



# Opening Address Counsel Assisting – Kate Eastman AM SC

## Public hearing 32: Service providers revisited

**Brisbane, 13 February 2023**

Counsel Assisting 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.

Over the next five days the Royal Commission will turn its attention to non-government disability service providers and their responsibilities to eliminate violence, abuse, neglect and exploitation experienced by people with disability when receiving services and supports from the providers. In the five days available for this hearing, it will not be possible to examine all types of services, service settings and providers. However, the issues to be examined at this public hearing will build on the thousands of submissions and accounts the Royal Commission has received from people with disability about their experiences with service providers.

The Royal Commission has also received a significant volume information from many service providers in response to notices requiring them to produce information and documents. As the Chair has said in his opening remarks, this is also a hearing that provides the opportunity to revisit the service providers who have appeared at previous Public hearings to understand what actions they have taken since the relevant Public hearing.

### Services

I want to start with services. The word ‘service’ itself is a word of generality<sup>1</sup> and it is apt to cover ‘any helpful activity’. All people in the community rely on services in all aspects

---

<sup>1</sup> See *IW v City of Perth* (1997) 191 CLR 1 at 16-17, and at 23. See also *Waters v Public Transport Corporation* (1991) 173 CLR 349 at 404, *McBain v State of Victoria* (1999) 177 ALR 320, *Australian Education Union v Human Rights & Equal Opportunity Commission & State of Tasmania* (1997) 80 FCR 46 at 54.

of their lives. These may be services provided by governments, organisations or individuals. When considering services for people with disability, we sometimes distinguish 'mainstream', 'generic' or 'universal' services that are provided to the community generally with particular services that people with disability use because of their disability. These are services exclusively used by people with disability which are not offered or provided to the general public.

Not all people with disability, in excess of four million people in Australia, require or use disability services. Just as not all people with disability in Australia are NDIS participants. An estimated 1.4 million people in Australia are described as living with severe or profound disability, meaning they sometimes or always need support with day-to-day activities related to self-care, mobility and communication.<sup>2</sup> It's for this group that disability services are important.

The National Disability Insurance Scheme (**NDIS**) is intended to fund supports that are not provided (or supposed to be provided) via existing service systems. The NDIS is not intended to fund supports that are part of another service system's universal service obligation, including the making of reasonable adjustments for a person with disability to access such mainstream services.

Perhaps this can best be explained by the comments of the Productivity Commission in its 2011 report, [Inquiry into Disability Care and Support](#). The Productivity Commission said this:

It will be important for the NDIS not to respond to problems or shortfalls in mainstream services by providing its own substitute services. To do so would weaken the incentives of government to properly fund mainstream services for people with a disability, shifting the cost to another part of government ... This 'pass the parcel' approach would undermine the sustainability of the NDIS and the capacity of people with a disability to access mainstream services.

One of the issues to be explored in the hearing is this tension between the line as to what is a mainstream service and what is a disability service. But this hearing will narrow its focus to the providers of disability services used by people with disability who are NDIS participants, being people with a permanent and significant disability who require

---

<sup>2</sup> Australian Institute of Health and Welfare, 'People with disability in Australia', 5 July 2022, <<https://www.aihw.gov.au/reports/disability/people-with-disability-in-australia/contents/people-with-disability/prevalence-of-disability>>.

reasonable and necessary supports in daily living, accommodation, supported employment and day programs. As at December 2022, there were 573,342 NDIS participants.<sup>3</sup> As at December 2022, the NDIA recorded there were 151,629 active service providers.<sup>4</sup> The costs of delivering services through the NDIS is significant. In the 12 months to 31 December 2022, \$31.0bn in support was provided.<sup>5</sup>

Coming back to what the Royal Commission has heard since April 2019. As at 3 January 2023, the Royal Commission has received information through submissions and private sessions that record:

- 9,094 accounts of violence, abuse, neglect or exploitation of people with disability
- 1,198 (13%) of those accounts related to service providers or support workers.  
From these accounts related to service providers or support workers, people with disability experienced:
  - Violence and/or abuse (53%, 637 accounts)
  - Neglect (46%, 554 accounts)
  - Systemic abuse (37%, 448 accounts)
  - Exploitation (19%, 228 accounts).

