



ROYAL
COMMISSIONS
& PUBLIC
INQUIRIES

Practice & Potential

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Making public policy in the public interest – the role of public inquiries

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Introduction

It is a good time to be reflecting on the role of public inquiries. In recent years, we have seen them established in unprecedented numbers, yet, arguably, there has never been a time when there has been so much contention and division about so many important public policy issues, and so little trust in government to produce effective policy solutions.

This current situation stands in contrast to the era of economic reform in the 1980s and 1990s, when public inquiries preceded most of the major policy change, yielding large and enduring benefits – the 1979 Campbell *Committee of Inquiry into the Australian Financial System*, the 1993 Hilmer *Independent Committee of Inquiry into National Competition Policy* and the 1991 Industry Commission report on *Energy Generation and Distribution*, to name just three.

What has changed? Have public inquiries lost their ability to foster successful public policies: policies that not only do good, but are accepted as such? If so, does it matter? And what, if anything, can be done? These are some of the questions I address in this chapter, drawing on my years at the Productivity Commission and its predecessors, as well as my involvement in independent reviews such as the 1997 West *Review of Higher Education Policy* and the Prime Minister's *Taskforce on Reducing the Regulatory Burden on Business* appointed in 2005.

What is a public inquiry?

The essence of a public inquiry (by any name) is that it takes place as a discrete activity, with leadership at arms length from the executive and the bureaucracy. A public inquiry is appointed by, and provides recommendations to, government, but has no power or role in relation to implementation or subsequent administration. In other words, a typical inquiry provides policy-relevant information and advice at the front end of the policy cycle, on a take-it-or-leave-it basis. A key feature of that advice is its “publicness”, responding to public terms of reference, drawing on public submissions, and, ultimately, reporting publicly.

The broad definition I use goes beyond the standard scholarly definition (Prasser 2006: 15) to include reviews conducted by the Productivity Commission, a standing body within the machinery of government. The inquiries that the Productivity Commission conducts share the ad hoc and once-off character of royal commissions and other public inquiries into important policy issues, and they have made a major contribution over the years to public policymaking. My definition, however, does not extend to parliamentary inquiries, which, though relevant, are birds of a different feather.

How can a public inquiry add value?

It seems self-evident from the extensive use of public inquiries that governments see considerable value in them. The motivation to undertake an arms-length review, from a policy perspective, generally falls into one or more of three categories. They seek to either:

1. vindicate or substantiate a policy course already being followed or intended (eg the 2010 Orgill *Building the Education Revolution Implementation Taskforce* [see chapter 14: Makin and Humphreys] or the 2010 *Fair Work Act Review Panel*);
2. determine how preferred policy directions should be framed or designed (eg the Productivity Commission's

2009 *Paid Parental Leave: Support for Parents with New Born Children* and 2011 *Disability Care and Support* reports); or

3. help establish what the policy approach in a specific area should be, whether by reviewing existing policies (eg taxation) or addressing a “new” issue (eg greenhouse or population ageing).

It is sometimes suggested that governments can be motivated more by the desire to avoid having to take policy action, or at least defer the need for it. Such intent is no doubt real, but it can be subsumed within other motives. No action effectively means supporting the policy status quo (first motive); and deferring action, which though maligned is often a beneficial strategy all round, is merely about the timing of all three. Similarly, the occasional attraction of public inquiries as a means of showing concern for an issue of (temporary) importance to the public without having to do anything substantive about it, would fall into the first category, if it succeeded.

My principal interest, however, is not just in how inquiries can help governments get what they want, but rather in how they can help obtain better outcomes for society. Ultimately, if Harry S. Truman’s dictum that “good policy is good politics” is correct, as I believe it is, there should be little difference, though it appears that currently, this is not widely believed.

The question of how public inquiries contribute to achieving better policy outcomes for society is best answered by considering separately two dimensions of the policy challenge: the *technical* – determining what to do; and the *political* – getting it agreed. There is a third dimension, getting it *implemented*, which is just as important, but outside the bounds of this chapter.

