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PARLIAMENTS NAVIGATING DISRUPTION –
HOW PARLIAMENTS NAVIGATE THE
FINDINGS OF INDEPENDENT INQUIRIES

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Executive Domination, the Law Making agenda - and Independent Inquiries

- ▶ Royal Commissions
- ▶ Ombudsman
- ▶ ICAC (state level)
- ▶ Coroner (state and territory level)

Three recent Royal Commissions (RCs)

RC into the Protection and Detention of Children in the Northern Territory (2016-2017)

Nyland RC into Child Protection Systems in South Australia (2014-2016)

RC into Institutional Responses to Child Sexual Abuse (RCIRCSA) (2013-2018)



Child Protection Systems
Royal Commission



Royal Commission
into Institutional Responses
to Child Sexual Abuse

Prasser and Tracey (2014)

'Many a royal commission has helped to ... **frame new public policy**. ..an indispensable tool for governments immersed in the difficult and messy business of **solving complex public policy problems**.

The appointment of **ad hoc bodies** in fact **strengthens and adds legitimacy to government decision-making** rather than displacing or diminishing the power of the bureaucracy or being incompatible with it. ...can coexist comfortably with existing agencies, public inquiries operate in a way that complements and adds value to their work.'

Royal Commissions

- ▶ Majority are policy inquiries
- ▶ Generally set up to investigate systemic failings, to restore public trust, to shift public perceptions and to help resolve complex policy problems
- ▶ Independent
- ▶ Significant resources and powers
- ▶ Make evidence-based findings and recommendations (both policy and legislative)

Royal Commissions - roles of the executive and the parliament

- ▶ Executive decides to est the RC
- ▶ Executive determines the ToR, the timeframe and the budget
- ▶ Executive receives the Final Report
- ▶ Executive decides whether to table the Report in Parliament - no statutory requirement at Cth level (and whether to redact or remove any parts)
- ▶ Executive makes a statement expressing support (or lack of)
- ▶ Executive articulates which recommendations (if any) will be accepted in full/in part/ 'in principle' and implemented
- ▶ Executive in charge of implementation process
- ▶ Parliament has a role in implementing any legislative recommendations

RCs - *Levels of implementation*

RCIRCSA commissioned PRC to research implementation levels.

Of 288 recommendations of 67 previous inquiries relating to child sexual abuse:

- ▶ 64% had been implemented in full or in part
- ▶ 21% were not implemented at all
- ▶ 15% was not clear

Kinds of RC recommendations most likely to be implemented:

- ▶ Systems type recommendations were the most likely type of recommendation to be implemented
- ▶ Legislative recommendations were the least likely type to be implemented and the most likely type to be partially implemented.



- ▶ heard from 214 witnesses
- ▶ received more than 400 submissions
- ▶ made 142 findings and 227 recommendations

NT Assembly implementing the recommendations of the (Cth) NT RC

In introducing **Youth Justice Amendment Bill 2018**, the Second Reading Speech stated:

'I will be recommending that this bill go through the routine passage of legislation [ie not through the parliamentary scrutiny process]. **It has already been through a Royal Commission; these recommendations are straight from the Royal Commission. We feel that is a significant level of scrutiny; therefore, we will be following the normal process of legislation.'**

NT, *Parliamentary Debates*, Legislative Assembly, 21 March 2018, 3457 (Dale Wakefield).

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NT case study

- ▶ Convergence (in this particular case) between RC recommendations and legislation
- ▶ BUT is parliament abdicating its legislative role? Should scrutiny be circumvented?

A large red circular logo with a white silhouette of a person at the bottom. The text "NT ROYAL COMMISSION" is written in white, bold, sans-serif capital letters. "NT" is on the top line, "ROYAL" is on the second line, and "COMMISSION" is on the third line.

NT
ROYAL
COMMISSION



Nyland Royal Commission in SA

- ▶ heard from 381 witnesses
- ▶ Received 374 submissions
- ▶ 74 stakeholder engagements
- ▶ made 260 recommendations

Concern re implementation without consultation

SA Council of Social Services (SACOSS) CEO Ross Womersley, August 2016:

“It is imperative that the government not act unilaterally on the implementation of Justice Nyland’s recommendations. History shows that in so many instances royal commission recommendations have not been successfully implemented.

We urge the government to refrain from acting with undue haste, and instead we are asking for the establishment of a process involving substantial community input and involvement.”



Child Protection Systems
Royal Commission

Convergence/divergence? SA Government and Nyland RC Report

- ▶ Implementation of Nyland recommendations via the *Children and Young People (Safety) Act 2017 (SA)*
- ▶ 'Best interest of the child' principle permeated the Nyland Report (ie *Convention on Rights of the Child* principle)
- ▶ Stakeholders: '[The Bill does] not represent overall, a scheme envisaged by the adoption of the recommendations made in the [Nyland Report]'



Child Protection Systems
Royal Commission



Government 'cherry picking' and convergence/divergence

- ▶ SA Government decided not to include the 'best interest of the child' principle in the Act
- ▶ AG explained that the Govt wanted to follow the Coroner's 'safety' of the child approach
- ▶ Coroner's report was delivered prior to Nyland RC report - it was narrower (concerned two child deaths)
- ▶ Opposition and civil society (eg SACOSS) frustrated by Govt's decision not to follow Nyland Report on this 'best interests of the child' issue



- heard from 7981 survivors
- received 1344 submissions
- made 409 recommendations

Joint Select Committee on Oversight of the Implementation of Redress Related Recommendations of the RCIRCSA



Royal Commission
into Institutional Responses
to Child Sexual Abuse

Parliamentary monitoring of the implementation of Redress Scheme (complements govt monitoring)

April 2019 report

- ▶ Hasty enactment of federal cooperative scheme led to minimal consideration by relevant parliaments
- ▶ Highlighted divergences between RC recs and implementing legislation eg Max and min Redress payments

Urging greater convergence

Joint Select Committee on Oversight of the Implementation of Redress Related Recommendations of the RCIRCSA

'8.10 The committee is of the view that there would have been some reasonable basis for the legislative process to be expedited in this way if the scheme had adopted every recommendation of the Royal Commission. Had all the recommendations been adopted and reflected in the Act, parliamentarians would have been assured that the bill had a reasonable basis in appropriate and adequate consultation with survivor groups.'



Royal Commission
into Institutional Responses
to Child Sexual Abuse

How are parliaments navigating the 'disruption' posed by independent inquiries such as Royal Commissions?

Select Committee on Statutory Child Protection and Care in South Australia - Final Report 2016

'Recommendations:

Parliament has a particular responsibility to protect the rights and interests of South Australians who are less able to speak for themselves, in particular, children. ...

Two options would include:

1. Establishing a standing committee to consider legislation which impacts on rights in general and the rights of vulnerable people, in particular; or
2. Tasking the Social Development Committee.'

To conclude-

- ▶ Through evaluating how systems and institutions can better assist people in vulnerable circumstances, RCs are well positioned to make a valuable disruption of, and contribution to, law making
- ▶ But in the implementation stage, the executive should not use RCs to try to circumvent parliamentary scrutiny
- ▶ Parliamentary committees have an important role in ensuring robust monitoring of implementation



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