These numbers, of course, don't add up to 100, so there is that overlap in the numbers.

- People with disability experience violence, neglect, systemic abuse or exploitation from:
  - Paid support person (77%, 917 accounts)
  - The service provider setting itself (35%, 425 accounts)
  - Unpaid support person (1%, 14 accounts)

Chair, as you have noted, the NDIS Quality and Safeguards Commissioner recently published a report following an 'own motion' inquiry about the supports and services delivered by NDIS providers. The Own Motion Report in part reflects what the Royal Commission has heard. The NDIS Commissioner revealed a significant number of reportable incidents notified to the NDIS Commission related to the conduct of workers, in particular:

- support workers exercising undue influence over a person with disability

---

<sup>3</sup> NDIS Quarterly Report to Disability Ministers, 31 December 2022, at p. 17

<sup>4</sup> NDIS Quarterly Report to Disability Ministers, 31 December 2022, at p. 90.

<sup>5</sup> NDIS Quarterly Report to Disability Ministers, 31 December 2022, at p. 86.

- verbal and psychological abuse of a person with disability by support workers, for example yelling at a person with disability, swearing at a person with disability, or using demeaning language.

This hearing will examine whether the policies and practices of disability service providers prevent violence, abuse, neglect and exploitation of people with disability and whether they deliver high quality and safe services. The hearing will also examine best practice responses to incidents or allegations of violence, abuse, neglect and exploitation of people with disability using disability services.

For those who have followed the public hearings of the Royal Commission, they will be aware that we have always endeavoured to ensure the public hearings are led by people with disability. This public hearing will involve fewer witnesses speaking about their personal experiences, but it will draw on what the Royal Commission has heard from people with disability over the past three and a half years. We will also ask disability service providers to address the various issues. And that's an important part of the Royal Commission's work to ensure we accord procedural fairness and service providers have an opportunity to respond. That is one of the central purposes of this hearing.

So, if I may now turn to the arrangements for this week.

Commissioners, you will shortly hear from **Sam Petersen**. Sam gave evidence at Public hearing 3 in December 2019.<sup>6</sup> Sam is a visual artist, writer, performer and advocate and has requested we refer to Sam as Sam. At Public hearing 3, Sam described the experiences of living in shared supported accommodation, of support workers and service providers. Sam said – and I quote – *'I should have the same power to shape my life as anybody else, but for years I have very little'*. Today, Sam will tell you about what has happened to Sam following the evidence given in December 2019. Sam will speak about the impact of the evidence Sam gave at that hearing and how that evidence has been used by others. Sam will also describe the concept of 'slow violence', where a person's needs are continually not met because of a lack of knowledge and funding.

After Sam Petersen's evidence, today we will then focus on three areas which have emerged as key issues for people with disability and their relationship with service providers – they are advocacy, choice and control and human rights.

---

<sup>6</sup> Exhibit 3-19, Statement of Sam Petersen, 27 November 2019.

## Advocacy

We will start with a panel dealing with advocacy. The National Disability Advocacy Program (**NDAP**) provides people with disability with access to advocacy that is intended to promote, protect and ensure their full and equal enjoyment of all human rights enabling community participation. Advocacy, as the Commissioners are aware, can take range of forms. The Department of Social Services describes the approaches to disability advocacy in six broad models,<sup>7</sup> referring to those models as Citizen, Family, Individual, Legal, Self and Systemic Advocacy.

With a panel of experienced advocates today, we will examine some of these forms of advocacy. The panel will address the following issues:

- the role of advocates and advocacy organisations
- the skills needed to be an effective advocate
- the challenges experienced by advocates and the challenges of providing advocacy, including the barriers experienced when advocacy seeks to perhaps stand in between the person with disability and their service provider.

