

# TRANSCRIPT

## LEGISLATIVE COUNCIL LEGAL AND SOCIAL ISSUES COMMITTEE

### **Inquiry into Homelessness in Victoria**

Melbourne—Wednesday, 12 August 2020

*(via videoconference)*

#### **MEMBERS**

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**WITNESS**

Dr Colleen Pearce, Public Advocate, Office of the Public Advocate.

**The CHAIR:** Good afternoon, everyone. I would like to declare reopened the Standing Committee on Legal and Social Issues. This is our public hearings of the Inquiry into Homelessness in Victoria. I know I do not need to say it, but I will: committee members, please make sure that your phones are on silent, and maybe keep your mics muted when you are not speaking. Thank you very much to Colleen Pearce, who is from the Office of the Public Advocate, for joining us today. We have today here right now—and we have got some other committee members joining us in a minute—Lee Tarlamis, Tania Maxwell and Kaushaliya Vaghela. And I am Fiona Patten, the Chair of the committee.

Colleen, all evidence taken at this hearing is protected by parliamentary privilege as provided by the *Constitution Act 1975* but also under the standing orders of the Legislative Council. Therefore any information you provide to us today is protected by law. However, any comment repeated outside this hearing may not be protected. Any deliberately false or misleading of the committee may be considered a contempt of Parliament. We are recording this as well as it being broadcast on the World Wide Web. We have the Hansard team listening to every word. They will produce a transcript, which will be sent to you. Ultimately that transcript will be put onto the committee's website and will form part of the committee's final report. Again, thank you so much for joining us here today. If you would like to make some opening remarks and some opening comments, and then we will open it up to a committee discussion. Thank you.

**Dr PEARCE:** Good afternoon, everybody. I would like to thank the committee for your very kind invitation to speak to you today. I would like to begin by acknowledging that I am speaking to you today on the unceded lands of the Wurundjeri people of the Kulin nation. I pay my respects to their [Zoom dropout]—

**The CHAIR:** Colleen, if you can hear me, we have just lost your sound.

**Dr PEARCE:** I do have a formal statement that I would like to read before opening it up to questions. So I will begin. As Victoria's Public Advocate, I am appointed by the Governor in Council, and I am answerable to the Victorian Parliament. I have been in this role since 2007. The main function of the Office of the Public Advocate, which is established under the *Guardianship and Administration Act 2019*, is to promote the human rights of persons with disability. Under that act the Victorian Civil and Administrative Tribunal, VCAT, can appoint the Public Advocate as guardian, a power I can in turn delegate to any of my staff. A guardian acts as a substitute decision-maker of last resort, with decision-making authority for personal matters such as specified by VCAT. This can include, for example, decisions relating to health care, access to services and, most commonly, accommodation decisions. My office also coordinates the community visitors program. Community visitors are independent volunteers empowered by law to visit residential services where people with disability may reside to monitor and advocate for their human rights. These services include supported residential services, disability group homes and acute mental health settings.

My opening statement will not directly touch on the impact of the COVID-19 pandemic except to say that the reality of a public emergency is that it brings pre-existing disadvantage into sharp focus. People who are more reliant on community supports in their day-to-day lives are those who are more likely to be disadvantaged when a public health crisis strikes. My office recently submitted on this topic to the disability royal commission, and I would welcome any questions you may have about the impact of COVID-19 on people with a disability.

I wanted to begin where I often do, and that is with human rights. Australia is a signatory party to the International Covenant on Economic, Social and Cultural Rights, which recognises the rights of every person to a decent standard of living. This is a fundamental and basic human right that goes beyond the sole requirement of receiving shelter to encompass a heap of factors, like affordability, security of tenure and availability of services and accessibility. As you know, Victoria is facing an acute housing crisis, and I would argue that the crisis is disproportionately affecting people with disability.

