas Aguilar, Public hearing 5, 19 August 2020, P-184 [9-21].
\textsuperscript{452} Exhibit 5.29, Statement of Catalina Devandas Aguilar, 10 August 2020, at [21].
\textsuperscript{453} Transcript of Catalina Devandas Aguilar, Public hearing 5, 19 August 2020, P-184 [25-29].
\textsuperscript{454} Transcript of Catalina Devandas Aguilar, Public hearing 5, 19 August 2020, P-184 [40-46].
\textsuperscript{455} Exhibit 5.29, Statement of Catalina Devandas Aguilar, 10 August 2020, at [22]; Transcript, Catalina Devandas Aguilar, Public hearing 5, 19 August 2020, P-185 [1-3].
\textsuperscript{456} Transcript of Catalina Devandas Aguilar, Public hearing 5, 19 August 2020, P-185 [1-6].
\textsuperscript{457} Exhibit 5.29, Statement of Catalina Devandas Aguilar, 10 August 2020, at [22]; Transcript, Catalina Devandas Aguilar, Public hearing 5, 19 August 2020, P-185 [8-9].
\textsuperscript{458} Exhibit 5.29, Statement of Catalina Devandas Aguilar, 10 August 2020, at [22]; Transcript of Catalina Devandas Aguilar, Public hearing 5, 19 August 2020, P-185 [9-10].
\textsuperscript{459} Transcript of Catalina Devandas Aguilar, Public hearing 5, 19 August 2020, P-185 [24-25].
\textsuperscript{460} Transcript of Catalina Devandas Aguilar, Public hearing 5, 19 August 2020, P-186 [8].
become hotspots of the pandemic or ‘traps’. Ms Devandas said that people with disability have been isolated in institutions during the COVID-19 pandemic and consequently are at a greater risk of violence, abuse and neglect.

Ms Devandas also gave evidence that women with disability are disproportionately at risk of gender-based violence and abuse during the COVID-19 pandemic, as they are more likely to be confined at home and have less access to support services, including shelters. She also spoke to the situation of children with disability, who are at heightened risk of witnessing or suffering violence and abuse when in lockdown. She said this was coupled with not having the same access to other people, for instance teachers, to report abuse at home.

Human-rights based response to COVID-19

Ms Devandas gave evidence that to address the disproportionate impacts of COVID-19 on people with disability, countries need to work on disability inclusion and strengthen the foundations of their implementation of the CRPD. She said that policy responses, including emergency responses, ‘must adhere to and promote international human rights norms and standards, including those established in the CRPD.’ This means that planning for and responding to emergencies should be based on a human-rights based approach.

She gave evidence that a human rights-based approach, upon which the CRPD is based, considers people with disability as right-holders and focuses on how barriers in society – for example a lack of accessibility – are the cause of the challenges people with disability face in seeking to enjoy their human rights. The human rights-based approach also calls on societies to embrace diversity and to challenge ableism, which she believes is the root cause of the many human rights violations people with disability experience.

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461 Exhibit 5.29, Statement of Catalina Devandas Aguilar, 10 August 2020, at [28]; Transcript of Catalina Devandas Aguilar, Public hearing 5, 19 August 2020, P-186 [9].
462 Transcript of Catalina Devandas Aguilar, Public hearing 5, 19 August 2020, P-185 [41-42].
463 Exhibit 5.29, Statement of Catalina Devandas Aguilar, 10 August 2020, at [30].
464 Exhibit 5.29, Statement of Catalina Devandas Aguilar, 10 August 2020, at [31]; Transcript of Catalina Devandas Aguilar, Public hearing 5, 19 August 2020, P-186 [16-19].
466 Transcript of Catalina Devandas Aguilar, Public hearing 5, 19 August 2020, P-186 [26-31].
467 Exhibit 5.29, Statement of Catalina Devandas Aguilar, 10 August 2020, at [18].
468 Exhibit 5.29, Statement of Catalina Devandas Aguilar, 10 August 2020, at [15].
469 Exhibit 5.29, Statement of Catalina Devandas Aguilar, 10 August 2020, at [13].
470 Transcript of Catalina Devandas Aguilar, Public hearing 5, 19 August 2020, P-183 [8-11].
471 Transcript of Catalina Devandas Aguilar, Public hearing 5, 19 August 2020, P-183 [13-18].
229. Ms Devandas referred to the following practical guidance documents she helped to prepare to assist countries:

(a) WHO, *Disability considerations during the COVID-19 outbreak*, 26 March 2020\(^{472}\)

(b) United Nations Secretary-General, *Policy brief: A disability-inclusive response to COVID-19*, May 2020\(^{473}\)


230. Ms Devandas also said that all public policy should be developed and implemented under a human rights framework.\(^{475}\) This involves ensuring people with disability are at the centre of the conversation; giving people with disability back their full citizenship and legal capacity; providing high quality inclusive supports and services people with disability may need in the community; and ending segregation.\(^{476}\)

231. Ms Devandas said that the COVID-19 pandemic offers an unprecedented opportunity to rethink laws and policies to be more inclusive of people with disability and use the CRPD as the guiding framework.\(^{477}\)

**Rosemary Kayess**

232. Rosemary Kayess made a statement dated 13 August 2020 and gave oral evidence on 18 August 2020.\(^{478}\) Ms Kayess made her statement and appeared at the hearing on behalf of the United Nations Committee on the Rights of Persons with Disabilities (the CRPD Committee).

233. In her written statement, Ms Kayess said that:

> In the early days of the pandemic, mainstream media and the Government’s coverage of the COVID-19 outbreak in Australia tended to focus on the view that for most people the COVID-19 virus was a mild flu and that those at risk were older

\(^{472}\) Exhibit 5.29.6, EXP.0027.0001.0999.

\(^{473}\) Exhibit 5.19.34, EXP.0027.0001.2029.

\(^{474}\) Exhibit 5.29.5, EXP.0027.0001.1382.

\(^{475}\) Transcript of Catalina Devandas Aguilar, Public hearing 5, 19 August 2020, P-189 [16-27].

\(^{476}\) Transcript of Catalina Devandas Aguilar, Public hearing 5, 19 August 2020, P-189 [29-37].

\(^{477}\) Exhibit 5.29, Statement of Catalina Devandas Aguilar, 10 August 2020, at [36-37].

people and those with pre-existing health conditions, including people with disability.  

234. Ms Kayess said that media reporting and Government messaging have reinforced ‘the pervasive and unconscious ableism and ageism that is inherent throughout society and social institutions’. This messaging suggests that older people and people with disability are ‘less valued, not viewed as part of the general community and therefore expendable’. Ms Kayess expressed her concern about the use of the word ‘vulnerable’ to describe people with disability. She said that the assumption that people with disability are inherently vulnerable, ‘mean[s] that people with disability are one of the most excluded groups in the COVID-19 pandemic response, including in terms of health prevention and response actions, economic and social support measures, and transmission risk mitigation strategies’. This assumption impacts the way policies are developed for people with disability in that ‘what gets built around people are service systems that deal with one small aspect of the person, but don’t look at the person as a whole…the individual gets lost’.

235. Ms Kayess’ evidence also looked at some of the major policy announcements of the Commonwealth Government in responding to the COVID-19 pandemic. Ms Kayess identified a two month period, from mid-February to mid-April, within which ‘there was no active or coordinated plan for people with disability in the response to the COVID-19 pandemic’. During this time ‘people with disability had little or no targeted accessible information about the virus symptoms, and how to protect themselves, such as how to physically distance when support workers are required to assist with personal care’. The exclusion of people with disability from the early days of Australia’s response ‘created significant fear, anxiety and confusion’ among people with disability.

236. Ms Kayess also spoke about the development of the Commonwealth Department of Health Advisory Committee on Health Emergency Response to Coronavirus (COVID-19) for People with Disability (Advisory Committee) and the Management and Operational Plan in April. Ms Kayess expressed her concern for

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479 Exhibit 5.19, Statement of Rosemary Kayess, 13 August 2020, at [21].
480 Exhibit 5.19, Statement of Rosemary Kayess, 13 August 2020, at [22].
481 Exhibit 5.19, Statement of Rosemary Kayess, 13 August 2020, at [22].
482 Transcript of Rosemary Kayess, Public hearing 5, 18 August 2020, P-32-33.
483 Transcript of Rosemary Kayess, Public hearing 5, 18 August 2020, P-32-33; Exhibit 5.19, Statement of Rosemary Kayess 13 August 2020, at [23].
484 Transcript of Rosemary Kayess, Public hearing 5, 18 August 2020, P-33 [25-34].
485 Exhibit 5.19, Statement of Rosemary Kayess, 13 August 2020, at [25].
486 Exhibit 5.19, Statement of Rosemary Kayess, 13 August 2020, at [25].
487 Exhibit 5.19, Statement of Rosemary Kayess, 13 August 2020, at [35].
the high level nature of the Management and Operational Plan, and the extent to
which the plan is reliant on ‘practical implementation and guidance’ through the
NDIS and state and territory governments.\footnote{Transcript of Rosemary Kayess, Public hearing 5, 18 August 2020, P-37 [16-37]; Exhibit 5.19, Statement of Rosemary Kayess, 13 August 2020, at [30].} Ms Kayess said that the Management and Operational Plan should have acted as a ‘framing document’, with other plans coming out of it, such as implementation plans, at State and community level.\footnote{Transcript of Rosemary Kayess, Public hearing 5, 18 August 2020, P-37 [16-24].} As it was, the Management and Operational Plan was not accessible and did not provide a lot of clarity for people with disability.\footnote{Transcript of Rosemary Kayess, Public hearing 5, 18 August 2020, P-37 [35-37].} She also expressed concerns about the makeup of the Committee; ‘Although people were represented on the Advisory Committee, they consulted a significant minority, and it is unclear how their expertise was meaningfully prioritised and what weight their views and concerns were given’.\footnote{Exhibit 5.19, Statement of Rosemary Kayess, 13 August 2020, at [34]; Transcript of Rosemary Kayess, Public hearing 5, 18 August 2020, P-37 [21-24].}

237. Ms Kayess co-authored a statement of concern entitled ‘COVID-19: Human rights, disability and ethical decision-making’ which was commissioned by a number of representative and advocacy organisations and released.\footnote{Exhibit 5.20.4, FPD.9999.0001.0001; Transcript, 18 August 2020; Statement of Rosemary Kayess, dated 13 August 2020.} The statement was developed in response to a concern that ‘any increasing demand on critical health treatment and intensive medical care will require decisions to be made about life-saving treatment that could seriously undermine the rights of people with disability’.\footnote{Transcript of Rosemary Kayess, Public hearing 5, 18 August 2020, P-38 [8-9].} Ms Kayess spoke about healthcare rationing proposals from Canada and England which ‘highlighted the ways that decisions were going to be made about critical care triage’.\footnote{Transcript of Rosemary Kayess, Public hearing 5, 18 August 2020, P-38 [9-10].} She said that these decisions ‘were being made on blatant arbitrary diagnostic status with no clinical reference whatsoever’.\footnote{Transcript of Rosemary Kayess, Public hearing 5, 18 August 2020, P-38 [10-13].} This meant that there was ‘no recognition of a person’s rights to equality in the standard of health care’ and based primarily on their diagnostic status, people with disability ‘would not receive critical care’.\footnote{Transcript of Rosemary Kayess, Public hearing 5, 18 August 2020, P-39 [4-7].}

238. Ms Kayess said that despite her ‘very privileged life’, the COVID-19 pandemic showed her that the life of her and other people with disability was expendable.\footnote{Transcript of Rosemary Kayess, Public hearing 5, 18 August 2020, P-38 [8-9].} She referred to her personal experience and said:

\begin{quote}

\end{quote}
I have a very high level of spinal cord injury. I have a history of bronchitis and have pneumonia and it is my Achilles heel. To be blunt, COVID scares the fuck out of me…it really does.498

239. Ms Kayess called for a human rights approach to the ongoing COVID-19 response and recovery efforts for people with disability.499 A human rights approach is a disability-inclusive approach which means that people with disability, and their issues and concerns, should be included in all planning efforts across governments and by other stakeholders, not just those efforts that pertain to people with disability.500 In addition, this approach should be ‘informed by rigorous disability-inclusive research methods for the collection of disaggregated data and a robust evidence base’.501

Professor Anne Kavanagh

240. Professor Anne Kavanagh made a written statement dated 12 August 2020 and gave oral evidence on 20 August 2020.

241. Professor Kavanagh is the Chair of Disability and Health and the head of the Disability and Health Unit at the Centre of Health Equity in the Melbourne School of Population and Global Health at the University of Melbourne.502 She is also the Co-Director and Lead Investigator on the Centre of Research Excellence in Disability and Health (CRE-DH)503 and the Academic Director of the Melbourne Disability Institute at the University of Melbourne.504

Public health response

242. Professor Kavanagh explained that the purpose of a ‘public health response’ is to prevent an exponential rise of cases by restricting the contact that people have with others who could potentially have the infection.505 Certain measures are aimed at reducing contact between people, including restrictions on travel, closing borders, closing schools and workplaces.506 The public health response also includes recommendations around physical distancing and personal hygiene

498 Transcript of Rosemary Kayess, Public hearing 5, 18 August 2020, P-38 [40-43].
500 Exhibit 5.19, Statement of Rosemary Kayess, 13 August 2020, at [47].
501 Exhibit 5.19, Statement of Rosemary Kayess, 13 August 2020, at [47].
502 Exhibit 5.30, Statement of Professor Anne Kavanagh, 12 August 2020, at [3].
503 Exhibit 5.30, Statement of Professor Anne Kavanagh, 12 August 2020, at [4].
504 Exhibit 5.30, Statement of Professor Anne Kavanagh, 12 August 2020, at [5].
505 Transcript of Anne Kavanagh, Public hearing 5, 20 August 2020, P-202 [30-46].
506 Transcript of Anne Kavanagh, Public hearing 5, 20 August 2020, P-202 [36-39], [41-42].
aimed at preventing the spread of the virus. The public health response requires everyone in the population to participate in reducing the spread of the virus.

People with disability ‘at risk’

243. Professor Kavanagh said that people with disability are an ‘at risk’ population in the COVID-19 pandemic because many have other health conditions and are therefore more likely to have deleterious health outcomes or die if they become infected with SARS-CoV-2. People with disability, particularly those with complex needs, are also at increased risk if they rely on personal support, making it impossible to physically distance. Disability support workers ‘may provide support to many other people… increasing the chance of workers contracting SARS-CoV-2 and passing it on to the people they support and vice versa.’

Response of governments

244. Professor Kavanagh said that, in her opinion, the response of governments was relatively slow despite the known potential risks for people with disability in emergency situations.

245. Professor Kavanagh was one of a group of academics with the CRE-DH who, on 16 March 2020, published a position statement expressing concern that the health sector was underprepared to meet the urgent needs of people with disability and that the disability service sector was not able to meet the care needs of people with disability. The statement contained two recommendations: firstly, the health care sector's capacity to care for people with disability should be rapidly scaled up; and secondly the capacity of the disability care workforce to respond to the pandemic and its consequences need to be rapidly increased.

246. The CRE-DH issued a second position statement on 24 March 2020 as it was dissatisfied with the government response to date and wanted to make further recommendations. The recommendations included that ‘National Cabinet...
organises a Committee of expert advisers knowledgeable in disability and health service provision.\textsuperscript{518} This recommendation recognised that the pandemic is a public health emergency, that it needs ‘a coordinated health and disability response’\textsuperscript{519} and that ‘they can’t be siloed responses.’\textsuperscript{520}

247. By 2 April 2020, the Commonwealth Department of Health established the Advisory Committee, which was formed to develop the Management and Operational Plan.\textsuperscript{521} Professor Kavanagh is a member of the Advisory Committee.\textsuperscript{522}

248. The CRE-DH issued a third statement dated 13 July 2020, which recommended a number of ‘immediate actions’.\textsuperscript{523} The first group of recommendations related to proactive community outreach to households, which could be undertaken by community workers.\textsuperscript{524} The second set of recommendations related to specific health care and social welfare initiatives that could include a range of measures to ensure that testing could be done for people with disability in an appropriate manner.\textsuperscript{525} The third and fourth group of recommendations were specific actions that the NDIA, the NDIS Commission and state and territory government agencies should be doing to prepare for localised ‘clusters’.\textsuperscript{526}

249. In relation to the delineation of responsibilities between the Commonwealth and state and territory governments, Professor Kavanagh said ‘I don’t care whose responsibility it is, I just want them to work together and come up with the best response.’\textsuperscript{527}

Data

250. Professor Kavanagh gave evidence about the lack of availability and transparency of data.\textsuperscript{528} Professor Kavanagh said that she does not know the number of people with disability who have contracted COVID-19 or who have died due to the virus.\textsuperscript{529} This is because ‘there is no routine data collected about people with disabilities…

\textsuperscript{518} Exhibit 5.30.4, EXP.0031.0001.0043 at 0044.
\textsuperscript{519} Transcript of Anne Kavanagh, Public hearing 5, 20 August 2020, P-207 [4-5].
\textsuperscript{520} Transcript of Anne Kavanagh, Public hearing 5, 20 August 2020, P-207 [5].
\textsuperscript{521} Exhibit 5.80, DRC.2000.0002.0551 at 0563.
\textsuperscript{522} Transcript of Anne Kavanagh, Public hearing 5, 20 August 2020, P-208 [13-20].
\textsuperscript{523} Exhibit 5.30.11, EXP.0031.0001.0008.
\textsuperscript{524} Exhibit 5.30.11, EXP.0031.0001.0008 at 0009.
\textsuperscript{525} Exhibit 5.30.11, EXP.0031.0001.0008 at 0010.
\textsuperscript{526} Exhibit of Anne Kavanagh, Public hearing 5, 20 August 2020, P-211 [21-46].
\textsuperscript{527} Transcript of Anne Kavanagh, Public hearing 5, 20 August 2020, P-210 [13-15].
\textsuperscript{528} Exhibit 5.30, Statement of Professor Anne Kavanagh, 12 August 2020, at [72], [89-100].
\textsuperscript{529} Transcript of Anne Kavanagh, Public hearing 5, 20 August 2020, P-213 [4-13].
[or] on the support, which makes it very hard for us to know the extent of the problem.'530

251. Professor Kavanagh said that the only data that she is aware of is the data reported to the NDIS Commission by service providers.531 However, this figure is likely to undercount the number of NDIS participants with disability testing positive because services may not be aware of positive cases among participants who are using services not registered with the NDIS.532 The NDIS Commission also receives notifications of infections among disability support workers, however, these figures are likely to be undercounted because workers who are employed directly by participants or through online platforms may not be reported.533

252. Professor Kavanagh also noted that the data reported to the NDIS Commission will not include people who are not NDIS participants, including residents of State-funded group homes.534

Response of NDIA and NDIS Commission

253. Professor Kavanagh expressed the view that the NDIA and the NDIS Commission could have been better aligned with best practice public health response to better protect people with disability in the pandemic.535 This view is based on two key areas of concern.

254. The first relates to Professor Kavanagh’s view that the NDIA and the NDIS Commission have ‘no background in public health’.536 She recommended that the NDIA and the NDIS Commission rapidly scale up their capacity in relation to a public health response and that they work closely with people in public health in the Commonwealth and States.537

255. The second concern relates to the lack of directives from the NDIA or the NDIS Commission in relation to whether service providers could continue to operate.538 This concern does not relate to group homes, which need to continue to operate, but rather relates to the provision of services such as day services and supported employment services.539 Professor Kavanagh said that, while the NDIS

530 Transcript of Anne Kavanagh, Public hearing 5, 20 August 2020, P-213 [31-33].
531 Transcript of Anne Kavanagh, Public hearing 5, 20 August 2020, P-213 [19-21].
532 Exhibit 5.30, Statement of Professor Anne Kavanagh, 12 August 2020, at [96].
533 Exhibit 5.30, Statement of Professor Anne Kavanagh, 12 August 2020, at [97].
534 Transcript of Anne Kavanagh, Public hearing 5, 20 August 2020, P-213 [27-29].
535 Exhibit 5.30, Statement of Professor Anne Kavanagh, 12 August 2020, at [73], [101-125].
536 Transcript of Anne Kavanagh, Public hearing 5, 20 August 2020, P-215 [7-8].
538 Exhibit 5.30, Statement of Professor Anne Kavanagh, 12 August 2020, at [103-117].
539 Transcript of Anne Kavanagh, Public hearing 5, 20 August 2020, P-215 [29-31].
Commission did provide services with information, it was incumbent on the providers themselves to make the decision as to whether they could continue to provide the service.\(^{540}\) Professor Kavanagh expressed concerns about leaving these decisions to service providers in circumstances where they are dependent on providing that service to maintain financial viability.\(^{541}\) Further, the NDIA’s policy of adding a 10% loading during the pandemic created a perverse financial incentive to stay open.\(^{542}\)

**Preparedness of the disability workforce**

256. Professor Kavanagh gave evidence about the preparedness of the disability workforce.\(^{543}\) In early August, Professor Kavanagh was part of the team that published a report, *Disability Support Workers, the Forgotten Workforce of COVID-19*, which was based on a survey of 357 disability support workers in June 2020.\(^{544}\) The report found that 23% of respondents had not received any COVID-19 infection control training. Of the 77% of workers who did receive training, 48% would like more training.\(^{545}\)

257. Professor Kavanagh said that using full PPE (meaning gowns, goggles, masks and gloves) is a highly technical skill which cannot be taught ‘by watching a video’.\(^{546}\) It was stated that where there is a COVID-positive environment, there is a need for ‘health staff working alongside the support workforce to enable the support workforce to stay safe and for people with disabilities to stay safe’.\(^{547}\)

258. Professor Kavanagh said that the disability sector has a highly transient, casualised workforce. This is a risk factor because casual, low paid workers have greater incentive to attend work when they are sick.\(^{548}\) In relation to paid pandemic leave for the disability sector workforce, she said that is ‘an absolute must…so they don’t come to work sick’.\(^{549}\)

259. Support workers often work across multiple group homes, some work for multiple providers and some work in aged care. Professor Kavanagh described this as a ‘perfect storm’ and called for consideration being given to restricting workers’

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\(^{540}\) Transcript of Anne Kavanagh, Public hearing 5, 20 August 2020, P-215 [26-30].

\(^{541}\) Transcript of Anne Kavanagh, Public hearing 5, 20 August 2020, P-216 [1-2].

\(^{542}\) Transcript of Anne Kavanagh, Public hearing 5, 20 August 2020, P-216 [6-17]; Exhibit 5.30, Statement of Professor Anne Kavanagh, 12 August 2020, at [119].

\(^{543}\) Exhibit 5.30, Statement of Professor Anne Kavanagh, 12 August 2020, at [132-145].

\(^{544}\) Exhibit 5.30.12, EXP.0031.0001.0094.

\(^{545}\) Exhibit 5.30.12, EXP.0031.0001.0094 at 0097.

\(^{546}\) Transcript of Anne Kavanagh, Public hearing 5, 20 August 2020, P-219 [14-22].

\(^{547}\) Transcript of Anne Kavanagh, Public hearing 5, 20 August 2020, P-219 [22-25].

\(^{548}\) Exhibit 5.30, Statement of Professor Anne Kavanagh, 12 August 2020, at [140].

\(^{549}\) Transcript of Anne Kavanagh, Public hearing 5, 20 August 2020, P-220 [44-46].
movements between settings.\textsuperscript{550} This would require ‘much greater collaboration across the sector’ and it would be necessary to make sure that support workers do not suffer financially as a result.\textsuperscript{551}

**Dr Jason Agostino (NACCHO)**


261. Dr Agostino is a GP and epidemiologist, as well as being a medical advisor for the National Aboriginal Community Controlled Health Organisation (NACCHO).\textsuperscript{552} For the last decade, Dr Agostino has worked ‘mainly in the field of Aboriginal and Torres Strait Islander health’.\textsuperscript{553}

262. NACCHO is a peak body representing 143 Aboriginal Community Controlled Health Organisations (ACCHOs) across Australia on Aboriginal and Torres Strait Islander health and wellbeing issues.\textsuperscript{554} The ACCHOs affiliated with NACCHO ‘provide about three million episodes of care each year for over 400,000 people’.\textsuperscript{555}

263. Dr Agostino gave evidence that:

   In 2018-19, it was estimated around 306,100 Aboriginal and Torres Strait Islander people were people with disability, representing 38 per cent of the Aboriginal and Torres Strait Islander population. The percentage of Aboriginal and Torres Strait Islander people with disability is considerably higher than the percentage of people with disability in the non-Indigenous population (18 per cent).\textsuperscript{556}

264. Dr Agostino gave evidence that Aboriginal and Torres Strait Islander people ‘are at risk of both rapid spread and more severe disease due to COVID-19’.\textsuperscript{557} Dr Agostino also spoke about the ways in which the pandemic has ‘led to several specific issues and challenges for Aboriginal and Torres Strait Islander people with disability’.\textsuperscript{558}

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\textsuperscript{550} Transcript of Anne Kavanagh, Public hearing 5, 20 August 2020, P-220 [26-31].

\textsuperscript{551} Transcript of Anne Kavanagh, Public hearing 5, 20 August 2020, P-220 [33-36].

\textsuperscript{552} Exhibit 5.35, Statement of Dr Jason Agostino, 12 August 2020, at [3], [6a].

\textsuperscript{553} Exhibit 5.35, Statement of Dr Jason Agostino, 12 August 2020, at [5].

\textsuperscript{554} Exhibit 5.35, Statement of Dr Jason Agostino, 12 August 2020, at [8].

\textsuperscript{555} Exhibit 5.35, Statement of Dr Jason Agostino, 12 August 2020, at [9].


\textsuperscript{557} Exhibit 5.35, Statement of Dr Jason Agostino, 12 August 2020, at [15].

\textsuperscript{558} Exhibit 5.35, Statement of Dr Jason Agostino, 12 August 2020, at [18].
265. One of the challenges faced by Aboriginal and Torres Strait Islander people living in discrete remote communities was around access to essential support services as a result of travel restrictions.\textsuperscript{559} While Dr Agostino noted that these travel restrictions were requested by community leaders and supported by NACCHO, they did create a barrier to support services entering these communities where they were not seen as ‘essential services’.\textsuperscript{560} The Royal Commission also heard about the different rules across jurisdictions around travel outside of immediate communities to access, for example, ‘hospital-based procedures, specialist review or specialised allied health services’, and how some people were required to quarantine for 14 days upon return to the community.\textsuperscript{561}

266. Dr Agostino also spoke of the need for appropriate accommodation for individuals required to isolate while awaiting test results or having tested positive to COVID-19. Dr Agostino noted that the ‘default model of isolation is for people in spacious homes, who are able-bodied and do not have caring responsibilities’.\textsuperscript{562} Acknowledging there is ‘no easy solution for this problem’,\textsuperscript{563} Dr Agostino said that there was ‘no clear guidance provided’ on how a person should isolate if they live in a crowded house, have responsibilities to care for others, or are themselves in need of care or daily support.\textsuperscript{564} Dr Agostino also highlighted the importance of the proactive provision of ‘culturally appropriate psychological and medical supports’ for people in isolation or quarantine.\textsuperscript{565}

267. Amongst other suggestions for improvement, Dr Agostino recommended that:

(a) Aboriginal and Torres Strait Islander organisations be given opportunities ‘that go beyond advocacy and provide the chance to be involved in structures that set policy direction’\textsuperscript{566}

(b) more significant funding be directed to ACCHOs given their ‘demonstrated ability to provide culturally safe care and their existing relationships’ within communities\textsuperscript{567}

\textsuperscript{559} Exhibit 5.35, Statement of Dr Jason Agostino, 12 August 2020, at [19].
\textsuperscript{560} Exhibit 5.35, Statement of Dr Jason Agostino, 12 August 2020, at [20].
\textsuperscript{561} Exhibit 5.35, Statement of Dr Jason Agostino, 12 August 2020, at [21].
\textsuperscript{562} Exhibit 5.35, Statement of Dr Jason Agostino, 12 August 2020, at [32].
\textsuperscript{563} Exhibit 5.35, Statement of Dr Jason Agostino, 12 August 2020, at [33].
\textsuperscript{564} Exhibit 5.35, Statement of Dr Jason Agostino, 12 August 2020, at [32].
\textsuperscript{565} Exhibit 5.35, Statement of Dr Jason Agostino, 12 August 2020, at [33].
\textsuperscript{566} Exhibit 5.35, Statement of Dr Jason Agostino, 12 August 2020, at [54].
\textsuperscript{567} Exhibit 5.35, Statement of Dr Jason Agostino, 12 August 2020, at [55].
(c) continued improvements are made to telehealth services and that programs such as telehealth are considered at the time of program development to address systemic issues such as isolation.568

(d) a greater recognition is given to the public health functions of ACCHOs and that legislative changes are made to support better co-ordination and information sharing with public health units.569

268. Dr Agostino spoke about the strengths of the response to the COVID-19 pandemic to date, specifically referring to the formation of the Aboriginal and Torres Strait Islander COVID-19 Advisory group in March 2020;570 and the use of point-of-care testing machines.571 In Dr Agostino’s view, it is important to ‘give the due credit to Aboriginal and Torres Strait Islander people and their communities’, noting that the potential threat was identified early and communities were very proactive.572 Furthermore, Dr Agostino opined that this successful response has highlighted that ‘the government prioritising Aboriginal and Torres Strait Islander voices and listening to Aboriginal and Torres Strait Islander experts gets results’.573

**Associate Professor Michelle Villeneuve**

269. Associate Professor Michelle Villeneuve made a written statement dated 31 July 2020 and gave oral evidence on 19 August 2020.

