



Chair's Opening Address – Ronald Sackville AO QC

Public hearing 14: Preventing and responding to violence, abuse, neglect and exploitation in disability services – South Australian case study

Adelaide, 7 June 2021

I extend a welcome to all who are attending this Public hearing 14 of the Royal Commission on Preventing and responding to Violence, Abuse, Neglect and Exploitation in Disability Services with particular reference to South Australia.

Acknowledgement of Country

I wish to acknowledge the Kurna (pronounced “Gar-na”) people of the Adelaide Plains, the traditional custodians of the land on which the Royal Commission meets this week, and to pay our respects to their Elders past, present and emerging.

I also acknowledge the Gadigal people of the Eora Nation, upon whose lands I am sitting, and the Wurundjeri people of the Kulin Nation, from whose lands Ms Elizabeth Bennett of Counsel is appearing.

I pay our respects to their Elders, past, present and emerging and I also pay our respects to all First Nations people who are attending the hearing in person today, as well as those who are viewing the hearing on the livestream.

Public hearings and COVID-19

This is the first public hearing the Royal Commission has held in South Australia. Indeed it is the first public hearing we have held outside the three eastern mainland States.

This was not the original plan. Our program for 2020 included public hearings in each State and the two Territories, even Western Australia. Those plans were frustrated by the arrival of the COVID-19 pandemic and the restrictions that went along with it. Not only were we unable to hold any public hearings between February and August 2020, but

when hearings resumed they had to be conducted remotely without members of the public being able to attend in person. It was not possible to hold hearings in States or locations outside Queensland or NSW.

People who have followed the work of the Royal Commission will know that we recently held Public hearing 13, the first hearing since February 2020 which members of the public could attend. At that hearing at Homebush in Sydney, witnesses gave evidence in person in the hearing room, Counsel Assisting and the legal representatives of parties who had leave to appear were present in the hearing room. Two of the three Commissioners were present at Homebush, while Commissioner Galbally participated in the hearing from Melbourne.

In my opening at the Homebush hearing I was rash enough to express the hope that all future hearings would be open to the public and that we would not be subject to constraints by any resurgence of COVID-19. Unhappily, I spoke too soon.

The unfortunate fresh outbreak of COVID-19 in Victoria has prevented Ms Elizabeth Bennett, one of the Counsel Assisting the Royal Commission, from leaving Melbourne. For reasons connected with the outbreak I am participating in this hearing from the Royal Commission's premises in Sydney rather than travelling to Adelaide.

However, Commissioner Alastair McEwin AM and Commissioner Barbara Bennett PSM are present in the Adelaide hearing room in the Convention Centre, as is Ms Kate Eastman SC, the Senior Counsel Assisting the Royal Commission and Dr Hayley Bennett, Counsel Assisting. All witnesses will give evidence in person in Adelaide.

I should mention that Commissioner McEwin is Adelaide born and bred, and maintains strong connections in Adelaide. I am sure he will feel very much at home.

I cannot claim to be Adelaide born and bred, but I do have a Royal Commission connection with South Australia. A few people following the hearing might be old enough to remember the South Australian Royal Commission into the Non-Medical Use of Drugs which I chaired from 1977 to 1979, a mere four decades ago.

At that time, Don Dunstan was Premier, nobody had even thought of transforming the Victorian Football League into the Australian Football League, let alone Adelaide and Port Adelaide joining the national competition.

I am disappointed not to be able to participate again in person at a Royal Commission in Adelaide following an adjournment of 42 years. I doubt I shall be available in another 42 years.

The scope of this hearing

This is the second public hearing at which the Royal Commission is investigating the responses of service providers and regulators to alleged (or actual) cases of violence against or abuse or neglect of people with disability living in supported residential accommodation. This hearing will focus upon two case studies which involve the experiences of people with disability receiving disability accommodation services provided by the South Australian Department of Human Services to which I will refer as **(DHS)**.

Ms Eastman's opening will provide more details of the evidence to be presented concerning these two case studies.

The hearing will also examine the responses of DHS, the National Disability Insurance Agency (**NDIA**) and the National Disability Insurance Scheme Quality and Safeguards Commission (**NDIS Commission**) to the tragic death of Ms Ann Marie Smith.

Ms Smith died on 6 April 2020. She lived by herself in her own home and had a single carer employed by a registered service provider. Ms Smith was an NDIS participant.

Ms Smith lived with cerebral palsy and at the time of her death she was found to have experienced, among other things, septic shock, multiple organ failure, severe pressure sores and malnutrition. She had been living in squalid circumstances.

The hearing will consider the responses of DHS, the NDIA and the NDIS Commission to the recommendations in two sets of reports. The first is the report by The Hon Alan Roberson SC: Independent review of the adequacy of the regulation of the supports provided to Ms Ann Marie Smith, an NDIS participant – (31 August 2020) (**Robertson Review**).

