



# Opening Address Counsel Assisting – Kate Eastman SC

## Public hearing 26: Homelessness, including experience in boarding houses, hostels and other arrangements

**Parramatta, 29 August 2022**

### **Acknowledgment of Country**

As Counsel Assisting, we acknowledge the traditional custodians of the lands on which we are meeting today and across Australia. We pay our respects to First Nations elders, past, present and emerging, as well as to all First Nations people following this public hearing.

Housing has been raised at every Public hearing of this Royal Commission. Chair, you've mentioned some of the hearings this morning. Commissioners, you have heard evidence from people with disability about their homes and living arrangements, about inaccessible dwellings and sub-standard conditions of hygiene. You have heard about the importance of choice and control about where a person lives and who they live with. People with disability and their families have told you about threats of eviction and the fear about losing their accommodation.

You have heard about the importance of secure accommodation being essential to enable some people with disability to undertake employment, to feel secure and participate in the community. You have heard about the impact on women with disability who experience family and domestic violence, rendering them homeless. At the recent Public hearing in Alice Springs you heard about the experience of First Nations people with disability with respect to the lack of housing, overcrowded homes and inaccessible dwellings.

In December 2019, the Royal Commission held Public Hearing 3 concerning the experience of people with disability living in group homes. At that hearing, you heard that

de-institutionalisation in Australia coincided with a dramatic increase in the number of people with disability who became homeless or incarcerated in prisons.

People with disability have also provided submissions to the Royal Commission describing how they became homeless and their experiences living without a home and support. They've told you about the experience of being discharged from hospitals, mental health facilities and prisons into unsupported accommodation. They have told you about having to live in a hospital, sleeping rough, living in a car and staying in hotels, caravan parks and boarding houses where some have experienced violence, abuse, neglect and exploitation.

People with disability have also made submissions about the impact of public emergencies, including the Covid pandemic and the recent floods in New South Wales and the impact these events have had on their housing and supports.

The people with disability who have made these submissions reflect a diverse group. They live with a wide range of disabilities and come from a range of different socioeconomic and demographic groups. Their experiences also include a range of interactions with all levels of government, with social housing and private sector housing as tenants and home owners.

Their experiences reflect the findings of other public inquiries and research. As the Commissioners are aware, the Royal Commission's terms of reference require the Commissioners to have regard to past reports and past recommendations.

The recent House of Representatives Standing Committee on Social Policy and Legal Affairs report, *Inquiry into homelessness in Australia* found people with disability, are at greater risk of housing stress and homelessness and face additional barriers to accessing support and housing services.

The Committee made a number of recommendations and identified the need for an increased focus on prevention and early intervention to address homelessness in Australia.

The recent Royal Commission into Victoria's Mental Health System found that 'safe and affordable housing plays a central role in supporting people to live well, with a sense of safety, security and belonging'.

The Victorian Parliamentary Inquiry into Homelessness report highlighted that many people seeking homelessness services in Victoria rely on fixed Commonwealth income support such as Jobseeker or the Disability Support Pension.

The academic research identifies that:

- people with disability are at a greater risk of experiencing, homelessness;
- disability is considered one of several risk factors for experiencing homelessness;
- people who experience chronic homelessness have higher rates of cognitive impairment, traumatic brain injury, serious physical health problems, history of abuse or trauma, mental illness, mental disorder, psychiatric disability or addictions;
- The research identified, for example, in June 2020, there were 141,000 social housing households that included a person with disability, making up 40% of all social housing households. The proportion was greatest in public housing (42%) followed by community housing (33%) and State Owned and Managed Indigenous Housing (SOMIH) (29%); and
- pathways into and out of homelessness are just as varied, and can be influenced by disability type, location and the level of a person's disability.

## **Experiencing homelessness**

This public hearing will examine the experiences of people with disability of homelessness and living in boarding houses, hostels and insecure housing.

The starting point is to ask what does it mean to be homeless and what is the prevalence of homelessness for people with disability?

There is no clear or consistent definition of homelessness used in Australia. You will hear from the witnesses this week but they don't identify by reference to a definition, they speak to their experiences.