Technical support

Contrary to popular opinion, few solutions to policy problems are self-evident or can be lifted from a textbook, or even from another coun-

try’s practice. Some analysis of the specific nature of the problem and likely impacts of different options, including their interaction with existing policies, is generally required. For the bureaucracy, this policy work is core business, but, depending on the issue, there will not always be the necessary skills on tap, especially if more specialised or in-depth research is required, or the capacity and latitude to undertake necessary public consultations. Policy problems that cut across different portfolios or jurisdictions, or are new or highly contentious, particularly need this outside help.

Arguably, in recent years the need for independent technical advice has grown. For one thing, the analytical capacity of the bureaucracy appears to be in decline. Few departments today have in-house research units, and generalists have been displacing specialists at key levels in the public bureaucracy. This development goes some way to explaining why the Productivity Commission has been able to extend its influence into areas of policy that in earlier years would have been jealously guarded by responsible departments, and why departments increasingly rely on external consultancies, even for core policy development activities.

Budgetary pressure impacting on training and research is one factor that goes part of the way to explaining this shift. Other more fundamental contributors have been the shift to an ethos of responsiveness (read “passivity” and “reactiveness”) in the public service, the related power shift to ministerial offices, and the consequently reduced attractiveness of a public service career for smart analysts – compounded no doubt by the rise in alternative sources of employment.

At the same time, the scope for public servants to engage externally in the development and design of policy appears to be more circumscribed. There have been a number of policy mishaps in recent years with unintended consequences that even cursory consultation with business would have helped avoid, such as the ill-fated initial changes to tax rules for employee shares schemes, announced ahead of the Productivity Commission’s 2009 inquiry into *Executive Remuneration in Australia*.

In this context, public inquiries provide a means of marshalling dedicated expertise as well as enabling public consultation on policy options to occur without exposing government politically. For an incoming government, which may feel uncertain about the capability or inclination of incumbent bureaucrats, they offer the further advantage of providing some control over who does the job.

Political benefits

While public inquiries can help address technical challenges in policy development, their ability to improve the *politics* of policy change can be even more important. There are multiple dimensions to this:

- first, a policy initiative based on the advice of credible outside experts will generally be easier to sell to the public and parliament (eg the 1993 Hilmer *Inquiry into National Competition Policy*);
- second, and a closely related consideration, is that public inquiry processes can serve to educate and inform the public and help build broad support for policy change (eg the Productivity Commission's 2011 *Disability Care and Support* report);
- third, public inquiries can diminish the credibility and influence of special interest groups, by exposing self-serving arguments and demonstrating adverse impacts on the community (eg Productivity Commission's 2011 *Gambling* report);
- fourth, they can enable a government to credibly defer taking action in response to an emerging issue, allowing time for some of the heat or fuss to subside, as well as enabling a more considered response (eg the Productivity Commission's 2009 review of *Executive Remuneration in Australia*);

- fifth, public inquiries can provide an opportunity for government to observe the behaviour of different interest groups and how they react to different policy proposals, leading to better informed political judgements (eg the Industry Commission's 1998 *Private Health Insurance* inquiry);
- finally, in helping governments deliver policies that work and that demonstrably benefit the community, public inquiries can engender public support for genuine reform and promote trust in government itself.

A potential downside, politically of course, is that, once in train, public inquiries can make it harder for a government to avoid adopting the policy options recommended (eg the 2005 *Taskforce on Reducing the Regulatory Burden on Business*, the various gambling inquiries by the Productivity Commission and Ross Garnaut's first *Climate Change Review* released in 2008).

For an incoming government, public inquiries can have further distinct political advantages. They can provide a plausible pretext for modifying problematic parts of a policy platform developed in Opposition. They can also provide an authoritative base for dismantling a policy introduced by a government's predecessors, in circumstances where this may otherwise be contentious or interpreted as merely ideological. In this way, they may lead to policy outcomes that are not only in the public interest, but also are less vulnerable to reversal with the next change of government. A current example is in the field of industrial relations, where the Coalition has signalled that it will ask the Productivity Commission to undertake a thorough review of the existing regulatory framework, on the strength of which it would take any substantive reform proposals to the subsequent election.

