



Monday, 25 March 2019

## To Whom It May Concern

drummond street services (drummond street), including our sub entity queerspace are writing in response to the recent consultation regarding the draft Terms of Reference (ToRs) for the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability.

The purpose of this brief submission is to offer comments, on behalf of consumers living with a disability and their friends, families and communities who we support; as well as contribute to guiding the design and scope of the ToRs.

This paper adopts the definition of people with disability as per Article 1 of the United Nations Convention on the Rights of Persons with Disabilities (CRPD), which includes people with ‘...long-term physical, mental, intellectual or sensory impairments which, in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.<sup>1</sup>’

drummond street/queerspace notes the Disabled People’s Organisations Australia (DPO Australia) 2017 Civil Society Statement to the Australian Government produced by 163 civil society organisations and 383 individuals calling for a Royal Commission. We agree as identified by the signatories, a Royal Commission process is the ‘only way to provide a comprehensive, independent, and just response to all forms of violence and abuse against people with disability’<sup>2</sup>. We also strongly support the DPO Australia document ‘Road Map for Our Royal Commission’<sup>3</sup>, and encourage the Commission use this roadmap as a guide to key considerations, outcomes and process.

This Commission is a generational moment, and if undertaken comprehensively, could establish (with bi partisan commitment to invest in) a national system for reporting and

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1. *Convention on the Rights of Persons with Disabilities, opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008) art 1; note also art 2 ‘Definitions’.* <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/article-1-purpose.html>

2. [http://dpoa.org.au/wp-content/uploads/2017/05/Civil\\_Society\\_Statement\\_Disability\\_Violence\\_Royal\\_Commission\\_Endorsed\\_Turnbull.pdf](http://dpoa.org.au/wp-content/uploads/2017/05/Civil_Society_Statement_Disability_Violence_Royal_Commission_Endorsed_Turnbull.pdf)

3. <http://dpoa.org.au/roadmap-royal-commission/>



investigating and eliminating violence, abuse and neglect of people with a disability.

I look forward to working with Government during the establishment, throughout the Royal Commission's deliberations, as well as contributing to subsequent recommendations on behalf of the communities that we support.

Our agency's Vision includes ensuring our services are safe, trauma-informed, person-centered, community-lead and integrate expertise with the lived experiences of our diverse communities. We would like to bring this lens to our support of and participation in the Royal Commission processes.

Kind Regards,

Karen Field (CEO drummond street services)



**Recommendation 1:** Ensure the terms of reference are strongly worded to indicate the following goals:

- *that the reporting of and action taken to address violence, abuse, neglect and exploitation of people with disability increases, therefore improving safety and just outcomes for people harmed*
- *that the prevalence of violence, abuse, neglect and exploitation against people with disabilities is reduced; by creating barriers to repeated abuse being committed by institutions and individuals who have not been deterred by other 'prevention' strategies.*

**Recommendation 2:** That the ToR are worded to establish the task of identifying the level to which incidences of *violence, abuse, neglect and exploitation* breach the threshold of human rights, duty of care, quality and compliance and other legislated breaches of Criminal Law.

**Recommendation 3:** The Commonwealth Government compliment the ToR with an implementation plan which provides for consumer, family and carer supports from the outset, throughout the Inquiry and that these include all ancillary supports listed in the Disabled People's Organisations Australia (DPO Australia) Roadmap for our Royal Commission <sup>4</sup>.

**Recommendation 4:** Include a Framework or First Principles approach to the Terms of Reference which:

- Creates a foundation for collaborative approaches between the Commonwealth, and other States and Territories (e.g. coordination of investments priorities and responsibilities between jurisdictions)
- **Determines process elements of the Inquiry including:** co design, consultation, inclusion of people with disabilities, their families and carers; and mechanisms to increase trust and ensure the Inquiry acknowledges the real and distressing experiences raised by consumers and carers
- Creates a foundation for the approach to the design of a National Operational and Implementation Plan for the Royal Commission recommendations, monitoring this Plan and subsequent evaluation.