270. Associate Professor Villeneuve leads the Disability Inclusive Community Development research stream at the Centre for Disability Research and Policy at the University of Sydney.574

271. In the Disability Inclusive Community Development research stream, Associate Professor Villeneuve and her team bring together ‘the best of community development strategies, working with people to grow good practices at the local community level with the systematic application of research methodologies to bring out the best of what we know, and also look at how we might scale or transfer good practices to other communities and other contexts’.575 Associate Professor Villeneuve has developed a website called Collaborating 4 Inclusion which

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568 Exhibit 5.35, Statement of Dr Jason Agostino, 12 August 2020, at [56], [57].
569 Exhibit 5.35, Statement of Dr Jason Agostino, 12 August 2020, at [58].
570 Exhibit 5.35, Statement of Dr Jason Agostino, 12 August 2020, at [34].
571 Exhibit 5.35, Statement of Dr Jason Agostino, 12 August 2020, at [43].
572 Transcript of Dr Jason Agostino, Public hearing 5, 20 August 2020, P-268 [46]-P-269 [3].
573 Transcript of Dr Jason Agostino, Public hearing 5, 20 August 2020, P-269 [5-7].
574 Transcript of Associate Professor Michelle Villeneuve, Public hearing 5, 19 August 2020, P-94 [34-40].
575 Transcript of Associate Professor Michelle Villeneuve, Public hearing 5, 19 August 2020, P-94 [42-46].
contains information about a number of the projects she has undertaken and provides resources to assist people with disability to begin the planning process.576

272. Associate Professor Villeneuve’s work which she shared with the Royal Commission has centred on a Person-Centred Emergency Preparedness approach (PCEP) and Disability Inclusive Disaster Risk Reduction (DIDRR). In her evidence, Associate Professor Villeneuve described PCEP as an approach which:

…marries person-centred planning and person-centred approaches with emergency preparedness. What it does is it provides a process tool and framework that allows people with disability to have a tailored emergency preparedness plan that matches two things: their capabilities and their strengths, what they are able to do; and their support needs, what they need support with.577

273. DIDRR is ‘about making sure the needs, voices and perspectives of people with disability are included in disaster risk management practices’.578 Associate Professor Villeneuve stressed that DIDRR ‘requires cross-sector communication and collaboration’ to ensure that people with disability ‘are safe and their wellbeing is recognised throughout’ periods of disaster.579

274. Associate Professor Villeneuve identified the role of key players in the emergency preparedness world: people with disability, service providers and emergency managers.580 She said:

People with disability experience challenges as a result of disabling environments and exclusion daily, however this impact is intensified when the entire community is destabilised, such as during disasters triggered by a natural hazard emergency and pandemic. In such cases, people with disabilities are disproportionately impacted. Whilst people with disabilities and chronic health conditions may have additional support needs that increase their vulnerability in such events, these factors do not remove their right to be included and be active participants in emergency preparedness.581

275. The PCEP Toolkit, which is a User Guide and a series of videos that illustrate the PCEP in action,582 and Framework was developed in 2017-18 by Associate Professor Villeneuve and her team as part of a project funded under the Joint State

576 Transcript of Associate Professor Michelle Villeneuve, Public hearing 5, 19 August 2020, P-95 [1-3].
577 Transcript of Associate Professor Michelle Villeneuve, Public hearing 5, 19 August 2020, P-95 [23-28].
578 Transcript of Associate Professor Michelle Villeneuve, Public hearing 5, 19 August 2020, P-95 [43-45].
579 Transcript of Associate Professor Michelle Villeneuve, Public hearing 5, 19 August 2020, P-96 [4-7].
580 Exhibit 5.24, Statement of Associate Professor Michelle Villeneuve, 31 July 2020, at [62-72].
581 Exhibit 5.24, Statement of Associate Professor Michelle Villeneuve, 31 July 2020, at [62].
582 Exhibit 5.24, Statement of Associate Professor Michelle Villeneuve, 31 July 2020, at [10].
and Commonwealth Natural Disaster Resilience Program.\(^{583}\) The COVID-19 pandemic struck while work was advancing on the peer support approach to disseminating and putting the PCEP Toolkit and Workbook into practice, leading to the development of a PCEP Planning Guide for COVID-19.\(^{584}\) The PCEP Planning Guide is available in multiple versions, including a version for Queensland (QLD),\(^{585}\) one for the ACT,\(^{586}\) a National version;\(^{587}\) an Easy Read version;\(^{588}\) and a Pacific Island region version.\(^{589}\) Associate Professor Villeneuve shared that there are now '17 peer support groups’ facilitating PCEP for COVID-19 conversations.\(^{590}\)

**Dr Ariella Meltzer**

276. Dr Ariella Meltzer made a written statement dated 7 August 2020 and gave oral evidence on 20 August 2020.

277. Dr Meltzer is a Research Fellow with the Centre for Social Impact (CSI) at the University of New South Wales.\(^{591}\)

278. Dr Meltzer said that ‘accessible information’ refers to information that can be used and understood by people with disability, because it appropriately accommodates their support needs.\(^{592}\) For example, documents may use large text, wide spacing or certain sans serif fonts to be visually accessible for people with low vision.\(^{593}\) Conceptual accessibility means that information uses easy language and only the main points so it is easy to understand. Common formats in Australia are Easy Read and Easy English and translating information into Auslan.\(^{594}\)

279. Between March and late May 2020, Dr Meltzer compiled a list of information on the virus that claimed to be accessible for people with disability.\(^{595}\) Dr Meltzer said that

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583 Exhibit 5.24, Statement of Associate Professor Michelle Villeneuve, 31 July 2020, at [12-14]; Exhibit 5.24.4, EXP.0025.0001.0028.

584 Exhibit 5.24, Statement of Associate Professor Michelle Villeneuve, 31 July 2020, at [41].

585 Exhibit 5.24, Statement of Associate Professor Michelle Villeneuve, 31 July 2020, at [41]; Exhibit 5.24.19, EXP.0025.0001.0363.

586 Exhibit 5.24.20, EXP.0025.0001.0406.

587 Exhibit 5.24.21, EXP.0025.0001.0434.

588 Exhibit 5.24, Statement of Associate Professor Michelle Villeneuve, 31 July 2020, at [43]; Exhibit 5.24.22, EXP.0025.0001.0389.

589 Exhibit 5.24, Statement of Associate Professor Michelle Villeneuve, 31 July 2020, at [44]; Exhibit 5.24.23, EXP.0025.0001.0462.

590 Exhibit 5.24, Statement of Associate Professor Michelle Villeneuve, 31 July 2020, at [42]; Transcript of Associate Professor Michelle Villeneuve, Public hearing 5, 19 August 2020, P-101 [24-26].

591 Exhibit 5.31, Statement of Dr Ariella Meltzer, 7 August 2020, at [4].

592 Transcript of Ariella Meltzer, Public hearing 5, 20 August 2020, P-227 [8-10].


594 Transcript of Ariella Meltzer, Public hearing 5, 20 August 2020, P-227 [10-25].

595 Exhibit 5.31, Statement of Dr Ariella Meltzer, 7 August 2020, at [18].
she did not use a systematic approach when compiling the list and acknowledged that there are, therefore, limitations to it from a research perspective. 596

280. Dr Meltzer said that to make accessibility work well it is necessary in a fast-moving crisis, such as COVID, that producers of accessible information need to be thinking about the timing of when it comes out, how it is disseminated, who makes it and issues about the coverage of information. 597 Dr Meltzer emphasized the need for resources to be frequently updated in the context of the pandemic and said that only some producers did this. 598

281. She said that, in mid-March, accessible resources were produced by disability advocacy agencies or specialist information access services. 599 The NDIS produced accessible resources for NDIS participants in mid-March. 600 Other government branded easy information came out in late March. 601 Dr Meltzer said that, while government branded resources were updated, those updates did not occur at the same pace as some of the other organisations. 602

282. In order to make information about COVID-19 accessible and accurate, Dr Meltzer said there needs to be collaboration between organisations who are making the accessible information (who have skills in making the resource accessible) and health and legal experts (who can check the accuracy of the medical information included). 603

Professor Julian Trollor

283. Professor Julian Trollor provided a written statement dated 7 August 2020. Professor Trollor did not give oral evidence at this hearing. Professor Trollor’s statement and annexures were tendered as exhibits at the hearing on 20 August 2020. 604

284. Professor Trollor is a specialist neuropsychiatrist with a focus on cognitive disability. He is the Chair in Intellectual Disability Mental Health and Head of the

596 Transcript of Ariella Meltzer, Public hearing 5, 20 August 2020, P-228 [7-9].
597 Transcript of Ariella Meltzer, Public hearing 5, 20 August 2020, P-228 [26-31].
598 Transcript of Ariella Meltzer, Public hearing 5, 20 August 2020, P-230 [1-3].
599 Transcript of Ariella Meltzer, Public hearing 5, 20 August 2020, P-228 [6-8].
600 Exhibit 5.31, Statement of Dr Ariella Meltzer, 7 August 2020, at [25].
601 Exhibit 5.31, Statement of Dr Ariella Meltzer, 7 August 2020, at [26].
602 Transcript of Ariella Meltzer, Public hearing 5, 20 August 2020, P-230 [10-13].
603 Transcript of Ariella Meltzer, Public hearing 5, 20 August 2020, P-230 [39-47].
604 See Transcript, Public hearing 5, 20 August 2020, P-224 [28-40].
Department of Developmental Disability Neuropsychiatry at the University of NSW.  

285. Professor Trollor said that the COVID-19 pandemic highlights the need for high quality and readily available information and resources, as well as better collation, sharing and dissemination of these resources, to improve access to healthcare for people with intellectual disability, autism or other developmental disabilities. He said this is a well-established issue for people with disability but it has been highlighted by the urgency and the risk inherent in COVID. He also said that the limited connectivity between the health system and disability supports is ‘extremely problematic in the context of the pandemic’.

286. Despite initiatives such as the Commonwealth Department of Health funded trial of a COVID-19 Health Professionals National Disability Advisory Service, there continues to be an unmet need for information and resources for people with intellectual or developmental disability.

287. Professor Trollor said that the resources that are needed include:

   (a) accessible information and resources for people with intellectual or developmental disabilities and their families about health and wellbeing issues

   (b) information and training resources for disability professionals about the health and wellbeing of people with intellectual disabilities

   (c) information and training resources for health professionals about the health and wellbeing of people with intellectual or developmental disabilities.

288. Professor Trollor said that a disability health resource hub (or clearing house), funded by the Australian Government could be a ‘one-stop-shop’ to map and collate these resources; identify gaps; identify preferred methodologies for the development of future resources; plan and execute their development; and ensure their dissemination, promotion and uptake.

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605 Exhibit 4-8.1, EXP.0015.0001.0001.
606 Exhibit 5.36, Statement of Professor Julian Trollor, 7 August 2020, at [3], [10].
607 Exhibit 5.36, Statement of Professor Julian Trollor, 7 August 2020, at [10].
608 Exhibit 5.36, Statement of Professor Julian Trollor, 7 August 2020, at [12].
610 Exhibit 5.36, Statement of Professor Julian Trollor, 7 August 2020, at [22].
Commonwealth Government witnesses

289. Each of the Commonwealth Government witnesses provided written statements in response to a Notice to Give a Statement in Writing. These witnesses were asked to address specific questions set out in the Notice. They were not required to address each and every aspect of the Commonwealth Government’s response to COVID-19 with respect to people with disability. We recognise that there were many experiences and issues raised by witnesses with lived experience, advocates, service providers and experts that were not addressed in the Notices and the Royal Commission did not ask the Commonwealth Government witnesses to respond to those issues prior to Public hearing 5.

290. The following summaries are directed to the witness statements and the oral evidence.

Dr Nick Coatsworth

291. Dr Nick Coatsworth provided a written statement dated 7 August 2020, in response to a Notice to Give a Statement in Writing, and gave oral evidence on 21 August 2020.

292. Dr Coatsworth holds the position of Deputy Chief Medical Officer (CMO), Commonwealth Department of Health.

293. The Royal Commission drew Dr Coatsworth’s attention to the absence of any reference to the needs of people with disability in the Department’s health emergency, pandemic and communicable disease plans prior to COVID-19 and the COVID-19 Plan published on 18 February 2020.

294. In his statement, Dr Coatsworth explained that the pre COVID-19 plans set out the ‘high-level arrangements’ that the health sector will follow in response to a communicable disease outbreak or pandemic and do not ‘deal directly with any specific groups’. He said the COVID-19 Plan was designed to guide the initial Australian health sector response to the virus. It was intended to be a ‘living document’, updated as more is learnt about the virus and key at-risk groups.

295. In response to a series of questions about the drafting and purpose of the CDNA National Guidelines for the Prevention, Control and Public Health Management of COVID-19 Outbreaks in Residential Care Facilities in Australia (Residential Care Facilities Guidelines), Dr Coatsworth said they were developed by the

612 Transcript of Dr Nick Coatsworth, Public hearing 5, 21 August 2020, P-355 [18-40].
614 Exhibit 5.44, Statement of Dr Nick Coatsworth, 7 August 2020, at [4].
Communicable Diseases Network Australia (CDNA) for the purpose of providing best practice information for the prevention and management of COVID-19 outbreaks in residential care facilities. He said they were intended to apply to disability accommodation.

296. Dr Coatsworth said the NDIS Commission was not consulted in relation to the first version of the Residential Care Facilities Guidelines because the aged care sector was the focus of consultation. He said the Department did not distribute the Residential Care Facilities Guidelines to disability accommodation or the disability workforce directly.

297. On the availability of PPE, Dr Coatsworth said that PPE distribution from the National Medical Stockpile (NMS) is managed by the Department and prioritised for acute health services and primary care staff supplied and distributed by the States and Territories, GPs, Pharmacists, ACCHOs and allied health professionals. He said that since early April 2020, PPE has been made available in limited quantities from the NMS to providers and support workers for people with disability in accordance with protocols to prioritise those most in need.

298. Dr Coatsworth said that following the release of the Management and Operation Plan and, as at 17 July 2020, 72,000 surgical masks have been provided by the NMS to the NDIA for distribution to NDIS participants and 500,000 masks have been set aside to support the disability sector as required.

299. In relation to people with disability who are not NDIS participants, Dr Coatsworth said that following the Victorian Government’s introduction of the policy of mandatory mask wearing there has been an increase in PPE distribution from the NMS stockpile to Victoria, including disability support workers in the past two weeks.

300. In relation to COVID-19 testing, Dr Coatsworth said in his statement that testing arrangements for people with disability ‘are consistent with that of the general population’. He acknowledged in his oral evidence, however, that not all testing arrangements for the general population are accessible to some people with...


disability and said that in such cases testing arrangements should be made through a primary health provider.\(^{624}\)

301. Dr Coatsworth’s attention was drawn to the absence of data identifying the number of people with disability who had contracted COVID-19. He explained that using disability as an identifier within the National Notifiable Diseases Surveillance System, which is concerned with real-time actionable data for whole of community control of a communicable disease, would not have had a material impact on the ability to control the pandemic within its early phases.\(^{625}\)

**Simon Cotterell**


303. Mr Cotterell is the First Assistant Secretary, Primary Care Division, Department of Health (the *Department*).\(^{626}\)

304. Mr Cotterell confirmed that he was the most senior officer directly involved in coordinating the health response to assist people with disability.\(^{627}\) For a period of about four months, he was taken offline from day-to-day duties to focus on the Primary Care Response to the COVID-19 pandemic.\(^{628}\)

305. In his oral evidence Mr Cotterell said that, as at 5 February 2020, the date of his previous witness statement, there were no emergency health response initiatives that specifically targeted people with cognitive disability in the Primary Health Networks.\(^{629}\)

306. Mr Cotterell acknowledged that data is not collected about the incidence of COVID-19 among people with disability.\(^{630}\) He said the Department had requested that the CDNA include a disability ‘flag’ within the National Notifiable Diseases Surveillance System to capture the incidence of COVID-19 among people with disability or adjust their data collection settings to capture the incidence of COVID-19 among people with disability living in disability accommodation. Both requests were rejected.\(^{631}\) However, the CDNA determined that it would create an additional data

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\(^{624}\) Transcript of Dr Nick Coatsworth, Public hearing 5, 21 August 2020, P-363 [11-17].

\(^{625}\) Transcript of Dr Nick Coatsworth, Public hearing 5, 21 August 2020, P-351 [1-13].

\(^{626}\) Exhibit 5.43, Statement of Simon Cotterell, 5 February 2020.

\(^{627}\) Transcript of Simon Cotterell, Public hearing 5, 21 August 2020, P-313 [28-29].

\(^{628}\) Transcript of Simon Cotterell, Public hearing 5, 21 August 2020, P-313 [9-22].

\(^{629}\) Transcript of Simon Cotterell, Public hearing 5, 21 August 2020, P-316 [10-31].

\(^{630}\) Exhibit 5.42, Statement of Simon Cotterell, 10 August 2020, at [22].

capture field described as ‘other residential care facility setting’ as distinct from the existing ‘aged care facility setting’.  

307. Mr Cotterell explained how the Advisory Committee was established on 2 April 2020.  

308. Mr Cotterell said the role of the Advisory Committee was to guide the development and oversee implementation of the Management and Operational Plan to address the specific health needs of people with disability, their families, carers and support workers.  

309. The Management and Operational Plan was released on 17 April 2020. Mr Cotterell said the Department drafted the initial and subsequent iteration of the Management and Operational Plan with the Advisory Committee, state and territory representatives and wider disability stakeholders. The Department developed a Communications Strategy for People with Disability to support the Management and Operational Plan and short form and easy read versions of the document were published on the Department’s website on 5 May 2020.  

310. Mr Cotterell said in his statement that, prior to the release of the Management and Operational Plan on 17 April 2020, advice about minimising the impact of COVID-19 specifically addressed to people with disability was released in the form of the Residential Care Facilities Guidelines on 13 March 2020; online infection, prevention and control training for care workers including those workers in the disability sector on 16 March 2020; and the Coronavirus Guide for Home Care Providers on 2 April 2020.  

311. In his oral evidence Mr Cotterell said, however, that he was unaware the first version of the Residential Care Facilities Guidelines made no reference to people with disability. He said there had been no evaluation of the effectiveness of this online training since it was released and that he was not in a position to respond to the suggestion that Coronavirus Guide for Home Care Providers as published on 2 April 2020 did not refer to disability services.  

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632 Exhibit 5.42, Statement of Simon Cotterell, 10 August 2020, at [24].
633 Transcript of Simon Cotterell, Public hearing 5, 21 August 2020, P-329 [43].
636 Exhibit 5.42, Statement of Simon Cotterell, 10 August 2020, at [37].
639 Transcript of Simon Cotterell, Public hearing 5, 21 August 2020, P-323 [5-8].
640 Transcript of Simon Cotterell, Public hearing 5, 21 August 2020, P-326 [9-12].
641 Transcript of Simon Cotterell, Public hearing 5, 21 August 2020, P-332 [1-13].
312. Mr Martin Hoffman is the Chief Executive Officer of the NDIA. Mr Hoffman provided a written statement dated 3 August 2020 in response to a Notice to Give a Statement in Writing.

313. Senior Counsel Assisting intended to call Mr Hoffman to present oral evidence on 21 August 2020. He did not give oral evidence for two reasons. First, the Royal Commission had asked Mr Hoffman to make a statement addressing one issue in relation to the NDIA’s Assistive Technology Policy (AT Policy) which was announced on 27 April 2020. Secondly, it was apparent from the evidence presented over the course of the public hearing that there were a number of issues touching on the NDIA’s response and operations during the COVID-19 pandemic. The Royal Commission had not asked Mr Hoffman to address these issues prior to the hearing and Senior Counsel Assisting decided that, both in the interests of the time required and in fairness to Mr Hoffman, he should be given the opportunity to respond to the issues.

314. In his statement, Mr Hoffman said that the development of the AT Policy commenced on or around 16 March 2020, when the NDIA sought to establish an appropriate continuity of service response to minimise the participant impact of the COVID-19 pandemic (which had been declared by the WHO on 11 March 2020). He said that through March and April 2020 the NDIA consulted widely with key stakeholder groups, including the Independent Advisory Council, to gather both technical and practical information to develop its position on mainstream technology usage and that these consultations were necessary for the development of the AT Policy. He said that ‘[a]ny sense of delay was mitigated by the retrospective application of the AT Policy to 1 April 2020.’

315. Mr Hoffman explained that the AT Policy was restricted to low-cost items because the NDIA ‘is aware that most devices that are suitable for engaging in disability related supports during the COVID-19 pandemic are under the $1,500 price point.’ Participants in need of additional functionality due to their disability, including higher cost AT equipment falling outside the limits of the AT Policy,

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642 Exhibit 5.45, Statement of Martin Hoffman, 3 August 2020, at [14].
643 Exhibit 5.45, Statement of Martin Hoffman, 3 August 2020, at [30].
644 Exhibit 5.45, Statement of Martin Hoffman, 3 August 2020, at [16].
645 Exhibit 5.45, Statement of Martin Hoffman, 3 August 2020, at [22].
646 Exhibit 5.45, Statement of Martin Hoffman, 3 August 2020, at [23].
continue to be funded by the NDIA under existing policy for the purchase of AT.\textsuperscript{647} This includes funding and supply of AT items between $1,500 to $5,000.\textsuperscript{648}

316. Mr Hoffman said that the AT Policy did not cover data or WIFI because these are considered everyday costs and are reasonably incurred regardless of a person’s disability.\textsuperscript{649} He referred to the \textit{National Disability Insurance Scheme (Supports for Participants) Rules 2013 (Participant Rules)} which provides that a support will not be provided or funded by the NDIS if it relates to day-to-day living costs that are not attributable to a participant’s disability support needs and said that a decision to amend the Participant Rules is a matter for Government(s).\textsuperscript{650}

317. Mr Hoffman explained that the decision to choose 1 April 2020 as the start date was a result of taking into account public health orders and social distancing restrictions taking effect on 31 March 2020.\textsuperscript{651} He said that many disability support providers were moving their supports to an online mode and withdrawing face to face disability related services from that date.\textsuperscript{652}

318. Mr Hoffman confirmed that, as at 30 June 2020, 80% of current NDIS participant plans included a form of AT.\textsuperscript{653}

\textbf{Graeme Head AO}

319. Mr Graeme Head AO provided a written statement dated 13 August 2020 and gave oral evidence on 21 August 2020 together with Ms Samantha Taylor, the NDIS Commission’s Registrar.

320. Mr Head is the National Disability Insurance Scheme Quality and Safeguards Commissioner (NDIS Commissioner). He was appointed in December 2017 and took up office on 1 July 2018.\textsuperscript{654}

321. At Public hearing 4, Mr Head provided a statement dated 11 February 2020, which addressed a number of issues, including: the role and jurisdiction of the NDIS Commission in the regulation of NDIS providers;\textsuperscript{655} the NDIS Code of Conduct and

\textsuperscript{647} Exhibit 5.45, Statement of Martin Hoffman, 3 August 2020, at [24].
\textsuperscript{648} Exhibit 5.45, Statement of Martin Hoffman, 3 August 2020, at [24].
\textsuperscript{649} Exhibit 5.45, Statement of Martin Hoffman, 3 August 2020, at [25].
\textsuperscript{650} Exhibit 5.45, Statement of Martin Hoffman, 3 August 2020, at [25].
\textsuperscript{651} Exhibit 5.45, Statement of Martin Hoffman, 3 August 2020, at [26].
\textsuperscript{652} Exhibit 5.45, Statement of Martin Hoffman, 3 August 2020, at [26].
\textsuperscript{653} Exhibit 5.45, Statement of Martin Hoffman, 3 August 2020, at [13].
\textsuperscript{654} Exhibit 5.47, Statement of Graeme Head AO, 11 February 2020, at [7].
\textsuperscript{655} Exhibit 5.47, Statement of Graeme Head AO, 11 February 2020, at [10] – [15].
the NDIS Practice Standards;\textsuperscript{656} and the NDIS Quality and Safeguarding Framework and NDIS Commission Compliance and Enforcement Policy.\textsuperscript{657} In addition, Mr Head provided evidence in relation to the NDIS Commission’s functions including in relation to registration;\textsuperscript{658} reportable incidents;\textsuperscript{659} complaints;\textsuperscript{660} and behaviour support.\textsuperscript{661}

322. In his witness statement dated 13 August 2020, Mr Head stated that he asked Ms Taylor to be the COVID-19 Coordinating Executive for the NDIS Commission over the course of the weekend of 14 and 15 March 2020.\textsuperscript{662} Ms Taylor’s evidence, which sets out in more detail the NDIS Commission’s response to the pandemic, is summarised below.

323. Mr Head said that, throughout the COVID-19 pandemic to date, registered NDIS providers’ obligations under the NDIS Practice Standards and NDIS Quality Indicators have not changed.\textsuperscript{663} In his oral evidence, he explained:

… the features of our regulatory toolkit, if you like, are the same as what they were pre-pandemic. We have utilised those in ways that have responded to the very significant changes that the pandemic has created for all of us. So, for instance, the way we’ve used the ability under the rules to have providers notify us of certain events that are specific to the pandemic.\textsuperscript{664}

324. Mr Head noted that the NDIS Commission was concerned not to overcomplicate regulatory settings, particularly for the many providers that only recently came under the NDIS Commission’s jurisdiction.\textsuperscript{665}

325. Mr Head said that, during the pandemic, the NDIS Commission has relied on public health advice about COVID-19 and has worked to ensure that the public health advice was brought to the attention of registered NDIS providers.\textsuperscript{666} This

\begin{itemize}
\item \textsuperscript{657} Exhibit 5.47, Statement of Graeme Head AO, 11 February 2020, at [18] – [44].
\item \textsuperscript{658} Exhibit 5.47, Statement of Graeme Head AO, 11 February 2020, at [55] – [64].
\item \textsuperscript{659} Exhibit 5.47, Statement of Graeme Head AO, 11 February 2020, at [65] – [80], [196] – [206].
\item \textsuperscript{662} Exhibit 5.46, Statement of Graeme Head AO, 13 August 2020, at [9].
\item \textsuperscript{663} Exhibit 5.46, Statement of Graeme Head AO, 13 August 2020, at [21].
\item \textsuperscript{664} Transcript of Graeme Head AO, Public hearing 5, 21 August 2020, P-387 [15-20].
\item \textsuperscript{665} Transcript of Graeme Head AO, Public hearing 5, 21 August 2020, P-387 [20-35].
\item \textsuperscript{666} Exhibit 5.46, Statement of Graeme Head AO, 13 August 2020, at [49].
\end{itemize}
advice was available to all NDIS providers and participants through the NDIS Commission website.667

326. During his oral evidence Mr Head said he understood that the Department of Health would lead the COVID-19 health response and that the advice provided by the NDIS Commission to providers would reflect and refer to the public health advice.668 Mr Head said the NDIS Commission did not engage any public health specialists in the course of responding to COVID-19 as it did not want to establish a separate line of public health advice. He said the approach of the NDIS Commission was to interact with the Department of Health in respect of matters that needed to be incorporated into the NDIS Commission guidance provided to providers.669 Mr Head said that providing links to information contained on Department of Health sites was typical of the approach taken by the NDIS Commission in providing such guidance.670

327. Mr Head provided a supplementary statement to the Royal Commission dated 27 August 2020 in which he responded, among other things, to Natalie Wade’s criticism that the NDIS Practice Standards, the applicable standards a NDIS provider is required to meet for registration purposes, did not sufficiently protect people with disability during COVID-19.671

328. Ms Wade gave evidence to the Royal Commission about her client, ABE, and her client’s son, ABD who was faced with the prospect of removal from his long standing accommodation to a short term accommodation service as a result of service changes proposed by his provider due to COVID-19. An outline of Ms Wade’s evidence is located in Part 2 of these submissions.

329. In her statement, Ms Wade said that the NDIS Practice Standards, for which the NDIS Commission has responsibility, do not anticipate providers transitioning clients within their services but only consider transition from one provider to another. Ms Wade said that this created a ‘gap’ which meant that the NDIS Commission, as an oversight body, could not respond.672

330. Mr Head said that there was no such gap in the NDIS Practice Standards. He pointed out that the Practice Standards and the supporting quality indicators require providers to ensure and demonstrate that participants have access to

667 Exhibit 5.46, Statement of Graeme Head AO, 13 August 2020, at [49].
668 Transcript of Graeme Head, Public Hearing 5, 21 August 2020, P-391 [40-47].
669 Transcript of Graeme Head, Public Hearing 5, 21 August 2020, P-391 [7-23].
670 Transcript of Graeme Head, Public Hearing 5, 21 August 2020, P-391 [24-47].
671 Supplementary statement of Graeme Head AO, 27 August 2020.
672 Exhibit 5.5, Statement of Natalie Wade, 10 August 2020, at [24.2].
timely and appropriate supports without interruption.\(^{673}\) He said the Practice Standards are framed sufficiently broadly to require providers to maintain the provision and quality of services and supports as much as possible, given the occurrence of a pandemic.\(^{674}\)

331. Mr Head emphasised that it was the role of the NDIS Commission to ensure that providers are meeting their obligations under the Practice Standards. He noted that, in the case of ABD, the NDIS Commission required the provider to furnish information about ABD, including a risk assessment and transition plan.\(^{675}\)

**Samantha Taylor**

332. Ms Samantha Taylor provided a written statement dated 13 August 2020 and gave oral evidence along with Mr Head on 21 August 2020.

333. Ms Taylor is the Registrar of the NDIS Commission and reports to Mr Head. On 16 March 2020, Mr Head appointed Ms Taylor to the role of COVID-19 Coordinating Executive for the NDIS Commission.