But the Australian Bureau of Statistics (ABS) says definitions of homelessness are culturally and historically contingent. The ABS says they range from limited objective measures which conflate homelessness with rooflessness or to more equivocal subjective definitions founded on culturally and historically determined ideas of what it means to have a 'home'.

In 2012, the ABS developed a statistical definition of homelessness to use in its work. The ABS defines homelessness as follows:

When a person does not have suitable accommodation alternatives, they are considered homeless if their current living arrangement:

- is in a dwelling that is inadequate
- has no tenure, or if their initial tenure is short and not extendable
- does not allow them to have control of and access to space for social relations.

The ABS acknowledges that there are limitations with using Census data to estimate homelessness because of the risk of under/over estimation and under-enumeration of people in the Census. The ABS says observing homeless people in any data collection is a challenge, and their homeless circumstance may mean that these people are not captured at all in datasets used to count people generally.

The ABS acknowledges Aboriginal and Torres Strait Islander people are over-represented in the measures of homelessness developed with this definition, there are likely to be additional aspects to homelessness for First Nations people with their perspectives and that the definition does not currently adequately capture, including high rates of residential mobility or living remotely in the bush on Country.

For the most recent census, the ABS records that 1 in 200 people in Australia are experiencing homelessness. It records that 116,000 people are homeless every night, including those sleeping on the streets across Australia.

The previous of 2016 identified around 5,700 people with disability (defined as people with a need for assistance with core activities) who experienced homelessness. People with disability represented 5% of homeless people.

The Census also recorded that people with severe or profound disability were overrepresented among those in certain forms of marginal housing. While representing around 5% of all homeless people, those who were homeless because of disability who were disproportionately represented in the following areas:

- 12% of persons in supported accommodation for the homeless
- 12 % of persons who are marginally housed in caravan parks
- 9 % of persons in temporary lodgings (excluding boarding houses)
- 8 % of persons living in boarding houses

There are other definitions and the Australian Institute of Health and Welfare (**AIHW**) which receives and aggregates data from around 1,600 Specialist Homelessness Services (**SHS**) agencies across Australia on a monthly basis. The SHS defines homelessness in a different way to the ABS. The SHS identifies a person as homeless if they are living in:

- non-conventional accommodation or sleeping rough (defined as living on the streets, sleeping in parks, squatting, staying in cars or railway carriages, living in improvised dwellings or living in long grass)
- short-term or emergency accommodation due to a lack of other options (which includes refuges, crisis shelters, couch surfing, living temporarily with friends and relatives or insecure accommodation such as emergency accommodation, hotels, motels and boarding houses).

The Australian Institute of Health and Welfare's key findings about their clients with disability for 2020–2021 reveals there were 7,000 SHS clients who identify with disability. Of the 7,000 clients, 66% had been previously assisted by a SHS agency at some point in the past 10 years. The majority of clients with disability were alone and not part of a family.

### **Human rights perspective on the experience of homelessness**

Can I now turn to the question of human rights and a human rights perspective on the experience of homelessness. From a human rights perspective, experiencing homelessness means not having stable, safe and adequate housing, or the means and ability of obtaining it.

The United Nations Special Rapporteur on the Right to Adequate Housing says:

"Homelessness is a profound assault on dignity, social inclusion and the right to life. It is a prima facie violation of the right to housing and violates a number of other human rights in addition to the right to life, including non-discrimination, health, water and sanitation, security of the person and freedom from cruel, degrading and inhuman treatment."

The Special Rapporteur says the experience of homelessness will not be not fully captured unless the definition goes beyond the deprivation of physical shelter. Reducing the definition to merely putting a roof over someone's head, would fail to take into account the loss of social connection, a feeling of "belonging nowhere" — and the social exclusion experienced by persons living in homelessness.

