

Putting the 'Public' back into Inquiries:

Assessing the success of Public Inquiries in Australia

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Statement of Originality

This is to certify that to the best of my knowledge, the content of this thesis is my own work.

This thesis has not been submitted for any other degree or for other purposes.

I certify that the intellectual content of this thesis is the product of my own work and that any assistance received in preparing this thesis has been acknowledged.

Marlene Krasovitsky

3 March 2019

Abstract

Public Inquiries are significant, authoritative institutions established by governments to address some of the most important and controversial issues in public policy and society. Inquiries are powerful mechanisms to investigate and advise on matters of public concern. They are designed to right wrongs and address egregious breaches of public trust. However, Public Inquiries are not just tools of government. They are also tools of society, and they express a significant dimension of the social contract, the reciprocal acceptance of obligations between citizens and their government. Public Inquiries often respond to crises, scandals, or the incremental development of inadequacies, which violate public expectations of the reciprocal obligations between State and citizens.

The central objective of this thesis is to assess the success of Public Inquiries in Australia. Public administration scholars and political scientists generally contemplate success from the point of view of government. This is problematic because it has resulted in less than adequate recognition of the 'public interest or common good' served by Public Inquiries (Prasser and Tracey 2014, p. 227). On the basis of illustrative case studies, the thesis argues that including citizen perspectives provides a powerful means by which to assess the success of Public Inquiries in repairing breaches of societal expectations.

The literature review (Chapter 2) is utilised systematically to distil three recurring propositions regarding the assessment of success of Public Inquiries. These propositions suggest that an assessment of the success of a Public Inquiry should examine the ways in which a Public Inquiry:

- has responded to a crisis and restored legitimacy;
- given voice to the public, including stakeholders, 'victims' or experts; and
- provided the opportunity for policy change and improved outcomes.

Based on these three propositions, and their theoretical foundations, an analytical framework is derived to assess the success of Public Inquiries (Chapter 3). Three Public Inquiries are selected as case studies for analysis, each corresponding to a distinct 'type' of Public Inquiry. The first type is the 'Investigatory Inquiry' (Inquiry into Certain Australian Companies in Relation to the UN Oil for Food Programme 2006; Chapter 4). The second type is the 'Policy Advisory Inquiry' (Queensland Child Protection Commission of Inquiry 2013; Chapter 5). The third type is the 'Hybrid Inquiry' (Queensland Floods Commission of Inquiry 2012,

Chapter 6). The analytical framework is applied to each case study (respectively in Chapters 4, 5 and 6).

The thesis then draws out the implications of these findings for scholarship (Chapter 7). For Public Inquiries to be positioned as part of the social contract, the perspectives of citizens could be more effectively incorporated. The case study analyses reveal various proxies or markers of citizen perspectives. These include media commentary, subsequent Inquiries, and legal action. Further analysis of the case studies using these proxies provides significant insights into how citizens assess the success of the Public Inquiry.

The thesis then moves to theory building and argues that despite their many variations, the overarching purpose of a Public Inquiry is to rebuild the social contract after breach. Three enduring functions of Inquiries are identified: to respond; to hear; and to prevent. The analytical framework applied to the three case studies is revised to include citizen perspectives in order to assess success. That is, an assessment of the success of a Public Inquiry should examine three characteristics. First, the ways in which the Public Inquiry is trusted to make sense of the events or the violation of expectations. Second, the ways in which people were heard. Third, the ways in which the Public Inquiry rights wrongs and thus changes policy, processes or outcomes for the better.

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List of Abbreviations

AO	Officer of the Order of Australia
ABC	Australian Broadcasting Commission
AC	Companion of the Order of Australia
ACF	Advocacy Coalition Framework
ACT	Australian Capital Territory
AFP	Australian Federal Police
AIHW	Australian Institute of Health and Welfare
ALRC	Australian Law Reform Commission
ASIC	Australian Securities and Investment Commission
ASX	Australian Stock Exchange
ATSI	Aboriginal and Torres Strait Islander
AWB	Australian Wheat Board
CALD	Culturally and Linguistically Diverse
Carmody Report	Report of the Queensland Child Protection Commission of Inquiry 2013
Carmody 3(e) Report	Report of the Queensland Child Protection Commission of Inquiry 3(e) Term of Reference 2013
CEO	Chief Executive Officer
CMC	Crime and Misconduct Commission
Cole Inquiry	The Inquiry into certain Australian companies in relation to the UN Oil for Food Programme 2006
Cole Report	Report of the Inquiry into certain Australian companies in relation to the UN Oil for Food Programme 2006
CSCB	Children's Services Coordination Board
C'wlth	Commonwealth
DFAT	Department of Foreign Affairs and Trade

KTS	Keep Them Safe, New South Wales Government Response to the New South Wales Special Commission of Inquiry into Child Protection 2008
LNP	Liberal National Party
N	No
NPM	New Public Management
NGO	Non-government organisation
NSW	New South Wales
NSW SCI	New South Wales Special Commission of Inquiry into Child Protection Services 2008
NSW SCI Report	Report of the New South Wales Special Commission of Inquiry into Child Protection Services 2008
NT	Northern Territory
OAM	Medal of the Order of Australia
OFFTF	Oil for Food Task Force 2006-2015
OFFTF Report	Report of the Oil for Food Task Force 2015
OOHC	Out of home care
PVM	Public Value Management
QC	Queen's Counsel
QCPCI	The Queensland Child Protection Commission of Inquiry 2013
QCPCI Report	Report of the Queensland Child Protection Commission of Inquiry 2013
QFCI	The Queensland Floods Commission of Inquiry 2012
QFCI Discussion Paper	Discussion Paper of the Queensland Floods Commission of Inquiry 2011
QFCI Interim Report	Interim Report of the Queensland Floods Commission of Inquiry 2011
QFCI Final Report	Final Report of the Queensland Floods Commission of Inquiry 2012
Qld	Queensland

QC	Queens Counsel
SA	South Australia
S&P	Standard and Poors Index
SC	Senior Counsel
SPRC	Social Policy Research Centre
Tas	Tasmania
UK	United Kingdom
UN	United Nations
USA	United States of America
VCC	Victorian Children's Council
Vic	Victoria
VCPI	Victoria Child Protection Inquiry, 'Protecting Victoria's Vulnerable Children' 2012
VCPI Report	Report of the Victoria Child Protection Inquiry, 'Protecting Victoria's Vulnerable Children' 2012
WA	Western Australia
WEA	Wheat Export Authority
Y	Yes

Glossary of Inquiries

Carmody, T 2013, Queensland Child Protection Commission of Inquiry.

Cole, TRH 2005-2006, Inquiry into Certain Australian companies in relation to the UN Oil for Food Programme.

Cummins, P, Scott, D and Scales, B 2012, Protecting Victoria's Vulnerable Children Inquiry.

Hangar, I 2014, Royal Commission into the Home Insulation Program.

Heydon, JD 2015, Royal Commission into Trade Union Governance and Corruption.

Holmes, C 2011-2012, Queensland Floods Commission of Inquiry.

James, G 2005, Kapunda Road Royal Commission, South Australia.

Kennedy, GA 2004, Royal Commission into whether there has been Corrupt or Criminal Conduct by any Western Australian Police Officer.

McClellan, P, Atkinson, B, Coate, J, Fitzgerald, R, Milroy, H and Murray, A 2017, Report of the Royal Commission into Institutional Responses to Child Sexual Abuse.

Sofronoff, W 2015, Grantham Floods Commission of Inquiry, Queensland.

Teague, B, McLeod, R and Pascoe, S 2010, 2009 Victorian Bushfires Royal Commission.

White, M and Gooda, M 2017, Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory.

Wood, JRT 1997, Royal Commission into the NSW Police Service 1995-1997.

Wood, JRT 2008, Special Commission of Inquiry into Child Protection Services in NSW.

Chapter 1 - Introduction

1.1 Introduction to the Thesis

Public Inquiries are powerful institutions established by governments to address some of the most distressing, disturbing and controversial issues and events of public policy and society. They occupy a special, often revered, place in many societies. Public Inquiries are mechanisms by which many societies around the world aim to discover the truth, redress wrongs, restore the public's confidence, and give voice to the most disempowered and aggrieved members of society. Public Inquiries are the 'the highest form of inquiry on matters of substantial public importance' (Australian Law Reform Commission [ALRC] 2009, p. 31). They are established by governments as trusted, wise, impartial investigators or advisers.

Public Inquiries are a tool of government. This thesis posits, however, that they are also a tool of society. The central argument of the thesis is that Public Inquiries express a significant dimension of the social contract between State and citizens, and that the overarching purpose of a Public Inquiry is to rebuild the social contract after it has been breached.

The social contract is an enduring concept in political philosophy, and, as argued by Verschoor (2018, p. 4), offers 'one of the most dominant normative frameworks for evaluating political structures and acts'. The social contract is the agreement between State and citizens to cooperate for reciprocal social and economic benefit. It is the shared norms and expectations on which society rests. The social contract confers reciprocal obligations between citizens and the authorities to which they subject themselves (Hill 2017). Citizens agree to live together under common laws and create enforcement mechanisms for our social contract and the laws upon which it is formed (Elahi 2005). When such obligations or expectations are breached there are consequences. The breach requires repair and remedy: for an individual, such consequences may be prosecution in a court of law and possibly imprisonment; for society, it may be the establishment of a Public Inquiry to investigate the breach and advise Government.

Yet despite their importance, the significant matters they investigate, the expectations and trust citizens vest in them, and the wide powers delegated to them, researchers have not yet adequately addressed the question of how successful Public Inquiries are, nor how success

might be assessed. This is the central research question of this thesis: how can the success of Public Inquiries be assessed?

There is a significant gap in the literature on how to assess the success of Public Inquiries generally, and specifically with respect to investigating and repairing breaches of societal expectations. Perspectives on success which are offered through public administration and political science literature contemplate success principally from the point of view of government. This is necessary, but insufficient, and does not acknowledge citizens' expectations of repair and remedy of the social contract.

This thesis demonstrates that citizens' perspectives can provide a powerful means by which to assess how successful a Public Inquiry has been in repairing the breach of societal expectations. Public Inquiries are a public good and, as such, citizens' perspectives are central to any assessment of success.

Chapter 1 introduces the literature on Public Inquiries, draws the link between the social contract and Public Inquiries and positions Public Inquiries as a public good. It then draws parallels with Truth and Reconciliation Commissions, as institutions most similar in form and function to Public Inquiries. Chapter 1 then discusses why success, not 'effectiveness', defined by Prasser and Tracey (2014, p. 225) as 'the persuasiveness of [the Public Inquiry's] arguments and the quality of its report', is the focus of this thesis. The research design is introduced, and the structure of the thesis is outlined.

1.2 What are Public Inquiries and what do they do?

Public Inquiries are established by, but are not part of, executive government. Governments establish Public Inquiries to investigate matters of public importance and 'as an aid to policy formulation' (Banks 2007, p. 1).

Public Inquiries are temporary, ad hoc, non-judicial bodies appointed by executive government: to provide advice or to investigate an issue; whose members are drawn from outside government; have public processes; seek community input and release their reports (Prasser 2003, pp. 55-56; Prasser and Tracey 2014, p. 2). Inquiries typically sit outside the 'usual' policy making processes and structures (Prasser 2003, p. 8). They are intended to operate with independence from political processes and the state bureaucracy. According to Banks (2014, p.131), 'public inquiries provide a useful mechanism for penetrating complexity, and countering asymmetric political pressures on government'.

Public Inquiries have advisory powers only and their findings do not have any legally binding status (Prasser 2003, p. 56). They are established to provide recommendations to government, but they have no power or role in relation to the implementation of their recommendations or their subsequent administration (Banks 2013, p. 3). Public Inquiries are not part of government's bureaucratic structures, processes and systems. In formulating their recommendations for change, Public Inquiries do not routinely apply the 'usual' policy making considerations, nor do they 'thoroughly anticipate the political, policy and administrative challenges that await approved policies after enactment' (Lindquist and Wanna 2011, p. 4), as that is the task of public administration. Public Inquiries 'do not and cannot consider the budget implications of their recommendations' (Eburn and Dovers 2015, p. 499) or 'think carefully' about the political, strategic and capability considerations of implementing reform (Lindquist and Wanna 2011, p. 4). This is not their brief.

Public Inquiries occupy a unique place in the Australian system of government, 'being the highest form of inquiry on matters of substantial public importance' (ALRC 2009, p. 31). Across Australia, Commonwealth, State and Territory legislation provides for the establishment of Public Inquiries.¹ Public Inquiries vary in terms of their brief, constitution and timeframe for reporting, but typically they have wide ranging coercive and investigatory powers.

Public Inquiries are a recurring feature of the political landscape (Ben-Josef Hirsch, MacKenzie and Sesay 2012 pp. 389-90). Public Inquiries are often established in response to crisis; have many different purposes, forms, functions, scope and levels of participation; and usually undertake some information gathering, research and consultation (Prasser, 2003). Taking some recent Australian examples, Public Inquiries² have been established to investigate the management of natural disasters (for example, Queensland Flood Commission of Inquiry 2012; 2009 Victorian Bushfires Royal Commission); allegations of corruption (for example, Inquiry into UN Oil for Food Program 2006; Royal Commission into the NSW Police Service 1997) or systemic policy failures (for example, the New South

¹ *Royal Commissions Act 1902* (Commonwealth); *Royal Commissions Act 1923* (NSW) and the *Special and the Commissions of Inquiry Act 1983* (NSW); *Inquiries Act 2014* (Victoria), formerly established under the *Constitution Act 1975* (Victoria); *Commissions of Inquiry Act 1950* (Queensland); *Royal Commissions Act 1917* (South Australia); *Royal Commissions Act 1968* (Western Australia); *Commissions of Inquiry Act 1995* (Tasmania); *Royal Commissions Act 1991* (Australian Capital Territory); the *Inquiries Act 1991* (Australian Capital Territory), and the *Inquiries Act 1945* (Northern Territory).

² The term 'Public Inquiry' refers to a temporary, ad-hoc body appointed by executive government to investigate and/or advise. A range of organisational forms and nomenclatures are used including Royal Commission, Commission of Inquiry. In this thesis 'Public Inquiry' is used as the broader term but as defined by Prasser's (2003, pp. 55-56) classification system.

Wales Special Commission of Inquiry into Child Protection Services 2008, The Royal Commission into the Protection and Detention of Children in the Northern Territory 2017). Eburn and Dovers (2015, p. 495) establish that in the last 75 years there have been 50 Public Inquiries in Australia. In relation to natural disasters specifically, there have been over 30 inquiries since 1939 into fires, floods, storms, and emergency management arrangements.

Public Inquiries will continue to be established, to investigate and to report on matters of public concern or importance (Prasser and Tracey 2014, p. 393). During the writing of this thesis a Royal Commission into Misconduct in Banking, Superannuation and Financial Services³ (Turnbull 2017) and a Royal Commission into Aged Care Quality and Safety (Morrison 2018) have been established, and there have been ongoing calls for a Royal Commission into Abuse of People with Disabilities (Beech 2017).

Public Inquiries are also a recurring feature in other Westminster type democracies, possibly since the early 1800s (Stanton 2010, p. 9). Significant examples include the Scarman Inquiry established by the United Kingdom government after the Brixton 'disorders' in London, 1981 (Bowling 1999), and the Walkerton Inquiry, 2000, which was established in Canada after the town's drinking water system became contaminated with deadly bacteria (O'Connor 2002). Public Inquiries also regularly appear in different types of liberal democracies and parliamentary systems. Examples can be found in the Jerusalem banquet hall collapse Inquiry in Israel (2001), the Elbe Flood Inquiry in Germany (2002) and various Inquiries in a number of Scandinavian countries after the 2004 Boxing Day tsunami (Boin, McConnell and 't Hart 2008; 2009). Significant examples in the United States include: the Roberts Commission after Pearl Harbour 1941; the Warren Commission after the assassination of John F. Kennedy 1963; the Ervin Commission after the Watergate scandal 1972; and the 9/11 Commission 2002 (Parker and Dekker 2008 p. 255).

All of these examples, and many more, establish the significance, the gravitas and importance of these powerful institutions and the matters they address.

³ On 30 November, 2017, the Prime Minister and Treasurer announced that there would be a Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Sector, viewed 9 December 2017, <https://www.pm.gov.au/media/royal-commission-banks-and-financial-services>

1.3 What is the connection between the social contract and Public Inquiries?

This thesis positions the kind of events that trigger Public Inquiries as breaches of the social contract, of the shared expectations and reciprocal obligations between citizens and their institutions. When such events or breaches occur, citizens experience a 'crisis of confidence in the integrity of public life or about other matters of vital public importance' (Salmon 1967, p. 313). Such breaches contravene expectations of a 'good society'. Citizens build pressure for an independent and powerful body to investigate, right wrongs and strengthen our society and systems so such events or breaches are properly and impartially investigated and can be avoided in the future.

1.3.1 What is the social contract?

'We the people' (Rousseau 1764).

The notion of the social contract lies deep within expectations of the role and functions of Public Inquiries. There is a wide continuum of political philosophy that contemplates social contract, ranging from Rousseau and Kant, to Locke, to more modern theorists including Rawls (Dobuzinskis 2000, p. 688). Within the social contract tradition there have also been a 'certain range of problems [which have been] disputed for hundreds of years (Riley 1982, p. 10). The essential point in the context of this thesis is that the enduring justification for political obligation is that, although citizens are naturally self-interested, citizens are also rational (Friend n.d.; Elahi 2005). Citizens choose to submit to authority (a sovereign, a collective body, an elected assembly) in order to live in a civil society, which is, of course, conducive to their own interest (Elahi 2005). The only justified authority is that which is generated out of these agreements, covenants or compacts. Authority is accountable (Jos 2006, p. 143, p. 151).

Citizens agree to live together under common laws and create enforcement mechanisms for the social contract and the laws upon which it is formed (Elahi 2005), or, citizens submit their individual wills to the collective or general will, created through agreement with other free and equal persons (Elahi 2005). In so doing, individuals become 'the people' (Rousseau, 1764, Book I, Chapter VI). The general will is directed to the common good, understood and agreed to collectively. It is in Rousseau's version of the social contract that the notion of reciprocal duties emerges (1764, Book I, Chapter VII). The 'authority' is committed to the good of individuals and individuals are committed to the good of the whole. Citizens give over their power to these laws, the judges that adjudicate them, and the executive power required to enforce them. Citizens are obliged to respect and obey the

State. The State is obliged to provide stability and protection (Elahi 2005). Citizens and State share these beliefs in societal values and norms (Parsons 1960, pp. 172-187).

The social contract 'is the most fundamental source of all that is good and that which we depend upon to live well...which guarantees equality and protection for all' (Friend n.d.). The social contract is based on our 'common interests that create durable social bonds' (Jos 2006, p. 148). Once the social contract is formed we are all expected to keep our promises, cooperate and act within societal norms and laws. If we break these laws or breach expectations, there are consequences.

According to Locke, when the conditions under which the compact with government is destroyed not only are we justified in resisting the authority of government, we are indeed obliged to (Elahi 2005, p. 3). When the 'authority' has breached these expectations, when these most fundamental promises are broken, citizens advocate for redress, for a trusted voice to investigate impartially, forensically and authoritatively. In our contemporary democratic context, this can take the form of a Public Inquiry.

Indeed, Rousseau contemplated such 'checks and balances' in order to 'temper' governments, in the form of tribunes and censors (1764, Book IV, Chapter V). Tribunes were not part of government but 'merely serve to balance' executive power, not exercise it (Riley 2010, pp. 216-7). Censors issued public declarations of cultural norms (*moeurs*) 'persuading' citizens and authorities to engage in certain actions and refrain from others. Censors, like tribunes, and like Public Inquiries, have no authority to enact laws or employ coercive forces themselves. They are 'countervailing powers' (Riley 2010, p. 219) designed to keep citizens and government in balance; guardians of the public good.

Rousseau (1764, Book IV, Chapter V) foreshadowed the importance of the Tribune when he wrote:

Though it can do nothing, it can prevent everything...It is more sacred and more revered as the defender of the laws, than the prince who executes them, or the Sovereign which institutes them...The tribuneship, wisely tempered, is the firmest support of a good constitution...It can overturn everything'.

To strengthen the parallel with Public Inquiries even further, Rousseau also asserted that the best way of utilising such formidable bodies was to ensure they were temporary (as are Public Inquiries).

1.3.2 Limits of social contract theory and the possibility of other political theory perspectives

While it is an enduring, classical concept in political theory, social contract theory has its limitations and critics. Given the centrality of social contract theory to the assessment of success of Public Inquiries, these limitations are acknowledged and explored in the following section.

This section also acknowledges that social contract theory is but one lens of conceiving state-society relations. A sample of other political theories which may have informed the thesis are also briefly described.

Lessnoff (1986, p. 2) defines social contract theory as a ‘theory in which a contract is used to justify and/or to set limits to political authority, or in other words, in which political obligation is analysed as a contractual obligation’. For contractual theorists a contract is premised both on a promise as well as legal enforceability (Lessnoff 1986, p. 3). If a contract is breached there are consequences.

However, is there, or was there ever, an actual social contract? If so, does it have any relevance to political obligation? Who are the parties to this contract? What is the nature of consent? Are all the parties equal (Lessnoff 1986, p. 87)?

It is not within the scope of this thesis to examine the history of states, whether governments have been founded on ‘actual’ contracts⁴, or ‘covenants’⁵. The general view is that they have not (Lessnoff 1986), yet the notion of a social contract remains an enduring concept.

Rousseau’s social contract is an ‘ideal’ contract based on how government ideally ‘*ought to have been established, rather than how it actually was established*’ (Lessnoff 1986, p. 74, italics in original). Legitimate political authority stems from the ideal, not any actual contract.

Immanuel Kant also theorises that the social contract is ‘not an actual event, but a regulatory ideal’ and that ‘the idea of a social contract can and should be used to test [political institutions’] rightness’ ... ‘the idea of the social contract provides a criterion for the ideal constitution of the state’ (Lessnoff 1986, pp. 90-91). More recently for John Rawls (1972), the social contract ‘is not an historical event, but a thought-experiment’ (Lessnoff 1986, p. 159, Weale 2013 p. 16).

⁴ For a fuller analysis on this question, see Lessnoff 1986.

⁵ Crocker 1968, p. 60; Höffe 2013, p. 13

As an idealised, or 'experimental' notion therefore, the social contract, has been criticised as lacking rigour, being abstract and ambiguous, 'hopelessly unrealistic' (Lessnoff 1986, p. 85), or 'emotional fantasies' (Crocker 1968, p. 6).

Lessnoff (1986, pp. 97-122) describes a range of competing social contract theories from individualist theories based on the 'abstract' individual and individual interests, through to Marxist traditions of universal interests (which are in fact, the interests of the dominant social class and the basis of class struggles). He concludes that social contract theory 'appeals not only to self-interest, but also to a due concern for the interests of one's fellows. It seeks to balance the equally legitimate interests of all' (Lessnoff 1986, p. 121). This fact, Lessnoff argues, accounts for the 'continuing popularity of the idea in present-day political discourse' (Lessnoff 1986, p. 122).

In *A Theory of Justice* (1972) John Rawls encapsulates a contemporary version of social contract theory. Rawls' focus is on the justice of social systems and social structures. Social justice requires the basic structure of society to conform to just principles which are desirable and feasible (Kukathas and Pettit 1990, p. 36), principles which ensure 'the appropriate distribution of the benefits and burdens of social cooperation (Rawls 1972, p. 4), and a proper assignment of basic rights and duties (Rawls 1972, p. 5). These principles⁶ guarantee fundamental individual liberties (for example, of speech, worship) and 'ensure that the social and economic inequalities are arranged to offer the greatest possible benefit to the worst off in society, while upholding fair equality of opportunity' (Kukathas and Pettit, p. 36). The principles are based on three postulates: self-interest; rationality and equality (Rawls 1972, p. 302, Lessnoff 1986, p. 133, Kukathas and Pettit 1990, p. 43). Rawls (1972, p. 11) argues that these are the principles that would be chosen by the parties to the 'hypothetical' contract.

The basic premise of Rawls' theory is that principles which our self-interest would lead us to agree to as the terms of a contract made in an ideally fair situation⁷, are just; and that therefore such principles are morally obligatory for us' (Lessnoff 1986, p. 136). Rawls

⁶ Rawls (1972, pp. 302-303) outlines two principles. In summary, the first is that each person is to have an equal right to the most extensive total system of equal basic liberties. The second principle is that social and economic inequalities are to be arranged so that they are firstly, to the greatest benefit to the least advantaged, and, secondly, attached to offices and positions open to all under conditions of fair equality of opportunity. The principles are ranked in lexical order so it is the first principle of liberty that has priority.

⁷ Rawls (1972, p. 12, pp. 17-22) calls this the 'original position', a purely hypothetical situation where 'no-one knows his place in society, his class position or social status', nor 'his fortune in the distribution of natural assets and abilities'. The principles of justice are chosen 'behind this veil of ignorance' and thus the fundamental agreements reached are fair.

'operationalises' the application of the principles of justice in his basic structure of a just society (Rawls 1972, pp. 195-201).

The role of justice in society is to resolve conflict over the distribution of social primary goods (rights and liberties, powers and opportunities, income and wealth), which each citizen wishes to maximise. Rawls (1972, p. 302) offers an account of the just political constitution (upheld by the principle of liberty) and just economic arrangements (upheld by the principle of addressing social and economic inequalities), (Rawls, 1972, pp. 302-303). Rawls addresses 'the question of the nature of the obligation of people in the imperfect world...to comply with the laws of an imperfectly just society' (Kukathas and Pettit 1990, p. 48). However, while laws and institutions provide a stabilising influence on society, if they are unjust they must be changed (Höffe 2013 , p. 6).

In the context of this thesis, the first principle (liberty) is most relevant. Rawls conceives of the state as an association of equal citizens (Rawls 1972, p. 213). A government may limit liberty but only when the common interest in the public order of security is at stake. The principle of equal liberty requires that citizens have the opportunity to participate in political processes. However, a society can never be perfectly just and there must be checks on authority to guard against the 'graver wrongs a society should avoid' (Rawls 1972, p. 201). A just political constitution limits the powers of government. Liberty requires checks and balances on the powers of legislatures (for instance, separation of powers, bicameral legislatures – and by extension for this thesis, Public Inquiries).

Rawls is not without his critics. Kukathas and Pettit (1990, pp. 74-151) detail a range of critiques , as well as Rawls' own self critique as he develops his theory. Ellis (2006, p. 544) notes that while the language of social contract permeates a broad range of spheres from politics to media and sport, there remain two recurring 'complaints': how can political authority derive from contract theory's 'hypothetical, ahistorical description' and how can authoritative consent be granted by citizens 'subject to conditions ranging from imperfect to utterly disabling?' (Ellis 2006, p. 544).

Social contract theory is only one of the possible lenses offered by the broad church of political science theory and philosophy. Other political science perspectives highlight different aspects of state-society relations and the bases of political obligation, all of which could have been chosen to inform and structure this thesis.

For example, Marxist theories offer an analysis of power that challenges the notion of the state as a natural, benevolent or 'good' arbiter. Marxist approaches characterise the state as

the defender of class domination and exploitation (Heywood 2004, p. 81). Marxist views emphasise the emancipation of workers from bourgeois exploitation, social ownership of the means of production and an end to class struggles through revolution to bring down capitalism and establish a communist state. In Marxist terms, depending on the 'stage of the revolution', a Public Inquiry could be cast as defender, either of the state, or of the people.

Weber focusses on institutions and positions power and struggle as the 'primordial components of state-society relations' (Dusza 1989, p. 73). Power and struggle give rise to particular structures in which power is institutionalised. Institutional structures, rather than class, give concrete form and direction to political struggle.

As a form of power, authority is a means of gaining compliance. Weber's categorisation of the three 'ideal-types' of authority are traditional authority (based on respect for long held customs and traditions), charismatic authority (based on the power of an individual's personality) and legal-rational authority (which attaches to an 'office' not office holder, and is based in the rule of law). Weber's view is that legal rational authority is the most dominant form of organisation in modern industrial societies and is characteristic of large-scale bureaucracies with clearly defined rules (Heywood 2004, p. 135). The exercise of power is depersonalised. It is an 'office', not an 'office holder'. Political struggle in the state concerns the acquisition of office. While Public Inquiries are ad-hoc, temporary structures, in Weberian terms, they may be cast as examples of legal-rational authority.

Post-industrial societies have seen a shift from individuals as producers and members of a class, to individuals as consumers in a fragmented and pluralist society that is more reliant on knowledge and communication (Heywood 2004, p. 7). Post-modernist schools of thought have emerged which eschew certainty; assert that all knowledge is partial; and that the language that expresses ideas and concepts is itself steeped in complex power relations (Heywood 2004, p. 7). Post-modernists emphasise a 'discourse of power...a subsystem of social relations and practices that assign meaning and therefore identities to those that live or work within it' (Heywood 2004, p. 128). Discourses structure relations between people. As such, an analysis of Public Inquiries in post-modernist thought would focus on the power struggles underpinning the knowledge production and discourse of the Public Inquiry and its directions for reform.

The focus and limitations of this thesis preclude a fuller elaboration of these and other perspectives. The brief exposition of these schools of thought serve only to demonstrate a small sample of the variety of perspectives and traditions that could have potentially and fundamentally informed this thesis, and hence the positioning of Public Inquiries.

This thesis also acknowledges that social contract theory 'presents a wide range of perspectives on human nature and the social processes that shape conflict, cooperation, and compliance' (Jos 2006, p. 150). The limits of this thesis prevents a fuller analysis of the critiques and variances of social contract theory (however some further exploration is undertaken at 2.2.1.2). However, Lessnoff's deep and intricate examination of social contract theory over centuries, and his examination of the contest of ideas about its form, function and relevance, draws him to conclude that social contract theory remains a relevant way 'to think about our own society'(Lessnoff 1986, p. 157). In her analysis, Ellis (2006, p. 545) takes a step further concluding that the 'social contract idea remains the basis of contemporary democratic politics'.

Social contract theory is a durable, classical construct. For the purpose of this thesis, the author has selected social contract theory to inform the investigation of the research question. The author argues that the concept has relevance to the positioning of Public Inquiries as powerful tools of the state and citizens to provide checks and balances, and to investigate and repair breaches of the social contract.

1.3.3 Public Inquiries as a public good

There are a range of theoretical views on the public good that relate to the role and function of Public Inquiries. This thesis does not attempt to settle timeless debates about what is the public good, public interest, common good or even public domain. However, given the positioning of this idea as being central to assessing the success of Public Inquiries this warrants some contemplation.

From the means by which Adam Smith's 'invisible hand' works to improve human society (Meek 1973, p. ix; Wight 2007, p. 341), Spann's (1967, p. 23) 'authoritative "central value system" in society', to Rousseau's 'ever constant, invariable and pure' general will (Rousseau 1764, Book I, Chapter VI), there have been many erudite and profound dispositions of what constitutes the public good. Perspectives on the public good span from Aristotle's consideration of virtues (MacIntyre 2007; Morrell 2009, 2012, 2016) to Habermas's consideration of post national constellations, the 'new political configuration' beyond the nation state (Giesen 2004, p.1, Lebeck 2003). In his review of public administration reforms in Australia, Nethercote (2003) concludes that 'Government remains in the business of public good, protecting the disadvantaged, promoting economic growth and stability and protecting rights'.

This researcher respectfully acknowledges the tussles between the great philosophers, and the ambiguities and definitional contests that have been contemplated by many great thinkers. Yet, even though ‘nearly everyone is convinced that the public interest is vital in public policy and governance, [and] there is little agreement as to exactly what it is’ (Bozeman 2007, p. 84), it continues nonetheless as a durable, normative concept.

For the purpose of this thesis, this researcher adopts Shergold’s (1997) pragmatic working definition: the public good is a shorthand signal for shared benefit at a societal level. What is this shared benefit? Crooks (2012, p. 1) offers one description of the common good, the terms of our social contract and citizens’ expectations:

We acknowledge that our shared responsibility as citizens in a democracy is to debate with tolerance, directly and through our elected representatives, the best means to create opportunities, regulations and services that meet the basic needs of the population and sustain the environment. There is a general understanding of the principle of the separation of powers, with government, the judiciary and the public service working independently as part of an integrated system.

We install governments in the expectation that each will serve its full term and act in accordance with its mandate to implement policies that advance the common good. We recognise the importance of our governments being transparent and accountable. At the same time, we see them as having a critical role in promoting fairness, social cohesion, economic prosperity and the protection of the most vulnerable.

Morrell (2009) argues that there is a well-established account of what ‘the good’ means in political thought, most clearly in Aristotle’s account of virtue. Aristotle suggests that different activities ‘aim’ at different good things, ‘the end of the medical art is health; that of shipbuilding, a vessel; that of strategy, victory; that of economics, wealth’ (Morell 2009, pp. 546-547). These can be understood as proximate ends, which is to say each of these ends is in themselves subordinate to other activities and ends. Health is not an end in itself, but it enables us to pursue other activities and live a good life.

Using this structure, to what ‘end’ does a Public Inquiry contribute? What ‘good’ does an Inquiry aim to achieve for its citizens? The ‘end’ of a Public Inquiry is ‘truth’ and ‘though it is worthwhile to attain the end merely for one man, it is finer...to attain it for a nation or for city states’ (Morrell 2009, p. 547). Extending this idealised notion, this proximate end, the Public Inquiry, contributes to the political administration creating the conditions within which citizens can live ‘the good life’ (Morrell 2009, p. 547). Public Inquiries are an important instrument in support of the reciprocal obligations between citizens and their governments, or ‘the attainment of collective goals’, which are based on the shared values between citizens and State (Parsons, 1960, p 187).

Marquand (2004, p. 51) offers a different insight. He defines the public domain or public realm as 'the realm of citizenship, equity and service, where pursuit of the public interest takes precedence over private ties and market transactions' which is 'coterminous with, or at least guaranteed and protected by the democratic state'. Marquand (pp. 52-53) argues that the public domain:

depends on public institutions (notably the rule of law), but is not confined to them. [The public domain] is best understood as a dimension of social life, with its own norms and decision rules, cutting across sectoral boundaries: as a set of practices...It is symbiotically linked to the notion of a public interest, in principle distinct from private interests; central to it are the values of citizenship, equity and service...[In the public domain] citizenship rights trump both market power and kinship or neighbourhood bonds; the duties of citizenship take precedence over both market incentives and over private loyalties.

In concrete terms, Marquand (2004, p. 53) proposes a list of goods in the public domain which includes:

Fair trials, welcoming public spaces, free public libraries, subsidized opera, mutual building societies, safe food, the broadcasts of the BBC world service, the lobbying of Amnesty International, clean water, impartial public administration, disinterested scholarship, blood donors, magistrates, the minimum wage, the Pennine way and the rulings of the Health and Safety Executive.

Within the social contract tradition, Weale (2013, p. 21-22) states that a viable society must possess institutions that enable social cooperation to produce goods and services valued by its members. In order to pursue individual interests, individuals accept 'command over their person' (for example, secure freedom of movement; freedom of expression and communication). However, since social cooperation is a necessary condition for these individual interests, individuals also have a stake in the public interest, which is made up of the interests that they share in common with other members of society. Public goods that support this purpose include:

[A] functioning system of law and order, defence from external armed threats, methods of adjudicating conflicts that arise between private interests, general literacy and education, protection from environmental hazards, management of common land and resources, sanitation and provision against communicable disease, a system of transport, agreed weights and measures, maps and geographical information systems and instruments of public communication together with a system of news reporting and recording that ensures that the use of political power is tested for its purpose and justification.

These 'lists' constitutes a reasonably stable category, acknowledge the diversity of goods in the public domain and offers a more nuanced and flexible approach to defining goods that are in some senses public (Morell 2009, p. 542). This thesis posits that Public Inquiries are part of these 'lists' of goods in the public domain.

Critically, Marquand (2004, pp. 55-56) argues that the public domain and its practices are:

the sources of public trust...public trust, like the domain itself, is an artefact. It is a by-product of the argument and debate which are part and parcel of the public domain, and of the institutions that embody and transmit its values: an epiphenomenon of the practice of citizenship... In the public domain, citizens collectively define what the public interest is to be, through struggle, argument, debate and negotiation.

Marquand argues that in the public domain, where relationships are necessarily long term: 'accountability can come only through Voice - in other words through argument, discussion, debate and democratic engagement' (2004, p. 57). In the public domain Marquand (2004, p. 55) states:

Citizens trust each other because, and to the extent that, they are citizens: because, and to the extent that, they know that public institutions are governed by an ethic of equity and service. If that ceases to be true, if the public domain succumbs to the ever-present threat of invasion by the market and private domains, if justice is on sale or public offices go to kinsfolk or clients, if professionals behave as if they were market traders and nothing else, trust and citizenship are both undermined.

Marquand argues that a 'crucial task of the state is to do everything in its power to ensure that this does not happen. [The state] is - or ought to be - the guardian of the public domain' (2004, p. 55).

A Public Inquiry is a powerful mechanism by which the State asserts its authority as guardian of the public domain. This guardianship is underpinned by the trust of citizens. The focus of the literature examined in this thesis (Chapter 2) is on the exercise of this guardianship in the form of a Public Inquiry. A focus on the success of a Public Inquiry must include consideration of citizens' views on whether the breach of the social contract, the violation of societal norms and expectations is repaired.

The following Australian examples demonstrate the connection between the breach of the social contract and the Public Inquiry they triggered:

Table 1. The connection between the breach of the social contract and the Public Inquiry.

Breach	Public Inquiry Response
Trusted clergy abuse and betray children and are subsequently protected by their institution (Wright, Swain and McPhillips 2017).	Royal Commission into Institutional Responses to Child Sexual Abuse 2017.
Trusted officials allegedly act corruptly and breach Australia's international sanctions	The Inquiry into certain Australian companies in relation to the UN Oil for Food Programme 2006.

obligations and gain from holding positions of power (The Economist 2006, 'Wheat Scandal').	
Family, friends and neighbours die in floods because they were unaware of the proximity and intensity of danger, or because help failed to arrive (Murray n.d.).	Queensland Floods Commission of Inquiry 2012.
Parents who are well known to the statutory child protection department continue to neglect their seven-year-old child and she dies alone and in squalor because the department failed to act (ABC News, 9 November, 2007).	NSW Special Commission of Inquiry into Child Protection 2008.
A news program broadcasts children being brutalised and tortured in juvenile detention centres (Vanovac 2017).	Royal Commission into the Protection and Detention of Children in the Northern Territory, 2017.
After a 'string of scandals' (Hutchens 2018) and the Australian Broadcasting Commission's 'biggest crowd sourced investigation', the Four Corners Program "Who Cares", 'reveals the shameful lack of care and dignity experienced by many elderly Australians' (ABC Four Corners, 17 September 2018)	Royal Commission into Aged Care Quality and Safety, 2018

The political science and public administration literature contemplates the uses, functions and operations of Public Inquiries, their political context, how the Commission is established, its terms of reference, processes, report and recommendations. Prasser and Tracey 2014, pp. 385-6) conclude that the:

potential of a public inquiry to serve the public interest lies in its capacity to inform debate, clarify facts, develop consensus and improve the quality of public life. Like good public policy, there are no hard and fast rules that will guarantee the success of an inquiry, nor is there any easy and obvious measure of effectiveness.

This thesis emerges from dissatisfaction with the notion that we relegate the factors of success, or even effectiveness, to 'accidental factors' [such as] timing, people and political events' (Prasser and Tracey 2014, p. 139), or to "virtu" and "fortuna" (Bovens, 't Hart and Peters 2001, p. 604).

This thesis finds that there is a gap in the examined literature regarding the extent to which a Public Inquiry has 'served the public interest' and by this omission, underplays the significant place of these powerful bodies for citizens. There is value in pursuing this agenda in order to develop a more holistic analytical perspective.

1.4 Overview of the Public Inquiry literature

There is not an extensive empirical or theoretical literature on Public Inquiries. Prasser's (2003, 2006) definitive work in mapping the landscape of the use of Public Inquiries in Australia builds on previous work by Smith and Weller (1978) and Weller (1994). Prasser (2003, pp. 51-52) argues that Public Inquiries are a largely ignored area of study and that accurately defining Public Inquiries is a long-standing problem. Prasser argues that this has contributed to a lack of recognition of Public Inquiries 'as a distinct type of advisory body with particular features and therefore possibly serving certain roles in the political system' (Prasser 2003, p. 52). However, Prasser's (2003, pp. 51-65) seminal work on defining what a Public Inquiry is, and differentiating it from other forms of advisory functions, provides a critical benchmark in this literature.

Further, given the varied nature and purposes of Public Inquiries, there have been a number of attempts at classification. Inquiries have been variously classified by function, membership, organisational form, process and policy issues (Peachment 2006, pp. 28-29, Prasser 2003, pp. 43-44). However, as Public Inquiries tend to share features and processes, a clear classification system has proven elusive. According to O'Connor (2007), 'fact finding' or 'investigatory' inquiries are most often established in the aftermath of a tragedy or scandal, usually with political implications where the public's confidence or trust in a public institution has been shaken. 'Policy' based inquiries are mandated to examine a particular area or issue of public policy and make recommendations for future policy direction. Some Public Inquiries share the elements of both categories of Inquiry and are both investigatory and policy advisory (such as the Queensland Flood Commission of Inquiry 2012; 2009 Victorian Bushfires Royal Commission). For the purpose of this research these Inquiries will be referred to as 'hybrids'.

However, questions pertaining to the success of Public Inquiries are typically eschewed in the literature, with a cursory, explanatory note that the role of Public Inquiries is only to make recommendations to government. It is the responsibility of government to accept or reject recommendations, to choose the mechanisms and timing of implementation, and to meet funding obligations. It is therefore unfair or misplaced to assess the success of a Public Inquiry by virtue of the extent to which its recommendations were accepted and have led to positive outcomes. Recommendations for reform are provided to government on a 'take it or leave it basis' (Banks 2013, p. 3). Once it has reported, the Public Inquiry 'shuts up shop' (Hanrahan 2016). Findings may or may not inform policy or new legislation. Reports and deliberations of Public Inquiries can be met with a variety of responses; from enthusiasm to falling 'on stony ground' (Bulmer 1981, p. 374).

Most discussions of success, therefore, revert to the internal workings of the Public Inquiry, namely, its processes of consultation and deliberation, whether it came within budget and met its reporting deadlines. Given society's expectations of Public Inquiries, such assessments fall short of recognising the significance of these powerful institutions.

In fact, attempts to assess the success of Public Inquiries in the literature are rare. Research in this area is hampered by a lack of clear research questions and is typically based on individual case studies (Barnes and Harris 2011; Cunneen 2001) where 'we are repeatedly provided with descriptive narratives of what different inquiries did and proposed' (Prasser 2003, p. 46; Gilligan 2002, p. 292). Some articles and books are written as reflections of those who have been involved in, or led, Public Inquiries (Barnes and Harris 2011; Cunneen 2001; Davies 2014; Hodgetts 2007; O'Neil 2001). Banks (2014, pp. 118-130) considers the preconditions for an effective Inquiry and proposes 'six determinants of success that are in the control of government', including asking the right questions and ensuring transparency.

This thesis examines the institution of Public Inquiries, that is, as a shared construct organised by rules, norms and strategies (Frederickson and Smith 2003, pp. 71-72), and as a recurring feature of political systems in many countries around the world (Prasser 2003). The focus of this research is broader than any one Public Inquiry. It is on assessing the success of the institution of Public Inquiries itself, not on the outcomes or perspectives of a particular Public Inquiry.

As such, the thesis does not use the lenses provided by organisational or legal theory to examine the structure or operation of any particular Public Inquiry, its legal parameters or conventions. Nor does the thesis look inside the entity known as the Public Inquiry to assess the relative merits of organising in various ways, the type of leadership provided by the Commissioner(s), the logistics, composition, resourcing, governance arrangements or quality of evidence. Undoubtedly much is to be learned by looking into this 'black box' of the ad-hoc organisation that is the Public Inquiry, and which factors contribute to the success or otherwise of the Inquiry, and the quality of its outcomes. They are not the focus of this thesis.

The invisibility of attempts to address the question of the success of Public Inquiries is puzzling. Eschewing such questions runs contrary to public administration trends. All Australian governments over recent decades have strived to introduce transparency and accountability systems for the expenditure of public funds, program and outcome evaluations

and consumer feedback mechanisms (Nethercote 2003). Yet, why is there no 'overarching framework of analysis and comparison' with regard to Public Inquiries (Prasser 2003, p. 46)? Why is there so little discussion, let alone agreement, about what types of measures or factors might be used to assess success, nor how these might be applied across a range of cases (Brahm 2007, p. 24)? One argument is that Public Inquiries 'are too diverse in their effects to be tied down to a uniform explanatory model' (Gilligan 2002, p. 289). Such questions could be the basis of a rich research agenda, though they are not the purpose of this thesis.

According to Peachment (2006, p. 29) 'assessing overall effectiveness in terms of the reforms and system change a given commission helps bring about, is the most important question to be posed and the most difficult to comment upon'. Mackie argues (2012, p. 8) there are few empirical or theoretical foundations to know whether 'the outcome of Inquiries made any discernible difference to the conduct of public life'. It is to this issue that the thesis aims to make a contribution.

1.5 Parallels with Truth Commissions

There are strong parallels between the literatures on Public Inquiries and Truth Commissions. Truth Commissions are defined as bodies set up to investigate past human rights abuses and to examine a pattern of human rights abuses over time, rather than a specific event (Brahm 2004, p. 16). Truth Commissions are temporary bodies, and are officially sanctioned, authorised and empowered by the State (Brahm 2004; Hayner 2001). They do not have prosecutorial powers to bring cases to trial, nor do they act as judicial bodies to investigate individuals accused of crimes (Chapman and Ball 2001, p. 2). The role of a Truth Commission is truth finding, or more precisely, documenting and acknowledging a legacy of conflict and human rights violations as a step toward healing (Hayner 1994, pp. 607-608). A Truth Commission can also 'go beyond a court of law and render a moral judgement about what was wrong and unjustifiable' (Chapman and Ball 2001, p. 3). There are clear parallels between Truth Commissions and Public Inquiries as defined in this thesis. In fact, Stanton (2010, p. 15) characterises Truth Commissions as a specialised form of Public Inquiry, and that it is 'the ability of a commission of inquiry to "search for truth and justice" that made it suitable for adaptation to the human rights context'.

Over past decades the establishment of Truth Commissions has been a recurring feature of post-conflict processes; 'a "staple" of transitional justice mechanisms and an "imperative" for societies emerging from repressive regimes or intra-state conflict' (Ben-Josef Hirsch 2014, p.

811). While 'counting rules' differ between authors about how many have been established (Brahm 2004, 2007, 2009; Taylor and Dukalskis, 2012; Tepperman, 2002), there is broad agreement that Truth Commissions have become institutionalised as 'a permanent feature of transitional and post-conflict practices' (Ben-Josef Hirsch, p. 811). Yet, like Public Inquiries there is 'scant evidence-based assessment of their successful impact' (Ben-Josef Hirsch, p. 811). As with the literature on Public Inquiries in general, Brahm (2007, p. 16) states that:

most studies focus on a small biased sub sample of cases, rely on anecdotal evidence and normative conviction, and fail to follow the Truth Commission's legacy beyond its immediate reception. What is more, although a range of purposes have been put forward for Truth Commissions, there is little consensus on what criteria might be used to assess them.

Studies usually take the form of case studies and small-N comparisons and, like the literature on Public Inquiries, much of this literature is dominated by those who have led, or worked on, the Commission. This raises the potential for bias. There are 'no established methods or mechanisms for measuring the impacts of [Truth and Reconciliation Commissions]...[and there are] contradictions and inadequacies in existing efforts to measure the impacts and successes of commissions' (Ben-Josef Hirsch, Mackenzie and Sesay 2012, p. 386).

For Truth Commissions, like Public Inquiries, Ben-Josef Hirsch, MacKenzie and Sesay (2012, p. 387) state that:

empirically assessing their assumed positive effects has been challenging. In fact, there is little knowledge and next to no consensus about the actual long-term consequences and impact of [Truth and Reconciliation Commissions]. Moreover there are virtually no established mechanisms for measuring these consequences and therefore for assessing the overall success of the commissions in achieving their stated objectives.

Given the similarity of challenges across these powerful institutions, of which society has high expectations, this thesis draws on the Truth Commission literature where possible in order to apply any lessons that are pertinent to the research question.

1.6 Why success? Why not effectiveness? And what's the difference?

Success: 'pleasing to the eye and comforting to the ear'
(McConnell 2010b, p. 2),

The research question for this thesis is deliberately framed around success, in full knowledge that success has both objective and subjective elements. There are many lenses on success. At its most elemental, success can be defined simply - did the Public Inquiry fulfil the duties assigned to it (Brahm 2007, p. 17)? Given the diversity of purposes, structures, powers and political environments within which they operate this idiosyncratic, particularised assessment of success is relatively straightforward. It may indeed be part of the reason that most existing attempts to assess success take the form of a single case study approach.

Objectively it is possible to examine a Public Inquiry's processes and determine how successful it has been at being inclusive and consultative, for example, by way of the number of submissions, number and scope of public consultations. It is also possible to objectively measure the number of successful prosecutions occurring as a result of a Public Inquiry, or count the number of recommendations accepted by government. These 'counts' may be important, but there is no benchmark against which to establish whether these are large, small or average numbers, or whether such comparisons are useful at all.

It is a truism to say that success means different things to different people at different times (Bovens and 't Hart 1996). Subjectively, and as a relational term, success depends in great measure on who you are, where you sit, and your interest or investment in the area under scrutiny by a Public Inquiry. Success for a senior bureaucrat under intense scrutiny because of an inadequate emergency response will be different to success for a politician facing corruption charges, a government aiming to drive a particular agenda, or the mother of a child who has been sexually abused in foster care because of the failures of child protection policy and practice. Ransley (2014, p. 69) provides, as an example of the different perspectives on success and failure, the 1963 Gibbs Royal Commission, which, while it failed to uncover systemic police corruption, 'did succeed in the government's objective of taking police corruption off the public agenda for the next 25 years'. Citing the 'planning disaster' that was the construction of the Sydney Opera House, Bovens, 't Hart and Peters (2001, p. 20) also remind us that issues that seemed highly controversial at the time have a temporal component and may have since 'evaporated or changed shape', fundamentally changing our assessment of success or failure.

Success is also relative to intention, that is, what was the intention of the policy change or reform (Harrison 2001, p. 277)? Success can also be assessed on a comparative basis - was the Inquiry successful as compared with what would have been achieved through a

judicial process, a parliamentary inquiry, regular democratic or policy processes? Significantly, success is also multi-dimensional, so success may be partial⁸. On some measures an Inquiry may be able to be assessed as successful, but not on others. For instance, whilst the majority of recommendations of the Royal Commission into Aboriginal Deaths in Custody are yet to be implemented, there is broad agreement that this Inquiry forever changed public discourse and continues to influence policy and contemporary narratives (Cunneen 2001).⁹

Assessing success could also focus on outcomes. For example, was the Public Inquiry successful in achieving its intended outcomes, did the recommendations achieve better public policy, programs, services and outcomes? However, as previously noted, this approach is flawed because a Public Inquiry is not responsible for implementation. Policy choices, timeframes and resourcing of the implementation of accepted recommendations rest with government, not the Inquiry. Monitoring and reporting on implementation and outcomes rests with government, not the Inquiry.

Assessing success therefore emerges as a complex, nuanced task. This is highlighted empirically in Bovens, 't Hart and Peters (2001) foundational comparative work comprising 24 case studies across six European states. Bovens, 't Hart and Peters (2001, pp. 20-22) focus on notions of success and failure across different governance tasks and key governance challenges in four different sectors. Often their assessments are equivocal. Typically, their assessments contain a mix of successes and failures.

Critically, success is always a judgement which is deeply contextual, and probably temporal. Bovens, 't Hart and Peters (2001, p. 10) claim that a study of success and failure:

is inevitably also a study of politics. The assessment of success and failure of particular policies or programmes is in the end a political judgement...because the criteria for success and failure are in the end dependent on implicit visions of the good life and the power of man to influence fate...[and] because political actors, such as interest groups, politicians, journalists and voters are the main judges.

Edelman (1998, p. 43) argues that '[beliefs] about success and failure are among the most arbitrary of political constructions and perhaps the least likely to be recognized as arbitrary'.

⁸ McConnell (2010, pp. 55-80) dissects the success/failure of process, programs and politics on the following spectrum: success, durable success, conflicted success, precarious success, failure.

⁹ See also Duffy and Huggins 2016, viewed 15 September 2016, <https://changetherecord.org.au/blog/news/a-generation-of-government-failure-time-for-change>. Further, on the 25th anniversary of the Report of the Royal Commission into Aboriginal Deaths in Custody, see the Special Report in *The Conversation*, 15 April 2016 viewed 18 January 2018, <https://theconversation.com/au/topics/royal-commission-special-report-26622>

Judgements about success or failure are also 'highly contingent', and 'malleable' (Bovens, 't Hart and Peters 2001, p. 178, p. 180) and inevitably involve biases. Bovens, 't Hart and Peters (2001, p. 180) distinguish between structural, agency-centred, institutional or cultural accounts of success or failure. The authors also contemplate asymmetries between political and programmatic performances, that is, why programmatic success may not be political success and vice versa (pp. 22-25, p. 606).

McConnell's (2010a, 2010b) research also highlights the asymmetries between programmatic, policy and political success. According to McConnell (2010b, p. 3), despite its critical relevance across many disciplines, there is a paucity of research on policy success. In some senses it may be easier to identify failure. For example, did the Public Inquiry fail to investigate thoroughly, did it fail to deliver an evidence-based report, did it fail in getting government to take its recommendations seriously?

The measure most often used in the literature examined in this thesis is effectiveness, not success (for example, Prasser and Tracey 2014, pp. 225-232). Effectiveness is essentially the degree to which something is successful in producing a desired result. But what is the desired result? Public Inquiries are established by governments, so this begs the question; why did the government establish the Inquiry? What was the result desired by government? Sometimes the answers to these questions are less than explicit, and as Sulitzeanu-Kenan (2010, p. 632), observes, 'are typically covert, and – in the unlikely event that they are articulated by office holders – unreliable'. Further, this thesis argues that government is not the only interested party in the success, or even effectiveness, of Public Inquiries.

Another lens on effectiveness is provided by Prasser and Tracey (2014, p. 225). They state that 'the real measure' of [a Public Inquiry's] effectiveness, lies in the persuasiveness of its arguments and the quality of its report'. However, this definition is particular to an Inquiry and underplays the significance of these powerful institutions for citizens.

This thesis finds that there are yet few robust propositions or frameworks to assess how successful Public Inquiries are in resolving public problems, particularly from the perspective of citizens. Effectiveness does not equal success. Success is broad and assessed in many ways and from many perspectives. Effectiveness may be part of assessing success, but it is particular and pertains to a specific Public Inquiry; its processes, function and outputs. Given the power and status of these institutions, the importance of the matters they investigate and society's expectations of them, a lens of effectiveness is important, but insufficient. Effectiveness does not take into consideration the significance of Public Inquiries for society

and its citizens. Effectiveness pertains to a particular Public Inquiry and does not provide any explanatory power across Public Inquiries. Effectiveness goes to questions of the extent to which a Public Inquiry; met its terms of reference; was inclusive; the number and type of submissions it received; the breadth of its hearings; the quality and scope of its research or investigatory efforts; whether it came within budget; met its reporting deadlines; the quality of its report and recommendations. Some of these are in the control of the appointing government, for example, terms of reference, timing, resources. Others are the responsibility of the Public Inquiry itself, like independence, expertise, processes and recommendations (Prasser and Tracey 2014, p. 228). These are all important matters, but their focus is the Public Inquiry itself and the extent to which the Inquiry effectively performed the functions given to it by government. The focus of this thesis is not the internal workings of a Public Inquiry.

In *Making Inquiries* (2009, p. 165), the Australian Law Reform Commission states that given 'the many and varied functions of Public Inquiries, their effectiveness is measured in a number of ways, for example, by implementation of reports, critical feedback from experts, judicial and academic citation of reports, or even the way that recommendations affect popular thinking on social issues'. This amorphous 'influence by osmosis' thesis may be alluring but empirically is difficult to test (Sheriff 1983, p. 678).

A promising but nascent approach may be assessing impact. Prasser and Tracey (2014, p. 227) suggest that an:

appropriate measure of the impact of a public inquiry is a judgment about the value of the policy changes it recommends, assessed in terms of the public interest or common good...followed by a second more meaningful question...is the outcome of the inquiry better public policy? ...The soundness of an Inquiry's findings rather than their actual implementation is therefore what should be measured.

This two-step process is also echoed by Banks (2013, p. 7). This is a promising approach but is yet to be reflected in the literature. This thesis expands on the centrality of the notion of the 'public interest or common good' in assessing the success of a Public Inquiry.

1.7 Research design

The central objective of this thesis is to assess the success of Public Inquiries in Australia. The intent of this thesis was not to predefine what success is, but to assess some of the recurring assertions in the literature about what a successful Public Inquiry looks like. Three recurring theoretical propositions are distilled from the public administration and political science literature which is reviewed in Chapter 2. These are that Public Inquiries: respond to

crisis and restore legitimacy of government; give voice to the public, including stakeholders, 'victims' and experts; and provide the opportunity for policy change and improved outcomes.

These propositions are developed into an analytical framework in Chapter 3 which is then applied to the three different types of Public Inquiries identified in the literature. These are:

- Investigatory - a Public Inquiry which investigates allegations or seeks to find the cause of a particular catastrophic event such as a disaster or accident, or to check some suspected impropriety (Prasser 2003, pp. 85-91, after Hallett 1982). The investigatory case study in this thesis is the Inquiry into certain Australian companies in relation to the UN Oil for Food Programme 2006 (Chapter 4);
- Policy advisory - a Public Inquiry which aims to inform, summarise and propose suggestions to government on the possible solution to a particular policy problem (Prasser 2003, pp. 85-91, after Hallett 1982). The policy advisory case study in this thesis is the Queensland Child Protection Commission of Inquiry 2013 (Chapter 5);
- Hybrid - a Public Inquiry which has both investigatory and policy advisory functions. The hybrid case study in this thesis is the Queensland Floods Commission of Inquiry 2012 (Chapter 6).

An example of each type of Public Inquiry was selected in order to assess whether the analytical framework holds across Inquiry types or whether it is more relevant to particular types of Public Inquiries. The process and rationale for each case study selected for analysis is outlined at Appendix 1.

By examining Inquiry reports, government responses, media and academic commentary, findings are drawn for each case study against each of the three theoretical propositions (Chapters 4 to 6). This analysis yields an equivocal result. However, the primary focus on how Public Inquiries serve governments, rather than how they serve citizens, is revealed. The lack of feedback sought from those who have participated in the Public Inquiry, or the public more generally, is also noted. Further analysis is then undertaken utilising citizen perspectives which are publicly available. These are drawn from various proxies such as media commentary, parliamentary processes, legal action and subsequent Inquiries. Analysis using these proxies provides significant insights into how citizens assess the success of the Public Inquiry. The value of incorporating citizen perspectives into the analysis of success is demonstrated.

The analysis of the three illustrative case studies drives the argument that the three propositions for success drawn from the public administration and political science literature

provide significant insights, but focus primarily on the perspective of the State. This is undoubtedly important but, as this thesis argues that Public Inquiries express a significant dimension of the social contract between state and citizens, this perspective is incomplete.

The analysis confirms the lack of focus on citizen perspectives. The propositions of success do not adequately address considerations of the 'public interest or common good' (Prasser and Tracey 2014, p. 227). They fail to capture the meaning and significance of a Public Inquiry to citizens, or the trust invested in its deliberations and outcomes.