I will present two stories that illustrate the compounding effects of inadequate housing on people with disabilities. For both of these stories I am using pseudonyms. So I would like to start with Holly. Holly is a guardianship client of my office. Holly has an intellectual disability and experiences severe mental illness and engages in heavy drug use. She has survived significant trauma. Holly has cycled through a variety of

accommodation settings and has at times been homeless. She is also well known to the mental health service system and has spent some time in prison, in custody, so her support needs span a number of service systems. It took a great deal of advocacy, but my office along with the DHHS complex needs service, which is both the MACNI and the support for high-risk tenancies program, were able to obtain an office of housing unit for Holly. She has been very houseproud with this unit. She has kept it clean and would often say until very recently that the unit has been a safe haven for her. It has been a key factor in her wellbeing. Notwithstanding the improvements achieved, it remains that Holly is a highly transient person who engages in harmful behaviours, and lately Holly's drug intake has increased, causing some setbacks. While the unit is still in her name, symptoms of drug-induced psychosis have caused her to be afraid of staying there, and she is currently sleeping rough.

I still stand by that the unit is amongst the most important developments in her life. She now has a fixed address that essentially is in her name and acts as a foundation for her when other aspects of her life may not be going so well. Having a place to call home that is safe and fit for purpose acts as a scaffolding for other supports to be put in place. Holly's housing is secure. It is not reliant on her engaging with services, not reliant on good behaviour, not reliant on having or achieving rehabilitation goals. The most critical feature is that it would not be relinquished if she were hospitalised or incarcerated. Her home is a safe place from which supports can be wrapped around.

For many people with disability who have complex needs and who cannot access adequate housing the risk they face in the absence of a home is homelessness. If they are captured by the health or justice system, the risk is that they will be subject to overly restrictive deprivation of liberties. This is what happened to Rebecca. Rebecca was a person who was the subject of an investigation by the Victorian Ombudsman and for which the opening statement reads that this is 'the saddest case' the Ombudsman has ever reported on during her time as Ombudsman. At the time of the report Rebecca was a 39-year-old woman with a disability who spent over 18 months in prison on remand for breach of an intervention order taken out by her family, who could no longer cope with her behaviours. Whilst in prison she was subjected to 23 hours a day in lockdown, so she had 1 hour a day out of lockdown. This was for breach of an intervention order. She was found unfit to stand trial and not guilty due to mental impairment and yet remained in prison for the simple reason that there was nowhere for her to go. This is a clear case of a person with a disability who, in the absence of community supports and in the wait for different agencies to come together to fund and source adequate housing to enable release, is left to wait in isolation and in serious distress in a prison cell because the correctional services staff are not equipped to support someone with her level of impairment. The failings of the sector to respond to her needs led Rebecca to receive a punishment that far outweighed the offence.

Some people with a disability come to be stuck in the health system, and while this may be less restrictive than prison, it is still a restriction that is at times unnecessary. A hospital will usually not discharge a patient unless there is an assurance of a safe address to be discharged to, and more and more this is dependent on accessing services through the NDIS. In 2019 patients with disability remained in hospital an average of 100 additional days because of delays with the NDIS. Community visitors from my office collect data on long-stay patients in mental health services, and last year identified 92 patients in mental health inpatient services whose duration of stay ranged from three months to 24 years. Some may well have been too unwell to move on, but for many who were clinically ready for discharge there was simply nowhere for them to go. My staff also said in the inverse scenario, where some hospitals face such high pressures to free up beds, they discharge patients to homelessness or to temporary settings like a motel or an Airbnb, and also of course to supported residential services. At times guardians are faced with the difficult decision to consent to a patient being discharged to a less than ideal placement because there are so few options for them to choose from.

In closing, a final comment on the NDIS. The NDIS holds promise for people with a disability, but in many ways it is failing participants with complex needs. Only a small proportion of the estimated 6 per cent of NDIS participants are eligible for SDA, which is the funding category for the bricks and mortar of an accommodation, and the SDA market is slow to develop. As you can imagine, it takes time to develop and build new properties and to find providers who have the financial capability. I hold grave concern about the retraction of DHHS in this space.

I often say that the NDIS gives choice and control to both participants and the providers, and that the providers can and indeed do refuse to take participants who have particularly complex needs, especially if they have a history of involvement with the justice system. My office supports clients who have been refused five, 10, even

15 times by different NDIS-funded accommodation providers. In some disability group homes a person may be forced to remain in a situation where they are subjected to abuse by other residents in their house because there is simply no other alternative. Where there is no accommodation provided that is able or willing, who provides the safety net? Who steps in and assures the service provision when all else fails? Previously DHHS, being the funder of disability services, had leverage to entice or direct service providers to step in, and importantly it had some accommodation of its own to fall back on. But now in the free market there is no designated provider to fall back on. I will say that DHHS is exercising some residual functions, but I am apprehensive about what will happen when they further withdraw.