We will also ask this panel about changes that could be made to ensure effective advocacy for people receiving disability services.

## Choice and Control

After lunch, we will move to a panel looking at choice and control. The *National Disability Insurance Scheme (Provider Registration and Practice Standards) Rules 2018* require that ‘*Each participant is enabled to exercise informed choice and control*’. It sounds good, but how does it work in practice? We will address this with a panel of three service providers: Supporting Independent Living Cooperative (**SILC**), Scope (Aust) Ltd (**Scope**) and **UnitingCare Queensland**.

Panel members will be asked about choice and control in group homes and shared support arrangements, including the exercise of choice and control when a service provider is delivering its services in a group or shared environment, by, for example,

---

<sup>7</sup> Department of Social Services, ‘National Disability Advocacy Program’, <<https://www.dss.gov.au/our-responsibilities/disability-and-carers/program-services/for-people-with-disability/national-disability-advocacy-program-ndap>>.

managing vacancies and rosters. They will be asked about policies and procedures which are designed to promote choice and control. The panel will be asked to address:

- supported decision-making
- service agreements
- service provider resourcing and staff training to enable supported decision-making
- transitioning out of group homes.

## Human Rights

We will end the day by focusing on human rights. The CRPD has informed all of the Royal Commission's work. At Public hearings 3 and 18, you heard about the relevance of the CRPD to the disability services and whether non-government providers have obligations to give effect to the CRPD rights.

On the final panel for today, you will hear from three service providers, representatives of **Melba**, **Scope** and **Synapse**, about how human rights approaches have worked in their organisations. We want to examine the following matters:

- the development of the human rights policies in their organisations
- who has responsibility in the organisation for ensuring human rights standards are observed
- how human rights policies operate in day-to-day practice and what, if any, changes have been made because of the approach of applying human rights. If changes have not been made following the introduction of a policy, we want to know why and what needs to be done
- how clients with disability, their families and supporters can raise human rights concerns and the extent to which people with disability are aware of their rights
- what do service providers need to better understand and practice human rights.

That will complete today.

## Workforce issues

Tomorrow, we are going to move and turn our focus on workforce issues. On Tuesday and then into Wednesday morning, we will examine the disability sector workforce.

In 2019, the Department of Social Services in its *Growing the NDIS Market and Workforce Strategy Report*<sup>8</sup> suggested that

The NDIS presents one of the largest job creation opportunities in Australian history. The Productivity Commission estimates the disability care workforce will need to approximately double from the 2014–15 level to meet the demand created by the NDIS.<sup>9</sup> This means that one in five jobs created in Australia over the transition period will need to be disability care jobs.<sup>10</sup>

Approximately 71 per cent of newly created jobs are expected to be support worker roles, 12 per cent allied health service roles, 11 per cent case and social worker roles and 6 per cent managerial roles.<sup>11</sup> As such, most NDIS roles require the right capabilities and experience rather than formal qualifications.

The Government's report says that:

The Government's long-term vision is for a capable and adaptable NDIS workforce, with workers pursuing attractive career pathways. This vision will require a mature market of diverse and strong providers delivering effective on-the-job capability development for workers, along with appropriate and accessible formal training pathways.

So, it's clear that a skilled workforce is one of the key factors in delivering quality and safe services, and to facilitate choice and control in respect of human rights.

Later this week, you will hear from **Laurie Leigh**, the CEO of National Disability Services (**NDS**), which is the peak industry body for non-government disability service providers. In the NDS's *State of the Disability Sector Report 2022*, workforce issues were identified as key challenge for service providers, being described in the following way:<sup>12</sup>

In terms of workforce, 2022 is probably most accurately described as 'going from bad to worse'. Recruitment and retention challenges remained across the board and many staffing categories became substantially worse.

---

<sup>8</sup> Department of Social Services, *Growing the NDIS Market and Workforce Strategy*, 23 March 2019, at p. 9.