In none of the case studies analysed, or indeed in the examined literature, are there mechanisms for gauging citizens' views or perspectives on success. The only available windows into these perspectives are through proxies such as the media and parliamentary, democratic or legal processes. There are no mechanisms that capture the views of those who participate, have an interest in, or who are affected by the workings and outcomes of a Public Inquiry, or that capture the place of a Public Inquiry in the social contract between government and citizens. However, in each case study, these proxies for citizen responses to the Public Inquiry are identified and then applied. These perspectives provide significant insights into whether citizens assessed that the Public Inquiry was successful in repairing the breach and rebuilding the social contract.

The implications of these findings for scholarship and further research are articulated (Chapter 7). These insights form the basis of a revised framework for assessing success which emerges inductively from the research process. Regardless of their varied forms, processes or subjects, this thesis argues that, as part of the reciprocal obligations shared between citizens and government, the overarching purpose of Public Inquiries is to rebuild the social contract after it has been breached.

Within this purpose, three enduring functions of Public Inquiries are identified: to respond, to hear and to prevent. These three functions provide a framework for assessing the success of a Public Inquiry. The propositions for success are reframed as: whether the Public Inquiry was trusted to make sense of events; whether people were heard; and whether the Public Inquiry rights wrongs and thus changes policy, processes or outcomes for the better (Chapter 7). This represents a significant shift from the propositions derived from public administration and political science literature.

1.8 Structure of the thesis

Chapter 2 reviews an extensive literature on public administration and management, political science, public policy and crisis, as it is these bodies of literature that concern themselves with Public Inquiries. Chapter 2 concludes by distilling three recurring propositions of success from the literature, that is, an assessment of the success of a Public Inquiry should examine the ways in which it responds to crisis and restores legitimacy, gives voice, and provides the opportunity for policy change and improved outcomes. These three propositions form the basis of the analytical framework which is then applied to three illustrative case studies (Chapters 4-6).

Chapter 3 describes and defends the research design. This chapter concludes with the introduction of the analytical framework based on the three recurring propositions of success drawn from the literature. The following three chapters are the three Australian case studies, which form the empirical base of this research. The three propositions of success are applied to the case studies.

Chapter 4 presents and discusses Case Study 1: The Inquiry into certain Australian companies in relation to the UN Oil for Food Programme 2006 - an investigatory Public Inquiry. Chapter 5 is Case Study 2: The Queensland Child Protection Commission of Inquiry 2013 - a policy advisory Public Inquiry. Chapter 6 is Case Study 3: The Queensland Floods Commission of Inquiry 2012 - a hybrid Public Inquiry.

Each case study includes a brief background to the establishment of the Public Inquiry, the parameters of the Inquiry itself, its report and findings and the government's response. The three propositions of success derived from the literature are applied to each case study and an assessment is made regarding the success of the Public Inquiry. This process highlights and identifies the limitations of this analytical framework and the perspectives upon which it is derived. Each case study analysis concludes that the propositions, which are grounded mainly in the perspective of governments, yield ambiguous results. However, each case study also identifies markers or proxies which are indicators of the perspectives of citizens.

Chapter 7 consolidates the findings of the case study analyses, confirms that the propositions of success focus on the perspective of the State, and highlights the significant omission of citizen perspectives. This chapter then conducts an analysis of each Public Inquiry utilising the proxies for citizen responses to the Inquiry revealed through the case study analyses. These include media, legal action, parliamentary processes and subsequent Inquiries. This analysis highlights citizens' views and provides a clearer assessment of the success of the Public Inquiry. A number of questions arising from the case study analyses are also posed which challenge some of the recurring themes in the literature.

From these findings, the implications for scholarship are then identified. The thesis then moves to inductively building theory. The insights gained from the case study analyses, and revisiting a broader range of literature, inductively lead to the development of a new analytical framework. This revised framework is structured around the conclusions of this thesis as to the overarching, unifying purpose of Public Inquiries: to repair the breach of the social contract after breach, and their three enduring functions for society: to respond; to hear; and to prevent. The propositions of success are reframed as an examination of, first, the ways in which the Public Inquiry is trusted to make sense of the events or the violation of expectations. Second, the ways in which people were heard. Third, the ways in which the Public Inquiry rights wrongs and thus changes policy, processes or outcomes for the better.

An alternate analytical framework is proposed, which incorporates citizen perspectives and is not centred mainly on the perspective of the State. The chapter then offers possible approaches drawn from a range of literatures to assess success. Promising literatures and empirical frameworks are explored which offer some potential to assess the success of Public Inquiries from this more holistic view. This nascent framework emerges as a contribution to the literature.

Chapter 8 summarises the findings and implications of this research.

Chapter 2 - Literature Review

2.1 Introduction

This chapter reviews an extensive inter-disciplinary literature on Public Inquiries that includes; political science, public administration, management and policy, crisis and change literatures, and examines contested perspectives on what characterises a successful Public Inquiry. These literatures have been examined as they offer insights into the role and function of Public Inquiries, as well as the political and societal contexts in which they are formed and operate. These literatures also offer perspectives on the outcomes of Public Inquiries. In summary, for political scientists the criteria for success revolve around questions of whether the Public Inquiry provides a response to crisis, restores the legitimacy of government, and gives voice to stakeholders. In contrast, the public management literature focuses on questions of how successful the Public Inquiry has been in improving the responsiveness and efficiency of organisations and service delivery. From public policy and participation perspectives, the key questions of success relate mainly to the extent to which there have been better policy outcomes, broadened participation and changes in policy networks over the short and long term.

The purpose of this chapter is to draw on the literature to distil recurring propositions of how to assess the success of Public Inquiries. Three propositions are identified and these form the basis of the analytical framework that is applied to three selected case studies which are discussed in Chapters 4, 5 and 6. These propositions suggest that an assessment of the success of a Public Inquiry should examine the ways in which a Public Inquiry: has responded to a crisis and restored legitimacy; given voice to the public, including stakeholders, 'victims' or experts; and provided the opportunity for policy change and improved outcomes.

2.2 Theoretical perspectives on Public Inquiries

The primary theoretical perspectives on the role and function of Public Inquiries are offered through the political science and public administration literature¹⁰. The literature offers a range of perspectives including those relating to: crisis; public policy; public management and institutional change; and public participation. Each perspective provides possible, but

¹⁰ The author acknowledges that many scholars work across the fields of political science and public administration. The intent is not to delimit the domain of each discipline (Wildavsky, 2004, p. 386). Distinctions are drawn for illustrative purposes only, that is, to highlight the various contributions and contested views on success.

different, propositions of success, and within each perspective, there are contested views. Further, these perspectives are not mutually exclusive. Much of the political science literature considers participation and policy networks. Public policy literature contemplates policy coalitions. Public management literature contemplates institutional and organisational change. For the purpose of this thesis the attribution of propositions to various bodies of literature serves to delineate and crystallise elements that may together build an analytical framework to assess success. However, the core, recurring tension between all of the literature examined is the extent to which the central function of a Public Inquiry is 'to blame' or 'to learn'.

2.2.1 Political science, public administration and crisis perspectives

There are many perspectives expressed about the role and purpose of Public Inquiries including policy making, avoiding blame and achieving political objectives. Each of these suggests different ways of assessing success.

Considine (2005, pp 100-101) observes that apart from the responsible Minister, Public Inquiries 'are the most common alternate sources of [policy] proposals'. Inquiries bring different types of expertise into policy debates and create an arena for interest groups to press their perspectives (Capling & Galligan 1992, Glezer 1982). Gilligan (2002, p. 296) asserts that they provide 'breathing space' for government by inserting an eminent Inquiry between events and the government's response. Others argue that Public Inquiries insulate elites from blame and control the parameters of scrutiny focused on dominant policy systems and sub-systems (Boin, McConnell and 't Hart 2008; Prasser 2006; Sulitzeanu-Kenan, 2006; 2007).

McConnell, Gauja and Botterill's (2008) study of the Australian Wheat Board scandal contemplates the role of official Inquiries in helping frame contests over meaning and directing the spotlight away from government and its policies. Butler and Drakeford (2005 p. 4) suggest that Public Inquiries 'are important sites where a variety of professional, ideological and personal positions compete for dominance' as well as being 'foundations on which history can be rewritten'. The 'establishment of an Inquiry ipso facto demonstrates that claims-makers have been successful in transforming a set of particular events into something of wider significance' (Butler and Drakeford 2005, p. 234).

What motivates a particular government to establish a Public Inquiry in some instances, and not others, is less clear. Sulitzeanu-Kenan's (2010, p. 631) finds that 'when things go wrong, the interplay of the politics of blame, public agenda (issue salience) and government

popularity determines the choice of whether to establish a commission of inquiry'. Banks (2014, p. 131) states that 'experience tells us that governments do not always resort to public inquiries with noble intent'. Inquiries 'have a political impact because that is the government's intention in appointing them – to achieve clear vested political objectives' (Ransley 2014, p. 60). Others emphasise that Public Inquiries are established to avoid blame and/or to reduce the level of public interest in the affair by 'kicking the ball into the long grass' (Public Administration Select Committee 2005, p. 9), by depoliticising the event and deflecting controversy (Woodhouse 1995, p. 25). Sulitzeanu-Kenan's research finds that while the 'long grass argument' is not supported (2007, p. 641) there is some preliminary support for the feasibility of the role of Public Inquiries as a blame avoidance strategy (Sulitzeanu-Kenan 2010 p. 613). D'Ombra (in Stanton 2010, p. 10) concludes that sometimes Public Inquiries are established 'more as a gesture of puzzled goodwill than a clear sighted initiative'.

McConnell, Gauja and Botterill (2008 p. 600) build on the idea of the 'role of official inquiries in directing the spotlight away from government and its policies'. Parker and Dekker (2008, pp. 255-282) propose that official inquiries play three roles: as fact finding mechanisms and learning devices; a *realpolitik* function (that is, as 'arenas of opportunity' where various players compete); and a symbolic function as interpretive authorities and in the protection and maintenance of key office holders. In this schema:

if astute political leaders can, through their formal powers, steer investigative committees in particular directions, then they are steering the blame game and effectively closing off formal debate on alternative routes; closing off the possibility that 'learning' will involve unwanted change (in policies and/or leadership), but reinforcing this with the appearance of impartiality (McConnell, Gauja and Botterill 2008, p. 605).

Important or respected figures often head such Public Inquiries. This is 'to ensure that their creation and deliberations remain above partisan or public reproach' (Howlett and Ramesh 2003, p. 116). O'Connor (2007) states that a Public Inquiry Commissioner combines a number of roles; 'that of a fact finder, like a judge; a proposer for policy reform; a healer for traumatised communities; and a manager with responsibility for budgets and an administrative and legal staff'.

Establishing a Public Inquiry may also serve to demonstrate that government is not being passive, symbolising 'a reassertion of moral order' (Hill 1990, pp. 207-209). According to Kennet (1937, p. 408) Public Inquiries perform three functions:

'[firstly] a tribal dance to persuade the general public to believe that something very active was in progress...[secondly] the medicine hut...into which [the medicine man]

retired for a long period with the object of persuading the tribe that something very important was going on and that it was essential that they should wait for his emergence...[and thirdly, the] dog-fight. When a Government finds itself extremely hard put to it to distract the attention of the public from one of the fundamental human ills for which the public expects a remedy from the Government, and for which the Government is sorry it can find no remedy, it promotes a dog-fight between the people with different views, and for starting a dog-fight there is no method so valuable as that of a Royal Commission

For Hill (1990, pp. 207-209) Public Inquiries segregate abuse and abusers from the rest of society, preserving 'cherished values' and 'exerting authority'. Inquiries are thus a mode for dealing with 'moral panic' (Parton, 1981, pp. 391-395), and 'appease public disquiet' (Hill 1990, p. 207). Gilligan (2002, pp. 289-90, p. 296) argues that while Public Inquiries can be 'deeply ambiguous, both in their process and in their effects', they are 'an important component of official discourse'. Gilligan (2002, pp. 289-90) argues that Public Inquiries play a pragmatic role in that they investigate an issue, collect information, write a report and make recommendations for government but that they also play a 'broader political or ideological function as a management strategy...for centralised authority'. Mackie (2012, p. 7) argues that Public Inquiries play a 'cathartic role-holding people and organisations to account for their actions, and rebuilding public confidence after a devastating event or after suggestions of significant harmful conduct'. Sheriff (1983, pp. 676-677) identifies the vital role that Public Inquiries play as 'balloon raisers' where, 'it is not the quality or type of balloon that has been raised that is important, but rather the fact that it has been raised at all'. Sheriff argues that the value of Public Inquiries is that their reports 'are not the result of a hidden discourse within the regular bureaucracy, but rather of an open forum with wide participation' (1983, p. 676). The form and content of the recommendations hardly matter. What matters is that 'their recommendations be used to test the temperature of public reaction so that the resulting policy can take such reaction into account' (1983, p. 677).

2.2.1.1 Crisis perspectives

While varied in their purpose and structure, Public Inquiries are often established in response to a crisis of some form. Crisis literature therefore provides relevant perspectives on success. In fact, Boin 't Hart, McConnell and Preston (2010) argue that Public Inquiries appear 'a near inevitable by-product of crises' (Boin 't Hart, McConnell and Preston 2010, p. 707). The crisis may also be one of confidence, when 'the restoration of public confidence in the integrity of a vital element of public life is the paramount public interest' (Fitzgerald 1987, p. 10). Fitzgerald (1987, p. 350) argues that a Public Inquiry 'is a body with extraordinary powers set up to cope with an extraordinary situation. The justification for its existence is a crisis of public confidence'.

If, then, as is regularly asserted in the literature, Public Inquiries are established as a response to crisis, a clearer understanding of crisis is required to assist in refining the approach.

Crisis disrupts the 'patterns of politics, order and shared meaning' (Frederickson and Smith 2003, p. 71), at least temporarily. A further recurring assertion is that crises lead to change. However, there are contested views of what constitutes a crisis, why some events are framed as crises and others are not, and whether crises really do lead to change. While there is a recurring theme that crises 'often cast long shadows on the politics in which they occur' (Boin, 't Hart and McConnell 2009, p. 81; Edelman 1977, pp. 43-55), perusal of the literature suggests that despite many definitions 'a consensus does not exist about a particular way of conceptualising or examining crises' or even whether a consensus is actually required (Dayton 2004, pp. 165-194). However, for the purposes of this thesis the following definition is adopted (McConnell 2011, p. 63):

Crises are extraordinary episodes which disturb and threaten established patterns of working and dominant assumptions about the way aspects of society operate. They can threaten lives, property, markets, infrastructure, public services, policy agendas, political careers and even governing paradigms. Such threats, combined with high uncertainty, place enormous pressure and responsibility on crisis managers.

This thesis adopts the 'constructed view of crisis' as 'events or developments widely perceived by members of relevant communities to constitute urgent threats to core community values and structures' (Boin, 't Hart and McConnell 2009, pp. 83-4). To a large extent 'crisis is in the eye of the beholder' and it is 'not the events on the ground, but their public perception and interpretation that determine their political impact' (Boin, 't Hart and McConnell 2009, p. 83). According to Edelman (1988, p. 31) a crisis 'is a creation of the language used to depict it; its identification is a political act, not a recognition of fact'. Boin, 't Hart and McConnell (2009 pp. 85-88) describe these 'framing contests' as being whether the event is described as a ripple or crisis, an incident or a symptom. The authors then theorise that how an event is framed has an impact on subsequent political and policy outcomes.

Crises or the 'disruptions of societal routines and expectations open up political space for actors inside and outside government to redefine issues, propose policy innovations and organisational reforms, gain popularity and strike at opponents' (Boin, 't Hart and McConnell 2009, p. 82). The outcomes of these 'framing contests' determine the 'nature and severity of the crisis, its causes, the responsibility for its occurrence or escalation, and implications for the future'. When crisis 'delegitimizes the power and authority relationships that... discourses underpin, structural change is desired and expected' (Boin, 't Hart and McConnell 2009, p. 81).

Herepath and Kitchener (2016, p. 1114) describe 'breaches' rather than crises. They argue that it is in cases of:

the most severe and protracted institutional breaches, where loss of legitimacy of the social actors deemed to be responsible, compounded by reputational damage to the institutional field, render situated repair untenable...Once publicly disclosed, such severe breaches function as highly disruptive field-wide events that can in some contexts, prompt repair efforts by external actors through government inquiries.

According to Boin, 't Hart and McConnell (2009) political and policy outcomes in the aftermath of crisis are informed by how events are framed, that is, whether events are framed as symptomatic of broader issues; or unfortunate, but one-off aberrations; as 'wrinkles' or 'tears' (Reay, Golden-Biddle and Germann 2006, p. 994). Building from Kingdon's work (1995), the authors posit crisis exploitation theory, where, always on the lookout for 'problems' to which to attach their own 'solutions', political actors scan the horizons for problems to which to attach their preferred solutions and may seek to appropriate critical incidents of various kinds for precisely that purpose' (Boin, 't Hart and McConnell 2009, p. 83). Boin, 't Hart and McConnell (2009, p. 83) define their theory of crisis exploitation as 'the purposeful utilisation of crisis-type rhetoric to significantly alter levels of political support for public office-holders and public policies'. The authors contemplate framing contests in the Inquiry area and posit that 'office-holders appear to operate on the assumption that an expert-led (as opposed to parliamentary) Inquiry is less likely to turn into a political witch-hunt, reasoning that expert driven Inquiries tend to 'go for policy substance, not for political skulls' (Boin, 't Hart and McConnell 2009, p. 98) and that 'elite escape' is possible 'on the wings of inquiry reports that spread blame around by emphasising the complex, multifaceted nature of the causes of crisis' (Boin, 't Hart and McConnell 2009, p. 94). In the reports of Public Inquiries canvassed by the authors they conclude that 'whilst their tone was grave, their focus was mostly on regulatory, managerial and cultural factors' (Boin, 't Hart and McConnell 2009, p. 98). They predict that crises investigated by expert commissions appear less likely to result in political fatalities and that in the presence of an Inquiry 'incumbents are more likely to successfully survive the *political game* of crisis exploitation' (Boin, 't Hart and McConnell 2009, p. 100, italics in original).

Crises, and how they are framed, disrupt the norms of institutions and our understanding of how they function (March and Olsen 1984). Crises disrupt meaning. The perspectives offered by sensemaking theory provide another potent theoretical lens. Weick, Sutcliffe and Obstfeld (2005 p. 409) argue that sensemaking plays a central role in determining human behaviour. Sensemaking organises flux (Weick, Sutcliffe and Obstfeld 2005, p. 411) and

determines how something comes to be an event, what the event means and by doing so helps order our worlds (Weick, Sutcliffe and Obstfeld 2005, p. 410). Sensemaking involves the 'ongoing retrospective development of plausible images that rationalise what people are doing' (Weick, Sutcliffe and Obstfeld 2005, p. 409). Sensemaking is 'an issue of language, talk, and communication. Situations, organizations, and environments are talked into existence' (Weick, Sutcliffe and Obstfeld 2005, p. 409). Sensemaking occurs 'when the current state of the world is perceived to be different from the expected state of the world' and 'to make sense of disruption' (Weick, Sutcliffe and Obstfeld 2005, p. 409).

Boudes and Laroche (2009, p. 377) focus on the narratives associated with crises and characterise crises as 'moments when sensemaking fails'. Official reports of post-crisis analyses 're-establish patterns of sensemaking' (Boudes and Laroche 2009, p. 377). In their examination of seven official reports following a sudden and unexpected heatwave in France in 2003 which led to thousands of deaths, the authors take the reports as 'elements in the sensemaking process' (Boudes and Laroche 2009, p. 377). Official reports 'transform the chaotic events of a crisis into an ordered and official story' and, after Weick (2005), provide answers to 'What's the story' and 'Now what should I do?' (Boudes and Laroche 2009, p. 377). The authors explore the close link between narratives and sensemaking and conclude that narratives have been used as (Boudes and Laroche 2009, pp. 377-378):

cognitive structures that help individuals and groups to cope with the confusion in their world of action (Bruner 2002; Cunliffe et al. 2004); communication devices (Barry and Elmes 1997; Martens et al. 2007; Weick and Browning 1986); repositories of knowledge to be transmitted and re-enacted (Boyce 1995; Orr 1996; Patriotta 2003); taken-for-granted meanings that are to be re-used as guidance for subsequent action and interpretation (Ingersoll and Adams 1992; Mumby 1993; Wilkins 1984).

Official accounts, or post-crisis Inquiry reports, deal with the 'politics of meaning; how meanings are selected, legitimized, encoded and institutionalised at the organisational level' (Patriotta 2003, p. 351). Inquiry reports are characterised as 'story telling' and follow a convention that differentiates between a state of normalcy preceding the occurrence of crisis, the crisis period itself, and the aftermath (Boin, Kofman-Bos and Overdijk 2004, p. 380). Boudes and Laroche's research (2009) suggest that a successful Public Inquiry is one where the Inquiry report depoliticises the disaster event and justifies actions taken; restores trust and legitimacy; and 'reduces anxieties by elaborating fantasies of omnipotence and control'. Sulitzeanu-Kenan (2006, p. 647) qualifies this assertion with his finding that rather than performing a primarily normative 'fact finding role', Public Inquiries also play a descriptive, social role by 'providing confirmation'. He describes 'conditional credibility', where prior to receiving the report of a Public Inquiry 'public perceptions maintain a high

level of trust in the operation of the Public Inquiry, and retain this trust if a negative report emerges. This perception is, however, abandoned if an 'overly' positive report is delivered' (Sulitzeanu-Kenan 2006, p. 647). Sulitzeanu-Kenan (2006, pp. 647-8) posits that 'people form value judgments relatively early in the stages of an affair and seek the appointment of a Public Inquiry not [only] to reveal unknown facts, but to provide an authoritative confirmation of their *ex ante* judgements'. As expressed more directly in the context of the Queensland Floods Commission of Inquiry case study (discussed in Chapter 6) '[t]hey don't want answers per se, they want answers that they agree with' (Eburn 2012).

Some breaches or crises profoundly call into question the legitimacy of our institutions. They 'hit at the heart of existing policy domains, exposing deficiencies in regulatory or service delivery arrangements' (Alink, Boin and t'Hart 2011, p. 286). Alink, Boin and t'Hart (2011) argue that 'institutional crises are periods in which a policy sector experiences major legitimacy shortfalls' and provide a 'major opportunity for issue advocates to raise the salience of the issue domain and reshape its hitherto dominant problem definitions and policy mixes' (in Boin, t'Hart and McConnell 2009, p. 98). Governments 'typically have access to much of the authority and resources to help resolve crisis situations, and there are strong expectations from the media, citizens and civil society generally, that they will do so 'successfully' (McConnell 2011, p. 63). But what is a 'major legitimacy shortfall'? More fundamentally, what is legitimacy?

2.2.1.2 Crisis disrupts legitimacy. But what is legitimacy?

Restoring legitimacy emerges as a recurring theme with regard to assessing the success of Public Inquiries. Further examination of this concept is therefore undertaken to explore the ways in which a Public Inquiry restores legitimacy. This section explores various contested perspectives on legitimacy and the role Public Inquiries play in restoring legitimacy.

Legitimacy is one of the foundational concepts, an 'anchor point' of institutional theory (Suchman 1995; Suddaby and Greenwood 2005). However, there are recurring tensions in the legitimacy literature. The sociological approach focusses on legitimacy as public consent and support (Lipset 1959), 'willing obedience' (Cromartie 2003, p. 93) or support and compliance (Heywood 2004, p.130). The philosophical approach describes legitimacy as principled justification (Rawls 1972, pp. 17-22) and equates legitimacy with appropriateness and justice (Hegtveltdt and Johnson 2009, p. 395). Beetham (2013, p. 19, italics in original) draws a distinction as follows:

'Legitimate power for the philosopher is power which is *rightful* according to rationally defensible standards or principles. Legitimate power for the social scientist is power which is *acknowledged as rightful* by relevant agents'.

According to Heywood (2004, p. 141) legitimacy is 'the quality that transforms naked power into rightful authority; it confers upon an order or command an authoritative or binding character, ensuring that it is obeyed out of duty rather than because of fear'. Suchman (1995, p. 573) reminds us that the question 'what is legitimacy' is intertwined with the question 'legitimacy for what'?

Ideas of legitimacy are highly contested (Abulof 2016). The contest of ideas turns on whether legitimate rule is that which best serves the people, or whether it rests on the general will (Heywood 2004, pp. 141-2). Within the enduring social contract tradition 'political legitimacy, political authority, and political obligations are derived from the consent of those who create a government (sometimes a society) and who operate it through some form of quasiconsent, such as representation, majoritarianism, or tacit consent' (Riley 1982, p. 1). In his seminal work *Will and Political Legitimacy*, Riley (1982) traces the five main theorists of the social contract tradition (Hobbes, Locke, Rousseau, Kant and Hegel), as well as more contemporary philosophers including Rawls. He observes the definitional contests regarding 'will' and 'consent', and the ongoing ambiguities and inconsistencies in 'setting up a philosophical framework that is adequate to explain the concept of consent as a source of authority and obligation' (Riley 1982, pp. 9-10). Riley (1982, p. 214) concludes that given 'the social contract tradition is alive...[it is vital to develop] 'a coherent metaphysic of morals, a coherent account of the relation of will to political legitimacy'. Weale (2013, pp. 6-7) also acknowledges that social contract theory takes many forms¹¹, but argues that 'the various accounts are united by the thought that justifiable terms of social cooperation are to be understood on a model of a contract that each individual would have reason to make with other individuals, all taking due regard for their own prudential interests'.

Rousseau's fundamental question is 'what makes curtailment on our freedoms' legitimate (Mistrey 2008, p. 130)? According to Rousseau's social contract theory, 'because the people

¹¹ Within various modern social theories, further contests arise from the different ways under which it is assumed the negotiation over the social contract occurs. In contractarian approaches, the negotiation is assumed to be one in which individuals are concerned with the rational pursuit of their own interests. They seek to establish a social contract that is to their mutual advantage. This links to individualist ideologies. Contractualist approaches emphasise that each reasonable person will endorse the social arrangements and principles that are to govern their joint lives that could be accepted by all reasonable persons. Reasonable justification acts as a constraint on pure self-interest. Contractualist theories link to collectivist ideologies (Riley 1982, Solum 2011, Weale 2013).

originally entered into the agreement voluntarily (or of their own free will), the power and legitimacy of the sovereign [or the State] is ultimately derived from the will of the people' (Wilkerson 2014, p. 574). The only justified authority or legitimacy is that which is generated out of this social contract, or the reciprocal obligation between citizens and the State. Legitimacy allows the State to exercise its authority and 'facilitates a state's efforts to form a social contract with the populace, making it possible to gain its citizens' trust, create and enforce rules, use force and minimise the impact of actors looking to destabilise the state' (Dagher 2018). Rousseau (1764, Book I, Chapter III) asserts that 'obedience is only due to legitimate powers'. Locke goes further and states when the conditions under which the social contract with the State is destroyed citizens are obliged to resist the authority of government (Friend n.d.).

According to Weber legitimacy refers to the 'right to rule' and as long as people are willing to comply, the system of rule is legitimate (Heywood 2004, p. 142). Suchman (1995, p. 574) defines legitimacy as 'a generalised perception or assumption that the actions of an entity are desirable, proper or appropriate within some socially constructed system of norms, values, beliefs and definitions'. Others argue that legitimacy is 'little more than a façade concealing the domination of the 'power elite' or 'ruling class' (Heywood 2004, p. 145). All regimes manufacture legitimacy by manipulating what people know, think or believe (Heywood 2004, p. 142) and legitimacy is a form of ideological hegemony or dominance. According to these traditions legitimacy is produced by ideological manipulation and indoctrination and is designed to mask the self-interest of the ruling class (Parks 2011, p. 31).

The critical point in the context of this thesis, is that legitimacy 'represents a *relationship* with an audience, rather than being a *possession* of the institution or organization' (Suchman 1995, p. 594, italics in original). While built on subjective perceptions, legitimacy is generalised, aggregated and objectified at the collective level (Berger and Luckman 1966, p. 79, pp. 110-122). Critically, legitimacy is always conferred, it is 'a social evaluation made by others' (Bitektine and Haack 2015, p. 50). If, as argued in this thesis, citizens are part of the 'audience' of Public Inquiries, it is critical that their perspectives are incorporated into assessments of the ways in which a Public Inquiry has been successful in restoring legitimacy.

Beetham (2013, p. 20) examines the way legitimacy is brought about and proposes that power can be said to be legitimate if: it is exercised according to established rules (formal legal codes or informal conventions); these rules are justified in terms of the shared beliefs

of the government and the governed; and legitimacy is demonstrated by the expression of consent on the part of the governed. This is the basis of the social contract. Legitimacy is only conferred upon regimes that exercise power according to established and accepted principles. Liberal democracies, it is argued, guarantee their continued legitimacy by ensuring that government power is not unchecked or arbitrary but is exercised in accordance with the wishes, preferences and interests of the general public. This occurs through the rules of power (constitution) which protects individual liberty and constrains government power, and regular, open and competitive elections (Heywood 2004, p. 143). Arguably, as constituted under its respective legislation, a Public Inquiry functions as just such a check on power.

Bitektine and Haack (2015) offer both a macro and micro level analysis of legitimacy. This constructive work suggests that legitimacy takes place at both the micro level within individuals, but also at the sensemaking level where actors make a legitimacy judgment at the macro level (Bitektine and Haack, p. 51). Propriety (the individual's approval of the organisation and its actions and practices) and validity (the extent to which there appears to be a general consensus within a collectivity that the entity is appropriate for its social context) are both at play - and both can be manipulated and assessed. Media (the share of voice), government (regulatory and legislative decisions) and the judicial system (legal judgements) are the three critical sources of validity; 'each of the judgement validation institutions provides some form of forum for debates over legitimacy and a mechanism for debate resolution' (Bitektine and Haack 2015, p. 51). The authors describe this multi-level theory of legitimacy in states of institutional stability and instability. Using this schema, a Public Inquiry is a unique source of validity and a powerful forum for debate over legitimacy, in that it is established by, but independent of government, has wide, coercive powers, like the judiciary, and is scrutinised closely by public and media.

Scott (2014, p. 74) defines legitimacy by reference to the three pillars, or foundations, of institutions. The regulatory pillar emphasises the legitimacy of rules, relevant legal or quasi-legal requirements. The normative pillar emphasises 'a deeper, moral base for assessing legitimacy' and is more likely to be internalised. The cultural-cognitive pillar rests on legitimacy that comes from conforming to 'a common definition of the situation, frame of reference, or a recognizable role (for individuals) or structural template (for organisations)'. Institutions 'exhibit stabilizing and meaning-making properties' because of the processes set in motion by regulative, normative and cultural-cognitive elements...these elements 'guide behaviour and resist change' (Scott 2014, p. 57). Institutions 'are underpinned by institutional logics' (Brown, Ainsworth and Grant 2012, p. 299) and which provide organising principles

(Rao, Monin and Durand 2003, p. 797). These principles shape interpretations, define roles, constrain and enable agency (Peters 2012, pp. 174-175). Institutional logics may become 'misaligned or weakened' (Brown, Ainsworth and Grant 2012, p. 299), possibly through a crisis.

Habermas argues that challenges to legitimacy are inevitable. In 'Legitimation Crisis' (1988) Habermas argues that liberal democracies have 'crisis tendencies' or 'structural risks' which challenge the stability of regimes by undermining legitimacy. The core tension between the capitalist economic system and a democratic political system renders a capitalist democracy to be inherently unstable. A crisis in the politico-administrative system results in a legitimation crisis which could 'threaten the whole of the state apparatus with disintegration...the threatening crisis is offset, buffered, or diffused with...the contrived legitimations of ritual parliamentary elections' (Pusey 1987, p. 96), or, by extension in the context of this thesis, the ritual of a Public Inquiry.

Habermas argues that a great part of the substantial legitimacy of the nation-state is through the governance of regulating common risks, handling social problems and maintaining order' (Lebeck 2003, p. 147). However, 'crisis states assume the form of disintegration of social institutions' (Habermas 1988, p. 3) and 'as soon as belief in the legitimacy of an existing order vanishes, the latent force embedded in the system of institutions is released - either as manifest force from above (which is only a temporary possibility) or in the form of expansion of the scope for participation' (Habermas 1988, p. 96). It is precisely this expansion of the scope for participation that some argue is a key success factor of Public Inquiries.

Legitimacy is a form of social capital (Weede 1996, p. 222), a 'reservoir of support' for institutions and authorities (Tyler 2006, p. 381). However, when a crisis occurs rules, norms and expectations are breached resulting in a shortfall of legitimacy. Alink, Boin and 't Hart (2011, p. 281) argue that legitimacy cannot be measured in absolute terms but that it is possible to 'assess and detect significant alterations in levels of legitimacy', through indicators such as the extent and content of media coverage, parliamentary attention, number and nature of administrative appeals, court and ombudsman rulings regarding a sector.

Sheriff (1983, pp. 670-671) asks why Public Inquiries are set up in some circumstances and not in others. What are the exceptional circumstances requiring the establishment of a Public Inquiry to undertake a task that would otherwise be undertaken by the regular bureaucracy which has the expertise to deal with routine and non-routine matters. Sheriff (1983, p. 672)

identifies one of the key tasks of the State in capitalist society is the legitimisation function, whereby the State maintains or creates the conditions for social harmony. Sheriff (1983, p. 672) argues that as a powerful mechanism sitting outside the state bureaucracy and a crucial element of the State apparatus, Public Inquiries are set up:

in exceptional circumstances when the task must not only be dealt with but seen to be dealt with, and that what differentiates their task is that they are more effective in performing the legitimization function that cannot be carried out in the hidden recesses of the regular bureaucracy.

With respect to the recurring theme in the literature that successful Public Inquiries restore legitimacy, DiMaggio and Powell (1983) provide a helpful heuristic. DiMaggio and Powell (1983) termed the 'iron cage' of isomorphism, that is, where firms were influenced by crisis, proximity, prestige and other forces of diffusion over time and came increasingly to resemble each other. Resting on the three-pillar model of institutions, DiMaggio and Powell (1983) describe three types of pressures towards isomorphism: mimetic (pressure to copy or emulate – cultural cognitive pillar); coercive (often associated with legal requirements – regulative pillar); and normative (impact of professional standards and norms –normative pillar). Each pillar offers a different basis for legitimacy: legally sanctioned (regulative pillar), morally governed (normative pillar), and comprehensible, recognisable and culturally supported (cultural-cognitive pillar), (Scott 2014, p. 60).

DiMaggio and Powell (1983) argue that organisations yield to the isomorphic pressures that confront them, otherwise they risk their legitimacy and survival. In Suchman's (1995) terms, in uncertain environments, organisations pursue cognitive legitimacy (comprehensibility and taken-for-grantedness) which is based on cognition rather than on interest or evaluation (Suchman 1995, p. 582) through mimetic isomorphism, that is, by mimicking the most prominent and secure entities in their field (Suchman 1995, p. 589).

The critical point in the context of this thesis is that legitimacy is essential for the maintenance of any system of political rule (Heywood 2004, p. 147). Legitimacy is conferred, and as such, citizen perspectives are at the heart of considerations of legitimacy. Our institutions require the trust and confidence of citizens to maintain their legitimacy (Parks 2011, p. 1). Restoration of legitimacy is a critical task for central authorities (Suchman 1995). The establishment of a Public Inquiry is a powerful tool which can be used by governments to achieve this task. Amidst the contested approaches to legitimacy outlined above, it is generally agreed that one of the key roles of Public Inquiries is to restore legitimacy and confidence (Sulitzeanu-Kenan 2006, 2007) and that Inquiry reports 'make a case for

institutional change by altering perceptions of legitimate processes of organizing' (Brown, Ainsworth and Grant 2012, p. 299).

In summary, taking the key, recurring themes from the literature detailed above, the following proposition is established:

Proposition 1

An assessment of the success of a Public Inquiry should examine the ways in which it has responded to crisis and restored legitimacy.

2.2.2 Participation perspectives

A Public Inquiry signals the possibility of a participatory process. How is this done? What are the mechanisms used to secure participation? How are the views of experts, stakeholders, and those affected by the issue that led to the creation of the Inquiry balanced? Who's voice counts?

There is an extensive, rich and contested literature on participation which provides relevant insights on the ways in which the success of a Public Inquiry might be assessed on this dimension. This section explores such perspectives.

Public Inquiries are not 'faceless' bureaucratic systems. They are intended to be open, transparent, public processes. Prasser (2003, p. ii) argues that it is 'precisely their "publicness" that gives Public Inquiries a particular standing and legitimacy' to investigate and advise on a range of issues. He argues that Public Inquiries satisfy other requirements of the policy process and political system such as promoting participation, providing forums for debate and putting issues on the agenda (Prasser 2003, p. 308). There are various mechanisms and types of participation in Public Inquiries. Depending on the type of Public Inquiry (investigatory, policy advisory, hybrid), these generally vary from quasi-judicial processes like: issuing subpoenas; calling for witnesses; calling on experts to give evidence, to broader forms of public participation like: open public hearings; consultation; calling for submissions; and providing detailed documentation, transcripts and updates via websites.

Participation is an important element of impartially and thoroughly investigating the 'who, what, where, when and how' of the subject of the Inquiry. Participation through a Public Inquiry is a 'pivotal feature in how societies produce authoritative accounts of 'what went wrong' (McConnell, Gauja and Botterill 2008, p. 614). Prasser (2006, p. 86, p. 97) notes that through their processes of gathering evidence and participation, Public Inquiries often

assume the authoritative statement on crisis and perform the roles of fact-finder, auditor, reformer and/or apportioner of blame. Butler and Drakeford (2005, p. 4) however, remind us that the Report of the Inquiry is only one record of events and that media, official papers and 'recollections' by those present 'are equally articulate commentaries'. Butler and Drakeford (2003, p. 219) argue that despite the usual claims of 'objectivity and veracity' the Report of an Inquiry is 'only one partisan version of many possible accounts'. Inquiries too are social processes.

From the public's perspective much is expected of and attributed to Public Inquiries and once established coverage of their processes, deliberations and outcomes attract much media attention and commentary. According to Kerr (2014, p. 281):

Scandal. Incompetence. Mismanagement. Negligence. And corruption...are all pertinent...as their scope and scale can lead our politicians to throw up their hands and promptly dump the problem into that legalistic too-hard basket, a royal commission. And the media do love a royal commission. There's really nothing quite like it. These are often 'the hottest ticket in town'.

However, the public's view of Public Inquiries is also contested. Not everyone welcomes yet another Public Inquiry or has faith in its outcomes. In an inquiry into Public Inquiries commissioned by the Centre for Effective Dispute Resolution between 2011 and 2015, more than half of those surveyed found Public Inquiries 'too long and too costly, and did not believe recommendations were implemented' (Mackie 2012, p. 8).

Some members of the public want more Inquiries 'to inform and energise a new generation of democratic action and political decision making' (O'Neil 2001). Others stress the importance of the Inquiries in bringing people to justice and preventing further abuse, for example, '[t]he most important outcomes people want from the inquiry are that abusers and those who protected them be brought to justice, along with preventing further child sexual abuse' (Zwartz 2012). However, others are sceptical: '[y]et another royal commission is not going to alter the mistrust...it's seen as another stalling tactic by government to avoid assuming its real responsibilities...You can't put out a fire with paper' (Wagamese 1991); and, '[c]ommissions will likely limp across the finish line and produce voluminous, overdue reports...Will you as a taxpayer, consumer and citizen be any better off?' (Gessell 1996).

As the literature notes, however, Public Inquiries can provide an opportunity for people to have their say in an open and transparent manner:

The reconciliation afforded by the process is critical for those directly affected by the tragedy. This is why the process was so important and, in the case of the royal commission into the Victorian fires, is probably its greatest achievement. The

painstaking opportunity for people to have their say and to be heard is an integral part of this coming to terms (Holmes 2010, p. 389).

Whilst a contested area, whenever and wherever they are established Public Inquiries flag the prospect of participation¹², carry the weight of public expectations, the inevitability of media scrutiny, the requirement for a government response and the possibility of some change.

A recurring assertion in the literature about the impact of Public Inquiries is the inclusion of voices and ideas that, typically, may not have been heard, that is, those outside the policy elites or epistemic communities; and a Public Inquiry's impact on public discourse. Some authors suggest that one of the key outcomes of Public Inquiries is the extent to which they contribute to public discourse (ALRC 2009; Regan 2014). Regan suggests that there are three dimensions of influence or impact; impact on research, public discourse and policy. Regan suggests that if a government accepts the recommendations, the review has had some impact, although she acknowledges that policy reform may have happened anyway. If a government rejects the recommendations the Public Inquiry may have failed to influence policy, but it may have 'engendered new research and analysis and fostered public debate or improved public understanding' (Regan 2014, p. 51). Regardless of whether the government accepts or rejects the recommendations the review may have been a 'paradigm shaper' (Regan 2014, p. 51).

Sheriff (1983, p. 672) however, argues that the success or failure of a Public Inquiry:

must be evaluated not mainly on the basis of the extent to which their recommendations are implemented, given that the regular bureaucracy is quite capable of suggesting policy...but rather on the basis of the extent to which their functioning has provided sufficient and appropriate visibility for the topic under scrutiny.

According to Sheriff, Public Inquiries activate the 'participative state' where 'the bureaucracy provides for representatives of various sectors to participate directly and democratically in the definition of desirable policies' (1983, p.673).

Sheriff concludes that it is the form, rather than the content of the Inquiry that is important, that is, 'the opportunity to bring in representatives of a great variety of viewpoints, which is

¹² Participation occurs through various mechanisms that typically include hearings, calling for witnesses and/or experts, submissions and consultations. Depending on the nature of the Public Inquiry, participants will usually include experts, those affected by whatever triggered the Inquiry, advocates and a range of stakeholders which many include businesses, insurers and unions.

facilitated by the appointment of Commissions and which contributes towards this participative image of the modern state'. It is 'not so much *what* policy is formulated but *how* it is formulated that takes precedence', that is, 'the legitimisation or participatory aspect of commission functioning that is an important but neglected aspect of the purpose of commissions'; 'when the task must not only be dealt with but *seen* to be dealt with' (1983, pp. 671-674, italics in original).

A Public Inquiry is a particular form of deliberation¹³ with its own distinctive features, opportunities and constraints. However, it is never a 'collegial form of organisation' where individuals gather to reach agreement (Eriksen and Weigård 2003, p. 213). This raises the question; what does participation mean and what kind of communication characterises participation in the context of a Public Inquiry? What are the models of participation relevant to assessing the success of a Public Inquiry?

Arnstein's ladder of participation (1969) offers one heuristic of direct relevance to this question. Arnstein observes 'the exacerbated rhetoric and misleading euphemisms' (Arnstein 1969, p. 216) that are used in discussions of participation. In Arnstein's typology (1969, p. 216), each of the rungs of the ladder corresponds to citizens' power in determining the level and type of participation, and the influence on outcomes. Arnstein (1969, p. 216) notes the 'critical difference between going through the empty ritual of participation and having the real power needed to affect the outcome of the process'. There are 'significant gradations of citizen participation' and the ways in which citizens can 'make institutions responsive to their views, aspirations, and needs' (Arnstein 1969, p. 217).

Habermas (1981) also offers insights on the structural characteristics of participation to ensure rational and legitimate processes. These are explored in the next section.

¹³ For the purposes of clarity, although sometimes used interchangeably, deliberation is not the same as participation. For example, Pateman's (2012) view of participatory democracy has a higher threshold than Dryzek's (2015) deliberative view of democracy. For Pateman (2012, p. 7) 'deliberative democracy is a form of citizen participation'. She argues that 'deliberative democracy still leaves intact the conventional institutional structures and political meaning of "democracy"' (2012, p. 10). Participatory democracy, however, requires structural changes to 'reform undemocratic authority structures (Pateman 2012, p. 10). There is active scholarship and debate about the features, sites and benefits of participatory and deliberative democratic processes (for example, Dryzek, 2001, Ercan and Dryzek 2015, Curato, Dryzek, Ercan, Hendriks and Niemeyer 2017, Pateman, 2012). However, the key point in the context of this thesis is how, and in which ways, a Public Inquiry's processes have incorporated participation and its outcomes have secured legitimacy (Dryzek, 2001, p. 651, p. 652).

2.2.2.1 Habermas: Linking communication and participation with legitimacy

In his Theory of Communicative Action (1981), Habermas 'regards a public sphere of rational debate as the only possible foundation for democratic politics in the contemporary world' (Kulynych 1997, p. 320). For Habermas, democracies are 'systems that achieve the formation of public opinion and public will through a correct process of public communication' (Kulynych 1997, p. 320). The 'legitimacy of democracy depends not only on constitutional processes of enacting laws, but also on the "discursive quality of the full processes of deliberation leading up to such a result"' (Bolton 2005, p. 2). Of particular relevance to Public Inquiries, particularly policy advisory Inquiries, Habermas (1998-99, p. 940) writes:

Rational discourse is supposed to be public and inclusive, to grant equal communication rights for participants, to require sincerity and to diffuse any kind of force other than the forceless force of the better argument. This communicative structure is expected to create a deliberative space for the mobilisation of the best available contributions for the most relevant topics.

According to Habermas (1998-99, p. 941) 'collective actors of civil society' may influence public opinion but:

such 'influence' is transformed into 'power' only by an interaction of the informal and diffuse communication flows of the public sphere at large with formally organised opinion-and will-formation processes first embodied in the parliamentary and the judiciary complex [or a Public Inquiry]. 'Communicative power' is produced according to the democratic procedures of elected and deliberating bodies and then, in accordance with legislative programs and court decisions, transformed into the administrative power of the executive agencies, available for the purpose of implementation.

It is the 'communicative power and the conditions that fashion its formation which ensure the legitimacy of law' (Eriksen and Weigård 2003, p. 174). In this context 'participation equals discursive participation; it is communication governed by rational, communicatively achieved argument and negotiation' (Kulynych 1997 p. 320). Habermas (Kulynych 1997, pp. 320-321):

distinguishes two types of discursive participation: problem-solving or decision-oriented deliberation, which takes place primarily in formal democratic institutions such as parliaments [and arguably Public Inquiries] and is regulated or governed by democratic procedures; and informal opinion-formation, which is opinion-formation "uncoupled from decisions... [and] effected in an open and inclusive network of overlapping, subcultural publics having fluid temporal, social and substantive boundaries".

Habermas characterises the former as the 'strong' public sphere and the latter as the 'weak' public sphere (Eriksen and Weigård 2003, p. 185).

For Habermas (1998-99, p. 941) the:

structural features of political communication are more important than individual properties; such as the capacity for rational choice or good intentions or appropriate motivations. Public communication must be inclusive and selective at the same time; it must be channelled in such a way, that relevant topics come up, interesting contributions and reliable information come in, and good arguments or fair compromises decide on what comes out.

These structures and procedures ensure that deliberation is conducted in 'such a manner that the issue under discussion is sufficiently illuminated before a decision is made, and that decisions can claim to be qualified, that is, rational' (Eriksen and Weigård 2003, p. 125). Habermas shifts 'the focus of participation away from policy making and toward redefining legitimate democratic processes that serve as the necessary background for subsequent policy making' (Kulynych 1997, p. 321). In these terms, a Public Inquiry can be seen as an arena which links the 'public sphere' to the state and through which 'influence' may be transformed into 'power'.

Of relevance to assessing the success of a Public Inquiry, therefore, is the ways in which its structural features enable rational discourse; the ways in which the communication structure is equitable and inclusive (Kulynych 1997, p. 323) and thus legitimate. This is particularly relevant to Public Inquiries established as policy advisory or hybrid Inquiries, as at the core of these Inquiries is the attempt to gather evidence and knowledge from broad perspectives, and upon which to make recommendations to government.

A consideration of the various mechanisms for participation are therefore relevant, namely, the extent to which a Public Inquiry calls for and balances inputs from experts and advocates, as well as those with lived experience (non-experts who have been affected by the events which triggered the Public Inquiry).

Potts (2008, pp. 20-22) operationalises these structural features of active and informed participation, or 'having voice', as having the following elements:

- Institutional mechanisms to ensure people can participate – these include ensuring that participation is undertaken in an appropriate way which is accessible by different groups and that barriers to participation are addressed (for example, physical barriers, economic barriers, ensuring representatives are duly authorised and accountable to their constituencies; and
- Capacity building for participation, where necessary.

This provides an important schema against which to assess the extent to which a Public Inquiry has facilitated participation and given voice.

2.2.2.2 Redefining 'expertise': opening the window for paradigm shift

In addition to considering how successful the mechanisms of participation have been, a further lens on success may be to examine whether the inputs, or, 'voices', have broadened as a result of a Public Inquiry. Public Inquiries can change the regular dynamics of a policy system (Howlett and Ramesh 2003, p. 116). New ideas and knowledge can challenge existing policy networks and can lead to the dissolution of established networks, the rise of new actors or existing actors adopting new issues (Sabatier 2007, pp. 142-143). Howlett and Ramesh (2003, p. 106) suggest that this:

involves alteration of the government's authority to elevate the views of some policy actors above others in formal and informal policy processes. Commissions or Inquiries are based on preferential recognition extended by states to specific policy actors, enhancing their access to decision-makers and their voice in policy deliberations.

As such, suggested factors of success may be the extent to which a Public Inquiry has been open to, and incorporated, new ideas and policy perspectives, or to including different policy systems and actors in order to inform the Inquiry and suggest reform. This perspective contemplates policy entrepreneurship, policy networks and advocacy coalitions. These are explored in this section.

A number of theoretical approaches use the policy network concept. For example, policy networks are variously described as governance systems, as descriptive of possible patterns and interactions among players within specific policy systems, or as a quantitative approach to social network analysis (Adam and Kriesi 2007, pp. 129-130). Various authors (for example: Agranoff and McGuire 2001; Considine, Lewis and Alexander 2009; Gains 2003; Kingdon 1995) identify 'small networks of policy specialists who discuss particular issues, set agendas, formulate policy alternatives outside formal bureaucratic channels, who serve as brokers for admitting new ideas into decision-making circles' (Haas 1992, p. 31).

In his study of international policy coordination Haas (1992, p. 2) examines:

the role that networks of knowledge based experts - epistemic communities - play in articulating the cause-and-effect relationships of complex problems, helping states identify their interests, framing the issues for collective debate, proposing specific policies, and identifying salient points for negotiation.

If 'rationality is bounded, epistemic communities may be responsible for circumscribing the boundaries and delimiting the options' (Haas 1992, p. 16) and, as Schattschneider (1975, p. 66) notes 'the definition of the alternatives is the supreme instrument of power'.

Haas (1992, p. 14) also notes that '[d]ecision makers do not always recognise that their understanding of complex issues and linkages is limited, and it often takes a crisis or shock to overcome institutional inertia and habit and spur them to seek help from an epistemic community'. As previously established, the precursors to Public Inquiries are often such 'shocks' and the ways in which a Public Inquiry opens up the space for new voices to inform policy and direction is significant, and may constitute a factor of success.

Thomas (1997) 'imported' Haas' concept of epistemic communities and tested some of the hypotheses of epistemic influence using a case study of interagency cooperation. Thomas found that 'context mattered greatly in shaping epistemic influence because public officials search out and heed new advice when they are confronted by anomalous situations and uncertainty' (p. 243-44), as may be the case when a Public Inquiry is established.

Considine (1998) confirms that context matters. In his analysis of issues selection and agenda setting, Considine (1998, pp. 298-9) found that over time a relatively small group of policy influentials in each functional policy field are responsible for answering the questions raised by external events and internal governmental opportunities. In contrast to studies that show randomness in the distribution of agenda setting influence, Considine's 'structured influence model' finds considerable impact of structural features on likely levels of power. His study of six policy sectors¹⁴ and agenda items by policy field over three years found that 'specific structural characteristics play a decisive role in determining which issues will gain attention in the agenda setting process (Considine 1998, p. 307).

Considine's (1998, p. 315) findings suggest far more coherence than contingency or 'primeval soup' (Kingdon 1995, p. 19) models suggest. The structure of agenda setting influence is more likely to be field specific and outside driven¹⁵. Considine's findings suggest a nuanced way of assessing success in terms of examining to which groups a Public Inquiry has given voice, and which voices have had an impact on outcomes.

¹⁴ The six policy fields studied were economics, environment, education, transport, health and welfare (Considine 1998). Considine finds that the six fields are characterized by important differences in the representation of policy influentials. For example, 'Economic policy appears to be dominated by business and by politicians...Health is heavily populated by doctors and hospital administrators and welfare is marked by strong representation from service providers; in this case the various private non-profit agencies. These specific structural characteristics play a decisive role in determining which issues will gain attention in the agenda-setting process' (Considine, 1998, p. 307).

¹⁵ Of the six policy fields only 'two fields, transport and environment, are dominated by groups internal to government. In both cases bureaucrats appear to have a crucial significance' (Considine 1998, p. 310).

Another theoretical approach, the Advocacy Coalition Framework (ACF), developed by Sabatier and Jenkins (Sabatier 2007, pp. 9-10) focuses on the distribution of power among policy actors. The ACF holds that policy subsystems are the most useful unit of analysis for understanding and explaining policy change over time (Sabatier 2007, p. 204). Most policy making occurs among specialists within a policy subsystem (characterised by both a functional/substantive dimension and a territorial/geographic one) but their behaviour is affected by wider political and socio-economic systems (Sabatier 2007, p. 196). Most policy subsystems are dominated by one advocacy coalition with one or more minority advocacy coalitions (Sabatier 2007, p. 204). Policy participants include the 'iron triangle' of legislators, agency officials and interest group leaders but also researchers and media that specialise in that area (Kingdon 1995). The ACF posits that the vast majority of policy making occurs within these policy systems but that there are two key exogenous factors that impact, one which is stable, the other dynamic.

Stable parameters include the attributes of the problem, fundamental structure and values. These rarely change and rarely provide the impetus for behavioural or policy change within a policy subsystem. The more dynamic external factors include changes in socio-economic factors, governing coalitions, disasters, or policy decisions from other subsystems. These external shocks can lead to the replacement of the dominant coalition by a minority coalition (Sabatier 2007, p. 204). According to this analysis, a Public Inquiry is an external dynamic factor with the possibility of creating another subsystem, and hence has the capacity to bring about change in policy influencers (Sabatier and Weible 2007, p. 193).

In summary, examination of this literature suggests a more nuanced approach to general statements that Public Inquiries give voice. Analysis must also consider new entrants and changes in the distribution of power among policy subsystems over time. The literature review suggests the following proposition:

Proposition 2

An assessment of the success of a Public Inquiry should examine the ways in which it gives voice and:

- a) has promoted public and stakeholder engagement and provided a locus for public discourse;*
- b) new ideas and knowledge have had an impact on the dominant policy coalition/subsystem, there has been a shift to another policy coalition or the emergence of new actors.*

2.2.3 Public policy and public management perspectives

There is an extensive body of literature on public policy, public management and policy implementation which variously examines conditions and factors of policy success. This literature is relevant as it considers the detail and process of policy development, the role and positioning of Public Inquiries, the influence of policy actors, the relative power of implementers at different levels (Considine 2005; deLeon and deLeon 2002; Hill 2003; Matland 1995; Pressman and Wildavsky 1973), as well as how to contemplate and frame success (McConnell 2010).

The literature consistently espouses the benefits of Public Inquiries as policy making instruments: 'for the appearance of rational policy making in the public interest, a public inquiry is an instrument without peer' (Prasser and Tracey 2014, p. 133; Stanton 2010, p. 15). Public Inquiries are described as 'versatile instruments of public policy' (Prasser 2006, p. 252) which play a useful role in responding to, and managing a crisis, gaining evidence, generating a range of policy options, bringing stakeholders into a policy debate that otherwise may struggle to have an input, apportioning blame and making recommendations (Prasser 2006; Banks 2013; Boin 't Hart and McConnell 2009). Banks (2007, pp. 3-4) identifies the 'combination of independence and public consultation' brought by Inquiries as providing major advantages to the policy making process.

However, despite Public Inquiries being a recurring institution and suggested as a legitimate means of policy making, there is limited attention in public policy literature to the specific context, contributions and outcomes of a Public Inquiry on public policy, as distinct from 'regular' policy making processes. There is limited research about whether a Public Inquiry is just like any other policy advisory or investigatory body or whether there is anything distinctive about Public Inquiries as a trigger for public policy reform and public management change. Similarly, there are unanswered questions about whether different types of Public Inquiries (that is, investigatory, policy advisory or hybrid) are more successful in leading to changes in public policy and management than others.

Unlike political science perspectives with their focus on blaming and insulating elites, public management literature stresses the opportunity afforded by Public Inquiries for learning. Elliot (2009, p. 158) argues that 'efforts to identify lessons from failure, to avoid their repetition, are institutionalised in the form of the Public Inquiry'. Inquiries are important tools for organisations to learn from failure (Boin, 't Hart and McConnell 2008), establish accountability (Preston 2008, pp. 33-61) and better manage risk (Schwartz and McConnell

2008, pp. 208-231). Public Inquiries provide the opportunity for learning, to draw lessons to help prevent a similar event happening again (Sulitzeanu-Kenan 2006, p. 625; Sulitzeanu-Kenan, 2010, p. 633). These purposes have been otherwise expressed as 'learning, disciplining, catharsis and reassurance' (Reder and Duncan 2004, p. 107).

However Public Inquiries do not always prompt learning or bring about reform. Some authors suggest that 'there is a remarkable reluctance to learn and adapt to the changes identified by these [I]nquiries, in so many professions' (Hill, 2010). Boin (2008, p. 239) suggests that 'in the aftermath of a crisis, politics intrude and can influence and impede subsequent learning':

The outside world imposes itself...upon the organisation that has 'produced' the disaster. Political elites, citizen outcries, victims' relatives and media representatives create a climate in which organisational learning is subjugated, at least temporarily to the lessons learned of an outside body.

Some public management authors find that Public Inquiries can have a detrimental effect. They note that the 'blaming function' of Inquiries can be counter-productive (Holmes 2010). Warner (2006, pp. 228-234) argues that the 'blaming function of Inquiries has usurped their main intended function of facilitating learning' and fostered the development of defensive professional practice and 'doing things by the book'. Warner's research demonstrates that as a result of Public Inquiries, social workers 'increasingly gave priority to avoiding becoming the social worker at the centre of the Inquiry', with more emphasis on 'covering your back' (p. 227). Elliot (2009) also highlights the repeated patterns of organisations failing to learn from crises in child protection and asserts that this is due to the separation of policy from practice and the lack of attention placed on the processes of knowledge transfer and assimilation. Lachman and Bernard (2006, pp. 964-965) note that Public Inquiries have led to the development of defensive attitudes which run counter to ongoing service improvement. Arklay (2015, p. 189) finds that Public Inquiries have the potential to alienate staff, destabilise morale and affect institutional memory.

The literature also notes broad trends in public management which offer different perspectives on success. Various authors (O'Flynn 2007; Smith 2004) have traced the shift from traditional public management to new public management (NPM) to the newer paradigm of public value management (PVM), originally posited by Moore in 1995. As two of the key influences on public management, NPM and PVM are now explored in order to gather insights as to how such perspectives might inform the assessment of success of Public Inquiries.

NPM draws heavily from rational choice approaches and market theory. Such approaches include the introduction of competition, a focus on outcomes, the adoption of corporate values, objectives and practices in public service provision (Frederickson and Smith 2003, p. 220), shifting power from public officials to 'entrepreneurial activity' in policy networks (Frederickson and Smith 2003, p. 218). Whilst lacking a 'single definitive 'manifesto'' (Hood 1991, p. 8), Hood describes the 'doctrines' of NPM as; professional management, explicit standards of measures and performance, greater emphasis on output controls, disaggregation of units in the public sector, greater competition in the public sector with private sector styles of management practice, and greater discipline and parsimony in resource use. Success, according to NPM approaches, would therefore reflect these elements of improved routines and efficiency, greater transparency and accountability, better management of performance and risk, and opening up to competitive markets and ideas, as these would lead to better services, policies, processes and outcomes.

