Chair Opening Address – Ronald Sackville AO QC

Public hearing 8: The experiences of First Nations people with disability and their families in contact with child protection systems

Brisbane, 23 November 2020

I extend a welcome to all who are following this, the eighth public hearing of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability. This hearing will examine the experiences of First Nations people with disability and their families in contact with child protection systems. I therefore extend a particular welcome to all First Nations people who are following or will follow this hearing.

I shall now ask Commissioner Andrea Mason OAM to perform the acknowledgement of country and to make an opening statement.

I thank Commissioner Mason for her statement and express the deep appreciation of the Royal Commission for her tireless work in ensuring that the voices of First Nations people with disability are listened to and heeded. I also pay my respects to the traditional owners of the land where I am sitting, the Gadigal people of the Eora nation. I also acknowledge the First Nations people who will give evidence during this week and all First Nations people following these proceedings on the webcast.

We hope that this hearing will encourage more First Nations people with disability and their families to come forward with their stories. As Commissioner Mason has said and as Uncle Paul's beautiful artwork illustrates, we are committed to Respectful Listening to all people with disability who are willing to engage with us.

As has been the case with the last three public hearings conducted by the Royal Commission, because of the restrictions resulting from the COVID-19 pandemic, this will be a virtual hearing.

On this occasion I shall be joined by Commissioners Roslyn Atkinson AO, Andrea Mason OAM and Alastair McEwin AM. Commissioners Atkinson and Mason are present in the Royal Commission's hearing room in Brisbane. Commissioner McEwin and I are in the Royal Commission's premises in Sydney.

Senior Counsel Assisting the Royal Commission at this hearing are Mr Lincoln Crowley QC and Dr Kerri Mellifont QC. They appear with Ms Elizabeth Bennett and Mr Ben Power of counsel. They are ably assisted by Brisbane barrister, Ms Avelina Tarrago, a proud Wangkamadla woman (phonetically pronounced won-ka-mud-la).

Counsel will participate in the proceedings from the Brisbane hearing room, except for Ms Bennett who will appear by videolink from Melbourne. Legal representatives of the parties given leave to appear will participate in the hearing either remotely or in person in the Brisbane hearing room. Their appearances will be announced shortly.

These proceedings can be followed on the webcast which is available on the Royal Commission's website. As with all our hearings, an Auslan-English interpretation will be visible at all times on the webcast. Our Auslan interpreters will be translating interpreting in both the Brisbane and Sydney hearing rooms.

During the course of the hearing we expect to hear from about 25 witnesses over five days. They include First Nations people with disability who have had direct experience with the child protection systems in various parts of Australia.

We shall hear from the Aboriginal and Torres Strait Islander Social Justice Commissioner of the Australian Human Rights Commission and from First Nations Children's Commissioners from several Australian jurisdictions.

We shall also hear from First Nations child protection organisations, community legal centres and disability rights organisations, academic experts, advocates and government witnesses.

Most witnesses will give evidence remotely, but some will give their evidence in the Brisbane hearing room.

As is inevitable in the age of the pandemic, the best laid plans are always at risk of being disrupted. Some witnesses had kindly agreed to travel from Adelaide to Brisbane to give evidence in person but that plan has had to be abandoned because of the resurgence of coronavirus in Adelaide. Nonetheless, using the wonders of technology, we shall still hear from them.

Of the 18 non-government witnesses who will give oral evidence at Public Hearing 8, 12 identify as a First Nations person.

Mr Crowley will shortly provide further details in this opening statement about the nature of evidence that witnesses are likely to give during the week.

We had originally intended to hold the first hearing addressing issues of particular importance to First Nations people with disability in May 2020. That hearing was to be conducted in the Northern Territory and the subject matter was to be the experiences of First Nations people with disability in remote areas. The decision to hold an early hearing on these issues reflected the direction in the Royal Commission's terms of reference requiring us to have regard to the fact that specific experiences of violence against and abuse, neglect and exploitation are multi-layered and are influenced by experiences associated with race, including the particular situation of First Nations people.

Unfortunately the travel restrictions imposed as a result of COVID-19 forced the postponement of the hearing planned for May. We hope to hold that hearing once travel restrictions are lifted and the threat from coronavirus has receded.

The Royal Commission has always intended to investigate interaction between First Nations people with disability and the child protection systems of the Australian states and territories. It has been clear from an early stage of the Royal Commission's work that this is a major concern for First Nations people with disability.

