



Chair's Opening Address – Ronald Sackville AO QC

Public hearing 7: Barriers experienced by students with disability in accessing and obtaining a safe, quality and inclusive school education and consequent life course impacts

Brisbane, 12 October 2020

Good morning. I welcome everyone who is following this hearing of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability. We commence with an acknowledgment of country and I invite Commissioner Andrea Mason OAM to perform that acknowledgement.

This is the seventh public hearing of the Royal Commission and the sixth at which the Royal Commission has heard or will hear evidence on matters within the Terms of Reference. It is also the second public hearing to consider issues associated with the right to inclusive education recognised in Article 24 of the Convention on the Rights of Persons with Disabilities (CRPD).

The First Education Hearing

The first of the Education hearings, Inclusive Education in Queensland – A Preliminary Inquiry, was held in Townsville from 4-7 November 2019, eleven months ago. That hearing (Public Hearing 2) took place before the same four Commissioners who are participating in this hearing. I shall refer to the Commissioners by name shortly.

The Royal Commission selected inclusive education as the first subject of a public hearing because of the obvious importance of a safe, inclusive and quality school education for the life experiences of both children and adults with disability. A number of witnesses at the Townsville hearing told the Royal Commission that poor educational experiences can have a significant impact on the life-course of students with disability, for

example in relation to literacy, employment opportunities and mental health. The Royal Commission will shortly publish a report based on the evidence given at Public Hearing 2.

The Effect of the Pandemic

We intended to follow up the Townsville hearing with a second hearing on Education in March 2020. Unhappily, the COVID-19 pandemic arrived in Australia in February 2020. The restrictions imposed by Governments on gatherings and movements of people in the interests of community safety meant that the second Education hearing had to be postponed.

The pandemic also caused the postponement of several hearings and other forms of public engagement planned by the Royal Commission. For example, we were due to hold an important hearing in the Northern Territory concerning First Nations people with disability in May 2020. The travel restrictions in place meant that that hearing, too, had to be postponed.

Just as many other entities, organisations and individuals have had to adjust to the new reality, so the Royal Commission has had to adjust. We have done that, so far as our public hearings are concerned, by revising the program and resuming hearings in August 2020 using technology to conduct virtual hearings. This of course reflects our inability for safety reasons to hold hearings in the conventional way with members of the public free to attend the hearings in person.

This Hearing

This virtual hearing will be primarily conducted from the Royal Commission's purpose-built hearing room at its premises in Brisbane. Commissioner Roslyn Atkinson AO and Commissioner Mason will participate from that room. Commissioner Rhonda Galbally AC is participating in the hearing from her own home in Melbourne. I am located in a court room in the Sydney premises of the Fair Work Commission and I do so with the kind permission of that body

Dr Kerri Mellifont QC is the Senior Counsel Assisting the Royal Commission for this hearing, a role that she performed admirably at the Townsville hearing. Dr Mellifont appears with three Counsel Assisting the Royal Commission: Ms Elizabeth Bennett, Mr Andrew Fraser and Mr Ben Power. Ms Bennett is located in Melbourne, while Mr Fraser and Mr Power will appear from the Brisbane hearing room.

Most witnesses will give evidence remotely and in some cases evidence has been pre-recorded. However, certain witnesses will give evidence from the Brisbane hearing room. You can deduce from this set up for the virtual hearing that, like Commissioner Galbally, I am likely to feel quite lonely as the hearing proceeds. More importantly, we are dependent on the technology working smoothly which, from experience, it usually does, but not always. We may therefore have the occasional interruption and we ask for patience and understanding if and when that occurs.

Recent Publications

As many following these proceedings will be aware, the Royal Commission publishes progress reports every six months or so. The last such report, which is available on the Royal Commission's website, covered developments up to 30 June 2020. Today provides an opportunity to explain some of the developments that have occurred since that time.

The Royal Commission is directed by the Terms of Reference to provide an Interim Report by 30 October 2020. That deadline will be met, although of course the contents of the Interim Report have had to take into account the interruptions to the Royal Commission's program caused by the COVID-19 pandemic.

The Royal Commission's revised program commenced with a virtual hearing in August 2020 on a subject that had not been included in the original schedule. At the August hearing the Royal Commission investigated the impact of COVID-19 on people with disability and, in particular, the responses of the Commonwealth to the many difficulties and challenges experienced by people with disability during the pandemic. The Commission selected this subject because it was clear that the unforeseen pandemic was having a serious impact on the health and well-being of so many people with disability that an urgent inquiry was warranted.

We stated at the time that we would publish a report on matters investigated at the hearing to ensure, so far as possible, that people with disability are kept safe and as secure as possible during the pandemic and in any future emergencies. The report on the COVID-19 hearing will include recommendations and will be published next month, that is in November 2020.

Public hearings are essential to the work of the Royal Commission, but they form only one part of the Commission's activities. I do not intend to describe the full range of

activities but I do want to refer to reports and other documents that have been published by the Royal Commission over the last two months or so:

- Three important research reports have recently been published: Ms Rosemary Kayess and Ms Therese Sands, *Convention on the Rights of Persons with Disabilities: Shining a light on Social Transformation*; Emeritus Professor Ron McCallum AO, *The United Nations Convention on the Rights of Persons with Disabilities; An Assessment of Australia's Level of Compliance*; and Associate Professor Matthew Stubbs, Dr Adam Webster and Professor John Williams, *Persons with Disability and the Australian Constitution*. These research reports address significant legal and policy issues and will be considered by the Royal Commission in its continuing work and in preparing its Final Report in due course.
- The Report of the Commissioners who participated in Public Hearing 3, *The experience of living in a group home for people with disability* was published on 30 September 2020, along with an Overview of responses received to the Royal Commission's *Group Homes Issues Paper*.
- On 13 August 2020 we published an Overview of the numerous responses received by the Royal Commission to the *Education and Learning Issues Paper*. The Overview includes references to the responses made by some organisations and individuals who will give evidence at this hearing in addition to the many other responses received from individuals, organisations, governments and public authorities.
- As I have already mentioned, the Royal Commission will soon publish its Interim Report and the Commissioners' Report on Public Hearing 2 (*Inclusive Education in Queensland: A Preliminary Inquiry*). We shall also soon publish the Commissioners' Report on Public Hearing 4 (*Health Care and Services for People with Cognitive Disability*) which was held from 18 to 28 February 2020 at Homebush in Sydney.
- The sixth hearing of the Royal Commission was held from 22-25 September and addressed the use and overuse of psychotropic (mood-altering) medication for people with disability. This was the second hearing to consider the health and wellbeing of people with intellectual disability or autism, particularly in response to what medical practitioners generally call behaviours of concern. In due course, the Royal Commission will publish a report of this hearing as well.

The Nature of our Investigations

I have referred to these publications partly to bring people who are interested in the work of the Royal Commission up to date. There is, however, another reason for mentioning these developments. As I frequently remark, this Royal Commission has extraordinarily broad terms of reference and it therefore faces a very formidable task.

Our work should not be seen as a series of separate inquiries into distinct policy questions. Our inquiries are designed to explore the various forms of violence, abuse, neglect and exploitation that have an impact on people with disability, not only at particular points in their lives but throughout their lives. Violence, abuse, neglect and exploitation can have a profound impact on the life experiences of people with disability: on their physical and mental health and well-being; their educational attainments; their employment opportunities; their unwanted interactions with the criminal justice system; their contacts with families, friends and the wider community; and the extent of their inclusion within Australian society. Our work takes into account the multiple forms of disadvantage and discrimination experienced by particular groups such as First Nations and culturally and linguistically diverse people with disability – something that is often described as “intersectionality”. Indeed the very first witnesses from whom we shall hear today are First Nations people.

It may help to see the Royal Commission as constructing a very large and complex mosaic piece by piece, with the active participation of people with disability. The idea is that the mosaic will come together as the Royal Commission moves towards the completion of its work, still some time off. There are a very large number of interrelated and intersecting parts that need to be developed, but the broader picture that will be represented by the completed mosaic is beginning to emerge.

We have identified a number of themes from our work to date that are particularly significant to the autonomy and independence of people with disability and their right to live free from violence, abuse, neglect and exploitation. These themes include:

- choice and control
- prejudiced and uninformed community attitudes toward people with disability
- segregation and exclusion of people with disability
- restrictive practices
- access to facilities, services and supports
- effective advocacy and representation

- active oversight of service providers and improved complaints procedures
- comprehensive data about the experiences of people with disability
- adequate funding for the changes that are needed.

The Focus of This Hearing

Article 24 of the CRPD recognises the right of people with disability to access education without discrimination and on the basis of equal opportunity. As Dr Mellifont will explain, the focus of this hearing is on the barriers to a safe, quality and inclusive education for children with disability in what are usually described as mainstream or general schools. Some evidence will resonate with those who have followed the Royal Commission's work because of what we have already heard, for example, about the use of psychotropic drugs as a means of controlling the behaviour of people with intellectual disabilities or autism.

Dr Armstrong, from whom we shall hear today, explains that what he calls the "manage and discipline model" does not work for children with disability. He argues that this model needs to be replaced with one that provides positive behavioural support for students with disability who are perceived to be creating behavioural difficulties. Other witnesses, including children with disability, their families and advocates, will refer to evidence demonstrating the adverse and sometimes catastrophic effects of repeated suspensions or expulsions on children subjected to punitive or disciplinary regimes.

As we heard in the hearing on psychotropic drugs, a different approach requires an acknowledgement that behaviours seen as problematic should not be characterised as the fault of the child engaging in that behaviour. Rather, the behaviour should be understood primarily as a form of communication and the child provided with support and assistance rather than exposed to punishment or disciplinary action.

It has become apparent through submissions and responses to the Education and Learning Issues Paper that there are genuine disagreements as to the precise scope, effect and practical operation of Article 24 of the CRPD. This is not a normative or evaluative judgment. It is a simple statement of fact.

What is important for present purposes is that there is a substantial measure of agreement as to what Article 24 does require. Whatever the other differences of interpretation may be, it is generally agreed that all children with disability whose parents or guardians wish them to have a safe, inclusive and quality education in mainstream

schools, have a right to receive that education without discrimination. That means that they are entitled to the support of reasonable accommodation (a term defined in Article 2 of the CRPD). This is the philosophy which underlies Queensland's Inclusive Education Policy.

It seems that almost everyone also agrees that there is no Australian jurisdiction that has successfully implemented inclusive education in all mainstream schools. This is despite the fact that, as Dr Mellifont will explain, the vast majority of children with disability are currently educated in mainstream schools.

The pressing and central question for the Royal Commission, therefore, is how the right of children to inclusive education within mainstream schools can be realised. This is not a simple problem to address. It involves practical issues of great complexity and difficulty that will involve long term planning and the allocation of considerable resources.

Professor Graham, from whom we shall hear on Thursday, accepts in her statement that to achieve her model of inclusive education she supports "fundamental reform of the school system is required". Dr Armstrong recognises that to achieve inclusive education as he understands the concept the training of teachers requires very substantial reform and the culture of schools and educational systems in Australia also has to change substantially.

If the Royal Commission is to bring about changes of this kind we need to understand the barriers to the implementation of genuine inclusive education in mainstream schools. That is what this hearing is about. The next step is to formulate workable proposals that can protect all children with disability from violence, abuse, neglect and exploitation within the educational systems in this country.