A more contemporary public management perspective is public value management. Public value management (PVM) is described variously as the contribution made by public services to economic, social and environmental well-being (Grigg and Mager 2005, p. 1), the paradigm that 'presents the achievement of public value as its core objective' (Stoker 2006, p. 42) and the value 'that is 'consumed' collectively by the citizenry rather than individually by clients (Alford and Hughes 2008, p. 131). Moore (1995, pp. 70-72) argues that 'public value offers a more holistic way of thinking about the goals and performance of public policy' and that PVM's strategic triangle 'presents a framework to integrate politics, substance and administration in "envisioning" public value'.

There are highly contested views of PVM. PVM has been described as 'a yardstick for measuring public service reform' to 'actually increasing the integrity and transparency of government' (Crabtree 2004, p. 54; Heaphy 2006, p. 3,). However, PVM has also been described as 'theoretically poor' and 'methodologically bankrupt' (Morrell 2009, p. 548) and 'a soft-soap rationale with little explanatory power' (Crabtree, p. 55). There are engaging debates in the literature about the extent to which public value can be applied in the Westminster system, the primacy or otherwise of politics and the extent to which 'public value' is a self-serving, or at best, naive framework (Alford 2008; Gains and Stoker 2009; Rhodes and Wanna; 2008, 2009).

Notwithstanding these debates, in the context of this thesis, the relevance of PVM is referenced as one of the 'big ideas' (Alford and O'Flynn 2009, p. 178) that has taken hold in government and public administration for some years. A public value lens on success

(Moore 2003, pp. 11-13) contemplates strategy (the extent to which the organisational strategy and resourcing was aligned to its mission); legitimacy and support (measures that monitor the strength of the relationship with financial supporters, public 'legitimisers' and 'authorisers'); and operational capacity, of the organisation as well as the broader sector or industry (productivity or efficiency measures, measures of financial integrity, staff capabilities, measures of learning and innovation). As with NPM approaches, it is argued, this would lead to better services, policies, processes and outcomes.

In summary, review of the literature suggests that from a public management perspective success of a Public Inquiry would contemplate the ways in which: better routines and standard operating procedures are established; systems are put in place for effective management of crisis with the inevitable cases of deviance having better enforcement mechanisms in place (Peters 2012, p. 31); the reformulation of the institution to better cope with external demands (Peters 2012, p. 37); organisations become more efficient (Hood 1991) and provide greater public value (Moore 1995).

2.2.3.1 Change perspectives

Public Inquiries are potentially powerful instruments of change. Their reports can be 'powerful disruptive devices' (Brown, Ainsworth and Grant 2012, p. 299), which serve 'as an authoritative moral voice and as a focal point for continued pressure' (Brahm 2007, p. 29). Even though a Public Inquiry itself does not itself implement its recommendations, success must necessarily consider the extent to which change has occurred as a result of the Public Inquiry. Therefore, a broader view of institutional perspectives on change is required to inform the analysis.

Within institutionalist literature there are varying perspectives on the readiness and responsiveness of institutions to change. However, one of the most enduring critiques against most forms of institutionalist theories is their limitations in explaining change. Although change is conceived differently in different approaches, the basic logic of institutions is a tendency to permanence, stability and predictability (Peters 2012, p. 119), 'an assumption that policy making systems tend to be conservative and find ways of defending existing patterns of policy' (Peters, Pierre and King 2005, p. 1276). Institutional theory has been criticised for focussing on 'structures over action, fixity over change' and its subsequent inability to account for political and policy change (Mulé, 1999, p. 148; Peters, Pierre and King, p. 1278) However, others argue that 'institutions must be relatively stable and durable if they are to be effective in helping to create order. The durability of institutions

makes them meaningful, but it also hinders efforts at institutional change' (Kingston and Caballero 2009, p. 172).

Mulé (1999, pp. 147-8) argues that influence on institutions is exerted from extra-institutional sources at the macro level and not in the organisation itself, possibly through a Public Inquiry. Institutions, like Public Inquiries, potentially provide the 'agency' (structures and resources) for ideas to change the course of policy. Peters, Pierre and King (2005, p. 1297) emphasise that it is the 'significance of extra-institutional forces which command institutional change'. Public Inquiries can be conceived as extra-institutional agents of change and as powerful facilitators of new ideas.

The work of Peters, Pierre and King (2005) provides a number of relevant insights into the question of how successful Public Inquiries bring about change. Peters, Pierre and King (2005, p. 1277) argue that one of the failings of institutionalism is that it masks widespread incremental change and that smaller changes are defined away. Dempster and Wildavsky (1979) contemplate this question, and ask how large does a change need to be before it ceases to be incremental? Peters, Pierre and King (2005, p. 1285) argue that it is critical to understand the 'complex relationships existing among institutions, ideas and agency' in explaining change. They argue that the identification of agents becomes the means through which internal dissensus and inputs from the environment can be translated into change activity and that a change agent is 'required to mediate between the dynamic external environment and the internal inertia of the institution' (Peters, Pierre and King 2005, p. 1288). They also argue that ideas are crucial elements to place issues on the agenda and the form in which they will appear (Peters, Pierre and King 2005, p. 1295-1296). However, ideas in and of themselves are not a sufficient condition for change. They must somehow be articulated and inserted into the debate: 'agency and ideas offer partial explanations for policy change; the fuller explanation rests in the collusion of these two factors. Ideas without agency cannot be effective, but agency without ideas cannot provide any direction to change' (Peter, Pierre and King 2005, p. 1296). A Public Inquiry offers a powerful arena to bring together agency and ideas and hence bring about change.

2.2.3.2 Do crises lead to change?

As described previously there is little research on change emerging directly as a consequence of Public Inquiries. However, it is established that Public Inquiries are often, although, not exclusively, established in response to crisis. There is a body of literature on

whether crises lead to change and so it is to this literature that this thesis now turns to identify insights of relevance to assessing success.

There are contested ideas about the propensity of institutions to adopt or resist change. The literature establishes that a crisis is not a sufficient condition to bring about change and that institutional forces may be activated in a number of ways to deflect or oppose the forces of change and reform, possibly arising from a Public Inquiry. If one of the fundamental purposes of a Public Inquiry is a signal that some change will occur how does this institutional reality temper notions of success? According to Dayton (2004, p. 172) 'the crisis aftermath-when a crisis gives way to a new future - is one of the most interesting and understudied phases of the crisis process'.

As argued previously, a crisis is essentially a socially constructed truth, a 'political act' (Edelman 1988, p. 31) or 'political exercise' (Ingram, Schneider and deLeon 2007, pp. 93-126). It is the outcome of framing contests regarding an 'external shock', or 'focussing event'.

Birkland (2007, pp. 145-149) describes focussing events as sudden, disruptive, unusual events which may be catalysts for agenda and policy change. Focussing events can be 'normal' (an event that might reasonably be expected to happen at some time), a 'new' focussing event (one that has never, or rarely, happened before) and 'common events under uncommon circumstances' (those generally common events that gain greater attention due to some unique and unusual feature that brings them to attention and makes them newsworthy). Such events may be used as examples of policy failure and produce a warrant for change.

Brunsson and Olsen (1993, p. 6, p. 21-23) argue that the greater the gap between the values and norms professed by an institution and its actual behaviour, and the values held by surrounding society and the behaviour of the institution, the more likely reform will be. However, Meier and O'Toole (2008), and Meier, O'Toole and Hicklin (2010) demonstrate how organisations 'buffer' their environments and mitigate shocks through structural and procedural routines. Lodge and Hood (2002, pp. 1-3) also remind us, that institutions 'are not weathervanes that respond to any public pressure in an automatic way. Rather, such institutions are held to deal with external shocks in ways that fit with imperatives of their own, even when "forced" to respond to their environment'. Such 'forced choices' may be through investigations carried out, or recommendations made, by a Public Inquiry.

Lodge and Hood (2002, pp. 3-4) outline three types of institutional responses to external shocks:

- entrepreneurial exploitation of 'windows of opportunity' to launch incubated proposals;
- dynamic conservatism or system maintenance approaches, where institutions respond to disturbances in ways which seek to maintain their borders and established modes of operation; and
- institutional biases colouring response, where organisations filter out the more demanding aspects of the change agenda and focus on the more readily 'doable', programmable or internally valued aspects.

These are not mutually exclusive responses and in their comparative empirical work Lodge and Hood (2002) found elements of all responses. These periods of 'forced choice' incidents may cause periods of disequilibrium where an issue is forced onto the macro-political agenda' (True, Jones and Baumgartner 2007, p. 160). At such times, with normal constraints on policy making removed, new possibilities emerge, however, "'normal" institutional constraints and processes tend quickly to reassert themselves once the media feeding frenzy (is) over' (Lodge and Hood 2002, p. 10). Lodge and Hood provide examples of 'watering down' or even revoking initiatives at the implementation stage and a return to pre-existing behaviour and procedure. Lodge and Hood found evidence of institutions mediating forced choices by 'the interests and positions that are developed in advance of a crisis and being promoted before the crisis event, and in the detailed way that regulatory tools and their application are developed during and after such events' (Lodge and Hood 2002, p. 11).

Boin, 't Hart and McConnell (2009, p. 95) also find that 'the mere occurrence of an emergency and/or the prevalence of crisis discourse in a polity does not guarantee that major policy changes will be made'. From the perspective of the '*policy game* of crisis exploitation', Boin, 't Hart and McConnell (2009, pp. 100-101) predict incremental rather than radical change will result, 'even in the wake of destabilizing crisis episodes'. They conclude that crises are not a sufficient condition for policy change and they cast further doubt on path dependency theory's idea of critical junctures as the explanation for change in stable policy environments. Research suggests that 'overoptimistic notions of crises as devices for change' should be 'treated with considerable caution' (Boin and Otten 1996, p. 159). In their examination of fifteen crises Boin, 't Hart and McConnell found that most changes that occurred 'were of a relatively minor kind, although often there were large numbers of them

being enacted at the same time, often in response to “shopping lists” of technical recommendations put forward by inquiry reports’ (Boin, ‘t Hart and McConnell 2009, p. 95).

Despite ‘turbulent, formative moments’ (Peters, Pierre and King 2005, p. 1276), Alink, Boin and ‘t Hart (2011, p. 303) state that the ‘logic of path dependence and policy “lock-in” does not stop at the moment of a crisis’ suggesting that the future course of the sector will continue to be influenced by the same institutional arrangements that preceded the crisis. While change may happen, the outcomes of crisis episodes are hard to predict (Boin, ‘t Hart and McConnell 2009, p. 81). Boin, ‘t Hart and McConnell (2009, pp. 85-88) argue that the nature of change will be dependent on the outcome of competing narratives or ‘framing contests’, for example, whether the crisis is framed as an aberrant event, a mistake, or whether it is symptomatic of systemic or institutional failing.

This notion of framing contests is derived from Kingdon’s (1995) comprehensive empirical work across two policy areas over four years in the United States of America which provides rich insight into a complex world of problems, participants, perspectives and politics. This work provides relevant insights on the question of how to assess the success of a Public Inquiry in bringing about change. Kingdon’s application of garbage can theory (Kingdon 1995, p. 19, pp. 84-86) identifies three parallel but independent streams; the political stream, the policy stream and the problem stream. Each stream has its own life. Sometimes two or three streams connect, often they do not. Crises can be ‘policy windows’ that provide ‘opportunities for pushing pet proposals or conceptions of problems’ (Kingdon 1995, p. 20). Triggers like a change in the collective understanding of problems, changes in political power, possible new ways of dealing with problems or a focussing event, can cause the streams to find each other (Frederickson and Smith 2003, p. 179) and, ‘the greatest policy changes grow out of the coupling of problems, policy proposals and politics’ (Kingdon 1995, p. 19).

Public Inquiries can be ‘some of the times when the three streams are joined in a ‘single package’, that is, a policy window is opened. This ‘dramatically enhances the odds that a subject will become firmly fixed on a decision agenda’ (Kingdon 1995, p. 202). Conversely, partial couplings are less likely to rise on decision agendas, that is, problems without policy proposals, policy proposals without politics. It might be argued that the mere establishment of a Public Inquiry (that is, a policy window) is evidence that the three streams have come together, at least providing the possibility for change.

In summary, to restate, a Public Inquiry is not responsible for the implementation of recommendations. Noting also the literature which contemplates the extent to which institutions will resist or adopt change, based on the literature reviewed above, the following proposition is articulated:

Proposition 3

An assessment of the success of a Public Inquiry should examine the ways in which a crisis or 'focussing event' which has led to the establishment of a Public Inquiry, opens up a 'policy window' and the Public Inquiry has provided the opportunity for:

- *problems, policy proposals and politics to create policy change;*
- *improved services, policies, processes and outcomes.*

2.3 Conclusion

This chapter has examined various literatures and noted the tensions and differing perspectives on ways in which to assess the success of Public Inquiries. Three recurring propositions of success have been distilled from this broad range of literature. In summary, an assessment of the success of Public Inquiries should examine the ways in which a Public Inquiry responds to crisis and restores legitimacy, gives voice and has provided the opportunity for policy change and improved outcomes. Chapter 3 takes each of the three propositions derived in this chapter, and based on the theoretical perspectives outlined in the literature review, develops the method and analytical framework for applying the propositions against three selected case studies.

Chapter 3 - Research Design

3.1 Introduction

This chapter draws from the literature review in Chapter 2 to identify and defend the research design adopted to answer the research question: how can the success of Public Inquiries be assessed? Research design is the logic, plan, structure and strategy of the investigation of a research question (Burnham, Gilland, Grant and Layton-Henry 2008, p. 39). It is the overarching framework involving 'the intersection of philosophy, strategies of inquiry, and specific methods' (Creswell 2009, p. 5).

McNabb (2004, p.7) offers an overarching framework to conduct political science research. The six elements of McNabb's approach are:

Step 1: Identify a problem or question of interest or organisational need;

Step 2: Form one or more hypotheses about the problem or question;

Step 3: Determine the most efficient and effective way to study the problem or question;

Step 4: Design a comprehensive system of approach and procedures for studying the problem or question;

Step 5: Implement the study by investigating sources and collecting appropriate data;

Step 6: Organise, summarise and interpret the findings of the investigation.

McNabb's framework has been selected as it is a systematic, comprehensive framework. This framework provides the organising structure for this chapter. The chapter concludes with the analytical framework to assess the success of Public Inquiries derived from the literature review (Chapter 2).

3.2 Research design

Step 1: Identify a problem or question of interest or organisational need.

The literature review (Chapter 2) identifies the gap in the literature regarding how to assess the success of Public Inquiries generally, and specifically with respect to investigating and repairing breaches of the social contract by way of a Public Inquiry.

The research question of this thesis is how can the success of Public Inquiries be assessed?
The literature review also notes contested views on success.

Step 2: Form one or more hypotheses about the problem or question.

Examination of the literature has led to the development of three propositions in order to assess the success of Public Inquiries (Burnham et al 2008, p. 3). The three propositions are:

Proposition 1

An assessment of the success of a Public Inquiry should examine the ways in which it has responded to crisis and restored legitimacy.

Proposition 2

An assessment of the success of a Public Inquiry should examine the ways in which it gives voice and:

- c) has promoted public and stakeholder engagement and provided a locus for public discourse;*
- d) new ideas and knowledge have had an impact on the dominant policy coalition/subsystem, there has been a shift to another policy coalition or the emergence of new actors.*

Proposition 3

An assessment of the success of a Public Inquiry should examine the ways in which a crisis or 'focussing event' which has led to the establishment of a Public Inquiry, opens up a 'policy window' and the Public Inquiry has provided the opportunity for:

- problems, policy proposals and politics to create policy change;*
- improved services, policies, processes and outcomes.*

Step 3: Determine the most efficient and effective way to study the problem or question.

There is always a range of ways to study a problem, different techniques to choose from, and a particular question does not necessarily suggest a particular method (Burnham et al, 2008, p. 2). However, a critical consideration is which method is most appropriate to the research question (Burnham et al, 2008, p. 6).

This starts by making explicit the philosophical worldview held by the researcher. Creswell (2009, pp. 5-11) argues that this worldview is a key influencer of the selection of research design and he identifies four basic orientations;

1. Positivist approaches are often characterised as 'the scientific method'. This is a 'deterministic philosophy in which causes probably determine effects or outcomes' (Creswell 2009, p. 7). It is reductionist and is based on observation and measurement of an 'objective reality'. Such approaches test and refine theory.
2. Social constructivists assume that individuals seek understanding of their world and develop subjective meanings of their experiences. These meanings are varied, and the researcher looks for this complexity, often relying on participants' views. These meanings are constructed and negotiated socially and historically (Creswell 2009, p. 8). Theories, or patterns of meaning, are generated inductively.
3. Advocacy/participatory approaches advocate that research inquiry is intertwined with politics and a political agenda. Research is action oriented and aims to change the lives of participants and their institutions. Research is collaborative and often speaks to important social issues like inequality or discrimination (Creswell 2009, p. 9).
4. Pragmatic approaches focus on actions and consequences rather than antecedent conditions and are concerned with 'what works'. This approach focuses on the research problem and is not committed to any one system or approach.

This researcher declares her constructivist view of social contexts and phenomena (Creswell 2009, p.8; Crotty 1998, pp. 8-9; Neuman 2003, pp. 62-64), and is of the view that there is no one truth, and that 'multiple social realities can exist around a phenomenon because those involved interpret the phenomenon differently' (Shah and Corley 2006, p. 1823). This researcher is of the view that context is critical to analysing Public Inquiries in their broader context to answer the research question. As previously argued in Chapter 1, success is framed as a relative term and the literature establishes the range of expectations and meanings ascribed to Public Inquiries. This researcher's assumption guiding the research design is that the level or type of success of Public Inquiries will not be 'discovered' but that the assessment of success will be multi-dimensional, relative and, in all probability, contested. The research investigations will therefore not take a positivist approach of trying to 'find the truth' about the success of Public Inquiries, as measured by the 'facts', but rather, aim to apply a variety of propositions that different authors have made about what successful Public Inquiries look like, and use a range of sources to examine multiple perspectives. In so doing, the research design explores the possibility of applying and building an analytical framework for assessing the success of Public Inquiries, and inductively building theory.

A further consideration is whether data gathering should use qualitative or qualitative strategies of inquiry. According to Creswell (2009, p. 4), qualitative research is 'a means for exploring and understanding the meaning individuals or groups ascribe to a social or human problem'. Such research processes typically involve emerging questions and procedures, data analysis inductively building from specifics to general themes and the researcher making interpretations of data. Qualitative methodologies include ethnographic approaches (interviews and observation), narrative approaches and case studies (Creswell 2009, p. 13). Quantitative research is a 'means for testing objective theories by examining the relationships among variables which can be measured and analysed' (Creswell 2009, p. 4). Quantitative methodologies include surveys and experimental research (Creswell 2009, p. 12).

In order to investigate the research question both quantitative and qualitative elements are utilised. This research began by extracting recurring, but often untested, assertions from the literature and forming propositions. As is typical of quantitative research, concepts (for example, 'legitimacy', 'voice', policy change') may be regarded as variables (Neuman 2003, p. 145). The research design contains both pre-determined (the propositions) as well as emerging methods (multiple forms of data drawing on all possibilities, interpretations across data sources), (Creswell 2009, p. 15). However, in terms of research process, qualitative approaches are selected as the most relevant to addressing the research question (Neuman 2003, p.145). This is because 'qualitative data provides rich information about social processes in a specific setting' (Neuman 2003, p. 140), is 'well suited for the purposes of description, interpretation and explanation' (Lee, Mitchell and Sablynski 1999, p. 164) and enables in-depth analysis. Qualitative methods are also selected because assessing the success of Public Inquiries 'needs to be understood because little research has been done on it' and so the research is exploratory (Creswell 2009, p. 18).

According to Neuman (2003, p. 145), qualitative approaches:

- Capture and discover meaning during the process of being immersed in the data;
- Search for themes and motifs in the data which is gathered from documentary sources, transcripts;
- Develop generalisations and theory inductively from specific observations; and
- Analyse themes or generalisations from the evidence and organise data to present a coherent picture.

Qualitative approaches are therefore selected for this research method as they enable exploration of the complexity of the social processes that are Public Inquiries and the examination of contested views of success. Such approaches also offer the possibility of inductively developing theory.

Step 4: Design a comprehensive system of approach and procedures for studying the problem or question.

Within qualitative approaches there are a range of techniques which may be used, including interviews, observation (participant and direct) and archival analysis (Shah and Corley 2006, p. 1828).

Consideration was given to conducting interviews with key actors and participants. This would undoubtedly add much richness to the data. However, given the number and range of Public Inquiries chosen for analysis (Appendix 1) it was considered unrealistic to gain access to, and interview, the number and range of people who could provide perspectives on the research question and the theoretical propositions. There are also key questions about who should be interviewed, how this would be determined, and whether or not the researcher would have access to these individuals. Most importantly, however, it was considered that there could be considerable potential for unevenness in evidence gained through interviews depending on who was available for interview, and the period of time that has elapsed since the Public Inquiry. For some of the Inquiries examined, this is a significant period of time. This could provide unreliability about recollections and observations and yield patchy or uneven data.

Similarly, observation techniques were examined as a possibility but were considered less appropriate to the research question. For example, it is unclear what 'instances' should be 'observed'; the individuals, agencies, services, practices or policies which were under scrutiny by the Inquiry at the time of the Inquiry; what occurred after the Inquiry has concluded; and at what intervals or timeframes?

A case study approach was selected to allow the examination 'in depth, [of] many features of a few cases over time' (Neuman 2003, p. 33). According to Vaughan (1992), case studies help researchers connect the micro level to the macro level, that is, the actions of individuals to large scale social structures and processes. Walton (1992) argues that case studies tell a larger story through the lens of a small case.

The case study method was also selected as the research question is a 'how' question (how can the success of Public Inquiries be assessed?) being asked about contemporary events

over which the investigator has no control (Yin 1994, p. 9). According to Yin (1994, pp. 6-8) 'how' questions are 'explanatory' and likely to lead to the use of case studies, histories and experiments as preferred research strategies. Yin suggests that the distinction between when these various forms are used depends on the extent of the investigator's control over and access to actual behavioural events. When there is no access or control, and one is dealing with the 'dead' past, histories may be the preferred strategy. The 'case study is preferred in examining contemporary events, but when the relevant behaviours cannot be manipulated' (Yin 1994, p. 8).

An assessment of success suggests that contextual conditions are highly pertinent. Using a case study approach for this research allows investigation of a 'contemporary phenomenon within its real life context, where the boundaries between the phenomenon and context are not clearly evident' (Yin 1994, p. 13). This form of inquiry is considered appropriate for the following three reasons. Firstly, case studies cope with the distinctive situation in which there will be many more variables of interest than data points. Secondly, relying on multiple data sources and forms allows evidence to be triangulated. Thirdly, this approach benefits from the prior development of theoretical propositions to guide data collection and analysis, as in this research (Yin 1994, p. 13).

The unit of analysis in this research - or the case - is a Public Inquiry. Each case study examines a wide variety of aspects and the sequence of events in their "'messy", natural settings' (Neuman 2003, p. 148). However, this research does not use a single 'critical', 'unique' or 'revelatory' case study (Yin 1994, pp. 38-40). As outlined in Chapter 1, the literature has been criticised for this tendency to date.

This thesis uses multiple case studies as illustrative of different types of Inquiries. Each Public Inquiry serves a particular analytic purpose, namely, to explore whether the theoretical propositions hold for that type of Inquiry (that is, investigatory, policy advisory or hybrid) and whether they hold for the different types of Inquiries. The theoretical propositions drawn from the literature do not differentiate between different types of Public Inquiries. Choosing different types of Public Inquiries therefore has the potential not only to apply the propositions, but also under which conditions they do or do not hold.

The case studies are not intended as 'samples' representative of all Public Inquiries or types of Inquiries with findings therefore generalisable to all Inquiries. However, it is intended that the research will produce findings that are 'analytically generalisable' in which 'a previously developed theory is used as a template with which to compare the empirical results of the

case study' (Yin 1994, p. 31). Yin states that where two or more case studies are shown to support the same theory, replication can be claimed (Yin 1994, p. 31).

In terms of the time boundaries to guide the investigation, attention is paid to the events that led to the establishment of the Public Inquiry, the Inquiry process itself, the immediate aftermath (that is, government response to report and recommendations), as well as the short term (planning, implementation planning and review), and any significant developments that may have occurred since that time. For two of the case studies (the Queensland Floods Commission of Inquiry and the Queensland Child Protection Commission of Inquiry) this is typically a four to five-year time span. This time span is longer in the case of the Inquiry into certain Australian Companies in relation to the UN Oil for Food Programme, as this case study also incorporates the findings of the Oil for Food Task Force which was set up as an outcome of the Inquiry and which took nine years to report. These long time spans are critical because the propositions for success which are applied (particularly, 'restoring legitimacy' and 'providing the opportunity for policy change and improved outcomes') cannot be assessed when the Inquiry submits its report to government. A longer term view is required.

All three propositions are applied against each of the three Inquiries. Findings generated by three different case studies may provide a basis upon which to further refine propositions to assess success.

However the limitations of this approach are also acknowledged. For example, an alternative methodology could be to apply each proposition against a different Public Inquiry, or against different types, or numbers, of Public Inquiries. Another approach could be to use different theoretical foundations as the basis of the various propositions, or different models or heuristics against which to assess success. The number of cases could be increased, studied over longer periods of time, using different case study selection criteria and propositions of success.

Case study methods have their limitations. Given the focus on context, explanations and interpretations are complex. This can lead to distortions, or selective emphasis, and therefore, questionable analyses and partial findings. The literature acknowledges the wide variations in form and function of Public Inquiries so selecting just three cases for analysis may provide no explanatory function beyond the specific cases selected. Further, methods other than case study may have been chosen including comparative methods using quantitative variables, or focussing on field research and participant interviews.

These approaches would undoubtedly yield interesting results and may represent a future research agenda. However, given this researcher's examination of the literature, and her commitment to examining the Public Inquiry in its social context (for example, what happened before, during and after the Inquiry, what were the reactions and responses by government, citizens, media and stakeholders), the method outlined in this chapter is defended as the most relevant to investigating the research question.

As Bovens, 't Hart and Peters (2001, p. 10, p. 180) observe, assessments of success or failure are, at heart, political judgements involving some bias. The researcher acknowledges that her own biases will have been at play throughout the research, possibly manifest through the selection and interpretation of media articles, choice of parliamentary debates in Hansard, an over- or under-emphasis on particular actors or narratives, judgements about certain events. The researcher has been highly sensitive to this dynamic throughout the case study analyses and the contemplation of findings. This researcher also acknowledges that in exploring success, placing particular events, policies or outcomes in particular categories is 'more art than science' (McConnell 2010b, p. 63). However, the researcher has at all times attempted to stay consciously and deliberately true to the broadest range of evidence and to authentically reflect contested perspectives.

In applying all of the propositions to each case study, the research also aims to begin to build an overarching theoretical framework that may begin to construct a vehicle for generalising to new Public Inquiries in order to assess their success (Walter 2010, p. 9). By examining a number of different Public Inquiries the research also aims to make a contribution by utilising a method other than a single case study approach.

3.3 Examples of Public Inquiries – the selection process

This thesis examines Public Inquiries as a recurring institution in the political landscape. As outlined above, the researcher, therefore, considered it necessary for the research method to include a number of Public Inquiries. This poses some methodological considerations. For example, should they be the same, or different, types of Inquiries; should they be those commissioned by the same or different governments; should they be in the same period of time; should they include Inquiries from Australia as well as those from overseas? Each question is answered below.

Prasser (2003, pp. 55-56) establishes the key features of Public Inquiries. These have been applied to commence the selection of Inquiries for inclusion in this research. Public Inquiries are:

1. Non-permanent, ad hoc, temporary bodies;
2. Established and appointed by executive government;
3. Funded totally by government;
4. Appointed and exist at the discretion of executive government;
5. Discrete organisational units, not part of any existing government agency, department or permanent advisory body;
6. Members are typically drawn from outside the public service, government and do not include government ministers or backbenchers;
7. Need to promote their existence to the wider community;
8. Have clear terms of reference which are publicly stated;
9. Need to seek public participation;
10. Are expected to produce a report which should be submitted to executive government and should be made public within a reasonable timespan of the inquiry completing its task;
11. Have advisory powers only. They can only make recommendations; they cannot implement their proposals.

Prasser (2003, pp. 85-91, after Hallett, 1982) further distinguishes Inquiries by classifying them as inquisitorial/investigatory or policy advisory, as described in Table 2.

Table 2. Types of Public Inquiries: features, topics and membership

Public Inquiries	Inquisitorial/investigatory inquiries	Policy advisory
Features	More likely to be appointed as a Royal Commission as some witnesses may not want to come forward or certain information is not in the public domain This allows the use of their coercive powers.	More likely to be appointed to gather evidence and consult on complex policy issues, provide advice to government on possible policy solutions.
Topics, processes and tasks	Topics investigated are about ascertaining and verifying the facts about particular events (disasters, accidents), the improper and possibly illegal actions of individuals or organisations, or a combination of both. As the topics turns on what actually happened or who did what, they are especially reliant on what witnesses saw, experienced or knew about a certain incident or alleged act.	Cover most areas of policy and provide advice that is less prescriptive. Gain information by co-operative consultation (hearings, submissions, supplementary research) rather than coercive measures. Rely on their status as executive appointed bodies to

	More dependent on evidence collected first hand from witnesses through a hearing and cross-examination process, than from evidence collected through wide ranging consultation and/or research.	attract submissions and support. Focus on listening, gaining and understanding of the issues rather than seeking the 'one truth' or 'solution' to an issue. Rarely use their coercive powers to obtain evidence and avoid excessively legalistic processes.
Membership and size	Resemble courts of law: as evidenced by their procedures; adversarial nature of their hearings; use of legal counsel. Membership dominated exclusively by legal profession and judiciary. Usually bodies with single members. Judgemental in tone. Apportion blame about the cause of a particular problem in relation to procedures or persons. Cannot launch prosecutions, but often their reports result in further action by relevant legal authorities.	Usually more than one member drawn from a wide range of different professional groupings, interest groups or academic disciplines, to reflect their broader role.

Source: Prasser 2003, pp. 85-91, after Hallett, 1982.

Close examination of recent Public Inquiries in Australia, however, reveals that they do not always fall neatly into either category. For instance, recent Public Inquiries into natural disasters share features of both types of Inquiries. Both the Queensland Floods Commission of Inquiry (2012, p. 30) and the Victorian Bushfires Royal Commission (2010, pp. 38-41) were set up with the features of investigatory Inquiries as described above, but also to examine systemic policy and practice issues. These are described as 'hybrid' Inquiries.

To assess the success of Public Inquiries within their context it is important to include examples of different types of Inquiries, that is, policy advisory, investigatory/inquisitorial inquiries, and those which are a hybrid form. Otherwise research findings may only be able

to be applied to a particular type of Public Inquiry. It is entirely possible that different types of Inquiries should be assessed by different means. Focusing on one type only would not provide this insight. Three different types of Public Inquiries were therefore chosen for analysis: one policy advisory; one investigatory; and one hybrid Public Inquiry. Public Inquiries which are very recent or underway at the time of writing are not examined. This is because deliberations are not yet complete, or Inquiry Reports are still under consideration or in early stages of implementation.

The focus of this research is on Public Inquiries held in Australia. Consideration was given to including Inquiries held in other countries but a focus on Australia controls for some contextual differences and variances in parliamentary and political systems.

Investigatory/Inquisitorial Public Inquiry

Examination of recent investigatory/inquisitorial inquiries reveals a range of areas including responses to natural disasters (Victorian Bushfires Royal Commission 2009; Queensland Floods Commission of Inquiry 2012), responses to allegations of corruption against a person or persons (Report of the Kapunda Road Royal Commission, South Australia 2005; Royal Commission into whether there has been Corrupt or Criminal Conduct by any Western Australian Police Officer 2004), or systemic allegations of corruption (for example, the Commonwealth Inquiry into certain Australian companies in relation to the UN Oil for Food Programme 2005-2006, NSW Royal Commission into the NSW Police Service 1995-1997).

On closer examination, however, the Victorian Bushfires and Queensland Flood Inquiries are hybrid forms (Appendix 1).

The most recent investigatory Public Inquiry is that which was set up in response to allegations of corruption is the Commonwealth Inquiry into certain Australian companies in relation to the UN Oil for Food Programme 2005-2006 (the Cole Inquiry).

Policy Advisory Public Inquiry

The selection process for policy advisory Public Inquiries focuses on one major policy issue because this 'affords assessment of the use and role of the public inquiry instrument promoting an issue on to the agenda, defining its boundaries, suggesting options, proposing policies for implementation, legitimising choices and evaluating its impacts' (Prasser 2003, p. 273). This analysis of policy advisory inquiries in the same policy area may also control for some of the possible variables which could influence the processes, outcomes and indicators of success, for example, jurisdiction, legislative base, communities of interest,

policy networks. A focus on one policy area is also cognisant of Considine's (1998) 'structured influence model' which holds there are structural and discernible differences across policy sectors in terms of issue selection and agenda setting.

In recent decades most States in Australia have conducted inquiries into child protection.¹⁶ These Public Inquiries have similar terms of reference in that they have been set up to investigate broad systemic issues, rather than investigate a particular case, and to provide advice to government. The most recent policy advisory Public Inquiry selected for examination in the area of child protection is the Queensland Child Protection Commission of Inquiry 2013 (QCPCI).

While only one child protection policy advisory case study is conducted in depth (in Chapter 5), an examination of two other child protection Inquiries which were established around the same time is also conducted (Appendix 5). This analysis explores the generalisability of findings, similarities and differences across this policy area. It also informs some of the research findings of this thesis.

Hybrid Public Inquiry

As noted above the Public Inquiries set up in response to natural disasters are more accurately classified as hybrids as their terms of reference include both investigatory and policy advisory functions. The 'hybrid' Inquiry chosen for analysis is the most recent one at the time of writing, the Queensland Floods Commission of Inquiry 2012 (the QFCI).

Further details of the selection matrix and rationale for case study selection are in Appendix 1.

Step 5: Implement the study by investigating sources and collecting appropriate data.

As with many qualitative studies, this research takes a nonlinear research path (Neuman 2003, p. 141), in that the research process 'makes successive passes through steps, sometimes moving backward and sideways before moving on...with each cycle or repetition a researcher collects new data and gains new insights' (Neuman 2003, p. 141). Similarly, Wildavsky (2004, p. 9) characterises this approach as taking 'steps through which, darting back and forth, difficulties are divided and decomposed until they are made manageable or discarded', with its fair share of 'blind alleys' and 'trial and error'.

¹⁶ There has been no similar Inquiry at the Commonwealth level as in Australia child protection is the jurisdiction of State and Territory governments.

Data analysis began early in the data collection phase. This served to inform and guide further data collection. Data analysis 'stretch[ed] across all stages' of the research process (Neuman 2003, p. 440) and was used to triangulate and validate findings.

The source of data used is documentary analysis. Documentary analysis allows the researcher to 'piece together the complex chain of past events' (Burnham et al 2008, p. 1). All data analysed is that which is available in the public domain. The method relies on primary documents (for example, Public Inquiry reports, transcripts, Parliamentary debates), as well as secondary sources like expert commentary and analysis, and media coverage. Multiple sources of evidence are used to explore context and commentary, triangulate findings and assess whether there may be convergence around whether the Public Inquiry can be assessed as a success in answer to the research question.

Each case study included a thorough examination and multiple re-readings of:

- Inquiry Report and recommendations;
- Inquiry discussion papers and consultation mechanisms;
- Submissions to the Inquiry;
- Hearing transcripts;
- Government documentation - including official responses to reports, annual reports and budget statements, progress reports, evaluations of implementation, statistics;
- Media and public commentary (including social media, campaigns, interest group websites) prior to establishment of Inquiry, during and after the Inquiry;
- Academic commentary, scholarly articles and international perspectives regarding the Inquiry;
- Parliamentary debates (Hansards) and political developments;
- Court hearings, prosecutions, judgements and legal commentary.

As noted above, gathering documentation and analysis typically spanned a four to five-year time frame (or longer in the case of the Inquiry into certain Australian companies in relation to the UN Oil for Food Programme) to ensure contemporary developments like subsequent investigations, class actions or 'repeat' Inquiries were part of the evidence base. These post Inquiry developments prompted a return to, and re-examination of, original sources, analyses and recurring themes.

Step 6: Organise, summarise, and interpret the findings of the investigation.

The literature review led to the development of three theoretical propositions about success. The theoretical foundations of each proposition described in Chapter 2 are used to develop an analytical framework which organises and summarises the basis upon which each case is examined and each proposition is applied.

Each case study is a 'whole' study in itself in which data from multiple sources is gathered, analysed and revisited in order to demonstrate if each of the three propositions were or were not in evidence.

The theoretical propositions from which the criteria for assessing success are distilled are elaborated in the next section.

Proposition 1

An assessment of the success of a Public Inquiry should examine the ways in which it has responded to crisis and restored legitimacy.

A recurring assertion in the examined literature (as discussed in Chapter 2) is that one of the roles of Public Inquiries is insulating elites from blame. In their development of crisis exploitation theory, Boin, 't Hart and McConnell (2009) turn specific attention to framing contests in the Inquiry arena. In their examination of fifteen crisis cases they confirm that the establishment of an Inquiry creates a new venue that actors will seek to explore (Boin, 't Hart and McConnell 2009, p. 97). As much as authorities may wish to do so, the establishment of Inquiries are not generally blocked, although they may be resisted.

Two of the Public Inquiries selected for examination were established as a response to crisis; the Queensland Floods Commission of Inquiry, and the Inquiry into certain Australian companies in relation to the UN Oil for Food Programme. Recommendations will be examined to determine the focus of reform. Consequences for key actors will also be explored.

The second theoretical foundation of this proposition is based on DiMaggio and Powell's (1983) work, which identified ways that organisations within a field face pressures to enhance their legitimacy. The pressures toward institutional isomorphism are described as: mimetic (pressures to copy or emulate other similar organisations); coercive (pressures exerted by government, regulatory, or other agencies to adopt the structures or systems that they favour); and normative (pressures to conform to standards of professionalism and to adopt systems and techniques considered to be legitimate by relevant professional groupings). The major empirical prediction made by DiMaggio and Powell (1983) is that

organisations within a field will, over time, yield to the isomorphic pressures that confront them. Otherwise, their level of external support, and ultimately their survival, will be in jeopardy. If as is asserted, Public Inquiries restore legitimacy they could be expected to do so in the ways described by DiMaggio and Powell.

Alink, Boin and 't Hart (2011, p. 281) further argue that legitimacy cannot be measured in absolute terms but that it is possible to 'assess and detect significant alterations in levels of legitimacy', through indicators such as the extent and content of media coverage, parliamentary attention, number and nature of administrative appeals, court and ombudsman rulings regarding a sector. As indicators of legitimacy these sources will also be examined to assess to what extent legitimacy has been restored as a result of the Public Inquiry.

The third theoretical basis of this proposition is derived from Weick's work on sensemaking which asserts that 'to deal with ambiguity, interdependent people search for meaning, settle for plausibility, and move on' (Weick, Sutcliffe and Obstfeld 2005, p. 419). Sensemaking as a narrative process 'is not about truth and getting it right' (Weick, Sutcliffe and Obstfeld 2005, p. 415). Sensemaking 'is driven by plausibility rather than accuracy (Weick 1995, p.55) and if 'plausible stories keep things moving, they are salutary' and guide action (Weick, Sutcliffe and Obstfeld 2005, p. 415). As such this provides a different perspective on success than that which is based on rational decision-making models with their emphasis on accuracy and getting the facts rights.

As outlined in Chapter 2, this body of theory holds that 'inquiry reports support the legitimacy of social institutions and extend the hegemony of prevailing system-supportive ideologies' by persuading us to accept certain contestable ideas (Brown 2000, p. 48; Brown 2004). This approach requires a focus on the text produced by the Inquiry as an attempt to provide a narrative which is 'plausible, authoritative and verisimilitudinous' (Brown 2000, p. 65). The approach to applying this proposition will rest on reviewing the Reports and recommendations of the selected Public Inquiries and surrounding commentary.

Proposition 2

An assessment of the success of a Public Inquiry should examine the ways in which it gives voice and:

- e) has promoted public and stakeholder engagement and provided a locus for public discourse;*
- f) new ideas and knowledge have had an impact on the dominant policy coalition/subsystem, there has been a shift to another policy coalition or the emergence of new actors.*

This will require a focus on the inputs into the Public Inquiries, that is, who they are, what they propose, whether there have been any changes in the policy coalitions or their respective impacts, and how enduring this has been.

At the most basic level the first assessment of success will be whether the government accepted the recommendations (Regan 2014) and whether there is any ongoing reporting by government on implementation. Secondly, as participation is often referred to as a hallmark of Public Inquiries (McConnell, Gauja and Botterill 2008; Prasser 2003; Sheriff 1983) each Inquiry will be examined to determine the processes of participation and input, supports available, who used them, and how widely they were used. An assessment of the extent to which there has been an impact on public discourse (ALRC 2009; Regan 2014) will be gained by perusal of submissions, parliamentary debate transcripts (Hansard), media coverage, academic commentary and interest group campaigns.

However, for the purpose of deeper analysis into the proposition that one of success factors for Public Inquiries is that they allow new voices into the policy field (Howlett and Ramesh 2003), where possible from the examination of public documents, an assessment will be made about the extent to which new entrants and ideas have been given voice, whether there has been a shift in policy inputs and whether this is enduring (Sabatier and Weible 2007). In particular, an analysis will be made whether participation went beyond the 'iron triangle' of legislators, agency officials and interest group leaders (Hecl 2007, p. 421, Kingdon, 1995, p. 33).

Proposition 3

An assessment of the success of a Public Inquiry should examine the ways in which a crisis or 'focussing event' which has led to the establishment of a Public Inquiry, opens up a 'policy window' and the Public Inquiry has provided the opportunity for:

- *problems, policy proposals and politics to create policy change;*
- *improved services, organisations, policies, processes and outcomes.*

The first part of the proposition rests on Kingdon's (1995, p. 85) identification of separate 'streams' flowing through agenda setting and decision-making structures. Kingdon identifies three streams of problems, politics and policies, each of which has its own life. Sometimes two or three streams connect, often they do not. Public Inquiries can be 'some of the times 'when the three streams are joined' (Kingdon 1995, p. 201) in a 'single package' (Kingdon, p. 202), and a policy window is opened. This 'dramatically enhances the odds that a subject will become firmly fixed on a decision agenda' (Kingdon 1995, p. 202). Conversely, partial

couplings are less likely to rise on decision agendas, namely, problems without policy proposals, policy proposals without politics. It might be argued that the mere establishment of a Public Inquiry (providing a policy window) is demonstration that the three streams have come together at least providing the possibility for change.

The approach to applying this proposition in each case study will incorporate the following elements (Kingdon 1995):

Stream 1: Politics: Setting the agenda

- The trigger - Identify the crisis and how it is framed
- The response - examine the scope and terms of reference, that is, the 'policy window'
- Participants - identify actors, policy entrepreneurs, interest groups.

Stream 2: Problems: Recognition and definition

- The inputs - type, number, range, participants (politicians, academics, researchers, bureaucrats, interest groups, public)
- The process - hearings, cross examination, witnesses, submissions.

Stream 3: Policy proposals

- Generation of policy alternatives, recombination of familiar elements of existing policies, innovation
- Report and recommendations.

Did the streams join and did this lead to change?

- Response - government/media/public.

The second part of the proposition is designed to examine the recurring assertions in the literature that successful Public Inquiries provide the opportunity to improve services, processes, policies and outcomes (Hood 1991; Moore 1995; Peters 2012). Assessments against this proposition will use a combination of the New Public Management (NPM) 'doctrine' (as described by Hood 1991, pp. 4-5) as well as Moore's (1995, 2003) concept of public value, as outlined in Chapter 2.

Evidence of the introduction of NPM principles as a result of an Inquiry which is intended to improve organisational efficiency and effectiveness may include: improved management, transparency and accountability; clearer definitions of goals, targets, indicators of success; resource allocation linked to measured performance; break-up of centralised bureaucracy and establishment of corporatised units; competition, contracting-out, public tendering;

private sector management practices, and reducing direct costs. This analysis will be made from review of documentation in the public domain over a period of time, for example, annual reports, official government responses, statistics and evaluations (Hood 1991).

In terms of whether the Public Inquiry led to better public value, each case study will, where possible, apply the lens of Moore’s strategic triangle (1995) as the heuristic, namely:

- Strategy - the extent to which the outcomes of the Inquiry are integrated into or change organisational strategy; changes in funding allocations or organisational structure to support the outcomes of the Inquiry;
- Legitimacy and support - as per data drawn from the analysis from Proposition 2;
- Operational capacity - commitments to building staff capabilities or organisational learning in line with the outcomes of the Inquiry; changes to relationships with partners, co-producers in line with the outcomes of the Inquiry.

3.4 Analytical framework to assess the success of Public Inquiries

From these three propositions and their theoretical foundations, the following analytical framework has been developed to examine the recurring assertions of success outlined in the literature review (Chapter 2). For each proposition regarding success, elements of success have been identified from the literature, as well as indicators and measures. This analysis guides the evidence sought and analysed. This analytical tool applies the propositions to the three case studies.

Table 3. Analytical framework to assess the success of Public Inquiries.

Success Proposition	Elements of success	Indicators	Measures	Evidence/ source
Responding to crisis and restoring legitimacy.	Inquiry fulfils symbolic, learning and ‘ <i>realpolitik</i> ’ role. Reform in the regulatory, managerial or cultural spheres rather than on the role of political office-holders or political institutions	Focus of recommendations. Inquiry Report depoliticises disaster event, justifies action, reduces anxieties by asserting control (Brown 2000). Recommendations exhibit isomorphic	Political office-holders or political institutions unchanged. Reform in regulatory managerial or cultural spheres (Boin, ‘t Hart and McConnell 2009) Organisational response to	Inquiry Reports and recommendations. Government response. Consequences for key actors. Media coverage and commentary. Parliamentary attention.

	(Boin, 't Hart and McConnell 2009). Disaster/crisis depoliticised (Weick, Sutcliffe and Obstfeld 2005; Boin, 't Hart and McConnell 2009). Legitimacy of institutions restored (Alink, Boin and 't Hart 2011).	pressures to restore legitimacy (DiMaggio and Powell 1983).	isomorphic pressures to restore legitimacy (DiMaggio and Powell 1983).	Number and nature of appeals, court and ombudsman rulings (Alink, Boin and 't Hart 2011).
Giving voice.	Public and stakeholder engagement promoted (McConnell, Gauja and Botterill 2008; Prasser 2003; Sheriff 1983). Impact on public discourse (Australian Law Reform Commission 2009; Regan 2014). New/different policy ideas and new/different actors which are not transitory (Howlett and Ramesh 2003; Sabatier 2007).	Level and type of public engagement and discourse (McConnell, Gauja and Botterill 2008; Prasser 2003; Sheriff 1983). Impact of new ideas on policy. Impact of new actors/voices on policy. Challenges and changes to policy coalition/ subsystem (Howlett and Ramesh 2003; Sabatier 2007).	Inputs to Inquiries and processes of participation. Analysis of submissions. Analysis of government responses to recommendations and changes in policy inputs.	Government response to recommendations. Submissions, media coverage, interest group campaigns. Changes to policy networks and influence.
Creating the opportunity for policy change and	Opening the policy window-bringing politics, problems and policy	<i>Politics:</i> Identification and framing of the crisis (Boin, 't Hart	Extent and type of policy change. Extent to which the outcomes of the Inquiry have been	Inquiry participants: policy entrepreneurs, interest groups, 'victims'.

improved outcomes.	proposals together (Kingdon 1995). Providing the opportunity for improved service delivery, organisations, policies, processes and outcomes (Hood 1991; Moore 1995).	and McConnell 2009). Examination of the response - scope and terms of reference of Public Inquiry. Identification of participants <i>Problems:</i> Inputs Process <i>Policy proposals:</i> Generation of policy alternatives, where possible. Report and recommendations Policy change. Improved service delivery. Improved policies, process and outcomes. Organisational or structural change (Hood 1992; Moore 1995).	integrated into or change organisational strategy. Changes in management, transparency, accountability, structure, performance management, competition, funding, building staff capability.	Inquiry process: submissions, hearings. Review of documentation in the public domain over a period of time including Annual Reports, Budgets, official government responses, statistics and evaluations.
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3.5 Implications of findings for scholarship – inductively building theory

This thesis applies the analytical framework to the three selected case studies and presents its findings. The implications of these findings for scholarship are then identified and the thesis moves to inductively building theory (in Chapter 7). Theory building was not the original intent of this thesis. The original intent was to apply existing theory and recurring propositions in the literature about the ways in which the success of Public Inquiries may be assessed. Because this was not the original intent, the suggested staged process of building theory from case study research was not explicitly or systematically built into the

methodology (Eisenhardt 1989, pp. 532-550). Rather, it emerged inductively. As such it shares some of the elements of theory building from case study research but does not do so comprehensively. Specifically, the most significant omission, and therefore, limitation, of this research is the lack of direct participant data, for example, interviews, as part of the suite of data collection methods. Had the original intent of this thesis been theory building, interviews may have formed part of the research approach. This may inform a future research agenda.

The sampling of Public Inquiries was not random. It represents an attempt to gather data to support the development of an analytical framework. The cases chosen for study were not 'representative' but theoretically sampled because it was anticipated that each was 'particularly suitable for illuminating and extending relationships and constructs' or would be 'revelatory' (Eisenhardt and Graebner 2007, p. 27). By choosing different types of Inquiries, the attempt was to apply, and then refine and extend emergent theory, and examine its boundaries. The multiple case studies approach used in the research, therefore, should provide a stronger case for theory building (Yin 1994, pp. 44-48), with the significant caveat that the 'a few additional cases can significantly affect the quality of the emergent theory' (Eisenhardt and Graebner 2007, p. 27).

Theory building has emerged inductively through this research. The researcher chose a question, then the analytic method (case study) and then the specific data collection methods based on the particular context of Public Inquiries, including Inquiry reports, media articles and parliamentary debate transcripts (Shah and Corley 2006, p. 1826). The process was also iterative involving reading of documentary sources, developing a baseline description of events with reference back to literature and relevant theoretical concepts throughout the analysis (Brown and Jones 2000, p. 659). Data collection occurred alongside, and was followed by, a lengthy process of data analysis. During this process the researcher consistently returned to the research question in order to check whether any reorientation was required in data collection or analysis (Shah and Corley 2006, p. 1826).

A process of ongoing comparisons underpinned the research throughout the course of the study. Events and observations were compared, contrasted and followed up to gain additional perspectives. Data collection was open ended and flexible. For example, data collection was modified and expanded to include two additional child protection Inquiries (Appendix 5) to explore emerging ideas. Data collection was also expanded to examine any subsequent Inquiries or significant developments that were linked to the case study Inquiry. These include the Sofronoff Grantham Floods Commission of Inquiry 2015, the Queensland Floods class action (following the Queensland Floods Commission of Inquiry), and the civil prosecutions conducted by the Australian Securities and Investment Commission (following

the Inquiry into certain Australian companies in relation to the UN Oil for Food Programme). These analyses were undertaken in order to check whether these more contemporary developments provided any further insights on success.

When the analytical framework was found to be wanting (as discussed in Chapter 7), the researcher revisited the literature in order to find an appropriate fit between the findings that had emerged and the focussing concepts from the literature (Brown and Jones 2000, p. 659). Various theories from a broad range of disciplines were then explored in order to shed further insights on the research question. These are explored in Chapter 7.

There is significant potential for a future research agenda to supplement the data gathered and the theory building using a range of research techniques to further develop theory.

3.6 Conclusion

This chapter has outlined the research design and defended the choice of methodology. As outlined in Chapter 2 the institution of Public Inquiries is well documented, but an assessment of their success has received less attention. The thesis adopts a qualitative approach as the most appropriate to investigating the research question. A multiple case study approach is adopted to allow for a rich, in depth analysis within the specific context of each Public Inquiry selected for analysis.

As described in Chapter 1, the theoretical propositions which are applied to the case studies, provide the analytical framework for the research and serve to guide the collection and analysis of evidence.

Chapter 4 - The Inquiry into certain Australian companies in relation to the UN Oil for Food Programme 2006

Case Study 1: An Investigatory Inquiry

4.1 Introduction

This chapter details Case Study 1: The Inquiry into certain Australian companies in relation to the UN Oil for Food Programme, an investigatory Public Inquiry. The case study analysis is conducted using the analytical framework (from Chapter 3) based on the propositions of the success drawn from the literature.

In relation to the first proposition, that an assessment of the success of a Public Inquiry should examine the ways in which it has responded to crisis and restored legitimacy, this case study finds that this Inquiry was a response to the 'crisis' generated by the Volcker Report (Volcker, Goldstone and Pieth 2005, henceforth, the Volcker Report) which confirmed the corrupt practices of the Australian Wheat Board (AWB). It did not, however, restore the legitimacy of government and was not successful in depoliticising the scandal. By the government prescribing its narrow terms of reference, the Inquiry was, however, very successful in shielding government elites and the public service from blame.

With respect to the second proposition, that an assessment of the success of a Public Inquiry should examine the ways in which it gives voice, the Inquiry shone a light on the AWB's practices and transformed them from non-issues to serious allegations requiring investigation. The Inquiry gave voice to the 'rumours' of the AWB's corrupt conduct. However, as this Inquiry was conducted in a highly legalistic manner, apart from calling witnesses, the Inquiry did not give voice to those impacted by the practices of the AWB.

With regard to the third proposition, that an assessment of the success of a Public Inquiry should examine the ways in which it provides the opportunity for policy change and improved outcomes, it was the scandal itself and the practices uncovered by the Inquiry that prompted significant policy reforms in Australia's wheat marketing arrangements. These came about through regular democratic processes, not the Inquiry per se (Appendix 3). Policy changes arising directly from the Inquiry's limited number of recommendations have, however, led to

increased transparency and accountability of Australia in relation to United Nations sanctions and clarification of legal professional privilege in the context of Royal Commissions.

This chapter provides background to the Inquiry and outlines the Inquiry process and outcomes. It details the response to the Inquiry Report, including the establishment of the Oil for Food Task Force, and applies the three propositions of success. Assessments of success against the three propositions are articulated.

4.2 Background to the Inquiry

‘A scandal of such monumental proportions’ (Rudd 2005).

The Oil for Food Programme was authorised through United Nations Security Council Resolution 661. Trade with Iraq could only legitimately and legally occur under United Nations (UN) supervision. The Australian Wheat Board (AWB) Limited was a statutory marketing authority. It was the monopoly single wheat desk for Australia’s wheat exports. The AWB was listed as a top 200 listed company in Australia. It held approximately 70 percent of Australia’s bulk wheat export market (Grebe 2013, p. 119).

There had been concerns about the conduct of the AWB for some time, however, ‘in the rough and tumble world of international trade competition’ (Botterill 2007, p. 11) these were dismissed as rumours and framed as nothing but competitive market strategy. For example, in 2000, the Canadian Wheat Board refused to make a payment to Iraq and, subsequently, did not get a key contract. The Canadian Wheat Board was allegedly told that similar arrangements had been made with Australia. The Canadian Wheat Board raised the matter with the UN which referred the matter to Australia’s Department of Foreign Affairs and Trade (DFAT). DFAT duly questioned the AWB. The AWB denied the allegations, claiming they were ‘bullshit’ (Report of the Inquiry into certain Australian companies in relation to the UN Oil for Food Programme, Vol. 1, p. xxiii, henceforth, the Cole Report 2006). This was so reported back to the UN.

After the invasion of Iraq in 2003, the Oil for Food Programme ended. At that time documents came to light providing evidence of ‘kickbacks’ to President Saddam Hussein and his regime. In 2004, the UN established the Volcker Inquiry to inquire into the Oil for Food Programme. Volcker reported in 2005 and found that the AWB had been the ‘single biggest contributor of kickbacks to the Iraqi government’ (Botterill and McNaughton 2008, p. 586). The size, scale and duration of the scandal had been documented by the Volcker

Report. Rumour was now established as fact. The Australian Government was compelled to respond.

On 31 October 2005 Prime Minister Howard announced that an independent inquiry would be established to determine whether there was any breach of law by the Australian companies referred to in the Volcker report. The Prime Minister announced that the inquiry 'should be armed with appropriate powers' and that he was seeking advice what sort of inquiry would be appropriate (Howard, Hansard, p. 25, p. 31 October 2005).

The framing contests began. The Opposition signalled at this early stage, even before the form of the inquiry had been announced or the Letters Patent issued, that the Prime Minister wanted the inquiry to (O'Connor, BPJ, Hansard, 9 November 2005, p. 96):

focus on the companies and not on the government or any of its agencies. On this matter, Labor will not let this Prime Minister or his minister off...the government and its agencies cannot be allowed to slither out of the spotlight.

The Opposition called for a royal commission with full powers of investigation 'to expose the truth' and reveal how '\$300 million goes on to fund an Iraqi insurgency and the Iraqi's war against Australian forces in that country in 2003' (Rudd, Hansard, 9 November 2005, p. 89). The Opposition claimed 'that the people of Australia actually want to know what happened' and alleged that 'at a minimum, the Howard government is guilty of culpable negligence' (Rudd, Hansard, 9 November 2005, p. 89).

The Government framed the Opposition's claims of 'exaggeration and confected rage' as distortions which 'misrepresented the situation beyond the bounds of reality' (McGauran, Hansard, 9 November 2005, p. 92). The Government did concede, however, that there were 'matters to satisfy the parliament and the Australian people about' (McGauran, Hansard, 9 November 2005, p. 92). Notably, the Government also took this early opportunity to shift blame and stress 'that it was the UN, not the Australian government that ran the programme' and that 'there were shocking shortcomings in the United Nations administration of the Oil for Food programme' (McGauran, Hansard, 9 November 2005, p. 92).

On 10 November 2005 when the Letters Patent were issued, the Shadow Attorney-General (Rudd, Hansard, 10 November, 2005, p. 106) asked the Prime Minister:

Isn't it a fact that this commission of inquiry only has terms of reference to investigate three Australian companies and narrowly defined persons associated with those companies rather than powers to investigate the actions of Australian government ministers, advisors and their officials? Why is this inquiry not empowered to reach findings as to whether or not the Australian government itself has failed to meet its legal obligations to prevent breaches of global sanctions against Saddam Hussein? Prime Minister, if you are not empowering this inquiry to examine the government's

own actions in approving this \$300 million Saddam Hussein slush fund, aren't you simply establishing, in advance, a 100 per cent rolled gold political whitewash?

The Prime Minister responded that '[W]e are, to the letter, responding to the request made by the Secretary-General of the United Nations' and that the terms of reference were 'entirely appropriate' (Howard, Hansard, 10 November 2005, p. 106). Critically, this pivotal issue of the scope of terms of reference continued to be a recurring theme throughout the Inquiry and one around which the assessment of success turns.

4.3 The Inquiry

Justice Cole was appointed as the Commissioner of the Inquiry; 'a lawyer of great integrity, great repute and great forensic skills and as a completely and fearlessly independent man' (Howard, Hansard, 27 November 2006, p. 32).

This was an investigative Public Inquiry which was conducted in a highly legalistic manner. Seventy-five witnesses were called and statements from a further 130 witnesses were tendered. Confidential hearings were held over five days with former employees of the AWB. Evidence taken in confidential hearings was subsequently made public. Public hearings occupied 70 sitting days. Hearings were recorded and transcripts were publicly displayed. The cost of the Inquiry was approximately \$10 million (Cole Report 2006, Vol. 1, p. 197).

