

# **Royal commissions and public inquiries: Do we need them?**

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**5 May**

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**Why study public inquiries?**

**Definition?**

**History**

**Issues: appointment, impact, flaws & need**

**Why study public inquiries?**

# Why study public inquiries ?

- **Long history and continuing use**
- **Signposts and impacts:** pensions, tax, education, health, financial deregulation, corruption, calamities, housing costs
- **Rich sources of data/information**
- **Key issues** in political science & policy
  - why appointed, impact, where fit in modern govt
  - ignored eg *Australian Study of Politics* (2009)
- **New legislation:** Vic/SA/NZ//UK

# **Definition**

**And what they are – and what  
they are not**

**Types of public inquiries**

# Definition of public inquiries

- **Temporary, ad hoc bodies**
- **Appointed only by executive govt**
- **Members outside of govt**
- **Public processes and reports**
- **Provide advice on:**
  - **policy issues**
  - **investigate scandals**
- **Recommendations only**
- **NOT: parl cmtees or ‘judicial inquiries’**

# Types of public inquiries

- **Statutory** – eg royal commissions – coercive powers of investigation – high status – policy and inquisitorial (scandals/disasters)
- **Non-statutory** – task forces, committees – reviews policy issues, areas and institutions – no powers – eg *Wallis Review Financial Deregulation*
- **Most non-statutory** – 90% all inquiries

# Public inquiries in government advisory architecture

<b>Ministerial advisers Cabinet committees</b>	<b>Department policy units, project teams</b>	<b>Inter-departmental committees</b>	<b>Consultants</b>	<b>Research bureaux</b>	<b>Parliamentary committees</b>	<b>Permanent advisory commissions</b>	<b>Public inquiries (committees, task forces, reviews royal commissions)</b>
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**Closeness to government and level of control**



**Decreasing levels of government control and increasing perceptions of independence**

**Degree of perceived independence from government**

# **Some history**

**Where do they come from and  
how have we used them?**



# Origin

- All govts seek advice from outside
- UK: RCs traced to 1085
- UK 19thC 400 RCs appointed
- US has presidential commissions
- Colonies, then States appted many
- Australia 12<sup>th</sup> Act of new parliament  
*RC Act 1902* (copied from NSW)
- 139 Cmth RCs since 1901
- 500 other inquiries

# First Cmth royal commissions

- **First Cmth RC 1902** – investigate into condition of ship returned soldiers – seen by press as a **‘whitewash’**
- **Second RC 1903** – advise location of capital – Albury or Tumut – **ignored**

# Key Cmth royal commissions

- Aged Pensions (1905)
- Postal Services (1908)
- Health (1925)
- Television (1953)
- Espionage (1954)
- Ship Painters' & Dockers' Union (1981)
- Aboriginal Deaths in Custody (1987)
- Institutional responses child sexual abuse (2013)
- Aged Care (2018)