Housing can make a tremendous difference in enabling people with disability, like Holly and Rebecca, to live meaningful lives. Accessing adequate housing is one of our most fundamental needs and rights as humans. I encourage you to consider people with a disability and mental illness in your recommendations. Thank you very much.

**The CHAIR:** Thank you for those opening remarks. When you look at those pointy ends of disability it is so easy to see how they fall through the cracks. Thank you also for your quite fulsome submission to this committee as well and to this inquiry. I will start off. We have heard from Mind Australia and they also reiterated that really significant issue of people coming out of health facilities into homelessness, or into completely inadequate housing, and also that the type of support that many people with disabilities need to maintain their housing—maintain that home—is missing in the picture. In the short time I have got to ask a question: you touched on supported disability accommodation, and in your submission you talk about providing incentives to encourage supported disability accommodation and development. Have you got any thoughts on what those types of incentives would be?

**Dr PEARCE:** I think those incentives sit fairly and squarely with the commonwealth because they are the funder of SDA, but certainly finding the start-up capital for somebody to consider what the housing options will be is really a major impediment. We do have some examples. The Summer Foundation, for example, is doing some really fantastic work in the area of supporting people with a disability, but by and large one of the issues is the start-up funds to be able to do that. Secondly, it is the incentives to support people to take on complex clients. Those that are eligible for the SDA are often very complex, and it is about the additional supports that they might need, and particularly some of the people with disability who are looking for SDA need what we call 'robust build'. Those builds mean that accommodation has to be very sturdy. They may in fact habitually damage the property that they are in. In some cases it is because of their sensory needs. They may not like walls, they may not like particular things. So for some clients there is significant damage that occurs in a property, and people are unwilling to invest in properties for robust build if in fact we find that the property may be significantly damaged.

**The CHAIR:** You mentioned that I think it was 6 per cent of NDIS clients qualify for SDA. In your experience, do you think actually that we have set the bar too high? I think certainly when you are looking at people with intellectual disabilities, the supported disability accommodation might not look like that robust build that you are talking about, or where people have got significant physical disability, but it might be more about just where the support is more important than the actual architecture of the building.

**Dr PEARCE:** Yes indeed, and I think for people with a disability, we often say, 'We've got a number of people in here in the room. Number off—one, two, three, four, five. You're all going to live together. You're all going to eat together. You're all going to get on a bus together. You're all going to go out together'. And there is absolutely no choice. So one of the fundamental issues is providing people with a disability more choice, and particularly choice about who they live with in their home. Part of that is options to live in smaller units rather than the mini-institutions of five people who have no choice over who they live with.

**The CHAIR:** Thank you, Colleen. Tania?

**Ms MAXWELL:** Welcome, Colleen. Thank you for that very wholesome overview and for your submission. What would you say is probably the most pertinent point to raise with the government in regard to your submission?

**Dr PEARCE:** It is hard to find a single one, but I think the community visitors would argue that people being discharged from mental health services, either into the cycle of homelessness or SRSs, which have no

clinical services, very few support staff and inadequate assistance and where there are often situations of violence that ensue—and then people recycling back into the mental health system. So one would be the issue of discharge from mental health services. Another would be expanding the SDA requirements—that is a commonwealth issue—so more people are eligible, and encouraging incentives for people to build homes. And that might mean additional support, particularly, as I said, where you need what we call a robust build.

**Ms MAXWELL:** Colleen, just one last question, very quickly. Would you say that the government needs to take a closer look at the funding frameworks and allowing that organisation within its own right to be able to reconsider and not have to work to those targets, whether somebody needs two weeks support and another client might need 10 weeks support? That organisation should have the right to be able to support those clients in the best way they see fit, as opposed to, ‘You can only work with one client for six weeks’, which is what we see in a lot of the—

**Dr PEARCE:** Well, of course I would agree with you because I would argue that human rights are vested in the individual and every person’s situation is unique to their set of circumstances, and what applies to me certainly will not apply to you as well. So we should be starting off with the person, particularly the person with the disability, at the heart of the work which we do. We make an individual assessment, and then based on that we set up the systems that are best able to support them.

