



# Chair's Opening Address – Ronald Sackville AO QC

## Public hearing 24: The experience of children and young people with disability in different education settings

**Canberra, 6 June 2022**

I extend a warm welcome in chilly Canberra to everyone joining the 24<sup>th</sup> Public hearing of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability. During this five day hearing we will be examining the experiences of children and young people with disability in different educational settings.

I invite Commissioner Andrea Mason OAM to make the Acknowledgement of Country.

### **Sir Gerard Brennan**

We have just celebrated the 30<sup>th</sup> anniversary of the *Mabo* decision, a transformational event in Australia's history – not just our legal history. The celebration is tinged with sadness at the passing last week of Sir Gerard Brennan AC KBE QC who delivered the leading judgment in *Mabo*.

Sir Gerard was a man of profound learning, wisdom and humanity. He knew that the law can be a means of achieving social justice and was prepared to develop the law to that end in a principled and rigorous fashion.

I was fortunate enough to meet with Sir Gerard on many occasions in his rich post-judicial life. Despite his towering achievements, I was always struck by his kindness, generosity and humility.

We have lost a great Australian.

## **Public hearings and the pandemic**

This is the first of our hearings to take place in Canberra and it is the second hearing this year open to members of the public. As I mentioned last month in Sydney at Public hearing 23, the COVID-19 pandemic has had a significant and continuing impact on our Public hearings. The planning and preparation of a Public hearing takes significant time, energy, resources and skill at the best of times. I acknowledge the exceptional work of the staff of the Royal Commission in organising and preparing for this Public hearing while contending with the complications created by COVID-19 and the flu season.

I also acknowledge that the COVID-19 pandemic has continued to have significant consequences for people with disability around Australia and for the broader community.

## **This hearing**

At this hearing, I am joined in the hearing room in Canberra by Commissioner Andrea Mason OAM. Commissioner Rhonda Galbally AC is participating in the hearing from Melbourne.

Senior Counsel Assisting the Royal Commission, Ms Kate Eastman AM SC is also in the Canberra hearing room and she is joined by Ms Elizabeth Bennett SC and Ms Cathy Dowsett of Counsel.

Subject to any unforeseen developments, bearing in mind that COVID-19 has not disappeared, the Royal Commission will receive evidence this week from 12 witnesses, most of whom will give their evidence in person. Ms Eastman will provide details in her opening statement.

A number of parties have been granted leave to appear at this hearing and I will take their appearances shortly.

## **Previous hearings and activities**

The Royal Commission has held two previous Public hearings on the subject of inclusive education.

Public hearing 2, the first substantive hearing conducted by the Royal Commission, took place in Townsville, Queensland in November 2019, over two and a half years ago. The choice of education as the subject matter of the hearing reflected its profound importance to the life experiences of people with disability.

The main purpose of Public hearing 2 was to undertake a preliminary examination of the systemic challenges and barriers that children and young people with disability face in accessing and obtaining a safe, inclusive and quality education. This examination focussed on the policies and practices of the education authorities in Queensland.

The Commissioners participating in Public hearing 2 published a Commissioners' Report. The Report identified a number of drivers of forms of violence, abuse, neglect and exploitation of students with disability in school settings. These included:

- gatekeeping, and informal and formal exclusion of students
- restrictive practices applied to students exhibiting behaviours of concern
- lack of adjustments, supports and individualised planning
- low expectations of students with disability
- misuse of disciplinary measures, including suspensions and exclusions
- poor complaint handling procedures
- insufficient training of the education workforce to increase awareness of disability and insufficient use of communication, educational techniques and suitable materials to support students with disability.

The Report identified these as subjects for further investigation by the Royal Commission.

Public hearing 7, which was conducted in Brisbane from 12-16 December 2020, investigated a number of the matters identified in Public hearing 2. The specific objective of Public hearing 7 was to examine the barriers experienced by children and young people with disability in accessing safe, quality and inclusive education in mainstream schools. The hearing focussed on the government school systems in New South Wales and Queensland.

The Commissioners' Report for Public hearing 7, which has also been published, made findings about the experiences of Sam, a child whose first suspension was in his second term in kindergarten in a New South Wales public school. The Commissioners found that the process followed in Sam's case was defective and that he should not have been subjected to repeated suspensions that prevented him from receiving a safe, quality and inclusive education. Commissioners also found that Sam's school had inappropriately identified 'restraint' as a reasonable adjustment for him.