Commissioner Cole presented his final report on 24 November 2006. The report examines in great detail the transactions between AWB Limited and Iraq in relation to the UN sanctions and Australian law. The Inquiry found that between November 1999 and March 2003 the AWB paid to Alia (a Jordanian trucking company) transportation fees of around \$US225 million. After taking a 0.25 percent commission, Alia transferred funds to the General Maritime Transportation Company, the Iraq Public Ports Company or the Iraqi State Company for Water Transport. From there funds were distributed to various Iraqi government ministries: two thirds to the Ministry of Finance; 18 percent to 'land'; 4 percent to 'ports', and 1 percent to 'water' (Cole Report 2006, Vol 1, p. lxiii). This placed the AWB in the 'dubious position of being by far the major contributor to the schemes the Saddam Hussein regime had put in place in order to undermine the [UN] sanctions' (Botterill 2007, p. 4). These payments were in direct contravention to the UN Resolution. In no uncertain terms, Cole described this as a 'sham designed to deceive the United Nations' (Cole Report 2006, Vol. 1, p. xv).

The scandal was described in the media as 'the most far-reaching and expensive scandal in Australian history; '[i]t involves one of our biggest export industries, one of our most

important departments and a sovereign nation that we invaded militarily' (Carney 2006). More than ten years later it is still described as 'the greatest international trade scandal in Australian history, a terrific stain on our good name' (Overington 2016). The scandal involved both 'unethical and illegal transgressions' which were 'further compounded by immoral and unethical behaviours like cover up and denial' (Grebe 2013, p. 122). The scandal had potentially grave political implications and shook the public's confidence in its institutions and, as predicted by O'Connor (2007), a fact finding, or investigatory, inquiry was established.

In the prologue to his final report, Commissioner Cole (Cole Report 2006, Vol. 1, p. xi) states that:

the facts are now not in doubt. It is not my function to make findings of breach of the law; my function is to indicate circumstances where it might be appropriate for authorities to consider whether criminal or civil proceedings should be commenced. I found such circumstances to exist.

After the Inquiry thirteen former AWB executives potentially faced criminal charges. The AWB lost its monopoly on wheat exports. A new Chairman and Managing Director for AWB were appointed and new governance arrangements were put in place (AWB Limited Annual Review 2009).

4.4 The Letters Patent

'They put blinkers on the inquiry and tied both arms behind its back' (Bevis 2006)

There was 'much parliamentary and public debate about the scope of the Letters Patent' (Cole Report 2006, Vol. 1, p. 157, pp. 158-159, p. 163), particularly in relation to whether the terms of reference permitted findings to be made of illegality against the Commonwealth or any of its officers. Commissioner Cole stated that the Letters Patent did not permit him to make such findings and that it was 'not the function of a Commissioner exercising the powers of a Royal Commission to set its terms of reference' (Cole Report 2006, Vol. 1, p. 163). Nor did Commissioner Cole find any 'material that is in any way suggestive of illegal activity by the Commonwealth or any of its officers. Thus, there was no basis to seeking a widening of the terms of reference in that respect' (Cole Report 2006, Vol. 1, p. 164). Simply, 'it is not the function of a commissioner to determine his terms of reference' (Australian Senate Legal and Constitutional Affairs Reference Committee, *Work undertaken by the Australian Federal Police's Oil for Food Taskforce 2015*, p. 51, henceforth OFFTF Report 2015).

The Prime Minister asserted that the 'greatest evidence of our bona fides was the establishment of the Inquiry' (Howard, Hansard, 28 November 2006, p. 53). The Opposition took a different view with the Shadow Attorney General, Kevin Rudd, arguing repeatedly that the 'gaping hole' in the terms of reference was 'that Commissioner Cole had no head of power whatsoever to determine whether the minister or the department did their job' (Rudd, Hansard, 28 November 2006, p. 54). Rudd referenced a letter from Commissioner Cole stating that to request such additional power would 'represent such a huge expansion of my existing powers that I could not possibly ask for that. The only way I could be given those powers is if the government gave them to me of its own accord' (Rudd, Hansard, 28 November 2006, p. 54). Government was not so inclined.

4.5 The Report

'I never had a doubt...the money was always going into Iraq'
(Cole Report 2006, Vol 1, p.xlii)...
'AWB knowingly breached the sanctions' (Cole Report 2006, Vol 1, p.xlv).

Commissioner Cole concluded that the 'conduct of AWB and its officers was due to a failure in corporate culture' which he described as 'a closed culture of superiority and impregnability, of dominance and self-importance' (Cole Report 2006, Vol. 1, p. xi-xii). The AWB had failed to respect the 'great privilege' and 'obligation to conduct itself in accordance with high ethical standards [of] a government grant, by legislation, of a monopoly power' (Cole Report 2006, Vol 1, p. xii). Blame was further focussed on a 'relatively small group' in the AWB as most other employees including the Board, were unaware of the kickback arrangements (Botterill 2007, pp. 9-10).

Commissioner Cole describes the AWB as going to great lengths 'to hide the payments it was making to Iraq' (Cole Report 2006, Vol. 1, p. xx), 'disguis[ing] the fee' [and] 'distan[c]ing itself from the payments' (Cole Report 2006, Vol. 1, pp. xx-xxi). Critically, Commissioner Cole found that the Australian Government was not to blame.

Commissioner Cole notes on many instances in the report the AWB's failure to genuinely cooperate with the Inquiry characterising it as 'one of restricted disclosure and absence of true cooperation', 'a façade of cooperation with the Inquiry. In truth, it did not cooperate at all' (Cole Report 2006, Vol. 1, p. 235). The AWB had also 'resort[ed] to litigation to endeavour to keep from disclosure documents and material relevant to this Inquiry' (Cole Report 2006, Vol. 1, p. 242). Commissioner Cole notes that 'this is not a breach of any Commonwealth, State or Territory law' (Cole Report 2006, Vol. 1, p. 235) however he does observe that this approach 'caused inestimable reputational harm to AWB' (Cole Report 2006, Vol. 1, p. 242):

shareholders lost half the value of their investment. Trade with Iraq worth more than \$500 million per annum has been forfeited. Many senior executives have resigned, their positions being untenable. Some entities will not deal with the company. Some wheat farmers do so unwillingly, but are, at present compelled to do so. AWB is threatened by lawsuits both in Australia and overseas. There are potential further restrictions on AWB's trade overseas. And AWB has cast a shadow over Australia's reputation in international trade.

Most significantly, in terms of shielding political elites from blame, Commissioner Cole found that at no time did the AWB tell the Australian Government or the United Nations of its true arrangements with Iraq' (Cole Report 2006, Vol. 1, p.xii) and that, in fact, the AWB had 'deliberately hidden or disguised the payment of the fee to Iraq and knew that neither the UN nor Australian Government was aware of it making payments to Iraq' (Cole Report 2006, Vol. 1, p. xxi). This position is repeated many times throughout the Inquiry's four volumes.

The Volcker Inquiry (2005) had established that it was known that Iraq had asked many major companies from many countries to pay commissions, surcharges or after-sales-service fees to inflate prices (Cole Report 2006, Vol. 1, p. lxxvii). Many major companies approached their national governments advising them of these requests and seeking guidance as to whether they breached UN sanctions. However, none of the Australian companies that received demands from Iraq for such payments advised the Australian government of those demands or sought advice about the legality of making such payments or whether they would infringe UN sanctions: 'AWB was not prepared to raise with the United Nations the issue of the transportation fee for fear it might be prohibited by the United Nations, thus costing AWB its Iraq market' (Cole Report 2006, Vol. 1, p. xv).

However, on a number of occasions the Australian Government 'warned and advised AWB that the provision of funds to Iraq would breach UN sanctions' (Cole Report 2006, Vol 1, p. 115; Botterill 2007, p. 8). When the UN, through Australia, inquired whether the AWB was making such payments to Iraq, 'AWB emphatically denied that it was' (Cole Report 2006, Vol. 1, p116). That was where the matter rested.

Botterill (2007, p. 9) asserts that DFAT 'did not in fact receive large amounts of information suggestive of inappropriate behaviour' and that while it is 'arguable that DFAT's response should have been more proactive' once it had received assurances from the AWB 'that criticisms were baseless it had no authority to probe any further'.

The political and media controversy and public debate around Volcker's report, the involvement of the AWB in the Oil for Food programme, and the nature of the relationship between the AWB and the Commonwealth, was loud and unrelenting. However,

Commissioner Cole took a firm view that this public commentary was completely extraneous to the Inquiry and shone a 'bright line' (Cole Report 2006, Vol. 1, p. 170) between the Inquiry and public discourse.

4.6 Inquiry finding and recommendations

The Inquiry Report is thorough, forensic and dense. It details in great depth what happened, when, and who at the AWB knew. It details misinformation, deceit and the 'whatever it takes' corporate culture and decision making that characterised the AWB.

The Cole Inquiry was 'fundamentally confined to the realm of the legal' (Williams 2010, p. 189) and so it is no surprise that much of the report is given to legal argument, advice and process. However, a striking feature of this very lengthy report is that it makes only one finding and five recommendations. Commissioner Cole's finding was that:

I am of the view on the material before me that the following breaches of laws might have occurred...[a]nd that the following persons might have constituted them accessories to the offences AWB Limited or AWB (International) Limited might have committed...[a]nd that Acts, conduct of the following persons might have constituted a breach of various sections of the Corporations Act 2001.

It is worth reflecting on the word 'might'. According to Bartos (2014, p. 239):

the word 'might' was in no way an indication of doubt about the matters; the wording in the report and its findings conveys great certainty. It was simply a reflection of the words from the terms of reference.

Commissioner Cole recommended that these matters be referred to the appropriate authority for consideration whether proceedings should be commenced for breach of the law (Cole Report 2006, Vol. 1, pp. lxxxi-lxxxii). Commissioner Cole then made five recommendations (Cole Report 2006, Vol. 1, pp. lxxxiii-lxxxiv) which go to legal and contractual issues, as well as oversight of UN obligations and questions of legal professional privilege vis a vis Public Inquiries (Appendix 4). There were no recommendations regarding public service administration, advice or processes (Bartos 2014, p. 239).

4.7 Response to the Report

'I have not read the report...[but] in my assessment, this is a first-class report (McArthur 2006).

On the first Parliamentary sitting day after the release of Commissioner Cole's report debate in the House of Representatives continued in the same feverish way as it had done since the scandal broke. The Leader of the Opposition, Kim Beazley, asked the Prime Minister why he was 'so proud of himself 'for being incompetent and not criminal' and how he slept at night

after his neglect (Beazley, Hansard, 28 November, 2006, p. 32, p. 44). The Prime Minister responded that he was proud to lead a government that had the courage to have a full inquiry' (Howard, Hansard, 28 November, 2006, p. 32). The Government kept its finger firmly pointed at the AWB executives (Downer, Hansard, 28 November, 2006, pp. 33-34).

The Leader of the Opposition raised a censure motion against the Prime Minister, the Deputy Prime Minister and Minister for Foreign Affairs (Beazley, Hansard, 28 November, 2006, pp. 46-50). Whilst the motion was defeated it succeeded in raising the core issues of concern about the Government's handling of the scandal; that the Government had been negligent in failing to act on the 35 'warnings' it had received over five years, that it tried to cover up the scandal, for the cost to Australian farmers, for allowing \$300 million to be funnelled to the Iraqi regime, and for the damage caused to Australia's reputation.

The Leader of the Opposition claimed that the 'the government's rorted terms of reference produced the only outcome they could produce' (Beazley, Hansard, 28 November 2006, pp. 47-48). The Commission would never 'find these folk culpable of anything, because we understood from the outset that it was set up that way' noting the Government had 'dodged a bullet largely by its own manipulation' (Beazley, Hansard, 28 November 2006, pp. 47-48). The Shadow Attorney General, Kevin Rudd stated that 'the complaint is not against the umpire; the complaint is against the man who set the rules for the game within which the umpire operated, the man who set the rules for the match, the Prime Minister himself' (Rudd, Hansard, 28 November 2006, p. 55). As he had done many times before, the Prime Minister refuted the claims that the terms of reference were deliberately restrictive. The Prime Minister also asserted that had he wished to do so, Commissioner Cole could have sought a widening of the terms of reference (Howard, Hansard, 28 November 2006, pp. 51-52). He did not do so, so they were not widened.

Questions were also raised about the conduct of the Inquiry asserting that key witnesses had not been called and important evidence had been 'completely overlooked' (Thomson, Hansard, 28 November 2006, p. 172). Some characterised 'the Cole Inquiry into Wheatgate' as a whitewash, 'just another expensive bit of political theatre' in which once again the Australian public 'had been taken for patsies' and that 'Australian democracy, ministerial accountability and integrity are being trashed while Labor struggles to get its act together' (Singer 2006). The 'damning findings' of the Cole Inquiry made the AWB the 'worst performing business on the S&P/ASX200 index' in 2006 (Keenan 2006).

An 'embarrassed' AWB 'vowed to reinvent itself' (McArthur G, 2006). The Board resigned as did the Managing Director. AWB proposed a 'demerger' (that is, split into the grower-owned

AWB Ltd and AWB International which oversaw the single desk) as a means of retaining the single desk and national pool as a stopgap measure to ensure the current wheat harvest was managed and shareholders were protected. The move was seen as buying time (Hart 2006b) and 'a bit like an animal that gnaws its leg off trying to escape a trap, except in this case it's the head that's in the trap so a certain reluctance creeps in' ('AWB plan just a stalling tactic' 2006). Unsurprisingly, the plan was 'dismissed' stating that the Government would push for more fundamental reform (Lee and Grigg 2006). This fundamental reform commenced in December 2006 when the Government took the decision to remove the 'veto' over wheat exports from the AWB.

If a key driver of success was the continuing successful sale of Australian wheat to the Iraqi government (van Iterson and Clegg 2008, p. 1127) the Cole Inquiry led the Iraqi government, which had taken around 10 percent of Australia's export wheat to refuse to do business with the AWB (Botterill 2007, p. 12).

4.8 The Oil for Food Task Force

On 27 November 2006, the Attorney General announced that the Government would respond to the Cole Report by establishing a task force to consider possible prosecutions (Ruddock, Hansard, 27 November 2006, p. 45). On 20 December 2006 The Oil for Food Task Force (OFFTF) was established in consultation with the Commonwealth and Victorian Directors of Public Prosecutions. The Task Force was to be led by a senior former Australian Federal Police (AFP) officer and include a team of AFP officers, Australian Securities and Investments Commission (ASIC) staff and a member of the Victorian Police.

The scope of the OFFTF was to investigate all allegations of criminality raised by the Cole Inquiry. The Attorney General warned that 'although the government is moving quickly and decisively, it may take time for the independent task force agencies involved in the task force to thoroughly consider all the relevant material before commencing any prosecutions' (Ruddock, Hansard, 27 November 2006, p. 45).

The Taskforce reported nine years later in March 2015 (OFFTF Report 2015). A fuller description of the OFFTF is at Appendix 2. No criminal prosecutions were ever made against any former AWB executive. Civil convictions were recorded in two cases resulting in penalties being paid by the former Managing Director and the former Chief Financial Officer of the AWB. However, ASIC lost its long running case against the former AWB Chairman and a former executive, on all but one of its allegations of breaches under the *Corporations Act 2001 (Cwlth)*. All other AWB executives have escaped any penalty or conviction.

4.9 Success Proposition 1: Responding to crisis and restoring legitimacy

The Government had little choice but to respond to the Volcker Inquiry Report (2005). It was no longer possible to play down the AWB's conduct or dismiss allegations as pernicious rumours fuelled by rivals in the dubious, competitive world of international agri-business. Volcker had established these rumours as facts. The Government, however, carefully crafted the terms of reference to focus on the AWB and other companies, and not on government or its agencies. This shielded elites from blame but did it restore legitimacy? Were citizens' concerns about the operation of their institutions addressed? Was the breach of the social contract repaired?

The Prime Minister reassured the community that Commissioner Cole would get to the heart of the problem so that remedial action could be taken (McConnell, Gauja and Botterill 2008, p. 612) and lessons could be learned. The Government portrayed the Inquiry as 'impartial, apolitical and rigorous' (McConnell, Gauja and Botterill 2008, p. 612). In fact, the Government positioned itself, and the report, as a victory for democracy, with Prime Minister Howard announcing on the day after the Inquiry Report's release, 'I am proud to lead a government that had the courage to have a full inquiry - the only government in the Western world that had the courage to do this, the only government in the Western world that responded in a very comprehensive fashion' (Howard, Hansard, 28 November 2006, p. 32). Some sections of the media agreed; 'The Cole Inquiry has set a standard of clarity and transparency that the UN has yet to adopt and shows no signs of doing so' (Rosett 2006).

Prime Minister Howard reaffirmed that 'all the allegations [the Leader of the Opposition] so falsely made against the honour and integrity of the foreign minister and the Deputy Prime Minister have been demonstrated to be completely wrong' (Howard, Hansard, 28 November 2006, p. 32). The Government had done no wrong. The Inquiry cleared the bureaucracy of knowledge of the kickbacks and did not make any findings on what departmental agencies should have done (Botterill and McNaughton 2008, p. 593).¹⁷

Some argue that Commissioner Cole could have been more proactive in examining the role of the executive arm of government (Botterill 2007, p. 5). The terms of reference did not touch on the role of government or the public service, 'one may be certain that this exclusion by the government was quite deliberate' thus ensuring 'that there could not be any formal attribution of responsibility to these bodies' (van Iterson and Clegg 2008, p. 1125).

¹⁷ There was one exception. Commissioner Cole did find that the Wheat Export Authority (WEA) failed to monitor the conduct and performance of AWB. However, Botterill and McNaughton (2008, pp. 593-594) argue that this is based on a misunderstanding of WEA's role which was never charged with being a watchdog or industry regulator.

It is instructive to reflect at this point on what discretion may be exercised by a Commissioner with regard to terms of reference. In a matter that has resonance with this case study, Sir Richard Scott headed up an Inquiry into Matrix Churchill, a UK based Iraqi company selling 'machine tools' to Iraq. The Inquiry was set up in 1992 and reported in 1996. Taking the government by surprise, Commissioner Scott interpreted his terms of reference to include government knowledge of exports in breach of the guidelines of export control legislation (Scott 1996). Scott insisted that all relevant individuals would be called to give evidence in public (except where this would damage the national interest) and 'in order to encourage truth-telling, witnesses were granted immunity from prosecution, and civil servants were absolved from their responsibility to protect their ministerial bosses so that they could, with impunity, reveal ministerial wrong-doing' (Brown and Jones 2000, p. 671).

This was not the path taken by Commissioner Cole. According to Manne, 'one of the most important tools of government is the capacity to establish what the anthropologist Ghassan Hage has christened "the exonerating inquiry" and the Cole Inquiry showed that the Howard government is now a true master of this art' (Manne 2006). In careful crafting of the terms of reference the Government ensured that the Commissioner was restricted to questions of whether or not there had been breaches of the law, and not whether the government had been remiss. In appointing Cole as Commissioner, the Government selected 'a black letter lawyer with both a powerful forensic capacity and a proven track record of swimming safely between the Government's flags...an exonerating inquiry was the ambition and the predictable result' (Manne 2006).

The Inquiry was a reluctant, but carefully crafted response to the unequivocal findings of the Volcker Report. The slow burn of rumours and gossip could no longer be denied or dismissed. When the Inquiry reported, government claimed that the findings restored its legitimacy. It was the AWB's fault, not government or its bureaucracy.

However, legitimacy was not restored. The narrow terms of reference, and appointing an eminent Justice as Commissioner, skilfully deflected attention away from Government and focussed the spotlight squarely on the AWB. As per its terms of reference, the Report concentrates on the AWB, not what Government knew or did not know. The Report states repeatedly that the AWB at no time informed the Government of its real dealings. As there were no findings of wrongdoing by any Government Minister it could be seen to have restored the legitimacy of Government and served to reduce anxieties about our institutions. However, this is tempered by the ongoing doubts about the framing of the terms of reference as a means of shielding Government from too close scrutiny.

In the community there was significant and ongoing commentary that this Public Inquiry was unduly limited in scope by its narrow terms of reference and hence was never going to 'get the bad guys' (Hanrahan 2016). The Opposition, particularly the then Shadow Attorney General, Kevin Rudd, was tireless in its efforts to widen the terms of reference and call on the Ministers to be accountable. The prominence and relentlessness of the questions and debates in Parliament and in the media are evidence that the Inquiry did not succeed in depoliticising the issue or allaying the concerns of citizens.

The case study analysis confirms the findings of McConnell, Gauja and Botterill (2008, p. 613) that the 'government successfully negotiated a blame minefield'. The Inquiry was successful in deflecting blame away from Government and 'turning the tables' on to the AWB as the cause of the scandal (McConnell, Gauja and Botterill 2008, p. 609). This is clearly demonstrated, for instance, in the claims of the Minister for Foreign Affairs: 'The people responsible for the breach of UN sanctions and for deceiving both my department and the United Nations [...] are the executives of AWB Ltd...AWB were responsible for defrauding the Commonwealth' (Downer, Hansard 28 November 2006, p. 33, p. 35).

These statements mark the pinnacle of the 'retraction cascade' described by Suchman (1995) where in a legitimisation crisis, networks of support recoil to avoid guilt by association. This unequivocal dissociation by Government was apparent during the course of the Inquiry but never more so than in the Government's response to Commissioner Cole's report.

As predicted in the literature, the Cole Inquiry prompted some reform in the regulatory, managerial and cultural spheres of the AWB and did not focus on the role of political office-holders or political institutions. No Government member lost their job as a result of this Inquiry. Despite legal cases continuing for many years after the Inquiry, there was some, very limited impact on AWB management. Civil proceedings were brought by the Australian Securities and Investment Commission (ASIC) against some members of the AWB, but no criminal proceedings. Some attention was also paid to reforming the structure and culture of the AWB. In Suchman's (1995, pp. 597-8) terms, the AWB utilised classic ways of trying to repair their legitimacy. Firstly, building a 'firewall' between the past and the future by restructuring and installing new players, hence, 'symbolically' distancing the organisation from its past 'bad influences'. Secondly, creating monitors and watchdogs and instituting scrutiny, risk management and grievance mechanisms. The AWB did both in an attempt to rebuild its position and trust in the community, and with shareholders (AWB Limited Annual Review 2009). There may have been some damage to DFAT's reputation and standing but no public servant lost their job and there is no evidence of any changes to departmental practice or protocols as a result of the Cole Inquiry.

The Inquiry meticulously pieced together the series of events and the context in which the allegations of bribery and corruption were made. The Report is staggeringly detailed and dense. It is not an accessible read. The few recommendations are highly legalistic in nature and aim to ensure better accountability and give reassurance that Australia has strong and transparent accountability mechanisms. They are in the vein of recasting Australia as a better corporate citizen, and in that way aim to restore legitimacy.

4.9.1 Finding

The Cole Inquiry was a response to crisis but did not restore the legitimacy of Government. The assertions in the literature regarding the focus on administrative, regulatory and cultural reform are confirmed. The Government and its Ministers endured and were unharmed by the process or findings of the Inquiry. However, the Prime Minister was widely and consistently criticised for narrowing the terms of reference to the conduct of the AWB and other companies. Ministers, their agencies and some officials were doubted and distrusted. The scandal did inestimable damage to Australia's reputation as a good corporate citizen internationally and domestically.

In summary, the analysis confirms Prasser's (2006, p. 51) findings that Cole Inquiry is an example of a Public Inquiry 'established for politically expedient reasons such as to show concern about an issue, give an illusion of action, show responsiveness to a problem, co-opt critics, reduce opposition, delay decision-making, and reassert control over a policy agenda'.

4.10 Success Proposition 2: Giving voice

This was an investigatory Public Inquiry conducted in a highly legalistic way governed by strict legal processes and norms. This Public Inquiry was not open to broad participation and community consultation. Considerations, evidence and proceedings were made public, but participation was on the Inquiry's terms governed by the powers conferred to it under the *Royal Commissions Act 1902*. As described previously, for many 'what was admissible as evidence was circumscribed by the terms of reference of the Inquiry, which were tightly circumscribed' (van Iterson and Clegg 2008, p. 1123). According to one commentator, 'the fire wall erected' by the terms of reference 'in order to protect the government was breathtaking in its audacity' (Haigh 2006).

It is instructive to trace how the 'voice' of the scandal itself emerged from the veiled world of gossip and denial to the direct scrutiny of the Cole Inquiry. Looking internally into 'the rough and tumble world of international trade competition' (Botterill 2007, p. 11), van Iterson and Clegg (2008) examine the politics of gossip and denial and the role such gossip plays in

reducing uncertainty and facilitating sensemaking and problem-solving. The authors track the role of 'rumoured gossip' noting that once it has 'acquired the status of official formulation it may impel (other) organisations to become more accountable and responsible' (van Iterson and Clegg 2008, p.1121).

The exclusion from consideration of certain issues is a subtle but highly powerful means of ensuring that those issues are not highlighted, attended to or resolved. Non-attention means that these issues are not on the agenda, they do not exist. In Edelman's (1977, p.47) terms these are 'semantically masked' issues or crises. In shaping the terms of reference to exclude certain issues the government was essentially exercising the 'second face of power',¹⁸ or the politics of non-decision-making (Bachrach and Baratz 1970). Prior to the establishment of the Inquiry, Government had exercised its significant power to 'not do things'. For example, arguably, Government did not pay attention; did not make decisions and did not respond to issues and developments about which it should have been aware. In crafting the Inquiry's terms of reference, the Government continued to exercise the second face of power to ensure that the pivotal question about the Government's involvement was not a question open to investigation.

As noted in the case study, rumour of the AWB's malfeasance began in 'gossip' by the Canadian wheat marketers in the late 1990s. The Canadians complained to the United Nations. Wheat marketers and politicians from the United States of America (USA) joined the fray 'rumouring that from as early as 1998 the Oil for Food Program was being systematically abused and that the major miscreant was the AWB' (van Iterson and Clegg 2008, p. 1124). The Canadian and the USA wheat marketers were the AWB's major rivals and so such actions were characterised as 'self-interestedly sullyng the reputation of the AWB' (van Iterson and Clegg 2008, p. 1124). The Australian Government repeated the assurances it had been given by the AWB that such claims were false, or simply, 'the way business is done in the Middle East' (Botterill 2007, p. 11).

However, twenty-one diplomatic cables had been received by government officials at DFAT alerting them to rumoured offences (van Iterson and Clegg 2008, pp. 1125-1126). These were met by silence, or framed as rumours and gossip, or 'competitive strategy'. Further, just because a cable had been received did not mean it had been read or 'formally communicated to government members' (van Iterson and Clegg 2008, p. 1127; 'I didn't read cables: PM', 2006). Kevin (2006) raises the distinction 'between formal intelligence reporting

¹⁸ The first face of power concerns the outcomes of decisive battles, the more explicit issues which are visibly on the agenda (Bachrach and Baratz 1970).

and the constant, informal, deniable “buzz” that goes on orally’ and suggests that it is entirely plausible that while the AWB’s conduct would have been discussed such issues may have been ‘quietly set aside as something on which ministers did not require formal reporting’.

During the Cole Inquiry when these cables were brought to the attention of the Prime Minister and Ministers ‘recollections simply failed’ and no-one could remember being ‘formally advised’ (van Iterson and Clegg 2008, p. 1127). This analysis confirms the findings of van Iterson and Clegg; ‘by not attending to these data, a concerted effort to ensure that they remained non-issues for non-decision-making can be seen’ (van Iterson and Clegg 2008, p. 1127. However, once the gossip ‘moved into legal circuits of power, its precise status as issue or non-issue came into central focus’ (van Iterson and Clegg 2008, p. 1127). These ‘circuits of power...authenticate[d] their provenance’ so they could no longer be denied. Despite the ‘politics of denial and systematic non-attention’, gossip was reconstituted as formal allegation which was then subject to legitimate determination (van Iterson and Clegg 2008, p. 1128, p. 1131) by ‘shining the bright light of this Inquiry on AWB’s conduct’ (Cole Report 2006, Vol. 1, p. xi).

However, it was the Volcker Inquiry, not the Cole Inquiry that put the matter of the AWB’s systematic and long standing breaches of the UN sanctions on the agenda. The rumoured gossip was substantiated by the Volcker report. As argued previously, the Government was compelled to act as the allegations could no longer be ignored or dismissed. The rumours were given voice and Volcker’s allegations demanded answers. van Iterson and Clegg (2008. p. 1129) conclude that the:

approach of not attending to the allegations no longer had any credibility once the Volcker Inquiry addressed and confirmed them. The non-issue had become an issue because of the actions of organizational agencies extraneous to the Australian government and the AWB.

The Cole Inquiry gave voice to these allegations albeit within limited, narrow terms of reference, and in a very legalistic way. The role of Government continued to be a non-issue for the Inquiry. However, this question was very much a feature of political and media debate and commentary.

Commissioner Cole took a deliberate view not to engage with or respond media, public or political discourse. He claimed that this was necessary condition of conducting a highly ‘independent’ process. Commissioner Cole acknowledged the deep public interest in the Inquiry and its outcomes (Cole Report 2006, Vol. 1, pp. 170-177) but interpreted his role as conducting the Inquiry on the terms as defined by Government. It was the Government

which was the keeper of the public interest. Commissioner Cole's role was to take a black letter interpretation of the terms of reference and leave the public interest to others.

4.10.1 Finding

In the context of this highly legalistic, investigatory Public Inquiry, voice was primarily achieved through parliamentary processes and media commentary on the Inquiry, not by the Inquiry itself. Commissioner Cole 'gave voice' to those he deemed to be relevant within the Inquiry's tightly prescribed terms of reference, using strict legal conventions and practices. However, the media covered every element of the Inquiry. Much of the public discourse and commentary centred on the issues raised by the Inquiry; the composition and terms of reference of the Inquiry; and the credibility of evidence. Voice was not given through direct participation by the public or the many thousands of wheat farmers and their communities directly impacted, or disadvantaged, by the AWB's practices and dealings.

However, it was the very existence and necessity of the Inquiry, rather than the deliberations of the Inquiry itself, which made the major contribution to public discourse on the future arrangements of Australia's wheat market (Appendix 3). Public discourse on this issue was undoubtedly crystallised and shaped by the issues and practices raised in the Inquiry.

The Inquiry indirectly contributed to new and different policy ideas and actors achieving prominence on the broader issues of Australia's wheat marketing arrangements. In the main, however, these voices were not contributors to the Inquiry itself. There is strong evidence of the extensive engagement of wheat farmers over a protracted period with committed politicians representing positions on all sides of the wheat marketing debate (Appendix 3). The trigger for the Inquiry (the scandal), rather than the Inquiry itself, provided a significant arena for policy debate and change in the future of Australia's wheat marketing arrangements as will be discussed in the next section.

4.11 Success Proposition 3: Providing the opportunity for policy change and improved outcomes

The single biggest policy change in the aftermath of the Cole Inquiry was the significant, historic change to Australia's wheat marketing arrangements. This policy change is not however directly attributable to the Inquiry. It was the scandal itself, rather than the Inquiry that catalysed the eventual changes.

After the Inquiry handed down its Report, the Prime Minister acknowledged that 'there is within the community a proper and healthy debate about wheat marketing arrangements (Howard, Hansard, 28 November 2006, p. 6). According to Bolt (2006) while:

most Australians have long since started to glaze over the mere mention of kickbacks, monopolies and wheat, after endless headlines and lurid photographs chronicling the unscrupulous methods used by AWB staff to keep its lucrative business with Saddam Hussein's Iraq [the situation] was reverse for the 25,000-odd farmers from central Queensland to the northern WA Wheatbelt who rely on the small white grain for much of their livelihood. Their turmoil has only just begun.

Prophetic words as the matter of wheat marketing arrangements was to play out over many subsequent years (Appendix 3).

From a '*realpolitik*' perspective, the Government's 'success' in avoiding blame for the scandal came at the cost of an iconic policy issue for its coalition partner, the National Party. Single desk wheat marketing came under significant scrutiny. On the day following the tabling of the Cole Inquiry Report, Prime Minister Howard stated that he was 'aware, as I have said repeatedly, of the need, especially in the wake of the Cole inquiry, to look again at our marketing arrangements' (Howard, Hansard, 5 December 2006 p.35; see also Mitchell 2006; Grattan 2006b). Some Liberal Party members saw an opening in the policy window 'to remove this last vestige of collective marketing of agricultural products' (McConnell, Gauja and Botterill 2008, p. 614) and eventually, in 2008, under the new Labor Government, legislation was introduced which ended the export wheat monopoly (Appendix 3). The *Wheat Export Marketing (Repeal and Consequential Amendments) Act 2008* effectively abolished the single desk arrangements which had been operating in various forms since 1939. However, 'the end of the export monopoly was not a direct result of the Cole Inquiry' (Bartos 2014, p. 241) but rather, regular and robust democratic processes.

The scandal also highlighted important tensions about how private companies (like AWB Ltd), seeking to maximise profits and returns, operate within a sanctions regime which impose obligations on the State. Botterill and McNaughton (2008, p. 589) argue that 'like any other company or individual dealing with Iraq, AWB Ltd was an involuntary participant in implementing sanctions'. The authors raise the question of 'the role of government in enforcing international obligations when the commercial incentive is to find a way around them' (Botterill and McNaughton 2008, p. 589). As a privatised entity, AWB Ltd was 'no longer a manifestation of the State and, as such, not an addressee of the international obligations' (Botterill and McNaughton 2008, p. 591). Although the AWB's behaviour was ethically questionable, it was entirely consistent with the behaviour predicted by sanctions scholars (Botterill and McNaughton 2008, p. 597):

Governments that commit to the implementation of sanctions need to back the symbolism of their support with the mechanisms for tracking down and prosecuting breaches. To do otherwise leaves implementation in the hands of private actors, who may or may not be committed to the objectives of international action, and who face conflicting objectives when offered opportunities to profit through sanctions-evasion.

The implementation of Commissioner Cole's recommendations regarding enforcing UN sanctions aim to address this paradox. Policy changes that are attributable to the Cole Inquiry are those designed to strengthen Australian law and administration of the domestic enforcement of UN sanctions (as stated in Recommendations 1-3) and 'sought to apply Cole's recommendations in a way that improves all current and future UN sanctions regimes in Australia' (Australian Government response to the Cole Inquiry, n.d.). By amending various Acts, creating offences and introducing penalties (Appendix 4), the Government strengthened Australia's compliance with UN obligations. Arguably these are the most enduring legacies of the Cole Inquiry and continue to underpin better policy and outcomes. In this respect, Prasser and Tracey (2014, p. 228) argue that 'judged purely in terms of follow-up action on recommendations' the Cole Inquiry can be considered a success.

The implementation of Commissioner Cole's Recommendation 4 addressed issues of legal professional privilege and once again is an enduring legacy of the Inquiry. The government referred this matter to the Australian Law Reform Commission for review. This has served to clarify such questions for subsequent Public Inquiries (*Privilege in Perspective*, ALRC 2008).

4.11.1 Administrative change

'Our healthy democracy has become flabby and blotchy' (Thomson 2006).

The AWB scandal raised significant concerns about public administration. Issues regarding ministerial and administrative accountability were raised throughout the Inquiry in political, public and academic commentary (O'Connor, BPJ, Hansard, 28 November 2006, p. 190; Megalogenis 2006; Weller 2006). McMullan called it 'the big black hole in Australian accountability' (McMullan, Hansard, 28 November 2006, p. 180) and O'Connor argued that what was at stake here was no less than 'the future of democratic practice in this country and the great doctrine of ministerial responsibility under the Westminster system that lies at the core of our parliamentary system' (O'Connor, BPJ, Hansard, 28 November 2006, p. 190). *The Australian* newspaper concurred, saying that Commissioner Cole's findings demonstrated 'just how far we have departed from what is supposed to be a core principle of democratic government – ministerial responsibility' (Steketee 2006).

The role and functioning of Government's agencies was also called into question. According to some, the Inquiry's findings revealed 'a failure of regulatory alarms as much as a political

scandal' (Kingsford Smith 2006) and that '[a]n independent public service would have foiled AWB at the outset' (Davidson 2006). What Ministers knew, or should have known, what DFAT knew or should have known were recurring issues in public discourse. According to Malone (2006):

the real state of the [public] service was revealed by the Cole inquiry which showed a Government that had no clue what was going on in the public service, and ministers who never read the myriad of cables and reports prepared for them...the public service had never been more politicised or less accountable.

The Australian stated that 'as the findings of the Cole Inquiry show, it would seem that no-one is now forced to take responsibility for anything in the public service' ('Government fails test on governance' 2006). On the other hand, Sheridan (2006), in the same newspaper, argued that 'overall DFAT is a magnificent national resource. Slandering it over AWB is absurd'.

Commenting on the 'surprising' findings that 'not one person employed by the Commonwealth – no public servant high or low, no elected politician – did anything wrong, according to Cole', Carney (2006) commented that 'if Cole's conclusions stand, our system of accountable governance will fall', and 'ignorance and a total lack of responsibility are the two new twin engines of power'. Carney concluded that:

political survival and plausible deniability are now the paramount objectives of public administration. Executive government and the bureaucracy are now seemingly inseparable, their fates intertwined. They exist to look after each other...which suggests that the rest of us will have to look after ourselves.

According to Weller (2006), the Cole Inquiry was evidence that 'our systems of accountability and delivery are at best ramshackle and at worst broken'. The system of accountability failed us and:

at the least we should expect that ministers will be able to tell us how they will ensure these problems are never repeated, and what procedures have been implemented by their secretaries to guarantee that future signals will be read by ministerial and departmental staff with the technical knowledge to understand the programs they are required to supervise. If that happens, then some benefit will come from the Cole inquiry.

The Ministerial office was described 'one of the big problem zones in efficient, effective, transparent and accountable public administration' (Waterford 2006). Waterford describes the 'often deliberately vague practices of the Ministerial office and ambiguous questions of ministerial knowledge or consent' concluding that:

few observers of ministerial performance in the AWB affair would have great confidence in the competence of [Ministers] Downer or Vaille. The frightening thing, of course, is that so secure is the screen over the ministerial office that we have no

real means of knowing how many other offices are as ill-managed and ultimately unaccountable.

As noted in the literature review (Chapter 2) measures of the success of a Public Inquiry from public administration and management perspectives might have been reform to the systems and process of government agencies, changes in management, improved transparency and accountability, building staff capability and performance management. Commissioner Cole made no recommendations to this effect and no Minister was inclined to review the administrative practices of his or her Department (Megalogenis 2006).

In terms of Ministerial accountability, Howard was in fact, the first Prime Minister to establish a public ministerial code of conduct in 1996 (McKeown 2012). However, on 6 December 2007, as one of his first acts as the new Prime Minister, Kevin Rudd introduced his Standards of Ministerial Ethics which replaced Howard's code. The Standards were well received as 'imposing greater transparency' and the 'tough new ministerial code of conduct' was seen as placing 'ministers under unprecedented scrutiny' (McKeown 2012, p. 3), arguably as a result of what had been revealed by the Cole Inquiry.

4.11.2 Finding

The Cole Inquiry brought together politics, problems and policy proposals. The problem was defined as a possible breach of UN sanctions by the AWB and other companies. The politics was successfully confining the problem definition to the AWB and tethering the terms of reference to this definition of the problem. In adopting Commissioner Cole's recommendations, the policy proposals led to some changes to legislation to enhance Australia's transparency and accountability. Prime Minister Howard and his Ministers successfully argued that the Inquiry demonstrated that Australia was committed to being a trustworthy player. The implementation of the Inquiry's recommendations serves to strengthen that position.

The reference of this matter to the OFFTF for consideration of prosecution took nine years. There were no criminal convictions for anyone involved and only low level civil prosecutions against a small number of former AWB executives. No policy change resulted from this process.

Because the Inquiry was so narrow in its focus it did not address the much larger policy issues that were subsequently at the heart of much community debate, and ultimately reform, notably Australia's wheat marketing arrangements. It was the scandal itself, and not the Inquiry, that led to this reform. There is clear evidence that new policy actors emerged in

this larger debate and that this continued to be an enduring feature of public policy regarding wheat marketing arrangements (Appendix 3).

The scandal and the practices of the AWB which were uncovered by the Inquiry may be seen to have served the Liberal Party's (and subsequently the Labor Rudd government's) agenda to deregulate Australia's wheat marketing arrangements and abolish the single wheat desk. This almost drove a permanent wedge between Coalition partners, the Liberal Party and the National Party. The scandal itself, not the Cole Inquiry, may be framed as providing the opportunity for improved policy and better public outcomes. Australia's wheat marketing arrangements underwent significant, 'durable' reform (McConnell 2010b, p. 58) and the wheat industry is arguably now more transparent, accountable and competitive. However, it was the scandal that led to the Inquiry's establishment which was the catalyst for major public policy change in Australia's wheat marketing arrangements. Policy change and reform was brought about by regular democratic, political processes.

The Inquiry's major direct contribution to policy change is through the Australian Government's acceptance and implementation of the Inquiry's limited recommendations. These achieved increased transparency and accountability of Australia in relation to UN sanctions, and also clarified some enduring questions about professional privilege for future Public Inquiries (Appendix 4).

4.12 Conclusion

The analysis using the propositions of success drawn from the literature produces an ambivalent result. In relation to the first proposition of success, the Cole Inquiry responded to the 'crisis' of the Volcker Report's confirmation of the AWB's corrupt practices, but it did not restore the legitimacy of government. It was also not successful in depoliticising the scandal. The Inquiry was, however, very successful in shielding government elites and the public service from blame. With respect to the second proposition of success, giving voice, the Inquiry revealed the AWB's corrupt practices and transformed them from 'non-issues' to serious allegations requiring investigation. The rumours were given voice. Apart from calling witnesses, however, the Inquiry did not give voice to those more broadly impacted by the practices of the AWB. In regard to the third proposition of success, providing the opportunity for policy change and improved outcomes, the scandal itself and the practices uncovered by the Inquiry were a clear indicator that Australia's wheat marketing arrangements needed to change. These changes and policy reforms came about through regular, robust democratic parliamentary processes in which many people actively participated on all sides. Policy changes attributable to the Inquiry are those that related to increasing Australia's

accountability for upholding United Nations sanctions and legal professional privilege vis a vis Public Inquiries.

Chapter 5 - The Queensland Child Protection Commission of Inquiry 2013

Case Study 2: A Policy Advisory Public Inquiry

5.1 Introduction

This chapter details Case Study 2: The Queensland Child Protection Commission of Inquiry, February 2013. This case study is an example of a Policy Advisory Public Inquiry.

The case study analysis is conducted using the analytical framework based on the propositions of success drawn from the literature, that is, an assessment of the success of a Public Inquiry should examine the ways in which it responds to crisis and restores legitimacy, gives voice, and provides the opportunity for policy change and improved outcomes. In relation to the first proposition, the major finding of the analysis of this case study is that this Inquiry buoyed the legitimacy of the new Liberal National Party (LNP) Government by being framed as a 'once and for all' systemic look into an overburdened child protection system, as well as settling a long running conspiracy theory (the 'Heiner Affair') in Queensland.

With respect to the second proposition, the Inquiry gave voice using similar mechanisms as other child protection Inquiries held in different Australian states around this time, that is, calling for submissions, hearings, consultations, publishing transcripts on Inquiry website (Appendix 5). There is evidence that enduring changes have been made to broaden policy networks and actors, possibly in keeping with government's broader public administration reform agenda. However, other than primarily through advocacy and service organisations, there is limited evidence that the children and families directly impacted by the child protection system had a direct voice in the Inquiry process.

In relation to the third proposition, there is evidence that the Inquiry provided the opportunity for policy change arising from the implementation of the Inquiry's recommendations but to date there is no compelling evidence of better outcomes for children and families.

This chapter provides background to the Inquiry and outlines the Inquiry process and outcomes. It details the response to the Inquiry Report and applies the three propositions of success. Assessments of success against the three propositions are outlined.

5.2 Background to the Inquiry

‘Getting on with the job of fixing our child protection system’ (Davis 2012a).

Since 2000 there have been no less than 33 separate reviews, inquiries and commissions into child protection in Australia (Parenting Research Centre 2015).¹⁹ Inquiries have been established with varying terms of reference, powers, resourcing, and for various durations. All of the child protection Inquiries have made a raft of recommendations to prevent child abuse and improve the responsiveness and effectiveness of the child protection system. Most often child protection reviews or inquiries are convened after a horrific child death or scandal which is perceived, or framed, as demonstrating catastrophic failure of the child protection system. The Queensland Child Protection Commission of Inquiry (QCPCI) was not. It was established to fulfil an election commitment. The QCPCI was the third child protection inquiry held in Queensland in thirteen years.

5.3 The Inquiry

‘To make Queensland the safest place to raise a child’ (Bleijie 2012).

The Inquiry was established through Letters Patent received from the State’s Governor and included the terms of reference for the Inquiry and specified the reporting timeframe. The Honourable Justice Tim Carmody QC, was appointed as Commissioner. Justice Carmody was described as ‘the right person for this job’ and the Government expressed ‘every confidence’ in him (Newman, 2012).

Justice Carmody was tasked with (*Taking Responsibility: A Roadmap for Queensland Child Protection*, p. xi, henceforth, the Carmody Report 2013):

reviewing the entire child protection system root and branch to find out whether it is still failing our children, and if so, why... [and] to deliver a roadmap for the way forward, one that will take us, within a decade, to the best possible system for supporting families and protecting children that our state can afford.

The Inquiry’s task was to look back as well as look ahead. The Inquiry was to review actions in response to previous Government Inquiries (the Forde Inquiry 1999; and the Crime and Misconduct Commission Inquiry into abuse of children in foster care 2004), as well as to review Government responses to allegations of historic sexual abuse in youth detention

¹⁹ This does not include the many more inquiries on specific issues like managing child sexual offenders, children within the legal process, children in the context of family violence, children in detention (*Implementation of recommendations arising from previous inquiries of relevance to the Royal Commission into Institutional Responses to Child Sexual Abuse*, Parenting Research Centre, May 2015, pp. viii-ix).

centres (known as the 'Heiner Affair'). The Inquiry was also to make recommendations for reforms to Queensland's child protection system including strategies to reduce overrepresentation of Aboriginal and Torres Strait Islander children and legislative reforms (Newman, Hansard, 13 November 2012, p. 2465). The Inquiry would 'have a look right to the guts of child safety in this state' (Bleijie, Hansard, 6 March 2013, p. 394).

The QCPCI was established on 1 July 2012 'to make Queensland the safest place to raise a child...[and] ensure that children are afforded the level of protection expected by the community and, in doing so, public confidence in the child protection system in Queensland can be restored' (Bleijie, Hansard, 11 July 2012, p. 1134). The QCPCI engaged a twelve-member advisory group which included specialists in child protection and safety. The Commissioner was also assisted by members of the Queensland bar at various stages.

The announcement of the Inquiry fulfilled an election commitment of the, then, new Liberal National Party (LNP) Newman government which promised to 'do whatever it takes' to ensure children are safe (Newman 2012). Premier Newman intended to conduct a 'full and comprehensive audit and overhaul of Queensland's child protection laws', 'put a stop to the constant change and under-resourcing of this area' and position Queensland as 'world leaders in supporting families and protecting children' (Hurst 2012). The Inquiry would demonstrate the Government's 'longer term commitment to create a sustainable and targeted child protection system in Queensland' (Molhoek, Hansard, 13 September 2012, p. 1989).

This Inquiry was unlike previous Inquiries. It was the first time, in Queensland, 'that an inquiry into child safety hasn't been driven by a crisis that has dominated the news headlines. It is being driven out of a genuine desire to improve the system' (Davis 2012a).

The Inquiry was tasked with reviewing the whole child protection system. It was not established to investigate a particular case or matter of concern. It was to be a systemic, broad reaching attempt to look at child protection in the context of child rearing, community expectations and norms, and government responses. This meant that not only the relevant child protection agency was included but also other government agencies including Police, Health, Education, non-government agencies, out of home care service providers, as well as oversight agencies. A central theme to the QCPCI was that 'children will thrive only in a society where everyone concerned with child welfare takes responsibility for their own particular role' (Carmody Report 2013, p. xiii); 'No single service or agency is in a position to respond effectively to all the needs of vulnerable children and families all the time' (QCPCI Discussion Paper 2013, p. 53). The Inquiry was to also consider the public's confidence in

the system and specifically addressed the issue of oversight of the system (Carmody Report 2013, p. 395).

The QCPCI placed advertisements in state and national media, established a website (which included terms of reference, how to make a submission, publishable submissions, schedules of visits, transcripts, issues papers), wrote to key agencies requesting information, obtained some information under summons, invited submissions, conducted regional visits or hearings (open and closed), visited services and non-government organisations, held public forums and held key stakeholder meetings. The Inquiry also undertook case file reviews and audits and conducted focus groups and surveys.

The QCPCI received; 443 submissions from non-government organisations, 235 individual submissions and 12 from government agencies (Appendix 5, Table 10). The Inquiry also conducted consultations and hearings and regularly communicated its progress through its website and other public communication strategies. It was reported in Parliament that the QCPCI (Davis, Hansard, 6 August 2013b, p. 2264):

heard nearly 400 hours of evidence from across the state and found that reports of child abuse had tripled in the past decade. Detailed hearings were held over 12 months with a wide cross-section of professionals involved in child protection. More than 150 meetings were held with individuals and stakeholders with knowledge and expertise in the child protection system. Focus groups were held with children in the care system, and site visits were conducted to residential and therapeutic care facilities as well as non-government organisations that provide child protection services. An extensive academic literature review on child protection was also undertaken.

5.4 The Letters Patent

The key themes and issues of concern to the Inquiry reflected in the Letters Patent (Carmody Report 2013, p. xxiii) were:

- The cost - over the prior decade the budget for child protection services had tripled, fuelled in particular by the growth on demand for out of home care services;
- The focus on tertiary responses at the expense of prevention, early intervention and support services;
- The practice of investigating all notifications – however, investigation reveals that only 20 percent meet the threshold for a notification, meaning 80 percent of notifications go no further;
- The over representation of Aboriginal and Torres Strait islander children in the child protection system;

- Duplication in monitoring and oversight without any discernible accountability enhancement;
- An absence of a shared strategic direction supported by a whole of government structure.

The terms of reference appeared 'to fulfil the policy promise, except that they also include yet another examination of the already much-probed Heiner "Shreddergate" affair' (Wenham 2012). This significant 'legacy' issue was embedded in to the Commission's terms of reference, namely:

3(e) reviewing the adequacy and appropriateness of any response of, and action taken by, government to allegations, including any allegations of criminal conduct associated with government responses, into historic child sexual abuse in youth detention centres.

3(e) referred to 'Shreddergate', or the 'Heiner Affair', (Carmody 3(e) Report 2013, p. 2), which was a 'long-running conspiracy theory alleging mass, government-backed cover up of child abuse' (Madigan 2013c). The 'Heiner Affair' centred on claims of a 'cover up' and refers to the shredding of documents (Madigan 2012b):

gathered by Magistrate Noel Heiner in his 1989 inquiry into child sex abuse at the John Oxley Youth Detention Centre at Wacol. Heiner's inquiry was started by the Cooper National Party Government, but the incoming Goss Labor Government was advised it had not been set up properly and ordered the documents destroyed. There have been numerous inquiries at different levels into the affair.

The shredding of those files 'generated one of Queensland's most enduring public controversies and conspiracy theories' (Carmody 3(e) Report 2013, p. 2). There was some concern expressed about how the QCPCI would balance its different tasks (Wenham 2012):

just how much of the inquiry's valuable time and precious resources this aspect of the review will eat up... [and] it is worrying this highly politically charged, historical issue - associated with the Goss government in 1990 shutting down and shredding evidence collected by the Heiner commission of inquiry into child abuse which the previous National Party government had set up but not properly empowered - is being dealt with as part of a 'new road map' to take Queensland's child-protection system forward in the next decade.

It was suggested in the media that that the inclusion of this matter in the terms of reference may have been 'possibly to assuage members of the old National Party who are convinced the "Heiner Affair" represents a key into a world of Labor Party conspiracies concerning child abuse' (Madigan 2012b).

As Commissioner Carmody began to investigate this matter he wrote that (Carmody 3(e) Report 2013, p. 1):

As the evidence unfolded it became increasingly apparent that there was real

doubt about whether any relevant action of, or response by the executive government to, 'historic child sexual abuse in youth detention centres' warranted investigation.

Commissioner Carmody subsequently wrote to the Attorney General recommending (Carmody 3(e) Report 2013, p. 1):

that consideration needed to be given to the possibility of an amendment to the Order in Council to achieve what I understood was the purpose of paragraph 3(e), namely, a review of relevant executive government responses and actions and whether they were connected to historic child sexual abuse or not.

On 4 April 2013 paragraph 3(e) was amended to require Commissioner Carmody:

To make a full and careful inquiry with respect to:

reviewing the adequacy or appropriateness of (including whether any criminal conduct was associated with) any response of, or action taken by, the executive government between 1 January 1988 and 31 December 1990 in relation to:

(a) allegations of child sexual abuse; and/or

(b) industrial disputes;

in youth detention centres, or like facilities (Carmody 3(e) Report 2013, p. 1).

Some media reported the change to 3(e) as Commissioner Carmody 'targeting the Goss era'²⁰ (Madigan 2013d).

Government granted leave to extend the investigations and the report which was due to be delivered at the end of April 2013 was extended to end June 2013.

5.5 The Report

The Final Report of the QCPCI was delivered in June 2013. The Report found that the child protection system (Carmody Report 2013, p. xii):

is not only unsustainable but contrary to both policy intent and reasonable community expectations. As this report comprehensively demonstrates, without changing risk-averse reporting rates and behaviours, curtailing over-inclusive risk and harm assessments, reducing over-servicing and overspending on high cost-low yield outcomes, altering errant funding policy and resource allocation, and finding viable safe alternatives to removal and retention, the statutory system is in jeopardy of collapsing under the weight of excess demand for reactive tertiary services and spiralling delivery costs.

²⁰ Wayne Goss was the Labor Premier of Queensland from December 1989 to February 1996.

The Report is extensive and highly detailed. It describes; the current child protection situation, structure and the need for reform, the legislative context and legal system, current statistics and performance of all parts of the child protection system, workforce capacity and constraints, funding, regulation and oversight, research, relationships with other key providers (that is, interagency collaborations and the non-government system), and specific issues like domestic violence and the overrepresentation of Aboriginal and Torres Strait Islander (ATSI) children in the child protection system.

In addressing the many aspects of the child protection system and in keeping with the foundational principle that child protection is a shared responsibility, the Report makes a large number of recommendations. While the Government and its agencies have a key role to play, the Report stresses that child protection is a community wide responsibility. As such, recommendations address reform of the child protection system as a whole, but also universal services like Education, Police and the Courts, as well as workforce training and development, collaboration, specific approaches for ATSI children and culturally and linguistically diverse (CALD) children, regulation and oversight (Appendix 5).

The Inquiry made 121 recommendations across a broad range of areas including; changes to mandatory reporting, better training and professional development of the workforce, better interagency collaboration, better family support services and more early intervention, better supported transition for young people moving out of home care, and better information management systems. An increased focus on, and funding of, early intervention is recommended as well as support for vulnerable families, and an increased role for the non-government sector.

The Report acknowledges that reform takes time and that the Inquiry had ‘charted a roadmap, not a fixed timetable or inflexible funding schedule. Nonetheless, sooner is generally better and cheaper in the long run. Childhood is short and every moment counts’ (Carmody Report 2013, pp. xiv-xv).

5.6 ‘Shreddergate’ – the final word

With respect to 3(e), the ‘Shreddergate’ term of reference, Commissioner Carmody issued a separate and detailed report (Carmody 3(e) Report 2013). He found that the only ‘response or action’ of executive government meeting the review criteria was the Goss Cabinet Decision No. 162 dated 5 March 1990 that the so-called ‘Heiner documents’ be handed to the State Archivist for destruction. With respect to whether there was any evidence suggesting that this Cabinet Decision was ‘a response of, or action taken by, the executive

government in relation to child sexual abuse allegations in a youth detention centre or like facility', Commissioner Carmody found that '[t]here is no factual basis logically supporting a reasonable suspicion or rational belief that it was. Speculation or suggestions to the contrary are scandalous, disingenuous and groundless (Carmody 3(e) Report 2013, p. 7).

In relation to '[w]hether any criminal conduct was associated with any response of or action taken by the executive government between 1 January 1988 and 31 December 1990 in relation to industrial disputes in youth detention centres or like facilities' (Carmody 3(e) Report 2013, p. 7), Commissioner Carmody found that the evidence was sufficient for a judicial proceeding and therefore the possibility of conviction. However, he also found that:

the same body of evidence is also capable of supporting competing inferences that are probably equally consistent with innocence [and that] the balance of policy and public interest considerations, including the lapse of time, does not favour a criminal justice response' (Carmody 3(e) Report 2013, p. 7).

Commissioner Carmody established that, contrary to long-running allegations, the documents had nothing to do with accusations of child sexual abuse and that the documents related to industrial strife at the John Oxley Detention Centre. However, he did find that the actual shredding may have breached the criminal code, but noted that the likelihood of a successful prosecution was minimal. Nevertheless, the Attorney General referred Commissioner Carmody's report to the Director of Public Prosecutions 'to consider whether a prosecution is warranted as a matter of law and whether it is in the overall public interest' (Bleijie 2013, Estimates Hearing, Legal Affairs and Community Safety Committee, Justice and Attorney-General, Hansard, p. 42).

On 2 July 2014 it was reported in the media (Madigan 2014) that:

The state's longest-running conspiracy theory, the Heiner Affair, has reached its final chapter, with the Office of the Director of Public Prosecutions opting not to pursue an entire Labor Cabinet for shredding documents alleged to have been related to child sexual abuse... The DPP has now advised the Attorney-General that there are no reasonable prospects of success on a prosecution of any former Goss cabinet minister, and it would not be in the overall public interest to pursue a prosecution in relation to the shredding.

5.7 Response to the Inquiry Report

The Government's response to the Carmody Report (2013) was released in December 2013 (Queensland Government response to the Queensland Child Protection Commission of Inquiry Final Report 2013). The Government response accepts the position that child protection is a shared responsibility and commits to system wide reform. Specifically, the Government accepted 115 of the 121 recommendations. The remaining six recommendations were accepted in principle. The Government welcomed the

recommendations of the Inquiry announcing its intention to implement the reforms and to 'fundamentally reform how the child protection system operates' (Davis 2013a).

The Government response, *Supporting Families Changing Futures* reform program, commits to seven areas of reform:

- Sharing responsibility for children's safety and wellbeing;
- Supporting families earlier;
- Working better with families in the child protection system;
- Improving out-of-home care and post-care for children and young people;
- Working better with Aboriginal and Torres Strait Islander families;
- Delivering quality services through a capable, client-focused workforce;
- Building a transparent and cost-effective system;
- Services provided to vulnerable children and families will be high-quality and provided in an efficient, transparent and accountable manner.

The aims of reform are to:

- reduce the number of children and young people in the child protection system;
- revitalise frontline services;
- refocus on learning, improving and taking responsibility for a better child protection system (Queensland Family and Child Commission 2017).

The Inquiry's report was referred to the Health and Community Services Committee for consideration (Bleijie, Hansard, 20 March 2014, pp. 832-834) noting that '[t]his will bring Queensland into line with other jurisdictions in Australia such as New South Wales and Victoria' (Bleijie, Hansard, 20 March 2014, p. 833).