What connotes success?

It follows that, to be judged successful from a public interest perspective, an inquiry needs to achieve more than having an impact on policy; it needs to have an impact that is likely to lead to better outcomes.

Various examples come to mind of inquiries, or at least key recommendations, that managed to pass the first test, leading to policy change, but failed the second test, improving outcomes in the public interest. A recent case is the 2008 parliamentary inquiry into coastal shipping which led to legislative changes that may benefit Australian ship making and the local marine workforce, but at significant net cost to the Australian economy and community.

By the same token, there have been many review recommendations that would have passed the second test, but did not clear the first hurdle. The Productivity Commission has a long list, including its 2010 inquiry into restrictions on book imports; its 2011 recommendation for a public interest test in anti-dumping processes; and, from the Howard Government era, its 2000 broadcasting inquiry; and its 2007 inquiry recommending an end to freight-equalisation subsidies for Bass Strait shipping.

Occasionally, a public inquiry will fail on *all* counts, its recommendations neither being taken forward by government nor likely to benefit the community in the long term. A very recent example is the Finkelstein Inquiry recommendations relating to freedom of the press (see chapter 9: Tiffen).

Increasing the prospects of inquiry success

So what are the preconditions for an effective inquiry? There are at least six determinants of success that are within the control of government.

Selecting the right topic

Public inquiries generally involve considerable set-up costs and extensive public participation. The use of this mechanism for policy advice therefore needs to be reserved for issues that warrant the effort. Generally, inquiries are best suited to issues that are technically complex and politically contentious, and where there is much at stake for society in getting it right. Complexity alone is unlikely to provide sufficient justification, as experts can always be called in without the need for a full-blown in-

quiry. However, an issue that is not technically complex, but is highly contentious or has the potential to create winners and losers could still warrant an arms-length review if the gains from getting the policy right are potentially large. Tariff protection is a case in point, an area where reforms in the national interest confront strong and politically influential resistance from sectional interests. Inquiries have enabled claims to be publicly scrutinised, faulty arguments exposed, and the benefits and beneficiaries from specific reforms to be identified and quantified.

Scanning the large number of reviews that have taken place during the past decade, it is hard to find many that involved no political sensitivity at all. Most reviews address issues or topics where the benefits from improved policy outcomes would more than outweigh the costs of the review. However, the stakes for the public interest vary greatly. This is true even for Productivity Commission reviews, where significant effort is devoted to screening and selecting topics. In recent years, the Commission has, at one end of the scale, undertaken reviews on topics as diverse as private health insurance, consumer policy, electricity network regulation and broadcasting; and, at the other, battery egg sales in the ACT and reviews of local government exemptions from Section 20 of the *Trade Practices Act*.

Perversely, the sheer number of reviews at any one time will diminish their contribution, even when there is no doubt about the significance of the policy issues. For example, early in the first Rudd administration, major reviews were simultaneously underway for higher education, health and hospitals, taxation, defence, climate change, innovation, quarantine, 457 migration visas, national infrastructure, and assistance to the car and textiles industries. This is aside from several important inquiries by the Productivity Commission covering consumer policy, paid parental leave, and drought policy, and many other reviews of less important matters.

The failure of some of these inquiries to realise their potential can be attributed, at least in part, to the inability of government to give them the attention they needed, particularly at the crucial response and implemen-

tation stage. Arguably, advancing tax reform or health system reform alone on the scale envisaged could have fully occupied the first term of even the most ambitious government.

Asking the right questions

The old saying about “ask a silly question” is apt for public inquiries. The potential of an inquiry to contribute to good policy depends heavily on what is expressly asked of it. An inquiry has to be directed by the commissioning government. It cannot be allowed to become a happy hunting ground or loose cannon. However, if it is directed in its brief to do unproductive things, or is excluded from doing certain things that, from a public interest perspective, should be examined, then the inquiry is predestined for failure, or at least to making a lesser contribution.

