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The Commissioners
Disability Care and Support Inquiry
Productivity Commission
GPO Box 1428
Canberra City ACT 2601

Dear Commissioners:

Thank you for the opportunity to appear before you at the Productivity Commission's (the Commission) public hearing in relation to its Inquiry into Disability Care and Support in Sydney on 20 July 2010. We shall shortly be lodging a written submission which will elaborate upon the views we outlined at that time. However, there are two matters arising from our evidence that we would like to raise with you immediately and directly.

In the course of questions, you indicated to us that you had received a large number of submissions that supported congregate models of accommodation and other support services. You asked us to identify what size of facility we considered to be an institution. We also observed you to canvass the views of other witnesses on this subject and with respect to the level or standard of support that any new scheme ought to target, noting that some people currently receive very good supports, while many others receive very little assistance, and there may need to be a compromise.

We appreciate that you were asking questions based upon the evidence you have received, and in the course of deliberation, rather than indicating any concluded view on these matters. Nevertheless, these lines of questioning do potentially have important implications for the way in which the Commission is undertaking its inquiry and in relation to the potential scope of its recommendations, which we say, must reflect normative human rights standards.

We therefore respectfully request you to consider these implications in light of the submissions we outline following.

1. Australia ratified the Convention on the Rights of Persons with Disabilities (CRPD) in July 2008. The CRPD sets out the human rights and fundamental freedoms of persons with disability. As you would be aware, Australia's ratification of the CRPD represents a solemn

undertaking to recognise, respect, protect and fulfil the rights it contains. The CRPD is binding upon all Australian governments and their agencies.

2. The CRPD does not create 'new' human rights, but instead applies existing human rights to the specific circumstances of persons with disability. It is comprised of civil and political and economic, social and cultural rights. Civil and political rights are immediately realisable, which means that they must be complied with at and from the point of ratification. Economic, social and cultural rights are progressively realisable, which means that immediate compliance is not required at the point of ratification. However, parties must work towards their full realisation to the maximum extent of their available resources.
3. Human rights are normative values or standards that are accepted as being applicable to all persons, at all times, and in all circumstances. In an important sense they do not represent 'optimum' conditions. They are 'basic' or 'fundamental' requirements for human dignity. While economic, social and cultural rights are progressively realisable, this should not be understood as meaning that they are aspirational and not basic or fundamental.
4. It follows from this that we believe that the Productivity Commission must take care to ensure that in formulating recommendations for a national support scheme for persons with disability it does not conceptualise CRPD rights as expressing optimal conditions that are to be aspired to, but which may not be achievable, either immediately or at all. The CRPD expresses normative conditions that persons with disability are entitled to expect as of right. This is especially the case in relation to CRPD civil and political rights.
5. In this respect it is important for the Commission to note that Article 5: Equality and Non-Discrimination and Article 19: Living Independently and Being Included in the Community are both civil and political rights.
6. One of many important implications Article 5 has for the Commission's Inquiry is that it prohibits segregation on the basis of disability because this is inherently unequal and detrimental treatment and is therefore discriminatory. This is a basic civil rights principle of long standing that has already been applied in Australian law in other contexts.
7. Article 19 applies the traditional civil and political rights of liberty and security of the person, and freedom of movement, to one of the most pervasive human rights abuses experienced by persons with disability; their segregation and isolation from the community in institutional environments. It requires parties to the CRPD to recognise the equal right of persons with disability to live in the community, and participate in community life, with choices equal to others. The state obligations that relate to this right include the obligation to ensure that persons with disability are able to choose their place of residence and where and with whom they shall live on an equal basis with others; the obligation to ensure that persons with disability are not obliged to live in a particular living environment; and, the obligation to ensure that persons with disability have access to a range of community support services that support living and inclusion in the community, and which prevent isolation and segregation from the community.

8. The right to housing and disability support services are economic and social rights that are incorporated into CRPD Article 28: Adequate standard of living and social protection. Article 28 is subject to progressive realisation, but its progressive realisation must immediately comply with Articles 5 and 19 (among other civil and political rights). In other words, while from an international human rights perspective Australian governments may (indeed must) set progressive targets for the provision of housing and support services for persons with disability, all implementation action must comply with the right of persons with disability to live independently and be included in the community.

As an agency of the Australian government we view it as essential that the Commission's commentary and ultimately, its recommendations, are formulated so as to reflect Australia's international human rights obligations under the CRPD. To put it another way, we don't view it as being open to the Commission to be canvassing service models that would, if implemented, violate these obligations.

We acknowledge that the Commission will hear a variety of views about the acceptability and even the desirability of institutional models in the course of its inquiry. However, consistent with the Australian Government's obligations under Article 8 of the CRPD, the Commission has an important role to play in this Inquiry in raising awareness of, and fostering respect for, the rights of persons with disability, and in combating stereotypes, prejudice and harmful practices impacting upon persons with disability. We respectfully suggest that this is especially necessary in the area of housing and support for persons with disability.

We would welcome the opportunity to discuss these matters with you further should this be of assistance.

Yours sincerely

Signed

PHILLIP FRENCH
Director