



# Chair's Opening Address– Ronald Sackville AO QC

## Public hearing 25: The operation of the NDIS for First Nations people with disability in remote and very remote communities

### Alice Springs, 11 July 2022

I extend a warm welcome to everyone who is participating in or following Public hearing 25 of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability. This hearing, which is being held at the Alice Springs Convention Centre, will examine the important topic of the operation of the National Disability Insurance Scheme (**NDIS**) for First Nations people in remote and very remote communities.

I extend a particular welcome to all First Nations people present in person or who are following or will follow this hearing on the livestream.

### Acknowledgments

I would like to thank Kristy Bloomfield and Barbara Satour, Traditional Owners of Mparntwe Alice Springs for welcoming the Royal Commission to Country and performing the Smoking Ceremony. I would like particularly to thank the young women performers who braved an exceedingly cold Alice Springs morning to add to the smoking ceremony.

I would also like to take this opportunity to acknowledge Commissioner Andrea Mason OAM for her tireless efforts to ensure that the voices of First Nations people with disability are heard in all aspects of this Royal Commission's work, including in hearings such as this one. We are delighted that finally the Royal Commission is able to hold a Public hearing in Commissioner Mason's place of primary residence – Alice Springs. This is the one occasion on which she has been spared long distance travel in order to participate in person at a hearing of the Royal Commission.

## **Public hearings concerning First Nations people with disability**

This is the third Public hearing specifically addressing issues relating to First Nations people with disability. Public hearing 8 was held in the Royal Commission's hearing room in Brisbane from 23 to 27 November 2020. It examined the experiences of First Nations people with disability and their families who have come in contact with child protection systems.

Public hearing 16 considered the experiences of First Nations children with disability in out-of-home care. That Public hearing was actually scheduled to be held in Alice Springs on 17 to 24 September 2021. Arrangements for the hearing, including a Welcome to Country, were well advanced when we had to alter our plans because of the restrictions associated with COVID-19. To the disappointment of everyone involved – Commissioners, Counsel, the Royal Commission staff who had devoted so much time and effort to preparing the hearing and witnesses who were expecting to give evidence in person and had prepared accordingly – the hearing had to be held virtually.

It is therefore a great relief that we have finally been able to conduct a hearing in Alice Springs at which Commissioners, Counsel, witnesses, representatives of parties given leave to appear and members of the public, including of course First Nations people, can actually be present in the hearing room.

It is important to appreciate that this hearing and Public hearings 8 and 16 are not the only occasions on which we have heard or will hear from or about First Nations people with disability who have experienced violence, abuse, neglect or exploitation.

Public hearing 11 which was conducted in Brisbane from 16 to 25 February 2021, for example, investigated the experiences of people with cognitive disability in the criminal justice system. The evidence at that hearing recorded the shameful statistic that in 2020, 29 percent of all adult prisoners in Australia were First Nations people, at a time when First Nations people comprised just 2.5 per cent of the Australian population. In the Northern Territory, where the current hearing is taking place, First Nations people comprised 84 per cent of the prison population, yet they comprised just 26 per cent of the total Northern Territory population.

A significant portion of the evidence at Public hearings 11 and 15 concerned two case studies, both involving First Nations people with disability, given the pseudonyms of Melanie and Winmartie. They had been found unfit to plead to criminal charges and had been kept in forensic detention settings for many years in conditions including prolonged

seclusion and restraints, that no-one in this country should endure, let alone people who have not been convicted of a crime. Following the hearing, the circumstances of each of Melanie and Winmartie have improved and each has been able to meaningfully engage with the NDIS outside of forensic detention. But the systemic issues exposed at Public hearing 11 and 15, which result in violence and abuse being perpetrated on people with cognitive impairment, still need to be addressed.

## **This hearing**

I am joined by Commissioner Mason and Commissioner Alastair McEwin AM in what has become the hearing room at the Alice Springs Convention Centre.

Senior Counsel Assisting the Royal Commission at this hearing is Mr Pat Griffin SC. He appears with Ms Avelina Tarrago and Ms Rebecca McMahon of Counsel. All three are present in the Alice Springs hearing room. I will take appearances shortly from the legal representatives of parties given leave to appear at this hearing.