The Productivity Commission has two procedural protections against “silly questions”. One is the convention that terms of reference for a prospective inquiry are first given in draft form. This is principally intended to ensure that the task is comprehensible and feasible, but also serves to elicit comments on scope and utility that can help avert later problems. The second protection is the provision in the Commission’s enabling legislation that permits it to consider any matters relevant to the task at hand, even if these are not specifically mentioned in the terms of reference. This has helped ensure that the Commission can address issues that are important to a good outcome, but which may only emerge in the course of public consultations or research.

In some cases, government may wish to exclude some part of the policy terrain from a review. While this is procedurally legitimate, and indeed understandable, to avoid debilitating the inquiry, the excluded issues need to be “separable” and not integral to the main thrust of the review.

In the Industry Commission’s 1998 *Private Health Insurance* inquiry, the rest of the health system was ruled out of scope because at that time the government was responding to a more narrowly targeted community concern about price rises for health premiums. While this veto was

respected, the Commission felt it necessary to consider different possible reform directions for the health machine as a whole, to ensure that recommendations to improve this one “cog” would be complementary.

The Henry *Australia’s Future Tax System Review*, set up in 2008, was presented with a much bigger obstacle in seeking to reform Australia’s tax system without being able to recommend changes to the GST. This was not a “separable” matter and, while the Henry Tax Review came up with an alternative proposal for putting more weight on the consumption base, its report was handicapped and its value diminished. The issue, of course, has not gone away. Indeed, momentum has been gradually building over the past couple of years for the GST to be restored to the tax policy agenda. However, this will now require new policy foundations to be laid and valuable time has been lost.

The *Fair Work Act Review Panel* appointed in 2010 contained no explicit exclusions, but its terms of reference were framed to ensure a focus on legalistic aspects of the Act’s implementation, rather than broader impacts on industry and the economy. This was justified on the basis that it was merely a post-implementation review, triggered by the failure to undertake a regulation impact statement when the regulations were being formulated. However, as the Productivity Commission has argued, a post implementation review should be as wide in scope as the regulation impact statement for which it is effectively a substitute. The final report of the panel was welcomed by unions and many of its recommendations were accepted by government. However, business groups expressed disappointment that the review had not addressed their substantive concerns, arguing that the inquiry should have been conducted by the Productivity Commission. A member of the review panel defended the report by asserting that the Commission could have done no better given the same terms of reference, ignoring the Commission’s economy-wide analytical framework and its statutory ability to look at related matters.

Getting the timing right

In the art of comedy, timing is everything. The same could be said about public inquiries. While provoking laughter may not be as positive a sign for an inquiry as it is for comedy, timing can make the difference between success and failure.

Choosing the right time to hold an inquiry is a first rule for success – “the right thing at the wrong time is the *wrong* thing.” For example, if the political obstacles to desirable change in some policy areas vary inversely with business conditions, it will generally be better to tackle such areas when business conditions are good. It was ironic, for instance, that the long-awaited National Competition Policy *Review of Australia’s Anti-Dumping and Countervailing System* (which protects imports from “unfairly low” prices) was finally sent to the Productivity Commission in 2010 when an appreciated dollar was placing extra competitive pressure on local manufacturers. The predictable outcome was rejection of the Commission’s key public interest recommendation and the recasting of the anti-dumping regime to make it more receptive to an industry’s complaints about imports.

For similar reasons, it is not wise for an inquiry on a sensitive matter to report near the time of an election. Regardless of its merits, the report will inevitably become a political football. This was no doubt part of the story with the Henry Tax Review, compounded in that case by the government having had the report for six months before releasing it and then choosing to respond only to the politically most contentious recommendations, in isolation from other balancing proposals.

There have been plenty of examples over the years of Productivity Commission reports being rejected, or responses to them distorted, because of a looming election, to the point where in later years, the Commission found pretexts for delaying the completion of a number of its draft reports, knowing that they would be better received and more influential if released after the election.