**Recommendation 5:** That the ToR are worded to establish the task of further examination and review of data collections which can help address knowledge gaps about the extent, prevalence, impact of violence, abuse, neglect and exploitation of people with disability including from a range of marginalised cohorts (CALD, ATSI, LGBTIQ and women).

**Recommendation 6:** Resource a full evaluation on the legal capabilities and approach to the support of Royal Commission witnesses, families and carers with disabilities. Undertake this evaluation with the aim to:

- build working knowledge and;
- inform the foundation of any future national best practice model to increase access to the justice system for people with disabilities.

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<sup>4</sup> <http://dpoa.org.au/roadmap-royal-commission/>



## General Comments

drummond street/queerspace are pleased to see the announcement of a Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability. While we acknowledge this Royal Commission is long awaited we would have preferred the ToR consultation be extended to enable disability peaks adequate time to engage more members, stakeholders and people with disabilities, their families, friends and communities in this process. Subsequently some disability advocacy organisations reported to us they had limited time to consult with hard to reach groups about the proposed Royal Commission scope. Many of whom are most vulnerable to abuses in the system.

In addition, targeted engagement of cohorts within the broader disability community is required for those who are more marginalized within the disability service system such as LGBTIQ, CALD populations (including newly settled people of refugee experience) and Aboriginal and Torres Strait Islander peoples. drummond street services/queerspace had inadequate time to respond to the request in a way which could support full participation of disability advocates, clients and families to take part in this process who would have had difficulties completing an online survey.

### 1. Ensure the ToR indicate goals regarding reporting and prevalence

drummond street/queerspace would like to suggest some specific alterations to the draft ToR, noting point b) of this draft, which is currently written;

*“what governments, institutions and the community should do to achieve best practice to encourage reporting and effective responses to violence, abuse, neglect and exploitation of people with disability, including addressing failures in, and impediments to, reporting, investigating and responding to such conduct; (p. 1)”*

We recommend point b) of the ToR use language which goes beyond *encouraging* reporting and rather, *ensures* a culture which *increases reporting*, effective responses and a *reduction in the prevalence* of abuse of people with disabilities as a goal. We believe the latter (reduction in prevalence) is separate to prevention as listed in point a), as this broadens scope to addresses two things:

- circumstances where people and institutions who have already abused, or may continue to abuse; and,
- the need to examine ways a Royal Commission can determine and create barriers to additional abuse being committed by institutions and individuals who have not been deterred by other ‘prevention’ strategies.

Secondly, drummond street/queerspace would also like to see some determination of resourcing included in the scope of the Inquiry recommendations. Therefore, we propose amendments to ToR wording as per below:

*“what governments, institutions and the community should do, and how to achieve best practice to enable, and increase reporting of and effective responses to violence, abuse, neglect and exploitation of people with disability, including addressing failures in, and impediments to, reporting, investigating and responding to and reducing this conduct”*



**Recommendation 1:** Ensure the terms of reference are strongly worded to indicate the following goals:

- *that the reporting of and action taken to address violence, abuse, neglect and exploitation of people with disability increases, therefore improving safety and just outcomes for people harmed*
- *that the prevalence of violence, abuse, neglect and exploitation against people with disabilities is reduced; by creating barriers to repeated abuse being committed by institutions and individuals who have not been deterred by other 'prevention' strategies.*

**2. Identify the level to which incidences of *violence, abuse, neglect and exploitation* breach the threshold of human rights, duty of care, quality and compliance and other legislated Criminal Law**

Where evidence is received during the Royal Commission which identifies particular individuals as having been subject to violence, abuse, neglect and exploitation it is important to acknowledge the variable forms of violence, abuse, neglect and exploitation which are specific to the circumstances of a person having a particular disability. In other words, particular actions may have very different ramifications for, and impacts on a person with a disability, and abuse may take forms for a person with a disability which are not perceived as abuse towards a person without disability.