<sup>9</sup> Productivity Commission, *National Disability Insurance Scheme (NDIS) Costs, Study Report*, October 2017, at p. 319.

<sup>10</sup> Productivity Commission, *National Disability Insurance Scheme (NDIS) Costs, Study Report*, October 2017, at p. 319.

<sup>11</sup> Research conducted by the Department of Social Services and Alphabeta using focus groups, February 2019. Cited in Department of Social Services, *Growing the NDIS Market and Workforce Strategy*, 23 March 2019, at p. 9.

<sup>12</sup> National Disability Services, *State of the Sector Report, 2022*, at p. 30.

The NDS report records that NDS members have identified a range of concerns including:

- arising with the workforce, providers reported moderate or extreme difficulty recruiting allied health practitioners
- difficulty identifying and recruiting suitably qualified disability support workers and noting that the current award rates of pay do not reflect the complexity of the roles
- receiving limited applications for positions and identifying the bureaucratic burden as a barrier associated with employing international candidates.

The NDIS Commissioner's recent Own Motion Report addressed similar issues in relation to the workforce.<sup>13</sup>

Tomorrow, you will hear from **Zelda Riddell**, a disability development and support worker who also lives with disability. She will tell you about her work as a support worker, working in different service settings and with other support workers. She will provide you, Commissioners, with a front-line perspective as a support worker on how services are delivered and the demands on support workers.

Tomorrow, you will also hear from **Dr Fiona Macdonald**, Policy Director at the Centre for Future Work within the Australia Institute. The disability workforce has been the main focus of her research since 2014. She will be joined on a panel with **Angus McFarland**, who is the Australian Services Union NSW and ACT Branch Secretary, and he has worked with support workers who are members of the ASU. Together, they will tell you about the systemic issues for the disability workforce. They will tell you there is an expectation that the workforce should be skilled, qualified, and committed in discharging their duties, and this includes meeting the requirements of the NDIS Workforce Capability Framework that sets out the behaviours and core capabilities to be demonstrated by service providers and workers when delivering services.

The Workforce Capability Framework is intended to promote improvement in the attainment of progressively higher standards in how supports and services are provided. While the expectation of continuous and higher improvement is laudable and should certainly be supported, it appears that the onus rests on support workers to have to develop their skills. Support workers are expected to perform at higher standards, but the

---

<sup>13</sup> NDIS Quality and Safeguards Commission, *Own Motion Inquiry into Aspects of Supported Accommodation*, January 2023.



Workforce Capability Framework appears not to recognise how that work should be valued and remunerated as the skills and demands increase. I think we want to pose this question: are we asking support workers to do more, for less?

You will also hear from **Daniel Stubbs**, the Victorian Disability Worker Commissioner, who is heading up the Victorian regulatory scheme established under the *Disability Service Safeguard Act 2018* in effectively regulating support workers in Victoria.

There will be two panels dealing with workforce issues. On Tuesday, you will hear from representatives of **BET Group, Livebetter** and **Minda**. We will ask them about:

- the composition of their workforces
- the challenges, if any, in recruiting disability support workers
- their views about the qualifications required of disability support workers
- the regulatory arrangements setting the pay, terms and conditions for support workers.

On Wednesday morning, you will hear from representatives of **Afford, Araluen** and **Sunnyfield**, who will address:

- issues concerning training and supervision
- Staff arrangements, resourcing and rostering
- the approach to managing incidents and complaints about support workers
- casualisation of the workforce and its impact on retention of skilled and qualified workers

Tuesday will also be an opportunity to hear from the new CEO of Sunnyfield about the developments within Sunnyfield following Public hearing 13 in May 2021. We will have the opportunity to ask Sunnyfield about its response to the findings and recommendations made in the Commissioners' Hearing Report, which is available on the Royal Commission's website.

## **Governance and management**

On Wednesday, we will turn to another area of importance, and an area that has been the subject of earlier public hearings, and that is the issue of governance and management within service providers. Commissioners, you have heard about the composition of boards, the representation of people with disability on boards and in

senior management roles and advisory committees. You have also heard about the failure of senior managers to address violence and abuse within the service.

