

## Article Information

Authors: Tom Griffith, Antony Disciscio, James Nunn

Service: Commissions & Inquiries, Dispute Resolution & Litigation

Sector: Not-for-Profit

---

## Royal Commission into violence, abuse, neglect and exploitation of people with disability - First public sitting

**The first public sitting of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Commission) was held on 16 September 2019.**

---

*The first public sitting did not involve any witnesses, and there was no leave to appear granted to any parties, rather its purpose was for the Commission to set out its work to date, its priority areas of enquiry and its expected course.*

### Opening Address

Commissioner Mason OAM made an opening address concerning First Nations people with disability, and the special disadvantages they experienced as a “*marginalised group within a marginalised group*”.

Commissioner Mason highlighted that 7.3% of First Nations people (approx. 60,000) have severe or profound disability, compared to 5.8% non-indigenous Australians with disability.

The Chair of the Commission, The Hon Ron Sackville AO QC introduced newly appointed Commissioner the Hon Roslyn Atkinson AO, and gave an opening address that provided some background as to the incubation of this Commission.

Commissioner Sackville then spoke about the terms of reference, and highlighted that:

- The terms of reference are extraordinarily broad;
- The terms of reference have a rights-based focus;
- Special focus is to be given to First Nations people with disability; and
- Previous reports need to be taken into consideration, however the Commission will not succeed if it merely repeats the findings of previous reports: it was important to take advantage of excellent work already undertaken and not to attempt to reinvent the wheel, but rather to analyse why people with disability continue to experience unacceptable levels of violent and abusive conduct despite the recommendations made by so many reports.

Commissioner Sackville stated that there were high expectations from the community about this Royal Commission, and that it presented an opportunity for change. He also highlighted Australians’ willingness over time to embrace transformational changes in other social areas as grounds for some optimism that this could be achieved.

The importance of public hearings was emphasised, and an update was provided as to the workshops that had been held over recent months and the first community forum in Townsville.

Commissioner McEwin also made an opening, in Auslan. He began by stating that many people had been injured or died because of the actions or inactions of people supporting them.

Commissioner McEwin also spoke about the rights of people under the UN Convention on the rights of People with Disabilities including the importance of education, employment, free or affordable healthcare services, access to justice and living in the community.

Accessibility was the last key theme addressed by Commissioner McEwin, and in particular in relation to rural and remote areas and to engage with people with disability in closed settings.

## Opening Submissions

Senior Counsel Assisting the Commission Rebecca Treston QC then made opening submissions, introducing her fellow counsel assisting, further explaining the terms of reference, highlighting that up to 1 in 5 Australians has some level of disability, and the extent of abuse and violence in Australia and the impact on those with disability.

She spoke about the special position of First Nations people and women with disability.

She then described the ways in which the Commission will gather information and how it will exercise its compulsory powers. It is not proposed that compulsory powers will be used against any individuals with disability. Rather the Commission intends to use its powers to obtain documents from governmental bodies, agencies and other commercial organisations and support providers.

She also confirmed that last week the Commission wrote to a large number of the largest NDIS providers putting them on notice that the Commission will shortly issue them with formal notices to produce documents or to give information about:

- the services they provide;
- complaints or investigations and reporting of incidents of violence, abuse, neglect and exploitation of people with disabilities in connection with those services; and
- policies and procedures to identify and manage any such incidents.

## Practical Guidelines

Practice guidelines have also been recently published on the Commission's website setting out how people and organisations are to interact with the Commission, including general guidance about:

- the procedures of the Commission;
- how the Commission will receive and consider claims for legal professional privilege,
- appearing as a witness before the Commission; and
- the conduct of hearings before, and the production of certain documents to the Commission.

## Key Takeaways

Other key takeaways were:

- That each block of hearings will focus on a theme or domain of inquiry, which domains of inquiry are at this stage:
  - Education and learning;
  - Homes and living;
  - Relationships;
  - Economic participation;
  - Health;
  - Justice;
  - Individual autonomy, self determination and the right to the dignity of risk;
  - Community participation and geographical challenges.
- That the Commission intends to hold one or two public hearings by the end of year, likely in respect of education and learning and homes and living, and that they are particularly interested in receiving submissions from people with disability, their supporters or advocacy groups in respect of the use of restrictive practices, exclusion of students with disability from the education system and issues arising from the types of housing available to people with a disability in the community, an institutional setting or otherwise.
- That the Commission will hold some hearings in private for the protection of witnesses giving evidence about experiences of violence and abuse of people with disability. Such hearings will not be conducted under oath and the information and material provided in such sessions will be restricted in its use and disclosure, including through the use of non-publication orders and pseudonyms. Ultimately, it will be up to the relevant witness as to whether they are prepared to provide such evidence in a public hearing.
- That the Commission will provide support services to assist people with disability to engage with the Commission, including legal and advocacy services.

The Commission was first announced in February 2019, and its final report is due in April 2022.