334. In her statement Ms Taylor said that the NDIS Commission has responded to COVID-19 by:

   (a) raising the needs of people with disability and providers with those agencies or persons leading the public health response, the principal agency being the Department of Health

   (b) communicating with NDIS providers and participants, including communicating public health advice

   (c) maintaining its existing quality and safeguard mechanisms, with some modifications to regulations and its operations to ensure a focused and coordinated response to COVID-19

   (d) coordinating with other agencies to ensure continuity of critical supports and the wellbeing of participants who may be particularly vulnerable during the pandemic.\(^{676}\)

335. On 6 March 2020, Ms Taylor attended briefing sessions led by the CMO on behalf of the NDIS Commissioner and raised the importance of giving attention to the specific needs of people with disability in the government and health sector.

\(^{673}\) Supplementary statement of Graeme Head AO, 27 August 2020, at [33] – [36].

\(^{674}\) Supplementary statement of Graeme Head AO, 27 August 2020, at [39].

\(^{675}\) Supplementary statement of Graeme Head AO, 27 August 2020, at [37].

\(^{676}\) Exhibit 5.48, Statement of Samantha Taylor, 12 August 2020, at [26].
response to COVID-19. Ms Taylor said, however, that the NDIS Commission was not consulted on the COVID-19 Plan published on 18 February 2020 or the development of the Residential Care Facilities Guidelines which were first published on 13 March 2020.

336. On 27 March 2020, Ms Taylor attended her first stakeholder meeting that specifically focused on the health response for people with a disability. On 2 April 2020, Ms Taylor joined the Advisory Committee which was responsible for overseeing the development and implementation of the Management and Operational Plan.

337. Ms Taylor said the NDIS Commission established a dedicated COVID-19 webpage for participants. The NDIS Commission also published an information pack for NDIS providers and workers which sought to consolidate relevant information in one place.

338. Ms Taylor said the NDIS Commission provided advice and guidance to NDIS providers by publishing numerous Provider Alerts and fact sheets which provided information and resources to help prevent the spread of COVID-19.

339. The Royal Commission heard that the NDIS Commission has consistently referenced Department of Health public health advice and public health orders in its advice to providers. Ms Taylor explained that the focus of such advice has been to reinforce the obligations on providers to deliver supports and services to participants in accordance with the NDIS Code of Conduct and the applicable Practice Standards and other conditions of registration.

340. The NDIS Commission also issued a number of Provider Alerts which reminded NDIS providers of their compliance obligations and provided guidance on how to

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678 Exhibit 5.48, Statement of Samantha Taylor, 12 August 2020, at [94].
680 Transcript of Samantha Taylor, Public Hearing 5, 21 August 2020, P-394 [21-25].
681 Exhibit 5.48, Statement of Samantha Taylor, 12 August 2020, at [22].
682 Exhibit 5.48, Statement of Samantha Taylor, 12 August 2020, at [32].
683 Exhibit 5.48, Statement of Samantha Taylor, 13 August 2020, at [40].
684 Transcript of Samantha Taylor, Public Hearing 5, 21 August 2020, P-387 [25-36].
685 Exhibit 5.48, Statement of Samantha Taylor, 13 August 2020, at [37(a)]; Exhibit 5.177, CTD.7200.0001.3464.
686 Exhibit 5.48, Statement of Samantha Taylor, 12 August 2020, at [72], [99].
687 Exhibit 5.48, Statement of Samantha Taylor, 12 August 2020, at [82], [121], [128].
manage and respond to the risks associated with COVID-19 while continuing to support participants.688

341. Ms Taylor acknowledged that the NDIS Commission’s advice to providers did not focus on specific support or service activities or settings, but instead emphasised that the NDIS Commission’s regulatory approach was focused on protecting and preventing people with disability from experiencing harm arising from poor quality or unsafe supports, abuse, neglect and exploitation, or poorly managed changes to supports.689

342. Ms Taylor said the NDIS Commission has continued to exercise its quality and safeguarding functions throughout the COVID-19 pandemic.690

343. During the course of her oral evidence, Ms Taylor initially agreed with the proposition that there had been no material change to the NDIS Commission’s procedures since before the advent of the COVID-19 pandemic.691 In her statement and later in her oral evidence, however, Ms Taylor said the NDIS Commission had modified some of its functions in response to COVID-19.692

344. Ms Taylor referred to the action taken by the NDIS Commissioner on 24 March 2020 to inform all registered NDIS providers in writing that, under sections 13 and 13A of the NDIS Provider Registration Rules, they were required to notify the NDIS Commissioner of any change or event that relates to the impact of COVID-19.693

345. Ms Taylor gave evidence that registered provider notifications to the NDIS Commission, as at 13 August 2020, indicated 124 disability worker COVID-19 infections,694 76 participant COVID-19 infections695 and eight COVID-19 related deaths.696 The number of reported infections did not include all worker and participant infections for a variety of reasons, including that not all infected participants are supported by a registered provider.697

688 Exhibit 5.48, Statement of Samantha Taylor, 12 August 2020, at [123].
689 Exhibit 5.48, Statement of Samantha Taylor, 12 August 2020, at [83].
690 Exhibit 5.48, Statement of Samantha Taylor, 12 August 2020, at [88].
691 Transcript of Samantha Taylor, Public Hearing 5, 21 August 2020, P-385 [35].
692 Exhibit 5.48, Statement of Samantha Taylor, 13 August 2020, at [42]; Transcript of Samantha Taylor, Public Hearing 5, 21 August 2020, P-386 [7, 20].
693 Exhibit 5.48, Statement of Samantha Taylor, 13 August 2020, at [46].
694 Exhibit 5.48, Statement of Samantha Taylor, 13 August 2020, at [173].
695 Exhibit 5.48, Statement of Samantha Taylor, 13 August 2020, at [173].
696 Transcript of Samantha Taylor, Public Hearing 5, 21 August 2020, P-380 [14].
697 Exhibit 5.48, Statement of Samantha Taylor, 13 August 2020, at [176].
346. The majority of infections had been reported to the NDIS Commission from Victoria. The NDIS Commission provided this data to the NDIA and ‘in the case of the majority of deaths’ to the DHHS in Victoria. The data was not provided to the Commonwealth Department of Health.

347. Ms Taylor said that, in circumstances where participants became infected with COVID-19, the health system was responsible for provision of health care. The provider was responsible for the continued provision of disability supports to participants and for complying with applicable state or territory public health directions.

348. The NDIS Commission had commenced three investigations into the reported infections. However, it was not ‘reasonable’ or ‘realistic’ for the NDIS Commission to investigate all reported infections. Where the NDIS Commission was concerned that the COVID-19 infection resulted from a failing of the provider, an investigation would be conducted.

Part 3: Submissions directed to the areas identified by the Chair

349. 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 our submission addresses those 18 areas as they apply to the evidence received in this hearing, and some additional issues arising from the evidence.

350. In this part of the submissions we will identify:

(a) whether further evidence would be required to make any findings;

(b) whether any particular area of interest is more appropriately addressed to the states and territories; and

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698 Transcript of Samantha Taylor, Public Hearing 5, 21 August 2020, P-381 [17].
699 Transcript of Samantha Taylor, Public Hearing 5, 21 August 2020, P-380 [44-46].
700 Transcript of Samantha Taylor, Public Hearing 5, 21 August 2020, P-380 [44].
701 Transcript of Samantha Taylor, Public Hearing 5, 21 August 2020, P-383 [10-12].
702 Transcript of Samantha Taylor, Public Hearing 5, 21 August 2020, P-382 [11-13, 24].
703 Transcript of Samantha Taylor, Public Hearing 5, 21 August 2020, P-384 [20].
704 Transcript of Samantha Taylor, Public Hearing 5, 21 August 2020, P-389 [7].
705 Transcript of Samantha Taylor, Public Hearing 5, 21 August 2020, P-389 [12-46].
issues which are the subject of other Royal Commissions and investigations such as those considered in the recent public hearing of the Royal Commission into Aged Care Quality and Safety\textsuperscript{706} on the response to COVID-19 on residents of aged care facilities. Also, in this regard, we note the Terms of Reference of the Royal Commission into National Natural Disaster Arrangements,\textsuperscript{707} which is specifically considering whether changes are needed to Australia’s legal framework for the involvement of the Commonwealth in responding to national emergencies, including in relation to the following:

(i) thresholds for, and any obstacles to, state or territory requests for Commonwealth assistance;

(ii) whether the Commonwealth Government should have the power to declare a state of national emergency;

(iii) how any such national declaration would interact with state and territory emergency management frameworks.

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.

351. The importance of collecting data on the impact of COVID-19 on people with disability and on disability support workers was a concern raised repeatedly by witnesses. The concern about collecting data was not confined to understanding the incidence of and impact of COVID-19, but connected with the importance of an evidence base upon which to plan and respond to the pandemic.

352. There are several parts to this area:

(a) the nature and form of the data to be collected

(b) the nature and form of the data to be reported and to whom

(c) what data will identify the impact of COVID-19 on people with disability

(d) what data will identify the impact of COVID-19 on disability support workers.


353. There is likely to be a wide range of data that could be collected with respect to the impact of COVID-19 on people with disability during 2020. As the evidence revealed, the collection of data may identify impacts on:

(a) mental health
(b) the incidence of violence and abuse
(c) access to education
(d) access to employment
(e) essential supports for people with disability.

Surveillance data

354. One measure of the impact of COVID-19 on people with disability is health data, in particular rates of testing, infection and deaths.

355. The COVID-19 Plan\(^{708}\) released by the Commonwealth Department of Health on 18 February 2020 said that a key factor in the plan included ‘clear strategic approaches to the collection of national surveillance data’.\(^{709}\) In relation to surveillance, the COVID-19 Plan said:

The Australian Government is responsible for developing and maintaining systems to monitor communicable disease activity domestically and internationally and for communicating relevant information. Once a novel coronavirus with pandemic potential has arrived in Australia, these systems will be used for monitoring and analysis. Working together with state and territory representatives, the Australian Government will assess the risk of any potential outbreak threats to inform decision making about appropriate actions.

State and territory governments are responsible for collecting surveillance data to contribute to the national picture and to inform the jurisdictional public health response.

Other health sector stakeholders will also play a key role in surveillance activities and contributing to the national characterisation and understanding of the novel coronavirus of concern.\(^{710}\)

356. The daily statistics on COVID-19 have indicated the age and the sex of people who have died, or who are infected. The daily statistics have also indicated the number of people admitted to hospital and those in ICU. But as at 17 August 2020, there

\(^{708}\) Exhibit 5.75, EXP.0003.0001.0001.
\(^{709}\) Exhibit 5.75, EXP.0003.0001.0001 at 0009.
\(^{710}\) Exhibit 5.75, EXP.0003.0001.0001 at 0020.
was no publicly available data or statistics that revealed the rates of infection or death for people with disability. There was no publicly available data or statistics that enabled the Australian community to understand or to assess the impact of COVID-19 on people with disability in Australia.

357. Both Simon Cotterell, the most senior officer directly involved in coordinating the health response to assist people with disability, and Dr Nick Coatsworth, Deputy CMO, were asked how many people with disability had contracted COVID-19 since 22 January 2020 and how many people with disability had died due to COVID-19 since 22 January 2020. Neither were able to provide an answer.

358. Samantha Taylor, Registrar of the NDIS Commission, said 76 NDIS participants had contracted COVID-19 and 124 disability support workers of NDIS participants had contracted COVID-19. These figures were based on self-reporting by service providers. This data is not provided to the Commonwealth Department of Health but is provided to the NDIA and (in the case of the majority of deaths) the DHHS in Victoria.

359. On the second day of the hearing, 19 August 2020, the Minister for the NDIS issued a media release containing numbers of COVID-19 cases notified to the NDIS Commission since March 2020 and the current active positive COVID-19 cases by state and territory. This is a welcome and important development.

360. The Management and Operational Plan, like the Emergency Response Plan for Communicable Disease Incidents of National Significance: National Arrangements (National CD Plan) before it, identified roles and responsibilities for both the Commonwealth Department of Health and state and territory government health government agencies in the collection and review of data. The importance of surveillance data was clearly identified by the Advisory Committee, which in April 2020 stressed the importance of ‘COVID-19 surveillance data for people with disability’.

361. On 12 May 2020 the Advisory Committee identified ‘the importance of being able to identify people with disability in the National Notifiable Diseases Surveillance

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711 Transcript of Simon Cotterell, Public hearing 5, 21 August 2020, P-313 [28-29].
713 Exhibit 5.48, Statement of Samantha Taylor, 13 August 2020, at [173].
715 Exhibit 5.73, DRC.2000.0002.0367.
716 Exhibit 5.80, DRC.2000.0002.0551 at 0562.
717 Exhibit 5.99, CTD.1000.0001.0372; Exhibit 5.100, CTD.1000.0001.0375.
System (NNDSS) data, noting the Department has put a request forward to the CDNA to include this'.

362. The NNDSS does not collect information that flags disability as an indicator. Dr Coatsworth explained that the CDNA considered people identifying with disability as ‘so heterogeneous in terms of risk or vulnerability to COVID-19, that the inclusion of disability within the NNDSS itself would not have had a material impact’ on control of the pandemic in the early phases. The CDNA has however commenced using a broader ‘other residential care facility setting’ field. But Mr Cotterell told the Royal Commission that as at 21 August 2020, while some states were now collecting more detailed data and reporting that publicly, nationally there was no system for collecting that data.

363. Professor Kavanagh expressed her concern about the lack of availability and transparency of data. Professor Kavanagh said that she does not know the number of people with disability who have contracted COVID-19 or who have died due to the virus.

364. Ms Rosemary Kayess’ evidence addressed the importance of a human rights approach to the COVID-19 pandemic. She said it should be ‘informed by rigorous disability-inclusive research methods for the collection of disaggregated data and a robust evidence base’. We observe that this would be consistent with the obligations on Australia under Article 31 of the CRPD, which requires states parties to undertake to collect appropriate information, including statistical and research data, to enable them to formulate and implement policies to give effect to the CRPD (including disaggregated data), and to disseminate statistics and ensure their accessibility to persons with disabilities and others.

Data revealing the prevalence of violence

365. In response to a Notice to Give Information issued by the Royal Commission, the Australian Institute of Criminology (AIC) undertook a study based on an online survey of 15,000 women aged 18 years and older conducted by the Institute in May 2020, which examined the impact of the COVID-19 pandemic on women’s experience of domestic violence. 14,953 respondents were included in the

718 Exhibit 5.102, CTD.1000.0001.0381.
719 Transcript of Dr Nick Coatsworth, Public hearing 5, 21 August 2020, P-351 [3-9].
720 Transcript of Simon Cotterell, Public hearing 5, 21 August 2020, P-314 [24-26].
721 Transcript of Simon Cotterell, Public hearing 5, 21 August 2020, P-314 [26-28].
722 Exhibit 5.30, Statement of Professor Anne Kavanagh, 12 August 2020, at [72], [89-100].
723 Transcript of Anne Kavanagh, Public hearing 5, 20 August 2020, P-213 [4-13].
724 Exhibit 5.19, Statement of Rosemary Kayess, 13 August 2020, at [47].
analysis.\textsuperscript{725} The report of the analysis, *Experiences of domestic violence among women with restrictive long-term health conditions*,\textsuperscript{726} found that women with restrictive long-term health conditions reported high levels of physical and non-physical domestic violence during the initial stages of the pandemic.\textsuperscript{727}

### Survey data

366. The Royal Commission also heard about several surveys conducted by representative organisations, advocacy groups and research institutes which looked at the impact of COVID-19 on people with disability and disability support workers.

367. In June 2020, PWDA published *People with Disability and COVID-19: Final Report*, based on a survey which received 204 responses from people with disability and families/carers.\textsuperscript{728} It documented the impact on people with disability from changes to income support; increased cost of living expenses;\textsuperscript{729} changes to disability supports;\textsuperscript{730} access to health care;\textsuperscript{731} and other issues such as wellbeing, mental health and employment.

368. On 11 June 2020, the CID published *COVID-19: Leave no one behind: CID consultations with people with intellectual disability on the Coronavirus (COVID-19) and the Australian Government response*.\textsuperscript{732} The consultation with 15 people with intellectual disability\textsuperscript{733} identified health concerns, including fear of contracting COVID-19; testing difficulties; poor mental health; and concerns that other illnesses would go untreated.\textsuperscript{734} The survey also identified difficulty in locating accurate, trustworthy and accessible information on COVID-19.\textsuperscript{735} Further it noted issues related to employment, isolation, loneliness and technology, among others.\textsuperscript{736}

369. On 19 August 2020, EAC released *Left out and locked down: The experiences of people with disability and their families during COVID-19*.\textsuperscript{737} This survey received

\textsuperscript{725} Exhibit 5.71, CTD.9700.0001.0020 at 0025.
\textsuperscript{726} Exhibit 5.71, CTD.9700.0001.0020.
\textsuperscript{727} Exhibit 5.71, CTD.9700.0001.0020 at 0023.
\textsuperscript{728} Exhibit 5.22.2, EXP.0003.0003.0183.
\textsuperscript{729} Exhibit 5.22.2, EXP.0003.0003.0183 at 0186 and 0187.
\textsuperscript{730} Exhibit 5.22.2, EXP.0003.0003.0183 at 0188 and 0189.
\textsuperscript{731} Exhibit 5.22.2, EXP.0003.0003.0183 at 0190.
\textsuperscript{732} Exhibit 5.25.1, IND.0033.0001.0001.
\textsuperscript{733} Exhibit 5.25.1, IND.0033.0001.0001 at 0004.
\textsuperscript{734} Exhibit 5.25.1, IND.0033.0001.0001 at 0009 to 0012.
\textsuperscript{735} Exhibit 5.25.1, IND.0033.0001.0001 at 0012.
\textsuperscript{736} Exhibit 5.25.1, IND.0033.0001.0001 at 0015 and 0016.
\textsuperscript{737} Exhibit 5.26.3, DRC.9999.0015.0001.
721 responses, primarily from people with disability and/or their families, but also from a small number of people who work in the disability sector including as advocates. The survey asked respondents about the impact of the pandemic on their lives, how they coped and about their response to changes made by the NDIS. Messages from the survey included ‘we’ve been forgotten’, ‘we need more help’ and ‘we need things to be easier’. Respondents identified increased costs; mental health issues; information issues; difficulty accessing PPE; services ceasing; inability to get online; exclusion from the Coronavirus supplement; and lack of Auslan interpreters as affecting them.

370. CYDA released the results of two surveys: in May 2020, More than isolated: The experience of children and young people with disability and their families during the COVID-19 pandemic, based on 697 survey responses; and in July 2020, Not even remotely fair: Experiences of students with disability during COVID-19: Full Report. In More than isolated, survey respondents described being unable to buy essential supplies; cancellation of support workers; cancellation of other NDIS funded services; closure of school or education; being unable to work in usual employment; loss of income; and decline in mental health as among issues affecting them. Respondents identified a lack of targeted information which exacerbated stress, and uncertainty about education including school closures and challenges with learning from home. In Not even remotely fair, survey respondents indicated that 72% of students with disability were more socially isolated than their classmates and reported a significant reduction in the usual supports provided for students with disability.

371. On 21 April 2020, the report The disability workforce and COVID-19: initial experiences of the outbreak was released by the University of New South Wales Social Policy Research Centre. The report was prepared for the Health Services Union, Australian Services Union and United Workers Union and drew on data from a survey of 2,341 disability workers conducted in March 2020. The key findings of the survey were an urgent lack of PPE being supplied to staff and

738 Exhibit 5.26.3, DRC.9999.0015.0001 at 0002.
739 Exhibit 5.26.3, DRC.9999.0015.0001 at 0006.
740 Exhibit 5.28.1, DRC.2000.0003.0219.
741 Exhibit 5.28.1, DRC.2000.0003.0219 at 0229.
742 Exhibit 5.28.2, DRC.2000.0003.0121.
743 Exhibit 5.28.1, DRC.2000.0003.0219 at 0233.
744 Exhibit 5.28.1, DRC.2000.0003.0219 at 0244.
745 Exhibit 5.28.2, DRC.2000.0003.0121 at 0152.
746 Exhibit 5.28.2, DRC.2000.0003.0121 at 0125.
747 Exhibit 5.58, DRC.2000.0003.0395.
748 Exhibit 5.58, DRC.2000.0003.0395 at 0398.
clients; many workers feeling their organisation’s safety protocols were inadequate in the context of COVID-19; widespread perceptions that the disability workforce was being dangerously overlooked in the pandemic response; workers being particularly worried about day programs and community access activities remaining in operation; and workers being concerned about their inability to effectively self-isolate, and the financial impacts of doing so.749

372. On 31 July 2020, the Disability and Health Unit, University of Melbourne, published Disability Support Workers: The forgotten workforce in COVID-19.750 The research report was based on an online survey of disability support workers in June 2020 which sought views about physical distancing; COVID-19 infection control training; access to and purchase of PPE; testing for COVID-19; whom the disability support workers worked with and where they provided support; and financial and psychological stresses.751 357 disability support workers from around Australia participated in the survey.752 The survey revealed that:

(a) 90% of disability support workers said they were not able to physically distance at work
(b) 53% provided support with tasks that require close personal contact like feeding and brushing teeth
(c) 23% of workers had not received any COVID-19 infection control training and 69% of those wanted more training
(d) of the 77% of workers who did receive training, 48% would like more training.753

Data collection introduced by the DSS

373. Ms Downing raised concerns about a new data collection and partnership reporting procedure introduced by the DSS which commenced on 30 June 2020.754 She said that prior to its commencement, disability advocates pleaded with DSS to hold off on enforcing the reporting requirements for a number of reasons including the lack of training around the new procedures, the additional time that would be spent on reporting requirements and additional demands and pressures placed on advocacy organisations due to the COVID-19 pandemic, all of which also meant

749 Exhibit 5.58, DRC.2000.0003.0395 at 0398.
750 Exhibit 5.30.12, EXP.0031.0001.0094.
751 Exhibit 5.30.12, EXP.0031.0001.0094 at 0097.
752 Exhibit 5.30.12, EXP.0031.0001.0094 at 0097.
753 Exhibit 5.30.12, EXP.0031.0001.0094 at 0097.
754 Exhibit 5.21, Statement of Fiona Mary Downing, 12 August 2020, at [14-15].
that the capacity of disability advocates to assist this Royal Commission would be reduced. Despite this, the DSS refused to delay these additional requirements.\textsuperscript{755}

374. The Royal Commission did not receive evidence from DSS about these concerns.

Findings

375. The following findings are open to the Royal Commission:

(a) the Commonwealth Department of Health has not collected or sought surveillance data about how many people with disability have contracted COVID-19 since 22 January 2020 and how many people with disability have died due to COVID-19 since 22 January 2020

(b) the Commonwealth Department of Health made a request to the CDNA that a ‘disability flag’ and a ‘disability accommodation setting’ be included in the NNDSS, which was not supported by the CDNA. However, a broader ‘other residential care facility setting’ field has been included

(c) some data is available about the infection and mortality rates of NDIS participants and NDIS disability support workers, and at the state and territory level, but this is not coordinated nationally.

376. It is acknowledged that improving data collection needs to be specific about what data should be collected and by whom, when and how, to ensure that the data assists with identifying and supporting the people most vulnerable in a public health crisis and is also aligned with the broader aims of the public health response. Improved data collection must also appropriately involve the states and territories, given their role in data collection, data management and data reporting.

377. The most obvious types of data about COVID-19 are rates of COVID-19 testing, infections and mortality. But we submit that, as demonstrated by the findings of the AIC report on the experiences of domestic violence among women with restrictive long-term health conditions,\textsuperscript{756} the role of data in understanding the impact of COVID-19 on violence against, and abuse, neglect and exploitation of, people with disability goes beyond data about testing, infection and mortality.

Recommendations

378. The Royal Commission did not receive evidence directly from the CDNA but we submit the Royal Commission should note with some concern the evidence of

\textsuperscript{755} Exhibit 5.21, Statement of Fiona Mary Downing, 12 August 2020, at [14-15].

\textsuperscript{756} Exhibit 5.71, CTD.9700.0001.0020.
Mr Cotterell.757 It is open to the Royal Commission to make a recommendation that CDNA reconsider the inclusion of a disability flag within the NNDSS.

First Nations and CALD

(2) Whether the response of the Commonwealth Government to the circumstances presented by the pandemic has appropriately addressed and currently appropriately addresses the needs of people with disability, including the needs of First Nations people with disability and people with disability from culturally and linguistically diverse backgrounds.

First Nations

379. Dr Agostino spoke about the increased risk of contracting COVID-19, and about the risk of increased severity in consequence of contracting COVID-19, in First Nations communities.758 This, he said, was due to First Nations people having a higher prevalence of conditions such as heart disease, diabetes, chronic kidney disease, emphysema or chronic obstructive pulmonary disease when compared to the non-Indigenous population.759 Dr Agostino observed that ‘Aboriginal and Torres Strait Islander people frequently have two or more of these chronic conditions that can confer poorer outcomes with coronavirus’760 and that the onset of such conditions in the First Nations population happens much earlier, ‘sometimes 20 years earlier’, than in the non-Indigenous Australian population.761

380. Dr Agostino gave evidence that the Commonwealth Government established the Aboriginal and Torres Strait Islander COVID-19 Advisory Group (Advisory Group) in response to the increased risk First Nations people face during a pandemic.762 In particular, Dr Agostino noted the previous pandemic in 2009, H1N1 (swine flu), revealed a gap in specific programs and policies for First Nations people, which contributed to First Nations people being hospitalised and dying at a rate five times higher than the non-Indigenous population.763

758 Transcript of Dr Jason Agostino, Public hearing 5, 20 August 2020, P-264 [1-2].
759 Transcript of Dr Jason Agostino, Public hearing 5, 20 August 2020, P-264 [3-4].
760 Transcript of Dr Jason Agostino, Public hearing 5, 20 August 2020, P-264 [9-10].
761 Transcript of Dr Jason Agostino, Public hearing 5, 20 August 2020, P-264 [6-7].
762 Transcript of Dr Jason Agostino, Public hearing 5, 20 August 2020, P-268 [26-27].
763 Transcript of Dr Jason Agostino, Public hearing 5, 20 August 2020, P-268 [27-30]; Exhibit 5.35, Statement of Dr Jason Agostino, 12 August 2020, at [39].
381. The Advisory Group was established in the first week of March 2020 to advise on health issues related to COVID-19 and reports to the Australian Health Protection Principal Committee (AHPPC). The Advisory Group consists of representatives from each state and territory, some GP experts, as well as Aboriginal and Torres Strait Islander epidemiologists. Dr Agostino opined that ‘the rapid formation of the Advisory Group shows that the sector recognised the threat that COVID-19 posed to Aboriginal and Torres Strait Islander people early on and responded to it swiftly.’

382. Dr Agostino gave evidence that ‘[t]he role of the Advisory Group is to provide advice on Aboriginal and Torres Strait Islander health aspects related to COVID-19’, which includes contributing to the development of, and advising on the implementation of, the Australian Health Sector Emergency Response Plan for Novel Coronavirus (COVID-19): Management Plan for Aboriginal and Torres Strait Islander populations; Operational Plan for Aboriginal and Torres Strait Islander populations (Management and Operational Plan for Aboriginal and Torres Strait Islander populations). The Advisory Group’s Terms of Reference set out its key roles and functions in greater detail.

383. Dr Agostino gave evidence that access to testing had been an active focus of the Advisory Group. The Commonwealth Government has funded point-of-care machines in 85 regional and remote communities. Dr Agostino explained that these machines provide COVID-19 test results within 45 minutes, and ‘without these machines, people in these communities would face delays of a week or more’ for results.

384. Dr Agostino explained that the rates of COVID-19 amongst First Nations people is lower than what was expected in comparison to non-Indigenous people. It was expected that 3.3 per cent of COVID-19 cases would be in First Nations people, as First Nations communities make up 3.3 per cent of the Australian population. However, less than one per cent of COVID-19 cases have been in First Nations people. He attributes this lower than expected rate to the very proactive work of the First Nations communities in educating and protecting their population and

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764 Exhibit 5.35, Statement of Dr Jason Agostino, 12 August 2020, at [34].
765 Exhibit 5.35, Statement of Dr Jason Agostino, 12 August 2020, at [38].
766 Exhibit 5.35, Statement of Dr Jason Agostino, 12 August 2020, at [36].
767 Exhibit 5.35.3, EXP.0029.0003.0006.
768 Exhibit 5.35, Statement of Dr Jason Agostino, 12 August 2020, at [40].
769 Exhibit 5.35, Statement of Dr Jason Agostino, 12 August 2020, at [43].
770 Exhibit 5.35, Statement of Dr Jason Agostino, 12 August 2020, at [43].
771 Exhibit 5.35, Statement of Dr Jason Agostino, 12 August 2020, at [45].
772 Transcript of Dr Jason Agostino, Public hearing 5, 20 August 2020, P-268 [41-45].
773 Exhibit 5.35, Statement of Dr Jason Agostino, 12 August 2020, at [45].
notes that this success has highlighted that government prioritising of Aboriginal and Torres Strait Islander voices and listening to Aboriginal and Torres Strait Islander experts ‘gets results.’

385. Although the evidence from Dr Agostino does reveal that the Commonwealth recognised the threat that COVID-19 posed to First Nations people fairly early on:

(a) the Terms of Reference for the Advisory Group do not make any express reference to First Nations people with disability, nor does the Advisory Group include a representative from a First Nations disability organisation

(b) initially, the Management and Operational Plan for Aboriginal and Torres Strait Islander populations did not expressly refer to First Nations people with disability

(c) this was only amended in the July 2020 version of the Management and Operational Plan for Aboriginal and Torres Strait Islander populations.

386. The lack of express reference to people with disability is consistent with other early Commonwealth Government responses. Mr Griffis opines that this absence in the Management and Operational Plan for Aboriginal and Torres Strait Islander populations ‘is endemic of how compromised Aboriginal and Torres Strait Islander people with disability are in policy formulation.’