It is not difficult to understand why this is a topic of great concern, especially to First Nations people. Several of the statements that will be tendered during the hearing refer to the recent report of the Australian Institute of Health and Welfare (AIHW) entitled Child Protection in Australia 2018-2019.

The AIHW records that in 2018-2019, 51,500 First Nations children received child protection services. This is a rate of 156 per 1,000 First Nations children, **eight times the**

rate for non-indigenous children. Of these First Nations children nearly one third were under the age of five.

The rate of First Nations children receiving child protection services has actually increased from 134 per 1,000 in 2014-2015 to 156 per 1,000 in 2018-2019.

In the same year, 2018-2019, one in 26 First Nations children were the subject of substantiations. (That is, a finding after investigation that there is reasonable cause to believe that a child has been, is being or is likely to be abused, neglected or otherwise harmed.) First Nations children were **six times more likely** to be the subject of a substantiation as non-indigenous children.

On 30 June 2019 approximately 30,300 children in Australia were in long term out of home care (that is, for more than two years). Of these, over 40 per cent were First Nations children.

The data also suggests, as Professor Clare Tilbury says in her statement, that not only do First Nations children enter care at much higher rates than non-indigenous children, but they are subject to more intrusive interventions and stay longer in care.

It seems that despite all the reports and programs that have sought to address First Nations disadvantage things have gone backwards in recent years.

The AIHW states that the reasons for over-representation of First Nations children in child protection substantiations are complex, but include:

- the legacy of past policies of forced removal;
- the intergenerational effects of previous separations from family and culture;
- the effects of poverty on families; and
- perceptions resulting from cultural differences in child rearing-practices.

These themes are by no means unfamiliar in the discourse about the place of First Nations people in this country, and they will be reiterated in much of the evidence.

The evidence will tell us that there is very limited data available on the numbers and proportion of children in state and territory child protection systems whose parents are First Nations people with disability. But there is general agreement that First Nations parents with disability are particularly at risk of having their children removed and placed

in care. That is hardly surprising as they face intersecting and compounding disadvantages, even beyond those experienced by other First Nations parents.

Part of our task this week is to examine how these disadvantages can be addressed. We shall do so, as Mr Crowley will explain, having regard to Article 23(4) of the CRPD, which provides that no child is to be separated from parents on the basis of a disability of either the child or one or both of the parents.

We need to consider, among many other things, discriminatory practices by reporters of suspected neglect and by some child welfare workers; lack of cultural sensitivity, for example by seeing different child rearing practices as deficits rather than as promoting cultural strength; assessment criteria that may be appropriate for non-indigenous people but not for First Nations people; the assumption frequently made that disability equates to poor parenting; and failures to provide accessible and culturally safe support services to First Nations people seeking to overcome the intergenerational loss of parental skills. We must also consider how information about parents with disability in contact with child protection services is gathered and how that that information is used, both at a systemic and a case management level.

None of this is to deny genuine efforts that have been made to improve Australia's deeply troubling record. We shall hear, for example, of the Aboriginal and Torres Strait Islander Child Placement Principles (ATSICPP): prevention, partnership, connection, participation and placement. These principles have been incorporated, to varying extents, in state legislation.

I would like to add something based on work I did 45 years ago. In 1975, I presented a report to the Commonwealth as the Commissioner for Law and Poverty. Chapter 10 of that Report was entitled "Aboriginals and the Law". The terminology was rather different 45 years ago.

In Chapter 10 of the report I addressed, as best I could:

> "the variety of disadvantages that are deeply rooted in history and the attitudes of the white community. To overcome these disadvantages in the long term … it will be necessary to go beyond legal reforms into the realm of economic and political power."

The Chapter considered such pressing issues as the gross over-representation of indigenous people in custody; the survival of discriminatory laws, official practices and

racist social attitudes that created multiple forms of disadvantage and denied indigenous people fundamental human rights; and the unfairness indigenous people routinely encountered in their dealings with the justice system, particularly in relation to sentencing for criminal offences.

Among other things the Chapter argued for a transfer of power to indigenous people to ensure that they could determine their own future and have genuine freedom of choice.

How little things have changed

This week is an opportunity to move along a path that has been marked out for decades but has not yet been sufficiently travelled. The hearing marks a new and significant phase in the work of the Royal Commission and in the contributions of First Nations people with disability to that work.

The issues we shall confront this week – and some of the evidence will be confronting – are not simple to resolve. On the contrary, like many of the matters within our terms of reference, they are very complex and challenging. That is why the Royal Commission is not a sprint but a marathon and why we cannot rush to judgment.