I wish to take this opportunity of acknowledging the contributions of Lincoln Crowley QC, now his Honour Justice Lincoln Crowley of the Supreme Court of Queensland, to the work of the Royal Commission. Justice Crowley was Senior Counsel Assisting the Royal Commission at Public hearings 8 and 16. He was also involved in the preparation for this Public hearing prior to his appointment to the Supreme Court of Queensland. We congratulate Justice Crowley and wish him well in his judicial career.

This Public hearing will take place over five days. We expect to hear from about 27 witnesses, twelve of whom will give evidence in person. Of the 27 witnesses, 19 are First Nations people. They include First Nations people with disability who are participants in the NDIS, family members of NDIS participants and witnesses representing First Nations organisations providing services and advocacy to First Nations NDIS participants. The last group includes representatives from:

- the Ngaanyatjarra, Pitjantjatjara and Yankunytjatjara Women's Council (**NPYWC**);
- the Marninwarntikura Women's Resource Centre;
- the First People's Disability Network (**FPDN**);
- the National Aboriginal Community Controlled Health Organisation (**NAACHO**).

I wish to acknowledge the many contributions of FPDN to the Royal Commission's work. These contributions include giving evidence at hearings and assisting the Royal Commission to engage with First Nations people with disability and to gain the benefit of

their experiences. Mr Damian Griffis, the CEO of FPDN, is a member of the Royal Commission's First Nations Peoples Strategic Advisory Group, and Mr Griffis will give evidence at this week's hearing together with FPDN Deputy CEO, June Reimer.

The origins of FPDN can be traced back to a national gathering of First Nations people and people with disability in Alice Springs in 1999. Alice Springs can be regarded as the 'cradle' of many important campaigns involving First Nations people, including First Nations people with disability. This is one important reason why it is appropriate for this hearing to be held in Alice Springs.

This hearing is taking place in the week after NAIDOC Week, the theme of which was 'Get Up! Stand Up! Show Up'. During NAIDOC week calls were made for people around Australia to listen respectfully to the voices of First Nations people, particularly voices advocating for systemic reforms to address the multiple disadvantages faced by First Nations people. Listening to the voices of First Nations people with disability and their supporters is in keeping with this year's NAIDOC Week theme and discharging the responsibilities of the Royal Commission.

## **Background Information**

The Terms of Reference require the Royal Commission to inquire into what governments, institutions and the community should do to better protect people with disability from violence, abuse, neglect and exploitation. In undertaking these inquiries, the Royal Commission must take into account that people's specific experiences of violence, abuse, neglect and exploitation are multi-layered and are influenced by experiences associated with (among other things) the person's race. We are also directed to have regard to the "particular situation" of Aboriginal and Torres Strait Islander people with disability. We read that direction as a recognition that the First Nations people of this country have a unique history, culture and association with the land, as well as a recognition that First Nations people with disability face unique forms of disadvantage and unique challenges.

Mr Griffin in his opening will refer to statistical data, but I would like to record information that helps to understand the issues we are examining. If we combine the results from the 2016 and 2021 Censuses of Population and Housing, it appears that there are about 66,000 First Nations people with a 'profound or severe disability', or roughly 8 percent of a First Nations population of about 812,000 (around 3 per cent of the total population of

Australia). Of the 66,000 First Nations people with a profound or severe disability, about 11 per cent, or roughly 7,000 people, usually reside in remote or very remote areas. The NDIS defines areas as 'remote' or 'very remote' based on a system that classifies regions into seven categories depending on their population size and isolation from capital cities.

A recent report by the National Disability Insurance Agency (**NDIA**) indicates that in March 2022, 37,313 First Nations people with disability were NDIS participants, an increase of 260 per cent since 2018. In the same month, 8,007 NDIS participants lived in remote or very remote areas and about half of these (according to the NDIA) identified as Aboriginal or Torres Strait Islanders.

These statistics mean that the current Public hearing is considering the position of about 4,000 First Nations people with disability who are currently NDIS participants. The average annual support for First Nations NDIS participation in remote or very remote locations is \$96,000, which is 41 per cent more than the average annual support for all First Nations NDIS participants.

