**Health and human rights consultation: Highlighting key aspects of legal reform based on the Convention on the Rights of Persons with Disabilities (15pm – 17pm CEST)**

* Panel II: (15:00 to 17:00 CEST): Highlighting key aspects of legal reform based on the Convention on the Rights of Persons with Disabilities

**Professor Penelope Weller**

Thank you for the opportunity to present today. Before I begin, I would like to acknowledge the traditional owners of all the lands on which we meet. Today I am joining you from the lands of the palawa people of lutruwita (Tasmania). I pay my respects to elders past present and emerging and any First Nations people who are joining us today .

I have been asked to give a brief presentation about the law reform recommendations arising from the recent Royal Commission into Victoria's Mental Health System.

To give some context, Victoria is the second most populous state in Australia. 6.5 million people inhabit an area slightly smaller than the United Kingdom with 5 million people living in, or close to, the City of Melbourne.

The Victorian government called the Royal Commission in 2018 in response to growing awareness that the mental health system was crisis driven, inequitable, unsafe and over reliant on coerced treatment.

At the time, new rights based mental health legislation has been in place for 4 years. The Mental Health Act 2014 was supposed to strengthen consumer rights and mandate supported decision making for those who were subject to compulsory mental health treatment. It is uncontroversial to say that the legislation failed.

The Royal Commission conducted a system wide, evidence-based analysis receiving 12,500 contributions. It actively sought guidance and input from those with lived experience. The Commissions public hearings elicited candid and moving accounts that affirmed the toll of a fractured and broken system.

The 4 Volume final report was handed down earlier this year. The volumes provide a comprehensive road map for system transformation based on a human rights approach. The aim is to ensure that mental health and wellbeing services, care and support are of high quality: appropriate, effective integrated, affordable and safe.

The 160 recommendations range from the procurement powers of new regional Mental Health and Wellbeing Boards, to measures to reduce stigma and discrimination, to improved access to housing and to a reinvigorated the mental health workforce. Recommendations include consumer led services, a recovery college and plan for innovation translation, digital and data expertise.

Governance, leadership and accountability are key themes.

Importantly, the Royal Commission recognises restrictive practices as violations of human rights and requires immediate action to ensure the elimination of seclusion and restraint within ten years. The elimination of restrictive practices is to be achieved by clear vision and targets, the use of alternative approaches and comprehensive reporting on and oversight of the use of seclusions, mechanical and chemical restraint. Collaboration between consumers and clinicians will design and implementation reduction initiatives in each service or unit.

With respect to mental health legislation, the Royal Commission recommends that the Mental Health Act 2014 be replaced by a new Mental Health and Wellbeing Act. The new legislation will be the essential foundation of a transformed system. It is hoped it will reduce inequity, protect human rights and shift the focus away from compulsory treatment. The new laws will apply to everyone (not just those who are subject to compulsory treatment). They will establish the new governance structures including the regional Mental Health and Wellbeing Boards, a Mental Health and Well Being Commission and Mental Health and Wellbeing Commissioners, some of whom must be people with lived experience. The Royal Commission envisages that Mental Health and Wellbeing Commission will hold government to account, reinvigorated system leadership and report on and monitor the progress of the Royal Commission’ s recommendations.

One of the most significant recommendations is that the primary objective of the legislation will be to achieve the highest attainable standard of mental health and wellbeing for the people of Victoria. The human rights framing is new. The right to health will be achieved by

* promoting conditions in which people can experience good mental health and wellbeing;
* reducing inequities in access to, and the delivery of, mental health and wellbeing services; and
* providing a diverse range of comprehensive, safe and high-quality mental health and wellbeing services.

In addition, the new legislation will clarifies the roles, responsibilities and governance arrangements; strengthen accountability and monitoring mechanisms; specifies measures to reduce rates of compulsory assessment and treatment, seclusion and restraint; simplifies and clarifies the statutory provisions relating to compulsory assessment; address information sharing and inclusion of an ‘opt out’ mechanism to improve access to independent advocates.

An initial version of the new legislation is being drafted as we speak.

As I have indicated the Royal Commission explicitly recommended the retention of provisions relating to compulsory mental health treatment. The shift of significance is the reframing of compulsory treatment powers as measures of ‘ last resort’. The reframing of is designed to support the transition to a system in which it is no longer necessary to rely on coercion.

The legislation is to be reviewed in 5 years, with co-designed terms of reference. The 5 year review is charged with considering the alignment of mental health laws with the decision-making laws and framework as they apply to others. In other words, the hard work of aligning mental health laws with the CRPD has been deferred to the future.

The gradual approach reflects the Royal Commission’s recognition that the success of mental health legislation lies in broad community understanding and acceptance. The hard lesson from Victoria is that legislative reform alone, cannot drive system change. Transformation of mental health systems must be built on respect for human rights, consensus, collaboration and compassion. The Royal Commission has laid the foundations – and challenges Victorians to work together to build a house where human rights can flourish.