Findings

387. It is open to the Royal Commission to find that:

(a) the Commonwealth Government recognised the particular risk that COVID-19 presented to First Nations people at an early stage in its response to the pandemic and acted reasonably quickly to establish the Aboriginal and Torres Strait Islander COVID-19 Advisory Group

(b) initially, the Management Plan of that Advisory Group did not contain any reference to people with disability

774 Transcript of Dr Jason Agostino, Public hearing 5, 20 August 2020, P-269 [5-11].
775 Exhibit 5.35.3, EXP.0029.0003.0006.
777 Exhibit 5.34.4, DRC.2000.0002.0485 at 0495.
778 Exhibit 5.34, Statement of Damian Griffis, 11 August 2020, at [44].
(c) the Terms of Reference of that Advisory Group do not make express reference to people with disability.

**Recommendations**

388. The Royal Commission may wish to consider making the following recommendations:

(a) the Commonwealth Department of Health consider amending the Terms of Reference of the Advisory Group to state expressly that its work is to include provision of advice with respect to First Nations people with disability

(b) the Commonwealth Department of Health consider extending the membership of the Advisory Group to ensure that there is a member of the Advisory Group who represents the interests of First Nations people with disability.

**CALD**

389. A number of witnesses spoke about the importance of disseminating appropriate and accessible information into CALD communities.\(^779\)

390. Ms Yahya spoke about specific considerations, such as faith and family, which need to be taken into account when communicating with people with disability from CALD communities.\(^780\) Further, Ms Yahya gave evidence that the uncertainty surrounding the pandemic may be compounded for people who have experienced torture or trauma, and who find it difficult to take ‘in a vast amount of information and to remember that information’.\(^781\)

391. Mr Astourian opined that important information should first be translated into simple or Easy English, and then into various languages.\(^782\) He suggested this process would ‘simplify the language’, which is particularly important considering that ‘there are people within the community who cannot read in their own language’.\(^783\)

392. At this stage, the Royal Commission is not in possession of sufficient information regarding the Commonwealth Government’s process for producing health and emergency information in multiple languages and alternative formats.

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\(^{780}\) Transcript, Sarah Yahya, Public hearing 5, 19 August 2020, P-158 [11-38].

\(^{781}\) Transcript of Sarah Yahya, Public hearing 5, 19 August 2020, P-156 [15-22].


Consultation with people with disability

393. A number of the directions addressed the role of consultation and advocacy, as follows:

(3) The extent to which the Commonwealth should involve and consult with people with disability and their representative organisations.

(14) The need to include people with disability and their representative organisations at every level of planning and response to the pandemic and other public health emergencies.

394. The evidence presented to the public hearing was overwhelming about the importance and need for governments at all levels to consult with people with disability and their representative organisations in relation to the impact of COVID-19 on with people with disability.

Human rights and consultation and participation of people with disability and their representative organisations

395. The effective and meaningful participation of persons with disability through their representative organisations is at the heart of the CRPD.

396. The UN Special Rapporteur, Ms Catalina Devandas, said it was important to ensure meaningful consultation with, and active participation of, persons with disabilities and their representative organisations at all stages of COVID-19 response and recovery, from planning and design to implementation and monitoring. Participation is a core human rights principle and a basic condition of democratic societies.784

397. The participation of persons with disabilities and their representative organisations in public decision-making related to COVID-19 will ensure States are more responsive to the actual situation of persons with disabilities, and will add to efficiency and innovation in government responses.785

398. As the CRPD Committee noted in General Comment 7 (2018):786

[2] The active and informed participation of everyone in decisions that affect their lives and rights is consistent with the human rights-based approach in public

784 Exhibit 5.29, Statement of Catalina Devandas Aguilar, 10 August 2020, at [40].
785 Exhibit 5.29, Statement of Catalina Devandas Aguilar, 10 August 2020, at [40].
786 Exhibit 5.19.9, EXP.0003.0003.0356.
decision-making processes, and ensures good governance and social accountability.787

[21] To “closely consult with and actively involve” persons with disabilities through their representative organizations is an obligation under international human rights law that requires the recognition of every person’s legal capacity to take part in decision-making processes based on their personal autonomy and self-determination. Consultation and involvement in decision-making processes to implement the Convention, and in other decision-making processes, should involve all persons with disabilities and, when necessary, supported decision-making regimes.788

399. With respect to consultation during COVID 19, Ms Kayess referred to the Office of the UN Commissioner for Human Right’s guidance note, COVID-19 and the rights of persons with disabilities: Guidance789 and the UN Secretary-General’s policy brief, A Disability-Inclusive Response to COVID-19,790 which emphasise the importance of meaningful consultation and active participation of people with disability through their representative organisations in all stages of COVID-19 response and recovery. Ms Kayess said these policies provide guidance to States, including Australia, on a human rights approach to responding to COVID-19.791

The lack of consultation between the Commonwealth Government and people with a disability in the early stages of the COVID 19 pandemic

400. The risks of COVID 19 for people with disability were recognised in Australia very early. AAV told the Royal Commission she anticipated the seriousness of the coronavirus in January 2020 and acted swiftly to acquire the necessary supplies for her family.792

401. On 7 February 2020, the NDIS Commission issued a Provider alert. The alert warned the NDIS providers about a ‘novel coronavirus outbreak’.793

402. By February 2020, the Department of Health was working on its plans and response to the pandemic.794 There was no consultation with people with disability or their representative bodies at this critical time when emergency health response plans were being developed.

787 Exhibit 5.19.9, EXP.0003.0003.0356 at 0356.
788 Exhibit 5.19.9, EXP.0003.0003.0356 at 0361.
789 Exhibit 5.19.33, EXP.0027.0001.0001
790 Exhibit 5.19.34, EXP.0027.0001.2029.
791 Exhibit 5.19, Statement of Rosemary Kayess, 13 August 2020, at [32].
792 Exhibit 5.2, Statement of AAV, 6 August 2020, at [17].
793 Exhibit 5.177, CTD.7200.0001.3464.
794 Transcript of Simon Cotterell, Public hearing 5, 21 August 2020, P-315 [33-37].
403. On 18 February 2020, the COVID-19 Plan was released. The NDIS Commission was not consulted on the COVID-19 Plan.

404. There was no reference to people with disability in the COVID-19 Plan. Dr Coatsworth said the COVID-19 Plan was designed to guide the initial Australian health sector response to the virus. It was intended to be a ‘living document’, updated as more is learned about the virus and key at-risk groups.

405. Mr Cotterell said this was an ‘omission’ and said that in an ideal world, people with disability would have been included among identified ‘at-risk’ groups in the COVID-19 Plan.

406. On 25 February 2020, the Commonwealth Department of Health activated the National CD Plan for coronavirus at the request of the CMO. The National CD Plan did not refer to or address the needs of people with disability. It did note the importance of communication strategies and sought to be:

… 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.

407. On 6 March 2020 Ms Taylor said that on behalf of the NDIS Commissioner she attended briefing sessions led by the CMO and raised the importance of giving attention to the specific needs of people with disability in the government and health sector response to COVID-19.

408. On 11 March 2020, the Government’s $2.4 billion health response to COVID-19 was announced. Mr Cotterell confirmed this package was not communicated directly to disability stakeholders.

409. On 13 March 2020, the Commonwealth Department of Health published the first version of the Residential Care Facilities Guidelines. Dr Coatsworth said these

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795 Transcript of Simon Cotterell, Public hearing 5, 21 August 2020, P-316 [8-11]; Exhibit 5.75, EXP.0003.0003.0001.
796 Exhibit 5.48, Statement of Samantha Taylor, 12 August 2020, at [94].
797 Exhibit 5.44, Statement of Dr Nick Coatsworth, 7 August 2020, at [4].
798 Exhibit 5.44, Statement of Dr Nick Coatsworth, 7 August 2020, at [4].
799 Transcript of Simon Cotterell, Public hearing 5, 21 August 2020, P-319 [9-10].
800 Exhibit 5.73, DRC.2000.0002.0367.
801 Exhibit 5.73, DRC.2000.0002.0367 at 0391.
802 Exhibit 5.48, Statement of Samantha Taylor, 12 August 2020, at [15-16].
803 Exhibit 5.42, Statement of Simon Cotterell, 10 August 2020, at [9].
804 Transcript of Simon Cotterell, Public hearing 5, 21 August 2020, P-330 [9-10].
805 Exhibit 5.76, DRC.2000.0002.1670.
guidelines were developed by the CDNA in consultation with the aged care sector, for the purpose of providing best practice information for the prevention and management of COVID-19 outbreaks in residential care facilities. He said they were intended to apply to disability accommodation.\textsuperscript{806} There was no consultation with the disability sector. The NDIS Commission was not consulted on the development of the Residential Care Facilities Guidelines.\textsuperscript{807}

410. By 16 March 2020, the CRE-DH 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 \textit{health sector} is under-prepared to meet the urgent health care needs of people with disability.

- The \textit{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.\textsuperscript{808}

411. On 16 March 2020, the Commonwealth Government released an infection prevention and control training program which was published online for carers across all sectors, including for carers of people with disability.\textsuperscript{809}

412. On 24 March 2020, the CRE-DH published a further statement noting the apparent lack of an integrated disability and health support response.\textsuperscript{810} It noted that government had mobilised cross-sectoral support for aged care and health but had not paid the same sort attention to the disability sector. It noted that the response

\textsuperscript{806} Exhibit 5.44, Statement of Dr Nick Coatsworth, 7 August 2020, at [8-10].

\textsuperscript{807} Transcript of Samantha Taylor, Public Hearing 5, 21 August 2020, P 392 [22]; Transcript of Graeme Head AO, Public Hearing 5, 21 August 2020, P 392 [24].

\textsuperscript{808} Exhibit 5.30.2, EXP.0031.0001.0013 at 0014.

\textsuperscript{809} Exhibit 5.42, Statement of Simon Cotterell, 10 August 2020, at [9], [14].

\textsuperscript{810} Exhibit 5.30.4, EXP.0031.0001.0043.
so far ‘has largely focused on changes to the NDIS process’. As a result, the impact of COVID-19 on 90% of people with disability who are not NDIS participants had not been considered.

413. On or around 26 March 2020, Mr Cotterell became aware of the CRE-DH’s two statements of concern, together with Professor Julian Trollor’s statement on Access to COVID-19 prevention screening and treatment of people with intellectual or developmental disability.

414. As noted above, the Royal Commission released its Statement of Concern on 26 March 2020.

415. On 27 and 31 March 2020, the Department of Health held informal discussions with a small group of stakeholders and with the DSS and the NDIS Commission, for the purpose of establishing the Advisory Committee and commencing work on a plan specifically addressing the interests and health needs of people with disability.

416. On 2 April 2020, over 70 DPOs issued an Open Letter to the National Cabinet calling on all governments to take urgent measures.

Establishment of Advisory Committee on Health Emergency Response to Coronavirus (COVID-19) for People with Disability

417. On 2 April 2020, the Department of Health established an Advisory Committee.

418. The Advisory Committee was required to:

(a) provide expert advice to inform the development of the Plan on the healthcare needs of people with disability, their families and the disability service sector, including access to COVID-19 screening, prevention and healthcare

(b) oversee the implementation of the Plan. Committee members may be expected to share information on the progress of the work being undertaken.

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811 Exhibit 5.30.4, EXP.0031.0001.0043 at 0044.
812 Transcript of Simon Cotterell, Public hearing 5, 21 August 2020, P-320 [41-47], P-324 [13].
813 Transcript of Simon Cotterell, Public hearing 5, 21 August 2020, P-324 [6-23]; Exhibit 5.36.1, EXP.0015.0004.0052.
814 Transcript of Samantha Taylor, Public Hearing 5, 21 August 2020, P-394 [21-25].
815 Exhibit 5.20.3, FPD.9999.0001.0001.
816 Exhibit 5.48, Statement of Samantha Taylor, 12 August 2020, at [22].
817 Exhibit 5.98, CTD.1000.0001.0010.
419. The Advisory Committee members included people with lived experience of disability, experts and government representatives.818

420. Ms Kayess expressed concerns about the makeup of the Advisory Committee. She said, although people with disability were represented on the Advisory Committee, they constituted a significant minority, and ‘it is unclear how their expertise was meaningfully prioritised and what weight their views and concerns were given’.819

421. On 16 April 2020, the Management and Operational Plan was approved by the National Cabinet and it was published on 17 April 2020.820

422. The Management and Operational Plan committed the Commonwealth Government to undertake a ‘range of specific measures relevant to the health of people with disability in the context of COVID-19, including:

- Development of the Management and Operational Plan, in partnership with the Advisory Committee, states, territories and other stakeholders.
- Coordinating the implementation of the Plan, with oversight from the Advisory Committee.
- Provision of secretariat support to the Advisory Committee.
- Coordinating and communicating with the states and territories, through the Australian Health Ministers Advisory Council, the Australian Health Protection Principal Committee and relevant disability services coordination mechanisms, to support effective communication and health service provision for people with disability in response to COVID-19.
- Preparation and dissemination of national guidelines, procedures and other resources to support this Management and Operational Plan.
- Mobilising the resources of the National Medical Stockpile, and State/Territory resources where applicable, to support the appropriate provision of PPE and other resources, according to availability and need, to people with disability, their families, carers and support workers in health and disability care settings.
- Developing and supporting a national communications plan specific to people with disability, to educate people with disability, their families, carers, support workers, health care workers and others about the spread of COVID-19 and effective prevention, screening, assessment and treatment approaches.’ 821

818 Exhibit 5.98, CTD.1000.0001.0010 at 0011.
820 Transcript of Simon Cotterell, Public hearing 5, 21 August 2020, P-338 [44].
821 Exhibit 5.80, DRC.2000.0002.0551 at 0561.
423. Ms Kayess expressed her concern regarding the high level nature of the Management and Operational Plan, and the extent to which the plan is reliant on ‘practical implementation and guidance’ through the NDIS and state and territory governments. Ms Kayess said that the Management and Operational Plan should have acted as a ‘framing document’, with other plans coming out of it, such as implementation plans, at State and community level. She said the Management and Operational Plan was not accessible and did not provide a lot of clarity for people with disability.

424. After 17 April 2020, the Advisory Committee met weekly but in more recent times has continued to meet fortnightly from 2 June 2020. The Royal Commission has received the records of the Advisory Committee meetings between 21 April 2020 and 28 July 2020. It is apparent that the Advisory Committee has engaged with relevant state and territory officers. It also apparent that the Advisory Committee has identified and addressed a range of areas including:

(a) psychosocial disability and mental health support
(b) children and education
(c) rehabilitation after COVID 19
(d) responding to recommendations made by CID in ‘Leave No One Behind’
(e) the inability of the CDNA to capture cases among people with disability under the NNDSS
(f) disability support workers and surge workforce.

425. The Management and Operational Plan has been described as a living document and it has been amended and updated. The current version is dated June 2020.

426. Professor Kavanagh said the Advisory Committee was a positive development. She is a member of the Advisory Committee. She said the Committee had the involvement of the Australian Government, and also state and territory

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823 Transcript of Rosemary Kayess, Public hearing 5, 18 August 2020, P-37 [16-24].
824 Transcript of Rosemary Kayess, Public hearing 5, 18 August 2020, P-37 [35-37].
825 Exhibit 5.99, CTD.1000.0001.0372; Exhibit 5.100, CTD.1000.0001.0375; Exhibit 5.101, CTD.1000.0001.0377; Exhibit 5.102, CTD.1000.0001.0381; Exhibit 5.103, CTD.1000.0001.0379; Exhibit 5.104, CTD.1000.0001.0373; Exhibit 5.105, DRC.2000.0002.0001; Exhibit 5.106, DRC.2000.0002.1331; Exhibit 5.107, DRC.2000.0002.1332.
826 Exhibit 5.90, EXP.0003.0003.0128.
governments. She had seen a genuine willingness among government members of the Advisory Committee to share resources and to listen to the sector.\textsuperscript{827} She said: Government representatives on the Advisory Committee heard our suggestions and instead of saying ‘oh no, we can’t do that’ they would say ‘we’ll investigate and report back’. It was a model of how to develop policy in a collaborative way.\textsuperscript{828}

427. Professor Kavanagh said that although ‘still not ideal’, she has seen examples of the staff working within the disability sections of government working more closely with the health sector:

For example, when hospitals in Victoria banned visitors, the Victorian Government listened when people with disability said that they needed a support worker with them. The Victorian Government responded by issuing a directive that people with disability who need additional support can bring an additional person to the hospital, regardless of whether they were there for a COVID-19 related reason.\textsuperscript{829}

428. She said she had seen examples of issues on which the disability community had advocated for decades finally attract attention of government.\textsuperscript{830}

429. Mr Cotterell acknowledged that the Advisory Committee has shown it would actually be useful for the Commonwealth Department of Health to have a routine body of that kind to be hearing from people with lived experience, experts, and relevant agencies and providers about the health needs of people with disability more generally.\textsuperscript{831}

Findings

430. The Royal Commission may make the following findings:

(a) prior to 2 April 2020, the Commonwealth Department of Health failed adequately to consult with people with disability and their representative organisations

(b) the lack of consultation between the Commonwealth Department of Health and those departments or agencies with responsibility for disability policy and responses has been inadequate in the context of a pandemic and impaired the Commonwealth’s response to the actual situation of people with disability in the early stages of the COVID-19 pandemic

\textsuperscript{827} Exhibit 5.30, Statement of Professor Anne Kavanagh, 12 August 2020, at [148].

\textsuperscript{828} Exhibit 5.30, Statement of Professor Anne Kavanagh, 12 August 2020, at [148].

\textsuperscript{829} Exhibit 5.30, Statement of Professor Anne Kavanagh, 12 August 2020, at [151].

\textsuperscript{830} Exhibit 5.30, Statement of Professor Anne Kavanagh, 12 August 2020, at [152].

\textsuperscript{831} Transcript of Simon Cotterell, Public hearing 5, 21 August 2020, P-347 [3-8].
(c) the failure to consult resulted in adverse consequences for people with disability including:

(i) increased fear and anxiety

(ii) overlooking the specific interests and needs of people with disability in key health plans

(iii) failure to make testing/screening accessible for people with disability, who were unable to access the testing/screening arrangements for the general population

(d) the concerns raised by the evidence were about the availability, access to places where testing is conducted and appropriate information

(e) any ‘changes’ to ensure people with disability in all settings have access to testing have been identified in the Management and Operational Plan.

Recommendations

431. The Royal Commission may consider making the following recommendations:

**COVID 19**

(a) the Commonwealth Government and its agencies involve and consult with people with disability and their representative organisations in its response to COVID-19; development of plans and policies; the evaluation of plans and policies; and the measures to address recovery from COVID-19

(b) the Commonwealth Government fund and support people with disability and their representative organisations to participate in consultations with it during the COVID-19 pandemic

(c) the Commonwealth Government and its agencies commit to the Advisory Committee continuing during the COVID-19 pandemic and the recovery

(d) the Commonwealth Government consider the Office of the UN Commissioner for Human Right’s guidance note, *COVID-19 and the rights of persons with disabilities: Guidance* and the UN Secretary-General’s policy brief, *A Disability-Inclusive Response to COVID-19* to ensure the consultations address issues from a human rights perspective

(e) the Commonwealth Government examine and evaluate the gaps in consultation processes between those departments and agencies with responsibility for

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832 Exhibit 5.19.33, EXP.0027.0001.0001.
833 Exhibit 5.19.34, EXP.0027.0001.2029.
health and those with responsibility for disability, including but not limited to the NDIA and NDIS Commission

(f) the Commonwealth Department of Health continue its work that started with the National Roundtable organised by the Commonwealth Minister for Health in August 2019, and a draft National Roadmap of action to improve health care for people with intellectual disability, which should become part of the proposed national Primary Health Care 10 Year Plan.

Public health emergencies

432. Public hearing 5 did not address public health emergencies beyond COVID-19. However, there may be lessons from the response to the current pandemic for future public health emergencies. These lessons may inform and assist the Commonwealth Government in the future to:

(a) review all existing emergency plans for the purpose of identifying and modifying to include people with disability consistently with the rights set out in the CRPD

(b) ensure the next National Disability Strategy (NDS) specifically addresses and establishes pathways to ensure persons with disability, through their representative organisations, are consulted and included at every level of planning and response to other public health emergencies.

Human rights approaches to emergency planning, response and recovery

433. A number of the directions addressed the Commonwealth’s role and responsibilities, as follows:

(4) The role and responsibilities of the Commonwealth in an emergency such as the pandemic, including preparations for emergencies having regard to the responsibilities of the Commonwealth under the Convention on the Rights of Persons with Disabilities.

(13) Additional measures, if any necessary, to implement a human rights-based approach to the pandemic and during the period of recovery from the pandemic.

Approach to these issues

434. At the outset, we note Public hearing 5 was focused on the impact of COVID-19 on people with disability and not the much broader issue of the Commonwealth’s role
and responsibility in a national emergency. This Royal Commission has not received evidence that would enable it to consider, address or make recommendations touching on all aspects of the Commonwealth’s role, responsibilities and powers in national emergencies. As noted above, the Royal Commission into National Natural Disaster Arrangements is presently examining those issues.

435. The evidence in Public hearing 5 did not examine the whole of the Commonwealth’s response to the COVID-19 pandemic. We note for example, Mr Ben Gauntlett, the Commonwealth Disability Commissioner presented and proposed a structure for a draft human rights framework to the Advisory Committee on 29 April 2020. 834 This Royal Commission may wish to consider the work done by the Australian Human Rights Commission and its Guidelines on the rights of people with disability in health and disability care during COVID-19 which were released on 21 August 2020, but did not form part of the evidence for this public hearing. 835

436. In our respectful submission, it is premature for the Royal Commission to make recommendations about emergency planning generally or even by reference to the CRPD, particularly because the rights in the CRPD in relation to emergencies include natural disasters and humanitarian emergencies in conflicts situations. 836

437. For this reason, our submissions will address the evidence with respect to human rights in response to the COVID-19 pandemic with a view to identifying further areas of inquiry and investigation by the Royal Commission which may also be informed by any findings or recommendations of the Royal Commission into National Natural Disaster Arrangements.

Commonwealth Department of Health’s emergency plans pre COVID 19

438. As at 5 February 2020, there were no emergency health response initiatives that specifically targeted people with cognitive disability in the Primary Health Networks generally or with respect to COVID-19. 837

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834 Exhibit 5.100, CTD.1000.0001.0375 at 0001.
836 On 15 April 2020, the Royal Commission published an issues paper on Emergency Planning and Response. The issues paper explores how people with disability can be severely affected by emergency situations like the COVID-19 pandemic, and may be at a higher risk of experiencing violence, abuse, neglect and exploitation at these times. The issues paper can be accessed at: https://disability.royalcommission.gov.au/publications/emergency-planning-and-response.  
837 Transcript of Simon Cotterell, Public hearing 5, 21 August 2020, P-316 [10-31].
439. There is no reference to the needs of people with disability in the Department’s health emergency, pandemic and communicable disease plans prior to COVID-19.

440. Dr Coatsworth said that the pre COVID-19 plans set out the ‘high-level arrangements’ that the health sector will follow in response to a communicable disease outbreak or pandemic and do not ‘deal directly with any specific groups’.838

**Article 11 of the CRPD**

441. Article 11 states:

> States Parties shall take, in accordance with their obligations under international law, including international humanitarian law and international human rights law, all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters.

442. The Royal Commission heard the evidence of two eminent human rights experts, the Special Rapporteur Ms Devandas839 and Ms Kayess.840 They explained why the CRPD is the framework for Australia to adopt a human rights approach to the ongoing COVID-19 response and recovery efforts.

443. Ms Kayess said the United Nations Office of the High Commissioner on Human Rights (OHCHR) recognised that in order to comply with Article 11, States Parties and other relevant humanitarian actors are required to:841

   (a) reform their policies and practices in the context of situations of risk and humanitarian emergencies under the CRPD

   (b) ensure effective management and dissemination of accessible information at all stages of emergencies

   (c) ensure active coordination, participation and meaningful consultation with persons with disabilities and their representative organizations, including women and children with disabilities, at all levels842

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838 Exhibit 5.44, Statement of Dr Nick Coatsworth, 7 August 2020, at [1-2].
841 Exhibit 5.19, Statement of Rosemary Kayess, 13 August 2020, at [6].
842 Exhibit 5.19.9, EXP.0003.0003.0356 at 0369 and 0370; General Comment No 7, para [78] reads ‘In situations of risk and humanitarian emergencies (art. 11), it is important for States parties and
(d) mobilise adequate, timely and predictable resources to operationalise their commitment for emergency preparedness and response that is inclusive of and accessible to persons with disabilities following a human rights-based approach in their programming efforts, in order to avoid excluding members of this group

(e) build capacity across stakeholders, including both military and civilian, peacekeeping personnel, and other field workers intervening in emergency situations regarding the rights of persons with disabilities

(f) implement international cooperation in line with the standards established in the CRPD

(g) avoid including in their disability-related strategies matters of prevention of primary impairments

(h) promote the inclusion of persons with disabilities in existing United Nations frameworks dealing with conflict and emergency situations, and

(i) adopt internationally agreed guidelines on humanitarian response for upholding the rights of persons with disabilities.

444. She said that ‘Article 11 is a cross-cutting article that places obligations on States Parties to implement measures, such as those outlined [above], to fulfil the rights of persons with disabilities. In the context of the COVID-19 pandemic, Article 11 is instrumental in facilitating individual rights, in particular article 5 Equality and non-discrimination; article 10 Right to life; article 12 Equal recognition before the law; article 14 Liberty and security of person; article 15 Freedom from torture or cruel, inhuman or degrading treatment or punishment; article 16 Freedom from exploitation, violence and abuse; article 22 Respect for privacy; article 24 Education; article 25 Health; article 27 Work and employment. The CRPD requires States Parties to take into account the multi-dimensional layers of identities and statuses of individuals for its full implementation’.  

445. Ms Kayess explained that a human rights approach is a ‘disability-inclusive approach, which means that people with disability, and their issues and concerns should be included in all planning efforts across governments and by other humanitarian actors to ensure the active participation of and coordination and meaningful consultation with organizations of persons with disabilities, including those at all levels representing women, men and children with disabilities of all ages’.

843 Exhibit 5.19, Statement of Rosemary Kayess, 13 August 2020, at [8-9].
efforts should also be informed by rigorous disability-inclusive research methods for the collection of disaggregated data and a robust evidence base’.  

446. Ms Kayess went on to say that, in the context of a human rights approach, ‘response and recovery efforts to the pandemic should not only focus on the immediate crisis but provide the basis for building equitable, sustainable and resilient communities into the future where people with disability are fully valued and included’.  

**Australia’s compliance with Article 11**

447. Ms Kayess expressed the view that the COVID-19 pandemic has revealed that the CRPD has not been comprehensively implemented by States Parties generally and specifically that Australia has not fully implemented the concluding observations from the CRPD Committee. She said it appears that the normative content of the CRPD has not informed its response to COVID-19.

448. The CRPD Committee has commented on Australia’s implementation of Article 11 in its concluding observations on the initial report of Australia, and its concluding observations on Australia’s combined second and third periodic reports.

**Importance of emergency planning for people with disability**

449. The CRPD and international instruments address the importance of emergency planning to include people with disability.

450. The Royal Commission heard evidence about the importance of planning for individuals. As noted above, Associate Professor Villeneuve explained the importance of a Person-Centred Emergency Preparedness approach (PCEP) and Disability Inclusive Disaster Risk Reduction (DIDRR). In her evidence, Associate Professor Villeneuve described PCEP as a process tool and framework that allows people with disability to have a tailored emergency preparedness plan that matches two things: their capabilities and their strengths, what they are able to do; and their support needs, what they need support with.

451. DIDRR is ‘about making sure the needs, voices and perspectives of people with disability are included in disaster risk management practices’.  

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844 Exhibit 5.19, Statement of Rosemary Kayess, 13 August 2020, at [47].
845 Exhibit 5.19, Statement of Rosemary Kayess, 13 August 2020, at [48].
846 Exhibit 5.19, Statement of Rosemary Kayess, 13 August 2020, at [16].
847 Exhibit 5.19, Statement of Rosemary Kayess, 13 August 2020, at [16].
848 Exhibit 5.19.10, EXP.0003.0002.0145; Exhibit 5.19.11, EXP.0003.0001.0001.
849 Transcript of Associate Professor Michelle Villeneuve, Public hearing 5, 19 August 2020, P-95 [23-28].
850 Transcript of Associate Professor Michelle Villeneuve, Public hearing 5, 19 August 2020, P-95 [43-45].
Professor Villeneuve stressed that DIDRR ‘requires cross-sector communication and collaboration’ to ensure that people with disability ‘are safe and their wellbeing is recognised’.  

Findings

452. It is open to the Royal Commission to find:

(a) based on the CRPD Committee’s Concluding Observations on 21 October 2013 and 15 October 2019, the Commonwealth Government has not developed a disability inclusive approach to planning for emergencies that takes into account and incorporates the CRPD.

(b) the normative content of the CRPD has not informed the Commonwealth’s response to COVID-19 for people with a disability.

Recommendations

453. We submit that the Royal Commission continue to examine in its research and policy work the role and responsibilities of the Commonwealth in an emergency such as the pandemic, including preparations for emergencies having regard to the responsibilities of the Commonwealth under the CRPD. This work may be informed by the recommendations of other Royal Commissions and inquiries into emergency planning generally.

Outreach, oversight and standards

454. The Chair directed consideration of a number of issues relevant to outreach and oversight by NDIS agencies 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

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851 Transcript of Associate Professor Michelle Villeneuve, Public hearing 5, 19 August 2020, P-95 [4-6].
852 Exhibit 5.19.10, EXP.0003.0002.0145; Exhibit 5.19.11, EXP.0003.0001.0001.
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

455. A number of concerns were raised during the evidence about the response of the NDIS Commission to the COVID-19 pandemic.