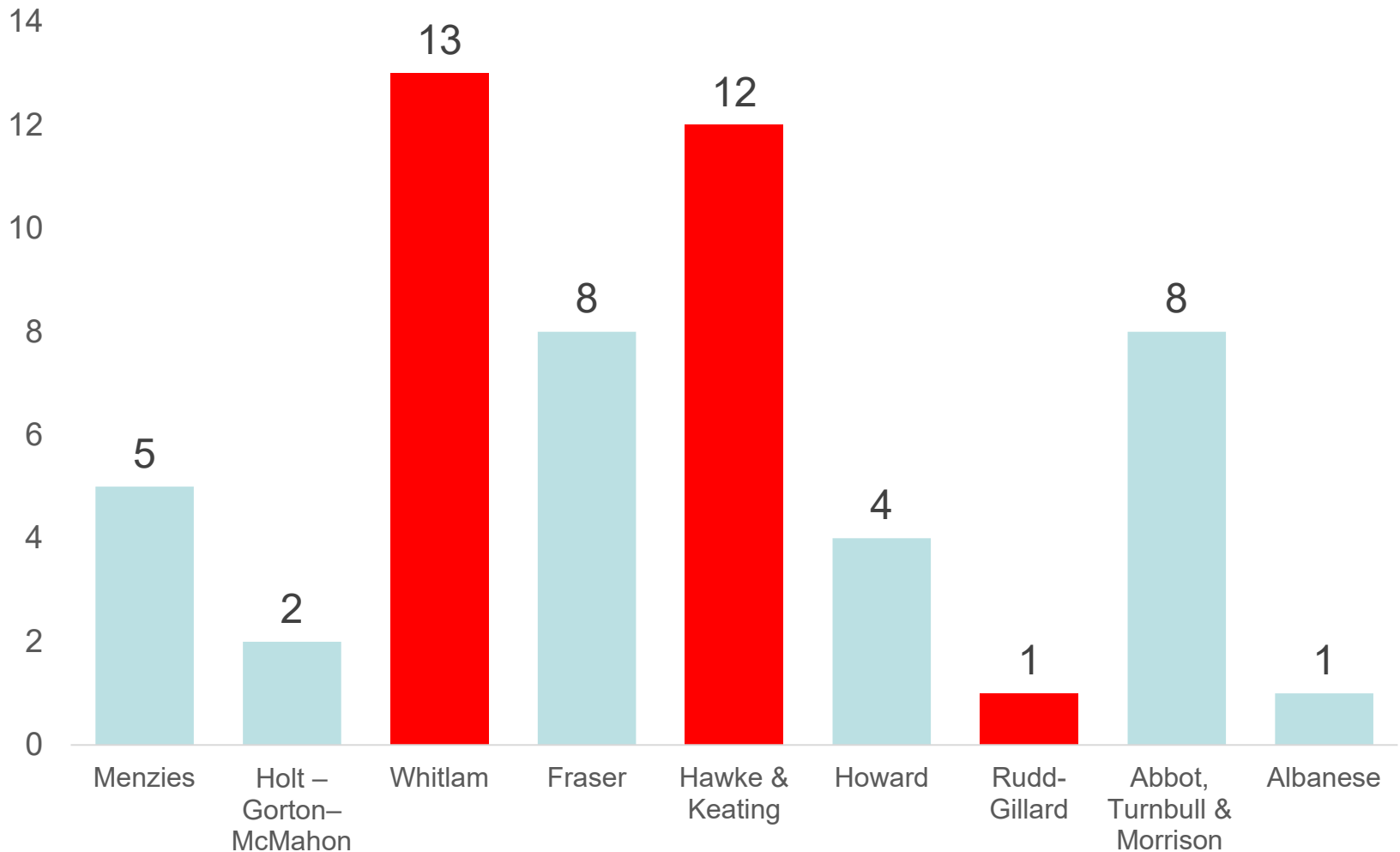
# Cmth non-royal commissions

- Soldier Settlement (1927)
- Sugar Industry (1930/1952/1978/2002)
- Stevedoring Industry (1947)
- Committees on Universities (1956/1961/1997)
- Since 1972: 8 Teacher and 4 Nursing education
- Decimal Currency (1961)
- School funding (Karmel 1972+1985) and Gonski (2011)
- Admin Review ie admin law (Kerr 1968)
- Health Insurance (1968)
- Taxation (1959/1972/74)
- Poverty (1972) Population (1972)
- Financial deregulation (1979/83/96/2013)

# Cmth public inquiries 1949-2023

<b>GOVERNMENT</b>	<b>RCs</b>	<b>OTHERS</b>	<b>TOTAL BY GOVT</b>
<b>Menzies (1949-66)</b>	<b>5</b>	<b>30</b>	<b>35</b>
<b>Holt, Gorton &amp; McMahon (1966-72)</b>	<b>2</b>	<b>27</b>	<b>29</b>
<b>Whitlam (1972-75)</b>	<b>13</b>	<b>73</b>	<b>86</b>
<b>Fraser (1975-83)</b>	<b>8</b>	<b>84</b>	<b>92</b>
<b>Hawke-Keating (1983-96)</b>	<b>12</b>	<b>189</b>	<b>201</b>
<b>Howard (1996-2007)</b>	<b>4</b>	<b>84</b>	<b>88</b>
<b>Sub-total</b>	<b>44</b>	<b>487</b>	<b>531</b>
<b>Rudd-Gillard (2007-13)</b>	<b>1</b>	<b>40+</b>	
<b>Abbott et al (2013-22)</b>	<b>8</b>	<b>60+</b>	
<b>Albanese (2022-)</b>	<b>1</b>	<b>15</b>	

# Cmth royal commissions 1949-23



**Why appointed**

**Rational**

**Politically expedient**

**Risks**

# Motives in appointment

## Legitimate (rational)

- New problem-need solution
- Lack of govt expertise
- Independent analysis (sometimes to gain support)
- Preferred solution needs refining or checking
- Review policy or institution
- Crisis/allegation – find cause/facts
- Promote stakeholder agreement-neutral ground
- Stake out policy area