**Ms MAXWELL:** Thank you.

**The CHAIR:** Thank you. Kaushaliya?

**Ms VAGHELA:** Thanks, Chair. Thanks, Colleen, for your presentation and detailed submission. Now, accommodation, shelter, a house, we consider it as a human rights issue, especially for people who are disabled or facing some sort of disability. Why do you think we have not reached there yet? What are the reasons we have not achieved what we should have achieved and especially for disabled people?

**Dr PEARCE:** Well, I think there is clearly a shortage of social housing, and so when you have got a shortage of housing there is competition for scarce resources. You talk about family violence, people escaping family violence, people with a disability, people with mental illness, let alone a person who is just living in poverty. So there is competition for scarce resources, but people with a disability have particular needs and they often have complex presentations, as in some of the case studies I have given. They may have contact with the criminal justice system, they may have what we might describe as challenging behaviours, they may have difficulty in maintaining a house, so they need additional supports. So the people that I see, the people who are my clients, they are the least likely to be able to find accommodation. We often get such a lot of rejections, and it is because they are clearly unattractive to housing providers. We are often the very last person in line for housing.

**Ms VAGHELA:** Yes, so I wonder how many other Hollys and Rebeccas are out there. You told us a story about two students. I wonder how many are out there.

**Dr PEARCE:** Yes, there are many more. And you see them languishing in other service systems. You see them in the mental health sector. You see them in prisons. You see them in hospitals. And if you look at the individual bed-based cost of either a hospital base or incarceration in prison, the cost is enormously higher. And if we invest that money into social housing, we may be able to reduce some of the pressures on some of the other service systems. And so I would argue that there is a benefit to increasing social housing to enable us to reduce the pressure on other systems.

And I can tell you now I am the guardian for a number of people who are in the justice system who are there only because they cannot get accommodation, so they cannot be released from prison. And if they are released from prison, they are released for a very short period of time because their accommodation is insecure or not appropriate and we find them back in the prison system, where they are unsuitable and they should not be there. And they cause enormous disruption in the prison system because they cannot just manage the basic rules of the prison system itself.

So the cost to society is very great in other areas, and if we think about, for example, the notion of justice reinvestment—reinvesting some of those resources into better social housing and other supports—we may be able to reduce some of the people that we see in prison.

**Ms VAGHELA:** Yes. We hear about youth models and other models for different cohorts—for women, older people. Just a quick one: is there any model or any initiative or program that we can look at specifically which is targeted for disabled people?

**Dr PEARCE:** Look, I think as I said before, the Summer Foundation has some really terrific housing models that certainly I would encourage people to look at; they are doing terrific work. But for some of the people who are far more complex, these are the ones that are costing the state of Victoria enormous amounts of money—some of these people may have packages that exceed \$1 million and I still cannot find them a house. So there is just an enormous problem for the group of people at the acute end of the system who are using up resources in multiple systems. And for those individuals there need to be unique, bespoke options developed.

**Ms VAGHELA:** Thank you.

**The CHAIR:** Thank you. Catherine?

**Dr CUMMING:** Thank you, Fiona. Thank you, Colleen, for your presentation. And you have given me a lot of food for thought, one thing being your last answer that you have got people with, like, half a million dollars sitting there and they are struggling to actually find appropriate housing.

I represent Western Metro and obviously there are a lot of greenfield areas, from Werribee all the way to Sunbury. Do you know how many houses are required for your priority cohort, in the way of people with disabilities or mental illness? And is there a way of even looking in the private sector? Because this committee has had much interest from the private sector, wanting to help homelessness with quality building, and I am feeling that there must be a way—even with this committee and looking at recommendations—to make sure that there is a certain amount of supported disability accommodation developed within the private sector or within these greenfield sites. Colleen, my background is I was on a council for a long time, so I have seen many an application and many large applications for hundreds of houses. And yes, they have always looked for accommodation that is affordable, but there are not many applications that I have ever seen in my 20-plus years that are disability specific in the way of housing applications.