Commissioners, the right to an adequate standard of living, including adequate housing is recognised as a core social human right. It is integrally connected to the enjoyment many human rights. Chair, this morning you have referred to both Article 19 and Article 28 of the *Convention on the Rights of Persons with Disabilities (CRPD)*. Article 28 recognises the right of people with disability to an adequate standard of living for themselves and their families, including adequate housing. In particular, Article 28 requires States to take measures to ensure access by people with disability to public housing programs.

At Public hearing 3, Commissioners, you examined the nature and scope of Article 19 of the CRPD. Chair, as you've said, it recognises the right of people with disability to live independently and to be included in the community. This right includes:

- the opportunity for people with disability to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement; and
- access to a range of in-home, residential and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community.

We note, Commissioners, the preparation of your hearing report for Public hearing 3, a copy of that report is available on the Royal Commission's website and you address the operation of Article 19 in some detail.

This Royal Commission's work is guided by the CRPD and importantly how these rights in the CRPD can be practically and effectively implemented in Australian laws and policies.

Chair you may recall asking Dr Ian Wiesel during his evidence at Public hearing 3. You asked him this:

'What would the system look like if Article 19 were to be fully implemented? What would have to be done?'

You will remember this question was asked in December 2019.

Dr Wiesel said:

'We would need a program, a national program to build a supply of affordable housing, and I'm talking at the scale of 100,000 new homes. This is just for NDIS participants, excluding many other people with disability who are not NDIS participants and live in substandard housing or live in private rental experiencing affordability stress which means

paying half their income on – on – on the rent. So a national plan to build 100,000, at least, new homes that are affordable where people pay no more than 25 per cent of their income on the rent is – is the first step.

He said:

And I don't see any such policy being proposed.'

Commissioners this week you will have the opportunity to hear whether Australian housing and homelessness policies and strategies are designed to meet Australia's human rights obligations or whether a human rights approach informs housing policy.

## **Australia's Disability Strategy**

This week we will ask representatives of the Australian Government why homelessness was not addressed in Australia's Disability Strategy 2021-2031. That strategy being launched in December last year.

Australia's Disability Strategy highlights two priority areas in relation to housing for people with disability:

- "increase availability of affordable housing;
- housing is accessible and people with disability have choice and control about where they live, who they live with, and who comes into their home".

The Strategy does not contain a priority or action related to homelessness for people with disability.

## **National Housing and Homelessness Agreement**

We will also ask the Australian Government why people with disability are not currently a priority cohort in the National Housing and Homelessness Agreement. This Agreement commenced on 1 July 2018 and is due to end on 30 June 2023. But is expected to be extended to 30 June 2024.

The Australian Government provides around \$1.6 billion each year to States and Territories to improve access to secure and affordable housing across the housing spectrum. In 2020-2021 budget, the Agreement included \$129 million for homelessness services, which were to be matched by states and territories. There is no specific funding identified for people with disability.

Under the Agreement, there are six housing priority policy areas and the Agreement identifies six priority homelessness cohorts. These cohorts may include people with disability but there is no specific priority cohort identified specially to capture people with disability.

The agreement provides that State and territory governments may identify other priority cohorts in their respective bi-lateral agreements. There will be an opportunity over the course of this week to ask New South Wales and Victoria with respect to their arrangements.

The Agreement also requires State and Territory governments to make their housing and homelessness strategies publicly available and to contribute to improved data collection and reporting to receive funding. A Data Improvement Plan for 2019-2023 details agreed data improvements and a schedule, but the plan is silent on indicators or agreed outcomes specifically related to people with disability.

Commissioners you are aware the Australian Productivity Commission is reviewing the Agreement. Among many other things, the review is considering the extent to which the Agreement is meeting the obligations of governments under *Australia's Disability Strategy*. We have checked the website and we understand the Productivity Commission will hand its report to the Australian Government on Wednesday this week.

## **National Disability Insurance Scheme (NDIS) and QSC**

Chair, you've made some observations about the role of the NDIS and the Quality and Safeguards Commission. This week you will hear from the National Disability Insurance Agency (NDIA) about its role in supporting participants who are homeless or at risk of homelessness and the supports to enable them to secure accessible, safe and sustainable housing.

