

ROYAL COMMISSION INTO VIOLENCE, ABUSE, NEGLECT AND EXPLOITATION OF PEOPLE WITH DISABILITY

PUBLIC HEARING 13 – Preventing and responding to violence, abuse, neglect and exploitation in disability services (A Case Study)

Submissions on behalf of Eliza in response to Submissions of Counsel Assisting following Public hearing 13

Introduction

1. Melissa is 23 years old and lives in supported accommodation in western Sydney ('the house') provided by Sunnyfield Disability Services ('Sunnyfield').
2. Eliza is the sister and legal guardian of Melissa.
3. Eliza provided a statement to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with a Disability ('Royal Commission') on 29 April 2021 in relation to Melissa's experiences in supported accommodation, including the circumstances of Melissa receiving a notice from Sunnyfield to terminate its accommodation and support services to her in 2018. Eliza also provided her observations concerning systemic issues in relation to supported accommodation, and the NDIS more broadly.
4. Eliza gave evidence before the Royal Commission at Public Hearing 13 on 24 and 25 May 2021.
5. Eliza agrees that the history outlined in Counsel Assisting's submissions as to Melissa, herself and her family is accurate, and it is not proposed to repeat that background in these submissions.

Key themes and findings

6. Eliza agrees with the key themes and findings outlined in Counsel Assisting's submissions.

Recommendations

7. Eliza agrees with all recommendations that Counsel Assisting submit may be made by the Royal Commission with respect to Sunnyfield and its response to the violence and abuse which occurred at the house in western Sydney.

Additional available recommendation – CCTV

8. It is submitted that one additional recommendation may be made by the Royal Commission with respect to the potential use of CCTV as a safeguarding measure by Sunnyfield at the house.
9. Counsel Assisting have, in their submissions, raised the issue of CCTV as a key theme of Public Hearing 13.¹
10. Eliza agrees with Counsel Assisting that CCTV is an important issue because of Sunnyfield's failure to detect SP1 and SP2's misconduct until late June 2019 and the subsequent dismissal of the criminal charges against them raise questions about additional safeguarding mechanisms, such as CCTV.²
11. Eliza agrees with Counsel Assisting that there are numerous issues to be considered and challenges to be overcome when CCTV is deployed as a mechanism to prevent or identify violence, abuse, neglect, and exploitation of people with disability in supported independent living homes.³
12. Importantly, Eliza agrees with Counsel Assisting that disability service providers like Sunnyfield need to take a nuanced approach when considering whether CCTV should be implemented as a safeguarding measure. Eliza agrees that the wishes of the people with disability receiving those services, and their families or supporters, must be central to the decision-making process and that requires open, constructive dialogue with them.⁴
13. Eliza accepts Counsel Assisting's submission that the Royal Commission should give further consideration and inquiry to the potential use of CCTV as a safeguarding measure in supported accommodation in its ongoing work.⁵ Eliza considers this work as important to the possibility of CCTV being installed in supported accommodation in the future.
14. Notwithstanding the above, it is submitted that Sunnyfield should further consider whether CCTV should be installed as a safeguarding measure at the house.
15. During the hearing, Eliza outlined the reasons why she felt it was important to have CCTV cameras installed at the house, and the reasons why she wanted to have a discussion with Sunnyfield about this before she signed the service agreements in April 2017. The following exchange occurred between Eliza and Counsel Assisting

MS EASTMAN: You wanted the CCTV to be their voice?

ELIZA: Yes.

MS EASTMAN: And to bear witness to what was happening to them in the house?

¹ Submissions of Counsel Assisting following Public hearing 13, P -100-104 [391-407].

² Submissions of Counsel Assisting following Public hearing 13, P-100 [392].

³ Submissions of Counsel Assisting following Public hearing 13, P -103 [406].

⁴ Submissions of Counsel Assisting following Public hearing 13, P103 [406].

⁵ Submissions of Counsel Assisting following Public hearing 13, P -127 [503(a)].

ELIZA: Absolutely.⁶

16. Eliza agrees with Counsel Assisting that CCTV cameras were not installed at the house in April 2017 nor have they been since.⁷
17. Counsel Assisting submit that it is open to the Royal Commission to make findings that violence and abuse was suffered by Melissa, Carl and Chen at the house, and that Sunnyfield failed to create an environment where the residents of the house were safe and well supported. Counsel Assisting submit that various adverse findings may be made against Sunnyfield in relation to the circumstances leading to and the culture and environment in the house surrounding these events.
18. In these circumstances, it is submitted that additional, thorough, and meaningful consideration of the installation of CCTV at the house by Sunnyfield would assure Eliza that Sunnyfield is committed to upholding the safety and well-being of Melissa and the other residents at the house at present and into the future.
19. It is submitted that the following recommendation may be made by the Royal Commission with respect to Sunnyfield and its response to the violence and abuse which occurred at the house in Western Sydney:

Additional available recommendation: Sunnyfield should further consider the use of CCTV as a safeguarding measure in the house, with the wishes of Melissa, Carl and Chen and their families, central to this process.