Lack of directives

456. Professor Kavanagh expressed concern 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. 853 In her view, this resulted in the onus being on providers themselves to make the decision as to whether they could continue to provide the service. 854 Professor Kavanagh expressed concerns about leaving these decisions to service providers in circumstances where they are dependent on providing that service to maintain financial viability. 855

457. In her witness statement, 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. 856 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’. 857

853 Exhibit 5.30, Statement of Professor Anne Kavanagh, 12 August 2020, at [103-117].
854 Transcript of Anne Kavanagh, Public hearing 5, 20 August 2020, P-215 [26-30].
855 Transcript of Anne Kavanagh, Public hearing 5, 20 August 2020, P-216 [1-2].
856 Exhibit 5.48, Statement of Samantha Taylor, 12 August 2020, at [76].
857 Exhibit 5.48, Statement of Samantha Taylor, 12 August 2020, at [111].
458. Ms Taylor also confirmed that advice to providers from the NDIS Commission did not focus on specific support or service activities or settings.\textsuperscript{858}

\textit{Managing COVID-19 outbreaks}

459. In her evidence, Ms Taylor confirmed that service providers have primary responsibility for NDIS participants in the event of an outbreak.\textsuperscript{859}

460. The NDIS Commission was not consulted about the Residential Care Facilities Guidelines prior to their initial release on 13 March 2020. Ms Taylor said in her witness statement that despite subsequently working on an amended set of guidelines intended to be for disability settings, the CDNA did not consider it necessary for these to be released.\textsuperscript{860}

461. Notwithstanding this, 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{861} Ms Taylor told the Royal Commission that she had more recently been approached to contribute to the finalisation of a set of guidelines that will be applicable.\textsuperscript{862}

462. The NDIS Commission also did not issue any specific advice about when providers may need to engage infection control nurses.\textsuperscript{863}

\textit{NDIS Commission’s regulatory approach}

463. Ms Taylor said that providers’ obligations continued during the pandemic.\textsuperscript{864} She 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{865}

464. Ms Taylor also said that ‘none of those mechanisms that are part of the framework and the powers under the NDIS Act have altered through this period’.\textsuperscript{866} The NDIS Commission continued to rely on its complaints function, incident reporting and self-reporting by providers during the pandemic, and also received information from public health authorities. Mr Head said ‘the features of our regulatory

\textsuperscript{858} Exhibit 5.48, Statement of Samantha Taylor, 12 August 2020, at [83].\textsuperscript{859} Transcript of Samantha Taylor, Public hearing 5, 21 August 2020, P-381 [43]-P-382 [5].\textsuperscript{860} Exhibit 5.48, Statement of Samantha Taylor, 12 August 2020, at [105].\textsuperscript{861} Exhibit 5.48, Statement of Samantha Taylor, 12 August 2020, at [107].\textsuperscript{862} Transcript of Samantha Taylor, Public hearing 5, 21 August 2020, P-396 [17-18].\textsuperscript{863} Exhibit 5.48, Statement of Samantha Taylor, 12 August 2020, at [133].\textsuperscript{864} Transcript of Samantha Taylor, Public hearing 5, 21 August 2020, P-384 [37-38].\textsuperscript{865} Transcript of Samantha Taylor, Public hearing 5, 21 August 2020, P-384 [37-38].\textsuperscript{866} Transcript of Samantha Taylor, Public hearing 5, 21 August 2020, P-385 [28-29].
toolkit...are the same as what they were pre-pandemic’.\(^{867}\) In relation to its regulatory approach, the NDIS Commission was also ‘very concerned in looking at what we did to respond to the unique features of the pandemic to avoid adding extra complexity and confusion for people, providers’.\(^{868}\)

465. Professor Villeneuve made recommendations related to the need for clear expectations and direction for disability service providers before, during and after a disaster using person-centred approaches and having service continuity plans and contingencies.\(^{869}\) She explained that the NDIS Quality and Safeguarding Framework establishes expectations for service providers and their staff to deliver high quality supports and clarifies how providers should respond during a ‘serious incident’.\(^{870}\) However, the NDIS Quality and Safeguarding Framework provides no provisions for emergency preparedness and disaster risk related to all hazards for people with disability and the services that support them.\(^{871}\) Natalie Wade also recommended an emergency-specific set of practice standards for the NDIS.\(^{872}\)

466. Professor Villeneuve recommended expanding the definition of ‘serious incident’ to include emergencies triggered by natural hazard and other emergencies.\(^{873}\) She urged for the establishment of nationally consistent expectations for the role of service providers in ensuring appropriate safeguards to ensure the safety and well-being of people with disability in emergencies.\(^{874}\)

467. Mr Head said that he did not consider it necessary to amend the NDIS Practice Standards and Quality Indicators in response to the COVID-19 pandemic as they were framed sufficiently broadly to require registered NDIS providers to provide NDIS supports and services in as safe a manner as possible, and to maintain the provision and quality of those NDIS supports and services as much as possible, given the occurrence of a pandemic.\(^{875}\) However, he was expecting to receive a proposal from Ms Taylor to ‘strengthen and clarify’ the NDIS Practice Standards and NDIS Quality Indicators ‘to incorporate learnings from the experience of responding to the COVID-19 pandemic’, potentially to make clearer provision as to

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\(^{867}\) Transcript of Graeme Head AO, Public hearing 5, 21 August 2020, P-387 [15-17].

\(^{868}\) Transcript of Graeme Head AO, Public hearing 5, 21 August 2020, P-387 [25-27].

\(^{869}\) Exhibit 5.24, Statement of Michelle Villeneuve, 31 July 2020, at [69].

\(^{870}\) Exhibit 5.24, Statement of Michelle Villeneuve, 31 July 2020, at [69].

\(^{871}\) Exhibit 5.24, Statement of Michelle Villeneuve, 31 July 2020, at [69].

\(^{872}\) Transcript of Natalie Wade, Public hearing 5, 21 August, P-375 [19-26].

\(^{873}\) Exhibit 5.24, Statement of Michelle Villeneuve, 31 July 2020, at [69].

\(^{874}\) Exhibit 5.24, Statement of Michelle Villeneuve, 31 July 2020, at [69].

\(^{875}\) Exhibit 5.46, Statement of Graeme Head AO, 13 August 2020, at [22]; Supplementary statement of Graeme Head AO, 27 August 2020, at [39].
registered NDIS providers’ obligations in relation to business continuity planning, infection control and other aspects of planning.\textsuperscript{876}

\textit{Consultation and coordination with Commonwealth health bodies}

468. It appeared from the evidence that the NDIS Commission was not involved in or consulted about several key aspects of COVID-19 planning by Commonwealth health bodies which affected people with disability, the disability workforce and service providers.

469. As noted above, the NDIS Commission was not consulted about or aware of the Residential Care Facilities Guidelines, released on 13 March 2020. It remains the case that the NDIS Commission is not mentioned in the Guidelines, despite three subsequent versions having been released and the Guidelines stating that they apply to ‘residential physical or mental disability care’.\textsuperscript{877} It was not until 27 March 2020 that the NDIS Commission was involved in a stakeholder meeting that had a specific focus on the health response for people with disability.\textsuperscript{878} Ms Taylor agreed that in the critical time period of early February to mid-March 2020, there was not much communication between the Department of Health and the NDIS Commission directly.\textsuperscript{879}

\textit{Notifications} by providers

470. The NDIS Commission wrote to providers on 24 March 2020 outlining a specific form which providers were to use to notify changes or events specified in section 13 or 13A of the NDIS Provider Rules that related to the impact of COVID-19. In her witness statement, Ms Taylor explained that these notifications were an important source of information for the Commission, as they enabled the NDIS Commission to identify potential disruptions to continuity of services, the impact on providers and to monitor infection rates among participants and workers.\textsuperscript{880} According to the letter to providers which accompanied the form, they also allowed the NDIS Commission ‘to monitor the market [to] understand impacts and emerging risks to participants and providers’.\textsuperscript{881}

471. In her evidence, Ms Taylor explained that the NDIS Commission’s concern in relation to the notifications was ‘principally where it is clear that there is some failing that has occurred that could be attributed to the actions of a provider that

\textsuperscript{876} Exhibit 5.46, Statement of Graeme Head AO, 13 August 2020, at [39]; Supplementary statement of Graeme Head AO, 27 August 2020, at [40].

\textsuperscript{877} Exhibit 5.77, DRC.2000.0002.1349.

\textsuperscript{878} Transcript of Samantha Taylor, Public hearing 5, 21 August 2020, P-394 [21-25].

\textsuperscript{879} Transcript of Samantha Taylor, Public hearing 5, 21 August 2020, P-392 [32-35].

\textsuperscript{880} Exhibit 5.48, Statement of Samantha Taylor, 12 August 2020, at [47].

\textsuperscript{881} Exhibit 5.183, CTD.7200.0001.3449.
has caused a person to be exposed to COVID-19 and where they have not then subsequently taken the appropriate action to ensure that transmission did not occur subsequent to that to anyone else…’. 882 In her supplementary witness statement, Ms Taylor described the NDIS Commission’s process of every second day contact with providers who reported COVID-19 infections to obtain up-to-date information on infection status. 883

472. However, although the NDIS Commission had been notified of 124 worker COVID-19 infections and 76 participant COVID-19 infections (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. 884

Risk of violence and abuse

473. The Royal Commission asked the NDIS Commission whether it had taken specific steps to increase its oversight of closed residential settings in response to the increased isolation of people with disability due to COVID-19; a matter which had been identified in the Royal Commission’s Statement of Concern on 26 March 2020. 885 Ms Taylor said that the NDIS Commission took steps in relation to all settings and continued its existing quality and safeguarding functions including the capacity to carry out investigations. 886 She added that it was:

…not yet clear…whether participants have experienced higher rates of violence, abuse, neglect and exploitation during the pandemic to date, or whether rates of violence, abuse, neglect and exploitation have increased in connection with the provision of NDIS supports and services or in other settings, such as in circumstances of family violence. I have not seen evidence of an increase in the information available to the NDIS Commission to date, although I am alive to the possibility that this might reflect some decrease in opportunities to report or complain. 887

474. This was a matter that the NDIS Commission would ‘keep under review’. 888

475. The NDIS Commission did not provide advice to the Department of Health about collecting and/or collating data that would assist in understanding the impact of

882 Transcript of Samantha Taylor, Public hearing 5, 21 August 2020, P-389 [41-46].
883 Supplementary statement of Samantha Taylor, 26 August 2020.
884 Transcript of Samantha Taylor, Public hearing 5, 21 August 2020, P-389 [7].
886 Exhibit 5.48, Statement of Samantha Taylor, 12 August 2020, at [87-88], emphasis added.
887 Exhibit 5.48, Statement of Samantha Taylor, 12 August 2020, at [93].
888 Exhibit 5.48, Statement of Samantha Taylor, 12 August 2020, at [93].
COVID-19 on the risks of violence against, and abuse, neglect and exploitation of, people with disability.\textsuperscript{889}

Findings

476. We submit the Royal Commission may make the following findings:

(a) the NDIS Commission has not issued specific advice about what disability services could be provided safely and in what form

(b) the NDIS Commission considered that it is the responsibility of service providers to determine the risk factors of continuing services

(c) the NDIS Commission considers that service providers have primary responsibility for NDIS participants in the event of an outbreak

(d) the NDIS Commission was not consulted about the Residential Care Facilities Guidelines prior to their initial release, and is still not mentioned in the current version of the Residential Care Facilities Guidelines

(e) other than the provider alert and fact sheet on 13 May 2020 (and since updated), the NDIS Commission did not issue specific advice about the difference between disability accommodation and aged care facilities to assist providers to determine how the Residential Care Facilities Guidelines applied to disability services

(f) the NDIS Commission did not issue specific advice about when providers may need to engage infection control nurses

(g) the NDIS Commission has conducted only three investigations in respect of the 124 worker COVID-19 infections and 76 participant COVID-19 infections notified to it as at midday on 13 August 2020

(h) the NDIS Commission has not to date provided advice to the Department of Health about collecting and/or collating data that would assist in understanding the impact of COVID-19 on the risks of violence against, and abuse, neglect and exploitation of, people with disability.

Recommendations

477. Having regard to the limited time to examine the issues at Public hearing 5 and also to the ongoing nature of the work of the NDIS Commission, we submit that it may be premature to make recommendations in relation to a change in policy and operations. However, the Royal Commission may ask the NDIS Commission to consider the broad and wide ranging issues raised by NDIS participants, service

\textsuperscript{889} Exhibit 5.48, Statement of Samantha Taylor, 12 August 2020, at [182].
providers and experts about the impact of the NDIS Commission’s operations and regulatory approach on NDIS participants and service providers during the pandemic.

NDIA

478. As explained above, the Royal Commission did not hear oral evidence from Martin Hoffman, Chief Executive of the NDIA, but received his written statement dated 3 August 2020.\(^{890}\)

Low-cost assistive technology policy

479. In relation to the NDIA, the Royal Commission heard from Kirsten Deane about the survey of people with disability and family members conducted by EAC between the end of April and the beginning of June 2020.\(^{891}\) The survey indicated that many respondents were ‘frustrated by confusing and inconsistent information, an inability to use their funds in a way that worked for them and lack of support in trying to navigate the changes the pandemic had made to their lives’.\(^{892}\) Ms Deane cited the NDIA’s low cost assistive technology policy as an example of this.\(^{893}\)

480. In his witness statement, Mr Hoffman addressed the low-cost assistive technology policy announced on 27 April 2020. He explained that this was one of a number of changes made by the NDIA to assist NDIS participants in dealing with the pandemic.\(^{894}\)

Other issues

481. We acknowledge there were a significant number of references to and issues raised by witnesses about the NDIA. The Royal Commission may consider asking Mr Hoffman to address or respond to those issues, including:

(a) whether the NDIA has collected any data about the numbers of NDIS participants and/or disability support workers who have contracted or died from COVID-19

(b) whether the NDIA knows how many disability support workers work in both aged care facilities and with service providers registered with the NDIS

\(^{890}\) Exhibit 5.45, Statement of Martin Hoffman, 3 August 2020.

\(^{891}\) Exhibit 5.26, Statement of Kirsten Deane, 12 August 2020; Transcript of Kirsten Deane, Public hearing 5, 19 August 2020.

\(^{892}\) Exhibit 5.26, Statement of Kirsten Deane, 12 August 2020, at [44].

\(^{893}\) Exhibit 5.26, Statement of Kirsten Deane, 12 August 2020, at [54].

\(^{894}\) Exhibit 5.45, Statement of Martin Hoffman, 3 August 2020, at [15].
(c) the ‘proactive outreach campaign to high risk participants’ referred to in paragraph 15 of the statement, including:

(i) how many calls did the NDIA make to participants as part of the COVID-19 outreach?

(ii) what criteria did the NDIA use to determine which higher risk or more vulnerable participants were called as part of the COVID-19 outreach?

(iii) during the calls, did the NDIA ask about the risk to the participant of violence, abuse, neglect and/or exploitation? If so, what did it do in response to such reports?

(iv) during the calls, did the NDIA ask if the participant received support and/or services in congregate or group settings? If yes, did the NDIA offer the participant an alternative 1:1 support and/or service?

(v) during the calls, did the NDIA arrange for PPE to be provided if the participant was unable to observe physical distancing?

(vi) during the calls, did the NDIA arrange for alternative or substitute services if the participant’s existing supports and/or services had ceased or been withdrawn due to COVID-19?

(d) was the NDIA aware of the surveys conducted by CID, PWDA, EAC? If so, has the NDIA responded and what was the nature of the response to the concerns raised in the survey?

(e) why did the NDIA not:

(i) allow PPE to be purchased by all NDIS participants through consumables or other funding?

(ii) adjust NDIS plans to cover the cost of PPE?

(f) why were the changes announced on 29 July 2020 to funding arrangements to allow NDIS participants to claim the cost of PPE, including masks:

(i) not made available to participants nationally?

(ii) restricted to participants who receive at least one hour a day of face-to-face daily living supports, given the Health Direct advice that a close contact is a person who has had face-to-face contact with a confirmed or probably COVID-19 case for more than 15 minutes in total over the course of one week?

(g) what specific advice did the NDIA give to providers about changing from supports and services provided in group or congregate settings to 1:1 supports?
(h) did the NDIA increase participants’ plans by 10% to match the 10% temporary price increase applicable from 25 March 2020 to 30 June 2020?

(i) if the answer to the question above is no, what steps did the NDIA take to ensure that participants were not adversely affected by providers passing on the 10% temporary price to participants?

(j) did the NDIA require providers to use the revenue from the 10% temporary increase to support the frontline disability workforce, for example by providing pandemic leave?

(k) was the 10% loading an incentive to stay open?

(l) what from 10% loading went to the frontline disability workforce?

Community Visitors

482. 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 Victoria895 and forensic disability units.896

483. Noting that Community Visitor programs are operated at a state and territory level, 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.

Testing and screening

(7) 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.

484. Access to COVID-19 testing for people with disability and those people who support and care for people with disability was a major issue of concern raised during the hearing. These concerns were not limited to residents in supported residential accommodation settings. Access to COVID-19 testing and screening remains an issue of concern in all settings.

Experience of COVID-19 testing

895 Transcript of Fiona Downing, Public hearing 5, 18 August 2020, P-69 [45-46].
896 Transcript of Ross Joyce, Public hearing 5, 18 August 2020, P-59 [25-26].
485. Ms Spencer shared the experience of a person with intellectual disability who had some difficulties navigating the testing regime. It took this person three calls to the Coronavirus Information Helpline 1800 number in SA to get an answer and he had to wait over four days for the results, resulting in unnecessary stress and an inability to attend work.

486. Ms Buchanan said that through her contacts on social media, she heard that it was difficult or impossible to get home testing for COVID-19 in Victoria. She said that in Victoria there was a helpline but once you called it the person on the end of the line didn't have any information about home testing. She said that one person she knows had to wait nine days to get a COVID-19 test at home. The difficulty with this was that the service providers immediately pulled services. So until the person with disability had a negative COVID-19 test, then services would not be provided. This particular person went for nine days without a carer, had no assistance with meals or personal care and ate muesli bars and stayed in bed for the whole of the period.

487. Ms Gibbs gave evidence that service providers are telling people with disability that they need to have a negative COVID-19 test before the provider can recommence providing them with support. She said that while it has been great to see accessible testing available in Melbourne and in some places in Victoria, accessible testing needs to be made available nationally for people with disability who do not drive or are not able to go out into the community.

488. Ms Downing said that issues raised with advocates have been around testing. She said that the Victorian Government’s recent introduction of home testing for people with disability should be applauded, but says these measures should have come in months ago when the first wave hit. Ms Downing said that people with disability have been voicing their concerns but ‘it’s just a general sense of across

897 Transcript of Rachel Spencer, Public hearing 5, 19 August 2020, P-121 [20]-P-131 [45]; Exhibit 5.25.2, IND.0033.0001.0017.
898 Transcript of Rachel Spencer, Public hearing 5, 19 August 2020, P-121 [20]-P-131 [45]; Exhibit 5.25.2, IND.0033.0001.0017.
899 Exhibit 5.3, Statement of Ricky Buchanan, 4 August 2020, at [76].
900 Exhibit 5.3, Statement of Ricky Buchanan, 4 August 2020, at [76].
901 Exhibit 5.3, Statement of Ricky Buchanan, 4 August 2020, at [77].
902 Exhibit 5.3, Statement of Ricky Buchanan, 4 August 2020, at [77-78].
903 Exhibit 5.3, Statement of Ricky Buchanan, 4 August 2020, at [77-78].
904 Transcript of Eleanor Gibbs, Public hearing 5, 18 August 2020, P-73 [10-30].
905 Transcript of Eleanor Gibbs, Public hearing 5, 18 August 2020, P-73 [10-30].
906 Transcript of Fiona Downing, Public hearing 5, 18 August 2020, P-69 [25-30].
907 Transcript of Fiona Downing, Public hearing 5, 18 August 2020, P-69 [25-30].
the community of people with disability not feeling like their voices are being heard’.908

489. Mr Astourian also said that COVID-19 testing stations are inaccessible and limited to people who have a car.909

**First Nations**

490. The First Nations Advisory Group has overseen the implementation of 85 point of care testing machines across rural and remote Australia.910 Dr Agostino gave evidence about the use of point-of-care testing machines, which have the capacity to provide COVID-19 test results within 45 minutes.911

491. Without those testing machines ‘some remote areas would face delays of a week or more to get test results’.912 Dr Agostino also noted that 23 Commonwealth funded GP Respiratory Clinics have been established in ACCHOs around Australia which provide culturally safe testing services.913

**The Commonwealth Government’s response to testing**

492. The COVID-19 Plan said:

> State and territory governments will develop and validate specific novel coronavirus tests; undertake novel coronavirus laboratory testing as required to monitor the outbreak and for individual patient care; implement testing protocols to support case management, surveillance needs and to preserve laboratory capacity; support and undertake novel coronavirus point of care testing if recommended.914

493. The COVID-19 Plan specifically noted the ‘Targeted action stage concerning clinical care and public health management’. It read:

> New models of care may be instituted to manage novel coronavirus patients, for example:

> a. innovative methods for contact tracing and diagnostic testing (call centres, at-home specimen collection etc.)…”915

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908 Transcript of Fiona Downing, Public hearing 5, 18 August 2020, P-69 [25-30].
909 Exhibit 5.32.1, IND.0039.0001.0004; Transcript of Christian Astourian, Public hearing 5, 20 August 2020, P-245-247.
910 Exhibit 5.35, Statement of Dr Jason Agostino, 12 August 2020, at [41], [43].
911 Exhibit 5.35, Statement of Dr Jason Agostino, 12 August 2020, at [43].
912 Exhibit 5.35, Statement of Dr Jason Agostino, 12 August 2020, at [43].
913 Exhibit 5.35, Statement of Dr Jason Agostino, 12 August 2020, at [41].
914 Exhibit 5.75, EXP.0003.0003.0001 at 0018.
915 Exhibit 5.75, EXP.0003.0003.0001 at 0042.
494. On 16 March 2020, CRE-DH’s first statement recommended, among other things:

Ensuring all clinics providing testing and services related to COVID-19 are completely accessible and that this is communicated clearly to people with disability and their carers.916


496. On 2 April 2020, over 70 DPOs published an Open Letter to National Cabinet which highlighted ten urgent actions required for Australians with disability in response to the COVID-19 pandemic.918 One of the items was to expand the criteria for COVID-19 testing to include people with disability and their support persons because of the high risk of contracting COVID-19.919

497. Dr Coatsworth was asked about arrangements for COVID-19 testing for people with disability and the disability workforce prior to 17 April 2020. Dr Coatsworth said in his witness statement that testing arrangements for people with disability ‘are consistent with that of the general population’.920 He said that ‘all General Practitioner Respiratory Clinics established by the Commonwealth under the COVID-19 Primary Care Response are required, under contact, to comply with relevant laws on wheelchair accessibility and other legal disability access requirements’.921

498. On 17 April 2020, the Department of Health released the Management and Operational Plan.922 With respect to testing, the Management and Operational Plan acknowledged the need for different approaches to COVID-19 testing, such as:

(a) consider less invasive COVID-19 testing approaches for some people with disability in circumstances where the approaches are safe and effective, such as using telehealth, and GP home visit services923

916 Exhibit 5.30.2, EXP.0031.0001.0013 at 0014.
917 Exhibit 5.36.1, EXP.0015.0004.0052.
918 Exhibit 5.20, Joint Statement of Ross Joyce and Patrick McGee, 11 August 2020, at [23]; Exhibit 5.20.3, FPD.9999.0001.0001.
919 Exhibit 5.20, Joint Statement of Ross Joyce and Patrick McGee, 11 August 2020, at [23]; Exhibit 5.20.3, FPD.9999.0001.0001.
920 Exhibit 5.44, Statement of Dr Nick Coatsworth, 7 August 2020, at [25].
921 Exhibit 5.44, Statement of Dr Nick Coatsworth, 7 August 2020, at [25].
922 Exhibit 5.80, DRC.2000.0002.0551.
923 Exhibit 5.80, DRC.2000.0002.0551 at 0568.
(b) as safe and effective COVID-19 pathology testing methods become available, prioritise mechanisms to test people with disability, including their families, carers and support workers.  

(c) develop new testing options, while ensuring safety and efficacy, which prioritise at home and less invasive options.

(d) enable people with disability and those supporting them to access diagnostic testing including:

(e) providing information to patients in a way that is appropriate to their needs (Easy Read, braille, Auslan)

(f) ensuring those providing disability supports know how to support a person who requires testing, and how to respond should there be a positive test result

(g) developing advice sheets for GPs and clinics around testing considerations, and

(h) providing accessible testing.

499. Ms Spencer said CID made recommendations following the first Management and Operational Plan. This included pursuing the option of saliva testing for people who cannot tolerate nasal swabs. She said that all of the recommendations they agree with in principle, and a number of those they agree with and are actioning.

500. The CRE-DH issued a third statement on 13 July 2020, which recommended a number of 'immediate actions' which included a range of measures to ensure that testing could be done for people with disability in an appropriate manner.

501. Dr Coatsworth was specifically asked to address the arrangements for COVID-19 testing after 17 April 2020. He said:

Testing arrangements for people with disability following the release of the Management and Operational Plan for People with Disability are consistent with what was in place prior…
502. Dr Coatsworth was not aware that home visits and home visit testing was a whole-of-country policy. To Dr Coatsworth’s knowledge, it was only available for some pathology providers.

503. In his oral evidence, Dr Coatsworth said that:

…the wide range of testing arrangements that are available to the general population also improve access. In fact, guarantee, in fact, help ensure access for people with disability.

504. Dr Coatsworth accepted that not all of the testing facilities or arrangements are accessible to some people with disability but insisted that thricharere are means to access testing through primary care. He explained that ‘the prioritisation of testing was really anyone who had symptoms required a test…so there wasn’t a specific distinction made’.

Disability support worker testing

505. The Royal Commission heard from service providers that disability support work must be recognised as an essential service. 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.

506. Mr Andrew Richardson, CEO of Aruma, spoke about access to scalable outbreak teams, expert advice and specialise in-home testing in all jurisdictions. ‘I commend the Victorian Government for their work in that area over the past couple of months and suggest that's a potential model that should be consistently rolled out across the country.’

Findings

507. We submit that the Royal Commission may make the following findings:

(a) prior to 17 April 2020, there was no specific consideration given to making testing/screening accessible for people with disability, who were unable to attend the testing/screening arrangements for the general population

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931 Transcript of Dr Nick Coatsworth, Public hearing 5, 21 August 2020, P-362 [32-35].
932 Transcript of Dr Nick Coatsworth, Public hearing 5, 21 August 2020, P-362 [32-35].
933 Transcript of Dr Nick Coatsworth, Public hearing 5, 21 August 2020, P-362 [32-35].
934 Transcript of Dr Nick Coatsworth, Public hearing 5, 21 August 2020, P-363 [4-17].
935 Transcript of Dr Nick Coatsworth, Public hearing 5, 21 August 2020, P-366 [9-10].
936 Transcript of Mr Andrew Richardson, Public hearing 5, 20 August 2020, P-298 [36-38].
937 Transcript of Mr Andrew Richardson, Public hearing 5, 20 August 2020, P-298 [40-43].
938 Transcript of Andrew Richardson, Public hearing 5, 20 August 2020, P-298-299 [45].
(b) the identification of alternative and flexible testing arrangements for people with
disability identified in the Management and Operational Plan was a welcome
and important initiative

(c) the alternative and flexible testing arrangements identified in the Management
and Operational Plan have not been comprehensively implemented by the
Commonwealth Government

(d) the primary responsibility for testing for COVID-19 infection rests with the States
and Territories, not the Commonwealth. So it must be recognised that there are
limits on what arrangements can be implemented by the Commonwealth
Government.

508. The Royal Commission should not find that systemic changes are needed in the
approach taken to suspected COVID-19 or positive COVID-19 tests among
residents in supported residential accommodation settings or people with disability
generally, for the following reasons:

(a) the concerns raised by the evidence were about the availability, access to
places where testing is conducted and appropriate information

(b) any ‘changes’ to ensure people with disability in all settings have access to
testing have been identified in the Management and Operational Plan.

Recommendations

509. We submit that the Royal Commission may consider making the following
recommendation:

(a) the Commonwealth Government implement the alternative and flexible
testing/screening arrangements identified in the Management and Operational
Plan.

Disability workforce

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

510. 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.

Experience with disability support workers
511. The Royal Commission heard evidence from a number of witnesses about their direct experience with disability support workers during the pandemic.

512. Tammy Milne, whose disability worker was unable to attend due to potential exposure to COVID-19, spoke of the stress of dealing with the possibility that she and her husband had unknowingly been exposed to the virus. In addition, no back up worker was sent to assist Ms Milne. She said ‘there was no backfill of a worker so no one was able to provide support to me for four days. That put myself and my husband in a potentially dangerous situation.’

513. Ricky Buchanan had four of her support workers’ shifts cancelled due to potential exposure to COVID-19. She said ‘fortunately these were not consecutive shifts so there was not a big impact for me but it meant that I would go without a meal.’

514. Tim Chan said that he ‘felt especially alone and vulnerable’ when disruption to his support network impacted his ability to communicate through assisted typing.

515. Sheree Driver, a disability worker herself, has a sister with disability who was diagnosed with COVID-19, as was the sister’s support worker. Ms Driver said:

> While I was in isolation (due to having contact with my sister…), I decided to stop working so that I could provide my sister with full-time support [over Facetime]. I worked with two clients a total of four hours, and then I contacted the other disability support workers and support coordinators to provide support to my clients in my absence.