Conversely, there can be a political gain in initiating an inquiry in the lead up to an election. A government is thereby seen to be taking an issue seriously, while ensuring that no action will be necessary until the next term, which will possibly have to be undertaken by the other side. At the Productivity Commission, the arrival of a pork inquiry (an industry that spans key electorates) invariably heralded a looming election.

Another important consideration is duration – the time allowed for an inquiry. If consultation is to be more than a token gesture, it is hard to complete a public inquiry in less than six months. There are, of course, plenty of examples of reviews meeting tighter deadlines (see chapter 10: Flood), but they are not heavily represented among the success stories.

A short sharp review can help government get the answer it needs in a politically convenient timeframe, depending on who undertakes it. But in most cases, lack of consultation will rebound on a review’s credibility and reduce its political value. It can also make it hard to get the right answer where complexity is a factor. These sorts of issues clouded the public’s reaction to such reports as the Howard Government’s 2007 review of carbon abatement policies and the Gillard Government’s 2011 review of population policy.

Selecting the right people (in the right settings)

The contribution an inquiry can make often comes down to who does the job and what incentives or disciplines they face. Getting either the personnel or the settings wrong can predestine failure against at least one of the dual tests of “influence” and “outcome”. Controversy around appointments makes it hard for an inquiry to develop the public credibility it needs. Over the years, a number of major inquiries have started off badly in this respect, including the 2006 Warburton-Hendy *International Comparisons of Australian Taxes Review*; the 1997 West *Review of Higher Education*; the 2008 Bracks *Inquiry into the Automotive Industry*; the 2010 Orgill *Building the Education Revolution Implementation Taskforce*; and the 2012 McCallum *Fair Work Act Review Panel*.

The qualities of the people involved in an inquiry and the governance arrangements under which they operate are interconnected, and some trade-offs between them may be possible, depending on the topic under review.

The minimum requirement for personnel could be expressed as “competence without conflicts”. Desirable additional qualities are integrity, openness of mind, and independence of spirit. Admittedly, these are demanding requirements, and people with all of these are not in abundant supply.

Governments will often be torn between their natural inclination to appoint a person they trust and the desirability of that person having wider credibility.

There will generally be scope to find such people if a government tries hard enough. “Trying hard” is important as such appointments typically receive intense scrutiny from interested stakeholders. They will rightly see the qualities and connections of an appointee as having an important bearing on their chances of at least getting a good hearing, if not the outcome they want. A review that cannot withstand such scrutiny will struggle to get broad participation in its processes, and for its recommendations to be accepted as being in the public interest.

Equally important are the governance arrangements of an inquiry. Arguably, the more independent the institutional setting, and the more rigorous and transparent its procedures, the less reliance needs to be placed on the qualities of the appointees heading it. A secret of the success of the Productivity Commission and its predecessors in producing consistently good reports, notwithstanding the unavoidable variation in the abilities of the outside appointees to specific inquiries, lies in the quality of its processes and the dedication of its core support staff.

Many public inquiries are supported by departmental secretariats. This has pros and cons, depending on the topic and the department. Central agencies have generally performed better than line agencies, re-

flecting their broader responsibilities. The 1993 Hilmer *National Competition Policy Review* is a good example, contrasting with the 2004 Hogan *Review of Pricing Arrangements in Residential Aged Care*. The 2005 *Rethinking Regulation Taskforce* was allocated a secretariat drawn from several departments, with representation also from the Productivity Commission. This proved challenging to manage, but was ultimately very effective.

A recent development is the appointment of departmental heads alongside external appointees to lead policy reviews. In 2007, Peter Shergold, Secretary of the Department of Prime Minister and Cabinet, chaired the *Prime Ministerial Task Force Group on Emissions Trading*. A year later Jeff Harmer, Secretary of the Department of Families, Housing, Community Services and Indigenous Affairs, led the *Pension Review*. And the Secretary of Treasury, Ken Henry was appointed in 2008 to chair the *Australian Future Tax System Review Panel*. This approach benefits from the undoubted policy skills and experience of agency heads, but deprives a government of the benefits to be gained from “deniability” and policy learning at one step remove. And there will always be suspicions that the inquiry’s findings and recommendations have been discussed with government ministers in advance. This is an understandable concern, one from which even arms-length reviews are not immune.

