



Chair Opening Address – Ronald Sackville AO QC

Public hearing 2: Inclusive education in Queensland – preliminary inquiry

Townsville, 4 November 2019

This is an extremely important and significant day. It is the beginning of the first substantive hearing of this Royal Commission. I want, on behalf of the members of the Commission, to welcome everybody here, and those who are following these proceedings elsewhere, and particularly, of course, people from the disability community. We are very grateful for your interest in the Commission and the contributions you have made, and will make, to the work of the Commission. This is what is essential to our succeeding in performing the functions with which we have been entrusted.

Before inviting Dr Mellifont QC, senior counsel assisting the Royal Commission, to make the opening remarks for this hearing I would like to make some observations myself.

The terms of reference

As has been pointed out on many occasions the Terms of Reference for this Royal Commission are extremely broad. Among many other topics the Commission is required to expose and examine violence against and abuse, neglect and exploitation of people with disability in **all its settings and contexts**. Importantly the Royal Commission is also required to inquire into:

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

This hearing is principally concerned with issues relating to the education of children with disability, with a particular emphasis on the experience in Queensland. We have selected education for the first topic for a hearing because of its obvious importance for the life experiences of children and adults with disability. And Dr Mellifont will say more on that in her opening.

Education, however, is only one of many areas that will be the subject of the Royal Commission's inquiries. Without attempting to be exhaustive there will be hearings on accommodation and independent living; the responses of the health system to people with disability; the interactions between people with intellectual disability and the criminal justice system (including prisons); assisted decision-making; the accessibility of buildings, infrastructure and transport; discrimination in employment; the barriers to a more inclusive society and the effectiveness of regulatory and reporting regimes. It is not a small task.

We are acutely conscious of the dangers of inquiring into particular areas without considering the overall picture. For example, students with disability who experience violence or abuse at educational institutions, or are denied the opportunity to realise their full academic or vocational potential may be profoundly disadvantaged later in life.

Addressing multiple forms of disadvantage

We are also conscious of the need to take into account the multiple and cumulative forms of disadvantage that often affect particular groups of people with disability. This is perhaps most obvious in the case of First Nations People with disability, particularly those in remote communities, an issue that has already been explored in Workshops conducted by Commissioner Mason. But it is also true of other people with disability such as members of culturally and linguistically diverse groups.

We will be holding hearings not only this year but in 2020 addressing abuse, violence, and neglect experienced by First Nations People with disability. These hearings, some of which will be in remote locations, will address issues specific to the education of First Nations students with disability. And indeed two Commissioners will be visiting Palm Island immediately after this hearing to hold discussions with the local community. And the Commission is also developing strategies to address issues specific to CALD students with disability.

Some of the public hearings will concentrate on case studies illustrating particular forms of violence, abuse, exploitation and neglect of people with disability. This is of course an important aspect of the Commission's work, not least because it will help shape the understanding by the wider Australian community of the discrimination, disrespect and exclusion experienced by so many people with disability.

The need for people to engage with the Royal Commission

This aspect of the Commission's work requires people with disability, their families, their advocates to engage with the Commission and to tell their stories. The task of funding and establishing services to ensure people receive the counselling and legal support to which they are entitled has been the responsibility of agencies outside the control of the Commission. It has taken more time than we hoped but these services are now in place and the relevant agencies are working hard to deal with the pent-up demand.

Unfortunately there are one or two commentators whose contributions often appear calculated to discourage people from telling their stories to the Commission and also to increase levels of anxiety. That is a matter for those commentators to reflect upon, bearing in mind the vulnerability of many people with disability. We are confident, however, that as the work of the Commission progresses very large numbers of people within the disability community will take advantage of what has been rightly described as a once in a lifetime opportunity.

Reviewing and evaluating practices and policies

A second and equally important aspect of the Commission's work is to assess and critically evaluate practices and policies of governments, public agencies and private service providers insofar as they have an impact on people with disability. This is part of the process for identifying the changes that need to be made to bring about a more inclusive society.

At the Opening Hearing in Brisbane on 16 September 2019 we remarked on the extraordinary number of inquiries that have been held relating to the disadvantages experienced by people with disability. The multitude of inquiries and reports has identified a range of issues and problems requiring attention. It will be much harder to formulate solutions that will actually bring about fundamental changes in policies, practices and social attitudes. But that is our job. And the job we are determined to do.

In performing that job we intend not only to expose abuse and poor policies and practices but to highlight innovative programs that yield good outcomes. The selection of Queensland for the first substantive hearing on education does not imply that it has a poor record in Australia in implementing a policy of inclusive education. On the contrary, one part of the inquiry will be whether the Queensland Department of Education's Inclusive Education Policy provides worthwhile guidance for other Australian education systems.

The Convention on the Rights of Persons with Disabilities

The selection of Education as the theme of this hearing provides an opportunity to consider the significance for our inquiry of the United Nations Convention on the Rights of Persons with Disabilities (**UN Convention**). The Terms of Reference, our Terms of Reference, recognise that Australia has international obligations to take appropriate legislative, administrative and other measures to promote the human rights of people with disability, including the right to be protected from all forms of exploitation, violence and abuse under the CRPD.

The UN Convention has a lot to say about Education. Article 24 recognises the right of people with disabilities to education without discrimination and on the basis of equal opportunity. Australia as a party to the Convention is required to ensure an inclusive education system at all levels. This is directed to the full development of human potential and sense of dignity and self-worth and to enabling people with disability to participate effectively in a free society.

It is important to remember that an international convention, even if ratified by Australia, does not automatically become part of Australian law. That only happens when a Parliament enacts legislation giving effect to the rights recognised by the Convention and establishing procedures by which those rights can be enforced. Despite Australia having ratified the Convention, no Australian jurisdiction – Commonwealth, State or Territory – has passed legislation expressly recognising a right to inclusive education for students with disabilities. This is an issue the Royal Commission will need to address.

Article 24 imposes certain duties on Australia as a State Party that are to be implemented in domestic law immediately. These include ensuring legal protection against

discrimination in education and providing reasonable accommodation for students with disability.

However the right to inclusive education recognised by Article 24 is generally regarded as an economic, social and cultural right, rather than a civil right. The significance of this is that Australia, like other signatories to the Convention, is not required to implement the right to inclusive education immediately. Rather its obligation under international law is to take measures to the maximum extent of its available resources, with a view to achieving progressively within a reasonably short time frame the full realisation of the right to inclusive education.

The reason for referring to these matters, is that the policy issues confronting us are not necessarily straightforward or uncontroversial. If they were presumably the problems would have been addressed already and there would be no need for a Royal Commission. The evidence at this hearing, for example, is likely to indicate that there are different views, as to whether there is any role for special schools in the public education system. We will have to address those issues.

Opportunities to have your say

A final point. This is only the first hearing on issues related to education. As the Commission has repeatedly stated, there will be other hearings on this topic. This hearing will not prevent anyone who wishes to make submissions or to share their experiences from doing so. And doing so with appropriate supports. There will be other opportunities at public hearings to present case studies and consider policy issues relating to inclusive education. Nothing will be ruled out. No one will be prejudiced by the holding of this hearing.

We have recently published an issues paper about education which is available on the Commission's website. The issues paper has been adapted from one prepared for a recent Education Workshop attended by inclusive education advocates and academic experts. The paper is not definitive but is simply intended to provide guidance for people wishing to make submissions or provide information. We encourage people, and encourage everybody, to take up the invitation to engage with the Commission and we hope the pleadings in these four days will help elucidate the issues we need to address

and in respect of which submissions and personal stories can be told so we are better able to achieve our objectives.