After consideration by the Health and Community Services Committee, when the subsequent Bills were introduced to Parliament, Attorney General Bleijie stressed that the Government was committed to implementing the QCPCI's reforms (Bleijie, Hansard, 20 May 2014, p. 1554). However, the Labor Opposition raised reservations. The Opposition stated that it:

recognises that we must continually improve our child safety system, but we cannot support the legislation put forward by this government. This arrogant government is once again removing accountability and cutting funding to important organisations that are in place to protect those who are most vulnerable in our community - children (D'Ath, Hansard, 20 May 2014, p. 1561).

Ms D'Ath labelled the Bill as 'essentially a cost-cutting exercise' (D'Ath, Hansard, 20 May 2014, p. 1561) motivated by 'the government's desire to remove all external accountability for their decisions' (D'Ath, Hansard, 20 May 2014, p. 1562).

The Opposition claimed that the Government was motivated by a desire to reduce expenditure and claimed that the Bills were being rushed through (D'Ath, Hansard, 20 May 2014, p.1564). The Government characterised the Opposition's concerns as 'scaremongering' (Krause, Hansard, 20 May 2014, p. 1570) and 'simply rants of ideologues' (Shuttleworth, Hansard, 20 May 2014, p. 1574). The reforms recommended by the QCPCI were passed in Parliament on 20 May 2014 'following the Commission's roadmap to build an effective and sustainable child protection system over the next decade' (Bleijie and Davis 2014a).

By the time the reform Bills were introduced into the House there was relatively little media coverage. Reporting on the passage of the three Bills ten months after Commissioner Carmody handed down his report, one article (Tin 2014) noted the Opposition's position that it was a 'weakening' of the child protection system with the LNP stating that Labor was 'living in the past'. Twenty-five million dollars was allocated in the 2014 to 2015 State Budget as part of an additional \$406 million package over five years, to implement the key reforms of the QCPCI (Newman and Davis 2014; Nicholls and Davis 2014). In April 2016, *Supporting Families Changing Futures: Advancing Queensland's child protection and family support reforms* was released (Queensland Commission for Children and Young People and Child Guardian 2016). It reports on the progress of implementation of the recommendations of the Carmody Report and sets out key actions for a ten-year reform agenda.

Given the ubiquity of child protection inquiries, an analysis of two other Public Inquiries which occurred in other States around the time of the QCPCI is included at Appendix 5. Comparisons are drawn between processes, structures and participation, as well as the recommendations and outcomes of the respective Inquiries. This comparative analysis is informative in demonstrating the isomorphic pressures at play in child protection systems and inquiries and the overlap of influential voices which are clearly in evidence in the QCPCI.

5.8 Success Proposition 1: Responding to crisis and restoring legitimacy

‘A genuine desire to improve the system’ (Davis 2012b), or,
‘The conspiracy theory that won't die?’ (Madigan 2013a)

This was an unusual Inquiry, particularly in the context of child protection. There was no specific crisis to which the Inquiry responded. There was no legitimacy shortfall which the Government sought to restore. This Inquiry was instituted by the new LNP Government which had won a landslide victory over long standing Labor incumbents. The LNP had made the Inquiry an election commitment and identified it as a key first-100-days-in-power election commitment (Madigan 2012b).

Just what prompted the LNP to commit to launching an inquiry before the election was ‘unclear’ (Wenham 2012). There had:

been no critical mass of evidence pointing to dire child protection system failure - certainly not like the years before the Forde inquiry and then between Forde and the Corruption and Misconduct Commission (CMC) Inquiry, during which time appalled Queenslanders learnt of many horror stories’ (Wenham 2012).

The LNP gave Commissioner Carmody wide terms of reference, including the investigation of historical allegations of child abuse, among them claims of a cover-up of sexual abuse at the John Oxley Youth Detention Centre (the ‘Heiner Affair’). In Commissioner Carmody’s words this was ‘no doubt intended to authoritatively resolve, once and for all, distracting and divisive debate about the adequacy, propriety and lawfulness of Cabinet Decision No. 162 of 1990’ (Carmody 3(e) Report 2013, p. 2). Carmody ‘very wisely split his inquiry in two and used some of his time to deal specifically with the Heiner affair’ (‘Carmody report is just the start’ 2013).

The Government consistently framed the Inquiry as a commitment ‘to making Queensland the safest place to raise a child’ (Bleijie and Davis 2013) and framed it as being different to previous inquiries in that it was holistic, not driven by crisis and ‘would take an honest look at the system’ (Davis 2012a). The Government consistently stated that it had inherited an ‘unsustainable’ (Davis 2012a) and ‘overburdened’ system (Bleijie and Davis 2014b) from the previous Labor government. The Government claimed that the former Labor Government had ‘failed to act on recommendations from their own inquiries into this important issue’ (Bleijie and Davis 2014a) and that they were following through ‘to deliver a strong plan that ensures all children are given a voice’ (Bleijie and Davis 2014a). Commissioner Carmody was perceived as having taken ‘a well-paid brief that could have been little more than an excuse to rake over the Heiner affair. Instead he has shone a torch down every unsavoury

burrow in the state in an attempt to give vulnerable Queensland children a better future' (Madigan 2013b) offering 'new hope for at risk kids' (Madigan 2013f).

The 'contest' regarding how this Inquiry was framed revolves around the extent to which it was an attempt to resolve once and for all the Heiner 'conspiracy theory' or was a legitimate response to an overburdened, unsustainable child protection system. Could it have been a pre-election deal between coalition partners to resolve the Heiner affair that provided the impetus for this Inquiry? An intriguing question but no evidence was found to support this assertion. The Queensland Government continued to reinforce its legitimate interest in this issue and successfully position itself as being committed to child protection reform and willing to bring about real change.

It is worth noting, however, the absence of a strong Opposition during this period. 'In the largest recorded swing in Australian political history-15.7 per cent against the ALP' (Holmes, B 2012, p. 37) the Newman LNP Government was elected in 2012 winning 78 seats. Labor lost 44 sitting MPs and retained only seven seats, the Katter Party held two seats and there were two independents. A severely weakened Opposition could do little to challenge such consistent messaging.

5.8.1 Finding

This Inquiry was not a response to crisis, it was an election commitment. 'Fixing the child protection system' was one way in which the LNP sought to differentiate itself from the incumbent Labor Government. The LNP argued that Labor had been in Government too long, had not acted on the recommendations of previous Inquiries, and had failed to keep children safe from harm.

Political office holders changed after the 2012 election but not as a result of this Inquiry, even though a whole previous Labor Cabinet faced the possibility that they may have been prosecuted as a possible outcome of the secondary Inquiry into the Heiner Affair. There is also no evidence that senior bureaucrats changed as a direct result of the Carmody Inquiry. Where there were changes they were as a consequence of post-election machinery of government changes, not a result of the Inquiry (Scott 2012).

Unlike previous Inquiries in Queensland or indeed in other States or Territories, there was no specific 'disaster' or 'crisis' to de-politicise. However, the Inquiry itself was established and used in a highly political sense in that it fulfilled an election commitment and promised to differentiate the new LNP from the previous Labor government's 'inaction'. The LNP promised to 'fix the system' and asserted its commitment to bringing about change and

engaging stakeholders. The legitimacy of the LNP was buoyed by the Inquiry – particularly as it also promised to finally ‘put to bed’ the longstanding conspiracy theory surrounding the Heiner affair.

Reform recommended by the Inquiry was focussed in the regulatory, managerial or cultural spheres rather than on the role of political office-holders or political institutions.

Recommendations focussed on the three pillars identified by DiMaggio and Powell (1983): mimetic (to bring Queensland in line with child protection practice in other States), coercive (legislative changes including changes to mandatory reporting), and normative (changes to professional practice and training). This is unsurprising as the focus was on the system, not on a particular catastrophic failure or crisis. The Inquiry certainly resulted in regulatory reform (amendments to child protection legislation) and cultural reform (interagency work, professionalisation of workforce). In fact, the recommendations clearly exhibit isomorphic pressures to restore legitimacy for Queensland’s child protection agencies and bring it in line with similar systems in other Australian states (Appendix 5). The Inquiry’s recommendations also bear striking similarity with all the other child protection Inquiries held around that time, namely, whole of government responsibility, changes to child protection legislation, increasing thresholds of risk of harm, professionalising the workforce, changes to referral processes and broader engagement of stakeholders (Appendix 5).

In conclusion therefore, whilst there was no crisis per se, the Inquiry was successful in reinforcing the legitimacy of the new LNP Government.

5.9 Success Proposition 2: Giving voice

The QCPCI gave voice using similar mechanisms as other child protection policy advisory Inquiries conducted around this time (Appendix 5), that is; establishing a website, calling for submissions, conducting meetings and hearings, site visits and case file reviews. However, in addition, the QCPCI employed an innovative attempt to speak directly to those affected by the issues of concern to the Inquiry. At the request of the Inquiry, the peak advocacy body, the CREATE Foundation, convened and facilitated three focus group meetings with 47 children in the care system (Carmody Report 2013, p. 591). This is a highly creditable attempt to include voices that are not typically heard.

In terms of ongoing impacts on the dominant policy coalitions, there is evidence that enduring mechanisms have been established as a result of the Inquiry which institutionalise the input of broader voices than child protection agencies or government agencies alone. These are typically non-government organisations and particular academics.

To exemplify:

- Recommendation 4.13 (Carmody Report 2013, p. 116) establishes a Child Protection Reform Leaders Group, to lead the reform of the child protection system and report to the Premier on implementation. The group comprises senior government executives as well as non-government organisations. This group is tasked with supporting 'a coordinated approach to child protection across government agencies and with child protection stakeholders' (Bleijie, Hansard, 20 May 2014, p. 1554).
- Recommendation 6.2 (Carmody Report 2013, p. 179) states that the Queensland Government forge a strong partnership between the government and non-government sectors by:
 - including a non-government representative at all levels of the governance structure outlined in the Child Protection Reform Roadmap; and
 - establishing a stakeholder advisory group (comprising government and non-government organisations) within the Department of Communities, Child Safety and Disability Services to implement policy and programs required by the Child Protection Reform Roadmap.

The Government committed to recommendation 6.2 and established a stakeholder advisory group 'to facilitate the co-design of the project responses as recommended by the commission and a stakeholder engagement strategy is being prepared as part of the project management plan' (Bleijie, Hansard, 20 May 2014, p. 1554).

- Recommendation 12.3 (Carmody Report 2013, p. 409) establishes the Family and Child Council to monitor, review and report on the performance of the child protection system. The Family and Child Council advises the Child Protection Reform Leaders Group and has access to an expert standing committee which provides advice on research and policy in matters within the Council's jurisdiction. The committee consists of up to eight non-government members and four senior government members and at least one Aboriginal or Torres Strait Islander member. The Family and Child Council supports the development of collaborative partnerships across government and non-government service sectors, and regularly monitor the effectiveness and practical value of these partnerships (as per Recommendation 6.3, Carmody Report 2013, p. 179).
- Regional Child Protection Service Committees were also established to draw on the expertise and resources of non-government organisations, academic institutions, local government, federal government and the corporate sector (Carmody Report 2013, p. 427).

Non-government agencies (NGOs) and academics were key voices in the QCPCI. Many of these actors were the same academics and NGOs who participated in other child protection Inquiries around the same time (Appendix 5).

The QCPCI, like other child protection inquiries, also recommended an expanded role for the private and non-government sectors. Bravehearts Inc, CREATE Foundation and Life Without Barriers are all national organisations which provide a range of services to vulnerable, or at risk children and families. Examination of their respective Annual Reports indicates that revenue from government grants grew steadily and significantly during and after the period of the Inquiry (Footnote 28, p. 158).

There is also clear evidence that the QCPCI gave voice to a cohort of academics who were highly influential in shaping the Inquiry's recommendations and discourse (Appendix 5). For example, Professor Eileen Munro, Professor of Social Policy at the London School of Economics; Associate Professor Judy Cashmore at the University of Sydney; and Professor Dorothy Scott, Foundation Chair in Child Protection and former Director of the Australian Centre for Child Protection at the University of South Australia. The QCPCI heavily references articles and publications by these academics. The QCPCI met separately with Professor Scott. Associate Professor Cahsmore is also noted as having provided specialist expertise to the Queensland Inquiry and critiquing some of the Commission's early drafts (Carmody Report 2013, p. 584).

The key ideas brought by these academics were all reflected in the Inquiry Report and its recommendations. For example, Munro's (2011b) key ideas were drawn from a child protection review she undertook in the United Kingdom. Her proposals for reform were (Munro 2011b, p.6):

intended to create the conditions that enable professionals to make the best judgments about the help to give to children, young people and families. This involves moving from a system that has become over-bureaucratized and focused on compliance to one that values and develops professional expertise and is focused on the safety and welfare of children and young people.

Munro (2011a) argues that:

experienced social workers should be kept on the frontline even when they become managers so that their experience and skills are not lost', and that 'The expertise and status of the social work profession should be improved with continual professional development that focuses on the skills needed in child protection'.

Munro's key ideas are reflected in QCPCI recommendations about the professionalisation and training of the child protection workforce and decision-making tools and processes. For example:

- QCPCI Recommendations 7.1 - practice framework/decision making;
- QCPCI Recommendations 10.1 and 10.2 - regarding the need for tertiary qualifications and professional development.

Munro's ideas also formed the basis of some of the submissions to the Inquiries. For example, Peakcare Queensland which represents sixty organisations contributed to the Inquiry advocating for mandatory qualifications for key child safety personnel. Peakcare heavily references Munro's childcare study to build professional expertise and allow a more flexible approach to child safety (Wegener 2012, p. 21, p. 24, p. 83, pp. 89-90; Madigan, 2012c).

Scott (2006) argued that the child protection system was overburdened and that child protection policies and laws have become increasingly applied to situations where children are seen at risk. This has led to 'dramatic net widening' and the subsequent 'epidemic of child protection notifications'. Scott advocates a public health approach to child protection arguing that this approach:

lends itself to tackling the underlying causal and contributory factors related to child abuse and neglect from a whole of government perspective which includes health, education and child welfare service and draws in sectors such as housing and employment services' (NSW Special Commission of Inquiry into Child Protection Report, 2008, henceforth NSW SCI 2008, p. 203).

Scott's ideas are foundational to the integrated systems approach taken in the QCPCI as well as the introduction of 'significant' risk of harm as one means of reducing the burden on the system. For example:

- QCPCI Recommendation 4.1 - risk of significant harm,
- QCPCI Recommendation 4.2 - whole of government approach.

Scott's public health approach has also been adopted in *Protecting Children is Everyone's Business, The National Framework for Protecting Australia's Children 2009-2020*, endorsed by the Council of Australian Governments in April 2009.

As well as being an acknowledged expert in child protection, Cashmore's particular contribution was in regard to extensive longitudinal work she had done in relation to outcomes for young people transitioning from out of home care (OOHC). Cashmore's research is reflected in the recommendations and outcomes of the Inquiry's consideration of the need for better transition arrangements and post OOHC placement support for young people. For example:

- QCPCI Recommendations 9.1-9.3 regarding transition from care.

As has been demonstrated above, the QCPCI clearly provided a forum to allow new ideas and knowledge to have an impact on the policy and operation of the child protection system. There is also evidence of new structures and mechanisms being established signalling a non-transient impact on the dominant policy coalition/subsystem. There has been an enduring shift to other policy coalition(s) and the emergence of new actors. Non-government organisations now play an enhanced role in service provision and advocacy and the ideas of key academics infused the approach and recommendations the QCPI.

The QCPCI and other child protection inquiries around this time (Appendix 5) call for an expanded role for the non-government sector. The role of the NGO sector is described in detail, as is the need for government to be the provider of last resort, that is, the provider of tertiary responses (statutory child protection). The non-government sector's role is to provide primary and secondary responses (prevention and treatment). However, the Carmody Report (2013) does not include a rationale for this approach or analysis of why or how the non-government sector is inherently better positioned to provide more effective services at the primary or secondary stages. This position, however, supports Government's public management reform agenda of outsourcing and risk shifting (Hood 1991, pp. 4-8; Nethercote 2003, Shergold 2008) and so may be described as a success for the Government. This suggests that there may be an additional criterion for success, that is, the extent to which Inquiry outcomes support the broader agenda of Government in relation to public administration and the provision of services.

Considine's (1998) finding that the policy area of welfare is influenced by leading groups outside government is confirmed in the context of this Inquiry. His further observation that this policy area is 'clearly the field in which officials [do] best' (1998 p. 310) is also confirmed as evidenced by the presence at hearings and the strong number of submissions to the Inquiry by relevant government child protection agencies and universal services (Appendix 5).

5.9.1 Finding

The Inquiry established a number of mechanisms to provide input including submissions, hearings, and visits to various locations. These are similar to the engagement mechanisms used by other child protection inquiries around this time (Appendix 5), with one notable exception. The attempt to include the voices of children directly impacted by the child protection system is a highly welcome development.

Additional and influential voices including academics and non-government agencies helped shape the recommendations of the Inquiry and were reflected in a number of submissions. There were also enduring changes to policy and advisory structures as a result of this Inquiry to broaden inputs to government and its agencies.

It is possible to trace the voice, ideas and impact of particular academics and some non-government organisations. Notwithstanding the three focus groups conducted with children, it is impossible, however, to assess the extent to which those directly and indirectly impacted by the child protection system themselves felt they had a voice in the considerations or recommendations of the Inquiry. There is an inherent assumption that peak advocacy, service and religious organisations adequately represent the voices and interests of those impacted by the child protection system. Families and children who come into contact with child protection systems can be some of the most marginalised and vulnerable members of the community. It would not be unreasonable to expect that particular measures and supports would need to be in place, for those that choose to use them, to ensure equitable and inclusive participation. The three focus groups with children referred to above are a strong start, but more broadly, this refers back to the centrality of the capacity building element of participation outlined by Potts (2008). There is no evidence of such capacity building, support or feedback mechanisms to assess whether participants felt heard, or to assess their views of the Inquiry and its processes.

The QCPCI is not alone in this respect. No Public Inquiry examined in this thesis has sought any feedback from individuals, families or participants on this question. If one of the recurring assertions in the literature is that Public Inquiries give voice, not to have some measure or assessment of the ways in which this has been supported and achieved is a significant omission, particularly for policy advisory and hybrid Inquiries. Input by 'representative' organisations can only be a partial proxy at best.

In summary, the Inquiry gave prominence to the voices of the 'usual' stakeholder organisations; peak groups, non-government service providers, religious organisations, and academics. There is evidence that these voices continue to have a role in policy implementation and reform. There is also evidence that these organisations have been strengthened and benefitted from having this 'seat at the table' (Footnote 28, p. 158). Notwithstanding the three focus groups with children, the extent to which the Inquiry gave voice to children and families directly impacted by the child protection system is less visible.

5.10 Success Proposition 3: Providing the opportunity for policy change and improved outcomes

The QCPCI provided the opportunity for problems (failures of the child protection system, high rates of reporting, high rates of unsubstantiated reports), policy proposals (more non-government sector involvement, higher reporting thresholds, better systems and accountability) and politics (the Government's commitment to make Queensland 'the safest place to raise children') to create policy change (the recommendations). The Queensland Government created a website to provide information on progress on policy and program implementation but to date there has been no independent evaluation of the impact of child protection reforms in Queensland.

The extent to which reforms arising from the QCPCI have improved service delivery and outcomes is a vexed question. Evaluating changes to the child protection system is fraught with complexities, not least of which is linking which policy change with which outcome. Data capture issues and differing definitions also make comparison across time periods and state jurisdictions difficult (Australian Institute of Health and Welfare, National Child Protection Data Collection 2014-15).

The reforms to child protection systems in Queensland are focussed on making the system work better through better assessment tools, better coordination, more efficient reporting and response systems. Many of the measures of success are process measures, for example, measures of increased interagency collaboration, number of consultations with Aboriginal and Torres Strait Islander communities. The focus of this thesis is not a thorough evaluation of the impact of the raft of changes in child protection systems as a result of the implementation of the QCPCI recommendations. No doubt there has been improvements in some services, systems, collaborations and programs but it is beyond the scope of this thesis to assess the particular impact of specific changes and the extent to which each change has contributed to overall improvements in the system and, more importantly to the lives of children at risk of harm.

The ultimate measure of success, identified by the Queensland Government itself (Appendix 5; Table 15) is to reduce the number of children and young people in the child protection system and in out of home care (OOHC), and the extent to which this has fallen as a result of reform efforts.²¹ Appendix 6 examines Queensland and Australian data on child

²¹ *Supporting Families, Changing Futures*, Background, Queensland Government, viewed 8 November 2015, <https://www.communities.qld.gov.au/campaign/supporting-families/background>

protection, in order to provide some indication of the extent to which policy changes arising from child protection Inquiries and subsequent reforms have resulted in improvements to service delivery and better outcomes for children and families.

Unfortunately, the evidence analysed indicates that the number of children in the care and protection system has not reduced, the number of children in OOHC has not declined and that the number of Aboriginal and Torres Strait Islander children in the system, and in OOHC, has not decreased. While there is no doubt that 'the policy window was opened' and there has been policy and practice change in child protection, there is no evidence yet that this has led to improvements on the key indicators nominated by the Queensland government itself as measures of success.

The Inquiry opened a policy window by bringing politics, problems and policy proposals together. The politics were framed as an election promise to differentiate the LNP from the previous Labor Government who, despite numerous previous investigations and Inquiries had, allegedly, not responded adequately. The problem was defined as a system under pressure which was unsustainable. The policy proposal or promise was a systemic review and overhaul of the whole child protection system with a whole of community approach to making Queensland the safest place to raise a child. The Inquiry Report recommended comprehensive policy reform, changes to service delivery, organisational reform, and better engagement of users in decision making. The policy changes underpinning the recommendations were incremental and in keeping with isomorphic pressures on all child protection services in Australia.

5.10.1 Finding

The extent to which the outcomes of the Inquiry have been integrated into or changed government strategy is still an open question. The Queensland Government currently continues to implement a ten-year program of reform. This includes commitments to; improve management practices, enhance transparency and accountability, restructure, focus on performance management, enhance competition, increase funding, build staff capability, and improve relationships with co-producers or clients. There is currently evidence of outsourcing, professionalisation of child protection work, new structures and systems in response to the Inquiry's recommendations (Queensland Government Response to QCPCI 2013, *Supporting Families, Changing Futures, Achievements*). These are all indicators of a successful Public Inquiry identified in the public administration literature.

However, there is no evidence of real improvements in outcomes for children (Appendix 6). These policy changes appear 'precarious', operating 'on the edge of failure' in that there is little or no progress towards meeting targets (McConnell 2010b, p. 61). There is much activity but no clear evidence yet of better outcomes.

Child protection policy has been subject to multiple reviews over many years. The QCPCI is just one of three reviews that occurred around the same time. This inevitably raises the question of the value of a process that fails to resolve a policy problem 'once and for all'. Prasser and Tracey (2014, p. 230) argue, however, that policy making is iterative and that repeat Inquiries 'are not necessarily a signal of ineffectiveness'. They argue that policies need to continually adapt to changing circumstances, unexpected developments and different political, social and economic contexts'. Wildavsky (2004, p. 5, p. 83, p. 386) also reminds us that policy problems are always with us and that 'problems are not so much solved as superseded'.

However, the causes of child abuse and neglect, and the community's expectations of child protection systems are relatively stable and enduring. These have not been subjected to 'unexpected developments', 'shifting contexts' or 'changing expectations' as described above. The reasoning outlined above may be truer for emerging policy areas like climate change, privacy, counter terrorism, technology and innovation, but it is questionable to frame child protection policy in the same light.

5.11 Conclusion

The analysis using the three propositions drawn from the literature yields an equivocal assessment of success. In relation to the first proposition, responding to crisis and restoring legitimacy, there was no identified 'crisis' or 'focussing event' to which to respond. However, child protection was framed as a potent election strategy to differentiate the Opposition from the long standing, incumbent Government. The Inquiry served to buoy the legitimacy of the new LNP Government by being framed as a 'once and for all' systemic look into an unsustainable and overburdened child protection system. The Inquiry was also framed as the 'once and for all' investigation into Queensland's long running conspiracy theory, the Heiner Affair. The new LNP Government was able to undermine the legitimacy of the previous Labor Government which was portrayed as not adequately responding to its own previous Inquiries into the system.

With respect to the second proposition, giving voice, the conclusion is again ambiguous. The Inquiry gave voice using similar mechanisms as all other child protection Inquiries held

around this time (submissions, hearings, publication of transcripts on websites - Appendix 5) – although its attempts to incorporate the direct voices of children is acknowledged and welcomed. There is evidence that enduring changes have been made to broaden policy networks and actors, possibly in keeping with Government's broader public administration reform agendas.

However, there is limited evidence that the voices of children and families directly impacted by the system were heard. Children and families were typically represented by peak advocacy, service and religious organisations. The extent to which these proxies are appropriate and truly representative is unknown. There is also no evidence of support, capacity building or feedback mechanisms for participants. Given that those who are part of child protection systems can be the most marginalised members of the community and that there is a risk of harm from participating in such Inquiries (Brahm 2007, p. 20), this is a significant omission.

In relation to the third proposition of success, providing the opportunity for policy change and improved outcomes, while there has been much activity and various policy changes, to date there is no compelling evidence of better outcomes for children and families.

Chapter 6 - The Queensland Floods Commission of Inquiry 2012

Case Study 3: A Hybrid Public Inquiry

6.1 Introduction

This chapter details Case Study 3: The Queensland Floods Commission of Inquiry (QFCI) 2012. This case study is an example of a hybrid Public Inquiry, that is, one which has both investigatory and policy advisory functions.

In relation to the first proposition, that an assessment of the success of a Public Inquiry should examine the ways in which it has responded to crisis and restored legitimacy, the analysis finds that while the Inquiry was a swift and humane response to the devastation of the Queensland Floods in 2010 to 2011, it did not restore the legitimacy of government. The Opposition successfully framed the management of the floods, and the QFCI, as symptomatic of a Government which was 'out of touch' and had been in power too long. The Inquiry promised to get to the heart of whether any more could have been done to avert the tragic loss of life and property, but for many, it failed to do just that. The credibility of the Inquiry was also significantly undermined by independent investigations conducted by *The Australian* newspaper which found shortcomings in certain evidence and prompted the Inquiry to conduct extra hearings.

With respect to the second success proposition, giving voice, the Inquiry worked hard to encourage members of the public to participate, albeit in a legalistic environment. Some argued that these legalistic processes and procedures were a barrier to participation.

In relation to the third proposition of success, providing the opportunity for policy change and improved outcomes, there has been some policy change as a result of the Inquiry and the inclusion of new policy entrants. The question of better outcomes is more contentious.

This chapter provides background to the Inquiry, outlines the Inquiry process and describes the Inquiry's Interim and Final Reports. It details the response to the Inquiry Reports, including reference to the Crime and Misconduct Commission, a subsequent Inquiry and a current class action. The chapter applies the three propositions of success to the QFCI. Assessments of success against the three propositions are outlined.

6.2 Background to the Inquiry

‘Our Summer of sorrow’ (Bligh 2011).

Prolonged and intensive rainfall over large areas of Queensland, coupled with already saturated catchments, led to flooding of historic proportions in Queensland in December 2010, stretching into January 2011. Thirty-three people died in the 2010/2011 floods; three remain missing. More than 78 per cent of the state (an area bigger than France and Germany combined) was declared a disaster zone; over 2.5 million people were affected. Some 29,000 homes and businesses suffered some form of inundation (QFCI Interim Report 2011 p. 32).

The floods in Brisbane and South East Queensland, followed by the Category 5 Cyclone Yasi caused the evacuation of over 70 towns, ‘washed away roads and railways, destroyed crops and brought Queensland’s \$20 billion coal and export industry to a near halt, making the flooding one of Australia’s most expensive natural disasters’ (World Bank 2011, p. 1).

The Queensland economy was ‘smashed by the combined effects of the brute and inhuman forces of global economics and then by the fury of Mother Nature’ (Fraser 2011, p. 2). All of Queensland’s ‘traditional strengths; mining, agriculture and tourism took a beating’ and the fiscal cost was estimated at \$6.8 billion (Fraser 2011, pp. 2-3). A deficit of \$2.127 billion was forecast in the Budget Papers (Queensland Budget Strategy and Outlook 2011-12, p. 1, p. 57).

Queensland has extensive experience dealing with natural disasters (World Bank 2011). Due to its ‘geography and population density Queensland has the greatest risk profile of any State in Australia (Arklay 2015 p. 187). However, the ferocity and impact of this particular event, the lives and properties lost and unrelenting questions about the management of the floods, particularly the operation of the flood mitigation dams, led to the establishment of this Public Inquiry.

6.3 The Inquiry

On 17 January 2011 the Queensland Floods Commission of Inquiry (QFCI) was established by the Bligh Labor Government. The Inquiry was set up under the Queensland *Commissions of Inquiry Act 1950* to inquire into seven matters arising out of the 2010/2011 floods, identified in the terms of reference as:

- preparation and planning for the floods by governments, agencies and the community;
- the adequacy of the response to the floods;
- management of essential services;

- the adequacy of forecasts and early warning systems;
- insurers' performance of their responsibilities;
- the operation of dams; and
- land use planning to minimise flood impacts (QFCI Final Report 2012, p. 30).

The Inquiry was headed by Commissioner Justice Catherine Holmes with the assistance of two Deputy Commissioners, James O'Sullivan AC and Peter Cummins. The Inquiry provided an Interim Report on 1 August 2011 focusing on matters of disaster preparedness that were a priority for implementation prior to the upcoming wet season. The Government responded to the Interim Report in the *Queensland Government Response to the Queensland Floods Commission of Inquiry Interim Report 2011*.

The original final reporting date for the QFCI of 17 January 2012 was extended to 24 February 2012, and then to 16 March 2012 due to the 'extensive public hearing schedule and the volume of evidence to be considered' (QFCI Final Report 2012, p. 31). The Inquiry reported on 16 March 2012.

6.4 The Reports

6.4.1 The Interim Report, August 2011

'The blueprint' (Bligh, Hansard, 2 August 2011, p. 2209).

The delivery of the QFCI Interim Report (Holmes, 2011) was designed to give the Government 'the opportunity to implement some changes before the next wet season' (Bligh, Hansard, 2 August 2011, p. 2209). Premier Bligh accepted in their entirety the recommendations relating to State Government responsibility. The Premier also committed to working cooperatively with Federal and Local Governments to ensure that recommendations under their areas of responsibility were implemented (Bligh, Hansard, 2 August 2011, p. 2209). The Premier committed an additional \$14 million of investment over the 2011/12 financial year and a total of \$76 million over the next five years to improve disaster response and flood infrastructure management (Bligh, Hansard, 23 August 2011, p. 2506). The Premier established a dedicated unit in her Department of Premier and Cabinet to coordinate the response across government agencies and detailed its full response in the *Queensland Government Response to the Queensland Floods Commission of Inquiry Interim Report 2011*.

The response to many of the recommendations of the QFCI Interim Report were actioned in the *Disaster Readiness Amendment Bill 2011*. The Bill was an omnibus Bill that included

amendments to water, disaster management, transport and planning legislation which implemented the state's legislative response to the Interim Report of the QFCI.²² The Bill was progressed as a matter of urgency to ensure that the amendments contained in the Bill were in place to support the state's disaster preparations in readiness for the coming wet season (Robertson, Hansard, 25 October 2011, p. 3319).

The Opposition supported the passage of the Bill through the House (Seeney, Hansard, 25 October 2011, p. 3320) despite some members claiming it had been rushed through.²³ The Government assured the House that there had been adequate time for consultation, particularly given that the recommendations from the flood inquiry 'were well based in terms of public experience, as well as the experience of the relevant authorities in the state and local governments' (Boyle, Hansard, 25 October 2011, p. 3329). Nevertheless, the Opposition claimed there had been insufficient time for 'bipartisan support and inclusiveness of Opposition members' (Stevens, Hansard, 25 October 2011, p. 3333). The Bill passed and the Premier urged members to 'act together and in a bipartisan way when it comes to disaster preparedness and implementing recommendations of the Floods Commission of Inquiry' (Bligh, Hansard, 25 October 2011, p. 3375). On 28 October 2011 the *Disaster Readiness Amendment Act 2011 (Qld)* received royal assent by the Queensland parliament.

6.4.2 The Extra Hearings

'Those reprehensible headlines' (Holmes, C 2012, p. 5313).

One of the most controversial aspects of the floods was the operation of the flood mitigation dams; the Wivenhoe, Somerset and North Pine dams (QFCI Final Report 2012, pp. 436-559). The Commission had considered the operation of the dams in its Interim Report but had focused on issues that could be resolved before the start of the 2011/2012 wet season.

In its Interim Report the QFCI made a number of findings relating to the operation of Wivenhoe Dam based on sworn evidence to the Inquiry that the official report was accurate. The flood event report and the flood engineers' testimony gave an account of the flood event that signalled compliance with the relevant manual in respect of the choice of strategy. The Inquiry had also relied on the views of a number of experts in hydrology and dam operations that the manual had been complied with (QFCI Final Report, pp. 438-439).

²² The Bill amended the *Disaster Management Act 2003*, the *South East Queensland Water (Restructuring) Act 2007*, the *Sustainable Planning Act 2009*, the *Transport Infrastructure Act 1994*, the *Transport Operations (Road Use Management) Act 1995*, the *Water Act 2000* and the *Water Supply (Safety and Reliability) Act 2008* (Robertson, Hansard, 25 October 2011, p. 3319).

²³ See, Ms Bates, p. 3326; Mr Boyle, p. 3329; Mr Stevens, p. 3332; Hansard, 25 October 2011.

By end January 2012, the QFCI had ostensibly completed its hearings: however, on 23 January 2012 *The Australian* newspaper published a story about the results of an investigation it had conducted into the strategies used at Wivenhoe Dam in the January 2011 flood. *The Australian's* investigations of 'an abundance of contemporaneous evidence' concluded that 'these documents directly contradict evidence given weeks later at the public inquiry' and alleged that 'the Wivenhoe Dam was mismanaged in a serious breach of its manual for two crucial days' (Thomas 2012).

The QFCI conducted a review of the material identified by *The Australian* and concluded that (QFCI Final Report 2012, p. 441):

the lack of any definitive contemporaneous record of strategy choice, suggested that there was sufficient cause to reopen public hearings in order to obtain sworn evidence from those who were involved in the operation of Wivenhoe Dam in January 2011 and in the preparation of records of those decisions.

The QFCI reconvened and extended its final date of reporting from 24 February to 16 March 2012. Additional hearings commenced on 2 February 2012, and were scheduled daily until 11 February 2012. The appearance of what Justice Holmes called those 'reprehensible headlines' (QFCI Transcript of Proceedings, 5 February 2012, p. 5313) led to her deciding not to call on the services of Deputy Commissioner Cummins²⁴ on the grounds that it was 'just simpler and puts everything beyond argument' (QFCI Transcript of Proceedings, 5 February 2012, p. 5313; Cranston 2012b).

The exclusion of Commissioner Cummins was immediately questioned in the media (Thompson and Solomons 2012; Madigan 2012a).²⁵ On the first sitting day of Parliament in 2012 the Opposition questioned the conduct of the Inquiry: '[h]ow did the commission miss pointers to key evidence that forced the resumption of the inquiry'; and asked, '[c]an the Premier explain how her \$15 million hand-picked commission of inquiry has degenerated into such a farce' (Seeney, Hansard, 14 February 2012, p. 21)?

The Opposition further aimed to undermine the Inquiry's credibility questioning the decision to stand aside Commissioner Cummins and asked;

²⁴At the Commissioner's request, 'Deputy Commissioner Cummins stood aside on becoming aware that a company for which he had contracted to work after the Commission's close had been engaged by Seqwater to be part of a review committee examining technical work completed for the long term review of the Wivenhoe and North Pine dam manuals. While he remained a Deputy Commissioner, to avoid any possible perception of a conflict of interest, he did not take any further part in the Commission's work' (QFCI Final Report 2012, p. 35).

²⁵ Commissioner Cummins himself later 'slammed' the running of the Inquiry, claiming that he and fellow commissioner, Jim O'Sullivan, had little input into its final report and that the Inquiry been 'a terrible system of inquiring into anything' (Solomons and Thompson 2013).

[c]an the Premier confirm that Deputy Commissioner Cummins was her personal choice for the role? Can she explain why he was stood down? And how can the inquiry proceed without a dam expert and not be regarded as a total farce (Seeney, Hansard 14 February 2012, p. 22)?

Premier Bligh stood firmly by the QFCI stating that it had acted 'exactly as you would expect a commission of inquiry determined to get to the heart of the matter to do' (Bligh, Hansard 14 February 2012, p. 21) and that 'unlike the Opposition [she] would not be seeking to erode public confidence in a commission whose work should not be underestimated in its importance' (Bligh, Hansard 14 February 2012, p. 23).

6.4.3 The Final Report, March 2012

'Leave no stone unturned' (Bligh, Hansard, 14 February 2012, p. 21).

The QFCI's Final Report (Holmes, 2012) made 177 recommendations across a variety of areas including flood management, state and local planning instruments, development and flood considerations, building controls, emergency response and dam related issues. Many of the recommendations focussed on regulatory reform.

The Final Report of the QFCI (2012, p. 440) states that while its Interim Report had:

reflected favourably on the flood engineers...in the light of further investigations... [a]ny opinion expressed in section 2.6 of the interim report must now be qualified by reference to the conclusions contained in this chapter and the result of any further investigations.

The Inquiry found that that Wivenhoe Dam was operated in breach of the manual from 8.00 am on 8 January 2011 until the evening of 9 January 2011 (QFCI Final Report 2012, p. 504) and that (QFCI Final Report 2012, p. 509):

the evidence is such as to warrant a recommendation that the appropriate law enforcement agency investigate the conduct of Mr Malone, Mr Tibaldi and Mr Ayre. Given that the relevant parties were public officials at the time of the events, and given the Commission's obligations under section 38 of the Crime and Misconduct Act 2001,763 the Crime and Misconduct Commission is the appropriate agency.

The QFCI Final Report (2012, pp. 527-528) stated that:

It is unfortunate that there has been a conflation in some media reporting of two separate issues: whether there was non-compliance with the manual strategies and whether it caused unnecessary flooding. The Commission has found the first ...As to the second...the problem is that the possibility exists that because the engineers failed to consider the releases open to them within the parameters of the correct...strategy, an opportunity may have been lost for earlier releases...[and therefore] the possibility exists of at least some improvement in the flooding outcome for Brisbane and Ipswich.

6.5 The Crime and Misconduct Commission

'A disgraceful whitewash' ('Case opens the floodgates' 2014).

As recommended by the QFCI the three flood engineers were referred to the Crime and Misconduct Commission (CMC) in relation to two issues. Firstly, the preparation of documents surrounding the January 2011 flood event, and secondly the oral testimony given to the Inquiry. The CMC was to determine whether the conduct of the flood engineers amounted to offence(s) against the Criminal Code, and/or official misconduct under the *Crime and Misconduct Act 2001* committed by any, or all, of them.

The CMC conducted its inquiries and on 20 August 2012 'found no evidence of criminal or official misconduct against three Wivenhoe Dam engineers' ('CMC finalises examination of Wivenhoe Dam Engineers' Conduct – 21.08.2012'). The CMC further argued that:

the dam manual was "conflicting" and at times "badly drafted" and that this was the reason for confusion about when particular flood strategies were implemented during last year's floods... [and that] prosecution of the trio would be "oppressive" if they were simply trying to follow a manual that contained contradictory statements.

The CMC Chairman stated that the probe had concluded that no further action is necessary.

For many, the question of who was responsible for the flooding from the dams was left unresolved. In the media, the investigation was characterised as too narrow and was described as 'a whitewash' ('Case opens the floodgates', 2014) offering 'little relief for flood victims' (Small 2012). The fact that, despite the QFCI and the CMC investigations, '[the engineers] can't point to anything they would do differently.... makes people in the shadow of the dam very nervous' (Vogler, Solomons and Thompson 2013).

Media reported residents' discontent and said that many felt that they were 'still no closer to knowing whether the southeast's dams were properly managed during the 2011 flood and whether any of the flooding of thousands of properties in Brisbane and Ipswich was avoidable' (Solomons 2012a, 2012b). Other media reported that 'thousands and thousands of people [are] signing up for a class action because they're not confident over the CMC inquiry or indeed the outcome of the floods commission' (Small 2012).

6.6 Success Proposition 1: Responding to crisis and restoring legitimacy

Early signs indicated that the Government would restore its legitimacy. Premier Bligh's Government acted quickly. It did not wait for the establishment or report of the Commission of Inquiry to commence legislative, administrative and policy change. The first institutional response to the floods was the establishment of the Flood Recovery Taskforce and a special

Cabinet Committee in the Queensland Executive branch. This was quickly followed on 15 February 2011 when the Premier established the Queensland Reconstruction Authority as a new independent statutory authority, with the support of the Opposition (Langbroek, Hansard, 16 February 2011, p. 189). The Premier took on the new Minister for Reconstruction portfolio and the Queensland Reconstruction Authority reported directly to her. The establishment of the Queensland Reconstruction Authority was a rapid response to the flood crisis.

Similarly, the establishment of the QFCI on 17 January 2011 was a powerful and swift response. In the immediate terror of the floods the establishment of the QFCI received bipartisan support however this was not to last. By 19 January 2011 'the fragile truce between Labor and the Liberal National Party (LNP) was fractured' as the leader called for an extension of the Inquiry to include a 'catch all phrase to include any other matters the commissioner deemed appropriate' (Barrett 2011a). The Opposition leader 'reversing the praise he had heaped on Ms Bligh only 24 hours earlier' (McKenna and Rout 2011) suggested that there were things 'Queenslanders deserved to know, deserve to be brought out into the light of day'. The Opposition leader also claimed that he had been 'snubbed' and was disappointed that he had been informed of the Inquiry's terms of reference through the media (Barrett 2011a). This was the first of many occasions on which bipartisan support was sorely tested.

There were high expectations on the QFCI. After all, 'these were 'matters of life and death' (Caldwell and Vogler 2011) and the Premier promised repeatedly that 'no stone would be left unturned' (Madigan 2011). The Premier would 'honour those who have tragically lost their lives in this catastrophe [...] by learning the lessons of the event' ('Inquiry launched into Qld floods' 2011) and promised that 'nothing would be swept under the carpet' (Barrett 2011a). The Inquiry would be 'uncompromising...and would have 'the courage to lay responsibility where it is due' ('Judicial Inquiry is the right move' 2011).

However the establishment of the QFCI was also criticised from its first day for being a diversion of funds that would be better spent on flood victims (Cameron 2011), that would 'put undue pressure on flood-affected councils' who were 'struggling to restore some semblance of normality back to their communities' (Dorizas 2011) or just another 'field day for lawyers [...] in a sea of expensive suits' (Murray 2011) who would be laughing all the way to their car brokers and travel agents' (Cameron 2011). Some accused the Inquiry as being 'a very good tactic to stop people in government and the public service...from talking and discussing the matter publicly' (Guse 2011).

The appointment of Justice Holmes, a sitting judge, to head up the Inquiry was also controversial. The Queensland Bar Association attacked the appointment of a sitting judge to head the high-profile inquiry (Barrett 2011b) claiming that this could 'blur the separation of powers between the executive and the judiciary' (Cowie 2011). The Bar Association noted that 'public inquiries were inherently political and appointing a sitting judge could compromise their perception of independence' (Cowie 2011). Nevertheless, the Inquiry's opening session was described as a 'box-office sell out' ('Keep it on track' 2011). Queenslanders then 'waited anxiously' for the delivery of the Inquiry's Interim Report ('Goodna welcomes interim flood report' 2011).

When the Interim Report was delivered, the fierce opposition of the LNP stymied any and all attempts at restoring the legitimacy of the Bligh Government. The LNP unrelentingly questioned the Premier's commitment, characterising her Government as untrustworthy as 'so many previous promises have been broken by the Premier' (Seeney, Hansard, 2 August 2011, p. 2215). The LNP called for the resignation of the Minister for Energy and Water Utilities because he "failed to resolve the confusion that characterised the decision making around dam levels and unexplainably parked his decision about full supply levels' (Nicholls, Hansard, 2 August 2011, p. 2215) and that he should, 'for the sake of the heartbroken flood victims in the community [...] apologise for his inactions and do the right thing, the Westminster thing, and resign' (Rickuss, Hansard, 2 August 2011, p. 2222). The Premier dismissed these claims as 'cheap attempts to turn this into a political football and politicise an event that I think should be above this kind of toing and froing' (Bligh, Hansard, 2 August 2011, p. 2224).

However, the Interim Report continued to be highly politicised. The Opposition accused the Government of seeking 'to blame everybody except their government, seek[ing] to shift responsibility to everybody except themselves' and that this was:

just one more indication of a government that has been in power for too long, a government that has lost the capacity to govern, a government that is now made up of too many failed ministers...[but that] the Premier is powerless to act because the cabinet and the caucus are plotting against her' (Seeney, Hansard, 2 August 2011, p. 2225).

The Opposition alleged that the Premier was 'refusing to sack any minister because doing so would bring on a much rumoured leadership spill' (Seeney, Hansard, 3 August 2011, p. 2327). The Opposition noted that the QFCI Interim Report failed to blame anyone specifically and characterised the Interim Report (Seeney, Hansard, 2 August 2011, p. 2270) as a:

damning report into this government's preparedness for January's devastating flood... a litany of failure and ministerial incompetence... It found a minister and a government were asleep at the wheel. Above all else, it is indicative of a government that has lost its capacity to govern.

The Premier refused to agree and reiterated that Queensland owed it to those who had lost so much; 'to take the report seriously and to learn from it' (Bligh, Hansard, 2 August 2011, p. 2273). Premier Bligh (Hansard, 3 August 2011, p. 2322) also reminded the Opposition that 'that there was a unanimous commitment from all parties and all agencies across all levels of government to work together to implement each and every one of the commission's recommendations'.

The Opposition also questioned the Premier's fundamental commitment to 'leave no stone unturned in cooperating with the inquiry' (Langbroek, Hansard, 3 August 2011, p. 2331). They highlighted that the Queensland Fire and Rescue Service had not provided sufficient detail to the QFCI in response to allegations that they did not respond quickly enough to the events of 10 January 2011 (QFCI Interim Report 2011, pp. 173-174), branding this as yet another broken promise.²⁶

The Inquiry's credibility was most significantly undermined when it had to reconvene after media allegations regarding shortcomings in certain evidence. However, as predicted in the literature (Boin, 't Hart and McConnell 2009) it was public officials, not politicians who were under scrutiny and it was the three flood engineers who were subsequently referred to the Crime and Misconduct Commission (CMC). This referral provided yet another opportunity for the Opposition to claim that the Premier knew more than she was admitting about the 'murky issue' ('Floods probe lapping at Bligh's door' 2012). This 'shock' recommendation was also framed as 'vindication of media claims of a cover-up and as grounds for Australia's largest class action' (Cranston 2012a).

Although the Inquiry may be assessed as successful in shielding political elites from blame, the Opposition effectively undermined the legitimacy of the Labor Government and of Premier Bligh herself. This was a significant achievement given the personal leadership and 'skyrocketing popularity' (Stevens, Hansard, 25 October 2011, p. 3333) of Premier Bligh throughout the floods and in the establishment of the QFCI. In the months just prior to the floods 'the Bligh government was facing political oblivion...[polls] recorded a primary vote of only 28 per cent...Bligh's satisfaction rating had slumped to 25 per cent - with 70 per cent

²⁶ The responsible Minister outlined the reasons for this, and stated that it was 'an absolute disgrace' to suggest that 'the people from the Queensland Fire and Rescue Service [who] have put their heart and soul into protecting Queenslanders in their hour of need [...] would deliberately withhold information' (Roberts, Hansard, 3 August 2011, p. 2333).

saying they were dissatisfied - raising more questions about her leadership' (Davies 2011). However, by January 2011 Premier Bligh was being described as having 'grown in stature', 'a real leader', 'a rock in the midst of the tragedy, drama and confusion', 'a little less modern and a little more Churchillian', 'in control but caring deeply', 'statesman like' (Davies 2011). Premier Bligh 'enjoyed an unprecedented bounce in the polls, with her approval rating surging from 25 to 60 percent' ('Bligh's poll rating shows massive turnaround' 2011). The personal leadership shown by Premier Bligh during the flood events led to a 'massive turnaround' in approval ratings (Holmes, B 2012, p. 5) Premier Bligh 'earned high praise for her raw and emotional performance at a flood briefing this morning, with the Queensland Premier's name rocketing up into Twitter's top 10 trending topics worldwide in the moments after her speech' (Levy 2011).

The Premier's announcement of the QFCI was described as 'sure footed' ('Wide-ranging Inquiry vital for closure on state disaster' 2011) and 'politically astute as well as intrinsically correct' ('Judicial Inquiry is the right move' 2011). As well as being timely she was 'correct' to have the Inquiry examine the floods throughout Queensland and not just those in the southeast where damage and loss of life was greatest ('Wide ranging Inquiry vital for closure on state disaster' 2011), and 'correct not to duck the big questions' ('Judicial Inquiry is the right move' 2011). On 19 January 2011 the Premier 'ruled out bolting to an early state election to capitalise on her well received handling of the floods' saying that 'this year would be about rebuilding, not politics' (Barrett 2011a).

However, as previously mentioned, the 'fragile' bipartisan support for the QFCI crumbled at the commencement of the QFCI and again when the Interim Report was delivered. The QFCI did not succeed in depoliticising the disaster. Further, when the Premier granted the Inquiry an additional round of hearings she 'refused to rule out postponing the State election if the floods inquiry fails to meet its deadline' stating that 'Queenslanders should not be asked to vote until they had a chance to read the commission's final report' ('Bligh wants election after flood report' 2012). The Inquiry and its outcomes were highly politically significant.

However, this decision meant that Local Government elections which had been scheduled for 31 March 2012 had to be postponed to 28 April 2012 in order to make way for the State election. A number of Local Government Councillors framed the Premier's announcement as 'political opportunism', 'a disgraceful act of political deception' which 'smacks of political undertones'; the Premier's 'decision to trample over councils in this way for her own political gain has no doubt severed any little faith councils had in her and her government' (Drew 2012).

On 19 February 2012 Parliament was dissolved and the elections were held on 24 March 2012. Despite Premier Bligh being widely regarded as ‘the caring Premier [who] is seemingly on top of everything as she helps steer Queensland through its darkest hour’ (Davies 2011) the Queensland Labor Government lost the election. From holding 51 seats in 2009, Labor was reduced to holding just seven seats in 2012. The LNP increased their number of seats from 34 to 78 to win the largest majority government in Queensland history.²⁷

While no Minister lost their seat as a result of the QFCI, every Minister (apart from Bligh herself) responsible for overseeing the Inquiry’s recommendations lost their seat as a result of the election. No public servant lost their job as a direct result of the QFCI. While the QFCI Final Report (2012, pp. 511-513) was highly critical of particular individuals it generally found that ‘on balance, their failure to identify the differences [between conflicting accounts of strategies used to manage the flood] should not be characterised as anything more than unfortunate’ (QFCI Final Report 2012, p. 514), and, that it was ‘unremarkable’ (QFCI Final Report 2012, p. 517) that particular people had not picked up discrepancies in accounts of the flood event.

On 15 May 2012 the new Parliament was sworn in and it was the new LNP Government which received the Inquiry’s Final Report and set about implementing its recommendations.

The Labor Government had tried to frame the flood disaster and the Inquiry in very ‘human’ terms, as a chance to learn together as a community, and to get to the heart of what had led to the extent of the loss of lives and damage. However, the Opposition successfully framed the emergency response, disaster management and the QFCI in highly political terms. It successfully portrayed the Government as disconnected and ineffectual arguing that Labor had been in power for too long.

The literature suggests that an emphasis on regulatory, structural and/or cultural reform are hallmarks of a successful Public Inquiry as a means of restoring legitimacy and shielding elites from blame. The QFCI’s recommendations rely heavily on regulatory and administrative reform including better training, coordination, communication and reporting. This is in keeping with what a hybrid Public Inquiry typically does, namely to investigate an

²⁷ A review by the Labor party (Wright, Lee and Tebbutt 2012) scrutinised the ‘devastating loss’ and acknowledged that Bligh’s response to the floods lifted Labor’s stocks (Wright, Lee and Tebbutt 2012, p. 11). The scale of Labor’s loss was attributed to: the unpopularity and divisiveness of the sale of Government assets; problems with the delivery and cost of key services; the longevity of Government and the breakdown of relationships with key stakeholders; and concerns about the tone and conduct of the election campaign (Wright, Lee and Tebbutt 2012, p. 3).

incident or crisis, as well as conduct a broader systemic review and make recommendations for reform.

However, for some expert commentators the QFCI recommendations represented a missed opportunity as they were not in keeping with contemporary practice or thinking about disaster management and recovery. For instance, McGowan (2014, p. 227) describes the findings of the QFCI as 'lamentable' and suggests that the focus should have been on prevention and preparedness initiatives rather than focussing on a 'prescriptive regulatory framework' (McGowan 2014, p.224). Further, McGowan (2014, p. 215) asserts that:

In adopting a regulatory approach to disaster management, however, it regrettably ignored, or was unaware of, recent intergovernmental policy developments, particularly the strategic intent of the Council of Australian Governments (COAG) of building individual and community resilience [and that] the inquiry's dependence on greater and more prescriptive regulation in its recommendations potentially conflicts with the agreement to reduce 'red and green tape' made at the COAG meeting of 12 April 2012.

There were also those who questioned the entire focus of the Inquiry. Eburn and Dovers (2015, p. 501) argue that in relation to post natural disaster Inquiries, focussing on what went wrong is 'an incorrect and immature narrative of disasters'. What would be more beneficial would be to focus on what went well, and 'a narrative that recognises that disasters are a product of the environment and human choices rather than a "failure" by government emergency services, land managers or individuals' (Eburn and Dovers 2015, p. 501).

Arklay (2015, p. 188) argues that other reviews of disasters have incorporated the lessons of current disaster management literature which emphasise the importance of information sharing, developing trust and collegial relations, an emphasis on relationships and 'non-structural aspects' like land planning and community participation (Arklay 2015, p. 191, p. 194). The QFCI's focus however was on regulatory reform. Arklay argues that the emphasis of the Inquiry's recommendations puts it odds with isomorphic pressures that characterise reform in contemporary emergency management approaches like building community resilience, reducing red tape, and an emphasis on building and sustaining relationships across agencies and within communities. This may explain the findings of a subsequent review of Queensland's emergency management practices and processes which found significant shortcomings in the uptake of the recommendations of the QFCI (Arklay 2015).

Initially the Inquiry was warmly welcomed as an eminent panel of Commissioners who would leave 'no stone unturned' in finding out the truth. The Inquiry's Final Report (2012, p. 30) acknowledged that while there was a:

good deal of room for improvement in planning for emergency response...Queenslanders can be relieved that governments at all levels were able to provide a prompt, if not perfect, response, which compares favourably with the apparent paralysis of government agencies and breakdown in order apparent on the Gulf coast after Hurricane Katrina struck New Orleans.

Queensland disaster management agencies and practices are in fact, considered in many regards world best practice (World Bank 2011). This, however, is as a result of years of responding to, and managing such disasters by all levels of government, not as a direct result of this or any other particular Inquiry.

Nevertheless, the QFCI failed to reduce the communities' anxieties and provide sufficient reassurance for many Queenslanders. The central question about whether the floods could have been better managed remained unfinished business. After the Inquiry, many in the community remained fearful and worried about next flood season. The post-Inquiry class action²⁸ and the creation of another Inquiry²⁹ by the subsequent Labor Government in 2015 provide stark evidence of this.

6.6.1 Finding

The establishment of the Inquiry was a direct and swift response to the crisis but it did not restore the legitimacy of the Government. The Premier did not wait for the Inquiry's outcomes to commence action. As noted, Premier Bligh introduced the *Queensland Reconstruction Authority Bill 2011* and became the Minister for Reconstruction herself. She swiftly activated the National Disaster Relief and Recovery Arrangement. She also responded decisively, if not perfectly, to recommendations of the interim Inquiry report.

The Inquiry did not depoliticise the disaster. The Opposition's unceasing challenges successfully framed the Inquiry as yet another example of a Government which had been in power for too long. This was reinforced by steady media reports which reported community concern with the finding that no one was to blame and ongoing anxieties about how future flood events would be managed.

²⁸ Maurice Blackburn law firm filed a class action in the Supreme Court of New South Wales on 8 July 2014, seeking compensation for financial loss and damage caused by the negligent operation of Wivenhoe and Somerset dams during the January 2011 flood in South East Queensland. The trial commenced in the Supreme Court on 4 December 2017, and recommenced on 12 February 2018. The claim is being brought by over 6000 flood victims, viewed 3 January 2018, <https://www.mauriceblackburn.com.au/current-class-actions/queensland-floods-class-action/>

²⁹ The Grantham Floods Commission of Inquiry 2015, headed by Walter Sofronoff SC, confirmed the findings of the QFCI, viewed 23 April 2016, www.granthaminquiry.qld.gov.au

As to shielding elites from blame, no Minister lost their job as a result of the QFCI, however, all of them (except Bligh) lost their seats at the following election.

For the many thousands of people who are to this day part of a class action (Chapter 7) about the operation of the dams, the legitimacy of the Bligh Government was not restored. There was also some ongoing controversy over appointing a sitting judge as Commissioner.

6.7 Success Proposition 2: Giving voice

In her Opening Hearing (10 February 2011, p. 4) Commissioner Holmes stated that:

subject only to the need to protect those who are suffering grief and loss, these hearings will take place in public. All who have an interest can assess the manner in which evidence is received and tested, and any concerns about political interference can be laid to rest.

The Inquiry was committed to being 'full, careful, open and independent' and that 'no amount of legal argument will prevent the Commission from inquiring into any matter of legitimate interest' (Holmes, Opening Hearing 2011, pp. 5-6). Commissioners promised that 'there will be an unprecedented opportunity for the public, or at least those with access to the internet, to monitor the process as it unfolds. By this means it is hoped to maintain public confidence in the conduct and conclusions of the Commission' (Holmes, Opening Hearing 2011, p. 4).

The media reinforced this view describing the Inquiry as providing 'a forum for those who lost families, friends and homes in the disaster to have their stories told and documented' (Tovey 2011) and 'to listen to the experiences of ordinary people and to find answers on their behalf' ('Keep it on track', 2011). People were encouraged to share their 'eyewitness accounts' with the Inquiry stating that these were an important element of the evidentiary foundation for the Inquiry's work (Farmer 2011). The Inquiry's website was extensive and included: submissions; consultation timetables; hearings schedules; exhibits; transcripts; those who had been given leave to appear and those who had not.

The QFCI received: written submissions; held community meetings and consultations; sought material from organisations and individuals with particular knowledge; held public hearings; and visited affected areas. The Inquiry's police investigators obtained statements from local people affected by flooding. The Inquiry sought to ensure it was informed in a 'balanced way, receiving the views of the public and those of organisations which played a part in the preparation and response to the floods, across a range of perspectives from urban and regional areas' (QFCI Final Report 2012, p. 33). The Inquiry provided timely information and updates on its website.

The issues covered by the Inquiry were consistent with the QFCI's terms of reference and included: flood preparations; land use planning and development; recommendations for the future; safety of individuals and communities; individual stories; insurance matters; complaints about weather reports/forecasting; communications and information; dams; floodgates and mismanagement; essential services and power supply; climate change; levee banks; community responses and resilience; and vulnerable groups. The Inquiry used its powers under the *Commissions of Inquiry Act 1950* to obtain statements and documents from members of the public, experts, public servants and members of non-government organisations. Some of those individuals were also called as witnesses in the Inquiry's public hearings. The Inquiry sat for 68 days in total. Three hundred and forty-five witnesses gave evidence in the Inquiry's public hearings.