Such considerations may have been behind former Prime Minister Rudd’s use of the term “commission” in his early references to the Henry Tax Review. The fact that the Review did not have the independence commensurate with that terminology made it hard to persist with the title. The lack of separation from government also made it hard for the review to issue preliminary recommendations for public scrutiny and debate. If it had, much of the subsequent political fallout might have been averted.

Ensuring transparency

Transparency is a key dimension of a successful inquiry and a key source of the value an inquiry can add to public policy development.

Public servants, despite their title, are neither trained nor encouraged to be open with the public, at least not when it comes to policy matters. Their main connection to the public is through their minister. Ministers vary in attitude and inclination, but most do not want their departments to be out consulting publicly on sensitive policy matters. For one thing, anything revealed or said by departmental officials is likely to be interpreted as the minister's or government's own views.

For another, an arms-length review enables findings to be tested and policy options floated without implicating government itself. It is an opportunity to learn about likely reactions to different courses of action without incurring the political pain of actually experiencing them. Moreover, the public testing of preliminary ideas can serve to reveal unintended potential consequences while there is still the opportunity to avert them, and to do so on the front foot.

Transparency amounts to more than mere consultation. A lot of policy consultations and conversations take place without transmitting meaningful information. Transparency requires that relevant interests be fully informed about the nature of a policy problem, and how particular proposals might be expected to address them. In other words, it requires that people understand what is going on in the minds of policy makers, so that they are in a position of being able to tell government whether that accords with their own experience and how they are likely to be affected by particular measures.

When done openly and thoroughly, consultation can have great informational and political value, as exemplified by the Productivity Commission's 2005 inquiry into the *Impact of Competition Policy Reforms on Rural and Regional Australia*. Private or poorly conducted consultations, on the other hand, can result in bad policy decisions because they are vulnerable to capture by the organised or the "impassioned", whose interests rarely coincide with those of the wider community.

To the extent that there is anything akin to revealed truth in public policy, it depends more on iteration than revelation. In public inquiries

the key conduits for this are the public availability of submissions and, importantly, the exposure of preliminary findings and recommendations.

There are few inquiries that would not benefit from feedback on draft findings. The convention that no recommendations from the Productivity Commission go to government without first having been circulated in a draft report has been crucial to the Commission's effectiveness. In many cases, as a result of feedback, the final recommendations have differed significantly from those in its draft reports.

Yet there are still many instances of public inquiries where submissions are released late, or kept secret, or where recommendations are not tested in advance. The lack of a draft report might have been a factor in undoing the proposals on mining taxation in the Henry Tax Review and in reinforcing suspicions that the McCallum *Fair Work Act Review Panel* was merely about endorsing the status quo and closing down debate.

Handling the report well

Even the best inquiry may come to nought if its report is mishandled. The key point is that a public inquiry is only one input into policy decision-making. Ultimately, decisions will be made in the political realm, where the views and skills of leaders – including how they read the politics and their capacity to influence opinion – play a decisive role.

Government may find a report's key recommendations unpalatable on ideological or political grounds (assuming it is technically sound) and simply reject them out of hand. Vintage examples of reports meeting this fate include former Prime Minister John Howard's rejection of the Productivity Commission's draft recommendation to remove subsidies for Bass Strait shipping the night before the report was released, and the pre-emptive rejection of "student centred funding" (vouchers) following the West Review. A more contemporary case is the Productivity Commission's inquiry into "default" superannuation provisions in industrial awards where, prior to the finalisation of the report, the minister publicly

indicated a policy position on the union funds' role that was contrary to the Commission's draft recommendation.