You will hear from a number of service providers on panels to address a range of issues, with representatives from **The Disability Trust, Afford, Coastal Residential Services** and **Melba**. The topics that we will address is to explore and understand the various regulatory systems and arrangements that are applicable to running the business of disability services. It will cover:

- organisational structures
- governance structures and management processes
- recruitment and skill sets of board members and senior managers
- systems of preventing and responding to violence, abuse, neglect and exploitation
- managing risks
- approaches to the use of service agreements. Commissioners, you will remember that was an issue that arose at the recent Public hearing 30.

The final two witnesses for Wednesday afternoon will be Ms Leigh, from the **NDS**, which will give us an opportunity of taking that big picture perspective from a peak body. And you will also hear from Jess Harper, the CEO of Disability Intermediaries Australia (**DIA**), which is the peak body for plan management and support coordination providers and practitioners in Australia. So, we will ask them about the themes arising from the earlier two days.

## **Complaints and Investigations**

On Thursday, we will turn to examine how people with disability, and their families and advocates can raise issues, concerns and make complaints about the services they receive. In particular, we want to examine the policies and practices to understand how service providers respond, how matters are investigated, whether a trauma informed approach is taken and the extent to which people with disability have been involved in designing these processes.

We want to examine what remedial action is taken, including forms of redress. In addition to the internal processes, the service providers will also address the reporting requirements under the *NDIS Act* and the processes of engaging with the NDIS Commission. In effect, we want to explore why transparency and accountability are key issues in the delivery of services.

There will be three panels on Thursday addressing these issues, and you will hear from representatives of Community Accommodation and Respite Agency Inc. (**Cara**), The Endeavour Foundation (**Endeavour**), The Northcott Society (**Northcott**), and Civic Disability Services Limited (**Civic**).

Thursday will also be an opportunity to revisit two service providers:

- From Public hearing 3, Yooralla, and Mr Symonds, the now CEO, will give evidence
- From Public hearing 20, Life Without Barriers (**LWB**) and you will hear again from Ms Claire Robbs, the CEO, about the initiatives introduced following Public hearing 20.

## Innovation

On Friday, we want to turn to innovation. Commissioners at the recent Public hearing 31, you heard about visions for an inclusive Australia, which included evidence about inclusive design, co-design and rethinking how services are designed and delivered.

On Friday morning, you will hear about innovative approaches to disability service delivery, with representatives of **Mable** and **Hireup**, who operate digital platforms to connect service users and support workers. You will hear about how the platforms operate, how the digital platform operators engage workers, and whether they ensure the delivery of quality, and safe services.

You will then hear from **Synapse**, **Summer Housing** and **Summer Foundation**, and you will recall Summer Foundation also gave evidence at Public hearing 3 in December 2019. They will talk about different approaches to providing accommodation for people with disability as alternatives to group homes. The representatives of these service providers will tell you what's different in the approach they take and some of the issues they have faced in implementing new processes.

## NDIA and NDIS Commissioner

Then we turn our attention to the **NDIA** and the **NDIS Commissioner**. We understand they will follow the proceedings over the course of this week and, in addition to the detailed statements that they have provided, we will ask them about the issues arising and, in effect, what is on the agenda for both the NDIA and the NDIS Commission into the future.

## **Content warning**

I want to give the usual content warning. As I said, our focus is always the experiences of people with disability, although you will hear very few direct experience witnesses this week. Nevertheless, some of the evidence may be distressing, and the slide on the screen provides the relevant contact numbers.

The Royal Commission encourages those watching, whether by web stream or here in person, to be mindful that topics might trigger and cause distress. We encourage everyone to seek support in that respect.

## **Protection for all witnesses**

I think this is now the thirty-first time I or Counsel Assisting has said: we remind everyone of the provisions in the *Royal Commissions Act* we draw attention to section 6M 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 given evidence or information to the Royal Commission, commits an offence.