The Commissioners' Report, after analysing the evidence at Public hearing 7, identified additional topics for investigation. These included:

- the ways in which education systems should protect the inherent dignity and value of students with disability, in particular by preventing them from being bullied;
- the policy and regulatory levers available to address the disproportionate use of exclusionary discipline against students with disability;
- how restrictive practices should be regulated to ensure the safety of students with disability, including whether such practices should be prohibited.

The Royal Commission's work on Inclusive Education has gone well beyond the two Public hearing on the subject. For example, in October 2019 we published an Issues Paper on Education and learning. By the time we published an Overview of the responses, we had received 49 responses, some of which were very detailed. The responses related to experiences across all education systems. They also expressed a variety of opinions on the issues we had identified. Not surprisingly people within the disability community have a diversity of views on where the reform priorities lie.

The Royal Commission has also received a large number of submissions and has conducted many private sessions.

As of today, the Royal Commission has received 4,677 submissions. Of these, 996 or 21 per cent discuss issues relating to education and learning for children and young people with disability. Certain themes recur in the submissions, such as unwillingness or inability of some schools and educators to provide students with disability with reasonable adjustments to facilitate these studies. But, as with responses to Issues Papers, submissions and opinions on issues such as the ability of mainstream schools to provide inclusive or high quality education to students with high support needs vary considerably.

Up to date the Royal Commission has conducted over 1,000 private sessions – that is, a session at which a person meets with a Commissioner and recounts their experiences or concerns on a confidential basis.

Of the 871 private sessions for which information has been reviewed and coded, 271 relate to education and learning for children and young people with disability. About 165 of these private sessions were with parents or supporters of students or adults with disability. Many of the remaining private sessions were with people with disability themselves who shared their experiences and ideas.

Participants in private sessions addressed the matters for investigation identified in the Commissioners' Reports for Public hearings 2 and 7. However, they too expressed a variety of opinions about the approaches that should be taken to the education of students with disability, particularly those with high support needs.

It is clear from responses to Issues Papers, submissions and information conveyed in private sessions that the disability community does not speak with one voice on all issues relating to education of and learning by students with disability, especially students with high support needs. We are likely to hear this diversity during the course of this week.

### **Evidence to be presented**

In this public hearing, by contrast with Public hearings 2 and 7, students with disability and parents of children with disability will give evidence about students' experience in a variety of educational settings, not just in mainstream schools. Following the completion of their evidence a panel consisting of two advocates, Ms Mary Sayers of Children and Young People with Disability Australia and Ms Catherine McAlpine of Inclusion Australia, will give evidence.

Evidence will also be given by senior officers from:

- The Western Australian Department of Education; and
- The South Australian Department for Education.

Each of these officers has provided a detailed statement explaining the educational programs and settings available to students with disability in the State.

Finally, we shall hear from the Special Adviser, Early Childhood Intervention and Autism at the National Disability Insurance Agency (NDIA).

Counsel Assisting will provide a detailed overview of the evidence to be examined in the hearing but I would like to touch upon the themes that will arise.

The first is choice. Australia is a country that allows students and their families a very wide array of educational options. We would like to understand what choice means for students and families of students who enter or are considering entering the special/segregated education system. What factors prompt the choice? Is the decision made with the benefit of advice and support? In practice, what options are available?

The second theme is the impact of different education settings on the life course of children with high support needs. We will receive evidence from students with disabilities

and their families about the challenges of transitioning to life after school. This includes not only preparing for further education or employment, but also acquiring core skills such as effective communication and decision-making.

The third theme is the intersection between the education system and the NDIS. The Royal Commission has already received evidence about the importance of reasonable adjustments for students with disability within systems, like education, that remain primarily the responsibility of the states and territories. We will hear evidence about the division of responsibilities between state and territory systems and the NDIS and the ways in which those tensions are managed in practice.

I add one further comment. We quite often hear the policy issues arising out of our Terms of Reference presented as involving a choice between mutually exclusive alternatives: supported decision-making vs substituted decision-making; open employment vs segregated employment; group homes or similar arrangements vs independent living; and inclusive education vs segregated/special education.

The policy measures needed to achieve the objectives specified in our Terms of Reference do not necessarily require what can be described as binary thinking: that is one or the other. The principal difficulty with binary approaches is that they tend to assume that there are relatively simple answers to difficult questions. If there is one thing that clearly emerges from the enormous range of activities undertaken by the Royal Commission over the three years of our life, it is that problems may be relatively easy to identify but finding solutions that will work is extraordinarily complex and challenging. We therefore need to consider whether there are more nuanced approaches that recognise the diversity of the issues that must be confronted and the complex nature of the policy choices we have to make.

I shall now take appearances.