The rejection or setting aside of key recommendations need not negate an inquiry's longer-term value. Many inquiries have had their recommendations spurned initially, only to have them revisited and implemented at a later date, following a change of government or in a different political climate. Taxation is a classic example. Recommendations of the *Asprey Taxation Review Committee*, commissioned by the McMahon Coalition Government in 1972, languished for over a decade before being revived under the Hawke Labor Government, with a further decade passing before one of the recommendations, for a consumption tax, was finally implemented. The report of the Henry Tax Review similarly contains many recommendations of enduring relevance, despite the short shrift they received. Tariff reform provides another illustration, with the Industry Assistance Commission's advocacy of top-down general reductions taking several years to be reflected in policy, again under the Hawke Government. And developments in higher education financing and regulation have seen many of the West Review's proposals gradually adopted over time. It can take quite a while for novel policy ideas to be properly understood and to gain acceptance.

Even where a government is broadly supportive of an inquiry's findings from the outset, a number of factors influence eventual implementation. How and when government chooses to release the inquiry report, relative to its own response, is crucial. There is no rule book here; it is a matter for political judgment. There are two main options, either to release a report ahead of a full response, or to release the report and announce the response at the same time. Both options have been exercised often, but not always to good effect.

Early release of a report enables additional lobbying to occur. At this point, the lobbying will be politically directed and take place behind closed doors, negating the transparency value of the public inquiry. This can be particularly difficult with a minority government, where advocacy

groups can target those individual parliamentarians who find themselves fortuitously in a position of great influence, but who may lack the knowledge or incentive to distinguish the national interest from their own electoral or personal interests. The unsatisfactory outcomes for gambling regulation and carbon policy for the Gillard Government were in large part due to the leverage that pressure groups were able to apply through one or two independent parliamentarians. Early release is therefore best reserved for reports where complexity and implementation detail warrant additional testing, or where for some reason there has been no opportunity to adequately test a report's findings in advance.

Simultaneous release is most valuable where an issue is politically contentious, where due process has been upheld, and of course where government is confident that the recommended course of action is in the best interests of the public.

The worst strategy is to keep a report under wraps for too long, or not to respond to it at all. This can only serve to diminish the standing and the value of a public review. The first tactic has recently been adopted by some state governments for their commission of audit reports. An ironic instance of non-response is the Commonwealth's failure to respond to a review it commissioned in 2009 from the Australian Law Reform Commission into the efficiency and effectiveness of public inquiries (see chapter 1: Croucher). A good feature of the Productivity Commission legislation is a requirement that all inquiry reports be tabled in the Commonwealth Parliament within 25 sitting days.

Irrespective of timing, the outcomes of an inquiry will depend on how skilfully any negotiations are conducted. This is not just about clinching a deal (any deal) for the sake of early agreement and a triumphant press conference, as the Rudd Government's decision on a minerals resource rent tax (RSPT) shows. The policy which emerged from quick and exclusive negotiations might best be characterised as throwing the revenue baby out with the RSPT bathwater. Another, less extreme, example was the Coalition government's deal with the Australian Demo-

crats a decade earlier to get the Goods and Services Tax (GST) over the line. To succeed in introducing a consumption-based tax, even an imperfect one, was preferable to failing for a third time, but the exemptions and design inflexibility that formed the *quid pro quo* have left an increasingly costly legacy.

Political negotiation can be rendered more tractable where an inquiry has helped educate the public about what is at stake. The negotiations leading to the introduction of the National Disability Insurance Scheme and the Opposition's support for the policy were assisted by the broadening of the public's own understanding as a result of the Productivity Commission's inquiry. The inquiry report was frequently invoked in the public debate.

The same could not be said of gambling reform, where sound evidence, broad community support and even signs of political will ultimately failed to prevail over vested interests. The gambling story shows how political deals can weaken the integrity of a policy package. Removing a measure that is complementary to others, or changing the sequencing of a carefully devised program rollout may end up strengthening the hand of those opposing reform. In the gambling case, the perceived need for speed to satisfy a key independent member of parliament, contrary to the more cautious, incremental approach advised by the Productivity Commission, meant the undoing of real reform.

Conclusion

A long-term observer of the Australian scene might easily conclude that the quality of public policy in this country is inversely related to its quantity, and that this holds true most strongly in times of plenty.