**Dr PEARCE:** Thank you for that question. I cannot give you a figure off the top of my head, but I will take that as a question on notice to get back to you with the quantum of the problem here. In terms of what we need in the encouragement of private investment, certainly with SDA the whole idea is to encourage that private investment through the use of SDA. What we are seeing, as I said, is a very low uptake of that, even when there is an incentive, and we need to look at why that is—why it is that we are not getting the buy-in when there is the incentive that is already there in the marketplace.

**Dr CUMMING:** Yes, so, Colleen, is it the linkages? Is it the linking between the clients and all the services? Is there a missing link?

**Dr PEARCE:** Look, I think the issue really is that the investment that is required for disability housing is far greater than it is for just a normal house, because you have to build in a whole range of accessibility options that you may not have to build into other houses, and I have spoken before about some of my clients who would significantly damage properties. So if you are wanting to invest quite a lot of money into housing and there is an incentive, you certainly are probably going to look for people that are a bit easier on the accommodation than the kinds of clients that I might have in my suite of clients. So I think there need to be more incentives around how we encourage and get builders and those with capital to understand what are the options that are available, that are out there, and how do you actually get people to participate and how do you get people interested in the kinds of houses? Because I have talked about the accommodation needing to be bespoke in some cases, and if you are building kind of standard housing, it certainly will not be suitable for some of the clients that I see.

**Dr CUMMING:** And Colleen, I think the Chair, Fiona, would know—and others that are sitting in this committee—that we have had so much interest from the private sector wanting to help. They obviously are experts in building good-quality homes, and it would not be much of a stretch for them to build them in a robust way for your clients and your clients' needs, especially when we all know that a new build is cheaper than trying to retrofit an old building, so making it quite specific. You would hope, when we understand the quantity that is required and the possibility of ratios when they are doing these new developments, that we could possibly have a certain amount that had that robust build and that specific build in them.

**Dr PEARCE:** Have you had the opportunity to speak to the Summer Foundation?

**The CHAIR:** I do not think we have actually spoken to them, but we have got their submission.

**Dr PEARCE:** I would really encourage you to. They are doing some incredible work, some really innovative work, around how you get housing options off the ground for people with disability, and it would be really worth talking to them about how they have approached it and how they have engaged providers in developing those resources.

**Dr CUMMING:** Thank you, Colleen.

**The CHAIR:** Thanks, Colleen and Catherine. Lee?

**Mr TARLAMIS:** Thank you, Chair, and thank you, Colleen, for presenting today and for your comprehensive submission. One of your recommendations calls for a review into the *Disability Act* and the *Residential Tenancies Act*. I was wondering if you could elaborate a little bit further on the concerns and issues that you are hoping that that review would pick up on and address.

**Dr PEARCE:** Okay, well this is a very complex area, but with the change of us moving away from the state government having responsibility for disability and moving to the commonwealth taking responsibility for some of the safeguarding provisions, we saw a change to the *Residential Tenancies Act*. The kinds of rights that people who live in group homes—I will use that phrase ‘group homes’—had were vested in the *Disability Act*; now they are vested in the *Residential Tenancies Act*. So there are some enormous problems in how the amendments have been constructed and how it affects people with a disability. So, for example, there are now two types of leases: there is the lease that is the normal residential tenancy lease and then there are those agreements that have in-built supports for people with a disability. But if you have a group home, you can only have one sort of lease in a group home, so if one person has a normal residential tenancy lease, then that means everyone in the house has that lease.

So those that might have had protections prior to the changes now are not able to access those same kinds of tenancy protections, and that means it is easier to evict them. They do not have the same protections, such as a period of notice to vacate. There are also other provisions that require people to assist people who might be evicted in finding other forms of accommodation. Service providers generally understood the rights that were inherent in the *Disability Act*. Now we find once it is under the *Residential Tenancies Act* and there is a greater influx of players in the system, they do not understand what those rights are and we are seeing all kinds of anomalies now. But we would say there is certainly a significant reduction in the tenancy safeguards available for people with a disability as a consequence of the changes to the *Disability Act*.

**Mr TARLAMIS:** Thank you.

**The CHAIR:** Thank you. That was an unintended consequence of that. That is really interesting. Just also looking at one of your recommendations, which was around a greater assessment of people coming before the criminal justice system for acquired brain injury or other forms of disability—and certainly in this inquiry and in previous inquiries this committee has done we have heard of the high level of prisoners with ABIs or other permanent intellectual disabilities—I am wondering: if we actually did that proper screening of cognitive impairment, we might find that we find a whole lot of people who are not going to jail, because they do not qualify to be trialled. Do you have any idea of the numbers of people, if we improved our screening protocols, the percentage of prisoners we would be talking about, who would not be trialled, who would not go on trial?