In addition, instances where protection from particular types of neglect are not adequately mandated by legislation relating to quality and compliance, a failure of duty of care becomes more difficult to prove. Therefore, drummond street/queerspace recommends the ToR explicitly refer to the task of identifying the level to which incidences of *violence, abuse, neglect and exploitation* brought before the Royal Commission breach the threshold of human rights, duty of care, quality and compliance and other legislated breaches of Criminal Law; and, that these types of action or inaction are then able to be categorized in a way which mandates preventative actions or incur a particular response.

**Recommendation 2:** That the Terms of Reference explicitly refer to the task of identifying the level to which incidences of *violence, abuse, neglect and exploitation* breach the threshold of human rights, duty of care, quality and compliance and other legislated Criminal Law.

**3. Compliment the ToR with an implementation plan which provides for consumer and carer supports from the outset and throughout the Inquiry**

Fundamental to this Inquiry is the centering of lived experience, many people participating in the Inquiry will have experienced the 'worst aspects' of historical and current service systems, and cultural/societal attitudes. As we have seen in other Inquiries, there is an arguably significant risk that this Royal Commission be highly traumatising for many participants, carers, families and friends.

This was the experience of many survivors during the Commonwealth's Royal Commission into Institutional Child Sexual Abuse, which acknowledged this trauma by including the provision of additional resources to support survivors to share their experiences. A commitment by the Commonwealth Government to make provisions for consumer and carer support from the outset, and throughout the Commission's work (and beyond) would be most welcome. These supports should cover the following:



**Support to engage with the Royal Commission:** this would include informing people of the Royal Commission process, to communicate the consent process for participation, what the implications are and how information will be used. This includes understanding, and clarification of people's expectations to reduce the prospect of re-traumatisation.

**Support required as a direct result of the impacts of participation in the Royal Commission:** Through our service delivery drummond street/queerspace are acutely aware of how the Royal Commission into Child Institutionalised Abuse, and the Royal Commission into Family Violence personally/emotionally impacted people who participated in these processes. These inquiries also provoked significant public media discourse which impacted consumers and families whether they were part of the Inquiry or not.

Access to a range of supports for participants who develop complex needs during a Royal Commission Inquiry is important to keeping them engaged. Communication on the extent to which services can support people seeking assistance and about service pathways needs to be explicit and clear. For example - waiting periods for services may impede access to services compounding distress.

**Support for people who are not engaged in the system at all:** Finally support/engagement processes need to ensure they capture the experiences of a range of people with disabilities who do not engage with services due a range of reasons. Noting too, people may avoid seeking support to participate in the Royal Commission from the types of services which in their view have harmed them.

Harder to reach groups will require more investment to engage, particularly those people in closed environments, where they are otherwise reliant on organisations and staff to participate in the Commission processes. Understanding specific needs and barriers is essential to achieve an inclusive and accessible Royal Commission for people with a disability and sets the tone for the complex and important process these ToR signal. drummond street/queerspace would welcome additional targeted communication strategies, supported consultations and the means to engage people who may wish to participate independently of service providers they rely on.

**Recommendation 3:** The Commonwealth Government compliment the ToR with an implementation plan which provides for consumer and carer supports from the outset, throughout the Inquiry and that these include all ancillary supports listed in the Disabled People's Organisations Australia (DPO Australia) Roadmap for our Royal Commission (DPO, 27 February 2019).

#### **4. Include a Framework or First Principles approach to the Terms of Reference**

drummond street/queerspace would like to see an overarching Framework applied to the Terms of Reference which can guide future investments, as well as include some First Principles foundational to the Inquiry process and future sector reforms.