Adverse findings

20. Eliza agrees with all adverse findings Counsel Assisting submit may be made by the Royal Commission with respect to Sunnyfield and the NSW Ombudsman.

Additional available adverse finding – Complaints and feedback concerning the house

21. Counsel Assisting have submitted that negative characterisations of and attitudes towards Eliza influenced Sunnyfield's responses to her feedback, concerns and complaints, and 'at the very least' this led to a 'protectionist' approach towards staff and contributed to its inability to recognise red flags in relation to SP1's conduct.⁸ Eliza agrees with this submission.
22. It is submitted that it is open to the Royal Commission to make one additional adverse finding in relation to Sunnyfield's handling of a specific concern raised by Eliza in relation to SP1's conduct at his previous place of employment.

⁶ Transcript, Eliza, Public hearing 13, 24 May 2021, P-54 [6-12].

⁷ Submissions of Counsel Assisting following Public hearing 13, P. 101 [397].

⁸ Submissions of Counsel Assisting following Public hearing 13, P. 88 [344].

23. During the hearing, Ms Cuddihy said that serious allegations which had been made against SP1 in the course of his previous employment were completely unknown to her and Sunnyfield when SP1 was employed.⁹
24. During the hearing Eliza was asked by Counsel Assisting whether she knew anything about SP1's employment history before he worked at Sunnyfield. Eliza said that she did,¹⁰ and that SP1 had, in a conversation with her, referenced an incident where he 'used an unauthorised restricted practice on a young man in their service.'¹¹ Eliza said that in telling her this, SP1 had said words to the effect of he 'didn't give a damn about what management said, he felt it was appropriate and, therefore, he would do it.'¹²
25. Eliza said that she recalled relaying this directly to Ms Cuddihy and Mr Swain in a teleconference in around October 2017, and they told her they would investigate it.¹³ Later, on 27 October 2017, Eliza emailed Mr Swain attaching the notes she had taken from a separate telephone discussion she had had with him that day.¹⁴
26. Eliza's notes indicated that she had asked Mr Swain whether SP1's previous employer had been 'contacted in relation to the incident with SP1 restraining a client without consent.'¹⁵ Eliza's notes indicated that Mr Swain had responded to the effect that Sunnyfield 'couldn't access some information due to employers requiring written consent from SP1 first.'¹⁶ There was no indication from Mr Swain that SP1 had been, or would be approached by Sunnyfield about this information, or that any further action would be taken.
27. As submitted by Counsel Assisting, it is agreed that Sunnyfield took a protectionist approach towards its staff which contributed to its failure to recognise red flags in relation to the conduct of SP1 and the situation in the house.¹⁷
28. Eliza submits that Sunnyfield did not, in October 2017, appropriately act on the allegation she raised in relation to SP1's use of an unauthorised restrictive practice on a person with disability at a previous place of employment.
29. This failure to appropriately act on Eliza's concerns put the safety of the residents of the house at risk. It led to a delay in Sunnyfield's ability to recognise that SP1 was 'unsuitable to hold the role that he did in the house and to work in the disability sector'¹⁸ and to take suitable action accordingly.

⁹ Transcript, Caroline Cuddihy, Public hearing 13, 27 May 2021, P-318 [46].

¹⁰ Transcript, Eliza, Public hearing 13, 25 May 2021, P-85 [15-18].

¹¹ Transcript, Eliza, Public hearing 13, 25 May 2021, P-85 [20-24] and P-86 [3-9].

¹² Transcript, Eliza, Public hearing 13, 25 May 2021 P-86 [8-9].

¹³ Transcript, Eliza, Public hearing 13, 25 May 2021 P-86 [11-17].

¹⁴ Additional Documents for Tender, Bundle Tab N/A, IND.0080.0008.0001, 'Email from [Eliza] to Jonathan Swain regarding confidential notes from phone call'.

¹⁵ Additional Documents for Tender, Bundle Tab N/A, IND.0080.0008.0002, 'Notes from phone call with Jonathan Swain re: Draft Action Plan'.

¹⁶ Additional Documents for Tender, Bundle Tab N/A, IND.0080.0008.0002, 'Notes from phone call with Jonathan Swain re: Draft Action Plan'.

¹⁷ Submissions of Counsel Assisting following Public hearing 13, P-89 [348(b)].

¹⁸ Transcript, Caroline Cuddihy, Public hearing 13, 27 May 2021, P-319 [36-37].

***Additional available adverse finding:* Sunnyfield did not appropriately act on Eliza's concerns as to SP1's use of an unauthorised restrictive practice on a person with disability at a previous place of employment.**

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O'BRIEN CRIMINAL AND CIVIL SOLICITORS

20 August 2021