## Politically expedient

- Seen to be 'doing something'
- Delay decisions
- Bury issues
- Promote/co-opt support
- Justify policy choice already made
- Pseudo consultation
- PR: activity, excuse, distraction
- Provide position for partisan appointees
- 'Kite flying'
- Get political opponent



# Key motives

- **Independence** from ‘politicised’ world
- **Access to expertise**
- **Prestige and clout**
- **Powers to procure evidence** (esp RCs)
- **Public engagement/consultation**
- **Open public processes**
- **Solve the policy and the politics?**

# Impacts & Flaws

# Impact?



# Impacts: beware of cliches

- “appointed not so much for digging up the truth, as for digging it in” (Herbert, 1961)
- “A wilful waste public money and private time” (Gittins)
- “never appoint an inquiry unless you know the results”
- “used **to delay** or postpone action – kick an issue into the long grass”
- “designed to get politicians off the hook”
- *“I’ve been around long enough to know that the prime function of politics is to win elections, and the function of commissions of inquiry is to throw enough dust to cover the facts...”* Dr Colin McLachlan, re Estens Inquiry on Telstra services to regions (2002)

# Factors affecting inquiry impacts

- Did the govt really want it?
- Controversy & public attention
- Quality of report – doability + public interest
- Inquiry leadership – status and activity
- Political environment & electoral cycle
- Timeframes for measurement
- **Dependencies:** other depts, govts, institutions, stakeholders
- Govt reactions and management

# Health RC 1925-26

- Pandemic 1919 – Cmth only had quarantine powers
- Why appointed:
  - returned servicemen & disease
  - 1919 flu pandemic poor Cmth-State cooperation
  - concerns women & children's health
  - Cmth Health Dept est 1921 – role?
  - alignment Bruce Govt, Deputy PM, Health Minister  
Chief Quarantine Officer (Dr John Howard Cumpston)
- RC members – medicos including woman dr
- Rec: govt co-ordination/women's health/tropical health/VD/ data collection
- Implementation slow – but 'seeping' influence

# Flaws

- Manipulated – ToR/memberships
- Quality reports:
  - poor research/methodologies
  - recommendations not doable/costly
- RCs:
  - over-reliance on current/former judges
  - quasi-legal adversarial processes
  - costly and slow
  - excessive powers – civil liberties
- Report back to executive govt for action – or inaction!

# Conclusions



# Some conclusions

- Public inquiries:
  - distinct from other permanent bodies
  - keep being appointed – real demand
  - Become a durable part of modern govt
  - certain unique features needed in modern democracy
  - can produce positive impacts
  - **but flaws**
- Do we still need them? **YES:**
  - **independence**
  - **institution of last resort**



***New directions in royal commissions and public inquiries: Do we need them? (Connor Court)***

[https://www.connorcourtpublishing.com.au/NEW-DIRECTIONS-IN-ROYAL-COMMISSIONS-PUBLIC-INQUIRIES-Do-we-need-them-Edited-by-Scott-Prasser\\_p\\_520.html](https://www.connorcourtpublishing.com.au/NEW-DIRECTIONS-IN-ROYAL-COMMISSIONS-PUBLIC-INQUIRIES-Do-we-need-them-Edited-by-Scott-Prasser_p_520.html)

***Royal Commissions and Public Inquiries in Australia 2<sup>nd</sup> ed LexisNexis***

[https://store.lexisnexis.com.au/categories/practice-area/jurisdiction-827/royal-commissions-and-public-inquiries-in-australia-2nd-edition-skuroyal commissions and public inquiries in australia 2nd edition](https://store.lexisnexis.com.au/categories/practice-area/jurisdiction-827/royal-commissions-and-public-inquiries-in-australia-2nd-edition-skuroyal%20commissions%20and%20public%20inquiries%20in%20australia%202nd%20edition)

# Further reading

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- Craft, J., & Halligan, J., *Advising Governments in the Westminster Tradition*, Cambridge Univ, 2021
- Hogan-Doran, D., “Lessons for Government from Recent Royal Commissions and Public Inquiries”, 2019
- Kelly, P., “The cult that raised false hopes in 2020”, *The Australian*, 23 Dec 2020
- Prasser, S., *Royal Commissions & Public Inquiries in Australia*, 2<sup>nd</sup> ed LexisNexis, 2021
- Regan, S., *Australia’s Welfare System: A Review of Reviews*, ANU, 2014
- Stark, A., *Public Inquiries, Policy Learning and the Threat of Future Crises*, Oxford, 2018 (watch for ARC project)