Nevertheless, some people felt that the Inquiry simply did not give them enough time to participate. When the QFCI was recalled to hear nine days of evidence regarding the operation of the Wivenhoe dam, media reported the 'renewed fears of Grantham residents that the review has not had sufficient time to properly investigate the causes of the 12 deaths in the town on January 10 last year' (Gearing 2012). Residents in Grantham feared that the final report of the Inquiry might leave them 'at risk in the future' as it had not been possible for many 'traumatised flood victims to give information to the inquiry when the hearings were being held' (Gearing 2012).

When the Inquiry's Final Report was released 'the website crashed' and 'was devoured by a public and media seeking answers to everything from the questionable conduct of insurance groups to the actions taken by government and dam operators' (Cranston 2012a).

Throughout the disaster Premier Bligh 'kept it personal'. She spoke about the losses, the impact on people's lives, the heartbreak and the tragedy, the strength of communities and the importance of hearing the voices of all Queenslanders (Bligh, Hansard, 2 August 2011, p. 2209). The Inquiry acknowledged the importance of broad participation however it was conducted in a legalistic manner. According to the QFCI Final Report (2012, p. 34), 'hearings were open to the public and conducted within a legal framework: witnesses gave evidence and were cross-examined, exhibits were tendered and transcripts prepared'. For some, however, it was alleged that the legalistic conduct of the QFCI constituted a barrier to participation and this was at odds with the 'openness' promised (Thomas 2011a, 2011d). The Premier acknowledged that 'the legal process can be quite confusing' and 'daunting' and in order to encourage and support people to tell their stories, set up a counselling service to ensure the Inquiry did not 'miss the voices of ordinary people who felt and

experienced these things firsthand' (Bligh, Hansard, 8 March 2011, p. 333). These were important measures in support of broad participation.

One example of the legalistic way in which the Inquiry was conducted was the requirement of seeking leave to appear before the Commission. This issue continued to be raised in the media and had the potential to undermine the Inquiry. For example, Thomas (2011d) argued that:

By not granting funded opportunities for well-organised and large groups of affected residents and businesses to appear and engage lawyers to question those responsible for public policy and operational decisions. Many senior lawyers, already briefed at vast expense to protect bureaucrats and the government against potentially adverse findings will do everything in their power to limit exhaustive cross-examination of their clients. In circumstances where those most directly affected are not directly represented, the risk to public confidence is inevitably heightened.

This issue was also the subject of heated debate in the Queensland Parliament. On 9 March 2011 the Opposition leader expressed his 'extreme disquiet and unease at the flood commission's refusal to allow leave to appear to those who have been severely affected by the floods' and called on the Premier to 'guarantee victims a right to appear' (Langbroek, Hansard, 9 March 2011, p. 441; Bleijie, Hansard, 10 March 2011, pp. 534-535). The Premier responded by reassuring that the QFCI would 'take evidence from anybody who wants to provide it' (Bligh, Hansard, 10 March 2011, p. 535). The Premier stated that 'the court will actually come to you and help you make a statement and a submission. It does not get much easier than that' (Bligh, Hansard, 10 March 2011, p. 534). It was also noted that the QFCI had waived the closing dates for submissions from people who had been most affected by the floods and who 'had much more immediate concerns' (Rickuss, Hansard, 10 March 2011, p. 598). Nevertheless, the Opposition was able to press the point that the legalistic conduct of the Inquiry had hindered the contribution of some voices.

The QFCI was a recurring feature of the public discourse at the time, in Parliament and in the media. The media provided a running commentary on the work of the Inquiry and provided relentless scrutiny of every detail considered by the Inquiry including: rain and weather forecasting (Thomas 2011b, 2011c); dam construction; water levels and flood gauges (Houghton 2011; 'Floods probe lapping at Bligh's door' 2012; Foley 2012); the operation of flood gates ('We drowned in silence' 2011); and drainage ('Farm drains raised Emerald flood' 2011). Because of the article in *The Australian* (Thomas 2012), the media played a pivotal role in the Inquiry hearing additional evidence and subsequently referring the flood engineers to the CMC.

The media also kept readers updated on changes being made as a result of the Inquiry, for instance: additional rescuers ('Queensland flood-ready for summer', 2011); better disaster management training ('Council to be skilled, flood ready' 2011); new flood alerts (Dam residents offered flood alerts' 2011; 'New weather warnings' 2011; Kennedy 2011; 'Council masterminds new ways to issue warnings' 2011), and an emergency action plan notification list ('Burdekin Falls Dam sms flood alerts' 2011).

In terms of changes to policy subsystems, one of the earliest enduring administrative changes made was in response to Recommendation 3.1 of the QFCI Interim Report. This recommended broadening the State Disaster Management Group to include 'new voices' at a significant level in responses to disaster, as announced in Parliament (Seeney, Hansard, 25 October 2011, p. 3321).

This inclusion of representatives of the Australian Defence Force and the Australian Red Cross in the planning and preparation for the next wet season by the State Disaster Management Group was a sensible recommendation of the inquiry in light of the critical role they have in responding to the events. I note that it is further proposed to add the Bureau of Meteorology and Surf Life Saving Queensland to the membership of the State Disaster Management Group

More broadly, however, there is no compelling evidence that policy coalitions or subsystems changed in any substantive or enduring way as a direct result of the Inquiry. The Inquiry drew upon many technical experts, engineers, Local Councils, independent reviewers and insurance providers during its deliberations. However, 'traditional' allegiances and positions held firm. For example, non-Labor Local Councils continued to be highly critical of the Labor Premier (Solomons and Thompson 2013).

Arguably, the most significant group of new policy entrants should have been Local Councils. The QFCI report, Government and commentators all acknowledged the centrality of Local Councils to emergency response and recovery efforts. As outlined in the Queensland Government Response to QFCI Final Report (n.d., p. 5), the implementation groups convened by the respective Directors-General to implement the recommendations of the QFCI acknowledge that:

a collaborative approach with local government will be essential for proper state implementation of the Commission's recommendations. There are many recommendations in the final report that will be the primary responsibility of either individual councils or councils generally.

There is some evidence of Local Government participation on some of the implementation groups³⁰ but overwhelmingly the QFCI implementation groups are dominated by State Government agencies.³¹

6.7.1 Finding

The Inquiry was set up to be participatory and to give voice. It did so, but on its own terms. There is clear evidence that many people had their say and told their stories. Yet the Inquiry's chosen method of operating was legalistic, considered by some as 'a field day for lawyers' (Cameron 2011). This may have limited voice and provided a barrier to broader participation, despite the provision of counsellors and support for participants.

Critically, the failure to successfully engage and coordinate Local Government in post flood efforts and policy change also suggests failure on this criterion. It is entirely possible that on closer examination, by issue or by recommendation, some changes to policy coalitions or subsystems may be evident; however, relying on information available in the public domain, this is not apparent.

A class action of residents against the Queensland Government, which is underway at the time of writing, provides a 'new voice' (Chapter 7). The class action continues to be a forum for many residents to be galvanised into local action groups to provide information and updates on proceedings, share their stories and continue to keep this issue in the public domain.³² For many it 'represents the last opportunity for [victims] to be compensated for their losses' ('Case opens the floodgates', 2014). The extent to which these voices have an impact on policy change remains to be seen.

By virtue of the post Inquiry class action, ongoing localised action groups, and a subsequent Inquiry concluded in 2015 (Chapter 7) it is evident that the Inquiry may have succeeded in giving voice but that there were those who felt unheard.

³⁰ For example, the Department of State Development Infrastructure and Planning's Brisbane River Catchment studies group partnered with Brisbane, Ipswich, Lockyer Valley and Somerset Councils, Response to Recommendation 2.2, viewed 14 June 2015, <https://www.premiers.qld.gov.au/publications/categories/reports/assets/gov-response-floods-commission-inquiry.pdf>

³¹ For instance, the Department of Environment and Heritage Protection's Environment and Mines Implementation Group includes representatives from relevant government agencies but no other stakeholders.

³² For example, action groups like Brisbane River Floods 2011, Greater Goodna Flood Group, viewed 15 March 2015, <http://goodnaflood.blogspot.com.au/>

6.8 Success Proposition 3: Providing the opportunity for policy change and improved outcomes

On 11 February 2012 Commissioner Holmes declared that the public hearings into the floods were completed. Soon after, on 25 February 2012, the Premier announced an election date of 24 March 2012 (Holmes, B, 2012, p. 14). By the time the QFCI delivered its final report (16 March 2012) Queensland had changed Government. The LNP convincingly won Government from Labor and it was the new Premier, Campbell Newman, who tabled the Government's response to the Inquiry and stated in Parliament; 'I reiterate my government's previous commitment to fully implement all of those recommendations for which we are responsible' (Newman, Hansard, 7 June 2012, p. 629).

Of the report's 177 recommendations, 123 related to areas of Queensland Government responsibility, 56 related to Local Government responsibilities, eight related to Commonwealth Government responsibilities, and seven recommendations related to private entities. Many recommendations were directed at both State and Local Governments or were dependent on action by the State to establish a consistent framework for implementation at a local level (Queensland Government Response to the Queensland Floods Commission of Inquiry Final Report n.d., p. 4).

The new Premier stated that 'my government is strongly committed to better planning and better protection for communities across Queensland. We are determined to learn from Queensland's recent flood disasters and do everything possible to deliver better flood security for all Queenslanders' (Newman, Hansard, 7 June 2012, p. 630).

The Inquiry's recommendations had policy and program implications for all tiers of Government and the State Government's response stressed that implementation would be collaboration with Local and Commonwealth governments. Five key streams of activity were described and clear processes were established for implementation, monitoring and reporting (Appendix 7).

There is also evidence of a significant restructure of Government agencies in 2012 (Scott 2012), however these were the result of the change of Government, not in response to particular recommendations or outcomes of the QFCI. The focus of many of the QFCI's recommendations was on regulatory reform and many required legislative change. Some of these legislative and policy changes had clear and uncontested bi-partisan support.³³

³³For example, the *Water Legislation (Dam Safety and Water Supply Enhancement) and Other Legislation Amendment Bill* implemented a number of the recommendations of the final report of the

Through late 2012 and 2013 there is also evidence of changes that had been achieved as a direct result of the QFCI recommendations. For example, the delivery of 56 flood boats which were part of the QFCI funded program ('Ambulances, rescue vehicles, flood boats', 2013; 'New boat for SES groups', 2013; 'Wide bay and Sunshine Coast stations and SES units get new flood boats', 2013; 'Pomona and Cooroy ready for next big wet with new boats' 2013), and funds for flood warnings ('We drowned in silence', 2011, '\$82,000 for flood warnings', 2012). Media also reported a new website offering 'easy access to vital information when natural disasters strike'; 'load testing' the state disaster coordination centre's capacity under a cyclone scenario; more trained rescuers and various other measures taken as a result of the QFCI to make Queensland 'flood ready' ('Queensland flood-ready for summer: govt', 2011). Presumably all of these have led to better services and outcomes for the community.

However, by 2013 media turned its focus to things that had not been achieved leaving residents feeling 'nervous about the current high dam levels', fearing a repeat of the 2011 floods', and feeling 'no safer today' with one resident quoted as saying 'I think we are worse off than we were two years ago' (Vogler, Solomons and Thompson, 2013).

A key area in which the QFCI provided the opportunity for significant policy and practice change is in the relationship between all tiers of government, notably Local Councils. The QFCI recommended stronger engagement with Local Councils. This was peppered through many of the Inquiry's recommendations consistently acknowledging that Local Councils were central to response, reconstruction and rebuilding efforts. Multiple recommendations were made by the QFCI which had a direct impact on Local Councils, for example: flood plain management; changes to local planning instruments; development assessments and control; essential services and emergency responses; buy backs and land swaps. The critical role of Local Government was recognised by both Premier Bligh and Premier Newman when they presented their Government's responses to the QFCI Interim Report and Final Report respectively. In the immediate aftermath of the floods, on 23 March 2011, Premier Bligh recognised the centrality of Local Councils to the recovery and reconstruction effort and expedited the flow of funds to impacted communities.³⁴ Later, in the Government's response to the QFCI's Final Report the Premier reiterated that many of the QFCI's recommendations

QFCI and also aimed to reduce the regulatory burden on some of the water services industry (McArdle, Hansard, 12 September 2012, p. 1843). The Opposition acknowledged the Bill's role in implementing nine of the recommendations of the QFCI and supported the passage of the legislation through the House (Pitt, Hansard, 30 October 2012, p. 2230).

³⁴ 18 disaster impacted councils were advanced \$220 million to begin their reconstruction works under a process that was used for the first time in Australia (Bligh, Hansard, 23 March 2011, p. 708).

needed to be addressed by individual Local Councils and announced an allocation of \$40 million over three years for Local Council projects to implement recommendations of the QFCI (Queensland Government Response to the Queensland Floods Commission of Inquiry Final Report n.d., p. 6).

However, this research was unable to track Local Councils' response to, and implementation of, the Inquiry's recommendations for reform. The primary emphasis of the Inquiry's recommendations for Local Councils rested on regulatory and procedural reform. The recommendations did not, however, resolve long standing tensions about respective areas of responsibility. As McGowan (2014, p. 222) observes, the QFCI recommendations in this regard are 'a very prescriptive set of regulatory recommendations with multiple subsets of formal requirements, rather than a risk-based approach based on principles of floodplain management and planning'. McGowan (2014, pp. 222-3) predicted that the QFCI's lack of clarity about who is responsible for what:

is likely to result in ongoing arguments over which level of government should bear the costs of the implementation of these recommendations. Many local councils are simply not in a financial position to meet these additional costs. Future blame shifting between tiers of government following incomplete implementation of these recommendations seems inevitable.

As predicted by McGowan (2014), this research was unable to track with any certainty the separate or coordinated responses to the QFCI by Local Councils.

In contrast, the State Government response to the QFCI's Interim and Final Reports were comprehensive and clearly outlined responsibilities, performance targets and timelines. Implementation updates can be tracked for the 123 State Government responsibilities and eight Commonwealth Government responsibilities. However, given the scope and limits of this thesis, it is impossible to track the remaining 71 recommendations which relate to the implementation of Local Government responsibilities. This research could not locate a coordinated or comprehensive response by Local Councils. Despite Local Councils being central to the implementation and coordination of the QFCI's recommendations there is little transparency on policy change and better outcomes in this critical area.

6.8.1 Finding

The QFCI successfully opened the policy window bringing politics, problems and policy proposals together. However, there is no compelling evidence of significant or sustained shifts in policy subsystems or positions as a result of the Inquiry. There is a lack of evidence of a coordinated approach or transparency regarding implementation of the QFCI recommendations by Local Councils and hence whether better outcomes were achieved.

The State Government, on the other hand, drove a transparent and coordinated response to the Inquiry's recommendations.

In conclusion, the assessment of the Inquiry's success in providing the opportunity for policy change and achieving improved outcomes is equivocal. Some services and processes are better resourced and coordinated but critically, given their pivotal role in emergency response and recovery efforts it appears that Local Councils generally failed to be engaged and well-coordinated.

6.9 Conclusion

The analysis using the three propositions of success drawn from the literature yields an ambivalent result. With respect to the first proposition of success, responding to crisis and restoring legitimacy, the Inquiry was a swift and humane response to the crisis and the devastation of the Queensland floods. The Inquiry was part of a suite of measures to respond to, learn, and recover from the floods. However, the Bligh Labor Government struggled to restore its legitimacy in the face of the Opposition's successful framing of the management of the floods, and the QFCI, as symptomatic of a Government that was 'out of touch' and had been in power too long. The Inquiry promised to establish whether any more could have been done to avert the tragic loss of life and property: from flood preparation and land use; to the adequacy of forecasts and early warning systems; and the operation of dams. For many, however, it failed to do just that. Further, the credibility of the Inquiry was seriously undermined by the independent investigations conducted by *The Australian* which found shortcomings in certain evidence. This was further eroded by the subsequent Crime and Misconduct Commission findings which found that the flood engineers had no case to answer.

In relation to the second proposition of success, giving voice, the Inquiry worked hard to encourage members of the public to participate and many people had their say. However, some argued that the legalistic way in which the Inquiry was conducted was a barrier to participation.

With respect to the third proposition of success, providing the opportunity for policy change and improved outcomes, there was some policy change as a result of the Inquiry and the inclusion of new policy voices in institutional settings. Critically, however, the Inquiry and subsequent efforts by Government failed to consistently or effectively engage Local Councils which are central to response and recovery coordination.

Chapter 7 - Findings and implications for scholarship

7.1 Introduction

This chapter presents the findings of this thesis (7.2), and outlines the various proxies which are suggestive of citizens' assessments of success which have been identified through the case study analyses (7.3). Further questions arising from the case study analyses are also presented (7.4) which challenge and extend some of the key propositions arising from the examined literature. These questions include the role and purpose of Public Inquiries, whose voices are heard, and the distinction between policy change and improved outcomes.

The chapter then turns to the implications of these findings for scholarship (7.5) and moves to building theory which has emerged inductively from the case study analyses. The significance of Public Inquiries is restated (7.5.1.1) and the analytical framework to assess the success of Public Inquiries is reframed to incorporate citizen perspectives (7.5.2). This is in keeping with the central argument of the thesis: that as part of the reciprocal obligations shared between citizens and government, the overarching purpose of a Public Inquiry is to rebuild the social contract after it has been breached.

Three enduring functions of Public Inquiries are identified: to respond, to hear and to prevent. Within each of these functions, a reframed proposition of success is presented. For each reframed proposition a revised analytical framework is presented which suggests possible elements of success, indicators, measures and sources of evidence.

These elements of success, indicators, measures and sources of evidence are drawn from various literatures and empirical frameworks (7.5.3, 7.5.4, 7.5.5), which are described as offering some potential to assessing success against these reframed propositions.

7.2 Findings

This section outlines the limitations of the analytical framework as applied to the case studies. It identifies the lack of focus on citizen perspectives as a missing element; however, various proxies or markers which are suggestive of citizen's views are identified and discussed.

The analytical framework developed for this thesis has enabled a nuanced dissection of various aspects of each Public Inquiry. It has achieved the central objective of the thesis: to assess the success of Public Inquiries in Australia. However, the assessment of success of each case study has produced an ambiguous result. The key finding of the analyses of the

three illustrative case studies is that the propositions for success drawn from the public administration and political science literature have been found to be incomplete. The propositions of success miss an essential perspective - the significance of Public Inquiries to citizens and the role Public Inquiries play in rebuilding the breach of the social contract after it has been breached.

Further, the methodological strategy of choosing one of each of the three different types of Public Inquiry (investigatory, policy advisory and hybrid), has failed to highlight under which conditions, or which types of Public Inquiry, various propositions of success may or may not hold. Nevertheless, the analyses have facilitated some important insights and the analytical framework provides some guidance on the proxies for citizens' views. These proxies include media and scholarly commentary, legal action and subsequent Inquiries.

Even from the point of view of government, application of the analytical framework yields an equivocal result. The question of the ways in which each Public Inquiry was successful, against each proposition, is at best, both yes and no. On some propositions the Inquiry may have been assessed as successful, yet on others, not. This is what Bovens, 't Hart and Peters (2001, pp. 20-22, p. 606) refer to as 'asymmetries', that is, when success or failure can be demonstrated on one dimension but not on others. Further, within each proposition, the assessment, at times, does not yield a clear result.

It is acknowledged that there are elements of success in each case study. The Cole Inquiry protected the Prime Minister and his Ministers from being seen to be too close to the allegedly corrupt practices of AWB executives, and strengthened Australia's compliance with its international obligations. Some organisations and advocates who are part of the Queensland child protection system had their say, and a program of reform is underway. In Queensland, flood management, disaster planning and emergency warning systems were improved, and resources enhanced.

Equally, however, there are elements of failure in each Inquiry. The Cole Inquiry failed at depoliticising the AWB scandal. It also failed to find anyone to blame for breaching UN sanctions, and arguably significantly delayed or stymied any subsequent prosecutions (OFFTF Minority Report, Chapter 6 2015). The Queensland Child Protection Inquiry has to date failed to 'fix' the child protection system and many children and families still do not experience better outcomes. The numbers of Aboriginal and Torres Strait Islander children in out of home care continues to increase (Appendix 6). The Queensland Floods Commission of Inquiry failed to find anyone or anything to blame for the management of, and response to, the Queensland flood disaster, in particular managing the dam gates. This matter

subsequently became the centre of another Inquiry (Sofronoff Grantham Floods Commission of Inquiry 2015). A class action by Queensland citizens against the State is still underway at the time of writing.

The case study analyses show that, where there is evidence that change has occurred, this has not necessarily been the direct result of the Public Inquiry itself. For example, fundamental changes to wheat marketing arrangements came about through regular democratic, parliamentary processes (Appendix 3). Changes in child protection may have come about through the regular isomorphic pressures within child protection systems nationally and internationally, and government's pre-existing propensity to outsource government services to the non-government sector. Improvements to disaster management and response came about, at least in part, through the deep and vast experience Queensland has in responding to natural disasters.

Perhaps the failure to find 'clear-cut yes or no answers' (Albæk 2001, p. 466) is not surprising, as '[f]irst, different indicators will point in different directions. Second, neither in academic language nor in everyday parlance do we find clear definitions of success and failure' (Albæk 2001, p. 466).

This is understood and is not the key critique of the framework. The key critique of the analytical framework is that it fails to recognise the role Public Inquiries play in rebuilding the social contract after breach. The focus of the analytical framework is on how Public Inquiries serve governments. The missing lens on assessing the success of Public Inquiries is the perspective of citizens.

7.2.1 The blind spot - citizen perspectives

The case study analyses confirm that in the analytical framework derived from the literature, citizen perspectives on success are, in the main, invisible. In the case studies themselves, there is no evidence of direct mechanisms or sources to gauge citizens' views on how they assess the success of the Public Inquiry. There are no post-participation surveys, no feedback mechanisms, and no formal processes of engagement to test recommendations. There are no measures or indicators to assess whether citizens trusted the Inquiry to make sense of the events or the violations of expectations, no surveys which indicate the extent to which citizens felt they had been heard, or trust that the Inquiry and its outcomes could prevent such events from occurring again, or the extent to which policies, processes or outcomes would improve as a result of the Inquiry.

There are, however, proxies in each case study which are suggestive of citizens' views about how they assess the success or otherwise of each Inquiry. For example, media commentary provides some insight into citizens' responses to Inquiries. Commentary by the media has been described through each of the case study analyses.

There are also other clues, or markers, which are suggestive of citizens' perspectives. This approach shows some promise in assessing success because, where such proxies have been found, the assessment of success is clearer. Using these markers, from the point of view of citizens, none of the case studies examined in this thesis could be assessed as successful in repairing the breach of expectations and rebuilding the social contract.

The Cole Inquiry failed not only to depoliticise the AWB scandal but also failed to reassure citizens of the competence or legitimacy of their government. The Inquiry was roundly viewed as a whitewash and, arguably, the Inquiry process itself significantly delayed any subsequent legal action or prosecutions against AWB executives.

Child protection Inquiries are ubiquitous, whether they are established in response to crisis (NSW SCI 2008), or as election commitments to establish the credentials of an alternative government and the incompetence of incumbents (QCPCI 2013, and the Protecting Victoria's Vulnerable Children Inquiry 2012). It may be argued that the sheer number of Inquiries suggests that such Inquiries consistently fail to meet expectations of functional and responsive child protection systems.

The QFCI failed to find anyone responsible for the devastation and loss of life and a class action remains underway to date. As described in the case study, many citizens were left fearful and anxious about how their government would respond to future natural disaster events. Because of ongoing community anxieties, devastating losses and unanswered questions, a successive government instituted a subsequent Inquiry (the Grantham Floods Commission of Inquiry 2015) and another Advisory Committee has since been established by the Queensland Government on these very matters ('Newman government takes steps to strengthen Queensland's flood resilience' 2013).

7.3 Proxies for citizen perspectives on the success of the three case studies

Given the lack of direct feedback mechanisms from citizens, this section details each case study using the various proxies which are suggestive of citizens' assessments of success which have been identified through the case study analyses. These include legal action and subsequent Inquiries, political change, ongoing media commentary, and in one case,

expression through the arts. These proxies provide an important, sharper lens on how citizens assess the success of the three Inquiry case studies.

7.3.1 Cole Inquiry 2006

Commissioner Cole acknowledged the 'daily commentary' and 'intense political debate and widespread media coverage' (Cole Report 2006, Vol. 1, p. 170) about the AWB scandal and his Inquiry. However, Commissioner Cole interpreted his Commission unequivocally as serving Government, not the public interest. Cole clearly expresses this view in his report:

It is the function of the executive government to define the scope of that which it wishes to have investigated...The Government knows the subject matter, and the scope of the subject matter, into which it wishes an inquiry to be conducted. It is not for a commissioner appointed to conduct such an inquiry to presume that he or she is the custodian of the public interest or the person authorised to determine the scope of any inquiry that might be related to or connect with the 'peace, order and good government of the Commonwealth, or any public purpose or any power of the Commonwealth' (Cole Report 2006, Vol. 1, p. 165).

As detailed in Chapter 4, however, citizens expressed ongoing doubts about government as the custodian of the public interest. Commissioner Cole acknowledged the great public interest in the matter but staunchly separated himself from it (Cole Report 2006, Vol 1, p. 169, pp. 176-177). Commissioner Cole maintained that 'there is a bright line to be drawn and maintained between what I shall call the legal aspects of this Inquiry, and the politics and media commentary which accompanies the holding of this Inquiry' (Cole Report 2006, Vol 1, p.170). He made a clear decision not to intervene in, or comment on, any of the media or political debate surrounding the Inquiry (Cole Report 2006, Vol. 1, p. 171). Commissioner Cole conducted his Inquiry in strict accordance with the Letters Patent, and did not seek to widen them. The public interest was not his concern.

Commissioner Cole did, however, conduct the Inquiry in as public a way as possible. His view was that:

public hearings are important in enhancing public confidence in commissions of inquiry or royal commissions as they allow the public to see the inquiry at work...conducting a royal commission or commission of inquiry in private 'seriously undermines the value of the Inquiry. It shrouds the proceedings with a cloak of secrecy, denying to then the public character which to my mind is an essential element in public acceptance of an Inquiry of this kind and of its Report' (Cole Report 2006, Vol. 1, p. 177).

However, the 'publicness' of this Inquiry did not enhance the acceptance of his Report. The central, enduring question for many remained: did Government know? For many, the accusations of cover up and incompetence, were not satisfactorily addressed: 'If [the

government] is not guilty of a vast cover-up, then it must be guilty of culpable negligence and incompetence' (Costello 2006).

The terms of reference had been carefully constructed. Critically, they excluded investigation into the involvement of Ministers and government officials and did not examine policy (McConnell, Gauja and Botterill 2008, pp. 612-613). The AWB was under investigation, not Government or its Ministers. Ultimately, 'no ministers were implicated in Cole's report and there was no significant criticism of the original privatisation policy or the "light touch" regulatory regime' (McConnell, Gauja and Botterill 2008, p. 600).

The Cole Inquiry also represents a missed opportunity of enhancing the effectiveness, capability and transparency of public administration and government agencies. These matters were not addressed by the Inquiry. DFAT, a key player, was viewed as not having the required capability, and 'lacked vigour' in following up suspected breaches in this relatively newly privatised arrangement. The case study analysis confirms Botterill and McNaughton's (2008) findings that DFAT had relied on advice provided by AWB Ltd who, after all, had been the experts and many of whom were the same people 'who had provided reliable advice to government when they were employed by the Australian Wheat Board' (Botterill and McNaughton 2008, pp. 592-3). DFAT had not had 'time to develop the necessary expertise on the intricacies of export wheat contracts following privatisation before the kickbacks began' (Botterill and McNaughton 2008, p. 592). This represents a missed 'opportunity to make institutional reform that might mean similar scandals can be avoided in the future' and, as such, it failed to have a lasting impact on how government conducts its business (Prasser and Tracey 2014, p. 228).

Once it had reported, there was pervasive 'disbelief' about the Inquiry's outcomes. Some saw the findings as 'plain wrong' (Thomson, Hansard, 5 December 2006, p. 9) or as 'self-serving' (Durie 2006). Bartos (2014, p. 234) notes that 'whether or not ministers or officials were involved in aiding or abetting AWB remains a mystery' (Bartos 2014, p. 234).

Even though no Minister or official lost their portfolio there were ongoing doubts about their performance and integrity, and the machinery of government. According to Wanna (2007, p. 287):

[a]lthough the inquiry largely was seen as a whitewash exercise, many politicians and officials came out of it looking incompetent, indolent and unprofessional. Many had given evidence that they had not read cables, not asked questions, dismissed rumours, and not passed on information to ministers.

There are also other insights into citizen perspectives. In the initial aftermath of the Cole Report (2006), the AWB lost half of its shareholder value, and eventually after the

deregulation of the wheat market, lost most of its market share of wheat exports (Bartos 2014, p. 240). The AWB was also exposed to a number of legal actions. These included actions by wheat growers in the United States of America, a class action on behalf of shareholders, action by the Australian Tax Office to recover tax foregone in respect of illegal payments,³⁵ and a class action on behalf of some wheat growers seeking to recover performance bonus payments (Crean, Hansard, 7 December 2006, p. 63). A civil lawsuit was also filed in an American court on behalf of the northern Iraqi people claiming AWB along with a European bank 'cheated Iraqis out of humanitarian supplies' (Crawshaw 2006). For these many thousands of citizens, the Cole Inquiry did not resolve the issues of most concern to them.

When the Cole Report (2006) was released, law firm Maurice Blackburn Cashman was drafting a claim intended to be filed in the NSW Supreme Court claiming that the AWB's payment of \$290 million led shareholders to lose more than half the value of their stock and that Commissioner Cole's findings had 'strengthened their case'. The class action was to seek up to \$60 million in damages with 'substantial interest' ('Cole report more rope for class action' 2006).

The class action was commenced against the AWB on 10 February 2010 in the Federal Court. The Applicant concluded his opening on 12 February 2010 and on the morning of 15 February 2010 the parties announced that the matter had been settled. The settlement resulted in AWB making a payment of \$39.5 million (inclusive of legal costs) to the plaintiffs (OFFTF Report 2015 Appendix 3, p. 5).

7.3.1.1 'Deeply offensive and utterly untrue', Version 1.0, 2007 (Williams 2010)

Perhaps a more unusual demonstration of the way in which this Inquiry was perceived by citizens, was the production and performance of 'Deeply offensive and utterly untrue' (2007) by the performance group, version 1.0 (Williams 2010). Version 1.0 'undertook a theatrical re-making' of the 8,500 pages of the Cole Inquiry's transcripts, 2,000 pages of the Cole Report (2006) as well as thousands of pages of journalism and commentary' (Williams 2010, p. 189, p. 190). Williams describes the legal nature of the Cole Inquiry as characterised by 'complex legal manoeuvring'... 'the ritualised combative language of lawyers', 'obstructionist' behaviour and 'protagonists who engage in such excessive and, at times, virtuosic acts of avoiding straight answers' (Williams 2010, pp. 190-191, p. 193). The impenetrability of the legal process was also compounded by Minister Downer's oft-repeated refrain that it was all

³⁵ The Australian Tax Office later ruled that the \$294 million in 'kickbacks' paid to the regime could be claimed as a tax deduction (Coorey and Wilkinson 2006).

'terribly complicated' (Williams 2010, p. 195). According to Williams (2010, p. 195) this 'encouraged citizens to not waste their time thinking closely about it, and such strategic avoidance of thinking obviously served very particular legal interests'. However, the production and success of 'Deeply offensive and utterly untrue' did 'encourage citizens to closely interrogate the processes by which their democracy operates, and the ways in which national representatives, both governmental and commercial, act in our name' (Williams 2010, p. 195).

7.3.1.2 Political change – Kevin '07

In the lead up to the 2007 election, the handling of the AWB scandal had gained significant political capital. The long term incumbent Liberal National Party (LNP) coalition government framed the Inquiry as proof of their trustworthiness credentials in dealing with such a momentous scandal. A highly charged, and hopeful, Labor Opposition framed the Inquiry as a manipulative, cynical whitewash. According to Grattan (2006a) 'reaction over AWB appears to have taken a toll on Prime Minister John Howard's popularity and helped Labor increase its vote in the AC Nielsen/Age poll' [and that] 'seven out of ten Australians aware of the Cole Inquiry still believe the Government knew of AWB's kickbacks to Iraq in the oil-for-food scandal despite ministers and public servants being exonerated last week'.

Also at play throughout this period was the leadership challenge in the Labor Party. Despite the 'gradual improvement in the party's electoral position', Prime Minister Howard's rating as preferred Prime Minister was consistently double that of the Opposition leader, Kim Beazley (Bennett and Barber 2008, p. 8). In the last half of 2006 speculation was rife about whether the Opposition Leader would be replaced. Doubts were fuelled about Mr Beazley's health and capacity due to some errors and memory lapses which were quickly 'employed to good use' (Bennett and Barber 2008, p. 8). The Shadow Attorney General, Kevin Rudd, was seen to have 'largely led the fight for the opposition in the fallout from the Cole Inquiry' (Kerin and Crowe 2006). On 1 December 2006 Shadow Attorney General Rudd challenged the Opposition Leader for the leadership. The Opposition Leader announced a leadership ballot. Kevin Rudd and the Shadow Education Minister, Julia Gillard, challenged and won. They became Leader and Deputy Leader respectively.

Despite concerns about this late change in Labor's leadership, after eleven years of LNP coalition government, the Labor party convincingly won the 2007 election. The AWB scandal

was identified as part of 'the baggage' the government took in to the 2007 election.³⁶ The AWB scandal and what Government knew or didn't know 'played a part' in the election defeat despite the fact that the Cole Inquiry 'failed to deliver the smoking gun against the government that the opposition was praying for' (Anderson, F 2006).

In summary, given the perspectives and developments outlined above, from a citizen's point of view, the Cole Inquiry cannot be assessed as successful in repairing the breach of the social contract represented by the AWB scandal.

7.3.2 Queensland Child Protection Commission of Inquiry 2013

The analysis of the QCPCI demonstrates that the direct voices of those who are the clients of the child protection system are not prominent (Appendix 5). Workers and their unions, academics, government and non-government organisations, however, are well represented. The voices of vulnerable children, parents and families are relatively absent compared to the dominant voices of the organisations which are funded to represent their interests.

Arguably, given that this case study is an example of a policy advisory Public Inquiry, it is critically important to ensure that there are effective mechanisms to guarantee that children and their families are encouraged and assisted to participate and that their voices are heard, however, there is limited evidence of this. Citizen perspectives, other than through service deliverers, organised peaks, faith based and advocacy organisations, are the least visible in this case study. Unlike the other case studies, there are few proxies, other than media coverage and academic commentary to draw upon.

The absence of any feedback or measure of participation by clients of the child protection system means that an assessment of success by those most impacted is not available. A range of:

complex and often chronic factors characterise many of the families coming into contact with the child protection system such as low income, unemployment, substance abuse, limited social supports, imprisonment, domestic violence and mental health issues. Many of these factors are interrelated' (NSW SCI Report 2008, pp. i-ii).

Further, child abuse and neglect are strongly correlated with other problems such as low birth weight, child behavioural disorders, low literacy, non-completion of school, juvenile drug use and teenage pregnancy (Scott 2006, p. 14). It is arguable, therefore, that it is for these

³⁶ Along with other factors like the length of incumbency, the presence of Australian troops in Iraq and Afghanistan, David Hicks' detention in Guantanamo bay, the military style intervention in the Northern Territory (Bennett and Barber 2008, p. 39).

very reasons that particular mechanisms should be in place to ensure participation, encourage voice, build capacity and receive feedback.

Child protection is a recurring issue of concern to the community, whether because of gross systemic failings, horrific child deaths, underfunding, lack of appropriate services or coordination. Child protection is not a marginal or peripheral issue affecting a small proportion of our community. In 2015/16, one in 33 children in Australia received child protection services.³⁷ O'Donnell, Scott and Stanley (2008, pp. 325-326) characterise current Australian child protection systems as unsustainable and overloaded. In the face of rising notifications and investigations and an increase in the number of children entering out of home care, there is growing concern about the ability of child protection systems to cope with the increasing proportion of high risk and vulnerable families notified to the system.

Child protection matters to the community. The fact that the QCPCI was established to fulfil an election commitment is testament to this (the Victorian Child Protection Inquiry included at Appendix 5 was also established to fulfil an election commitment). This commitment to address a matter of significant public concern has emerged as a potent election promise and as a way for a party in Opposition to differentiate itself from an incumbent government which has 'failed' to fix the child protection system and keep children safe from harm.

Child protection is a complex area scattered with scandals and subsequent Public Inquiries (Tilbury and Mazerolle 2008, p. 283, p. 287). In child protection there are always 'storms that swirl around for years' (Daly 2014, p. 13); '[p]roblems with working practices in protecting children from harm are historic' (Watkin, Lindqvist, Black and Watts 2009, p. 152). There are regular calls for Ministerial resignations, overhauls to the system and more funding for child protection workers (Hyland And Holme 2009, p. 197). Testro and Peltola (2007, p. 24) argue that 'it is unclear what gains have been made' by multiple Inquiries.

Some authors argue that Inquiries have become so prevalent that 'nobody can any longer believe that they are a serious instrument of law reform' (Sedley 1989, p. 469). The same sets of problems are identified over and over again and the same types of recommendations are made (Miskelly 2009). These typically include: better multidisciplinary work and information sharing; improving record keeping and data collection; enhanced supervision

³⁷ Seventy-three percent of these children were repeat clients. 162,175 children had an investigation, care and protection order and/or were placed in out-of-home-care. The national recurrent expenditure on child protection and out of home care services was almost \$4 billion in 2015/16, a real increase of \$283.7 million (7.7%) from 2014-15, '*Child Protection Australia 2015-16*', Australian Institute of Health and Welfare.

and training; better management of caseloads and resources; improved assessment frameworks and practice; and legislative reform (Hill 1990, pp. 198-201, pp. 204-205; Tilbury and Mazerolle 2008, p. 285). Stated simply, there is not 'much we do not already know' (Miskelly 2009, p. 4).

Given how ubiquitous they are it is arguable that multiple child protection Inquiries have been unsuccessful in meeting citizens' expectations of their child protection systems. What is the purpose, then, of recurring Public Inquiries into child protection? Is it to allay the communities' concerns, 'allow an expression of grievances' (Smith and Weller 1978, pp. 3-5), or provide an opportunity for 'communal catharsis' (Warner 2006, p. 223, p. 226)? Is it just the very fact that an Inquiry 'has sat, taken evidence and deliberated' (Sedley 1989, p. 473) that is important, not what the Inquiry has produced? Was the QCPCI any more successful than any of the other child protection Inquiries? There are no mechanisms to judge the validity of such assertions or answer such questions, so they remain in contention.

7.3.3 The Queensland Floods Commission of Inquiry 2012

The QFCI and the subsequent Crime and Misconduct Commission (CMC) investigation failed to find anyone or anything responsible for the loss of life, severe flooding and damage to property. No Minister lost their job; no public servant was to blame. As described in the case study, these matters were reflected regularly in media commentary and in the organising around potential legal action, even while the Inquiry was underway. Trust in the Inquiry's judgement and processes was also sorely tested when *The Australian's* investigations sparked the additional hearings and the referral of the three engineers to the CMC. One of the Commissioners, Deputy Commissioner Cummins, publicly stated that he was very negative about the Inquiry and its processes (Solomons and Thompson 2013). Further, the Inquiry was conducted in a legalistic manner which many found inaccessible and daunting.

Most importantly, however, for many citizens, the QFCI failed to alleviate Queenslanders general concerns about preparedness for flood disasters. For example, one of the matters of concern for the QFCI, the Lenthall Dam gates, was still being reported in the media in May 2013 as 'unresolved' and that (Makim 2013):

the safety concerns of the community had not been resolved despite the Queensland Floods Commission finalising a report on the issue in 2012...[which] 'left the community feeling vulnerable and uneasy as to their safety...the community needs some certainty on this issue which has been going on for a long time.

In response to community pressure, in 2013 Premier Newman announced a new independent Advisory Council to 'strengthen Queensland's resilience' ('Newman government takes steps to strengthen Queensland's flood resilience' 2013).

7.3.3.1 The class action

Another proxy, the current class action, provides important views of citizen perspectives of the QFCI. The lack of resolution, and dissatisfaction with the outcomes of the QFCI, remain live issues in Queensland. Those who were directly affected by the flooding did not wait for the outcomes of the QFCI before exploring legal avenues of redress. The possibility of a class action had been flagged early in the wake of the floods and by March 2012 more than 1,000 people had already joined the class action (Banks 2012).

By 2014 some media (Champion 2014) were reflecting on the 'inadequate inquiries' that had taken place and claimed that the QFCI:

fudged some answers to the central questions about why this particular flood was out of the ordinary and resembled a tsunami rather than all the other floods which the locals experienced in recent decades. The commission held community meetings to find out what notions might be bouncing around in the locals' heads, but took no evidence from them, relying instead on the experts. We already know, however, that the commission's initial findings, bristling with supposed expertise, were deeply flawed.

By 2014, Hall (2014) reported that more than 4,000 residents and businesses affected by the flood in Brisbane and Ipswich in January 2011 had launched legal proceedings, claiming engineers failed to operate the dams properly in the lead-up to, and during, the flood.

The class action was filed in the NSW Supreme Court because there is no class action regime in Queensland. The claim is now being brought on behalf of around 7,000 flood victims (Moore 2017). The class action alleges that the negligent operation of the Wivenhoe and Somerset dams in the lead up to, and during, the 2011 flood significantly contributed to the extent and the level of flooding downstream of the dams and created a flood that was much worse than it would have been if the dams had been operated competently. The class action is being brought in negligence, against Seqwater, Sunwater and the State of Queensland as the operators of Wivenhoe and Somerset Dams (Queensland Floods Class Action, Maurice Blackburn Lawyers n.d.).

No specific dollar amount is linked to the compensation claim, however some media report that estimates place it at about \$1 billion, noting that 'the exact figure will only be known if the class action lawyers can prove the operation of the dams created the flooding' ('Operators caused 2011 flood: victims claim' 2014). The QFCI and the CMC had found no

evidence of collusion between the three engineers, however, the funder of the class action claimed that the firm's investigation was far broader than the CMC's investigation '(Brisbane floods class action begins in NSW Supreme Court' 2014). A flood action group was also established to provide information for the victims of the floods and those who have joined the class action. At the time of writing the matter is still underway in the NSW Supreme Court. For the 7000 people joined in the class action, the QFCI and the subsequent CMC investigation left many questions unanswered. For them, the QFCI did not restore the legitimacy of their government, their voices were not heard, and no policy change or improved outcome has adequately addressed their concerns or the losses they experienced.

7.3.3.2 Postscript to the Queensland Floods Commission of Inquiry 2012

'They deserve and require further closure. ...
They [still] want the truth to prevail' (Palaszczuk 2015b, p. 279).

On 5 May 2015 the new Labor Premier, Anastacia Palaszczuk, announced that the Queensland Government would hold a new Commission of Inquiry into the flooding of the Lockyer Creek between Helidon and Grantham which occurred in January 2011 (Palaszczuk 2015a, 2015c). This would 'allow independent modelling to take place', making reference to 'a DHI consultant report published in *The Australian* newspaper [which had] suggested several inconsistencies' (Thomas 2015b). Thomas (2015b) reported that:

The new findings by DHI shed fresh light on the floods that hit Grantham on January 10, 2011, causing the deaths of 12 people. The new report contradicts the findings of the \$15 million royal commission-style floods inquiry, led by a Supreme Court judge, which stated conclusively in its final report in March 2012 that 'none of the earthworks associated with the quarry caused or contributed to the flooding of Grantham on 10 January 2011'. The new findings say this conclusion from the floods inquiry is not supported by evidence reviewed by DHI.

The Mayor and residents of Grantham had been calling for a new Inquiry. Premier Palaszczuk (2015a) stated that these people were:

determined that the deaths of their friends and neighbours and family members on that day will not be in vain. The people of Grantham have suffered through an horrific, terrifying, fatal event. They deserve and require further closure. They want the truth to prevail.

Mr Walter Sofronoff QC was appointed as Commissioner. The Grantham Floods Commission of Inquiry was set up specifically to investigate whether the particular way in which Grantham flooded on 10 January 2011 was a consequence of 'any natural or man-

made features of the landscape'.³⁸ The central question for the 2015 Inquiry concerned whether, and the extent to which, a quarry owned by the prominent Wagner family, contributed to the flooding. Significantly, the terms of reference specifically state that the Inquiry is in to certain matters 'but not so as to include a review or investigation of the way in which the Queensland Floods Commission of Inquiry was conducted' (Grantham Flood Commission of Inquiry Terms of Reference 2015).

Commissioner Sofronoff's Report confirmed the findings of the QFCI (Sofronoff Report 2015, p. 88). According to Thomas (2015a) in *The Australian*, the Wagner family lawyers:

are examining legal actions against Fairfax Radio and to rating 2GB broadcaster Alan Jones, who has alleged the family and successive Queensland premiers conspired in a criminal cover up over the quarry. Media reports that there will be 'disappointment' at the findings because residents were planning 'massive legal action' against the Wagner family, many of whom felt 'ignored, confused, or patronised' by earlier inquiries.

Noting that Commissioner Sofronoff's findings were virtually the same as those handed down by the QFCI, the State LNP member for Lockyer labelled the second inquiry as 'a waste of taxpayers' money' (Wilson 2015).

7.4 Further questions arising from the case study analyses

This section outlines a number of significant questions which have emerged from the case study analyses on which the literature provides limited guidance. These questions challenge and extend some of the propositions of success drawn from the examined literature.

7.4.1 Public Inquiries as election commitments

An election commitment establishes a promise with the electorate. The Government or Opposition promise to do, act, investigate, repair or fix something the community cares about, that is in the public interest. The promise of a Public Inquiry signals that the Government or Opposition will act on issues of concern to citizens by establishing a powerful, impartial, eminent Inquiry to investigate and recommend. The subject of the Public Inquiry is typically a matter where there has been a breach of public trust or expectations or where there is a perception that matters have not been satisfactorily resolved.

³⁸ These referred to the presence of a quarry, the presence of an embankment around the quarry pit, or the breach of that embankment by flood waters, Grantham Flood Commission of Inquiry, Terms of Reference, viewed 23 August 2016, <http://granthaminquiry.qld.gov.au/assets/counsel-assisting-view-of-scope-tor.pdf>

The pledge of a Public Inquiry as an election commitment is a promise to respond to a breach of societal expectations and to rebuild the social contract. This powerfully underscores the centrality of citizen perspectives in assessing the extent to which a Public Inquiry has been successful in fulfilling these expectations. This thesis refers to two Public Inquiries established to fulfil election commitments; the QCPCI and the Protecting Victoria's Vulnerable Children Inquiry (Appendix 5).³⁹ Both Oppositions at the time alleged ongoing inaction and incompetence by incumbent governments. The promise of a Public Inquiry was used as an effective election campaign strategy with both, then, Oppositions claiming that only they could bring about real and effective change (Lesman, Macreadie and Gardiner 2011). Both Oppositions successfully claimed that the incumbent Governments had held previous Inquiries but had ignored them and had not acted on the recommendations.

There are others examples. In the lead up to the 2013 Federal election Tony Abbott, as leader of the Opposition, promised to conduct a Royal Commission into the Labor Government's Home Insulation Program (RMIT/ABC Fact Check 2016a). The Abbott LNP government won the election on 7 September 2013. The Royal Commission was established on 12 December 2013 and reported in August 2014 (Hangar 2014). As Opposition leader, Tony Abbott also made an election commitment to conduct a Royal Commission into Trade Union Corruption and Governance if elected (RMIT/ABC Fact Check 2016b; Australian Council of Trade Unions 2014). This Royal Commission was established on 13 March 2014 and reported in December 2015 (Heydon 2015). At the time of writing, Labor's platform in Opposition has been to establish a Royal Commission into the Banking and Financial Services Sector. This has now been superseded by the LNP's Government's announcement on 30 November 2017 of a Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry. This Royal Commission is currently underway (Turnbull 2017).

The literature establishes that Public Inquiries are set up for a variety of purposes to investigate matters of public importance but is silent on the establishment of Inquiries specifically as election commitments. In the examples above, political parties used the promise of a Public Inquiry as a differentiator in the highly politicised context of an upcoming election. This is not something that emerged from the literature. Hence, there are no relevant propositions to draw on regarding how to assess the success of a Public Inquiry originating

³⁹ The Victorian Inquiry was also established to fulfil an election commitment in the lead up to the 2010 election. Both the 2012 Queensland election and the 2010 Victorian election toppled long standing incumbents. In Victoria, Labor had been in government for three consecutive terms. In Queensland, the ALP was attempting to win a ninth consecutive election victory.

in this context, and with this obvious political motivation. Perhaps it is as simple as whether the Party which proposed the Inquiry as an election commitment was elected. In a parallel context, it is also interesting to note that Truth Commission literature observes that such commissions are more likely to be established surrounding presidential elections (Brahm 2009, p. 3).

However, the critical point in the context of this thesis, is the fact that political parties use the promise of a Public Inquiry as an election commitment. This testifies to the significance of these powerful bodies for citizens. It also reinforces the imperative to incorporate citizen perspectives into the assessment of success. The promise of a Public Inquiry as an election commitment to address breaches or violations of expectations underscores the role of Public Inquiries in rebuilding the social contract. Citizen perspectives therefore matter to assessing how successfully they fulfil that role.

7.4.2 Who's voice?

The literature review posits that Public Inquiries provide a powerful arena to give voice to those who may not otherwise have a chance to participate in policy making. As outlined in Chapters 2 and 3, policy participants in a Public Inquiry generally include the 'iron triangle' of legislators, agency officials and interest group leaders but also researchers and media that specialise in that area (Hecl 2007; Kingdon 1995). To what extent have the examined Inquiries facilitated participation beyond these 'usual suspects'? What mechanisms have been available for people to participate and how has the Public Inquiry tried to balance the views of experts, advocates and those with lived experience?

As examples of policy advisory and hybrid Inquiries, analysis of submissions in the QFCI and the child protection Inquiries (Appendix 5; Table 10) confirms that it was indeed legislators, officials and interest groups that overwhelmingly formed the bulk of submissions. The Cole Inquiry, whilst calling many witnesses over many sitting days, was conducted as an investigatory Inquiry. Its public participation brief is therefore governed by legal and investigatory considerations rather than broad public participation.

As discussed, children and families involved in the child protection system tended to be represented by non-government organisations and peak advocacy groups. Whilst particular individuals and families told their stories to the Inquiry their individual voices were overshadowed by the more coordinated and organised voices of non-government organisations and peak advocacy bodies.

It is also interesting to note that even though the QFCI went to great lengths to hear from individuals and communities affected by the floods, many were less than satisfied with the Inquiry's processes and outcomes. Those affected by the floods were active participants in the Inquiry both through written submissions, and by providing testimony to the Inquiry. However, while they may have been given voice by the Inquiry there is some evidence that they may not have been heard. The class action in the Supreme Court of New South Wales provides some evidence of this.

This phenomenon confirms Sulitzeanu-Kenan (2006) finding of 'conditional credibility', that is, people have trust in the Inquiry as long as it confirms their view of events. This perception is, however, abandoned if an 'overly' positive report is delivered' (Sulitzeanu-Kenan 2006, p. 647). In the case of the QFCI legal action is being pursued, and, as described, various legal actions were commenced in the context of the Cole Inquiry.

Through the QCPCI and the other two child protection Inquiries examined (Appendix 5) there is evidence of broad participatory processes including submissions, hearings and consultations. There is also evidence across all three child protection Inquiries that enduring mechanisms have been established which institutionalise the input of broader voices than just government agencies in the longer term. However, across all three child protection Public Inquiries there is also a great deal of evidence of overlap in participants, especially a recurring group of non-government agencies (NGOs) and particular academics. With regard to the NGOs, one of the recurring themes of all the three Inquiries was an expanded role for the non-government sector in child protection, particularly in the prevention and early intervention stages. None of the child protection Public Inquiries examined present any well rationalised, evidence-based argument as to why a greater role for the non-government sector will necessarily improve outcomes for families or children at risk, but this position is certainly consistent with the broader public management agenda of governments (Beyer 2007; Lyons 2001; Verspaandonk 2001). It also reflects current government trends in the delivery of child protection across all States (Council of Australian Governments 'National Framework for Protecting Australia's Children 2009-2020' Appendix A).

A nascent proposition for success begins to emerge – that there may be a self-serving utility to be gained for external actors from their active participation in a Public Inquiry. In order to explore this idea, three of the main NGOs which contributed to all three child protection Inquiries (Bravehearts Inc, Life without Barriers and CREATE Foundation, Appendix 5) were selected for further examination. Examination of Annual Reports and financial statements

confirm that significant funds flowed from government to these three NGOs in the arrangements that were made post Inquiry.⁴⁰

This may provide another insight on success, drawn from the perspective of the advocacy, peak and service delivery agencies which participated in the QCPCI and other child protection Inquiries. The analysis demonstrates that such agencies have undergone significant growth as governments transfer funding and responsibility to the non-government sector. For these NGOs, their participation in the Inquiry may be considered to be a success. However, as the examined literature focuses on government, not citizens or its agencies, perspectives on this dimension are absent.

It is also evident that there was a recurring group of academics whose ideas infused the recommendations of each of the child protection Inquiries. This has resulted in isomorphic pressures for child protection systems to become more consistent with each other. One of these academics, Professor Dorothy Scott, also became one of the Commissioners of a subsequent Inquiry, the Victorian Child Protection Inquiry 2012 (Appendix 5).

It therefore emerges that a possible indicator of success may be the extent to which Public Inquiry outcomes support the broader agenda of government in relation to the provision of services, and that those who are invited in to be part of the broadened voice are those that support the public administration reform directions of government.

7.4.3 An opportunity for policy change...but improved outcomes?

As described in the literature, each Public Inquiry made a series of recommendations for change. In the main, the recommendations were accepted by Government. Each government response brought with it an allocation of significant funds dedicated to the implementation of agreed directions.

Whilst, as established in Chapter 2, a Public Inquiry is not responsible for implementation, the assertion in the literature is that one of the elements of success for an Inquiry is that it provides an opportunity for improved services, policy, procedures outcomes. Banks (2014, p. 117) suggests that 'to be judged successful from a public interest perspective, an inquiry

⁴⁰ CREATE Foundation government grants grew from \$2.9m in 2011 to \$3.4m in 2015 (CREATE Foundation Annual Review 2012, p. 48; 2015, p. 31). LWB government grants grew from \$84m in 2007 (LWB Annual Report 2007, p. 57) to \$365.6m in 2015 (LWB Annual Report 2014-15, p. 94). Bravehearts government grants grew from \$1.3m in 2013 to \$1.9m in 2014. Bravehearts also received \$2.9m in 2014 as part of an overall \$5.1m grant over 3 years) to support the Royal Commission into Institutional Responses into Child Sexual Assault, 'the single largest injection of funds to be received by Bravehearts since its inception' (Bravehearts Annual Report 2013-14, p. 18).

needs to achieve more than having an impact on public policy; it needs to have an impact that is likely to lead to better outcomes'. Banks provides a nuanced approach by proposing two tests: whether there was policy change (the first test); and whether this led to improving outcomes in the public interest (the second test). Some Public Inquiries pass the first test, but fail the second; others may have contributed to the second but did not get past the first. What is the evidence from the three case studies?

It is fair to say that, to date, there has not been a corruption scandal quite the scale of the AWB scandal. Policy changes have led to improved transparency and accountability (Appendix 4). These have no doubt improved Australia's compliance with international obligations and clarified some legal questions regarding the conduct of Public Inquiries.

However, the most significant policy change, the dissolution of the single wheat desk was not brought about by the Cole Inquiry. It was the scandal itself and the ensuing robust debates in the community and in Parliament that eventually led to the demise of the single wheat desk and an opening up of Australia's wheat marketing arrangements (Appendix 3).

In relation to child protection, the QCPCI Inquiry certainly prompted policy change – along the same lines as all the other child protection Inquiries held around that time (Appendix 5). These include changes in reporting thresholds, coordination across government agencies and a greater role for NGOs. However, given the strong isomorphic pressures at play in the child protection sector, would these policy changes have happened anyway even if there had been no Public Inquiry?

Have these changes improved service delivery or led to better outcomes? The evidence suggests that this is not the case. The number of children in out of home care continues to grow, the proportion of Aboriginal children in out of home care continues to grow and risk of harm reports are on the increase (Appendix 6). There is scant evidence that the child protection Inquiries have led to improvements on the key indicators nominated by governments themselves as measures of success (Appendix 5).

With regard to the QFCI, since 2011 there have continued to be natural disasters in Queensland. Doubtless the QFCI led to some policy and service improvements, better coordination between agencies and better outcomes. However, there are also to this day, many thousands of citizens for whom the QFCI failed to provide satisfactory outcomes.

In summary each Public Inquiry has opened the window for policy change. Whether this has led to improving outcomes in the public interest is a more contested question.

7.4.4 Why have a Public Inquiry anyway?

The Cole Inquiry raises interesting questions on the role of investigatory Public Inquiries more generally, and the extent to which they help or hinder subsequent legal and prosecutorial processes. As described in Chapter 4, the Prime Minister was compelled to respond to the findings of the Volcker Inquiry, but why by way of a Public Inquiry? John Agius (2008 p. 8), who had been the Senior Counsel on the Cole Inquiry, rebuked the Prime Minister's decision to establish a Public Inquiry, arguing that while they are powerful instruments which can produce great benefit, 'Public Inquiries such as the Oil for Food Inquiry cannot take the place of the administration of justice through the courts'. This point was also reinforced in media commentary. According to Sheridan (2006) the Prime Minister's 'one real mistake was setting up the Cole Inquiry' in the first place. The Prime Minister should have referred the matter to the Australian Federal Police (AFP) to 'see if any Australian laws were broken and left it at that'. The government should 'not [have] let a confected policy scandal produce bad policy' (Sheridan 2006). Davidson (2006) in *The Age* newspaper, also stated that if the terms of reference required Cole to look for breaches of the law, the matter should have gone to the AFP, Australian Securities and Investment Commission (ASIC) and the Director of Public Prosecutions rather than being a 'political circus over 11 months costing \$30 million'. Davidson (2006) went on to argue that 'to be useful the Cole Inquiry should have looked at the governance processes to see how and why the AWB could get away with the rorting of oil-for-food process so easily and quickly without being uncovered by checks and balances in the DFAT, the responsible minister's office and cabinet'.

The AFP and ASIC faced immense difficulty in prosecuting individuals on any matters arising from the Inquiry. Arguably, the Inquiry also created significant delays in prosecuting individuals, in part because of the enormous task of having to re-gather evidence. In *Making Inquiries*, the Australian Law Reform Commission (ALRC) acknowledges this tension. It notes that Public Inquiries are executive inquiries and not judicial in nature. Principles such as due process are therefore less relevant. However, 'this creates a problem when a royal commission recommends that judicial proceedings should be pursued, such as with the Cole inquiry' (OFFTF Report 2015, pp. 50-51).

Commissioner Cole himself quoted Justice Owen, who stated that 'a finding that the law has been breached is of no effect until it has been made by a court of competent jurisdiction' (Cole Report 2006, Vol. 1, p. 159). The Chair of the OFFTF accepted that 'the need to reconstruct evidence imposes a heavy burden on investigatory agencies and may even act to skew a subsequent investigation towards specific findings, closing down possibilities of

pursuing other avenues of investigation' (OFFTF Report 2015, p. 51). The Chair also noted that 'another problem with using a royal commission as an investigative body is that the scope of a royal commission's inquiry is limited to its terms of reference, as established by the executive of government' (OFFTF Report 2015, p. 51).

