



The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability – Top five FAQs providers are asking us

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Our team has extensive experience acting for clients in Royal Commissions. We have presented at a number of disability sector events recently about the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability and in this alert we address the top five questions disability service providers have been asking.

What should we be doing now to prepare?

1. Allocate an internal team to resource and respond to the Royal Commission and engage with your Board to establish a strategy and approach
2. Check your insurance coverage – you may not be covered for representation before Royal Commissions
3. Get on top of your documents – locate relevant sources of documents/management systems, and users to mobilise to extract records/data for when requests are made.
4. Consider your organisational risk profile – where are you likely to be exposed and have you done everything possible to improve upon and address such risks?
5. Consider whether you need to engage external experts in public relations, risk management, or legal services

For more information on what your organisation can start doing now check out our handy [Royal Commission preparation checklist](#).

Will your insurance cover your legal costs?

You will need to ask your broker/insurance provider whether your insurer will cover the legal costs associated with your preparation/response to any requests/invitations for information from the Royal Commission and legal representation if called to give evidence before the Commission. Insurance policies vary and not all policies will provide coverage for Royal Commissions. Further, new directors and officers policies are increasingly containing exclusions for Royal Commissions.

Also ask about the scope and kind of coverage you may have under your current policy. Some policies may include conditions about the kinds of

People who can help



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current policy. Some policies may include conditions about the kinds of legal assistance you receive. For example, they may allocate you a firm of lawyers rather than allowing you to engage the firm of your choice. It is also important to clarify if you will be required to pay a claims excess and the extent to which making a claim for legal costs will affect your future premiums.

What does it mean for current complaints/regulator investigations?

The Terms of Reference provide that the Royal Commission is not required to inquire into a particular matter if the Commission is satisfied that the matter has been, is being, or will be, sufficiently and appropriately dealt with by the Royal Commission into Aged Care Quality and Safety, another inquiry or investigation or a civil or criminal proceeding.

Practically, this means that providers should endeavor to resolve current and outstanding complaints and investigations with regulators. This will demonstrate a genuine commitment to protecting and promoting the rights of people with disability and continuous improvement. It may also contribute to reducing the likelihood of your service being the subject of detailed inquiry and will reduce the resources and time required to respond to the same issue in multiple forums.

What kinds of documents/information may be requested from service providers?

The Commission's call for submissions from the public suggests it is taking a broad approach to investigating its Terms of Reference; looking beyond instances of violence against, and abuse, neglect and exploitation of, people with a disability and encompassing adequacy and quality of supports and services. The likely information or documents that you may be requested to provide to the the Royal Commission could include:

- Incident reports;
- Internal complaint and investigation records;
- Whistle-blower reports;
- Corporate records including policies, procedures, board/committee agendas and minutes;
- Internal audit reports;
- WHS/OHS reports and records;
- Accreditation reports and quality of service reviews;
- Records related to complaints made to and investigations by external complaints commissions and regulators;
- Continuous improvement registers/initiatives; and
- Social media accounts.

The Royal Commission has extensive powers to compel providers to produce documents. Providers will be required to comply with any requests unless they have a reasonable excuse. What is considered a reasonable excuse for a Royal Commission is very limited. For example, legal professional privilege is not a reasonable excuse, unless another court has found the document subject to privilege or a member of the Commission excludes it from evidence before the Commission after making an assessment that this is the appropriate thing to do. Providers are recommended to obtain legal advice when they are considering making claims for legal professional privilege in respect of documents.

How far back will they inquire?

We understand providers may be concerned about locating records relating to historical incidents from some years back. Furthermore, given the regulatory transformation that has occurred in the disability sector with the roll out of the NDIS its likely many providers have transitioned to electronic records management systems or have implemented new systems. This is likely to mean the task of locating relevant documents

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may be quite challenging and time consuming.

Different documents/information will be subject to different document retention periods. The NDIS Terms of Business for registered providers require the retention of all records to comply with all relevant statutes, regulations, by-laws and requirements of any Commonwealth, State, Territory or Local Authority. For example, where a record, irrespective of its purpose, contains health information about a participant the generally accepted rule is for adults, that the record should be retained for 7 years from the date of last contact. State and Territory disability service funding

agreements may also have specified minimum retention periods for documents relating to service delivery.

We saw with the Royal Commission into Aged Care Quality and Safety that providers were requested to submit information relating to quality of care matters over the preceding 5 years. Disability service providers can likely expect a request for information/documents relating to a similar time-frame given document retention obligations and changes in the sector. Service providers should take steps now to ensure that no records that may be relevant to the Royal Commission are not destroyed.

In the interim, for further resources we encourage you to visit our Royal Commission page [here](#) which is updated regularly with insights and materials. If you would like more information or have any questions, please contact [Emma Turner](#) from our [Disability](#) team.

If you'd like to stay up to date with insights for the disability sector, please [sign up here](#).

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