



Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability

The Hon Ronald Sackville AO QC
Chair

29 October 2019

Ms Lyn Beverley
Secretary, Senate Finance and Public Administration Committees
PO Box 6100
Parliament House
CANBERRA ACT 2600

By email: fpa.sen@aph.gov.au

Dear Ms Beverley,

I refer to the transcript of the hearing held by the Senate Finance and Public Administration Legislation Committee on Monday 21 October 2019. The relevant pages of the transcript (pp.99-101) are attached.

The questions directed to Dr Baxter concerning the appointment of the Chair of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability were based on an incorrect premise.

Senator Waters, who asked the questions, did not identify a source for the assertion that the Chair had admitted that he had “very little experience of disability”.

To my knowledge, I have not made an “admission” or statement to the effect claimed by Senator Waters. I did say at an Education Workshop conducted by the Royal Commission that I “came to the Royal Commission with little experience in the disability sector although I have been closely involved over many years in other aspects of social policy”.

The statement attributed to me by Senator Waters and the statement I actually made refer to two entirely different experiences.

I have not made the statement attributed to me by Senator Waters because such a statement would be untrue. I do not intend to provide any further details of personal matters.

My concern is to correct a false assertion of fact made at the Committee’s hearing. I make no comment on the criteria that should or should not be applied when selecting the Chair of this or any other Royal Commission.

The above is quite independent of my service as a Judge of the Federal Court of Australia during which I decided cases under the *Disability Discrimination Act 1992* (Cth).

I request an appropriate correction of the record.

Yours sincerely,

Ronald Sackville AO QC
Chair

Copy:
Senator Larissa Waters
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By email:

Senator Cormann: If the answer is yes.

Senator WATERS: If the answer is yes, obviously. Thank you. My last tranche of questions are on behalf of Senator Steele-John. In appointing the commissioners to the disability royal commission, the Department of the Prime Minister and Cabinet consulted with disabled people and their organisations; however, apparently did not share your shortlist with the organisations for their feedback prior to the announcement of the commissioners. Why is that?

Ms Foster: Dr Baxter, I think, will take this question, Senator.

Dr Baxter: Could you repeat the question?

Senator WATERS: Sure. In appointing the commissioners for the disability royal commission, I understand that there was some consultation with disabled people and their organisations but that the shortlist was not shared with those organisations for feedback prior to the announcement of who the commissioners would be. Why is that?

Dr Baxter: The information that we sought from the relevant non-government organisations, as part of the roundtable with them and also through a series of consultations, was sought confidentially. We were aware that some of those organisations were willing to put those nominations on the record and others wished to make them confidential. So it was appropriate that the list wasn't shared.

Senator WATERS: Do you mean that the feedback people gave about who they thought was appropriate was confidential?

Dr Baxter: That's right.

Senator WATERS: That doesn't explain why you wouldn't then go back to them and say, 'Here's our short list. What are your views on that?'

Dr Baxter: The other thing is that that list comprises nominations that are made from those organisations but that also come from a number of other sources, and that's information that we would generally share with the Prime Minister's office. It's the Prime Minister who makes that recommendation to the Governor-General.

Senator WATERS: Yes, I understand. But, if you were keen to have the views of the sector taken into account, why not get their views on that short list?

Dr Baxter: We had a number of iterations with those groups. We talked to them initially about the sorts of characteristics that they'd be keen to see in commissioners. We had a number of processes talking about their sense of who may be appropriate commissioners. And we talked to them also about process in terms of reference. We didn't, as you say, go back to them with a final list. That wouldn't be general practice for material and advice that we're providing for the short list—

Senator WATERS: The short list, though. Not the final list: the short list.

Dr Baxter: That's right—for the short list that we're providing to the PM and to his office. That's to ensure that they're able to take that under consideration themselves and apply their own considerations and also apply advice they may have received to the consideration of who might be appropriate royal commissioners.

Senator WATERS: Did you inform the states and territories when you came to a decision as to the appointments to the commission that the PM was going to announce?

Dr Baxter: Yes, we did.

Senator WATERS: When were they informed?

Dr Baxter: I'll just check whether I have the date with me of when they were informed.

Senator WATERS: Prior to the announcement?

Dr Baxter: They were informed prior to the announcement. That's correct.

Senator WATERS: Was it much prior?

Dr Baxter: No, it would have been a short time prior, but I'll just check if I've got the exact date with me. No, Senator, I'll have to take that on notice.

Senator WATERS: Thanks very much for doing so. Did any of those states and territories flag any concerns with any of the appointees?

Dr Baxter: As part of the general process of nominating potential commissioners, states, territories, other organisations and other people who provided advice flagged issues that they thought made people meritorious for commissioners and they also flagged things like potential conflicts of interest or perceptions of conflicts of interest. That was a pretty standard part of the process.

Senator WATERS: But when you told the states and territories who the appointees would be, were there any concerns raised about the individuals who'd been appointed?

Dr Baxter: Not, as I recall, concerns. In those discussions, there may have been issues raised around whether there may have been perceptions of conflicts of interest in relation to some of the commissioners. That would have been material that was then provided as part of the conflict of interest declarations.

Senator WATERS: I don't want to belabour this point, but I want to understand what you're saying. Are you saying that, when you told the states and territories who the appointees were going to be, there were concerns raised or there were not?

Dr Baxter: No, there was not at that stage. But, in the period of time when names were being discussed—and that was coming from the states and territories and also from non-government organisations—at that point, a range of different players, including, I think, some of the states and territories, would have said that there may be a perception of conflict of interest about this person that you may need to look into. That then fed into the process we did of providing that information through to the Prime Minister's office and also to the Attorney-General's Department.