This thesis has established that the Government 'dodged a bullet' by establishing the Cole Inquiry. From the perspective of citizens, however, was an investigatory Inquiry the appropriate instrument to interrogate the AWB scandal? Like all Public Inquiries, the Cole Inquiry could investigate but could not prosecute. It could only recommend referral to the courts. However, this referral could only be done when evidence had been regathered in such a way as to make it permissible in a court of law. Further, as an investigatory Inquiry conducted in a highly legalistic manner, it was not a broad forum for public participation or for airing grievances. Nor did it address concerns about Ministerial accountability and public administration. Yet, and as acknowledged by Commissioner Cole, it was a matter about which citizens had a lot to say, and about which they were gravely concerned. From the perspective of citizens then this Inquiry, as constituted by Government, may not have been the appropriate instrument to successfully address the outrage at this breach of the social contract.

7.4.5 'Success is not an all or nothing phenomenon' (McConnell 2010, p. 55)

Applying the propositions drawn from the literature about what a successful Public Inquiry looks like has fallen short of providing clear answers. It has also highlighted the lack of focus on citizens' perspectives on success. The methodological decision to include different types of Public Inquiries as part of the research design to assess success under different circumstances has also proven to be of limited value because the analytical framework did not work sufficiently for any of the three different types of Public Inquiry.

However, success is not all or nothing, and the analytical framework has achieved the central objective of assessing the success of Public Inquiries in Australia. The framework has proven useful in enabling a nuanced and multi-dimensional analysis. It has also provided a strong basis upon which to inductively frame further propositions and perspectives, namely those of citizens, which acknowledge the place of these powerful institutions for society, not just for government.

Like Bovens, 't Hart and Peters' (2001, p. 653) rich and complex comparative analysis of success and failure in governance, '[d]espite the somewhat indeterminate nature of these findings, we are not yet ready to say that this is a garbage can in which outcomes are purely situational and random. There are some regularity in these data'. It is in this spirit that this

thesis therefore draws out the implications of these findings for scholarship and moves to theory building.

7. 5 Implications for scholarship

7.5.1 Building theory - putting the 'Public' back into Inquiries

The research question is: How can the success of Public Inquiries be assessed? There is value in addressing this question because of the serious matters Public Inquiries investigate, because they are a recurring feature of our systems of governance, because of the trust citizens invest in them and, of course, because of their significant cost. However, application of the analytical framework drawn from the literature which contemplates Public Inquiries has led to equivocal findings and more questions. The analyses have been of value in shedding light on various aspects of success, but they have been incomplete. Citizen perspectives are not prominent. This section revisits the significance of these powerful institutions and inductively builds theory about how to assess the success of Public Inquiries on the basis of the insights drawn from the case study analyses. It then explores other literatures which offer insights about how to assess success incorporating citizen perspectives.

The primary focus of analysis in the public administration and political science literature is how Public Inquiries serve governments, not how they serve citizens. This thesis positions Public Inquiries as more than a tool of government. They are a tool of society and as such citizen perspectives are an integral part of any assessment of success. Such perspectives may be inferred from media commentary, parliamentary processes and so on, but there are also other proxies which are indicative of citizens' views of success. These include subsequent Inquiries, changes of government and ongoing legal action. However, there are rarely, if ever, direct feedback mechanisms from those who have been impacted by the subject of the Public Inquiry, or from those who have participated in its processes. In the absence of these direct mechanisms the proxies outlined above are significant.

This is not to suggest that all citizens are equally as interested or invested in every Public Inquiry that is established. Nor is it to assert that citizens are one homogenous group. As Benington (2009, p. 235) observes 'the public sphere is heavily contested territory'. Weale (2013, p. 26) notes that 'the fundamental conception of society that lies behind social contract theory...is one in which the members of society share certain common interests and equality of status, but in which they also have competing and sometimes incompatible interests'. Further, Weale (2013, p. 222) claims 'nothing in this description [of the social contract] says that there will be political consensus'. However, it is precisely because of the

enduring nature of divisive issues and concerns in society that institutions such as Public Inquiries become an important public good. Weale (2013, p. 223) argues that 'because there will always be conflicting evidence and assumptions... it is in the collective interest' for a body or process, [such as a Public Inquiry], to investigate and generate alternatives as a basis for decision making.

It is, of course, true that some Public Inquiries are more relevant and important to some individuals, interest groups and sectors of the community than others. For instance, while there may be broad community outrage at child deaths and failed child protection systems, there may be a narrower community of interest in a Home Insulation Royal Commission (Hangar 2014). While there may be broad community concern about banking practices there may be narrower interest in a Public Inquiry into the costs and efficiency of grain storage (McColl 1988). However, every Public Inquiry will have a community of interest other than government. Within this community, people and organisations will have different interests. Their perspectives on success are relevant.

7.5.1.1 The significance of Public Inquiries

'It really belongs to the nation' (Gillard 2017).

The literature establishes that Public Inquiries occupy a special and revered place in society. The uproar, the outrage, the public interest and the importance of the matters Public Inquiries are established to investigate are difficult to overstate. Even if some Inquiries may be characterised as 'election stunts' (Australian Council of Trade Unions, 2014), or as a 'witchhunt' (Blackwell 2014) a Public Inquiry promises to discover truth, dispassionately investigate and get to the heart of a matter which has fundamentally violated the community's expectations. It is for this reason that a Public Inquiry gains such political capital, for example, as demonstrated by using the promise of a Public Inquiry as an election commitment.

There can be no more powerful example of just how important Public Inquiries can be than then Australian Prime Minister, Paul Keating's famous 'Redfern Speech' on 10 December 1992 (Keating, 1992). In arguably one of the most defining and significant speeches in Australian history Prime Minister Keating directly linked the acknowledgment of the wrongs done to Aboriginal people and the Royal Commission into Aboriginal deaths in custody.

Prime Minister Keating said:

We took the traditional lands and smashed the traditional way of life. We brought the diseases. The alcohol. We committed the murders. We took the children from their mothers. We practised discrimination and exclusion. It was our ignorance and our

prejudice. And our failure to imagine these things being done to us...As a consequence, we failed to see that what we were doing degraded all of us.

If we needed a reminder of this, we received it this year. The Report of the Royal Commission into Aboriginal Deaths in Custody showed with devastating clarity that the past lives on in inequality, racism and injustice. In the prejudice and ignorance of non-Aboriginal Australians, and in the demoralisation and desperation, the fractured identity, of so many Aboriginal and Torres Strait Islanders.

Keating's Redfern Speech captures the essential point. Public Inquiries are an instrument of society, not just of government. They belong to us all. They are a revered part of the social contract, they provide a special place to right wrongs; '[t]hey will always be considered a vital instrument for discovering the truth, for good governance, for improving accountability' (Kerr 2014, p. 293). Along with other constitutional checks and balances, they 'play an important and indispensable role in checking up on the leaders, in making them responsive to the longer term interests of a free society' (Spann 1967, p. 10). According to Sheriff (1983, p. 672), the contribution of Inquiries 'to policy formulation is less important than is their contribution toward social harmony'.

Writing in the context of the recent Royal Commission into the Protection and Detention of Children in the Northern Territory (November 2017), Deslandes (2016) reinforces this point:

As public inquiries with far-reaching powers that report to the nation's highest authority, royal commissions do important moral work in Australia. They represent an attempt to reckon with systemic failures in leadership. As an exercise of moral authority they say something forceful about what is right...Indeed the term 'commission' itself refers in some way to the delegation of trusted authority.

Ahead of the release of the Report of the Royal Commission into Institutional Responses to Child Sexual Abuse on 15 December 2017, former Prime Minister Gillard (2017) stated; '[i]t really belongs to the nation this Royal Commission and so everything that it has found belongs to the nation, and has to be received by it'.

Reflecting on the unethical practices uncovered by the Royal Commission into Misconduct in Banking, Superannuation and Financial Services, the chair of one of Australia's major banks states, 'It's our job to rebuild public trust' (Durie 2018).

According to Kerr (2014, p. 284), Australians 'understand that [a Royal Commission] is not just another inquiry. The term "royal" conjures up a certain degree of pomp...The word "royal" also imposes solemnity. And solemnity imposes importance and authority, the need for respect, a sense of occasion'.

Yet despite their significance, ubiquity, and cost to the public purse, scholars have not yet developed robust criteria to assess the success of Public Inquiries. An explanatory framework continues to remain elusive (Gilligan 2002, p. 289). The roles and functions of Public Inquiries have been comprehensively described within public administration and political science literature and theory. Properly these literatures go to questions of politics, public policy, administration and management. This research finds that this lens provides an important but incomplete perspective and fails to position Public Inquiries as a significant instrument of society, not just of government.

The case study analyses suggest that criteria of a different order are required in order to assess success more holistically and to incorporate the perspectives of citizens. Other literatures and theories must be drawn upon in order to round out contemplation of how to assess the success of Public Inquiries.

7.5.2 A revised analytical framework to assess the success of Public Inquiries

Each Public Inquiry examined in this thesis is clearly different. Each was established for different reasons, to investigate matters of grave public importance in different ways. Fundamentally, however, they all have something in common. Drawing on the positioning of Public Inquiries as expressing a significant dimension of the social contract between government and citizens (Chapter 1), this thesis argues that the overarching, unifying purpose of Public Inquiries is to rebuild the social contract after breach.

Within this purpose, three enduring functions of Public Inquiries are identified: to respond, to hear and to prevent. These functions hold across the variety of issues Public Inquiries interrogate, the conditions under which they are established and the various forms they take. These reframed functions bring the breach of societal expectations, restoring trust and the public good into the centre of the challenge of assessing the success of Public Inquiries.

These three functions suggest a reframing of the propositions for success as outlined in Chapter 3, and provide the backbone for an overarching analytical framework against which success, or otherwise, may be assessed. This is outlined in Table 4.

Table 4. Revised analytical framework to assess the success of Public Inquiries

Enduring functions of Public Inquiries	Current propositions of success drawn from the examined literature	Reframed propositions of success
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To respond	The ways in which the Public Inquiry responds to crisis and restored legitimacy.	The ways in which the Public Inquiry is trusted to make sense of the events or the violation of the public's expectations.
To hear	The ways in which the Public Inquiry gives voice.	The ways in which people were heard.
To prevent	The ways in which the Public Inquiry provides the opportunity for policy change and improved outcomes.	The ways in which the Public Inquiry rights wrongs and changes policies, processes or outcomes for the better.

In the following sections suggestions are made about how the reframed propositions may be used to assess the success of Public Inquiries. The elements of success, indicators and measures are indicative only. Not all of them will be as relevant to different Inquiries established under different circumstances. However, they may provide a starting point upon which to shape relevant considerations to guide future assessments of success incorporating citizen perspectives.

In this context, various literatures are examined which offer promising theoretical and empirical frameworks which may be applied to assess the ways in which a Public Inquiry has been successful in meeting these reframed propositions.

Reframed Proposition 1

To respond: An assessment of the success of a Public Inquiry should examine the ways in which the Public Inquiry is trusted to make sense of the events or the violation of the public's expectations.

Table 5. Revised analytical framework to assess the ways in which the Public Inquiry is trusted to make sense of the events or the violation of the public's expectations.

Possible elements of success	Possible indicators	Possible measures	Possible sources of evidence
Was the Inquiry trusted to openly and independently find out: what happened; what	Extent to which the Public Inquiry produced a plausible, authoritative narrative	Level of trust in Commissioner and his/her independence. Composition and processes of the	Feedback from broader community and specific communities of interest.

<p>went wrong; who is to blame?</p> <p>Did the Public Inquiry properly deal with whatever it was that led to its establishment?</p> <p>Was public trust restored?</p> <p>Was the Public Inquiry perceived to be authoritative and independent?</p> <p>Did it have accessible and inclusive processes (Fairclough1992).</p>	<p>(Brown, Ainsworth and Grant 2012).</p> <p>Extent to which the Public Inquiry provides some meaning, some explanatory power to the events, why and how they happened (Boudes and LaRoche 2009, Stapleton and Wilson 2017).</p> <p>Extent to which the Public Inquiry uncovered in a clear and compelling way the root causes of the events.</p> <p>Identification of who was responsible – individual and institutional accountability.</p>	<p>Inquiry, levels of agreement with the scope and terms of reference.</p> <p>Scope and methodology of report</p> <p>Degree to which the subject matter is understood as a genuine matter of public importance, a 'witch-hunt' or political posturing.</p>	<p>Feedback from participants.</p> <p>Rigour and scope of recommendations.</p> <p>Acceptance of recommendations and openness in reporting implementation progress.</p> <p>Subsequent prosecutions, legal action or corrective actions.</p> <p>Media and academic commentary.</p> <p>Shifts in public discourse (Fairclough 1992).</p> <p>Narrative templates (Stapleton and Wilson 2017).</p> <p>Global and situational meaning-making (Park 2010).</p>
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7.5.3 Promising theoretical lenses – discourse theory, rhetorical perspectives, narrative and sensemaking theories

This section explores various perspectives offered through discourse theories and analytical frameworks in order to assess the ways in which a Public Inquiry has been trusted to make sense of the events.

Discourse theories are highly relevant because they concern the interplay between language and social processes, power and control (Jaworski and Coupland 2006). Discourse is not

just text, but the whole act of communication involving production and interpretation. Discourse analysis offers an examination of the way in which language and discourse are used to achieve social goals and the part this plays in social maintenance and change (Bloor and Bloor 2007).

The origins of discursive change lie in the 'problematization' of events. Events become problematized, which then become the focus for struggles at the institutional and societal level. These have the potential to cumulatively produce structural changes in discourse and shifts in power relations. In Edelman's terms (1977, p. 3) it is 'language that evokes most of the political "realities" people experience'. As referred to in the literature review (Chapter 2) there is a rich body of theory and empirical work on 'framing contests' and how some events come to be 'crises' (possibly triggering a Public Inquiry) while others do not (Boin, 't Hart and McConnell 2009).

Discourse in social theory refers to different ways of structuring areas of knowledge and social practice. In social theory, discourses do not just represent or reflect social entities and relations, they 'signify' the world, construct or 'constitute' them and their meaning. Different discourses constitute key entities (for example, corruption, child abuse, natural disasters) and position people in different ways as social subjects (for example, child protection workers, victims, emergency workers). Shared meanings are ascribed to these entities.

Fairclough's (1992) analysis focuses on change and how different discourses combine under particular social conditions to produce a new complex discourse. Examples include shifts in narratives from 'siloes government agencies' to 'joined up collaborative approaches'. In the context of this thesis, examples might include shifts in discourse: from the 'rough and tumble world of international wheat trade' to ethical, transparent international corporate conduct (Chapter 4); from child protection agency to shared responsibility for child wellbeing (Chapter 5); and, from a focus on emergency responses to prevention and capacity building (Chapter 6).

Fairclough (1992, p. 64) provides a powerful, comprehensive method for investigating social change and details an approach to discourse analysis which investigates social and cultural change and the role of language in 'the struggle and transformation in power relations' (Fairclough 1992, p. 2). His analysis pays attention not only to text but also to the processes of text production and interpretation (Fairclough 1992, pp. 2-3). In the context of this thesis Fairclough's (1992) social theory of discourse analysis may be applied to:

- text - the reports and various communications of the Inquiry. This would include submissions, transcripts of hearings;

- discursive practice - the establishment, processes and outcomes of a Public Inquiry. This would include the extent to which Inquiry processes were inclusive and accessible;
- social practice - an examination of whether existing ideologies and power relations are maintained and strengthened, or transformed. This would include whether there were changes to policy inputs and networks. It would also examine whether the pervading narrative on the issue undergoes a shift, for instance, through media and public discourse.

Such an analysis would provide significant evidence regarding the ways in which the Inquiry was trusted to make sense of the events.

The theory of rhetorical institutionalism also offers insights on how to assess success on this reframed proposition. According to Berger and Luckman (1966 p. 82) 'the edifice of legitimations is built upon language and uses language as its principle instrumentality'. There is an emerging field in organisation studies exploring rhetorical sources of legitimation. This literature argues that legitimacy is a social phenomenon and can be closely studied through analysis of language and discursive practices (Parks 2011, p. 51). In the context of a Public Inquiry, rhetorical perspectives and methodologies may be employed to assess the extent to which Public Inquiry texts have persuaded readers that they are truthful, plausible, authoritative and verisimilitudinous, that is, the extent to which they made sense of the events (Brown, Ainsworth and Grant 2012, p. 300). There is also a body of empirical work focussing on Inquiry reports as 'active' texts which 'recognises the underlying agency of their authors' (Herepath and Kitchener 2016, p. 1114), and as 'artefacts of authoritative sensemaking (Boudes and LaRoche 2009; Brown 2004; Brown and Jones 2000). These studies provide directions and frameworks which may be applied to this task. There is also an emerging field of study in the use of rhetorical strategies to restore legitimacy post a Public Inquiry (Parks 2011; Suddaby and Greenwood 2005).

Narrative and sensemaking theories and literatures also provide promising insights into assessing shared understandings, and hence the possibility of factoring in citizen perspectives into an assessment of success. Narrative templates (Stapleton and Wilson 2017) provide a way of interpreting the socio-political world. By drawing on these shared templates of events and actors, as well as by rearticulating existing sets of meanings and narratives, we make sense of, and position ourselves in the world.

Stapleton and Wilson build on the idea of narrative templates which 'underlie collective accounts [and] structure shared understandings and memories of events and outcomes'

(Stapleton and Wilson 2017, p. 60). Inquiry Reports can play a powerful role in shaping these collective accounts and creating shared templates. To exemplify, the Report of the Victorian Bushfires Royal Commission describes itself as ‘an important part of securing the memory of the fires’ (2010, p. vii).

Within narrative psychology narratives are a way of understanding cognition (Bruner 2004) where ‘the culturally available narrative form is seen as a type of deep-structure that underpins everyday thinking and expression (Stapleton and Wilson 2017, p. 60). Extending this beyond the individual, Wertsch (2002, pp. 30-66) empirically examines the process of collective remembering and interpretation, and narrative texts as cultural tools.⁴¹ These narrative texts, or templates, provide ‘accounts that are “usable”... for various political and cultural purposes’ (Wertsch 2002, p. 66). Stapleton and Wilson (2017) argue that a shared narrative template underlies the production of individual and group-based stories. In their study, they identify the narrative structure within which different actors, event sequences and causal relationships are articulated as a way of making sense of the community’s experiences and actions (Stapleton and Wilson 2017, p. 73). Their study ‘provides empirical insight into how narrative operates across different social actors to provide a shared meaning structure’ (Stapleton and Wilson 2017, p. 74). Such approaches offer powerful mechanisms which could be employed in an assessment of success regarding the ways in which citizens trusted that the Public Inquiry made sense of events.

At the individual level, the meaning-making literature provides profound insights (Park 2010, 2016). Park’s (2016) work on resilience after traumatic events like natural disasters, states that responses like uncertainty, distrust and anger are common where people perceive some elements of human responsibility (Norris, Friedman, Watson, Byrne, Diaz and Kaniasty, 2002).⁴² Park (2010) applies a meaning-making model as a framework for conceptualising processes of coping and recovery after natural disaster events. The model comprises two levels of meaning:

- global - people’s fundamental beliefs about themselves, their place, sense of meaning and purpose, goals and values; and

⁴¹ Wertsch (2002, p. 59) describes narratives as providing both a referential and dialogic function. The referential function concerns ‘the relationship between narratives and the settings, actors and events they depict’, whereas the dialogic function’ concerns the relationship between one narrative and another’.

⁴² For instance, as is evidenced by the subsequent Sofronoff Inquiry (2015) post the QFCI (2012) to further investigate, inter alia, the extent to which the floods were caused or exacerbated by man-made structures.

- situational - how global meaning and the context of a particular situation influences one's interpretation and reactions to a situation, that is, the meaning assigned to these experiences.

Traumatic events may shatter or violate global meanings. Meaning-making processes, like a Public Inquiry, play a critical role in recovery and post disaster resilience. There is potential in a research agenda which explores the relationship between broader social processes and meaning making; specifically, the extent to which a Public Inquiry, as a meaning-making process, assists or hinders recovery and reduces distress.

These theoretical perspectives and empirical approaches offer promising ways to assess the ways in which a Public Inquiry was trusted to make sense of the events.

Reframed Proposition 2

To hear: An assessment of the success of a Public Inquiry should examine the ways in which people were heard.

Table 6. Revised analytical framework to assess the ways in which the Public Inquiry is one in which people were heard.

Possible elements of success	Possible indicators	Possible measures	Possible sources of evidence
<p>Were the processes and structures of the Public Inquiry equitable, accessible and inclusive?</p> <p>What was the 'level' and 'type' of participation (Arnstein, 1969)</p> <p>Was the Public Inquiry a moral actor? Did the Public Inquiry bring out the truth, did it</p>	<p>'Publicness' of the Public Inquiry, that is, the institutional arrangements and mechanisms to facilitate equitable and inclusive participation (Renn, Webler and Wiedmann 1995).</p> <p>The extent of citizen's power in influencing the outcome, as assessed by the 'level' and 'type' of</p>	<p>Evidence of extent to which voices of participants integrated into record, report and recommendations.</p> <p>Availability, dissemination, accessibility and readability of Public Inquiry record and evidence.</p> <p>Extent to which recommendations</p>	<p>Dissemination of participant's stories, testimony, evidence, experience (Ainsworth and Hardy 2012).</p> <p>Breadth and range of participation and communication mechanisms.</p> <p>Inquiry record/Report and communications.</p> <p>Feedback from individuals, families</p>

<p>hear and record the truth? Did the Inquiry uncover different truths? (Stanley 2001)</p> <p>Did the Public Inquiry bear witness? Did it bridge the divide between the elite and private spheres and the public spheres? Did it link the 'public sphere' and the state/ the <i>strong</i> public sphere with the <i>weak</i> public sphere? (Kulynch 1997, pp. 320-321)</p> <p>Did the Public Inquiry provide a platform and process for people to tell their stories and, if relevant, obtain some form of redress?</p> <p>Did the Public Inquiry help the healing of individuals, families and communities who have suffered loss, fear or deprivation?</p> <p>Did the Public Inquiry provide any form of capacity building to build 'competent understandings' and in order to support those who may otherwise not participate?</p>	<p>participation (Arnstein, 1969)</p> <p>Capacity building to ensure equitable and inclusive participation.</p> <p>Fairness and transparency of participation.</p> <p>Forms of participation, for example, was there the possibility of dialogue with the Inquiry, could people ask questions and receive answers?</p> <p>Timing of participation. At which points in the process could people participate, for example, in developing terms of reference, in gathering evidence, in monitoring and evaluation.</p> <p>Equity of access to participation, including assistance and support to participants to ensure participation is non-discriminatory. For example, particular measures for those with visual or hearing impairments, who travel long distances, have caring</p>	<p>align with or depart from Government policy positions, citizen's views, and why.</p> <p>Evidence of short, medium and long - term efforts to provide support and help healing.</p> <p>Evidence of testimony and stories in recommendations.</p>	<p>and communities who have been impacted, and other participants.</p> <p>Evidence of, and feedback about, support measures to ensure accessibility and inclusiveness, for example, information materials which includes meaning of all terms, definitions and concepts in accessible formats.</p> <p>Evidence of support, and feedback about, measures for debriefing/post participation support or counselling.</p> <p>Detail of who participated and on what basis, for example, whether they were invited, selected, self-nominated or representative.</p> <p>Evidence of how the Public Inquiry has balanced the views of experts, advocates and those with lived experience.</p> <p>Evidence of ongoing participation</p>
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<p>(Renn, Webler and Wiedmann 1995)</p> <p>Did the Public Inquiry provide appropriate and accessible support to those who told their story to ensure no further damage was suffered from the process of telling? (Brahm 2007; Stauffer 2015)</p>	<p>responsibilities, require financial assistance.</p> <p>Did it support the participants in the healing/debriefing?</p> <p>Extent to which people's testimony and stories were recorded and included in the report verbatim (Ainsworth and Hardy 2012).</p> <p>Extent to which people's testimony and stories informed findings and recommendations.</p>		<p>mechanisms post Inquiry.</p> <p>Community attitudes and behaviours over time with respect to the subject matter.</p> <p>Media and academic commentary.</p> <p>Changes in public discourse including social media (Habermas 1996).</p> <p>Quality of deliberation (Steenbergen, Bachtigerb, Spörndlib and Steinerab 2003).</p>
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7.5.4 Promising theoretical lenses – participation perspectives and knowledge production

Participation

The literature establishes that public participation is a cornerstone of Public Inquiries (Chapter 2). As previously argued, however, 'giving voice' is not the same as 'being heard' (Ross 2003, p. 327). What does participation mean in the context of a Public Inquiry? A Public Inquiry can be a form of deliberation (Gutmann and Thompson 2004) but as a process governed by its terms of reference and typically legalistic norms and practices how applicable are notions of public participation and deliberative democracy?

A Public Inquiry is not a forum for collective, consensual and non-hierarchical decision making. Whilst participation is a hallmark of descriptions of Public Inquiries, and an expectation of the societies in which they are conducted, what exactly is the purpose of public participation in a Public Inquiry? Is it to reveal 'the collective conscience', inform decision makers, or to acquire the public support necessary to implement change (Renn, Webler and Wiedemann 1995, pp. 5-6)? In their seminal, comparative work on citizen participation, Renn, Webler and Wiedemann (1995, p. 24) note that despite their ubiquitous

nature, public hearings and inquiries, are the 'least studied form of participation'. In their extensive comparative analysis, they explicitly exclude 'traditional methods such as public hearings or inquiries' as they cannot be 'seriously considered as candidates for ideal discourse' (Renn, Webler and Wiedemann 1995, p. 10).

It is pertinent to begin with the terms of reference for each Inquiry examined in this thesis. None of the terms of reference include an explicit requirement about how to conduct the Inquiry, nor is there any obligation to ensure public participation.⁴³ This may be an 'expectation', but the form and breadth of participation is typically a matter for the Commissioner to determine. Each Inquiry Report includes an outline of the approach it has taken to addressing its terms of reference and its processes of participation but this does not reference any pre-determined benchmark or required practice.

Nor does participation necessarily mean that the 'voice' of individuals and groups will be heeded, integrated into recommendations, actions or text. However, giving voice is consistently espoused in the literature as an important feature of Public Inquiries (Chapter 2).

Arnstein's ladder (1969) offers a heuristic which is based on the relative power of citizens and decision makers. In Arnstein's typology, each of the rungs of the ladder corresponds to 'citizens' power in determining the plan and/or program' (Arnstein 1969, p. 216) of participation. The eight rungs of the ladder range from 'manipulation and therapy' (which are forms of non-participation and are designed for powerholders to 'educate' or 'cure' participants); through to 'partnership, delegated power and citizen control' (representing increasing degrees of citizen power (Arnstein 1969, p. 216). The middle three rungs represent various degrees of tokenism (informing, consultation and placation). With regard to informing and consultation, 'citizens may indeed hear and be heard. But under these conditions they lack the power to insure that their views will be *heeded* by the powerful' (Arnstein 1969, p. 217, italics in original). Placation is 'simply a higher level tokenism' because while citizens may advise, the powerholders continue to have the right to decide. (Arnstein 1969, p. 217).

⁴³ Section 7 of the QFCI Terms of Reference and Section 8 of the QCPI Terms of Reference state that the Commissioner 'may hold public and private hearings in such manner and in such locations as may be necessary and convenient. The Cole Inquiry's consolidated Letters Patent include no reference to public participation, only that the Inquiry be conducted 'to the extent possible, so as to avoid public disclosure of commercially sensitive or confidential material' (Cole Report 2006, Appendix 2, p. 15).

The analysis of the three case studies confirms that the forms of participation in the Public Inquiries have hovered around these three middle rungs. Arnstein's heuristic provides a powerful model against which to assess levels of participation and whether citizen's voices were heard.

It is also argued that assessing the success of a Public Inquiry with regard to the ways in which it has 'given voice' reinforces the power, position and perspective of government. In the context of a Public Inquiry it is government that establishes the Inquiry and sets the agenda. This is enshrined in the terms of reference. Establishing the terms of reference is not typically done on the basis of consultation or participation. Further, it is the Public Inquiry itself which then sets the rules for engagement and deliberation. Inquiries usually resemble quasi-judicial venues and as such it is these norms, rules and procedures which usually govern engagement and participation.

Renn, Webler and Wiedemann (1995, p. 24) note that '[t]o a citizen, the thought of attending a public hearing immediately conjures up negative images. Citizens often picture the public hearing process as disempowering... To regulatory officials, experts and project sponsors, the public hearing hall is a battle zone'. A number of studies indicate that hearings are overly technical (Checkoway 1981, p. 568); favour participants who are more educated, politically active and better informed than non-participating community members (Godschalk and Stiffle 1981) and are dominated by those with economic interests (Checkoway 1981, pp. 568-569). Further, differential access to data and information means that experts are often more empowered than citizens (Hadden 1989).

As such, participation processes may not always be equitable. Using Habermas' theories of society and human action, Webler (1995) 'operationalises' Habermasian theory into practice and develops an evaluative model against which to assess a range of participation processes. Webler's procedural normative model of public participation articulates the goals of fairness and competence, based on Habermasian notions of communicative competence and the ideal speech situation. Webler's focus is on procedure, not outcomes. When participation is fair, everyone takes part on an equal footing. In the context of a Public Inquiry this would include technical experts, politicians, members of the public, affected individuals and academics. Webler argues that competence within a shared social construction (as distinct from Habermasian notions of individual competence) relates to competent understandings of terms, concepts, definitions and language, through established procedures and rules that coordinate interaction. In order to ensure equitable participation, this may require some capacity building, information and support for some participants.

Webler's (1995) model establishes that the conditions for fairness are that anyone may participate (attend), initiate discourse (make speech acts), challenge and defend claims (discuss) and influence the final determinations (decide). These aspects are relevant to each of the levels of public participation: agenda setting and rule-making; moderation and rule enforcement; and discussion. The conditions for competence are minimal standards for cognitive and lingual competence, access to knowledge (information and interpretation), procedures for knowledge selection and use of the most reliable methodological techniques available.

Webler (1995, pp. 78-86) provides a fulsome and detailed list of the discursive standard criteria which may be applied to assess the extent to which participation has been fair, equitable and inclusive according to the conditions described above. Different criteria attach to different forms of discourse. Webler acknowledges that there are applications where some criteria matter more than others and some where particular criteria may be inappropriate. For example, in the context of a Public Inquiry, criteria regarding agenda setting and process rules may not be relevant, but fairness considerations around who is invited or selected to attend, and how, may be highly relevant (for example: via selection; subpoena; random methods; calling for volunteers; or open forums). Competence criteria regarding: clarifying the purpose of participation; ensuring barriers to access are removed; ensuring equal access to information, terms, definitions and expert advice; enough time and supports to resolve comprehensibility problems; ensuring sufficient time to participate; promoting a variety of ways of gathering information (for example, stories as well as statistics); and seeking feedback are also highly relevant.

Webler's work draws from Habermasian notions of discursive participation. For Habermas, discursive participation is a very broad idea and the public sphere is an abstract concept. The public sphere is a 'network for communicating information and points of view' (Kulynych 1997, p. 322). It is not defined by a physical presence, but rather by a 'communicative structure' (Kulynych 1997, p. 322). Habermas offers insights beyond his time which are of direct relevance in the current era of social media, blogs, on-line campaigning and advocacy. Habermas argues that 'being present in a "central locale" is unnecessary for the public sphere' and that "'simple and episodic encounters" in which actors "reciprocally attribute communicative freedom to each other, unfolds in a linguistically constituted public space"' (Kulynych 1997, p. 322). These are the 'faceless public spheres made possible by the new electronic technologies' (Habermas 1996, p. 373). These types of communicative structures also make participation easier, are extremely inclusive and less resource intensive. Participatory mechanisms for Public Inquiries typically comprise hearings, being called as

witnesses and receiving submissions. Habermasian strategies for more inclusive, equitable participation could extend to blogs, social media, live streaming, chat rooms and simple email exchanges.

Not everyone is equally capable of participating. Some people will require additional supports, information or considerations to ensure they have truly equitable access to participatory processes. Different Inquiries have addressed these particular issues in different ways, usually by travelling to rural and regional locations. However, in none of the case studies analysed has there been a consideration of capacity building to support the participation of those who may be vulnerable, or whose voices are less likely to be heard. In the instance of the QFCI information and counselling were provided if requested however, this is different to capacity building. Capacity building typically focuses on strengthening the skills, competencies and abilities of people to enable them to participate and engage in the Inquiry's processes and deliberations fully and equally.

There is potential to establish evaluative criteria relevant to each Public Inquiry around the dimensions of how fair and competent its processes have been, and the extent to which they 'bring *relatively more* communicative reasoning' (Eriksen and Weigård 2003, p. 200, italics in original) into their deliberations. One example is Steenbergen, Bachtigerb, Spörndlib and Steinerab's (2003) Quality Deliberation Index which offers a reliable instrument based on Habermas' discourse ethics and empirically tests the quality of discourse in deliberation.

Knowledge production

How does a Public Inquiry come to know something? Building on previous work on knowledge production Ainsworth and Hardy (2012, p. 1709) argue that Inquiries may be considered as epistemic communities whose members are brought together to construct epistemic objects, that is, the 'problem' under examination. In the context of the three case studies analysed for this research the epistemic object may be constructed as 'practices of the AWB Board and executive', 'children at risk of harm', 'loss of life and damage from flooding'. However, in each of the cases, the object is also an epistemic subject who appears before the Inquiry and is a member of the epistemic community: 'If epistemic objects are that which come to be known, epistemic subjects are those who know. And like epistemic objects, epistemic subjects do not come to inquiries fully formed' (Ainsworth and Hardy 2012, p. 1709).

How is knowledge formed through the process of participation? Ainsworth and Hardy empirically demonstrate that participation is not a neutral process and that discursive

conventions used by the Inquiry they studied cast the subject in particular ways, for example, as 'helpless', as an 'expert' or 'lay witnesses'. This can result in positioning subjects in a particular light emphasising particular attributes of their evidence over others, for example, stories over statistics, or the original meaning and ownership of stories being lost in the process of transcription and recording (Ainsworth and Hardy 2012, p. 1709). Gabriel (2004, p. 182) emphasises 'the importance of experts "honouring" story-tellers by respecting their narratives and giving up the presumption that they can understand them better than they understand themselves'. Ainsworth and Hardy argue, therefore, that Public Inquiries must record original meanings and ownership of stories, rather than re-tell or re-interpret them. The extent to which a Public Inquiry has done this could be an indicator of success.

The circumstances under which witnesses appear before a Public Inquiry or give evidence can impact on an Inquiry's capacity to 'get to the truth'. However, truth is rarely, if ever 'a single objective reality waiting to be discovered or found' (Chapman and Ball, 2001, p. 3). Truth 'turns out to be a surprisingly elusive goal' (Tepperman 2002, p. 6). There are 'social, technical and methodological constraints, as well as epistemological limitations of what can be known' (Chapman and Ball 2011, p. 3).

There are significant lessons which can be drawn from the Truth Commission literature on this question. For example, South Africa's Truth and Reconciliation Commission's Final Report (Stanley 2001, p. 528; Chapman and Ball 2001, p. 10) details four overlapping notions of truth:

- Factual or forensic truth - based on legal and scientific notions of presenting corroborating evidence obtained through impartial and objective procedures;
- Personal or narrative truth - premised on a culmination of individuals' subjective stories to provide a multi-layered set of experiences;
- Social or dialogue truth - constructed through the debate and discussion of facts on a collective level;
- Healing and restorative truth - truth that places given facts 'in context' in an attempt to acknowledge individual's experiences.

This heuristic provides a useful delineation of the various truths that co-exist and legitimises different forms and functions of truth. Importantly it can also drive the processes of gathering evidence and the extent to which the Public Inquiry's efforts to 'discover the truth' were holistic or partial and hence assess the extent to which the Public Inquiry heard people's truths.

This is particularly important as while Truth Commissions, like Public Inquiries, can be ‘constructed and guided by elite political interests, infusing them with publicness has the potential to mitigate some of the pernicious effects that result... A public truth process, in other words, may help compensate for some of the dubious motivations that elites bring to the commission’s formation and work’ (Taylor and Dukalskis 2012, p. 682).

The Truth Commission literature also confirms that participation is not neutral and that it is not necessarily the case that appearing before, or participating in such a process is healing, cathartic or even helpful (Byrne 2004; Brounéus 2008; Rose, Bisson, Churchill and Wesley 2003). Truth can rekindle anger and trigger post-traumatic stress (Brahm 2007, p. 20). In the context of Truth Commissions, Stauffer (2015, p. 55) states that ‘it is simply not safe to say that testifying before a court – local or international – or truth commission leads to healing or catharsis for victims’. The same may be said for appearing before a Public Inquiry. It becomes critical therefore to ensure that such considerations are integrated into the operation and deliberations of the Public Inquiry and that relevant supports are in place and readily accessible. This is an assessable element of success.

Reframed Proposition 3

To prevent: An assessment of the success of a Public Inquiry should examine the ways in which the Public Inquiry rights wrongs and changes policy, processes or outcomes for the better.

Table 7. Revised analytical framework to assess the ways in which the Public Inquiry rights wrongs and changes policy, processes or outcomes for the better.

Possible elements of success	Possible indicators	Possible measures	Possible sources of evidence
<p>Did the Public Inquiry find out what exactly needs to change? Did the Public Inquiry get to the heart of the matter?</p> <p>Did the Public Inquiry speak truth to power?</p> <p>Did its analysis</p>	<p>Identification and analysis of the root cause of the problem.</p> <p>Analysis which is descriptive (how the breach came about), retrospective (establishing a view of</p>	<p>Regulatory, structural, cultural and normative changes.</p> <p>Perpetrators are identified and held to account.</p>	<p>Report and its evidence base.</p> <p>Degree to which findings or conclusions are challenged or disputed.</p>

<p>'connect knowledge with power' (Wildavsky 2004, p. 9)</p> <p>Do the Report and recommendations serve as a focal point for continued pressure for change and to hold government and elites to account?</p> <p>Did the Commission 'impart moral strength and urgency to recommendations to reform institutions' or put in place mechanisms to prevent the recurrence of such events? (International Centre for Transitional Justice 2008).</p> <p>Did the Inquiry build advocacy for repair? (Herepath and Kitchener 2016, p. 1135)</p> <p>Did the Inquiry outline the form repair must take? (Stauffer 2015)</p> <p>Will implementation of the recommendations make a difference, lead to better outcomes or reduce the chances of this happening again?</p>	<p>the past and why things have to change), prescriptive (what should be done), selective (who should do what), objective (as it compares to other alternatives), argumentative (to justify and build support for its recommendations) (adapted from Wildavsky, 2004, p. 14)</p> <p>Was the Inquiry's analysis based on accurate and appropriate data; was the evidence believable, from diverse sources and tested for credibility; are the arguments persuasive and balanced rather than one sided (Adapted from Wildavsky 2004, p. 401).</p> <p>Construction of alternatives and clear criteria and rationales for choosing its recommendations.</p> <p>Do recommendations for institutional reform cover regulatory, normative and cultural-cognitive spheres?</p>	<p>Accuracy of technical detail and analysis.</p> <p>Number of recommendations implemented and accessible progress, tracking and reporting of outcomes.</p>	<p>Subsequent Inquiries, processes or legal action to investigate the same or similar matters.</p> <p>Recurrence of the same or similar events.</p> <p>Implementation of recommendations by agencies and associated monitoring and reporting on progress and outcomes.</p> <p>Prosecutions or processes to implement sanctions.</p> <p>Improved transparency and accountability mechanisms.</p>
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	<p>(Brown, Ainsworth and Grant 2012, Herepath and Kitchener 2016).</p> <p>Is legislative, structural or other change required to avoid repetition of events or abuses?</p> <p>Is there the political and administrative will to implement, be accountable, monitor and report?</p> <p>Extent to which there is a shift in public discourse, social norms and expectations.</p>		
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7.5.5 Promising theoretical lenses – building advocacy for repair

As stated in Chapter 2, it is acknowledged that using the criterion of implementation of recommendations is an ‘unfair’ measure by which to assess the success of a Public Inquiry. A defining challenge of this thesis is how to assess the success of a Public Inquiry in full knowledge that it has no power of implementation. Reiterating Banks (2013), recommendations are presented to government on a ‘take it or leave it basis’. Governments will always have their own agendas and purposes for setting up a Public Inquiry. The literature is also bountiful on the forces that agencies will bring to bear to facilitate or resist implementation (Ashworth, Boyne and Delbridge 2007; Frumkin and Galaskiewicz 2004; Lindquist, and Wanna 2011; Kingston and Caballero 2009; Hood 2002; Furusten 2013; deLeon and deLeon 2002; Matland 1995; Pressman and Wildavsky 1973). However, Wildavsky (2004, p. 387) reminds us that the distinction between analysis and implementation should not be ‘an impassable line’. Policy analysis includes ‘thinking up ideas’ as well as ‘facilitating their application’ (2004, p. 10).

However, from the point of view of citizens, implementation matters. Preventing recurrence matters. Better outcomes matter. Otherwise what purpose did the Public Inquiry serve? How

can a Public Inquiry be considered a success if nothing happens as a result, or if nothing improves? This may, of course, be exactly the outcome government seeks but it will never be the outcome sought by society when there has been a violation of norms or expectations, and a breach of public trust. It is therefore central to assessing success. The Public Inquiry is a powerful symbol of, and force for change. If things do not change for the better how is the expense, time or effort justified? This is a legitimate question.

Turner (2017) encompasses this expectation when, on the release of the Report of the Royal Commission into the Protection and Detention of Children in the Northern Territory (White and Gooda 2017), she stated; 'You don't set up a royal commission and then walk away from its recommendations'.

Or, in another expression that powerfully expresses this expectation of the same Royal Commission (Anderson 2017):

I would go so far as to say the very survival of Aboriginal people in the Northern Territory depends on this commission making a real impact here; that it not just be that we all feel good talking about it, and we go away feeling all warm and fuzzy, and it's dropped in a filing cabinet somewhere... The pattern of having "a feel-good moment" from doing a report and then leaving it [has] to end. That cannot happen here today, [with] this report...Please, I beg you just do not drop it into the filing cabinet. You are morally bound to not just talk about it.

When a Public Inquiry reports, the community's expectations for change are high. While it may not be appropriate to assess how successful a Public Inquiry has been by way of the implementation of its recommendations, it is possible to assess the extent to which an Inquiry has 'built advocacy for repair' (Herepath and Kitchener 2016). As outlined in Chapter 2, Inquiry reports are not neutral. Inquiry reports 'build advocacy for repair' (Herepath and Kitchener 2016, p. 1135; Stauffer 2015): they are political texts employing rhetorical strategies 'that legitimize institutional logics leading to social and managerial policies' (Brown, Ainsworth and Grant 2012, p. 298). They outline the form repair must take (Stauffer 2015, p. 35).

According to Brown, Ainsworth and Grant (2012, p. 313) 'change in institutional practices is accomplished by rhetorical strategies'. In their examination of a Public Inquiry Brown, Ainsworth and Grant (2012) analyse how an Inquiry text makes a case for institutional change. Brown, Ainsworth and Grant (2012, p. 313) make a powerful case for the role and power of Inquiry texts to use 'language to affirm one logic..., deligitimate and replace an existing logic...and marginalize other competing logics' which 'mostly required dominant actors to do things differently'. A 'hegemonically successful report' refers to the extent to

which a Public Inquiry's Report has constructed an official narrative which 'makes sense', is plausible, fair, largely accepted, and authoritative (Brown 2004, Boudes and Laroche 2009).

Herepath and Kitchener (2016) use Aristotle's three classical rhetorical justifications in their comparative case study of six 'iconic scandals' in the United Kingdom's National Health Service:

- Logos - rational calculations conferring pragmatic and cognitive legitimacy;
- Ethos - impacting on cultural norms or ethical sensibilities conferring moral legitimacy; and
- Pathos - impacting on emotions constructing pragmatic legitimacy.

Herepath and Kitchener (2016) examine forensic rhetoric, which focuses on the causes of the breach, and deliberative rhetoric, which is used to convey the recommendations to effect repair of the Inquiry reports. Their examination demonstrates how this 'repair work' is primarily directed at regulative and normative pillars of the breached institution, though their consequential effects also seek to realign the cultural-cognitive pillar' (Herepath and Kitchener 2016, p. 1115).

This analytical model provides a powerful template against which to examine the extent to which Inquiry reports have built advocacy for repair, or whether they are 'small bandages' on a 'gaping wound' (Herepath and Kitchener 2016, p. 1118). The foundational analytical questions are whether the Inquiry's findings and recommendations focus sufficiently on the three pillars of institutions (Herepath and Kitchener 2016, p.1116, p. 1134; Brown, Ainsworth and Grant 2012; Brown 2004; Scott 2014):

- institutional reform - regulation, rules and laws;
- normative - values, norms and social expectations; and
- cultural-cognitive - beliefs, scripts and symbolic systems which guide behaviour.

Do the Inquiry texts link the cause of the crisis, or breach, to the recommendations for repair to mitigate future occurrences (Herepath and Kitchener 2016, p. 1115)? As discussed in Chapter 2, while implementation of recommendations may not be a 'fair' measure by which to assess success of a Public Inquiry, the ways in which the Public Inquiry has successfully built advocacy for repair is an entirely appropriate measure and can be empirically assessed using Herepath and Kitchener's (2016) analytical construct.

High quality analysis further builds advocacy for repair. The quality of analysis undertaken by a Public Inquiry can be assessed against a range of criteria (see in Table 7). For example, Wildavsky's exposition of the art and craft of policy analysis (2004, p. 386) acknowledges

'that problems are not so much solved as alleviated, superseded, transformed and otherwise dropped from view'. It is the art and craft of analysis that can and should be judged. In the context of Public Inquiries this refers to the way in which the Inquiry has practised the art of problem solving (discovering new ways to solve a problem) and the craft of justification (persuading others that recommendations and proposed alternatives are feasible and desirable), (Wildavsky 2004, p. 388-389). Solutions may be temporal and iterative, and 'truths' can be eclipsed (Wildavsky 2004, p. 402), however, the quality and integrity of analysis remains an assessable element of success.

7.6 Conclusion

This chapter has presented the findings of the case study analyses. The application of the analytical framework derived from the literature has yielded ambiguous results. It has also demonstrated that the propositions of success are weighted to the perspective of government, not citizens.

The implications of these findings for scholarship and further research are articulated. The case study analyses have enabled the researcher to build theory inductively. For Public Inquiries positioned as an expression of a significant dimension of the social contract, the perspectives of citizens must be more effectively incorporated. An overarching, unifying purpose and three enduring functions of Public Inquiries are theorised which incorporate citizens' perspectives and expectations. A nascent analytical framework is built around these reframed constructs and promising literatures which offer ways in which to assess success on these criteria are presented.

Chapter 8: Conclusion

The central argument of the thesis is that Public Inquiries express a significant dimension of the social contract between state and citizens, the reciprocal acceptance of obligations, and that the overarching purpose of a Public Inquiry is to rebuild the social contract after it has been breached.

This thesis acknowledges that social contract 'is a strongly evocative phrase' (Dobuzinskis 2000, p. 688) and is highly contested. Yet 'for more than two centuries, it has stood as a symbol of a political order founded on agreement among rational individuals who are equal participants in the political process' (Dobuzinskis 2000, p. 688).

Weale (2013, pp.22-23) argues that:

Social contract is a representation of the implicit logic in the normative order of a society, [that is] that the political legitimacy that any social order requires has to be built upon substantial agreement about the social bases of authority... Individuals have to accept certain collective practices and norms if their individual interests are to be secured...In this sense the basic institutions of a society may be regarded as the product of a social contract...Pressure to renegotiate the social contract suggests that dominant institutions are not serving the general interest to a sufficient degree.

Public Inquiries are established by governments when the social contract has been breached by way of a crisis, a scandal, problematic policy, or when inadequacies have been revealed and can no longer be tolerated. This thesis has asked how the success of Public Inquiries can be assessed.

The thesis positions Public Inquiries as a tool of society, not just government. Given their significance to society, the importance of the matters they investigate, and their significant cost to the public purse, theoretically informed, evidence-based assessments of the success of Public Inquiries is a justifiable aspiration. Further, if as Prasser and Tracey (2014, p. 393) argue, Public Inquiries are to continue to be a powerful tool available to government, there is value in pursuing this question.

Frameworks and mechanisms that go beyond the internal processes and workings of a Public Inquiry and have at their heart citizens' perspectives and assessments of success are central to this task. Further, learnings from such assessments may serve to inform the future conduct of Public Inquiries to maximise the extent to which they do perform their important functions and repair the breach of the social contract.

The central objective of the thesis was to assess the success of Public Inquiries in Australia. The thesis has built an analytical framework to assess the success of Public Inquiries incorporating the perspectives of citizens. It began with the propositions for success drawn from public administration and political science literature which properly go to questions of politics, public administration and management.

Each Public Inquiry examined represents a breach of the social contract, of our shared expectations and norms. The Cole Inquiry was triggered by the allegedly corrupt and unethical actions of AWB executives which could no longer be denied, and accusations that government and its agencies had turned a 'blind eye' to these practices. The QCPCI was a powerful acknowledgement that the child protection system was failing children and families. The QFCI was triggered by perceptions of an inadequate response to, and possible exacerbation of disastrous flooding.

However, assessing success using the analytical framework drawn from the examined literature sheds limited light on the extent to which the Inquiries were able to repair these breaches, from the perspective of citizens. The propositions of how to assess the success of a Public Inquiry focus primarily on the perspective of government. That is, the ways in which the legitimacy of government was restored; the ways in which government (through the independent Inquiry) gave voice; the ways in which government policy, processes and outcomes were improved.

Given the significance of these powerful bodies, this research, through the case study analyses, has concluded that these perspectives are necessary but insufficient in assessing success. An assessment of success must include the perspectives of citizens and address the extent to which the Public Inquiry rebuilds the social contract, repairs the breach of public trust and the violation of expectations. By extension, it therefore must include a consideration of the ways in which the Public Inquiry is trusted to make sense of the events, people are heard, wrongs are corrected, and policies, processes or outcomes will change for the better. If a Public Inquiry does not do these important things it has fallen short of success.

It is entirely possible that assessments of success using this more holistic perspective will also yield equivocal results and reveal the 'asymmetries' identified by Bovens, 't Hart and Peters (2001). Success 'is not all or nothing' (McConnell 2010, p. 55), it is a judgement. However, to make this judgement, citizen perspectives are critical - and are currently missing.

Given the lack of evaluative efforts of Public Inquiries to date, the various theoretical and empirical approaches offered which may be utilised to begin to assess success may seem almost radical. Yet such evaluative efforts are expected, and indeed standard fare, in assessment of many government policies, programs and initiatives (for example see *New South Wales Government Program Evaluation Guidelines 2016*). Evaluations might typically include: consulting on terms of reference; seeking advice from experts in community engagement and participation methodologies; designing effective communication strategies and measuring impact and reach; developing and implementing monitoring and evaluation mechanisms at commencement; establishing advisory structures or processes to test recommendations; and evaluating impact from the perspective of all stakeholders. These are considered good practice principles for evaluating any program of activity. It is acknowledged that there are fundamental differences between Public Inquiries and public administration and programs. However, why Public Inquiries have been quarantined from such 'ordinary' evaluative efforts is itself a fascinating question⁴⁴.

As detailed in Chapter 1, assessing the success and impact of Truth Commissions appears to be as elusive as that for Public Inquiries. However, unlike Public Inquiries, part of the reason for this is that they are relatively newly constructed institutions (Stauffer 2015, p. 59). Growing pressure to present evidence based assessments of the impacts and outcomes of Truth Commissions (Bell 2009, p. 11) has led to a proliferation of 'wide ranging social science methods (including surveys, focus groups, interviews, oral histories, transcript analysis, community studies, institutional change and analysis, policy analysis, and quantitative analysis)' (Ben-Josef Hirsch, MacKenzie and Sesay 2012, p. 391). There have also been 'several critical and enduring weaknesses and challenges in these approaches' (Ben-Josef Hirsch, MacKenzie and Sesay 2012, pp. 391-396) including assertions of professional, epistemological and methodological biases. Nevertheless, some promising principles are emerging which may have relevance to assessing the success of Public Inquiries.

Ben-Josef Hirsch, MacKenzie and Sesay (2012) and Brahm (2007) offer insights which are pertinent to the task of this thesis. In summary, an integrative approach to assessing the success of a Public Inquiry would:

- be part of the initial design and construction of the Public Inquiry;
- not be conducted by anyone who is part of, or a participant in, the Public Inquiry;
- include a multi-method approach to minimise biases;

⁴⁴ Perhaps, it is as Wildavsky (2004, p. 6) posits, '[r]esistance to evaluation is part of self-protection'.

- be multi-layered assessing success for the individual, families, community, society and institutions;
- occur over relevant time periods, that is, short, medium and long term;
- include an analysis of the extent to which the outcomes could have been achieved in the absence of a Public Inquiry.

In the context of this thesis, these principles are offered as a starting point to design ways in which to assess the success of Public Inquiries which incorporate citizen perspectives. Chapter 7 has also offered a range of promising literatures to assist in this task.

Even if Public Inquiries are cast as 'witch-hunts', initiated for highly politicised reasons, or appear to be genuine attempts by government to investigate and resolve vexed public policy issues or events, Public Inquiries are serious, weighty instruments of society, not just government. This thesis recasts the wide variety of purposes, forms and types of Public Inquiries into one unifying purpose - to rebuild the social contract. The three essential functions are identified as: to respond; to hear; to prevent. This acknowledges the breach of the social contract and the expectation of repair and suggests ways in which we may assess success incorporating the view of citizens, not just government.

Citizen perspectives provides a powerful means by which to assess the ways in which a Public Inquiry has been successful in repairing the breach of the social contract. This is an important task because, if for no other reason, then 'when they succeed, they start to build a shared narrative that may make repair possible for those who most need it' (Stauffer 2015, p. 49).

Appendices

Appendix 1

Selection of Public Inquiries

This appendix outlines the process and rationale for each case study selected for analysis in this research.

Selection of Policy Advisory Inquiry - Child Protection Inquiries

Chapter 3 outlines the rationale for focussing on one policy area. The policy area selected is child protection. In all Australian states there have been a series of Inquiries into child protection and/or investigations into particular cases of child abuse.⁴⁵ At the time of case study selection, only the most recent Public Inquiries were subject to this selection process.

The Public Inquiries reviewed for possible selection were:

- Children in State Care Commission of Inquiry, South Australia 2008
- 'Growing Them Strong, Together', Promoting the Safety and Wellbeing of the Northern Territory's Children 2010
- NSW Special Commission of Inquiry into Child Protection 2008
- 'Putting the Picture Together', Inquiry into Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities, Western Australia 2002
- Report of the Protecting Victoria's Vulnerable Children Inquiry 2012
- Select Committee on Child Protection, Parliament of Tasmania 2011⁴⁶
- Taking Responsibility, A Road Map for Queensland Child Protection 2013

⁴⁵ There have been no Commonwealth Inquiries into child protection as this is a matter of State jurisdiction.

⁴⁶ The Select Committee of the House of Assembly was established because of community concern arising from the former Commissioner for Children's *Inquiry into the circumstances of a 12-year-old child under the Guardianship of the Secretary, 2009*. One of the terms of reference for the Select Committee (1e) was to assess 'the appropriateness, and need for, any further inquiry including but not limited to a Commission of Inquiry as established under the Commissions of Inquiry Act 1995'. The Select Committee recommended that 'Given the large number of reports and recommendations over recent years, a further broad ranging inquiry into the Child Protection system is not warranted' (Recommendation 172). The Tasmanian Government however, did respond to the Select Committee's recommendations in 2011. For the purposes of this research the Commissioner for Children's *Inquiry into the circumstances of a 12-year-old child under the Guardianship of the Secretary, 2009* was also examined for suitability for inclusion. However, this report did not meet all the criteria for inclusion as it was undertaken by the Government's Commissioner for Children, an ongoing independent statutory officer responsible to Parliament.

- ‘The Territory as Parent’, Review of the Safety of Children in Care in the ACT and of ACT Child Protection Management, 2004.⁴⁷

Using Prasser’s (2003, pp. 85-91, after Hallett 1982) classification system, the above are classified as Policy Advisory Inquiries, that is, they share the following features:

- broad policy analysis and less prescriptive policy advice;
- gain information by cooperative consultation and supplementary research;
- rely on their status as executive appointed bodies to attract submissions and support, less reliant on use of coercive powers;
- avoid excessively formal legalistic processes;
- usually comprise more than one member. Members are drawn from a wide range of different professional groupings, interest groups or academic disciplines. This reflects the broad role of the Inquiry.

Table 8. Assessment of Child Protection Policy Advisory Inquiries by criteria for possible inclusion in research.

Features	NSW 2008	Vic 2012	Qld 2013	SA 2008	WA 2002	NT 2010	Tas 2011	ACT 2004
Ad hoc, temporary.	Y	Y	Y	Y	Y	Y	Y	Y
Appointed by executive government.	Y	Y	Y	Y	Y	Y	N	Y
Funded totally by government.	Y	Y	Y	Y	Y	Y	Y	Y
Discretion of executive government, not Parliament.	Y	Y	Y	Y	Y	Y	N	Y
Discrete organisational unit.	Y	Y	Y	Y	Y	Y	N	N

⁴⁷ Conducted by the Commissioner for Public Administration as a management review under sections 21 and 22 of the *Public Sector Management Act 1994*.

Members drawn from outside public service, government. Does not include Ministers or backbenchers.	Y	Y	Y	Y	Y	Y	N	N
Promote to wider community.	Y	Y	Y	Y	Y	Y	Y	Y
Clear terms of reference, publicly stated.	Y	Y	Y	Y	Y	Y	Y	Y
Seek public participation.	Y	Y	Y	Y	Y	Y	Y	Y
Produce report. Report made public within reasonable time span.	Y	Y	Y	Y	Y	Y	Y	Y
Advisory powers only.	Y	Y	Y	Y	Y	Y	Y	Y
Possible to include in thesis?	Y	Y	Y	Y	Y	Y	N	N

Of the Public Inquiries eligible for possible inclusion in this research, the most recent has been included as the focus of a case study, that is, the Queensland Child Protection Commission of Inquiry, 2013. However, two other child protection inquiries, the NSW Special Commission of Inquiry into Child Protection 2008 and the Protecting Victoria's Vulnerable Children Inquiry 2012, are also examined in Appendix 5 to provide a contextual analysis.

Selection of Investigatory/Inquisitorial Inquiries

Using Prasser's (2003, pp. 85-91, after Hallett 1982) classification system, the following are classified as Investigatory/Inquisitorial Inquiries, that is, they share the following features:

- Seek to ascertain/verify facts about an event, accident, disaster, or corruption/maladministration;
- Reliant on witnesses through hearings/cross examinations;

- Use of coercive powers;
- Usually single membership; and
- Legal/judicial appointment.

As Prasser’s (2003) research indicates these types of Public Inquiries are more likely to be Royal Commissions. Where there were a number of Public Inquiries in a jurisdiction which met the criteria, the most recent has been chosen. At the time of case study selection there were no Public Inquiries in the Northern Territory, Australian Capital Territory (ACT) or Tasmania which met these criteria.

The following were chosen for review:

- Commonwealth - Inquiry into certain Australian companies in relation to the UN Oil for Food Programme 2005-2006;
- NSW Royal Commission into the NSW Police Service 1995-1997;
- Queensland Floods Commission of Inquiry 2012;⁴⁸
- Report of the Kapunda Road Royal Commission, South Australia 2005;
- Royal Commission into whether there has been Corrupt or Criminal Conduct by any Western Australian Police Officer 2004;
- Victorian Bushfires Royal Commission 2009.

Table 9. Assessment of Inquisitorial/Investigatory inquiries by criteria for possible inclusion/exclusion in research.