- Creates a foundation for collaborative approaches between the Commonwealth, and other States and territories (e.g. coordination of investments priorities and responsibilities between jurisdictions).
- Determines process elements of the Inquiry including: co design, consultation, inclusion of people with disabilities, their families and carers; and reporting mechanisms that can increase

trust and ensure the Inquiry acknowledges real and distressing experiences raised by consumers and carers.

- Creates a foundation for the approach to the design of a National Operational Implementation Plan for the Royal Commission recommendations, monitoring this Plan and subsequent evaluation.

## **5. Examine and review data to address knowledge gaps about the extent, prevalence, impact of violence, abuse, neglect and exploitation of people with disability, including from a range of marginalised cohorts.**

drummond street/queerspace welcomes acknowledgement in point g) of the ToR which states “...that people with disability have specific needs, priorities and perspectives based on their personal circumstances, including their age, sex, gender, sexual orientation, intersex status or race, acknowledging the particular situation of Aboriginal and Torres Strait Islander people and culturally and linguistically diverse people with disability;”

drummond street/queerspace notes the themes of point a) of the ToR covers prevention, refers to diverse types of violence; and also specifies the Royal Commission ‘have regard to the extent of the violence’ which occurs ‘in all settings and contexts’. The ToR therefore needs to specify within scope the need to *count* the cost of violence which is occurring.

It has been identified in a Senate Community Affairs Reference Committee Inquiry in 2015 <sup>5</sup>and elsewhere<sup>6</sup> that further evaluation and improvements of current data collections are required to build evidence around types of violence and abuse towards people with disability. It is also particularly important to identify cohorts within disabled populations who are most marginalised, such as those listed in point g) of the ToR and the circumstances in which this violence is likely to occur. This would help address knowledge gaps about the extent, prevalence, impact of violence, abuse, neglect and exploitation of people with disability.

**Recommendation 5:** That the ToR are worded to establish the task of further examination and review of data collections which can help address knowledge gaps about the extent, prevalence, impact of violence, abuse, neglect and exploitation of people with disability including from a range of marginalised cohorts (CALD, ATSI, LGBTIQ and women).

## **6. Resource the Royal Commission process to build knowledge and capacity.**

The South Australian Government Disability Justice Plan and associated guidelines <sup>7</sup> has shown promise in meeting the needs of people with disabilities. This initiative combines law reform, training

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<sup>5</sup> Senate Community Affairs References Committee. (2015). Violence, abuse and neglect against people with disability in institutional and residential settings. Pgs. 37 - 40

<sup>6</sup> ‘We count what matters, and violence against people with disability matters’, 2015, Kavanaugh, A., Robertson, S., & Cadwallader, J. in The Conversation (accessed online 27.3.19)

<sup>7</sup> <https://www.agd.sa.gov.au/projects-and-consultations/disability-justice-plan>



and ethical principles to provide practical and ethical guidance to greatly improve access to the justice system for people with disabilities.

More however needs to be done in this area. The ‘Disability Access to Justice Research Consortium’ for example, has demonstrated this and been beneficial in the identification of research required to establish new practice models of legal and justice supports for people with a disability<sup>8</sup>. drummond street/queerspace believe the Royal Commission process is an opportunity to build the knowledge base and work with the architects of identified good practice to further develop the foundation of a National approach to improving access to our justice systems.

**Recommendation 6:** Resource a full evaluation on the legal capabilities and approach to the support of Royal Commission witnesses, families and carers with disabilities. Undertake this evaluation with the aim to:

- build working knowledge and;
- inform the foundation of any future national best practice model to increase access to the justice system for people with disabilities.

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<sup>8</sup> Disability Access to Justice Research Consortium Scoping Paper: Research needs in access to justice for people with disability in Australia and New Zealand, Literature Review, Consultation, and Emerging Research Opportunities, February 2018, Arstein-Kerslake, A., Maker, Y., Ireland, M., Mawad, R., Blakey, E., Raymond, M., University of Melbourne by the Hallmark Disability Research Initiative and the Melbourne Social Equity Institute, Melbourne, Australia