# What Do the Royal Commissions into Mental Health, Disability and Aged Care mean for the future of social support and the human rights of vulnerable Australians?

Dr Kay Wilson

Post-Doctoral Translational Research Fellow

Victorian Collaborative Centre for Mental Health and Wellbeing (VCCMHW) & Honorary Fellow, Melbourne Disability Institute

# Acknowledgment of Country

I would like to acknowledge the Wurundjeri Peoples of the Kulin Nations as the Traditional Owners of the land on which this seminar is held and to pay our respects to their elders, past and present and emerging.

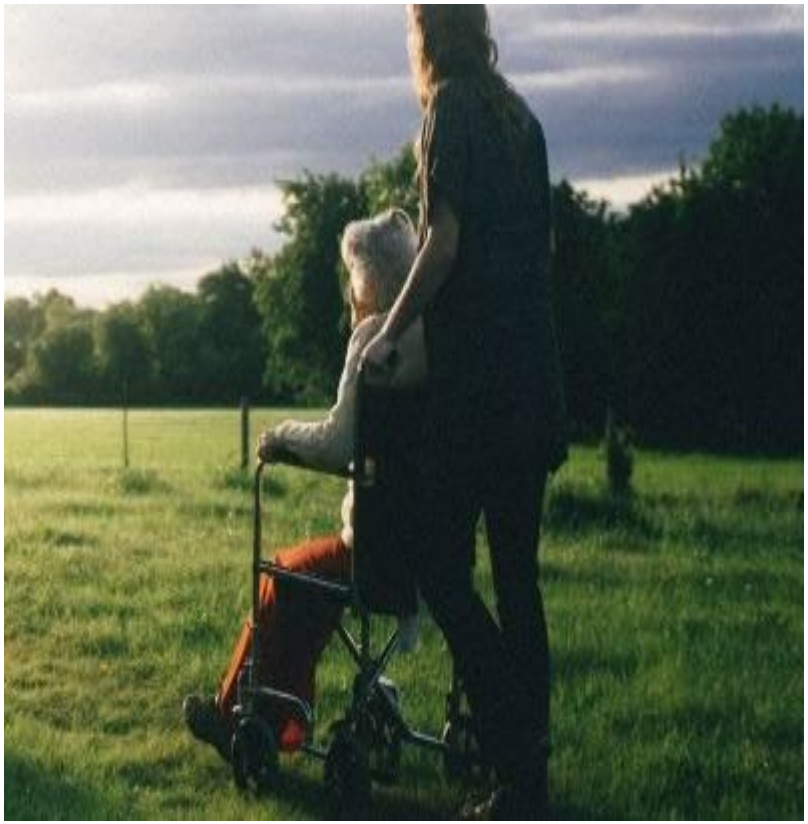
# Road Map of this Presentation

- Brief overview of the Mental Health, Aged Care and Disability Commissions
- Seven Common Themes
- Negative Social Attitudes and Discrimination
- Restrictive Practices
- Brief comment on the government response to the Royal Commissions so far

# Mental Health Commission (Victoria)

- 22 February 2019 to 5 February 2021
- Policy enquiry to create a practical plan to deal with Victoria's "broken" mental health system
- Future-focused, system-wide review to improve mental health outcomes
- Penny Armytage AM (public servant), Professor Allan Fels (economist), Dr Alex Cockram (psychiatrist), Professor Bernadette McSherry (legal academic)
- 12,500 contributions from consultations, focus groups, roundtables, public hearings
- Final Report, 65 Recommendations, in addition to 9 recommendations in interim report, no 'split' recommendations
- Cost: $13.6 million

# Aged Care Commission



- 8 October 2018 to 26 February 2021
- Impetus – Oakden Scandal and Senate Inquiry on Elder Abuse
- Policy inquiry on the future of aged care sector and how best to provide services for people with dementia and in the home as well as residential
- Richard Tracey AM QC (former judge) and Lynelle Briggs (public servant) and Tony Pagone KC (former judge)
- 10,574 public submissions, surveys, 600 witnesses, 99 sitting days
- Final Report 148 Recommendations
- Some ‘split’ recommendations where commissioners disagreed
- Cost: $104.30 million over four years

# Disability Commission

- 4 April 2019 to 2 November 2023
- Significant lobbying by disability community
- Appointed by Commonwealth and all states and territories
- Terms of reference developed by PWD
- Broad focus – best practice in preventing and responding to violence, abuse, neglect and exploitation of PWD in *all* settings and contexts and promoting an inclusive society
- Ronald Sackville AO QC (former judge), Barbara Bennett (public servant), Dr Rhonda Galbally AC (lived experience, advocate); Dr Alastair McEwin (lived experience, advocate, disability discrimination commissioner), Andrea Mason (indigenous), Francis Ryan AM (former MP)
- 7,944 submissions, 34 public hearings, 154 hearing days, 837 witnesses, 700 engagement activities
- Final Report 222 recommendations, some of them 'Split' where Commissioners disagreed
- Cost: $599.3 million