**Dr PEARCE:** I cannot say exactly how many would not proceed to trial, but Corrections Victoria a number of years ago did a study of acquired brain injury, so this comes from Corrections Victoria’s own data. It is a few years old, but they found something like 44 per cent of all male prisoners and 33 per cent of female prisoners had an acquired brain injury. So you add on top of that those where we know there are significant levels of mental illness, and I think there is a reasonably comprehensive screening process; Corrections Victoria could tell us that data. What we do know is there is a very significant number of people in the criminal justice system with some form of disability. And if the screening process—it is not so much as going to trial, but if we were able to wrap supports around those individuals early on, then we would be in a much better position.

One of the programs my office runs is the independent third-person program. So we sit in on police interviews wherever a person has an apparent cognitive impairment. These are volunteers—fantastic, good folk who get up at all hours of the day and night—and last year we sat in on over 3000 police interviews, and that was the tip of the iceberg. The problem with that program is that it is in police standing orders; it is not in legislation. If you are a child and you are arrested by police or being interviewed by police, in law you are required to have an independent person, so why is it that a person with a disability is only in police standing orders, not in legislation?

So we know that there are significant numbers of people at the front end. For some of those, if they are, for example, stealing food and you are able to intervene at that point and say, 'Perhaps they're hungry and perhaps we need to do something there', instead of wasting resources going through the criminal justice system we really need to be able to divert people much earlier, particularly for some of these low-level offences.

**The CHAIR:** Kaushaliya or Tania, do you have further questions? I have got another question, but I will hand it to Kaushaliya.

**Ms VAGHELA:** Just a quick one. The accommodation or the properties for disabled people—as you mentioned, Colleen—would have to be bespoke, which costs more money. And money is always limited—the money that we have. If you were housing minister for a day, to address the homelessness issue, what are the three things you would do, Colleen, with the limited money that we have?

**Dr PEARCE:** Yes, I am very conscious there is a very small slice of the cake, but I would be arguing that people with a disability should be represented in any of the social housing programs. So if it is housing for people who are escaping family violence, a proportion of that should acknowledge that people with a disability are subjected to violence at an enormously high rate. If you are talking about people living in poverty, we know that people with disabilities live below the poverty line. If in the first instance, when you are talking about a cake, you make sure that people with a disability have a seat at the table, that would be really important because too often they are left out altogether and are an afterthought. I have talked about bespoke accommodation—that is for some people. For some people, like the example of Holly—Holly just needed a place. Once she had accommodation you could build other services around her, and although she might at points sleep rough, she does have somewhere—a safe haven—to call home. So I would be saying, 'Make sure people with a disability have a seat at the table. And in any kind of cohort there are older people with a disability. Make sure there are people from non-English-speaking backgrounds who have a disability. Make sure disability is included in everything we are talking about'.

**Ms VAGHELA:** Thank you.

**The CHAIR:** We have got 3 minutes of Colleen's time left. Tania, Lee, Catherine—are you all good? Fantastic. Colleen, in that case I will just spend the next couple of minutes to thank you so much for the work that you do as Public Advocate. You know, I am so sad because I know that there are so many Rebeccas and Hollies out there. The other case studies that you presented in your submission are really important. Thank you for bringing those voices to the table because, as you say, we need those voices at the table, and by bringing them into your submission that helps a little bit in having those people's stories told. This will form an important part of our inquiry and of our final reporting. You have given us—I think probably outside the scope of this inquiry—issues around those police standing orders and about what is acceptable behaviour there and where we should be legislating for support for people with disabilities, but I very much appreciate it. And on behalf of the committee, thank you. You will receive a transcript of today. Please have a look and make sure we have not misrepresented you in any way. So thanks very much. Thank you to the committee. We will be back for our next witness in 15 minutes time, at 2.30 pm. Thank you.

**Dr PEARCE:** Thank you for the opportunity to speak to you today.

**The CHAIR:** Thanks very much.

**Witness withdrew.**