Now Chair, you mentioned some figures this morning and as you were speaking we received an updated schedule of those numbers and perhaps when Ms Short gives her evidence later in the week we will come to those numbers and make sure that they reflect the correct numbers.

But the NDIA says that it is aware that participants who are homeless, or at risk of homelessness, being the type of participants who might disengage with the services, supports and networks. One of the issues we'll explore during the course of this week are the measures used by the NDIA to connect with such participants.



Later this week, on Friday, you will hear from the National Disability Insurance Quality and Safeguards Commission about its role and measures taken by it with respect to service providers who provide supports and services to people with disability living in boarding houses and hostels.

## **This hearing**

This hearing will be led by people with disability who will share their personal experiences of homelessness and insecure housing.

The first part of this hearing will focus on New South Wales and people with disability will tell you about their personal experiences.

Commissioners, in the preparation for this hearing, the staff of the Royal Commission have engaged with people with disability who have a wide range of experiences concerning housing and homelessness. We have visited a range of homelessness services and places for crisis accommodation. In particular, we acknowledge and thank the Haymarket Foundation and Newtown Neighbourhood Centre.

Commissioners over the next three days we will present some pre-recorded oral evidence from our visits, in particular to the Newtown Neighbourhood Centre and you will hear from Jack, William, Christmas and Dave.

Shortly you will hear from Charlotte. Charlotte is 61 and she has prepared a statement that I will read with her. She will share her experiences of living out of home and in institutions. She lived in a boarding house for 15 years where she experienced significant violence, abuse and neglect. She will tell you that she thought living in gaol would be preferable to living in the boarding house. Charlotte has now lived in public housing for the last 25 years and she will tell you about the importance of stable housing, secure supports and making her own decisions.

You will also hear from Dawn. Dawn is already here in the hearing room. Thank you Dawn for coming today. I don't know whether I should say your age, Dawn, but you're probably in your 70's and Dawn lives in a boarding house in Sydney. We met Dawn at the Newtown Neighbour Centre and Dawn pre-recorded a conversation with me some time ago, and we'll play that but you will also have the opportunity to hear from Dawn this morning. She will talk about different housing services, accessing services and her experiences during the COVID lockdowns.

Later today you will hear from Colin. He's 58 and he lives with disability and he currently uses a wheelchair. He's worked most of his adult life running his own business in regional New South Wales.

In February 2022, he was living in his sister's house. His sister lives with disability and Colin was supporting her. He will tell you about the experience of the rising waters, having to be rescued and surviving the Lismore flood. He has experienced homelessness as a result of the flood and he is now constantly moving from one temporary accommodation to another, with no medium or long-term accommodation on the horizon for him.

Tomorrow you will hear from Nicola Moorhouse. She lives with visual snow syndrome and she has now two teenage daughters who are neuro diverse. She faced imminent homelessness when she was evicted from her private rental property in Newcastle and was initially unable to find suitable alternate rental accommodation (including social housing) that was within her budget and also met her accessibility requirements. She will tell you about the lack of affordable and accessible housing for people with disability, problems with the linkages between the NDIS and social housing, and how difficult it is to navigate the social housing system even with a knowledgeable and proactive NDIS support coordinator.

Also, tomorrow you will hear from Claudia. She is 25 and lives in a regional part of NSW. Claudia has a physical disability (which has required many painful surgeries throughout her childhood, adolescence and adulthood). She experienced family violence as a young person. Her experiences of homelessness started when she was 16 years old. They included couch surfing, staying out all night and sleeping in her car. Claudia lives in 'Foyer accommodation' and she will tell you about that. Secure housing had enabled Claudia to undertake tertiary study and engage in youth homelessness advocacy.

Commissioners, the evidence of people with disability is likely to identify a number of systemic issues including:

- a lack of affordable, suitable and accessible housing for people with disability and an over-reliance on crisis and temporary accommodation
- how people with disability can slip between the service provider and sector cracks leading them into homelessness
- the value of attaining safe, secure and sustainable housing

- the need for ongoing wrap around support for people with complex support needs to sustain a tenancy
- additional barriers faced by people with disability when trying to engage in and interact with mainstream service systems, such as the public housing system and the NDIS
- problems with integration and coordination between agencies, support services and sectors
- what role the NDIS plays, and should play, in supporting participants, who are homeless or at risk of homelessness, to find, secure and sustain permanent housing.