# Seven Common Themes

- Difficulty Accessing Services and Supports
- Lack of Choice and Control (Absence of Consumer Voice)
- Negative Social Attitudes and Discrimination
- Overuse of Restrictive Practices (eg. seclusion and restraint)
- Undertrained and Underpaid Workforce
- Problems with Oversight and Complaints Processes
- Chronic Underfunding

# Negative Social Attitudes and Discrimination

- **Mental Health Commission** – negative social attitudes and discrimination were 'ever present', people from disadvantaged groups (eg. ATSI, LGBTQI+, refugees, CALD etc) faced additional barriers, and that it drove chronic underfunding and lack of investment in the system
- **Aged Care Commission** – 'Ageism', one-size-fits-all system not suitable for people with diverse backgrounds, people with disability in aged care can't access NDIS (if they became disabled after age 65).
- *"Attitudes and assumptions about older people and aged care can affect the delivery of aged care. Assumptions about the natural process of ageing may contribute to a lack of attention to prevention and reablement. When it comes to improving health, some conditions, such as back pain or feelings of depression, may be put down to 'old age."*
- **Disability Commission** – concerned about the effect of "ableism" on violence, abuse, neglect and exploitation and saw overcoming negative social attitudes and discrimination as imperative to create an inclusive Australian society.

# Recommendations

- **Mental Health Commission** – Mentally health workplaces free from stigma and discrimination, MHWC designing and implementing anti-stigma programs and addressing systemic discrimination
- **Aged Care Commission –** rights to non-discriminatory and equitable care in a new Aged Care Act, creating 'age-friendly communities', and annual parliamentary reporting on people with disabilities in aged care who can't access supports equivalent to NDIS.
- **Disability Commission –** split recommendations about whether 'segregation' was ever acceptable, new Disability Rights Act and strengthening the Disability Discrimination Act, a new National Disability Commission, a Minister for Disability and Inclusion and new Department of Disability Equality and Inclusion, and to create a general duty to proactively prevent disability discrimination.

# Overuse of Restrictive Practices

- Practice that has the effect of restricting a persons movement or decision-making (eg. seclusion, physical restraint, mechanical restraint, chemical restraint, emotional restraint, deep chairs, tray tables etc)
- No national definition, much inconsistency between jurisdictions and sectors
- Widely agreed restrictive practices overused and that stronger regulation is required
- Widely agreed that restrictive practices are physically and psychologically harmful, often do not work and make “challenging behaviour” worse
- Chemical restraint most used and least well-regulated
- Can be driven by systemic factors like old and crumbling facilities, not enough staff and poorly trained staff
- Not regulated at all in settings like education

# Recommendations

- **Mental Health**
- Immediate reduction in seclusion and restraint and elimination within 10 years
- New MHW Act designed to measure and reduce rates of compulsory treatment, seclusion and restraint and to regulate chemical restraint
- New bodies to create proactive strategies towards reduction and elimination of restrictive practices
- Stronger oversight by the MHW Commission
- **Aged Care**
- Concerned restrictive practices are properly justified and authorised rather than with reduction or elimination
- Use based on independent expert assessment and behaviour support plan (BSP)
- Use otherwise prohibited except in emergencies – strictly limited (last resort, proportionate, shortest time, monitoring and informed consent)
- Chemical restraint specified as such on doctor's prescription, psychotropic meds only prescribed by a psychiatrist or geriatrician.
- Deferred to Disability Commission in the interests of equality across sectors.
- **Disability**
- Only used with appropriate legal frameworks as a last resort, proportionate, shortest time, monitoring etc.
- Creation of a Senior Practitioner to approve BSPs, provide advice, oversight, investigation etc
- Banning of particular kinds of restrictive practices – eg. particular kinds of cuffs and holds, solitary confinement of children and young people
- Develop evidence-base, targets and performance indicators to drive down restrictive practices

# Government Response

- Some action in relation to all of the Commission's interim reports and COVID recommendations while Commissions were operating
- Most action has been taken to implement the Aged Care Commission, 60 recommendations, especially in relation to restrictive practices. Numerous pieces of legislation including a new Aged Care Act 2024 (Cth) which comes into effect on 1 July 2025.
- Victorian government pledged to implement all of the recommendations of the Mental Health Commission at the outset and has implemented a new Mental Health and Wellbeing Act 2022 (Vic), but there are concerns about delays and that the government is quietly shelving some recommendations.
- Government's response to Disability Commission has been widely considered to be disappointing. Out of 222 recommendations only 13 were fully accepted or accepted in principle, 130 recommendations were committed to consideration.
- Nevertheless I think they will be a focus of ongoing advocacy and law and policy reform.

# Any Questions


Dr Kay Wilson, Post-Doctoral Research Fellow
Co-Convener of the Disability Law Network, Melbourne Law School, University of Melbourne

kayw1@unimelb.edu.au