The second set of reports comprises the Interim and Final Reports of the South Australian Safeguarding Task Force delivered, respectively, on 5 June 2020 and 31 July 2020. There was also a supplementary report from the Task Force that was presented on 28 September 2020.

The recommendations made by those inquiries relate to a number of matters including:

- the identification of vulnerable NDIS participants by the NDIA and the NDIS Commission;
- the NDIS Commission's regulation of 'sole carers';
- the responsibility of local area coordinators set up under the NDIS and support coordinators for NDIS participants' safety and wellbeing;
- the role of the Community Visitor Scheme in South Australia;
- information sharing arrangements between the NDIA and the NDIS Commission; and
- information sharing arrangements between State and Commonwealth agencies.

Constraints in the Terms of Reference

It is very important to appreciate that the Royal Commission's Terms of Reference constrain the scope of investigations we can conduct in relation to the circumstances leading to Ms Smith's death. The Terms of Reference expressly direct the Royal Commission to consider:

“the need to ensure that evidence that may be received by [the Royal Commission] that identifies particular individuals as having been subject to violence, abuse, neglect or exploitation is dealt with in a way that does not prejudice current or future criminal or civil proceedings or other contemporaneous inquiries”.

There are in fact criminal proceedings underway in South Australia and there may also be inquiries that have not yet been completed into the circumstances of Ms Smith's death. For these reasons, this hearing will be directing attention to the measures taken in response to the investigations that have already been conducted.

The Bilateral Agreement

In my opening statement for Public hearing 13 at Homebush I provided some basic national data about participants in the NDIS. I shall not repeat that information.

Because this hearing will be examining services provided by DHS, a South Australian Government Department, it might be helpful to explain why South Australia is continuing to provide services after the NDIS has come into operation. That will require reference to the Bilateral Agreement that I will come to in a moment. A more detailed explanation of the arrangements is given in statements that will be tendered in evidence in due course, notably the statement of Ms Boswell, the Chief Executive of DHS.

The transition to the full NDIS began in South Australia in January 2016, including the gradual transition of South Australian Government disability clients to the NDIS. The current arrangements between South Australia and the Commonwealth are set out in a Bilateral Agreement which commenced on 1 July 2018.

The Bilateral Agreement outlines the respective responsibilities of South Australia and the Commonwealth under the NDIS. South Australia, like the other States and Territories makes very substantial financial contributions to the NDIS. Its contribution in the current financial year (2020-2021) amounts to at least \$800 million.

The Bilateral Agreement contemplates that South Australia will continue to provide what are known as “in-kind contributions” to NDIS participants. These in-kind contributions can include accommodation services and Supported Independent Living (**SIL**) services. South Australia in effect receives a credit for the value of in-kind services to set off against its funding contributions to the NDIS. The in-kind arrangements are to be phased out by 30 June 2023.

It is important to note that in-kind services provided by State are not subject to regulation by the NDIS Commission. Regulation of these services is a matter for State authorities, particularly DHS itself.

At 31 March 2021, 39,608 South Australians were participants in the NDIS, including about 23,000 receiving support for the first time.

According to Ms Boswell's statement, 479 participants in the NDIS currently receive community accommodation services provided by DHS. The statement from Mr Hoffman, the CEO of the NDIA, gives slightly different figures, but they are not materially different. DHS also provides other services to NDIS participants under the in-kind arrangements.

After the in-kind arrangements finish in 2023, DHS intends to continue providing accommodation services that NDIS participants will be able to select if they choose to do so. DHS is a registered NDIS provider. That means that NDIS participants who choose DHS as a service provider will indirectly fund those services through their NDIS plans.

State responsibilities

The NDIS is often thought of as a Commonwealth scheme. As I have pointed out, the States and Territories made very significant financial contributions to the NDIS and DHS provides a range of in-kind services to NDIS participants.

As Ms Anne Gale, the South Australian Public Guardian, points out in her statement that despite the transfer of responsibility for the regulation and administration of the NDIS, the States retain important responsibilities. These include, as we saw at Public hearing 6, the authorisation of restrictive practices and the screening of disability support workers.

Ms Gale also identifies gaps in the NDIS that may have to be filled by State-funded services. One example is where the support or accommodation services for an NDIS participant are withdrawn or fail and the participant experiences difficulty in sourcing alternative providers. In these circumstances the State may become a provider of last resort.

In considering the measures required to prevent violence against and abuse, neglect and exploitation of NDIS participants, it is therefore necessary to examine the respective responsibilities of the Commonwealth, on the one hand and the States and Territories on the other. As we have been repeatedly reminded during this pandemic, Australia is after all a federation.

I shall now take appearances and then I shall invite Ms Eastman to make an opening statement.