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RE: Disability Royal Commission - Draft Terms of Reference

Australian Lawyers for Human Rights (**ALHR**) appreciate the opportunity to write to you regarding the draft Terms of Reference in respect of the recently announced Disability Royal Commission.

Our comments are as follows:

1. We commend the proposal that the draft terms of reference include all settings and contexts.
2. We agree that Australia's international obligations under the Convention on the Rights of Persons with Disabilities (**CRPD**) should be taken into account. However, the terms of reference should also consider whether current laws, particularly criminal and administrative laws, which operate for the benefit of people without disability in the event of their abuse, neglect, exploitation or violence, are also able to be utilised by people with disability to the same extent.
3. We appreciate that the focus of the Inquiry is upon potential ways forward, as described in paragraphs (a)-(c). However, ALHR is of the very strong view that the terms of reference should explicitly require inquiry into the experience of people living with a disability who have been directly or indirectly affected by violence, abuse, exploitation or neglect. Failing to do so will not give a proper insight into the experience, frequency or context of abuse which is needed to properly address the terms of reference described in paragraphs (a)-(c).
4. In recognising the experience of violence, abuse, exploitation or neglect of people with disability, the Terms of Reference must also be alive to the heightened vulnerability of people with disability to violence, abuse exploitation and neglect.
5. ALHR respectfully disputes that paragraph (d) (*to consider' any matter reasonably incidental to a matter referred to in paragraphs (a)-(c)'*) is sufficient to capture the extensive background of violence, abuse, neglect and exploitation of people with

disability in Australia as must be heard through the stories of those who have experienced such life-changing experiences. These stories are not incidental, and must be not only heard but also fully investigated by the Royal Commission. Victims of institutional child sexual abuse have been afforded the opportunity to be heard at a Royal Commission and victims of violence perpetrated against people with a disability should likewise be able to tell their stories.

6. While the Terms of Reference cover violence, abuse, neglect and exploitation in all settings, ALHR believes that should explicitly cover disability-specific violence such as denial to access to necessary aides or medication, Restrictive Practices, involuntary treatment for mental illness or sterilisation.
7. We commend the establishment of accessible and appropriate arrangements as described in paragraph (k). ALHR trusts this will include specific mechanisms for people living in rural and remote areas of Australia. It should also be recognised that some people with disability will need assistance to provide evidence without their immediate family, friends or supporters. For some people, their evidence may be strictly confidential or for others there may be a power imbalance. The Commission must safeguard against this.
8. We recognise the need to ensure that witnesses who have given evidence before other inquiries are not required to do so again, where the individual has provided consent for the evidence and information that they have previously given to be shared. Notwithstanding this, ALHR recommends that paragraph (n) of the Terms of Reference be amended to ensure that witnesses who have given evidence to past inquiries are given the option to give that evidence again to the new Inquiry if they so choose. It is important that all witnesses have the opportunity to participate in this forthcoming Inquiry and that any decision to share evidence from a previous Inquiry as an alternative be an elected choice by the individual to be exercised at their discretion.
9. ALHR is concerned that the Royal Commission will not be required to inquire into matters which it is believed will be sufficiently or appropriately dealt with by another inquiry or investigation or a criminal or civil proceeding. Paragraph (m) requires that evidence that identifies particular individuals as having been subject to violence, abuse, neglect or exploitation must be dealt with in a way that does not prejudice current or future criminal or civil proceedings or other contemporaneous inquiries. While on the one hand this precautionous approach is admirable, but at the same time ALHR is concerned that to fail to pursue an Inquiry into a matter which is subject to another inquiry, investigation, criminal or civil proceeding may inappropriately limit the scope of the Inquiry and result in serious matters relevant to the Inquiry not being investigated.
10. The Terms of Reference should be amended to address the ways in which people with disabilities are able to participate in systems which may support them to report abuse, neglect, exploitation and violence, such as the justice system. Investigating how police,

courts and responsible government departments hear and respond to complaints of this nature will be absolutely fundamental to obtaining the full picture in relation to the situation of a person with disability who has experienced abuse, neglect, exploitation or violence.

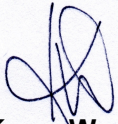
11. Finally, ALHR calls on the staff composition of the Royal Commission to include people with disability wherever possible. The contribution of people with lived experience will be invaluable to the work of the Commission.

We thank you for your consideration of the important matters raised in this letter and would be very happy to meet with someone from the Department to discuss them in more detail. Please do not hesitate to contact Natalie Wade, ALHR Vice President and Chair of our national Disability Rights Committee at vicepresident@alhr.org.au

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.

Yours faithfully



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