Casualisation of the disability workforce

516. Professor Anne Kavanagh’s evidence examined the preparedness of the disability workforce during COVID-19 and referred to the disability workforce as a ‘highly

939 Transcript of Tammy Milne, Public hearing 5, 18 August 2020, P-25 [5-11].
940 Exhibit 5.1, Statement of Tammy Milne, 3 August 2020, at [16].
941 Exhibit 5.3, Statement of Ricky Buchanan, 4 August 2020, at [74-75].
942 Exhibit 5.3, Statement of Ricky Buchanan, 4 August 2020, at [75].
943 Exhibit 5.9, Statement of Tim Chan, 5 August 2020, at [12].
944 Exhibit 5.4, Statement of Sheree Driver, 12 August 2020, at [34].
945 Exhibit 5.30, Statement of Professor Anne Kavanagh, 12 August 2020, at [132-145].
transient and casualised workforce' which creates a risk factor because casual, low paid workers have greater incentive to attend work when they are sick.946

517. Tammy Milne also noted that ‘due to the casualisation of support workers, many support workers work for multiple employers. They are therefore seeing hundreds of clients and bringing that contact from hundreds of clients to me.’947

Access to PPE and testing for the disability support workforce

518. In relation to PPE and testing for disability sector workers, Professor Kavanagh said in her statement ‘the disability workforce was clearly not defined as essential, and it was unclear whether the sector was included as a priority group for testing along with health and aged care sectors.’948

519. At the beginning of COVID-19, when health and aged care workers had been identified as priority groups for testing, Professor Kavanagh said that some disability sector workers were not treated by the health staff as a priority.949 Professor Kavanagh also said in her statement:

Access to PPE has been another issue. We are only seeing the distribution of PPE in the past month or so. Even so, getting that to everyone has been difficult.950

520. The Royal Commission heard from a service provider, Life Without Barriers, that disability support work must be recognised as an essential service – ‘it is fundamentally disrespectful to people with disability to think otherwise’.951

Training

521. As noted above 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.952 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.953

946 Exhibit 5.30, Statement of Professor Anne Kavanagh, 12 August 2020, at [140].
947 Exhibit 5.1, Statement of Tammy Milne, 3 August 2020, at [19].
948 Exhibit 5.30, Statement of Professor Anne Kavanagh, 12 August 2020, at [144].
949 Exhibit 5.30, Statement of Professor Anne Kavanagh, 12 August 2020, at [145].
950 Exhibit 5.30, Statement of Professor Anne Kavanagh, 12 August 2020, at [143].
951 Transcript of Andrew Richardson, Public hearing 5, 20 August 2020, P-298 [35].
952 Exhibit 5.42, Statement of Simon Brook Cotterell, 10 August 2020 at [14].
522. The *Disability Support Workers: the Forgotten Workforce of COVID-19*\textsuperscript{954} surveyed people working within the disability workforce sector.\textsuperscript{955} The survey was done in June 2020 and at that time ‘there was still about a quarter of people who had not even done an online infection control training module in the disability support workforce, and those that had, 50% nearly half of them actually wanted more training.’\textsuperscript{956} Professor Kavanagh said that she did not feel like the disability support workforce was ‘properly prepared.’\textsuperscript{957} Further she said that ‘pointed out the fact that we didn't have a confident workforce.’\textsuperscript{958}

**Findings**

523. Based on the evidence, it is open to the Royal Commission to find that:

(a) during the pandemic, people with disability had to go without disability support workers often without notice and with no back up disability support workers available

(b) the casualisation of the disability workforce increases the risk to people in close contact with disability support workers to contracting COVID-19

(c) the disability support workforce was not considered an essential workforce and did not receive priority (at least initially) in accessing PPE and being tested for COVID-19.

**Recommendations**

524. The Royal Commission may consider making the following recommendation:

(a) disability support workers be recognised as essential workers

(b) the Commonwealth Department of Health evaluate the effectiveness of the online training program released on 16 March 2020 and take into account the report *Disability Support Workers: the Forgotten Workforce*.

**Funding and increasing resources**

525. The directions include a number of matters with respect to emergency funding and support, as follows:

\textsuperscript{954} Exhibit 5.30.12, EXP.0031.0001.0094.

\textsuperscript{955} Exhibit 5.30.12, EXP.0031.0001.0094.

\textsuperscript{956} Transcript of Professor Anne Kavanagh, Public hearing 5, 20 August 2020, P-216 [35-45].

\textsuperscript{957} Transcript of Professor Anne Kavanagh, Public hearing 5, 20 August 2020, P-216 [35-45].

\textsuperscript{958} Transcript of Professor Anne Kavanagh, Public hearing 5, 20 August 2020, P-216 [35-45].
(11) The need for emergency funding for women with disability experiencing domestic or family violence during COVID-19, with particular reference to enabling access to support.

Increased prevalence of domestic violence during the pandemic

526. A number of witnesses gave evidence about the increased risk to women with disability of domestic and family violence throughout the pandemic. Ms Devandas said that it was important to highlight the intersections between gender and disability, noting that ‘many women with disabilities are being forced to lock down at home with their abusers at the same time as services to support survivors are being disrupted or made inaccessible.’

527. The AIC conducted a national representative online survey of 15,000 women, including more than 1700 with disability (11 per cent). Compared to other women, women with disability were more likely to have experienced the onset or escalation of domestic violence during the initial stages of the pandemic.

528. During the first three months of the COVID-19 pandemic, the survey found that, among women with a disability:

(a) 12.6 per cent (and 23 per cent of women in a current relationship) reported having experienced physical violence in the last three months

(b) 9 per cent reported having experienced sexual violence (16.4 per cent of women in a current relationship)

(c) 14.7 per cent reported having experienced coercive control (26.8 per cent of women who were in a relationship).

529. 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.

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960 Transcript of Catalina Devandas Aguilar, Public hearing 5, 19 August 2020, P-186 [15-18].

961 The AIC used the term ‘restrictive long term health condition’, which corresponds closely to the ABS definition of disability.

962 Exhibit 5.71, CTD.9700.0001.0020 at 0045.

963 Exhibit 5.71, CTD.9700.0001.0020 at 0030.

964 Exhibit 5.71, CTD.9700.0001.0020 at 0045.
530. Ms Lee identified as reasons for the increased risk of family violence for women with disabilities:

(a) partners are more likely to be working at home\(^{965}\)

(b) the health and economic impacts of the pandemic are also likely to heighten stress levels within already violence households\(^{966}\)

(c) opportunities to access help have significantly reduced because activities such as visiting allied health services, leaving the house with support workers or attending school or university have either moved online or are not happening at all.\(^{967}\)

531. Both Ms van Poppel and Ms Lee said that family violence hotlines are experiencing lower volumes of calls during the pandemic because people experiencing family violence are not safe to call for help when they are in the same house as a violent partner.\(^{968}\) Ms Lee said that family violence services need dedicated funding to enable them to make their services accessible to everyone.\(^{969}\)

Access to emergency funding

532. Ms Lee said that access to emergency funding can give a woman with disability in a violent relationship a means to escape and be safe and supported.\(^{970}\)

533. At this stage the Royal Commission is not in possession of economic modelling or sufficient information to make specific recommendations as to how or to who such funding should be provided.

(12) Emergency advocacy funding during the COVID-19 pandemic, including provision of Commonwealth funding for a dedicated 1800 hotline, an SMS service for First Nations people with disability, providing information relevant to the pandemic.

534. Ms Downing spoke about the increased burdens placed on advocacy organisations during the pandemic.\(^{971}\) She spoke for example about the fact that the demand for

\(^{965}\) Exhibit 5.18, Statement of Nicole Lee, 10 August 2020, at [7].

\(^{966}\) Exhibit 5.18, Statement of Nicole Lee, 10 August 2020, at [7].

\(^{967}\) Exhibit 5.18, Statement of Nicole Lee, 10 August 2020, at [8].

\(^{968}\) Transcript of Leah van Poppel, Public hearing 5, 19 August 2020, P-135 [23-25]; Exhibit 5.18, Statement of Nicole Lee, 10 August 2020, at [12].

\(^{969}\) Transcript of Nicole Lee, Public hearing 5, 18 August 2020, P-21 [17-20].

\(^{970}\) Transcript of Nicole Lee, Public hearing 5, 18 August 2020, P-20 [11-39], P-21 [20-23].

\(^{971}\) Exhibit 5.21, Statement of Fiona Mary Downing, 12 August 2020, at [8].
their services were so high that they even closed their waitlist and turned people away.972

535. In respect of First Nations people with disability Mr Griffis and Ms Riemer, CEO and Deputy CEO respectively, of the FPDN spoke about the particular burdens on their organisation which extended even to phone calls seeking how to get basic essentials such as food.973

536. Mr Griffis made a recommendation that a 1800 number and text messaging service be provided as a dedicated number for First Peoples with disability for assistance during the pandemic. This, he said, would enable members of First Nations communities from around the country to have access to a free phone number they can call or text for help, guidance or direction about where to get help and support for First Nations people with disabilities, their carers and their families.974

537. At this stage the Royal Commission is not in possession of sufficient information regarding economic funding or how and to whom such funding should be provided.

(15) Whether the Disability Support Pension should be increased commensurately with increases made to other Social Security recipients.

538. In the course of this pandemic, the Commonwealth Government has made 2 payments of $750 each to recipients of DSP, but has not otherwise increased the pension by way of a pandemic supplement. This is in contrast to the position with respect to JobSeeker.

539. We submit the evidence reveals that financial hardship is being endured by some people with disability through this pandemic because of the increases in costs of various aspects of living,975 and that the two supplements of $750 has been inadequate to meet need.976

540. The Royal Commission currently does not have sufficient information with respect to economic modelling to make a recommendation that DSP should be increased commensurately with increases made to other social security recipients.

972 Transcript of Fiona Downing, Public hearing 5, 18 August 2020, P-69 [45]-P-70 [5-10].
974 Exhibit 5.34.1, Supplementary Statement of Damian Griffis, dated 13 August 2020, at [4]; Transcript of Damian Griffis, Public hearing 5, 20 August 2020, P-259 [6-25].
975 See for example Exhibit 5.22.5, DRC:2000.0003.0178; and the evidence of Ms Deane: Transcript of Kirsten Deane, Public hearing 5, 19 August 2020, P-138 [3-5].
976 See for example, the evidence of Ms Riemer: Exhibit 5.33, Statement of June Riemer, dated 5 August 2020, at [38].
(16) Whether changes should be made to Medicare Benefit Schedule to allow for patient-end support using telehealth services during the pandemic.

541. The evidence in this hearing discloses that the availability of telehealth services being a welcome change: For example:

(a) Ms Buchanan stated that access to medical care is a huge problem for people who are bedridden and homebound. She gave evidence that one of the most significant things for her to have come out of a global pandemic was the push towards bulkbilled telehealth services (with a significant funding boost from the Federal Government). This means that she can now speak to her GP or a specialist on the phone at home and they get rebated for that. She can also see her counsellor on Skype.977 She stated:

Prior to COVID-19, I would need an ambulance transfer to go to the hospital to see the specialist. It would take an entire day to get there, get the script written, and get home. They wouldn’t write scripts unless I physically went there but it would take me more than a month to recover these trips.978

(b) Ms Lee stated that ‘the increased use of and availability of telehealth is fantastic’.979 She described how telehealth services ‘opened up a lot of our worlds to access services that we didn’t have the capacity to before’, including specialist healthcare.980 She spoke to how telehealth services have particularly benefited people with disability who are house-bound or do not have access to transport.981

(c) Professor Kavanagh stated that the emergence of telehealth has been a positive development during the pandemic. She gave evidence of having ‘heard so many people talk about the positives of accessing telehealth’ and hopes it continues to be available.982

542. Evidence from these individuals are consistent with the results of a survey by PWDA that people with disability welcomed the use of telehealth to access medical and allied health appointments during the pandemic.983

977 Exhibit 5.3, Statement of Ricky Buchanan, 4 August 2020, at [56].
978 Exhibit 5.3, Statement of Ricky Buchanan, 4 August 2020, at [60].
979 Exhibit 5.18, Statement of Nicole Lee, 10 August 2020, at [24].
980 Transcript of Nicole Lee, Public hearing 5, 18 August 2020, P-19 [30-32].
981 Transcript of Nicole Lee, Public hearing 5, 18 August 2020, P-19 [33-35].
982 Exhibit 5.30, Statement of Professor Anne Kavanagh, 12 August 2020, at [152].
983 Exhibit 5.22.2, EXP.0003.0003.0183.
543. A number of witnesses also called for continuation of telehealth services beyond the period of the pandemic:

(a) Ms Buchanan, and others, hope that telehealth remains available after the pandemic: if that were to happen, she said, it ‘would just be amazing’.

(b) Ms Gibbs said that it's important ‘…to maintain flexibility around supports, and, in our view, absolutely crucial that the initiatives around telehealth are maintained’.

(c) Ms van Poppel made recommendations for continued access to telehealth services for women with disabilities. She recommended this include targeted consultations over time to monitor the implications of access to telehealth, including on ‘the safety of women with disabilities balanced against their greater access to health care’.

The need for patient end support

544. Dr Jason Agostino gave evidence commending the expansion of the Medicare Benefits Schedule (MBS) to allow for more telehealth services during the pandemic. He did, however, speak about the inaccessibility of these telehealth services for some First Nations People with disability. He observed that without patient-end support to access telehealth, these services ‘remain largely inaccessible to many Aboriginal and Torres Strait Islander people with disability’. Dr Agostino said that patient-end support ‘remains inadequately funded with services providing this support without remuneration for most services, which is not sustainable’.

545. Dr Agostino provided a two prong approach to resolving this issue: the first being to ‘remove the requirement for the remote practitioner to claim Medicare’, therefore opening up eligibility to hospital based services; and the second being for the Commonwealth to fund this patient-end support through dedicated Medicare item numbers. The potential benefits of offering this patient-end support include the promotion of ‘team-based care’, assistance with ‘health literacy’, and the

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984 Exhibit 5.3, Statement of Ricky Buchanan, 4 August 2020, at [80]; see also Transcript of Ricky Buchanan, Public hearing 5, 19 August 2020, P-92 [33-38].
985 Exhibit 5.22, Statement of Eleanor Gibbs, 12 August 2020, at [20].
986 Exhibit 5.27, Statement of Leah van Poppel, 13 August 2020, at [37].
987 Exhibit 5.35, Statement of Dr Jason Agostino, 12 August 2020, at [26].
988 Exhibit 5.35, Statement of Dr Jason Agostino, 12 August 2020, at [26].
989 Exhibit 5.35, Statement of Dr Jason Agostino, 12 August 2020, at [30].
990 Exhibit 5.35, Statement of Dr Jason Agostino, 12 August 2020, at [30].
991 Exhibit 5.35, Statement of Dr Jason Agostino’, 12 August 2020, at [30].
opportunity to provide ‘culturally safe care’. Dr Agostino is of the view that these changes would benefit people with disability generally, not just First Nations people with disability.

Findings

546. It is open for the Royal Commission to find that:

(a) the extension to the availability of telehealth services have been of benefit to people with disability

(b) that the telehealth services are not accessible by some people with disability, including First Nations people with disability, unless they are accompanied by patient-end support.

Access to health services

(17) Whether the Commonwealth should take action to guard against health rationing decision-making, which discriminates against people on the basis of disability, whether through express policies or systemic or unconscious bias.

547. A number of witnesses expressed their fear and concern about health rationing.

548. Health care rationing refers to allocating limited resources when patients exceed resource availability. The most notable example is allocating intensive care beds when patient numbers exceed beds.

Concerns about health rationing decision-making

549. Dr Palipana spoke about concerns that he, and some people with disability, hold with respect to health care rationing, noting the possibility that healthcare rationing could disproportionately affect people with disabilities, by allowing people with disability to be triaged out of health care in favour of people without disability. He observed that health care rationing has occurred overseas in some places, such as

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992 Transcript of Dr Jason Agostino, Public hearing 5, 20 August 2020, P-266 [1-4].
993 Transcript of Dr Jason Agostino, Public hearing 5, 20 August 2020, P-266 [1-4].
994 Exhibit 5.13, Statement of Dr Dinesh Palipana, 4 August 2020, at [18].
995 Exhibit 5.13, Statement of Dr Dinesh Palipana, 4 August 2020, at [18]; Transcript of Dr Dinesh Palipana OAM, Public hearing 5, 20 August 2020, P-236 [22-26].
Italy and Texas. Significantly, Dr Palipana says that ‘fortunately, we have been able to avoid the situation in Australia as at July 2020.’

550. FPDN, in partnership with Professor Cameron Stewart (Sydney Health Law, University of Sydney) and Professor Jackie Leach Scully (Disability Innovation Institute at the University of New South Wales), developed a policy document entitled the ‘Ethical Decision-Making for First Peoples Living with Disability’. This document outlines principles and recommendations regarding care for First Peoples living with disability, and also provided specific guidelines for individuals presenting to ICU and outlining how their treatment should be prioritised and managed.

551. Mr Griffis, in his evidence to the Royal Commission, explained the concern which led to the development of this document as follows:

We were highly concerned about a scenario where, for example, a 50 year old Aboriginal man who smokes, who may have psychosocial disability, and who may have other underlying health issues, gets triaged out of the healthcare system because of a points based system. In this scenario, he would have a number of crosses against his name and we are very concerned about the very real possibility in our view that he would be triaged out of intensive care, for instance… Our concerns were based on our understanding of what was happening in the United States, where African Americans were overrepresented in COVID-19 related deaths and because of the emerging evidence showing the people with disability in England and Wales account for as much as two thirds of the deaths from COVID-19 there.

552. Mr Griffis said that ‘people who are disadvantaged would often score lower on these types of point ranking systems, and it is those same people who miss out on receiving appropriate medical attention and care’.

553. Mr Griffis said ‘it was a fear of FPDN that in Australia it would be First Peoples with disability, who are already experiencing higher levels of disadvantage and are extremely vulnerable to COVID-19, who would be triaged out of the health system or be provided with inadequate support’. This is in a context where ‘it’s often the case that in particular regional-based hospitals… there is a reputation often of Aboriginal people experiencing racial discrimination’.

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996 Transcript of Dr Dinesh Palipana OAM, Public hearing 5, 20 August 2020, P-236.
997 Exhibit 5.13, Statement of Dr Dinesh Palipana, 4 August 2020, at [18].
998 Exhibit 5.34.3, FPD.9999.0001.0027.
999 Exhibit 5.34, Statement of Damian Griffis, dated 11 August 2020, at [22].
1000 Exhibit 5.34, Statement of Damian Griffis, dated 11 August 2020, at [23].
1001 Exhibit 5.34, Statement of Damian Griffis, dated 11 August 2020, at [23].
1002 Transcript of Damien Griffis, Public hearing 5, 20 August 2020, P-256, [30-35].
shared at a Commonwealth Department of Health roundtable, and Mr Griffis commented that it was 'well received'.

554. Ms Devandas gave evidence that the COVID-19 pandemic is revealing and deepening pre-existing inequalities and barriers experienced by people with disability, exposing the extent of their exclusion. That it showed that there is a lack of a strong human rights-based framework for people with disability, which has resulted in either a lack of response or inadequate responses, and at worse discrimination causing direct damage to people with disability.

555. Ms Devandas described the impact of COVID-19 in the area of health. She gave evidence that people with disability’s health may be disproportionately affected due to serious disruptions to the support services they may rely on and discrimination in accessing emergency health services.

556. Ms Kayess co-authored a statement of concern entitled COVID-19: Human rights, disability and ethical decision-making which was commissioned by a number of representative and advocacy organisations and released on 14 April 2020. The Statement was developed in response to a concern that ‘any increasing demand on critical health treatment and intensive medical care will require decisions to be made about life-saving treatment that could seriously undermine the rights of people with disability’.

557. Ms Kayess spoke about healthcare rationing proposals from Canada and England which ‘highlighted the ways that decisions were going to be made about critical care triage’. She said that these decisions ‘were being made on blatant arbitrary diagnostic status with no clinical reference whatsoever’. This meant that there was ‘no recognition of a person’s rights to equality in the standard of health care’ and based primarily on their diagnostic status, people with disability ‘would not receive critical care’.

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1003 Exhibit 5.34, Statement of Damian Griffis, dated 11 August 2020, at [25].
1004 Exhibit 5.29, Statement of Catalina Devandas Aguilar, 10 August 2020, at [18].
1005 Transcript of Catalina Devandas Aguilar, Public hearing 5, 19 August 2020, P-189, [25-29].
1006 Exhibit 5.29, Statement of Catalina Devandas Aguilar, 10 August 2020, at [20]; Transcript of Catalina Devandas Aguilar, Public hearing 5, 10 August 2020, P-184, [9-21].
1007 Exhibit 5.29, Statement of Catalina Devandas Aguilar, 10 August 2020, at [21].
1008 Transcript of Catalina Devandas Aguilar, Public hearing 5, 19 August 2020, P-184, [25-29].
1011 Transcript of Rosemary Kayess, Public hearing 5, 18 August 2020, P-38 [8-9].
1012 Transcript of Rosemary Kayess, Public hearing 5, 18 August 2020, P-38 [9-10].
1013 Transcript of Rosemary Kayess, Public hearing 5, 18 August 2020, P-38 [10-13].
Guidelines

558. Dr Palipana observed that the United Kingdom’s National Institute for Health and Care Excellence’s (NICE) COVID-19 rapid guideline: Critical care in adults, calls on decision-makers ‘to consider how frail a person is and if they are considered to be too frail, based on any of these disabilities, the guidelines suggest that you defer critical care for these patients’. He compared these guidelines to the Australian and New Zealand Intensive Care Society (ANZICS) Guiding principles for complex decision making during pandemic COVID-19 which calls for ‘respect among all patients’ and asks ‘practitioners to ignore unnecessary considerations such as race, gender, sexual orientation and disability’. Dr Palipana stressed that while these guidelines build in some protections for people with disability, intensive care medical practitioners ‘still need to be vigilant’ to ensure equitable health care is provided, that is, that their clinical decision making is not effected by conscious or unconscious bias against people with disability.

559. Dr Palipana highlighted the importance of ensuring clinical decision-makers are aware of the ANZICS guidelines and emphasised that the:

...most important thing is to look at this from a societal perspective. I think we've seen that the pandemic can be controlled and at least suppressed if we all gather round and do the right thing...So I think the single-most important recommendation is to get the messaging out, that by doing the right thing we're protecting the most vulnerable people in our society.

560. Dr Coatsworth was asked whether the ANZICS Guidelines reflect the Commonwealth Department of Health’s policy in terms of the allocation of critical care where the demand exceeds capacity. He confirmed that currently there are no nationally-endorsed guidelines that recognise the principles outlined by ANZICS.

561. However, Dr Coatsworth acknowledged that the position of the Government concurred with ANZICS view that disability is absolutely irrelevant to decision-making regarding the allocation of ventilators where the demand exceeds capacity.

1014 Transcript of Dr Dinesh Palipana OAM, Public hearing 5, 20 August 2020, P-236 [34-37].
1015 Transcript of Dr Dinesh Palipana OAM, Public hearing 5, 20 August 2020, P-237 [1-7].
1016 Transcript of Dr Dinesh Palipana OAM, Public hearing 5, 20 August 2020, P-237.
1017 Transcript of Dr Dinesh Palipana OAM, Public hearing 5, 20 August 2020, P-241 [27-43].
1018 Transcript of Dr Nick Coatsworth, Public hearing 5, 21 August 2020, P-368 [10-20].
1019 Transcript of Dr Nick Coatsworth, Public hearing 5, 21 August 2020, P-368 [10-25].
1020 Transcript of Dr Nick Coatsworth, Public hearing 5, 21 August 2020, P-368 [10-25].
562. Dr Coatsworth was also asked the following:

...When a hospital or its senior intensive care specialists prioritise the provision of limited life-saving resources like ventilators, would you agree the following steps should be taken to assist in ensuring the rights of people with disability are protected? First, clearly articulating within any relevant policy including the one derived from ANZICS' general principles that all decisions must, first, be clinically-based; second, include a medical assessment of the individual patient; thirdly, not be based on assumptions about the quality of a person's life after treatment because of their disability. Then, providing for an independent review of any decision not to allocate life-saving resources to a person with disability or otherwise. And finally, providing patients with access to an independent health advocate. Would you agree with that approach?

563. Dr Coatsworth responded ‘In broad terms, yes, I would, Counsel.’

Findings

564. Based on the evidence, it is open to the Royal Commission to find that:

(a) during the pandemic, there were concerns about health rationing in decision-making amongst people with disability and among experts

(b) there is evidence of health rationing in decision-making occurring overseas

(c) in Australia, specific guidelines intended to guard against health rationing on the basis of disability are in operation, namely the ANZICS Guidelines

(d) the Commonwealth Department of Health has not, itself, developed guidelines which seek to guard against health rationing on the basis of disability in the pandemic.

Recommendation

565. The Commonwealth Department of Health consider developing guidelines specifically directed to guard against health rationing on the basis of disability.

1021 Transcript of Dr Nick Coatsworth, Public hearing 5, 21 August 2020, P-368 [25-40].
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.

566. The Royal Commission heard evidence about the importance of clear and accessible information on the COVID-19 pandemic for people with disability. This gives rise to a number of issues, including how such clear and accessible information should be created and coordinated, and by whom.

567. Professor Trollor said that the COVID-19 pandemic highlights the need for high quality and readily available information and resources, as well as better collation, sharing and dissemination of these resources, to improve access to healthcare for people with intellectual disability, autism or other developmental disabilities.1022

568. Professor Trollor said that a disability health resource hub (or clearing house), funded by the Australian Government could be a ‘one-stop-shop’ to map and collate these resources; identify gaps; identify preferred methodologies for the development of future resources; plan and execute their development; and ensure their dissemination, promotion and uptake.1023

569. Ms Devandas recommended ensuring the accessibility of information, which is fundamental to an inclusive COVID-19 response and recovery. If public information is not accessible, people with disability cannot take necessary decisions, live independently and quarantine safely, or access health and public services on an equal basis with others. Accordingly, all public advice campaigns, information, and communication must be available in accessible means, modes and formats.1024

570. Dr Meltzer noted the success of Government collaboration with the organisation IDEAS during the pandemic. IDEAS was supported by Government to provide a dedicated hotline and website to collate and disseminate disability-focused COVID-19 information, including accessible information. Dr Meltzer highlighted the value of this information triage role by an established and trusted organisation within the disability community, and recommended that this model could be further developed.1025

1022 Exhibit 5.36, Statement of Professor Julian Trollor, 7 August 2020 at [3], [10].
1023 Exhibit 5.36, Statement of Professor Julian Trollor, 7 August 2020 at [23-24].
1024 Exhibit 5.29, Statement of Catalina Devandas Aguilar, 10 August 2020, at [39].
1025 Exhibit 5.31, Statement of Ariella Meltzer, 7 August 2020, at [52], [56].
571. Mr Astourian recommended that government’s messaging about the pandemic should first be translated into Easy English and then into community languages, because it would ‘simplify the language in the general community getting the information.’\textsuperscript{1026}

572. Ms Sayers recommended increasing the provision of clear and accessible information immediately, and on an ongoing basis through disasters like COVID for children and young people with disability and their families.\textsuperscript{1027} Ms Sayers’ evidence suggested this should be done in partnership with disability advocacy organisations including CYDA and state-based advocacy organisations. She further noted that the lag in accessible information being produced during the fast-paced environments of Prime Minister and Premiers announcements needs to be addressed.\textsuperscript{1028}

573. The Royal Commission also heard evidence from other witnesses about confusion surrounding information on the COVID-19 pandemic,\textsuperscript{1029} and the damaging effect of this on people with disability, as well as the importance of community messaging.

**Part 4: Additional matters arising from Public hearing 5**

574. In addition to the points raised by the Chair in his closing remarks, the following issues emerged as key themes. In the time available, our focus has been on the particular areas identified by the Chair, so the following issues are not addressed in detail.

**Lack of integration between the health response and disability response to a public health crisis**

575. A number of witnesses expressed concern that the health response has not addressed the specific needs of people with disability or recognised the particular risks for people with disability in a health pandemic. While it is accepted that people with disability are part of the general population, it cannot be assumed that the health response for the general population will be appropriate or sufficient to

\textsuperscript{1026} Transcript, Christian Astourian, Public hearing 5, 20 August 2020, P-247–248 [45].

\textsuperscript{1027} Exhibit 5.28, Statement of Mary Sayers, 12 August 2020, at [120].

\textsuperscript{1028} Exhibit 5.28, Statement of Mary Sayers, 12 August 2020, at [121].

safeguard people with disability. A clear example is the COVID-19 testing arrangements. As noted above, there was limited or no consultation with the disability sector or key agencies such as the NDIS Commission in the early stages of the Commonwealth Department of Health’s planning and response.

576. Turning to the disability sector, it cannot be assumed this sector has the relevant expertise or experience to respond to a public health emergency. Professor Kavanagh expressed her concern that the NDIS Commission has ‘no background in public health’. She recommended that the NDIS Commission rapidly scale up their capacity in relation to a public health response. It cannot be assumed that a ‘business as usual’ approach is appropriate during an emergency and where physical distancing may mean a significant change in the way services are delivered and interaction with support workers. Where the focus of services for people with disability have been the individual needs for a person, different and additional considerations may be required to address a public health emergency to ensure the response is appropriate for people with disability. A clear example is PPE and NDIS participants being required to purchase their own PPE. Arguably, a public health emergency response should have been to provide PPE rather than approach the provision of PPE on a person by person basis.

577. Witnesses said the NIDA and NDIS Commission engage with around 10% of the Australian population with disability. The witnesses properly asked about the 90% of people with disability who are not NDIS participants. There appeared to be assumption that the rights and interests of people with disability would be covered by the NIDS and this is clearly not so.

