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The Hon Scott Morrison MP
Prime Minister
Parliament House
CANBERRA ACT 2600

Sent Via: Post and Prime Minister's Online Contact Form

Dear Prime Minister,

RE: Royal Commission into violence, abuse and neglect of people with disabilities in Australia

Australian Lawyers for Human Rights (**ALHR**) writes to strongly urge you to call a Royal Commission into violence, abuse and neglect of people with disabilities in residential and institutional settings in Australia. ALHR holds grave concerns about the scope and extent of human rights violations in this sector and seeks for it to be recognised as an urgent priority for the Federal Government.

ALHR welcomes your announcement of a Royal Commission into Aged Care Quality and Safety and congratulates the Federal Government on this initiative. This is an important first step towards addressing the serious issues within the aged care sector, which have been highlighted in a string of disturbing incidents that have recently come to light. However, we ask that you establish, as a matter of urgency, a Royal Commission for the disability sector as a separate initiative.

Young people with disabilities living in aged care facilities

ALHR notes that, while the Royal Commission into Aged Care Quality and Safety will primarily look at the quality of care provided in residential and home aged care to senior Australians, it is

also proposed to include young Australians with disabilities living in residential aged care settings. We note that your preliminary position has been to oppose calls for an expansion of the scope of the Royal Commission to encompass all people with disabilities living in residential or institutional care, on the basis of the establishment of the National Disability Insurance Scheme Quality and Safeguards Commission (**NDIS Commission**). While ALHR supports the establishment of the NDIS Commission, we do not consider that it duplicates the role of, or displaces the urgent need for, a Royal Commission in this sector.

ALHR agrees that the accommodation of young Australians with disabilities in residential aged care facilities is an issue of serious and immediate concern. We consider that this practice is in breach of the obligations Australia has assumed by signing and ratifying the Convention on the Rights of Persons with Disabilities (**CRPD**) and breaches the human rights of the people living in this situation. In particular, we draw your attention to Article 19 of the CRPD, which establishes the right for all persons with disability to live independently and be included in the community. Article 19 provides:

States Parties to the present Convention recognize the equal right of all persons with disabilities to live in the community, with choices equal to others, and shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community, including by ensuring that:

- a) Persons with disabilities have the opportunity 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;*
- b) Persons with disabilities have 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;*
- c) Community services and facilities for the general population are available on an equal basis to persons with disabilities and are responsive to their needs.*

Article 23 of the Convention on the Rights of the Child (**CRC**)¹ similarly establishes the right of children with disabilities to the enjoyment of a full and decent life in conditions that ensure dignity, promote self reliance and facilitate active participation in the community.

It is now well established that aged care settings, designed for the care of elderly Australians, are inappropriate residential accommodation placements for young Australians. Concerns for young people with disabilities, accommodated in aged care facilities, include exclusion from life

¹ UN General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, available at: <http://www.refworld.org/docid/3ae6b38f0.html>

in the community, social isolation and limited opportunities for recreation,² high levels of unmet need in terms of appropriate rehabilitation and support services,³ as well as inadequate training and skills of staff to respond to the specific needs of young people with a disability.

The need for a separate Royal Commission into the disability sector

ALHR strongly asserts that it is not appropriate for issues afflicting the aged care and disability sectors to be addressed in the same Royal Commission, particularly given the grave nature and broad scope of the issues. ALHR considers that the issues facing these sectors, while similar in certain respects, are distinct and must be separately addressed, particularly in light of the current and significant reforms rolling out across the disability sector, including the introduction of the National Disability Insurance Scheme and the National Injury Insurance Scheme.

People with disabilities are more vulnerable to all forms of abuse be it mental, physical or sexual in all settings. Their particular vulnerability may be explained, inter alia, by the following:

- a) *Their inability to hear, move, and dress, toilet, and bath independently increases their vulnerability to intrusive personal care or abuse;*
- b) *Living in isolation from parents, siblings, extended family and friends increases the likelihood of abuse;*
- c) *Should they have communication or intellectual impairments, they may be ignored, disbelieved or misunderstood should they complain about abuse;*
- d) *Parents or others taking care of the child may be under considerable pressure or stress because of physical, financial and emotional issues in caring for their child. Studies indicate that those under stress may be more likely to commit abuse;*
- e) *Children with disabilities are often wrongly perceived as being non-sexual and not having an understanding of their own bodies and, therefore, they can be targets of abusive people, particularly those who base abuse on sexuality.⁴*

A 2015 Senate inquiry explored violence, abuse and neglect against people with disability in institutional and residential settings, including the gender and age related dimensions, and the particular situation of Aboriginal and Torres Strait Islander people with disability, and culturally

² Winkler, D., Farnworth, L., Sloan, S., Brown, T., & Callaway, L. (2010). Comparison of People With ABI Living in Two Accommodation Settings: Shared Supported Accommodation and Residential Aged Care. *Brain Impairment*, 11(3), 313-325. doi:10.1375/brim.11.3.313; Winkler Dianne, Farnworth Louise Sloan Sue (2006) People under 60 living in aged care facilities in Victoria. *Australian Health Review* 30, 100-108. <https://doi.org/10.1071/AH060100>.