The accumulated deadweight cost of poor policy is substantial. But, as Adam Smith reportedly replied to a young Hanrahan of his time, "Be assured, my young friend, there is a great deal of ruin in a nation." Smith himself, however, campaigned consistently and eloquently against poli-

cies (such as protectionism) that he saw as potentially the most ruinous. There are certain areas of policy where bad decisions inflict a particularly heavy price. Unfortunately, these tend to be the policy areas with a greater predisposition to poor decision-making, areas where complexity and ignorance can be exploited to benefit special interests rather than the public interest.

Well-targeted and properly conducted public inquiries provide a useful mechanism for penetrating complexity, and countering asymmetric political pressures on government. There is more reason to employ such arrangements today than ever before. Loss of policy analytic capability within the public service, compounded by erosion of procedural protections, have in some areas made policy "co-production" with special commissions and taskforces more of a necessity than a luxury.

Experience tells us that governments do not always resort to public inquiries with noble intent. Yet when they do, there are pitfalls to avoid if their goal is to be realised. For one thing, it is crucial that the right topics be addressed in the right timeframes, and not too many at any one time; for another, the reviews need to be conducted by the right people, who are acting under the right governance arrangements. Even when all these boxes have been ticked, a successful outcome is still not assured. How well the commissioning government handles the inquiry's report will often be a deciding factor.

All that being said, policy experience in sensitive areas suggests that even a poorly structured public inquiry may sometimes be better than the alternative.

Public inquiries mentioned in chapter

(in chronological order by year of appointment, with name of chair)

- Taxation Review Committee* (Asprey: 1972)
Committee of Inquiry into the Australian Financial System (Campbell: 1979)
Independent Committee of Inquiry into National Competition Policy (Hilmer: 1993)
Review of Higher Education Policy (West: 1997)
Review of Pricing Arrangements in Residential Aged Care (Hogan: 2004)
Taskforce on Reducing the Regulatory Burden on Business (Banks: 2005)
International Comparison of Australian Tax: Comparison Review (Warburton and Henry: 2006)
Prime Ministerial Task Force Group on Emissions Trading Scheme (Shergold: 2006)
Climate Change Review (Garnaut: 2007)
Australian Future Tax System Review Panel (Henry: 2008)
Pension Review (Harmer: 2008)
Inquiry into the Automotive Industry (Bracks: 2008)
Fair Work Act Review Panel (McCallum: 2010)
Building the Education Revolution Implementation Taskforce (Orgill: 2010)
Independent Inquiry into the Media and Media Regulation (Finkelstein: 2011)

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Endnotes

- 1 This chapter is adapted from the *Inaugural Peter Karmel Lecture in Public Policy*, hosted by the Academy of the Social Sciences in Australia in conjunction with the Australian New Zealand School of Government and delivered at the Shine Dome, Canberra on 3 July 2013.

Section 3

What inquiries do and how they do it

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Governments have various reasons for their persistence in creating new independent external inquiries, but the major impetus comes from a desire to be seen as rational decision makers, relying on the best available evidence to make decisions that serve the public interest. For the appearance of rational policymaking in the public interest, a public inquiry is an instrument without peer.

In modern government, the stakes for rational guidance for policy decisions are high. Governments risk losing trust and legitimacy if their decisions appear to be purely political, serving narrow or partisan interests at the expense of other groups in society. The best public inquiries gather evidence, conduct research, garner expert advice, establish facts, provide analysis, test ideas, assess options and propose a solution, appropriate action or a way forward. The report of an independent public inquiry ideally is a key instrument for legitimisation of government action, an assurance that national rather than sectional interests are being served.

With seemingly limitless demands on the public purse, the need to justify policy decisions in terms of the best available evidence is paramount. A government which rolls out untested or heavily contested programs requiring large-scale public investment or takes legislative action without a strong rationale is acting irresponsibly, failing the first principles of good governance. Evidence is clearly not everything – politics as well as policy have a large part to play in government decision-making; the two need to find a proper balance. But evidence is critically important to good public policy and sound political decisions. The