578. The evidence has highlighted the need for the health response and disability response to be integrated. The establishment of the Advisory Committee and the matters addressed by the Committee between April and July 2020 have clearly illustrated that health and disability responses need to be considered together.

**Disabled People’s Organisations**

579. While the focus of Public hearing 5 has been the Commonwealth Government’s response, the evidence demonstrated the importance of Australia’s disabled people’s organisations and advocacy groups (the DPOs). We will not refer to all of the initiatives of the DPOs but note they have engaged in providing information in accessible formats, undertaken surveys and collected data about the impact of COVID-19, identified gaps in the governments’ responses and action, advocated for services, lobbied governments and business, participated on the Advisory Committee.

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1030 Transcript of Anne Kavanagh, Public hearing 5, 20 August 2020, P-215 [7-8].

Committee, attended roundtables, prepared reports and information, engaged with the media and supported people with disability and their families. The DPOs have stepped in where the gaps have emerged in the governments’ responses.

580. It was also apparent that the DPOs have undertaken work for which they are not funded and have no source of funding. Advocates gave evidence about the lack of advocacy funding generally and how this has impacted on their ability to respond to the pandemic.

581. For example, Ms Downing raised concerns about NDIS appeals funding, noting that despite the new challenges for NDIS appeals that has arisen due to the COVID-19 pandemic, ‘DSS has cut NDIS appeals funding for this financial year to 80% of that for the 2019-2020 financial year. Additionally, DSS has only continued to fund DJA for the North-Eastern suburbs of Melbourne, despite NDAP covering all of Melbourne’. Ms Downing’s evidence was that DJA often have people with disability contact the service begging for assistance with AAT appeals because all of the other advocacy services have closed waiting lists. Until earlier this year, DJA had not closed its NDIS appeals waiting list, as it had a smaller geographical area to service. However, demand for NDIS appeals assistance has increased and DJA were forced to close the waiting list.

582. Ms Downing also gave evidence that the DSS has provided DJA with funding to support people across Melbourne who wish to engage with this Royal Commission but this funding is a third of DJA’s NDAP funding, which equates to around $100,000 per year. Ms Downing described this amount of funding as ‘vastly inadequate to meet demand, meaning many people with disability are likely to miss out on receiving advocacy assistance to help them write submissions or appear before the Commissioners.’

583. It is open to the Royal Commission to make some findings about the importance of DPOs having regard to the CRPD and the contribution DPOs have made to advocate for the rights of people with disability during the pandemic. It is open to the Royal Commission to consider recommendations about the funding and support for the DPOs for their work in the response and recovery to COVID-19.

**Health advice regarding use of PPE**

584. Access to PPE and assistance in using PPE was a key issue that emerged during the hearing.

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1032 Exhibit 5.21, Statement of Fiona Mary Downing, 12 August 2020, at [18].
1033 Exhibit 5.21, Statement of Fiona Mary Downing, 12 August 2020, at [18].
1034 Exhibit 5.21, Statement of Fiona Mary Downing, 12 August 2020, at [12].
585. Mr Clifford Stephens gave evidence about his experience of trying to get his service provider’s staff to wear PPE when working with his highly vulnerable son who is particularly susceptible to respiratory infection complications, having been in hospital in January 2020 with pneumonia.1035

586. Mr Stephens’ evidence was that the service provider did not provide or communicate a plan to address COVID-19 issues and took no specific action to access clients for individual vulnerability. Mr Stephens said that he told the service provider that 1.5m social distancing was not possible for his son and requested that support staff wear droplet protection when they were not practically able to maintain a 1.5m separation.1036

587. The service provider declined Mr Stephens’ request and told him that they were complying with and doing everything required by the DHHS guidelines for people with a disability, which mirrored Federal Government health advice.1037

588. In his statement, Mr Stephens described a 2 month long ‘battle’ with the service provider to get personal support staff to wear PPE when working with his son. This battle involved engaging a Professional Advocate to raise this with the Victorian Disability Services Commissioner (DSC); obtaining and providing the DSC with a letter from his son’s GP attesting to his serious vulnerability to poor outcomes with respiratory infections, stating that a mask should be worn if social distancing could not be achieved; complaints to the NDIS and DHHS about the lack of protection for people with disabilities; and further requests to the service provider.1038

589. He gave evidence that on his reading of the Federal Government’s health advice, it was his view that it was only focused on protecting the worker and he found this advice ‘disgusting.’ He noted that 17 July 2020 was the first time in 6 months since the pandemic began that the Federal Government recommended masks for disability support workers.1039

**Mental health services for people with disability**

590. 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

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1037 Statement of Clifford Stephens, 12 August 2020, at [16-18].
disability. It is an important issue and we suggest it warrants further consideration by the Royal Commission.

**Community attitudes and stereotypes**

591. The word ‘vulnerable’ has been used during the COVID-19 period to describe some people in the Australian community. The word conveys a sense that a vulnerable person is dependent and in need of special care. This word appears frequently in the media and in key Commonwealth Government plans.

592. As noted above the COVID-19 Plan refers to considering ‘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.’ While people with disability were not referred to in this plan, it appeared the word ‘vulnerable’ may apply to some but not all people with disability, as Dr Coatsworth said in his evidence.


> [4] … during the negotiations on the Convention, the need to embrace a human rights-based approach to disability in the humanitarian protection of persons with disabilities led to the discarding of references to persons with disabilities as a “vulnerable” or “neglected” group in connection with emergency situations.

594. As Nicole Lee said the media often describe people with disability as ‘vulnerable’ and this language is problematic. She said people are not inherently vulnerable, they are only at risk due to being in dangerous situations. Describing people with disability as ‘vulnerable’ breeds helplessness and reinforces vulnerability. She said:

> It makes us targets for people who choose us for the purpose of exploiting and abusing.

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1040 Exhibit 5.75, EXP.0003.0003.0001 at 0020.
1041 Transcript of Dr Nick Coatsworth, Public hearing 5, 21 August 2020, P-351 [18-40].
1042 Exhibit 5.19, Statement of Rosemary Kayess, 13 August 2020, at [6].
1043 Exhibit 5.19.3, EXP.0003.0003.0234.
1044 Exhibit 5.18, Statement of Nicole Lee, 10 August 2020, at [30].
1045 Exhibit 5.18, Statement of Nicole Lee, 10 August 2020, at [30].
595. Ms Lee said the language of ‘vulnerability’ sits closely with the language of ‘burden’. She noted the media reporting of the deaths of Ann Marie Smith and Willow Dunn described their treatment as ‘neglect’. She said this language is totally inadequate to describe what happened to them and minimises and excuses the behaviour of the people that were supposed to be caring for them.\textsuperscript{1046}

596. Ms Kayess said she found the language used in media and some of the discussions ‘devaluing and dehumanising views personally confronting’.\textsuperscript{1047} She said there was ‘a frightening and palpable reality that confirmed that I am dispensable in order to save the ‘real’ people’.\textsuperscript{1048}

597. Community attitudes, inequality and bias are all issues the Royal Commission should continue to examine in the course of its inquiries. The concerns raised by the witnesses about community attitudes and their sense of being dispensable in a public health crisis were deeply disturbing and it is open to the Royal Commission to acknowledge the hurt and distress it has caused people with disability.

\textbf{Innovation and positive outcomes}

598. COVID-19 has resulted in a number of rapid and significant changes to the lives of people with disability. As the Chair said in his opening remarks ‘in one sense we are all in this together. But we have not all been affected equally’.\textsuperscript{1049} Some of the changes have caused severe hardship to people with disability. Other changes have exposed systemic discrimination and inequality. Everyone has been forced to adapt to changing circumstances.

599. However, there have been some positive changes and developments. Samantha Dwyer said ‘welcome to my world’.\textsuperscript{1050} She said there is this idea of the ‘new normal’ and people who do not have a disability starting to understand what it is like for people with a disability to spend a lot of time in their homes.\textsuperscript{1051} The same point was made by AAV who said notwithstanding the fear and stress, more people have experienced isolation and a fear of hopelessness. She said ‘one can only hope they remember and support those who have no option’.\textsuperscript{1052}

600. Ricky Buchanan said that the COVID-19 pandemic has given her access to Telehealth, NDIS webinars, film festivals, expos, musical concerts, free online

\textsuperscript{1046} Exhibit 5.18, Statement of Nicole Lee, 10 August 2020, at [37].
\textsuperscript{1047} Exhibit 5.19, Statement of Rosemary Kayess, 13 August 2020, at [37].
\textsuperscript{1048} Exhibit 5.19, Statement of Rosemary Kayess, 13 August 2020, at [37].
\textsuperscript{1049} Transcript of Commissioner Sackville, Public hearing 5, P-4 [11 – 13].
\textsuperscript{1050} Exhibit 5.7, Statement of Samantha Dwyer, 28 July 2020, at [17].
\textsuperscript{1051} Exhibit 5.7, Statement of Samantha Dwyer, 28 July 2020, at [18].
\textsuperscript{1052} Exhibit 5.2, Statement of AAV, 6 August 2020, at [68].
courses, the zoo and ‘so much more’.\textsuperscript{1053} She is worried that her access to these accessible health, cultural, community and educational resources will cease when the pandemic is over. Ms Buchanan’s experience demonstrates what is possible with innovation and technology.

601. It was clear that access to reliable technology for information and communication in all areas of life has been a key part of the COVID-19 experience to all of the community but it has been particularly important for people with disability. Indeed, the Royal Commission’s ability to conduct Public hearing 5 depended on technology to have on-line communications. All the witnesses who participated in Public hearing 5 required access to the facilities and internet access to engage with the Royal Commission.

602. The response to COVID-19 has highlighted the importance of innovation and use of technology for people with disability, including the Royal Commission’s hearings. In its future work, the Royal Commission may consider examining how technology and innovation can better enhance the rights of people with disability. It may also examine the impact on people with disability who do not have access to technology and the extent to which it causes a form of segregation and increased isolation which in turn creates greater risks of violence, abuse, neglect and exploitation.

Further inquiries

603. Public hearing 5 focused on the Commonwealth Government’s response and it was clear there was a range of issues relevant to the states and territories that may require further investigation. Likewise, the response to service providers could be investigated further. These areas include but are not limited to:

(a) collection of data

(b) response and recovery planning at state, territory and local government levels

(c) the management of forensic units and support for forensic patients

(d) whether state and territory COVID-19 public health orders further exacerbated the restrictions that people with disability already experience in congregate settings

(e) bans and restrictions on support workers, family members and advocates for people living on congregate settings

(f) whether there has been an increase in the use of restrictive practices, including physical, chemical and environmental restraints to enforce physical distancing

\textsuperscript{1053} Exhibit 5.3, Statement of Ricky Buchanan, 4 August 2020, at [80].
and transmission risk, such as increases in medications, disabling mobility devices, restricting people from going to work and health appointments, confining people to their rooms for long periods of time

(g) the impact of COVID-19 on autonomy, supported decision making and guardianship determinations

(h) workers in ADEs

(i) impact of the delays or suspension of legal proceedings involving people with disability

(j) impact on employment.

Kate Eastman SC and Dr Kerri Mellifont QC

4 September 2020
### Appendices

#### Appendix A – Chronology of key events

<table>
<thead>
<tr>
<th>Date</th>
<th>Event/announcement</th>
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<tbody>
<tr>
<td>31 December 2019</td>
<td>World Health Organisation (WHO) China Country Office was informed of a pneumonia of unknown cause, detected in the city of Wuhan in Hubei province, China.</td>
</tr>
<tr>
<td>11-12 January 2020</td>
<td>China makes genome sequencing of novel coronavirus publicly available.</td>
</tr>
<tr>
<td>21 January 2020</td>
<td>CMO issued a determination adding &quot;human coronavirus with pandemic potential&quot; to the Biosecurity (Listed Human Diseases) Determination 2016 (see Biosecurity (Listed Human Diseases) Amendment Determination 2020).</td>
</tr>
<tr>
<td>30 January 2020</td>
<td>WHO declares the outbreak a Public Health Emergency of International Concern.</td>
</tr>
<tr>
<td>7 February 2020</td>
<td>NDIS Commission issues a Provider alert: &quot;Information about the novel coronavirus outbreak (7 February 2020)“</td>
</tr>
<tr>
<td>17 February 2020</td>
<td>Australian Health Sector Emergency Response Plan for Novel Coronavirus (the COVID-19 Plan) endorsed by the Australian Health Protection Principal hum (AHPPC).</td>
</tr>
</tbody>
</table>

This, the first Australian Health Sector Emergency Response Plan for Novel Coronavirus (the COVID19 Plan) is designed to guide the Australian health sector response. It should be considered a living document that will be periodically updated. As we learn more about the virus and its key at risk groups, and as potential treatments become available such as antiviral drugs and vaccine, we can target resources and public health interventions to most effectively protect the health of all Australians. The novel coronavirus outbreak represents a significant risk to Australia. It has the potential to cause high levels of morbidity and mortality and to disrupt our community socially and economically. The national approach to this plan has been based on the AHMPPJ, noting that the response to the novel coronavirus outbreak is now in the Initial Action stage. Accordingly, the preparedness and standby stages have not been included. ..

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 is no reference to people with disability.
<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
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<tbody>
<tr>
<td>20 February 2020</td>
<td>164 Australians and residents from the Diamond Princess Cruise ship repatriated on a flight from Japan to the Northern Territory (NT) and quarantined at the Howard Springs Quarantine Facility near Darwin. 7 passengers test positive after returning to Australia.</td>
</tr>
</tbody>
</table>
| 25 February 2020   | **National CD plan** for coronavirus activated at the request of the CMO. The National CD Plan makes no reference to disability. It states:  

  4.1.3 Communication strategies and sources  

  Information materials and activities developed by responsible agencies should be 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. Engaging and supporting community leaders in relevant target groups should be a key strategy to promote implementation of desired practices, involvement in public health measures, awareness of available support services and changes to arrangements for essential and government services. |
| 27 February 2020   | National Security Committee of Cabinet **agreed** and initiated implementation of the Coronavirus Emergency Response Plan. |
| Early March 2020   | UNSW begins survey of workers (see below reference to report published 21 April 2020). |
| 6 March 2020       | NDIS website **publishes** Coronavirus update: the Australian Government has enacted the Coronavirus Emergency Response Plan and the NDIA is taking necessary steps to prepare if a pandemic is declared. |
| 7 March 2020       | WHO **announce** worldwide number of cases surpasses 100,000. |
| 8 March 2020       | Ruby Princess departs Sydney. |
| 9 March 2020       | NDIS Commission **Provider alert**: “Provider obligations and COVID-19 health information (9 March 2020)” |
| 11 March 2020      | WHO **declares** that COVID-19 can be characterised as a pandemic. |
| 11 March 2020      | Government **announce** that the supply of PPE and pharmaceuticals held in the NMS would be increased at the cost of $1.1 billion. |
| 11 March 2020      | American actors Tom Hanks and Rita Wilson **announce** that they have tested positive for COVID-19 and are admitted to an Australian hospital in QLD. |
| 13 March 2020      | Department of Health publishes first version of **Coronavirus Disease 2019 (COVID-19) Outbreaks in Residential Care Facilities: CDNA National Guidelines for the Prevention, Control and Public Health Management of COVID-19 Outbreaks in Residential Care Facilities in Australia**. |
The Guidelines apply to all residential care facilities (RCFs), including ‘disability services or other congruent accommodation setting in Australia where residents are provided with personal care or health care by facility staff’. Developed by the CDNA in consultation with the Aged Care Sector, and noted by the AHPPC.

<table>
<thead>
<tr>
<th>Date</th>
<th>Event Description</th>
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<tbody>
<tr>
<td>13 March 2020</td>
<td><strong>CMO, Dr Murphy</strong> asks GPs to strictly apply epidemiological and clinical criteria due to shortages of pathology test kits, reagents and swabs and backlogs in testing. Epidemiological criteria include a) international travel in the 14 days before illness onset; or b) close or causal contact in the last 14 days before illness onset with a confirmed COVID-19 case. Clinical criteria include a) fever; or b) acute respiratory infection.**</td>
</tr>
<tr>
<td>13 March 2020</td>
<td><strong>Temporary Medicare Benefits Schedule (MBS)</strong> telehealth items introduced in response to the pandemic, enabling GPs to provide MBS funded telehealth services to their regular patients.</td>
</tr>
<tr>
<td>15 March 2020</td>
<td><strong>First meeting of the National Cabinet, which endorses</strong> advice from the AHPPC to introduce restrictions on mass gatherings and recommend social distancing measures. Following a decision of Government, from 11:59pm on Sunday 15 March 2020, all international arrivals to Australia are required to undertake a precautionary self-isolation for 14 days, regardless whether they are citizens, residents or otherwise.</td>
</tr>
<tr>
<td>16 March 2020</td>
<td><strong>CRE-DH publish ‘People with disability and COVID-19’</strong> which calls on State and Federal governments to develop a targeted response to COVID-19 for people with disability, their families and the disability service sector. Recommended steps included i) Rapidly scale up the health care sector’s capacity to care for people with disability; and ii) Rapidly increase capacity of the disability care workforce to respond to the pandemic and its consequences. ‘The government must ensure that disability services stay open otherwise the lives of people with disabilities are at risk’. (Signatories include Professor Anne Kavanagh at the University of Melbourne and Professor Julian Trollor from UNSW.)</td>
</tr>
<tr>
<td>16 March 2020</td>
<td><strong>Woolworths</strong> and <strong>Coles</strong> announce dedicated shopping hour for elderly and disabled.</td>
</tr>
<tr>
<td>16 March 2020</td>
<td>Department of Health published online infection prevention and control training for care workers across the health, aged care, disability and other sectors – How to protect yourself and the people you are caring for from infection with COVID-19. As at 7am 5 August, more than 78,000 people working in the disability sector have completed the course.</td>
</tr>
<tr>
<td>16 March 2020</td>
<td><strong>MBS telehealth items expanded</strong> to enable GPs to provide MBS funded telehealth services, provided the patient is a regular patient of the practice (does not need to be regular GP)</td>
</tr>
<tr>
<td>17 March 2020</td>
<td>Catalina Devandas Aguilar, UN Special Rapporteur on the rights of persons with disabilities, publishes ‘<strong>COVID-19: Who is protecting the people with disabilities?</strong>’</td>
</tr>
<tr>
<td>17 March 2020</td>
<td><strong>NDIS Commission</strong> Provider alert: Online training module for support workers (17 March 2020)</td>
</tr>
<tr>
<td>17 March 2020</td>
<td><strong>Meeting</strong> of the Independent Advisory Council to the NDIS.</td>
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| 18 March 2020 | Meeting of the Council of Australian Governments (COAG) Disability Reform Council. The meeting discussed a national response to the COVID-19 pandemic, and particularly its potential impact on people with disability and the NDIS. The following priorities were agreed at the meeting:  
  - Ensure appropriate consideration is given to people with disability and the disability services sector in the health response, including access to telehealth, infection control training and PPE.  
  - Ensure the ongoing delivery of core NDIA service delivery as part of the NDIA’s Pandemic Plan, including the shift from face-to-face planning to telephone planning, and the redirecting of NDIA staff and partners to priority service delivery roles that support participants in response to COVID-19.  
  - Ensure the continuation of services to NDIS participants through the extension and increased flexibility of NDIS plans where necessary so that the NDIA can focus on reviewing plans that may require amendment in response to the impact of COVID-19.  
  - Ensure appropriate plans are in place to respond to any workforce shortages that may arise as a result of COVID-19.  
  - Ensure providers are supported to remain viable during the period of impact of COVID-19 and beyond. |
| 18 March 2020 | The National Cabinet:  
  - accepted the AHPPC advice that non-essential indoor gatherings of greater than 100 people (including staff) will no longer be permitted from Wednesday 18 March 2020.  
  - agreed to restrictions on visits and arrangements at aged care facilities in line with AHPPC guidelines, enforced through state and territory directions.                                                                                                                                                                                                                             |
<p>| 18 March 2020 | Joint statement from Disability Sector Unions and Service Provider Peak, which, among other things, calls on government to ensure workers in the disability sector do not go without pay when their ability to provide a service is disrupted due to COVID-19; ensure immediate and easy access to PPE for all workers and providers.                                                                                                        |
| 18 March 2020 | Ruby Princess docks in Sydney and passengers disembark.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| 19 March 2020 | NDIS Commission Provider alert: Business continuity planning (19 March 2020)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| 19 March 2020 | NDIS website announces it is publishing additional resources on its website about coronavirus including FAQs and information in Easy Read.                                                                                                                                                                                                                                                                                                                                                                                                            |
| 20 March 2020 | National Cabinet agreed there must be a density of no more than one person per four square metres of floor space.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |</p>
<table>
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<tr>
<td>21 March 2020</td>
<td>Range of measures <strong>announced</strong> by Minister for the NDIS, Stuart Robert to assist NDIS participants and providers during COVID-19:</td>
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<td>• NDIS plans to be extended by up to 24 months, ensuring continuity of support and increasing capacity of NDIA staff to focus on urgent and required changes to plans.</td>
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<td></td>
<td>• Face to face planning shifted to telephone meetings where possible.</td>
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<td></td>
<td>• Action plan to ensure NDIS participants and their families continue to receive the essential disability supports they need (the NDIA will take a flexible approach to amending plans and, where necessary, shift capacity building funding to funding for core supports, in consultation with special teams of planners in the NDIA).</td>
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<tr>
<td></td>
<td>• Proactive outreach to 62,000 high-risk participants and sharing of data with states and territories to ensure continuity of supports.</td>
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<td></td>
<td>• Financial assistance to providers to support retention of workers including advance payments, 10 per cent COVID-19 loading on some supports and changes to cancellation policies.</td>
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<tr>
<td>22 March 2020</td>
<td>National Cabinet <strong>agreed</strong> to increase restrictions on social gatherings (selected non-essential services)</td>
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<tr>
<td>22 March 2020</td>
<td>Government <strong>announced</strong> $66.1 billion economic support package including: $14.1 billion over the forward estimates for a new time-limited Coronavirus supplement, $4 billion over forward estimates for the one-off $750 stimulus payment to pensioners, social security, veteran and other income support recipients and eligible concession card holders.</td>
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<tr>
<td>23 March 2020</td>
<td>NDIA <strong>announces</strong> it is reducing face-to-face interactions in line with Government advice. Current and potential participants can contact the NDIA by phone, email or webchat. Participants can still visit an NDIS office.</td>
</tr>
<tr>
<td>23 March 2020</td>
<td>All vulnerable GPs able to use <a href="#">telehealth</a> for all consultations with all their patients.</td>
</tr>
<tr>
<td>24 March 2020</td>
<td>Prime Minister <strong>announces</strong> ban on Australians travelling overseas under the <em>Biosecurity Act 2015</em>. National Cabinet agrees to increase the lists of non-essential services and gatherings that are to be prohibited, in addition to those announced on 22 March 2020.</td>
</tr>
<tr>
<td>24 March 2020</td>
<td>NDIS Commission releases <a href="#">fact sheet</a> for providers on the use of PPE (later updated) [also described as a “provider alert”]. Notes that there is no requirement for workers supporting NDIS participants to wear surgical masks or other items of PPE unless they are working with people who have suspected or confirmed COVID-19 and i) supports being provided are essential to the participant’s life, health or safety and ii) contact between people exceeds Australian Government Department of Health guidelines for social distancing or isolation.</td>
</tr>
</tbody>
</table>
A dedicated email address was created ([NDISCOVIDPPE@health.gov.au](mailto:NDISCOVIDPPE@health.gov.au)) for providers and self-managing participants who can no longer access PPE supplies through usual means to access the NMS.

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<tr>
<td>24 March 2020</td>
<td>CRE-DH publish <em>COVID-19: Policy action to protect people with disability</em> which urges for a coordinated response for people with disability from the disability and health sectors. It strongly recommends that National Cabinet organises a Committee of expert advisers knowledgeable in disability and health service provision, and makes specific recommendations related to healthcare and the disability workforce. (Signatories include Professor Anne Kavanagh at the University of Melbourne).</td>
</tr>
<tr>
<td>24 March 2020</td>
<td>UNSW adjusts final open-ended survey question; resulting report draws primarily on responses from workers who completed the survey after 24 March (see below reference to report published 21 April 2020).</td>
</tr>
</tbody>
</table>
| 25 March 2020 | NDIS website publishes [COVID-19 updates](https):  
  - If a participant has a scheduled plan review, NDIA will contact them by phone or email.  
  - New plans can be in place for 24 months.  
  - To ensure plans do not end, on the day a plan is due to expire, it will be automatically extended by 365 days (previously could only be extended by 28 days).  
  - Participants who have plans that expire soon do not need to do anything to have their plans automatically extended by 365 days.  
  - Contains additional information for providers regarding:  
    - Advance payment to registered providers  
    - Temporary 10 per cent increase to the price limit of some Core and Capacity Building supports  
    - Changes to the cancellation rules  
    - Introducing three new support coordination items under Core Supports. |
| 26 March 2020 | Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability issues [Statement of Concern](https), which calls on government to (among other things):  
  - Seek input from people with disability. |
• Develop a strategy to ensure PWD have access to essential services; 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.

It also expresses concern about a number of matters including:
• Reduction in oversight in closed residential settings
• Health impacts on First Nations people.


26 March 2020 WHO releases ‘Disability considerations during the COVID-19 outbreak’.

27 March 2020 National Cabinet agrees to further restrictions on the movement of incoming travellers, introducing mandatory 14 day self-isolation in hotel/accommodation facilities (with limited exemptions) to be implemented to later than 23:59 AEDT 28 March 2020.

27 March 2020 Management Plan for Aboriginal and Torres Strait Islander Populations endorsed by the AHPPC.

30 March 2020 MBS telehealth rules expanded to allow all Australians to access any GP by telehealth.

30 March 2020 The AHPPC on the advice of the CDNA today considered provisions for essential workers who are considered to be most at risk of acquiring COVID-19 and at higher risk of serious illness if they become unwell. Excluding healthcare settings where appropriate PPE and precautions are adhered to, the AHPPC considers that, given the transmission characteristics of the virus, the following settings are at higher risk of outbreaks of COVID-19:
• Correctional and detention facilities
• Group residential settings

AHPPC considers that, based on the limited current evidence, the following people are, or are likely to be, at higher risk of serious illness if they are infected with the virus:
• Aboriginal and Torres Strait Islander people 50 years and older with one or more chronic medical conditions
• People 65 years and older with chronic medical conditions. Conditions included in the definition of ‘chronic medical conditions’ will be refined as more evidence emerges. The most current list can be accessed on the Department of Health website
• People 70 years and older
- People with compromised immune systems (see Department of Health [website](#)).

30 March 2020  
Government **announced** it would provide $130 billion for a new JobKeeper payment to keep Australians in a job.

30 March 2020  
The South Australian Government announced the introduction of welfare calls for the state’s most vulnerable during the COVID-19 pandemic, including people with disability. South Australians are able to opt to receive a free, daily phone call from trained staff to check on their welfare in response to the COVID-19 pandemic.

31 March 2020  
NDIS Commission provider **alert** states that NDIS providers should take all reasonable action to continue to provide NDIS supports or services that are critical to the ongoing health, wellbeing and safety of people with disability, while complying with state and territory orders.

31 March 2020  
Meeting of the Independent Advisory Council to the NDIS.

31 March 2020  
Meeting of the Aboriginal and Torres Strait Islander Advisory Group on COVID-19. Communiqué available [online](#).

1 April 2020  
Person-Centred Emergency Preparedness for COVID-19 Planning Guide made widely available on the website [www.collaborating4inclusion.org](http://www.collaborating4inclusion.org) and website of QDN.

1 April 2020  
Joint Statement by the Chair of the CRPD Committee, on behalf of the CRPD Committee and the Special Envoy of the United Nations Secretary-General on Disability and Accessibility, [Persons with Disabilities and COVID-19](#).

2 April 2020  
Advisory Committee on Health Emergency Response to Coronavirus (COVID 19) for People with Disability (**Advisory Committee**) **formed** to develop the Management and Operational Plan for People with Disability; Chaired by Simon Cotterell, FAS COVID-19 Primary Care Response, Department of Health. Communiques from some meetings available [online](#).

2 April 2020  
Department of Health **published** the ‘Coronavirus (COVID-19) Guide for Home Care Providers’ (**Guide**). The Guide is for providers of aged care and disability services who offer home care and support services to older people living at home and people with disability living in the community.

3 April 2020  
Over 70 national, state and territory disability organisations issue an open letter to Cabinet: “Now is the time to act on pandemic measures for people with disability”. Letter contains 10 urgent action items, including: (1) guarantee continuity of supports for all people with disability; (2) Expand criteria for testing to include people with disability and their support persons; and (5) Include recipients of the DSP in the Coronavirus Supplement of $550 per fortnight.

3 April 2020  
First meeting of the **Advisory Committee**.

3 April 2020  
Statement from Ministers for the DSS: “Immediate response plan to focus on people with disability during Coronavirus.” See also on NDIS website [here](#).

3 April 2020  
Tasmania: two healthcare workers at the North West Regional Hospital (**NWRH**) test positive. By 21 April 2020, a total of 114 people had acquired COVID-19 associated with the North West outbreak comprising 73 staff members, 22 patients
and 19 others including household contacts. The original source of infection was most likely to have been one (or both) of two inpatients who were admitted to the NWRH with COVID-19 acquired on a cruise ship, the Ruby Princess.