³ Foster, M., Fleming, J., & Tilse, C. (2007). Council of Australian Governments' (COAG) Initiative for Young People With Disability in Residential Aged Care: What Are the Issues for Acquired Brain Injury? *Brain Impairment*, 8(3), 312-322. doi:10.1375/brim.8.3.31; Reilly Kate Pryor Julie (2002) Young people with brain injury in nursing homes: not the best option!. *Australian Health Review* 25, 46-51. <https://doi.org/10.1071/AH0200462>;

⁴ United nations Committee on the Rights of the Child General Comment no. 9 Forty-third session Geneva, 11 – 29 September 2006 CRC/C/GC/9 27 February 2007

and linguistically diverse people with disability. The findings of this inquiry were sobering, with the Committee noting:⁵

This inquiry heard highly distressing personal accounts from many people with disability. The inquiry also heard from dedicated family members and advocates speaking on behalf of loved ones, some of whom died as a result of violence or neglect.

This inquiry culminated in a Report, published in November 2015, which documented unacceptably high rates of violence, abuse and neglect of people with disability and noted:⁶

The committee finds that violence, abuse and neglect of people with disability is both widespread and takes many forms... the situation for people with disability is unacceptable...

In response, the first recommendation included in this Report was that a Royal Commission into violence, abuse and neglect of people with disability be called, with terms of reference to be determined in consultation with people with disability, their families and supporters and disability organisations. The Senate proposed that a Royal Commission should be established to conduct a more thorough investigation of instances of violence, abuse and neglect of people with disability and capture the full scale of violence, abuse and neglect of people with disability and the toll this has had on individuals and their families. The Senate recommended that the Royal Commission should have investigative powers and be funded and empowered to visit institutions.⁷

On 27 March 2017 an ABC Four Corners report also documented the abuse and neglect of people living with a disability in taxpayer-funded group homes and disability accommodation and reinforced the findings of the Senate inquiry.

ALHR notes with significant concern that this recommendation was issued almost three years ago and yet this Royal Commission is still to be called. This is so, notwithstanding the continued and vigorous advocacy by civil society for a Royal Commission to be established.⁸

ALHR also considers it relevant that the Federal Government is currently within the three year timeframe for the implementation of the United Nation's Optional Protocol to the Convention

⁵ Commonwealth of Australia (2015). *Violence, abuse and neglect against people with disability in institutional and residential settings, including the gender and age related dimensions, and the particular situation of Aboriginal and Torres Strait Islander people with disability, and culturally and linguistically diverse people with disability*. Senate Community Affairs References Committee, xxvi.

⁶ Commonwealth of Australia (2015). *Violence, abuse and neglect against people with disability in institutional and residential settings, including the gender and age related dimensions, and the particular situation of Aboriginal and Torres Strait Islander people with disability, and culturally and linguistically diverse people with disability*. Senate Community Affairs References Committee, xxvi.

⁷ Commonwealth of Australia (2015). *Violence, abuse and neglect against people with disability in institutional and residential settings, including the gender and age related dimensions, and the particular situation of Aboriginal and Torres Strait Islander people with disability, and culturally and linguistically diverse people with disability*. Senate Community Affairs References Committee, 268.

⁸ In June 2017, 163 civil society organisations and 383 individuals wrote to the Federal Government collectively reiterating the demand for a Royal Commission: <https://fpdn.org.au/media-release-163-civil-society-organisations-call-on-prime-minister-to-announce-a-royal-commission-into-disability-violence/>

against Torture (**OPCAT**) in Australia. ALHR considers that imminently calling Royal Commissions into both the aged care and disability sectors would be particularly timely, in developing an accurate understanding of the nature and scope of human rights concerns in these sectors, to inform the work of the Australian National Preventive Mechanisms (**NPMs**) under OPCAT.

Conclusion

Children and young people with disabilities are three times more likely to experience abuse than children without a disability. A Senate inquiry has revealed ongoing systemic failures by government and service providers to notify families and report matters of violence and abuse to police. This not only consistently denies people with disability access justice, it also denies victims support and protection, and instead reinforces and increases their vulnerability.

Australians living with a disability have a right to feel safe and secure in their home environment and to be free from abuse, exploitation and violence. It is clear that in many cases, this is simply not happening and their human rights are being violated at every point in the care and justice systems.

ALHR therefore asks you to call a Royal Commission into violence, abuse and neglect of people with disabilities in residential and institutional settings as an urgent priority. We propose that the scope of this Royal Commission should include young people with disabilities in residential aged care facilities, along with people with disabilities of all ages living in a full range of residential and institutional settings, including but not limited to specialist disability accommodation, boarding houses, group homes, institutions, forensic disability services and mental health facilities.

We look forward to receiving your reply.

Yours faithfully



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About ALHR

ALHR was established in 1993 and is a national association of more than 800 Australian solicitors, barristers, academics, judicial officers and law students who practise and promote international human rights law in Australia. ALHR has active and engaged National, State and Territory committees and Specialist National Thematic committees. Through advocacy, media engagement, education, networking, research and training, ALHR promotes, practices and protects universally accepted standards of human rights throughout Australia and overseas.