Senator WATERS: You said that there may have been those concerns expressed. Were they expressed by any of the states or territories?

Dr Baxter: I don't know that I'd go so far as to say 'concerns'. But I think from both some state and territory governments and non-government organisations, there was information that they passed on to say that there may be a perception of conflict of interest about this person or that person.

Senator WATERS: So at least some of the states and territories did pass on a concern that there might be a perception of a conflict with one or more of the appointees; is that correct?

Dr Baxter: Yes, I think that's correct. And this is in the context that, in the appointment of royal commissioners, in the discussions we've had with all of the stakeholders, including states and territories, there's a very delicate balance between getting people who have the right expertise and experience in the disability sector—and perhaps have lived experience or perhaps have worked in organisations or in government departments—and balancing that against perceptions of conflict of interest. So it's generally part of a discussion about trying to make sure we have people with the right expertise and also managing some of those perceptions. Part of the process is also that the chief royal commissioner himself speaks then with royal commissioners about potential conflicts of interest. All of those are published on the website. That forms part of that series of discussions, also.

Senator WATERS: Was anything done about those concerns that were raised by the states and territories?

Dr Baxter: We take on board any material that's provided to us either from states and territories or from other stakeholders in the field. We provide that as part of the information that goes through to both the Prime Minister and his office and the Attorney General's Department in looking at conflicts of interest. That's then considered in the conflict of interest declarations. I understand then that Attorney-General's works with those potential commissioners to look at whether those conflicts of interest are ones that can be managed within the context of the commission. For example, the royal commissioner, I think, in the very first set of hearings indicated to everyone who came along that no-one would be required to tell their story to someone with whom they felt uncomfortable. In the public declaration of conflicts of interest, which appears on the commission's website, the commissioners indicate how they plan to manage some of those conflicts of interest. For example, commissioners who've had experience of the NDIS then look at making appropriate arrangements when the NDIS is being considered by the commission. And all of the commissioners resigned the posts that they held at the time of being appointed, because almost all, if not all of them, held posts that had a disability component to them. And, largely, that's why they were selected—for their expertise in the field.

Senator WATERS: Was Mr Sackville the department's first choice to chair the commission?

Dr Baxter: I would have to take that on notice.

Senator WATERS: Could you also take on notice whether anyone else was approached and perhaps declined, or if no-one else was approached and he was the first pick. I'm interested in his own admission that he has very little experience of disability. Why would you pick someone to chair the commission who, by his own admission, has very little experience?

Dr Baxter: Is there a particular question for me in that, Senator?

Senator WATERS: Yes. Was he the first pick?

Dr Baxter: I have indicated I don't know, but I can take that on notice.

Senator WATERS: And if he was, the subsidiary question is: why, given his own statements?

Dr Baxter: I can certainly go to his expertise. He's a very experienced and well-regarded member of the judiciary. In a royal commission of this size, you're looking for a number of different qualities. Yes, you're looking for people who have a strong understanding and lived experience of disability, which we have in this commission, but also people who have an understanding of the way that royal commissions operate and the way judicial processes operate. And, in the case of this commission, you have many commissioners who bring the policy expertise, the experience with organisations and, the experience with consumers. Having that strong judicial voice would have been very important in the selection of Commissioner Sackville.

Senator WATERS: Who was given the task of making the recommendation to select the commissioners?

Dr Baxter: Commissioners are approved by the Governor-General on the recommendation of the Prime Minister.

Senator WATERS: Who fed the short list to the PM?

Senator Cormann: Now you are referring to processes of government. The cabinet ultimately makes the decision on who is put forward through the appropriate processes, and the Prime Minister obviously has got particular responsibility. And, as the officer has indicated, ultimately it's an appointment by the Governor-General.

Senator WATERS: Thanks, Minister. Thanks very much, Dr Baxter.

CHAIR: Senator Wong.

Senator WONG: Ms Foster, I think you made the comment that PM&C hadn't been the subject of an adverse comment previously by the office of the information commissioner. Was that you?

Ms Foster: What I said was that Mr Reid and I personally didn't have experience of getting an adverse finding, and therefore we weren't quite sure.

Senator WONG: There was a decision in January 2016, where the department's decision was set aside and the Information Commissioner substituted another decision, and were required to give me a copy of the document.

Ms Foster: I think that simply predates my time at PM&C.

Senator WONG: You're saying you personally—not PM&C.

Ms Foster: I was trying to be quite specific. Because we didn't have personal experience, I didn't want to pre-empt the answer.

Senator WONG: There's an FOI application in relation to whether there was a request to invite Mr Houston. It was due to be responded to by Wednesday. An hour after the exchange we had about this the journalist was advised by your department that a 30-day further extension was required in relation to that FOI application. I wonder if you could explain why and what prompted the delay.

Ms Foster: I have no—

Senator WONG: Someone must.

Ms Foster: Your advice to me is the first time I've heard that.

Senator WONG: Does anyone know?

Ms Foster: We'll find out. So it's news to both Mr Reid and me. We didn't direct that and we didn't know it had happened.

Senator WONG: Was the officer watching? Is that what prompted it—watching the way in which he dealt with that question?

Ms Foster: I don't know, Senator. I'm going to have to ask.

Senator WONG: Okay. I'm coming off FOI and going to staff at official establishments. Mr Martin should remember that I pulled out at some point—

Ms Foster: Just before we move on, our staff have just advised us that the team sent it out, it didn't come for SES clearance, so it was a process issue, and that they had not seen that segment of estimates.

Senator WONG: So what's the reason for the 30-day further delay on something that had been in the public arena for some time?

Ms Foster: I'm guessing it is a consultation requirement, but let me find out.

Senator WONG: With whom?