In addition, of course, we shall address the position of First Nations people with disability in remote and very remote areas who might be eligible to participate in the NDIS but whose applications to have a plan approved have been rejected. We know that First Nations people with disability are less likely to have their applications to become NDIS participants approved than non-First Nations applicants: 34 per cent of NDIS applicants who disclose their First Nations status are assessed as ineligible for the NDIS compared to 28 per cent of applicants who say they are not First Nations people. We also know that applicants in remote and very remote areas are assessed as ineligible to participate in the NDIS at a higher rate than applicants in major cities.

These figures perhaps suggest that some First Nations people with disability in remote and very remote areas are not necessarily being correctly assessed. In addition, we have to take into account the extent to which First Nations people with disability are deterred or prevented from applying for participation in the NDIS or plan approval in the first place. We shall hear a good deal of evidence about the barriers facing such people in remote and very remote areas.

Mr Griffin will outline in some detail the nature of the evidence to be given over the course of the week. In broad terms, the fundamental issue at this hearing is whether the NDIS, as governed by the *National Disability Insurance Scheme Act (2013)* (Cth) and administered by the NDIA, is achieving the desired outcomes for First Nations people

with disability in remote and very remote areas. If the answer to this question is no, the next question is what should be done to ensure that the First Nations people with disability in remote and very remote areas receive the supports they need in a manner that is culturally appropriate and makes best use of the available resources.

Numerous statements that will be tendered in due course identify the barriers that prevent First Nations people with disability from accessing the NDIS to the extent that is warranted by their needs and by the statutory eligibility criteria. The statement by Ms Patricia Turner, the CEO of the National Aboriginal Community Controlled Health Organisation (**NACCHO**) specifies six major interconnected barriers:

- The first is the geographic extent of the remote areas and the relatively small populations of those areas. Mrs Kunmanara Smith and Ms Kim McRae of the NPYWC explain, for example, that the NPY Lands comprise 25 very remote communities across 350,000 square kilometres of semi-arid country. The entire region has a population of about 6,000, with an average of about 200 people in each community.
- Secondly, the failure of markets in remote and very remote areas to provide the services necessary to support First Nations people with disability. This is usually referred to as the problem of 'thin markets'. That is a technical expression which can be used in a variety of ways, but in the present context it describes a situation where the available funded support services simply cannot meet the needs and entitlements of NDIS participants.
- Thirdly, the difficulties facing First Nations people in navigating the NDIS system by reason of its complexity and bureaucratic nature, coupled with linguistic, cultural and literacy barriers.
- Fourthly, a lack of appropriately qualified and knowledgeable service providers in remote and very remote areas. This perhaps can be regarded as another way of describing the difficulties created for the NDIS by thin markets in remote and very remote areas.
- Fifthly, a lack of culturally appropriate services and supports for First Nations people with disability in remote and very remote areas. A number of witnesses will explain, for example, the fundamental importance for the wellbeing of First Nations people that they maintain links with their community and Country. This is something that is very difficult or impossible to achieve if services and supports are

only provided in regional centres and little or no support is given for visits to Country and community.

- Finally, distrust by First Nations people towards what Ms Turner describes as 'institutional care', arising from both personal and historical experiences of First Nations people. This includes the history of colonisation and dispossession, racism and intergenerational trauma that compound the distrust associated with endemic poverty and lack of decent housing in many remote communities.

I do not wish to create the impression that the NDIA is unaware of the issues that will be raised in the evidence or is unwilling to address them. We shall hear from senior representatives of the NDIA who will describe the various Strategies that have been put in place to encourage innovative models of service delivery for First Nations people with disability in remote and very remote areas. These include:

- the Rural and Remote Strategy;
- the Aboriginal and Torres Strait Islanders Engagement Strategy;
- the Cultural and Linguistic Diversity Strategy; and
- the Community Connectors Program.

There may well be very different views about the effectiveness of these Strategies and programs. But we do not approach the evidence of this hearing on the assumption that the NDIA is unsympathetic or unwilling to constructively respond to the issues that will be raised.

Before taking appearances, I understand that Commissioner Mason wishes to make a brief statement.

***[Commissioner Mason makes her statement.]***

Thank you, Commissioner Mason. I will now take appearances.