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<tbody>
<tr>
<td>4 April 2020</td>
<td>WHO reported that over 1 million cases of COVID-19 had been confirmed worldwide.</td>
</tr>
<tr>
<td>5 April 2020</td>
<td>Sumith Premachandra, a 55 year old disability support worker dies of COVID-19 in Melbourne.</td>
</tr>
<tr>
<td>5 April 2020</td>
<td>Minister for the NDIS announces NDIS participants to receive priority home delivery from leading supermarkets.</td>
</tr>
<tr>
<td>6 April 2020</td>
<td>Second meeting of the Advisory Committee.</td>
</tr>
<tr>
<td>6 April 2020</td>
<td>Priority Home Delivery Service commences. NDIS participants receive an individual code via SMS or email which gives them access to priority delivery from supermarkets (Woolworths, Coles, IGA/Foodland IGA, Foodworks, Harris Farm).</td>
</tr>
<tr>
<td>6 April 2020</td>
<td>The NDIA announces that NDIS participants and providers can now connect with matching platforms through the NDIS website. Services the platforms offer include posting job alerts, searching for workers, booking workers and assisting with on-boarding new staff.</td>
</tr>
<tr>
<td>6 April 2020</td>
<td>Changes to MBS telehealth rules: GPs no longer required to bulk bill all patients, however telehealth services must continue to be bulk billed for concession card holders, children under 16 and patients vulnerable to COVID-19.</td>
</tr>
<tr>
<td>7 April 2020</td>
<td>Meeting of the Roundtable on the Health of People with Intellectual Disability (considered draft Management and Operational Plan for People with Disability).</td>
</tr>
<tr>
<td>7 April 2020</td>
<td>The QLD Government released a statement outlining support available to people with a disability during COVID-19 pandemic. This support included:</td>
</tr>
<tr>
<td>7 April 2020</td>
<td>• Community Recovery Hotline to arrange for the delivery of essentials</td>
</tr>
<tr>
<td>7 April 2020</td>
<td>• funding to Queenslanders with Disability Network (QDN) to produce a range of resources to assist people with disability in understanding COVID-19</td>
</tr>
<tr>
<td>7 April 2020</td>
<td>• the development of a Person-Centred Emergency Preparedness Planning Tool</td>
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<tr>
<td>7 April 2020</td>
<td>• funding for the Community Services Industry Alliance (CSIA) to develop a Business Continuity Toolkit and guide to support organisations.</td>
</tr>
<tr>
<td>8 April 2020</td>
<td>Senate establishes a Select Committee on COVID-19 to inquire into the Australian Government’s response to the COVID-19 pandemic.</td>
</tr>
<tr>
<td>9 April 2020</td>
<td>Minister Ruston (Minister for Families and Social Services) and Minister Robert announce $90.7 million to support people with disability as part of a broader community support package to ensure community services have the resources they need. Package includes:</td>
</tr>
</tbody>
</table>
- $61 million will be available to Disability Employment Service (DES) providers
- $2 million to establish a dedicated phone line to provide accessible information, and counselling and outreach services to assist people with disability.

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>9 April 2020</td>
<td>EAC Zoom call with Scott McNaughton of NDIA.</td>
</tr>
<tr>
<td>9 April 2020</td>
<td>COAG Disability Reform Council meeting</td>
</tr>
<tr>
<td>11-22 April 2020</td>
<td>Summer Foundation survey of NDIS participants re PPE.</td>
</tr>
<tr>
<td>12 April 2020</td>
<td>Decision to close North West Regional Hospital in Tasmania announced.</td>
</tr>
<tr>
<td>14 April 2020</td>
<td>Statement of concern – COVID-19: Human rights, disability and ethical decision-making commissioned by PWDA, WWDA, NEDA, AFDO, FPDN, ACTCOSS, signed by Robin Banks, Andrew Byrnes, Kevin Cocks AM, Megan Davis, Graeme Innes AM, Rosemary Kayess, Ron McCallum AO.</td>
</tr>
<tr>
<td>14 April 2020</td>
<td>Third meeting of the Advisory Committee.</td>
</tr>
<tr>
<td>14 April 2020</td>
<td>Meeting of the Independent Advisory Council to the NDIS.</td>
</tr>
<tr>
<td>15 April 2020</td>
<td>Ministers Ruston, Robert and Hunt letter to Chair of the Royal Commission, outlining Australian Government response to the pandemic.</td>
</tr>
<tr>
<td>15 April 2020</td>
<td>DRC releases Emergency Planning and Response Issues Paper.</td>
</tr>
<tr>
<td>15 April 2020</td>
<td>Special Commission of Inquiry into the Ruby Princess established.</td>
</tr>
<tr>
<td>16 April 2020</td>
<td>National Cabinet endorsed the Management and Operational Plan for COVID-19 for People with Disability (Management and Operational Plan) as part of the Australian Health Sector Emergency Response Plan. Part 1 is the Management Plan:</td>
</tr>
<tr>
<td></td>
<td>- Objectives include minimising COVID-19-related transmission, morbidity and mortality among people with disability; inform, engage and empower all people with disability, their families, carers and support workers in relation to COVID-19</td>
</tr>
<tr>
<td></td>
<td>- Notes that the pandemic presents a significant risk to the health and wellbeing of all Australians, “but particularly people with disability”.</td>
</tr>
<tr>
<td></td>
<td>- Sets out roles and responsibilities including:</td>
</tr>
</tbody>
</table>
Australian Government to develop and implement Management and Operational Plan; prepare and disseminate national guidelines, procedures and other resources to support Management and Operational Plan; mobilise the resources of the NMS, and State/Territory resources where applicable, to support the appropriate provision of PPE and other resources, according to availability and need, to people with disability, their families, carers and support workers in health and disability care settings.

State territory governments to develop, where appropriate, complementary operational plans for public health, clinical and disability service responses specific to people with disability, promoting and drawing on expert and specialised sources of advice wherever possible.

Part 2 is the Operational Plan. It describes actions for:

- **Phase 1: Preparedness** (aim: to ‘reduce the risk of infection in people with disability and facilitate community preparedness’)
- **Phase 2: Targeted action** (aim: to ‘optimise health and support responses to help recovery and minimise further transmission’)
- **Phase 3: Stand down and Evaluation.**

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<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
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<tbody>
<tr>
<td>16 April 2020</td>
<td>Tasmania: <a href="#">Health care worker</a> who worked at the North West Regional Hospital and Private Hospital and three aged care facilities tests positive.</td>
</tr>
<tr>
<td>16 April 2020</td>
<td>The Western Australian (WA) Government <a href="#">launched</a> a free essential shopping delivery service for vulnerable individuals isolated in their homes, including people with a disability.</td>
</tr>
<tr>
<td>18 April 2020</td>
<td>National Cabinet <a href="#">announces</a> it had agreed to release and begin implementing the Management and Operational Plan, which provides 'high level guidance on a range of factors that need to be considered in managing and preventing the transmission of COVID-19 for people with disability.</td>
</tr>
<tr>
<td>20 April 2020</td>
<td>Changes to <a href="#">MBS telehealth rules</a>: Non-GP specialists and allied health professionals no longer required to bulk bill telehealth services.</td>
</tr>
<tr>
<td>20 April 2020</td>
<td>Office of Public Advocate reports Ann Marie Smith's death to the NDIS Commission</td>
</tr>
<tr>
<td>21 April 2020</td>
<td><a href="#">The disability workforce and COVID-19: initial experiences of the outbreak</a> report prepared for the Health Services Union, Australian Services Union, United Workers Union by Dr Natasha Cortis and Dr Georgia van Toorn of UNSW. Based on survey of 2341 disability workers who shared their experiences by completing a workforce survey during March 2020.</td>
</tr>
</tbody>
</table>
Finds that: pre-existing problems were exacerbated during the pandemic; urgent lack of PPE being supplied to staff and clients; staff are extremely anxious about the situation.

21 April 2020  Fourth Advisory Committee meeting. “Key Outcomes” available online.

21 April 2020  The Australian Capital Territory (ACT) Government welcomed the release of the Management and Operational Plan. The ACT Government stated it was also developing an ACT Disability COVID-19 Strategy to address some of the local issues not covered in the national plan.

23 April 2020  The Australian Government announced student visa holders studying relevant medical courses were able to temporarily work more than the 40 hours per fortnight usually allowed, if they are working in support of COVID-19 efforts and at the direction of the relevant health authority. Student visa holders working for registered disability service providers will also be able to work more than the usual 40 hours.

23 April 2020  The Australian Government announces $400 million for the Partners in the Community grants program, to deliver frontline Local Area Coordination Services for the NDIS in NSW.

24 April 2020  National Cabinet agreed to expand testing criteria across Australia to all people with mild symptoms of COVID-19.

27 April 2020  Minister Robert announces that:

• For the next five months, eligible participants will be able to flexibly use existing NDIS plan funding to purchase low-cost Assistive Technology, including smart devices, to enable continued access to disability supports through telehealth and telepractice.

• New support items for Supported Independent Living (SIL) providers where participant has been diagnosed with the coronavirus.

• Downloadable NDIS Access Request and Supporting Evidence Forms are now available on the NDIS website.

28 April 2020  Minister of Health announces 500,000 additional masks allocated to the disability sector. Half to go to the primary health networks and half to go to the NDIA.

28 April 2020  Meeting of the Independent Advisory Council to the NDIS

28 April 2020  A joint application made by the Australian Services Union, Health Services Union, United Workers Union and National Disability Services for the variation of the Social, Community, Home Care and Disability Services Industry Award 2010 under section 157 of the Fair Work Act 2009. The joint application seeks a temporary additional allowance to be paid to social and community services employees undertaking disability services work with people with disabilities who are self-isolating due to the COVID-19 pandemic.
29 April 2020  Fifth Advisory Committee meeting. “Key Outcomes” available online.

1 May 2020  NDIA update on coronavirus (COVID-19) supports. Provides additional information for participants about the 10 per cent COVID-19 loading policy.

1 May 2020  The WA Government launches a Jobs in WA Disability Services website to reduce the time and effort required to apply for jobs in the disability sector, particularly for those whose employment has been affected by COVID-19.

5 May 2020  Sixth Advisory Committee meeting. “Key Outcomes” available online.

6 May 2020  Australian Government Department of Health publishes a disability specific webpage to provide tailored health advice for people with disability, families, carers and support workers.

6 May 2020  The Victorian Government announces funding of $17 million for additional services to support people with a disability during COVID-19. Initiatives included:

- new Disability Liaison Officers in health services
- additional funding for advocacy organisations
- additional respite care hours for carers
- extension of Home and Community Care Program for Younger People
- additional funding for organisations helping Victorians with psychosocial disabilities
- expansion of the DHHS Intensive Support Team
- additional funding for the Office of the Public Advocate
- additional funding to help smaller not-for-profit services with infection control and business continuity
- partnership with the Victorian Disability Advisory Council to provide information.


7 May 2020  Meeting of the Roundtable on the Health of People with Intellectual Disability.

11 May 2020  NDIA announces that 27,500 people with disability joined the NDIS in the first quarter of 2020.

11 May 2020  NDIA media release states that the NDIS Minister Stuart Robert released the COAG Disability Reform Council Quarterly Report for the quarter ending 31 March 2020. The COAG Disability Reform Council meeting communique discussed national efforts to support people with a disability through the COVID-19 pandemic. The meeting notes the Coronavirus response measures implemented so far, including implementation of the Management and Operational Plan. The Advisory
Committee will monitor its ongoing implementation. Several recent measures were highlighted, particularly in relation to the disability workforce.

<table>
<thead>
<tr>
<th>Date</th>
<th>Event Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>12 May 2020</td>
<td>Seventh Advisory Committee meeting. “Key Outcomes” available online.</td>
</tr>
<tr>
<td>12 May 2020</td>
<td>Meeting of the Independent Advisory Council to the NDIS.</td>
</tr>
<tr>
<td>12 May 2020</td>
<td>The SA Government introduce legislative changes to ‘keep South Australians safe during the COVID-19 pandemic’. This includes measures that allow community visitors and the Chief Psychiatrist to visit and inspect mental health and disability services remotely, through audio-visual or other electronic means.</td>
</tr>
<tr>
<td>15 May 2020</td>
<td>NDIA announces changes to plan flexibility and auto-extensions. Participants with a Core Support budget and are either Plan or Agency-managed, can utilise all four funding categories, without the need for a plan review.</td>
</tr>
<tr>
<td>18 May 2020</td>
<td>Australia one of 138 countries that responded to and supported the UN policy brief on a disability-inclusive response to the pandemic.</td>
</tr>
<tr>
<td>19 May 2020</td>
<td>Eighth Advisory Committee meeting. “Key Outcomes” available online.</td>
</tr>
<tr>
<td>19 May 2020</td>
<td>The NT Government announces it would match Australian Government funding of $400,000 to provide low cost infection control training for businesses in the NT, including in the disability sector.</td>
</tr>
<tr>
<td>21 May 2020</td>
<td>The Australian Government announces the development of new training qualifications for the aged care and disability support workforce ‘to deal with the challenges put by COVID-19’. The new Entry into Care Roles skill set ‘will provide foundational knowledge and skills, including safe work practices and infection prevention procedures’.</td>
</tr>
<tr>
<td>21 May 2020</td>
<td>The WA Government announces it would defer transition to the NDIS Commission until 1 December 2020, to allow disability providers to better focus on critical support issues for people with disability during the COVID-19 pandemic. It also announces it would also provide $2 million via the Sector Transition Fund to help the disability sector meet the requirements of the NDIS Commission.</td>
</tr>
<tr>
<td>26 May 2020</td>
<td>Meeting of the Independent Advisory Council to the NDIS.</td>
</tr>
<tr>
<td>2 June 2020</td>
<td>Ninth Advisory Committee meeting. “Key Outcomes” available online.</td>
</tr>
<tr>
<td>Date</td>
<td>Event</td>
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</tr>
<tr>
<td>5 June 2020</td>
<td>PWDA releases <a href="#">Experiences of People with Disability During COVID-19: Survey Results</a></td>
</tr>
<tr>
<td>9 June 2020</td>
<td>Committee on Rights of Persons with Disabilities releases its <a href="#">Statement on COVID-19 and the human rights of persons with disabilities</a></td>
</tr>
<tr>
<td>9 June 2020</td>
<td>Meeting of the Independent Advisory Council to the NDIS</td>
</tr>
<tr>
<td>10 June 2020</td>
<td>A client of Scope Disability Services (who attended a day centre in Melbourne) tested <a href="#">positive</a> for COVID-19.</td>
</tr>
</tbody>
</table>
| 12 June 2020| NDIS Minister Stuart Robert [media release](#) states that, following a review of temporary measures to support participants and disability providers during the pandemic, the following changes to apply from 1 July 2020: | • Removal of temporary 10% price loading on certain core and capacity building supports  
• Definition of cancellation period is reduced from 10 days to levels under the previous policy  
• Medium Term Accommodation (MTA) period will be returned to the original policy of 90 days (rolled back from 180 days). |
| 16 June 2020| Meeting of the Roundtable on the Health of People with Intellectual Disability. |                                                                         |
| 25 June 2020| Meeting of the Independent Advisory Council to the NDIS               |                                                                         |
| 26 June 2020| Following the launch of the [ACT COVID-19 Disability Strategy](#), the ACT Government [announces](#) support to people with disability, their families, carers and the disability sector in their response to COVID-19. Funding under the first phase included: | • $100,000 for both Aged, Disability and Carer Advocacy Service (ADACAS) and Advocacy for Inclusion (AFI) to provide individual advocacy for people with disability to be delivered through health settings.  
• $110,000 to National Disability Services to be a central point of contact to support necessary collaborations in the ACT disability sector allowing people to get consistent information in a timely manner.  
• $40,000 to create a targeted communication partnership for engaging people who are vulnerable and isolated.  
• $50,000 to ensure that thin markets in the |
| 30 June 2020| Tenth [Advisory Committee](#) meeting. “Key Outcomes” available [online](#). |                                                                         |
| 30 June 2020| Meeting of the Aboriginal and Torres Strait Islander Advisory Group on COVID-19. Communique available [online](#). |                                                                         |
1 July 2020  NDIA media release referring to the Victorian Premier’s announcement on 30 June 2020 that stay at home orders will be in place across a number of Melbourne suburbs commencing 11.59pm on 1 July 2020 and advising that NDIS participants in those locations can contact the NDIA by phone or by making an appointment.

4 July 2020  Victorian Premier announces Flemington and North Melbourne public housing estates go into lockdown.

6 July 2020  The AHPPC, on the advice of CDNA, revised the previous AHPPC statement on 30 March 2020 on managing vulnerable workers. AHPPC is pleased to note the continued stable low number of cases of COVID-19 in most communities in Australia. This has permitted progressive relaxation of travel and other physical distancing restrictions. As the current level of COVID-19 cases is low, people, even those at higher risk of becoming severely ill from COVID-19, can return to work and other settings with appropriate precautions in place.

8 July 2020  Stage 3 “Stay at Home” restrictions reinstated across metropolitan Melbourne and Mitchell Shire from 11:59pm.

9 July 2020  NDIA media release encouraging participants to participate in a survey conducted by University of Melbourne about the changes the NDIA made to the NDIS in response to COVID-19.

9 July 2020  Global Alliance for Disaster Resource Acceleration was formed by disability-led organizations: World Institute on Disability, Partnership for Inclusive Disaster Strategies.

9 July 2020  NDIA media release encouraging participants to participate in a survey conducted by University of Melbourne about the changes the NDIA made to the NDIS in response to COVID-19. Survey closed on 31 July 2020.

13 July 2020  CRE-DH publish ‘Recommendations for a tailored COVID-19 response for people with disability’ which makes four recommendations for immediate actions that Victorian and Commonwealth Government agencies could consider for people with disability in response to the evolving situation in Victoria and across the nation. (Signatories include Professor Anne Kavanagh at the University of Melbourne.)

14 July 2020  Meeting of the Roundtable on the Health of People with Intellectual Disability.

16 July 2020  Deputy CMO, Professor Michael Kidd holds a press conference where he said:

- Following a request from Minister Hunt and Minister Robert, the AHPPC is now also recommending the disability support workers and other people working with people with disability wear face masks when working with their clients with a disability in the areas under level 3 restrictions in Melbourne and the surrounding regions in Victoria.

- Where possible, it's also wise for people with disability to wear a mask while receiving services in their homes.

- Over the past week, the Australian Government has provided 4 million additional masks to aged care facilities and home care services in the hot spot areas in Victoria, and an additional 1 million masks to GPs, community.
pharmacies and allied health providers working in those areas. An additional half a million masks have been available to residential aged care facilities in the areas where we've seen community transmission in Sydney. And today, an additional 1 million masks will be made available for disability support workers in the affected areas in Melbourne.

- Thank you to aged care and disability care workers.

<table>
<thead>
<tr>
<th>Date</th>
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<tbody>
<tr>
<td>17 July 2020</td>
<td>Eleventh Advisory Committee meeting.</td>
</tr>
<tr>
<td>17 July 2020</td>
<td>Joint media release of Ministers of Health, Aged Care and NDIS announces:</td>
</tr>
<tr>
<td></td>
<td>• All aged care workers across Victoria will be required to wear face masks</td>
</tr>
<tr>
<td></td>
<td>• A further one million masks will be released from the NMS.</td>
</tr>
<tr>
<td></td>
<td>• Since late March, more than 295 million masks, more than four million gowns, more than 41 million gloves, and more than five million goggles and face shields have been placed in the stockpile.</td>
</tr>
<tr>
<td>19 July 2020</td>
<td>Face coverings mandatory for Melbourne and Mitchell Shire.</td>
</tr>
<tr>
<td>20 July 2020</td>
<td>Changes to MBS telehealth rules: Telehealth services provided by GPs must be linked to a patient’s regular GP or practice.</td>
</tr>
<tr>
<td>22 July 2020</td>
<td>NDIA issues media release stating the NDIA is reaching out to vulnerable participants across Metropolitan Melbourne and the Mitchell Shire to ensure NDIS participants continue to have supports in place during COVID-19 restrictions.</td>
</tr>
<tr>
<td>23 July 2020</td>
<td>NSW Health updates advice for disability support providers who reside in South West Sydney. Recommends that where services are being provided both inside and outside of a residential facility (e.g. day programs), staff who reside in South West Sydney should wear a mask while providing care to residents.</td>
</tr>
<tr>
<td>24 July 2020</td>
<td>Meeting of the Disability Reform Council. Statement published online.</td>
</tr>
<tr>
<td>28 July 2020</td>
<td>Twelfth Advisory Committee meeting.</td>
</tr>
<tr>
<td>29 July 2020</td>
<td>NDIS Minister Stuart Robert announced temporary changes to funding arrangements to allow NDIS participants in Victoria and NSW to claim the cost of PPE, including masks. NDIS participants who rely on face-to-face supports and assistance with their daily living will be able to use an existing support item (Low Cost Disability-Related Health Consumables) to claim on the cost of PPE for the times their worker is with them.</td>
</tr>
</tbody>
</table>
In Victoria and NSW, the ability to claim for the cost of PPE is extended to providers. Participants living in their own home who test positive for COVID-19 and are required to self-isolate or quarantine will also be able to claim for related cleaning costs.

Existing measures that provide additional funding for providers of SIL where there is a confirmed case of COVID-19, as announced on 27 April, will also be extended. SIL providers will now also be able to claim for higher intensity supports to cover situations where there is a potential COVID-19 positive case of a participant and they are required to self-isolate or quarantine.

<table>
<thead>
<tr>
<th>Date</th>
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<tbody>
<tr>
<td>29 July 2020</td>
<td>The Fair Work Commission issued <a href="#">determinations</a> varying the Aged Care Award, the Nurses Award and the Health Services Award. The Fair Work Commission has added an entitlement to paid pandemic leave for residential aged care employees covered by the Aged Care, Nurses and Health Services Awards. The new entitlement starts from the first pay period on or after 29 July 2020, is up to 2 weeks' paid leave on each occasion, and is available for 3 months.</td>
</tr>
<tr>
<td>31 July 2020</td>
<td>Disability and Health Unit of the University of Melbourne’s School of Population and Global Health publish <a href="#">research report</a> Disability Support Workers: The Forgotten Workforce in COVID-19.</td>
</tr>
<tr>
<td>2 August 2020</td>
<td>Victoria <a href="#">declares</a> a state of disaster. Stage 4 restrictions commence at 6pm.</td>
</tr>
<tr>
<td>3 August 2020</td>
<td>The AHPPC shares the concern expressed by Victoria on the current state of the COVID-19 outbreak. It says “Community engagement efforts with culturally and linguistically diverse groups and other at-risk populations must continue to be a priority. This requires ongoing partnership with community members, understanding their needs and enabling them to support each other to protect themselves.”</td>
</tr>
<tr>
<td>3 August 2020</td>
<td>The Health Service Union (HSU National) and its Victorian branch the Health and Community Services Union (HACSU) urge the Federal and Victorian Governments to act quickly to prevent another aged care tragedy. The virus has spread to multiple disability providers in Victoria and both staff and residents have been reported as infected. The characteristics of the disability workforce are comparable to the aged care workforce with insecure and low paid work, workers with multiple employers and workplaces, and vulnerable participants and residents. Paid pandemic leave, a COVID care allowance, financial support to work at one facility, access to PPE and training, and establishing an advisory group and a prepared surge workforce are all immediate measures that can assist to contain further outbreaks.</td>
</tr>
<tr>
<td>7 August 2020</td>
<td><a href="#">ABC News</a> reports:</td>
</tr>
<tr>
<td></td>
<td>• 70 cases of coronavirus have been recorded in disability accommodation in Victoria, including 24 residents and 47 staff members, and two people have died.</td>
</tr>
<tr>
<td></td>
<td>• Positive cases have been detected in more than 30 sites.</td>
</tr>
</tbody>
</table>
- Victoria’s Chief Health Officer, Brett Sutton, said specific guidance had been issued to disability care providers about stopping the spread of coronavirus.

- In a statement, a State Government spokesperson said a dedicated disability rapid response outbreak unit had been set up. It had helped to distribute PPE to the sector, which it said was largely run and regulated through the NDIS.

| 10 August 2020 | The [Guardian](https://www.theguardian.com) reports people with disabilities and chronic health conditions will no longer have to try to find transport to get to Covid-19 testing clinics after the Victorian government announced home-testing for vulnerable people. |
| 11 August 2020 | NDIA [announces](https://www.nxia.gov.au) it has created a panel of four large experienced disability providers to offer additional workforce support for participants living in residential support settings. These providers are able to offer advice, support staff and isolation accommodation for smaller organisations to access as needed due to the impact of COVID-19. |
## Appendix B – List of Acronyms

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>ABS</td>
<td>Australian Bureau of Statistics</td>
</tr>
<tr>
<td>ACCHO</td>
<td>Aboriginal Community Controlled Health Organisation</td>
</tr>
<tr>
<td>ACT</td>
<td>Australian Capital Territory</td>
</tr>
<tr>
<td>ADEs</td>
<td>Australian Disability Enterprises</td>
</tr>
<tr>
<td>ADHD</td>
<td>Attention deficit hyperactivity disorder</td>
</tr>
<tr>
<td>AFDO</td>
<td>Australian Federation of Disability Organisations</td>
</tr>
<tr>
<td>AHPPC</td>
<td>Australian Health Protection Principal Committee</td>
</tr>
<tr>
<td>AIC</td>
<td>Australian Institute of Criminology</td>
</tr>
<tr>
<td>ALS</td>
<td>Amyotrophic Lateral Sclerosis</td>
</tr>
<tr>
<td>ANZICS</td>
<td>Australian and New Zealand Intensive Care Society</td>
</tr>
<tr>
<td>ARC</td>
<td>Australian Research Council</td>
</tr>
<tr>
<td>ASD</td>
<td>Autism Spectrum Disorder</td>
</tr>
<tr>
<td>CALD</td>
<td>Culturally and linguistically diverse background</td>
</tr>
<tr>
<td>CDNA</td>
<td>Communicable Diseases Network Australia</td>
</tr>
<tr>
<td>CID</td>
<td>Council for Intellectual Disability</td>
</tr>
<tr>
<td>CMO</td>
<td>Chief Medical Officer</td>
</tr>
<tr>
<td>COAG</td>
<td>Council of Australian Governments</td>
</tr>
<tr>
<td>COVID-19</td>
<td>Coronavirus disease, COVID-19, is a disease caused by a new strain of coronavirus. 'CO' stands for corona, 'VI' for virus, and 'D' for disease. Formerly, this disease was referred to as '2019 novel coronavirus' or '2019-nCoV'</td>
</tr>
<tr>
<td>CRE-DH</td>
<td>Centre of Research Excellence in Disability and Health</td>
</tr>
<tr>
<td>CRPD</td>
<td>Convention on the Rights of Persons with Disability</td>
</tr>
<tr>
<td>Acronym</td>
<td>Definition</td>
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<tr>
<td>-----------</td>
<td>----------------------------------------------------------------------------</td>
</tr>
<tr>
<td>CRPD</td>
<td>Committee on the Rights of Persons with Disabilities</td>
</tr>
<tr>
<td>CSI</td>
<td>Centre for Social Impact</td>
</tr>
<tr>
<td>CYDA</td>
<td>Children and Young People with Disability Australia</td>
</tr>
<tr>
<td>DES</td>
<td>Disability Employment Services</td>
</tr>
<tr>
<td>DHHS</td>
<td>Department of Health and Human Services</td>
</tr>
<tr>
<td>DIDRR</td>
<td>Disability Inclusive Disaster Risk Reduction</td>
</tr>
<tr>
<td>DnD</td>
<td>Diversity and Disability</td>
</tr>
<tr>
<td>DPO</td>
<td>Disabled People’s Organisation</td>
</tr>
<tr>
<td>DSP</td>
<td>Disability Support Pension</td>
</tr>
<tr>
<td>DSS</td>
<td>Department of Social Services</td>
</tr>
<tr>
<td>EAC</td>
<td>Every Australian Counts</td>
</tr>
<tr>
<td>FPDN</td>
<td>First Peoples Disability Network</td>
</tr>
<tr>
<td>GP</td>
<td>General practitioner</td>
</tr>
<tr>
<td>ICU</td>
<td>Intensive Care Unit</td>
</tr>
<tr>
<td>MBS</td>
<td>Medicare Benefits Schedule</td>
</tr>
<tr>
<td>MND</td>
<td>Motor Neurone Disease</td>
</tr>
<tr>
<td>MSU</td>
<td>Minnesota State University</td>
</tr>
<tr>
<td>NACCHO</td>
<td>National Aboriginal Community Controlled Health Organisation</td>
</tr>
<tr>
<td>National CD Plan</td>
<td>Emergency Response Plan for Communicable Disease Incidents of National Significance: National Arrangements</td>
</tr>
<tr>
<td>NDIA</td>
<td>National Disability Insurance Agency</td>
</tr>
<tr>
<td>NDIS</td>
<td>National Disability Insurance Scheme</td>
</tr>
<tr>
<td>NDIS Commission</td>
<td>NDIS Quality and Safeguards Commission</td>
</tr>
<tr>
<td>Acronym</td>
<td>Definition</td>
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<td>-----------------</td>
<td>----------------------------------------------------------------------------</td>
</tr>
<tr>
<td>NDIS Commissioner</td>
<td>NDIS Quality and Safeguards Commissioner</td>
</tr>
<tr>
<td>NDS</td>
<td>National Disability Strategy 2010–2020</td>
</tr>
<tr>
<td>NICE</td>
<td>National Institute for Health and Care Excellence</td>
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<tr>
<td>NMS</td>
<td>National Medical Stockpile</td>
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<tr>
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<td>Office of the High Commissioner on Human Rights</td>
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<tr>
<td>PCEP</td>
<td>Person-Centred Emergency Planning</td>
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<tr>
<td>PPE</td>
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<td>PWDA</td>
<td>People with Disability Australia</td>
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<tr>
<td>QDN</td>
<td>Queenslanders with Disability Network</td>
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<tr>
<td>Royal Commission</td>
<td>Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability</td>
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<tr>
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<td>Severe Acute Respiratory Syndrome</td>
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<tr>
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<td>Supported Independent Living</td>
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<td>VPR</td>
<td>Vulnerable Persons Register</td>
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<td>WHO</td>
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