## **Sector perspectives**

Commissioners, you will also have the opportunity to hear from the frontline services. Tomorrow you will hear from representatives of three peak homelessness sector bodies Homelessness NSW, NEAMI and Mission Australia.

Commissioners you will hear this week there is a disconnection between policies and strategies to address homelessness and those that address support for people with disability in New South Wales. The sector witnesses will tell you:

- what we know (and don't know) about people with disability in the homelessness space in NSW
- what the structural, system, attitudinal and individual barriers are that prevent people with disability who are experiencing, or at risk of, homelessness. The opportunity to secure appropriate and accessible long term housing
- whether there are proven models, programs, projects and strategies of intervention and support that can tackle and bring down these barriers for people with disability
- what their visions are for housing and homelessness for people with disability in NSW in 20 years time.

## **New South Wales Government**

You will also hear from the New South Wales government and NSW has a suite of homelessness and social housing policies covering emergency circumstances, boarding houses and social housing.

The NSW Homelessness Strategy 2018 – 2023 refers a range of different cohorts, including people with mental health issues, but not people with disability generally and we will ask the question why.

You will hear, for example, in NSW that as at 30 June 2021, there were almost 50,000 applicants on the NSW Housing Register. This includes 11,022 or 22.1% of applicants who live with disability (where the household head's main source of income is the Disability Support Pension).

I want to ask about waiting times for access to social housing. You are likely to hear that the median waiting time for priority approved applicants for public housing in the year 2020 – 2021 was 2.2 months but the maximum waiting time for a priority approved applicant could be as much as 15 years.

With respect to the suite of policies and practices in New South Wales, we will examine:

- eligibility for priority assistance;
- the making of modifications to the premises to improve accessibility;
- special rebates;
- eligibility for a longer fixed-term tenancy; and
- eligibility for a private rental subsidies.

## Victoria

Commissioners, as you have mentioned, the second part of this hearing will focus on Victoria. So on Thursday and Friday this week, we will turn our attention to aspects of Victoria's policies and practices in relation to homelessness. Victoria also has a suite of homelessness and social housing policies covering emergency circumstances, boarding houses and social housing.

In particular, we will examine the experiences of people with disability living in Supported Residential Services (**SRS**) in Melbourne, which is a hostel form of accommodation and you will hear from people with disability and family members about living in an SRS.

We propose to make some additional opening comments to explain the nature of SRS with respect to the SRS's that have failed to meet regulatory standards and we will present those additional opening remarks on Thursday morning.

Now, up on the screen you will see that there is a content warning. The focus of this hearing is to listen to and understand the experience of people with disability who have

experienced homelessness and insecure housing. Some of the evidence will be distressing so the Royal Commission encourages those watching, whether by web stream or whether here in person, to be mindful that topics might be upsetting and we encourage those to seek support in that respect.

The numbers and the contact services are identified on the screen.

Commissioners, for this public hearing, we will not ask the Royal Commission to make adverse findings with respect to the individual experiences of people with disability. For this hearing, we will not ask you or invite you to make findings as to whether a particular person or agency has breached the law or breached a policy.

The Royal Commission is not intended to be a substitute for the Commonwealth, State and Territory regulators, for the conduct of coronial inquiries, or to act as if it was a court or tribunal dealing with tenancy and homelessness issues.

### **Protection for all witnesses**

Finally, before we break, I just remind everyone following this proceeding, be it in the room or on the web stream that there are provisions in the Royal Commissions Act that have a very clear object of protecting witnesses who give evidence before the Commission. In particular, I want to draw attention to section 6M of that Act, which provides that – any person who uses, causes, or inflicts, any violence, punishment, damage, loss or disadvantage to any person on account of the person having appeared as a witness, given evidence, or produced documents to the Royal Commission, commits an indictable offence.