	NSW 1995-97	Vic 2009	Qld 2012	SA 2005	WA 2004	Cwlth 2005-06
Ad hoc, temporary.	Y	Y	Y	Y	Y	Y
Appointed by executive government.	Y	Y	Y	Y	Y	Y

⁴⁸ The Queensland Floods Commission of Inquiry was initially not chosen for inclusion as ‘the Commission’s approach across the terms of reference has not been one of seeking to attribute blame; its brief was not to seek out wrong-doers but, as the Order in Council establishing it specifies, to make recommendations for the improvement of preparation and planning for future floods and emergency response in natural disasters, as well as for any legislative change needed’ (Queensland Floods Commission of Inquiry, Final Report 2012, p. 30). However, as it had both investigatory and policy advisory elements it has been included as the most recent example of a Hybrid Public Inquiry.

Funded totally by government.	Y	Y	Y	Y	Y	Y
Discretion of executive government, not Parliament.	Y	Y	Y	Y	Y	Y
Discrete organisational unit.	Y	Y	Y	Y	Y	Y
Members drawn from outside public service, government and do not include Ministers nor backbenchers.	Y	Y	Y	Y	Y	Y
Promote to wider community.	Y	Y	Y	Y	Y	Y
Clear terms of reference, publicly stated.	Y	Y	Y	Y	Y	Y
Seek public participation.	Y	Y	Y	Y	Y	Y
Produce report. Report made public within reasonable time span.	Y	Y	Y	Y	Y	Y
Advisory powers only.	Y	Y	Y	Y	Y	Y
Possible to include in thesis?	Y	Y	Y	Y	Y	Y

Using the schema above, all of the above case studies appear eligible for inclusion as a case study. However, on closer examination both the Victorian Bushfires Royal Commission 2009 and the Queensland Floods Commission of Inquiry 2012 are examples of hybrid Inquiries, that is they have both investigatory and policy advisory functions. The most recent Investigatory Inquiry, the Commonwealth Inquiry into certain Australian companies in relation to the UN Oil for Food Programme 2005-2006 is therefore included as the focus of this case

study. The most recent example of a hybrid Public Inquiry, the Queensland Floods Commission of Inquiry 2012 is included as an example of a hybrid case study.

Appendix 2

The Oil for Food Task Force and post-script to the Cole Inquiry

The then Attorney-General, Philip Ruddock, announced the establishment of the Oil for Food Taskforce (OFFTF) on 20 December 2006. The task force was established as a direct outcome of Commissioner Cole's finding that breaches of the law might have occurred and that these matters be referred to the appropriate authority for consideration whether proceedings should be commenced for breach of the law. Commissioner Cole recommended that a task force be established comprising the Australian Federal Police, Victoria Police and the Australian Securities and Investments Commission in consultation with the Commonwealth Director of Public Prosecutions and Victorian Director of Public Prosecutions. Responsibility for the conduct of the task force was to reside with the Commonwealth Attorney General (Cole Report 2006, Vol. 1, pp. lxxxi-lxxxii).

The terms of reference

The terms of reference for the Oil for Food Task Force (*Work undertaken by the Australian Federal Police's Oil for Food Taskforce 2015*, p.1, henceforth OFFTF Report 2015) were to:

- consider the Commissioner's findings in relation to possible breaches of the law in the context of the report and information obtained by the Cole Inquiry;
- co-ordinate consultation between agencies and authorities with an interest in the findings;
- undertake investigations into possible offences and other breaches of the law that are referred to in the findings of the Cole Inquiry report;
- consult with prosecuting and other relevant authorities on the question of whether prosecutions, or other legal proceedings, should be instituted against any person in connection with the Commissioner's findings;
- refer briefs of evidence and other relevant material to prosecuting or other authorities to enable the appropriate authority to consider whether prosecutions or other proceedings should be commenced for breach of a law; and
- investigate, or refer to appropriate authorities, matters relating to possible breaches of the law not referred to in Commissioner Cole's findings that are discovered during the Task Force's investigations.

Process

The OFFTF conducted wide ranging inquiries including interviewing a large number of witnesses and examining approximately 900,000 pages of documents submitted to the Cole

Inquiry together with documents obtained from the UN, shipping records, and banking records (OFFTF Report 2015, p. 2).

However, the Victorian Police withdrew from joining the Task Force, stating that they 'stood ready to help if required' but had decided not to participate as 'the matter should stay with the feds' (Baker 2006). This prompted *The Age* to report on 9 December 2006, that the 'Cole inquiry's plan' was now in 'tatters' (Baker 2006).

In July 2007, ASIC determined it would pursue a separate investigation into whether offences had been committed contrary to the *Corporations Act 2001* and, in August 2007, it also withdrew its members from the OFFTF.

In July 2009, the then AFP Commissioner Mick Keelty engaged Peter Hastings QC to 'undertake a review of the material gathered to date and to consider the likelihood, or otherwise, of a successful conclusion to the matter, including future avenues of enquiry and further evidence to be gathered'. Mr Hastings QC advised that the resources required to mount a prosecution would be disproportionate to the prospects of the criminal prosecution succeeding (OFFTF Report 2015, p. 3).

Based on this advice, on 28 August 2009 the Australian Federal Police dropped its investigation (OFFTF Report 2015, p. 38). This decision meant that no former employee or director of AWB would face criminal charges. Some media reported that '[i]t has hardly been a secret that the AFP investigation was under-funded and under-resourced, and it received little co-operation from AWB, which sees itself as a new entity, with all staff associated with the corrupt dealings having left' (Overington 2009).

'Getting the bad guys can be futile' (Hanrahan 2016)

Civil convictions were recorded in two cases. Mr Lindberg (former Managing Director, AWB) admitted four contraventions of section 180 of the *Corporations Act 2001 (C'wlth)* and was ordered to pay an aggregate penalty of \$100,000. Mr Ingleby (former Chief Financial Officer, AWB) admitted one contravention of section 180 and was ordered to pay a pecuniary penalty of \$10,000 which was increased to \$40,000 on appeal (Australian Securities and Investment Commission 2013).

On 16 October 2014 ASIC told the Senate Legal and Constitutional Affairs Reference Committee that 'there are extant ASIC civil penalty proceedings against the former Chairman of AWM Limited, Trevor Flugge, and Peter Geary a former executive of AWB Limited. At a

directions hearing on 25 September 2014 the matters were listed for trial on 5 October 2015' (OFFTF Report 2015 Appendix 3, p. 2).

The Report of the OFFTF was tabled on 24 March 2015, nine years after the task force had been established. In its Final Report (2015, p. 4) the Task Force notes that:

already the Food-for-Oil issue had been subjected the Cole Inquiry, a parliamentary inquiry which reported in June 2013 and made no recommendations about the work of the OFFTF, substantial investigations (with a budget of \$26 million) by the AFP and ASIC; and the independent investigation by ASIC which has resulted in civil convictions and the imposition of substantial penalties.

In its Report the OFFTF (2015, p.4) noted that it had faced 'considerable challenges' including:

- Evidence obtained from Cole inquiry witnesses was not in an admissible form for use in criminal proceedings and had to be re-collected in an admissible form using *Crimes Act 1914 (Cwlth)* powers and in accordance with the requirements of the *Evidence Act 1995 (Cwlth)*. In addition, the AFP could not force witnesses to provide statements in relation to the matter;
- Much of the material relevant to the investigation was held by international entities, which required time-consuming legal processes and the cooperation of overseas agencies;
- When the AFP sought relevant material from ASIC, under section 127 of the *Australian Securities and Investment Commission Act 2001 (Cwlth)*, the dissemination of this material was challenged through court action by AWB.

The majority report made one recommendation; 'that this matter should not further exercise the resources of the Federal Parliament'.⁴⁹

The problem with Royal Commissions

Significantly, the OFFTF Report (2015) includes the Chair's minority report, which presented the Senate with a contrary view.⁵⁰ The minority report posed significant questions about 'the value of using a royal commission such as the Cole inquiry as an investigatory body' and concluded that 'this inquiry has evinced serious limitations in the use of a royal commission to investigate potential criminal conduct if prosecutions are to proceed' (OFFTF Report 2015, p. 50). The AFP noted that 'one of the biggest challenges faced by the OFFTF was that the oral evidence gathered in the Cole Inquiry was not in a form that would have been

⁴⁹ The majority report is signed by Senator the Hon Ian MacDonald, Deputy Chair, and Senator the Hon Joe Ludwig, Labor senator from Queensland.

⁵⁰ The minority report was signed by Senator Penny Wright, Chair, and Senator Christine Milne, Leader of the Australian Greens.

admissible in a court of law and therefore a great deal of time was spent trying to reconstruct this evidence' (OFFTF Report 2015, p. 50).

ASIC also submitted that 'the findings of royal commissions are not always based on evidence that is admissible in court' (OFFTF Report 2015, p. 50). Experienced investigators had also advised the OFFTF that there was a significant difference between evidence which was given to the Cole Inquiry, and evidence which they could use to support prosecutions. It was pointed out to the OFFTF that evidence given to the Inquiry was obtained by coercion and, therefore, was not available for use in criminal prosecutions (OFFTF Report 2015, p. 3).

'That's how it ends, not with a bang, but a whimper' (Overington 2016).

On 15 December 2016 ASIC lost its long running case against Trevor Flugge, former AWB Chairman, and Peter Geary, former executive, on all but one of its allegations of breaches under the *Corporations Act 2001 (C'wlth)*. Mr Flugge faced four breaches and Mr Geary faced 13 breaches. Justice Robson of the Victorian Supreme Court stated that ASIC had failed to establish that Mr Flugge or Mr Geary knew that AWB was making payments to Iraq, contrary to UN sanctions (Durkin 2016). ASIC appealed the verdict ('ASIC appeals verdict AWB directors did not know about Iraqi bribes', 2017) but lost.

A further postscript was delivered on 12 April 2017 when Mr Flugge was fined \$50,000 and banned from managing a company for five years for 'failing to inquire about the company's case payments to Saddam Hussein's regime in Iraq' (Lee 2017). Justice Robson confirmed that this was a breach of his duties 'but not so egregious as to warrant the \$200,000 penalty ASIC had sought' (Lee 2017). Mr Flugge and other AWB executives have never faced criminal charges over the scandal. The AWB's former CEO and managing director, Andrew Lindberg was previously fined \$100,000 and disqualified from managing a corporation for two years and 35 days. Former Chief Financial Officer, Paul Ingelby was found to have breached the *Corporations Act 2001 (C'wlth)* and was fined \$40,000 and disqualified for 15 months. Other AWB executives have escaped any penalty.

Appendix 3

Changes to Australia's wheat marketing arrangements after the Cole Inquiry

'The gloves are off' (Donald 2006).

The Oil for Food scandal and Commissioner Cole's recommendations highlighted deep and long-standing divisions within the Liberal and National Party coalition and prompted 'open bickering' (Donald 2006). After the Cole Inquiry delivered its findings media reported that (Donald 2006):

[T]he gloves are off between the Liberals and the Nationals over what sort of system Australia should have for selling wheat overseas. A group of Liberals from Western Australia want AWB to lose its power to veto others from exporting the grain, while Nationals like Queensland's Senator Barnaby Joyce want the single desk arrangement to stay.

The Labor Opposition exploited these divisions, for example, '[t]he National Party has let [the Liberal Party] down and the Liberal Party has no capacity to deal with its partners in this complicit fraud on the nation' (Crean, Hansard, 29 November 2006, p. 145). The Opposition framed the scandal as being due to the 'long-established cosy relationship between National Party ministers and the leadership of the wheat industry who have been protected ever since World War One', and the single wheat desk as 'a monopoly arrangement that like all other monopolies is a breeding ground for corruption' (Danby, Hansard, 29 November 2006, p. 179).

For some in the Liberal Party, the AWB was 'a great example of the problem of monopoly power' (McArthur, Hansard, 28 November 2006, p. 178) noting that 'any monopoly has serious risks because of the capacity to generate anti-competitive conduct and to distort proper market operations' (McMullan, Hansard, 28 November 2006, p. 178).

Shortly after the release of the Cole Inquiry Report, on 29 November 2006, the Australian Wheat Industry was listed as a matter of public importance in the House of Representatives. Tony Windsor, one of the few wheat growers in the parliament at that time, spoke at length of the need for reform, but not without thorough consultation with wheat growers themselves: 'the focus has to be on what the wheat farmers of this nation want, not on what the political operatives within this place think they can do in making life difficult for one another' (Windsor, Hansard, 29 November 2006, p. 96). Windsor advocated that a number of options be put to a poll of registered wheat growers (Windsor, Hansard, 29 November 2006, p. 95, 7 December 2006, pp. 148-149).

The government did not support this idea. On the last sitting day for 2006 the Prime Minister announced that there would be consultation but that 'we are going to legislate... to transfer the veto, which is now held by AWB(I), for a period of six months to the minister' (Howard, Hansard, 5 December 2006, p. 36).

On 7 December 2006 the *Wheat Marketing Amendment Bill 2006* was read a second time against 'a degree of background, public discussion and debate that is somewhat unusual' (McGauran, Hansard, 7 December 2006, p. 61). McGauran (a self-confessed 'single desk purist', Hansard, 7 December 2006, p. 48) stated that (Hansard, 7 December 2006, pp. 61-62):

the changes are not intended to pre-empt or pre-determine any long term policy considerations by the government, nor does the government intend to hold the veto in the long term...The movement of the veto does not represent a change to the Australian government's single desk policy.

The government acknowledged that 'the single desk wasn't to blame for the failures at AWB' and great care must be taken not to inadvertently punish the innocent' (Brindal 2006). The measures were described as temporary, to enable consultation.

The Opposition called these measures a 'stopgap...trotted out by a desperate government on the last day of parliament' but claimed it had 'no choice but to go along with this proposal in the interim' (Crean, Hansard, 7 December 2006, p. 65). However, the Opposition proposed an amendment which would 'set in place a rigorous process that would ensure that all aspects of export wheat marketing [were] subject to an independent inquiry'.

Andren, an independent member, voiced the 'suspicions' of many growers who were concerned about the 'catalyst the Cole inquiry had given for the breakup of the single desk' (Andren, Hansard, 7 December 2006, p. 71) and urged the government not to 'throw away our marketing advantage' for what he described as a 'free market issue for the government, not a fair market one' (Andren, Hansard, 7 December 2006, pp. 70-71). Andren questioned how the government's commitment to the single desk 'fit in with the red hot free market interests of the Treasurer and Prime Minister and framed the wheat 'scandal' as an 'irritation' that 'has allowed the government to get off the hook' (Andren, Hansard, 7 December 2006, p. 71). He described the Cole Inquiry as simply, 'a very timely funeral for the single desk' (Andren, Hansard, 7 December 2006, p. 144). Many speakers asserted that most wheat growers wanted the single desk to remain⁵¹ and that to dismantle it would be playing in to the hands of Australia's competitors who wanted to 'continue their corruption of world markets' with the 'export subsidies that they pay', who were 'trying to steal our markets,

⁵¹ Moylan, p. 153; Forrest, p. 145; Scott, p. 155; Anderson, p. 157; Hansard, 7 December 2006.

including Iraq', and that 'honest wheat farmers...should not be the losers' ('Nationals back AWB retaining single desk monopoly' 2006).

Taking the opposing view, Mitchell (2006) reported in *The Australian Financial Review* newspaper that Howard 'should bury the single desk for the sake of farmers and even the AWB'. Mitchell stated that economists suspected that 'most of what AWB does could be done better if the wheat farmers were allowed more choice' and 'whether the costs of conferring an export monopoly are likely to outweigh the gains'.

The Bill was passed through both Houses without the amendments put forward by the Opposition (Crean, Hansard, 7 December 2006, p. 162) or by Mr Windsor (Hansard, 7 December 2006, p. 164).

On the first occasion that the Minister exercised his veto announcing that two other grain groups would export Australian wheat his National Party colleagues framed it as 'a disaster for farmers' (Lewis 2006) which 'could only be interpreted as a step towards undermining the ongoing viability of the wheat single desk export marketing system' (Crawshaw, Brinsden and Mulvey 2006). A member of the Minister's own party described it as 'the worst bit of government policy I've ever seen' (Crawshaw and Austin 2006). Ahead of the Minister's decision rallies were held all over the country to 'save the single desk' (Hopkins 2006; Veness 2006; 'Farmers rally to back AWB's monopoly' 2006). According to the Deputy Nationals Leader, Warren Truss, there was still 'overwhelming support among grain growers for the single desk and I think, if pressed, also a single desk operated by AWB' (Sutherland and Lee 2006).

On 12 January 2007, the Australian Government announced the appointment of a Wheat Export Marketing Consultation Committee to undertake extensive consultation with the Australian wheat industry, particularly growers, about their wheat export marketing needs. The Committee undertook 26 public meetings and received 1,200 written submissions (McGauran, Hansard, 14 June 2007, p. 1). According to Ralph, the Chair of the Committee, 'We're not required to recommend what should happen; it's simply to find out what growers think' (Price 2007; Peake 2007). The Wheat Export Marketing Consultation Committee reported to Government on 29 March 2007. The Ralph Report has never been released.

Various action groups became active in pushing their positions to government.⁵² Notably, however, there was no unified voice among wheat growers. Surveys were done,⁵³ rallies on the steps of Parliament House were well attended ('Riverina farmers join wheat export rally', 2008) and *The Land* (2008) reported that the Wheat Growers Action Group had taken its fight for the single desk to the United Nations ('Action group takes fight for single wheat desk to the UN' 2008).

On 14 June 2007 the *Wheat Marketing Amendment Bill 2007* was read a second time which retained the single desk for wheat export but extended the Minister's temporary veto power for another year (McGauran, 14 June 2007, Hansard, p. 1). Wheat growers were given until 1 March 2008 to establish a new entity to manage the single desk – which could be anyone except AWB Ltd. A number of other changes were also made including strengthening the scope of the Wheat Export Authority and restructuring it as the Export Wheat Commission and deregulating wheat exported in bags and containers. The Opposition supported the Bill in principle but moved a number of amendments which would make explicit the government's 'role in the now infamous "Wheat for Weapons Scandal"' (McClelland, Hansard, 19 June 2007, p. 89), note that the Government had 'failed to act on at least 34 substantial warnings about the role of the Australian Wheat Board in the scandal' (McClelland, Hansard 19 June 2007, p. 89), and had 'limited the terms of reference of the Cole Inquiry' (McClelland, Hansard 19 June 2007, p. 92). The Opposition also proposed that the legislation be split to refer the details of the proposed marketing arrangements to the House of Representatives Standing Committee on Agriculture, Fisheries and Forestry for further inquiry and scrutiny (O'Connor, BPJ, Hansard, 19 June 2007, pp. 81-82). The Opposition's amendments did not pass.

In the Senate, Labor argued that the government was 'ramming through' the Bill without adequate consultation and had not yet responded to Commissioner Cole's recommendation to review the powers, functions and responsibilities of Australia's monopoly wheat exporter' (O'Brien, Hansard, 21 June 2007, p. 34), and that the Bill be referred to the Rural and

⁵² The main protagonists for the single desk were: the AWB; The National Party; Wheat Growers Association; Grains Council of Australia; National Farmers Federation; and the Grain Growers Association. Those who opposed the single desk included: former state grain authorities which handled most domestic grain; large international trading houses which had domestic trading businesses in Australia but were keen to gain access to the export market; some 'vocal liberals' like Wilson Tuckey, MP; the Pastoralists and Graziers Association of Australia; and the Australian Grain Exporters Association, an advocacy group sponsored by international grain traders (Askew and Freed 2006).

⁵³ For example, the Ralph Report in 2007 which was never released, a survey of 20,000 wheat growers conducted by Tony Windsor, MP, and a survey of growers in the electorate of Pearce conducted by Judi Moylan MP (Moylan 2008)

Regional Affairs and Transport Committee. This did not occur and the Bill received assent on 28 June 2007.

The model put forward was widely seen as a compromise which ‘soothed tensions between the Nationals and the Liberals’ (Hart 2006a); ‘The Government is now in a desperate search for a wheat marketing compromise that will see it through the election without a damaging brawl between hardline Nationals and deregulatory Liberals’ (Grattan 2007). However, the AWB continued to enjoy preferential treatment over competitors as it would not need to apply for bulk export permits. This was seen as ‘a victory for the Nationals, who now have more time to distance the single desk from the kickbacks scandal (Hart 2006a).

The government changed as a result of the 2007 federal election. It was the new Labor government that tabled the Exposure drafts of the *Wheat Export Marketing Bill 2008* and the *Wheat Export Marketing (Repeal and Consequential Amendments) Bill 2008* in the Senate in March 2008. The Bills were referred to the Senate Standing Committee on Rural and Regional Affairs and Transport for inquiry and report by 11 April 2008 (Report of the Senate Standing Committee on Rural and Regional Affairs and Transport 2008).⁵⁴ The Committee received 48 submissions, held four public hearings and heard evidence from 87 witnesses who appeared in private capacity or as representatives of one of 29 different stakeholder groups (Report of the Senate Standing Committee on Rural and Regional Affairs and Transport 2008, Appendix 2, pp. 77-80). The Senate Standing Committee concluded that ‘consultation with the grower community is not without its challenges’ (Report of the Senate Standing Committee on Rural and Regional Affairs and Transport 2008, p. 16, p. 54). Despite the recurring concern that ‘government had not consulted directly with them in developing the proposed changes’ (Report of the Senate Standing Committee on Rural and Regional Affairs and Transport 2008, p. 15) the Committee noted that ‘there does not appear to be a single grower organisation that could confidently claim to represent the grower community on a national basis’ (Report of the Senate Standing Committee on Rural and Regional Affairs and Transport 2008, p. 17).

The Senate Standing Committee made a series of recommendations to amend the Bill when it was introduced into Parliament to address the key issues raised⁵⁵ and recommended that the Bill be introduced as soon as practicable.

⁵⁴ The reporting date was subsequently extended to 24 April 2008 and then 30 April 2008, Report of the Standing Committee on Rural and Regional Affairs and Transport 2008, Exposure drafts of the *Wheat Export Marketing Bill 2008* and the *Wheat Export Marketing (Repeal and Consequential Amendments) Bill 2008*, viewed 30 August 2016, http://www.aph.gov.au/binaries/senate/committee/rrat_ctte/wheat_2008/report/report.pdf

⁵⁵ For example, accreditation of exporters and access to bulk storage and handling infrastructure.

Additional comments were provided by Liberal Senators and a Dissenting Report was provided by the National Party Senators. National Party Senators wanted the draft Bill withdrawn and AWB International to retain the single desk, stating that (Report of the Senate Standing Committee on Rural and Regional Affairs and Transport 2008, p. 67):

[T]he oil-for-food scandal has been used very successfully as a means of leverage to destroy one of Australia's greatest wheat marketing advantages. The motivation for the contrived uproar was far from the protestation of an informed conscience but more of a financial opportunistic ploy for certain market players to set themselves up as regional monopolies with the windfall gain to those who had a financial interest in them.

National Party Senators claimed it was a 'travesty' that wheat growers would lose the single desk, noting the refusal to table the Ralph report as 'but one of many indications of this lack of transparency' (Report of the Senate Standing Committee on Rural and Regional Affairs and Transport 2008, p. 68), quoting Socrates that 'no man qualifies as a statesman who is entirely ignorant on the problems of wheat' (Report of the Senate Standing Committee on Rural and Regional Affairs and Transport 2008, p. 69).

The Bill was passed and brought about the deregulation of the wheat industry. The *Wheat Export Marketing (Repeal and Consequential Amendments) Act 2008* effectively abolished the single desk arrangements which had been operating in various forms since 1939 (Pyburn 2012).

Appendix 4

Implementation of Commissioner Cole's recommendations by the Australian Government⁵⁶

The Cole Inquiry Recommendations

The first recommendation requires the certification of accuracy and completeness of contractual documents said to constitute agreement with a foreign entity (Cole Report 2006, p. lxxxiii).

The second recommends an insertion to the Commonwealth Criminal Code offences for acting contrary to UN sanctions that Australia has agreed to uphold.

The third recommends conferring an appropriate body with the power to obtain evidence and information of any suspected breaches or evasion of sanctions.

The fourth recommends consideration be given to amending the *Royal Commissions Act 1902 (C'wlth)* to permit the Governor General to determine that in relation to the whole or particular aspect of matters subject of the inquiry that legal professional privilege should not apply. This was to address circumstances where it is appropriate for the public interest in discovering the truth should prevail over the private interest in the maintenance of legal professional privilege (Cole Report 2006, p. lxxxv).

Finally, and in recognition that the Wheat Export Authority failed in its duty to monitor the AWB's performance, Commissioner Cole recommended that there be a review of the oversight bodies of any Australian monopoly wheat exporter because a 'strong and vigorous monitor is required to ensure that proper standards of commercial conduct are adhered to' (Cole Report 2006, Vol. 1, plxxxv).

The Australian Government response

In response to Commissioner Cole's recommendations regarding enforcing UN sanctions, the *International Trade and Integrity Act 2007* was the Government's attempt at addressing the paradox of natural or corporate citizens being required to uphold international sanctions

⁵⁶ This section is drawn from Appendix 1 – Australian Government response to the Report of the Inquiry into Certain Australian Companies in relation to the UN Oil for Food Programme, International Trade Integrity Bill 2007 [Provisions], Senate Standing Committee on Legal and Constitutional Affairs, 1 August 2007, viewed 21 June 2015, https://www.aph.gov.au/sitecore/content/Home/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Completed_inquiries/2004-07/international_trade/report/e01

(Botterill and McNaughton 2008). This Act details offences for contravening a UN sanction enforcement law and for giving information which is false or misleading in relation to a UN sanction enforcement law. The Act also considers bribery of foreign officials and amends the *Criminal Code Act 1995* and the *Income Tax Assessment Act 1997*.

The Government accepted Commissioner Cole's recommendation that Australian law should require complete and accurate information in support of any permission to export goods which are subject to UN sanctions and impose significant consequences for any breach of that obligation. The government committed to implementing this recommendation for other Australian UN sanction regimes as well. Amendments were made to the *Customs (Prohibited Exports) Regulations 1958* and the *Customs (Prohibited Imports) Regulations 1956*, *Customs Act 1901*, increased financial penalties and amended the *Customs Act* and the *Charter of the United Nations Act 1945* to introduce criminal offences for providing false or misleading information in connection with the administration of UN sanction regimes.

The Government also accepted Commissioner Cole's recommendation to ensure Australian law properly criminalises conduct which breaches UN sanction regimes. Government committed to inserting a new offence into the *Charter of the United Nations Act 1945* and imposed strict liability on corporations. Government also gave agencies responsible for granting permits in relation to UN sanctions appropriate powers to undertake due diligence before any permission is granted; monitor compliance with any conditions or requirements of the permission, and identify any possible breaches of the law for referral to relevant law enforcement agencies.

Government also introduced penalties for failure to comply with providing required information or documents. Government also committed to addressing two issues that did not flow directly from Commissioner Cole's recommendations, but on which Commissioner Cole commented in his Report. These issues were foreign bribery and tax deductions. Government amended the *Income Tax Assessment Act 1997* and Division 70 (Foreign Bribery) of the *Criminal Code Act 1995*

Recommendation 4 related to the application of legal professional privilege in Royal Commission proceedings. On 30 November 2006 the Australian Government announced an inquiry by the Australian Law Reform Commission (ALRC) into legal professional privilege as it relates to the activities of Commonwealth investigatory agencies. The ALRC provided its report to Government *Privilege in Perspective, a Review of Legal Professional Privilege and Federal Investigatory Bodies*, in February 2008.

Recommendation 5 concerned Australia's wheat export marketing arrangements. On 12 January 2007, the Australian Government announced the appointment of a Wheat Export Marketing Consultation Committee to undertake extensive consultation with the Australian wheat industry, particularly growers, about their wheat export marketing needs. The Committee reported to the Government on 29 March 2007 (known as the Ralph Report), however the Report has never been made public (Appendix 3).

Commissioner Cole also recommended a Task Force be established to consider possible prosecutions in consultation with the Commonwealth and Victorian Directors of Public Prosecutions. On 20 December 2006 the Australian Government announced the establishment of the Oil for Food Task Force (Appendix 2).

Appendix 5

The Queensland Child Protection Commission of Inquiry in context - a comparative analysis

The Queensland Child Protection Commission of Inquiry (QCPCI) was not unique. In fact, in most respects, it was typical of child protection Inquiries undertaken in other Australian jurisdictions around the same time, namely in New South Wales and Victoria.

This appendix examines the QCPCI in the context of these other child protection Inquiries. It is instructive to look at this broader context as doing so reveals striking similarities between the Public Inquiries with respect to terms of reference, considerations, and recommendations, and in some cases, participants. This analysis reveals the considerable isomorphic pressures at play on child protection systems in order to restore legitimacy. It also highlights the similarity across mechanisms used by the Inquiries to give voice, as well as the considerable overlap in the voices attended to by the Inquiries. The comparative analysis also reveals the similarity in the directions of policy reform.

This appendix compares: Public Inquiry inputs (participants, submissions) (Table 10); report structure and recommendations (Table 11); issues (Table 12); approach to reform (Table 13); government response (Table 14); and measures of success (Table 15).

The Public Inquiries

Around the time of the QCPCI similar inquiries were also held in New South Wales and Victoria. These were the New South Wales Special Commission of Inquiry (NSW SCI) into Child Protection in 2008 and the Protecting Victoria's Vulnerable Children Inquiry (VCPI) which reported in 2012. The NSW SCI was established in the wake of two horrific child deaths in late 2007 and extensive media criticism of the Department of Community Services.⁵⁷ In Victoria, improving child protection services and responses was part of both the Labor and Liberal party's election platform (Nader 2010).

⁵⁷ The deaths of Shellay Ward and Dean Shillingsworth 2007, 'DOCS "warned repeatedly" about starved girl's family', 9 November.

Isomorphic pressures to restore legitimacy

Scope of the Inquiries

In Queensland, as in New South Wales and Victoria, there had been previous child protection reviews and inquiries, however these had tended to be issue or case specific, or focussed on the particular child protection agency.⁵⁸ Yet despite these reviews, increased investment and scrutiny there had not been 'any marked change' (VCPI Report, 2012, p. xxiii).

None of the three Public Inquiries were established to investigate particular cases or matters of concern but were systemic, broad reaching attempts to look at child protection in the context of child rearing, community expectations and norms, and government responses. The three Inquiries were all tasked with reviewing the whole child protection system, that is, not only the relevant child protection agency but also other government agencies including Police, Health, Education, oversight agencies and non-government agencies like out of home care (OOHC) service providers.

A central theme to the QCPCI was that 'children will thrive only in a society where everyone concerned with child welfare takes responsibility for their own particular role' (Carmody Report 2013, p. xiii); 'No single service or agency is in a position to respond effectively to all the needs of vulnerable children and families all the time' (*QCPCI Discussion Paper 2013*, p. 53).

This theme was also identified as the first principle of the NSW SCI (NSW SCI Report, 2008, p. v):

Child protection is the collective responsibility of the whole of government and of the community. Primary responsibility for rearing and supporting children and young people should rest with families and communities, and with government providing support where it is needed, either directly or through the funded nongovernment sector.

Victoria also took a holistic approach. The purpose of the Inquiry was 'to meet the needs, improve the lives and secure the rights of Victoria's vulnerable children and young people, now and in the future' (VCPI Report 2012, p. xxiii). The Inquiry considered Victoria's system for protecting its vulnerable children and young people as a whole and 'aimed to produce a report that was forward-looking and solutions focused' (VCPI Report 2012, p. xxiii).

⁵⁸ In NSW, see, Volume 1, NSW Special Commission of Inquiry into Child Protection 2008, pp. 8-12. In Victoria, see Report of Protecting Victoria's Vulnerable Children 2012, p. xxiii.

All three Public Inquiries also considered the public's confidence in the system and specifically addressed the issue of oversight of the system (VCPI Report 2012, p. 21; QCPCI, p. 395; NSW SCI 2008, p. 900)

Composition and processes

Each Public Inquiry was established through Letters Patent received from the State's Governor under their respective legislation. These Letters Patent included the terms of reference for the Inquiry and specified the reporting timeframe. In all instances the terms of reference were very broad requiring a systemic Inquiry rather than an Inquiry into particular incidents or events, or an Inquiry seeking to attribute blame for specific cases.

In New South Wales and Queensland, a Commissioner was appointed to head the Inquiry. In Queensland it was The Honourable Justice Tim Carmody QC, a barrister, former Queensland Crime Commissioner and a judge of the Family Court of Australia. In NSW the Honourable Justice James Wood AO, QC was appointed. Justice Wood was a former Supreme Court judge who also served as the Commissioner of the Royal Commission into the New South Wales Police Service 1995.

In Victoria a panel was established. The Honourable Phillip Cummins a former Victorian Supreme Court Judge, was appointed as the Chair. Other panel members were Emeritus Professor Dorothy Scott OAM and Mr Bill Scales AO. Professor Scott was an active participant in both the New South Wales and Queensland Inquiries and is a recognised expert academic in child protection. Mr Scales has a broad range of experience in government, and public policy as well as business.

The QCPCI engaged a 12-member advisory group which included specialists in child protection and safety, which met twice during the course of the Inquiry. The Commissioner was also assisted by members of the Queensland bar at various stages.

In New South Wales, Counsel Assisting was appointed to assist the Inquiry and specialists were engaged as required. A retired Family Court Judge was engaged as a consultant as were additional barristers from time to time. In Victoria, a Reference Group was established which met on three occasions to advise the Inquiry.

The Inquiries were hosted by their respective State Departments of Premier and Cabinet. Each Inquiry received funding from state government and was supported by a number of staff who were seconded from various State agencies or appointed through temporary employment contracts. However, there was wide variation in the number of staff supporting

the Inquiries. The QCPCI Report lists 54 staff over the course of the Inquiry while the NSW SCI Report lists ten staff. The Victorian Report does not provide any detail of the number of staff working on the Inquiry.

Each Inquiry placed advertisements in state and national media; established a website, which included terms of reference, how to make a submission, publishable submissions, schedules of visits, transcripts, and issues papers; wrote to key agencies requesting information; obtained some information under summons; invited submissions; conducted regional visits or hearings (open and closed); visited services and non-government organisations; held public forums and key stakeholder meetings. The New South Wales and Queensland Inquiries also undertook case file reviews and audits. The QCPCI also conducted focus groups and surveys.

Participants

The QCPCI received 443 submissions: 196 from non-government organisations; 235 individual submissions, and 12 from government agencies.

The NSW SCI NSW received 669 submissions: 423 public submissions; 118 from non-government organisations; 284 from individuals, and 21 from government agencies.

The Victorian Inquiry received 225 submissions: 120 from non-government organisations; 65 from individuals, and 40 from government agencies.

Submissions included personal stories and grievances, details of policy and operational failures and options for change. Table 10 reveals that each Inquiry received submissions from the same groups of organisations and in many instances from the same specific individuals and academics. For example, in terms of organisations, each Inquiry received submissions from church-based groups, particular non-government organisations, relevant professional associations, women's services, unions, legal services, particular advocacy groups. Table 10 clearly demonstrates the significant overlap in the community of interest in child protection and the actors intending to influence the policy agenda.

Report structure

There is striking similarity between the structure and considerations of the three Inquiry Reports (Table 11). Each Report is highly detailed and comprehensive. Each Report variously describes the current situation, structure and the need for reform. There is a detailed description of: the legislative context and legal system; current statistics and performance of all parts of the child protection system; workforce capacity and constraints;

funding; regulation and oversight; research; relationships with other key providers, including interagency collaborations and the non-government system; and specific issues like domestic violence and the overrepresentation of Aboriginal and Torres Strait Islander children.

Table 12 details the key issues discussed by each Inquiry and demonstrates the complete overlap in the issues outlined in each Report as needing to be addressed.

Recommendations

In addressing the many aspects of the child protection system and in keeping with the foundation principle that child protection is a shared responsibility, each Inquiry makes a large number of recommendations. The Reports all describe a way forward to address the raft of issues identified. While Governments and their agencies have a key role to play, child protection is a community wide responsibility. As such, recommendations address reform of the child protection system as a whole, as well as universal services.

Each Report makes recommendations about the same areas including: restructure and reform of child protection services; additional resources; whole of government policy and practice; family support service; reporting and response; court processes and legislative amendments; out of home care; workforce training and development; collaboration; specific needs of Aboriginal and Torres Strait Islander children and children from culturally and linguistically diverse backgrounds; and regulation and oversight (Table 12).

Table 12 highlights that the nature of recommendations across all three reports are conspicuously similar. These include: changes to mandatory reporting; better training and professional development of the workforce; better interagency collaboration; better family support services and more early intervention; better supported transition for young people moving out of home care; and better information management systems. Consistent across all Reports are recommendations for an increased focus on, and funding of, early intervention and support for vulnerable families, as well as an increased role for the non-government sector.

All three Inquiry Reports outline an approach to reform and acknowledge that reform takes time. Each Report claims that the Inquiry had been 'responsible' in mapping a way forward and has set realistic expectations (Table 13).

Government responses

All of the Government responses accept the position that child protection is a shared responsibility. Each State Government response commits to system wide reform.

The Queensland government response, *Supporting Families Changing Futures* reform program, commits to seven areas of reform:

- Sharing responsibility for children's safety and wellbeing;
- Supporting families earlier;
- Working better with families in the child protection system;
- Improving out-of-home care and post-care for children and young people;
- Working better with Aboriginal and Torres Strait Islander families;
- Delivering quality services through a capable, client-focused workforce;
- Building a transparent and cost-effective system;
- Services provided to vulnerable children and families will be high-quality and provided in an efficient, transparent and accountable manner.

The Victorian government response, *Victoria's Vulnerable Children – Our Shared Responsibility*, commits to five areas of reform:

- Building effective and connected services;
- Enhancing education and capacity building;
- Making a child friendly legal system;
- Providing safe, stable and supportive out-of-home care;
- Introducing accountability and transparency.

The New South Wales government response, *Keep Them Safe* commits to seven areas of reform:

- Changes to mandatory reporting;
- Establishment of Child Wellbeing Units in major Government Departments;

- Regional Intake and referral services;
- A bigger role for the NGO sector;
- Building the capacity of aboriginal organisations;
- Prevention and early intervention;
- Enhanced interagency cooperation.

A summary of the Government responses is provided at Table 14.

Giving voice

Each Public Inquiry expanded the networks of those who have a voice in the system.⁵⁹

In Victoria, prior to the Inquiry, the Children's Services Coordination Board (CSCB) had existed to bring together key decision makers across agencies and to ensure coordination of activities impacting on children. However, the Inquiry found '[n]o evidence that the Children's Services Coordination Board is effective in its role of coordinating and driving government action to address the needs of vulnerable children (VCPI Report, p. 485).

The Government agreed with Inquiry recommendations to:

- Give the Children's Services Coordination Board greater operational responsibility for coordinating policy, programs and services that affect children and young people (Recommendation 83);
- Strengthen the role of the Victorian Children's Council (VCC), a ministerial advisory body established to provide high-level policy advice to government. VCC members are recognised experts in a broad range of children's policies and services (Recommendation 84);
- Establish Area Reference Committees to oversee the monitoring, planning and coordination of services and management of operational issues within each catchment. The Committees are co-chaired by the Department of Human Services area manager and the chief executive officer or area manager of the lead community service organisation, and comprise a representative of each community service organisation in the local Alliance (Recommendation 16).

⁵⁹ The QCPCI is examined in detail in Chapter 5 in the body of this thesis.

A key recommendation of the NSW SCI was the establishment of Regional Intake and Referral Services (NSW SCI Report 2008, p. vi). These services were to be located within a non-government organisation (NGO) and would determine the nature of the services required and refer the family to the appropriate NGO or other state or Commonwealth agency for services such as: case management; home visiting; intensive family support brokerage; quality child care; housing and/or parenting education. At least one Regional Intake and Referral Service was to be established in each Department of Community Services Region (NSW SCI Report 2008, p. viii).

Further, a number of recommendations explicitly aimed to ensure the ongoing input of non-government actors including:

- Recommendation 24.2 - Each human services and justice agency CEO should have, as part of his or her performance agreement, a provision obliging performance in ensuring interagency collaboration in child protection matters and providing for measurement of that performance;
- Recommendation 24.3 - The Director-General, each Deputy Director-General and each Regional Director of the Department of Community Services should have, as part of his or her performance agreement, a provision obliging performance in ensuring interagency collaboration in child protection matters and providing for measurement of that performance;
- Recommendation 24.7 - An improved structure should be established for regular regional meetings between the key human services agencies and NGOs to facilitate collaborative cross agency work, and to be accountable to the Human Services and Justice Chief Executive Officers Cluster.

There is also evidence that there is a great deal of overlap in the participants in each Inquiry, particularly in the non-government agencies and academics. As may be expected, there is less overlap in the individuals who participated, presumably as those affected by the policies and operation of the child protection system in their relevant jurisdiction took their issues forward to the particular relevant State-based Inquiry.

However, as detailed in Chapter 5, a number of policy elites appear to have been very successful in their attempts to lobby and influence each Inquiry and its outcomes. A number of key agencies and academics feature as participants in all three Inquiries (Table 10).

Three academics were discussed in Chapter 5: Professors Eileen Munro, Dorothy Scott and Judy Cashmore. Professor Munro's key ideas are reflected in each Inquiry's

recommendations about the professionalisation and training of the child protection workforce and decision-making tools and processes. For example:

- QCPCI Recommendations 7.1 - practice framework/decision making, 10.1 and 10.2 regarding the need for tertiary qualifications and professional development;
- VCPI Recommendation 67 regarding professional development and training; and
- NSW SCI Recommendations: 3.1 regarding qualifications; 9.1 and 10.2 regarding structured decision-making; and 9.5 regarding professional development.

Professor Scott's ideas are foundational to the integrated systems approach taken in all three Inquiry Reports as well as the introduction of 'significant' risk of harm as one means of reducing the burden on the system. For example:

- QCPCI Recommendations 4.1 regarding risk of significant harm; 4.2 regarding a whole of government approach;
- VCPI Recommendation 2 regarding a whole of government approach/policy framework; Recommendation 6 encouraging participation in universal services; and
- NSW SCI Recommendations 6.1 and 6.2 regarding risk of significant harm and reporting.

The NSW SCI, drawing directly from Professor Scott, states that a key area of reform is that (NSW SCI Report 2008, p. viii):

Non-government organisations and state agencies should be funded to deliver services that should cover the continuum of universal, secondary and tertiary services and should target key developmental stages and transition points in the lives of children and young people.

Professor Cashmore's research is reflected in the recommendations and outcomes of each Inquiry's consideration of the need for better transition arrangements and post out of home care placement support for young people. For example:

- QCPCI Recommendations 9.1 to 9.3 regarding transition from care;
- VCPI Recommendation 25 regarding a 5-year plan for out of home care; and Recommendation 28 regarding leaving out of home care; and
- NSW SCI Recommendations 16.1 to 16.16 regarding out of home care, and Recommendations 20.1 to 20.3 regarding transitioning from care.

As demonstrated above there is clear evidence that each Inquiry provided a forum to allow new ideas and knowledge to have an impact on the policy and operation of the child protection system.

Providing the opportunity for policy change and improved outcomes

Each government response nominates its own measures of success (Table 15).⁶⁰ However, across all three Inquiries there is evidence of policy change but no compelling evidence of better outcomes for children and families. A brief analysis is provided in Appendix 6.

In terms of implementation of recommendations, as part of its considerations, the Royal Commission into Institutional Responses to Child Sexual Abuse (2017) commissioned the Parenting Research Centre 'to evaluate the extent to which 288 recommendations from 67 inquiries selected by the Royal Commission had been implemented, and the possible factors that determined, contributed to, or were barriers to successful implementation' (Parenting Research Centre 2015, p xiii). The Queensland, NSW and Victorian child protection Inquiries examined in this Appendix are included. However, while no specific detail is available on the implementation of the specific recommendations of these three Inquiries, the evaluation does conclude that of all the recommendations it evaluated, 'the majority of recommendations were rated as implemented either in full (48%) or partially (16%). Twenty-one percent were rated as not implemented, and the implementation status of 14% could not be determined' (Parenting Research Centre 2015, p. xiv).⁶¹

Generally, the Parenting Research Centre (2015, p. 153) found that: recommendations relating to systems had the highest proportion of recommendations that had been implemented in full; recommendations regarding legislation had the highest proportion that were 'not implemented'; and that policy oriented recommendations had the lowest proportion of 'not implemented'. As stated however in Chapter 2 this is not necessarily an indicator of the failure of the Inquiry but possibly a failure of implementation.

In New South Wales, the government's response to the SCI was the Keep Them Safe (KTS) reform process and strategy. To date, of all the Government responses, KTS is the only one to have had a formal evaluation conducted by five years after its implementation by an independent agency (Social Policy Research Centre [SPRC] 2014). In summary, this evaluation reveals that whilst KTS has been a good start, progress has been slow or

⁶⁰ Please note: some of these measures have shifted over time as new governments in both Queensland and Victoria have 'repackaged' their responses to the Queensland and Victorian Inquiries respectively. Current government responses can be found at, viewed 16 January 2018, <https://www.communities.qld.gov.au/campaign/supporting-families/background>, and, <https://www.vic.gov.au/health-community/children/child-protection.html>

⁶¹ In NSW 59% of recommendations were rated as having been implemented in full, 63% in Queensland and 45% in Victoria. However, these ratings include recommendations beyond those made by the Inquiries which are the subject of this analysis, Parenting Research Centre 2015, p. xiv.

uneven. Given the consistency of recommendations across all three Inquiries, the SPRC report offers some insights which may be generalisable across jurisdictions (SPRC 2014, pp. 82-85). In summary, the results are equivocal:

- Evaluations of many of these interventions did not provide reliable enough findings to make a definitive statement in this respect;
- In the child protection system, the gap between Aboriginal and non-Aboriginal children does seem to be narrowing, especially for young children. However, Aboriginal children still tend to experience worse outcomes across a range of child protection indicators;
- There is compelling evidence that KTS has led to substantial changes in the way agencies collaborate to prevent harm to children and to intervene early to divert them from being involved in the child protection system;
- There are positive signs of improvements in outcomes for vulnerable children not at risk of serious harm and children who encounter the child protection system, but the evidence is mixed;
- One of the paradoxical findings of this evaluation is that some of the basic assumptions behind KTS, and indeed all early intervention programs, have not, or not yet, been borne out;
- Most of the funded components of KTS which were evaluated appear to have been effective, but the evidence from the project evaluations is generally not robust enough to draw definitive conclusions about their effectiveness in terms of improving outcomes for children and families.

Table 10. Comparison of inputs, submissions and participants to each of the three child protection inquiries

	Queensland Child Protection Commission of Inquiry 2013	Protecting Victoria's Vulnerable Children Inquiry in Victoria 2012	NSW Special Commission of Inquiry into Child Protection 2008
Number of organisation/individual submissions	196 non-government organisations 235 individuals 12 government agencies Total: 443 submissions	120 non-government organisations 65 individuals 40 government agencies Total: 225 submissions	118 non-government organisations 284 individuals 21 government agencies Total: 669 submissions (423 public)
Church based groups and services	Y	Y	Y
The Royal Australian and New Zealand College of Psychiatrists – State branch	Y	Y	Y
Children's Guardians/Child Safety Commissions	Y	Y	Y
Professional associations: Psychiatrists, Social workers	Y Y	Y Y	Y Y
Commonwealth and State Government disability services	Y	Y	Y
State Councils of Social Services	Y	Y	Y
State Law Societies	Y	Y	Y
Aboriginal and Torres Strait Islander government and non-government services	Y	Y	Y
Women's services	Y	Y	Y
Teachers and principals	Y	Y	Y
Youth services	Y	Y	Y
Uniting Care	Y	Y	Y
Public Advocate	Y	Y	
Public Sector Unions	Y	Y	Y
State Legal Aids	Y	Y	Y
Academics	Y	Y	Y
Health and medical professionals	Y	Y	Y
Parents, carers, grandparents, kinship groups	Y	Y	Y
Youth advocates	Y	Y	Y
Culturally and linguistically diverse services	Y		Y
State and Federal MPs	Y	Y	Y
NGOs			

Bravehearts Inc.	Y	Y	Y
Create Foundation	Y	Y	Y
Life without Barriers	Y	Y	Y
Academics			
Professor Eileen Munro, Professor of Social Policy, London School of Economics	Y	Y	Y
Associate Professor Judy Cashmore, University of Sydney	Y	Y	Y
Professor Cathy Humphreys, Department of Social Work, The University of Melbourne	Y	Y	Y
Professor Dorothy Scott	Y	Y – one of the three Commissioners	Y

Table 11. Comparison of structure and content of the three child protection Inquiry Reports

Carmody 2013, <i>Report of the Queensland Child Protection Commission of Inquiry.</i>	Cummins, Scott and Scales 2012, <i>Report of the Protecting Victoria's Vulnerable Children Inquiry, Victoria.</i>	Wood 2008, <i>Report of the NSW Special Commission of Inquiry into Child Protection.</i>
Chapter 1 - The case for reform.	Part 1 - The impact of abuse and neglect.	Vol. 1 - Part 1 Department of Community Services structure and workforce.
Inquiry terms of reference, scope.	Inquiry task and processes.	Structure and reform. Workforce capacity.
A system under stress, why child protection matters.	Vulnerability and impact of abuse and neglect. Risk factors. Child protection reports. Impacts and costs of abuse and neglect.	
Chapter 2 - current system.	Part 2 - current system and performance.	Part 2 - early intervention and child protection.
Child protection legislation. Responsibility. Statutory system. Intake and notification data and performance. Out of home care (OOHC). Oversight. Drivers of demand. Risk factors.	History. Legislation.	Child protection research. Child protection data. Risk of harm reports. Early intervention. Assessment and response. Way forward.
Chapter 3 – Funding.	Performance. Conceptual and data issues. Measures – statutory protection and OOHC. Child protection reports. OOHC placements. Comparisons with other states. Ombudsman reports and child death inquiries.	Vol. 2 - Part 3 - Legal basis of child protection.
Funding service delivery. Adequacy of current budget. Efficiency. Performance monitoring. Economic impacts of abuse and neglect. Whole of government approach. Future investment.	Issues from submissions, sittings and consultations. Prevention and early intervention. Role of department. Multidisciplinary approaches. Out of home care and leaving care. Poor educational outcomes. ATSI programs. CALD issues. Child sexual abuse. Children's court. Professional child protection workforce. Community sector's role. Funding. Regulatory and governance issues.	Statutory basis of child protection. Other models of decision-making. Court processes. Interface with family law. Criminal justice system.

	Service capacity and demand. Use of research. Regional and remote challenges.	
Chapter 4 - Diverting families from statutory system.	Part 3 - Policy framework.	Part 4 - Out of home care.
Reduce demand. Other cases of rising demand. Reformed system. Oversight of reform process.	Child focussed. Child needs. Role of family/parents/ government/ community. Systems approach. Public health approach.	Data. Accreditation and monitoring. Casework. Carers. Health. Education. Adoption.
Chapter 5 - Designing a new family support system.	Part 4 - Protective elements.	Part 5 - Specific issues.
Stocktake of currently available services. Intensive services. Early intervention and family support. Universal services. New system.	Prevention. Early intervention.	Domestic violence. Overrepresentation of ATSI children. Case study.
Chapter 6 - Child protection and non-government sector. Funding. Regulation. Services. Role. Impediments – relationship with government, regulatory and administrative demands, capacity.	Statutory system. Legislative and service framework. Statistics. Performance.	Volume 3. Young people leaving care and homelessness. People with disability. Disaster recovery.
Chapter 7 - A new practice framework.	Out of home care.	Part 6 - Oversight and interagency cooperation. Ombudsman. Child deaths. Interagency cooperation. Department of Community Services funded non-government agencies. Performance measurements.
Decision-making. Casework and practice. Case planning. Family group meetings. Planning for stability. Planning for education and health needs of children in OOHC.	Leaving care.	Part 7 – Implementation.
Chapter 8 - Options for kids in out of home care.	Aboriginal and Torres Strait Islander children.	
Assessment. Family based care. Residential care. Secure care. Alternative care.	Children from culturally and linguistically diverse backgrounds.	
Chapter 9 - Transition from care.	Part 5 - The law and courts.	

Current practice. Nature and level of post care support. Age. Role of non-government agencies. Coordination.	Strengthening the law. Crime. Reform. Mandatory reporting. Religious organisations. Interaction with Commonwealth laws. Sex offences. Homicide and filicide. Realigning court processes to meet needs of children. Access and sensitive information. Adversarial nature of legal system. Court culture. Structural and process reforms.	
Chapter 10 - Building capacity in the child protection workforce.	Part 6 - System supporting capacities.	
Government workforce. Non-government workforce. Workforce planning and development.	Workforce.	
Chapter 11 – Aboriginal and Torres Strait Islander children.	Community sector capacity.	
Reducing overrepresentation. Prevention and early intervention. Improving practice in statutory system. Strengthening ATSI agencies. Discrete communities – violence, alcohol.	Court clinical services. Funding.	
Chapter 12 - Improving public confidence.	Part 7 - System governance.	
Current oversight. Concerns. Reform.	Government agencies.	
Chapter 13 - Legal system.	Regulation and oversight.	
Case management. Specialisation. Legal representation.	Part 8 - Implementation and conclusion.	
Chapter 14 - Legislative review.		
Policy and practice. Legislative amendments.		
Chapter 15 - Implementing the reform roadmap.		

Table 12. Comparison of issues and reforms detailed in each child protection Inquiry Report

Key Issues	Carmody 2013, Report of the Queensland Child Protection Commission of Inquiry.	Cummins, Scott and Scales 2012, Report of the Protecting Victoria's Vulnerable Children Inquiry, Victoria.	Wood 2008, Report of the NSW Special Commission of Inquiry into Child Protection.
Increasing numbers of reports /need to divert from statutory child protection system.	Y	Y	Y
Overrepresentation of ATSI children.	Y	Y	Y
Need for increased investment in prevention and early intervention.	Y	Y	Y
Need for coordinated government action/case management.	Y	Y	Y
Need for an area focus/regional systems.	Y	Y	Y
Need to increase efficiency and effectiveness of statutory child protection services.	Y	Y	Y
Stability in out of home care and leaving care.	Y	Y	Y
Increase capacity of non-government organisations.	Y	Y	Y
Reforms of the Children's Court and processes.	Y	Y	Y
Better oversight and transparency of the child protection system.	Y	Y	Y
Need for increased participation of young people in decisions.	Y	Y	Y
Reforms			
Holistic/integrated Child and Family Strategy comprising universal, secondary and tertiary services/government and non-government providers.	Y	Y	Y
Clearer departmental and agency accountability.	Y	Y	Y
Better /earlier decision making and assessment.	Y	Y	Y
Expanded Child and Family services	Y	Y	Y

/networks/hubs at local/regional/ level.			
Specialist services including Drug and Alcohol, Domestic Violence.	Y	Y	Y
More early intervention services.	Y	Y	Y
Co-located services.	Y	Y	Y
Strengthening law and legal institutions – changes to relevant Acts, protocols between agencies, operation of Children’s Courts.	Y	Y	Y
Facilitate information exchange between agencies.	Y	N because this issues had been previously addressed in 2005.	Y
Increased out of home care funding and services aligned to child’s needs/ transition from care.	Y	Y	Y
Increased role and improved community sector capacity.	Y	Y	Y
Improving regulatory and oversight framework.	Y	Y	Y
Addressing needs of Aboriginal and Torres Strait Islander children/maintaining cultural connection.	Y	Y	Y
Sector wide approach to professional education/workforce strategy.	Y	Y	Y
Better support/information /training for carers.	Y	Y	Y
Better information management.	Y	Y	Y
Change to child death review structure/process.	Y	Y	Y

Table 13. Approach to reform in the child protection Inquiry Reports

<p>Carmody 2013, <i>Report of the Queensland Child Protection Commission of Inquiry.</i></p>	<p>Cummins, Scott and Scales 2012, <i>Report of the Protecting Victoria’s Vulnerable Children Inquiry, Victoria.</i></p>	<p>Wood 2008, <i>Report of the NSW Special Commission of Inquiry into Child Protection.</i></p>
<p>'We are not saying that the reforms have to be introduced and funded <i>in toto</i> within the next couple of years. In a climate of fiscal restraint, the government can only do what it can with what it has to meet rival priorities and demands. The systemic changes proposed in this report are designed, therefore, to be phased in over time as the State of Queensland is in a position to afford them. Some improvements can be made within the next 12 months; others will take a number of years to properly design, evaluate and pay for. From the Commission’s perspective, late is still better than never. After all, more than a dozen years have already been lost through gross public under-spending on early intervention and voluntary support services for families. We have charted a roadmap, not a fixed timetable or inflexible funding schedule. Nonetheless, sooner is generally better and cheaper in the long run. Childhood is short and every moment counts' (Carmody Report 2013, pp. xiv-xv).</p>	<p>'The Inquiry recommends extensive and far-reaching changes to Victoria’s current system for protecting children. However, it has decided to be circumspect in the extent to which it recommends such a volume of reform that might of itself put the lives, safety or welfare of vulnerable children at risk, both now and in the future. Change and reforms take time, particularly within a system as complex and as fragile as Victoria’s system for protecting children. The Inquiry has been careful only to recommend changes that it believes are necessary, can be successfully implemented and within a reasonable period of time, and would not put the current system at unnecessary or unwarranted risk' (VCPI Report, p. xlvii).</p>	<p>'This report is focused on the further changes to the child protection system in NSW that are needed to take account of the current and projected demands on that system, and the changed environment in which it is to operate, including the extended participation of other government agencies and the non-government sector in providing for the safety, welfare and well-being of children and young persons. For the purpose of implementation, the recommendations made in this report have been ranked in order of priority, that is: “immediate”, where the Inquiry considers that the necessary changes should be substantially commenced within six months; “short term” where implementation should be substantially commenced within 12 to 18 months; and “long term”, where it is anticipated that such work should be substantially commenced within two to three years' (NSW SCI Report 2008, p. 1034).</p> <p>'The recommendations of the Inquiry’s report are far reaching and will involve significant change. The successful implementation of change requires committed leadership from the Directors-General of the key agencies and executives, clear and consistent communication about the imperatives for change and what is required of each agency, as well as attention to transparency and accountability. Much will be required of staff to bring about the changes required. There are already significant pressures on staff, some of</p>

		whom have experienced 'change' or 'reform' fatigue since commencement of the 2002 reform process and timing of changes will need to be carefully managed' (NSW SCI Report 2008, p. 1036).
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The Queensland, New South Wales and Victorian government responses to their respective child protection Inquiries have been examined and are compared in the table below. Excerpts are taken from each government response and are grouped thematically.

Table 14. Comparison of Government Responses to three child protection Inquiries

Theme	Taking Responsibility: A Roadmap for Queensland Child Protection, Queensland Government response to the Queensland Child Protection Commission of Inquiry 2013.	Victoria’s Vulnerable Children – Our Shared Responsibility – Directions Paper, Initial Government response to the Protecting Victoria’s Vulnerable Children Inquiry 2012.	Keep them Safe, New South Wales Government response to the NSW Special Commission of Inquiry into Child Protection, 2009-2014.
Shared responsibility	Caring for children and keeping them safe is a shared responsibility.	Our shared responsibility for protecting children...We all have a responsibility for protecting children from abuse and neglect.	A shared approach to child wellbeing.
Safe, supported children	Raise children who are safe, well, healthy and supported.	Vulnerable children are kept safe from harm. Vulnerable children have every opportunity to succeed in life.	All children in NSW are healthy, happy and safe, and grow up belonging in families and communities where they have opportunities to reach their full potential.
Systemic reform	The government is determined to deliver a reformed child protection system in Queensland that better provides for the safety, wellbeing and best interests of our most at-risk children when they cannot be properly cared for at home.	The Victorian Government is committed to system-wide reform and improvements that aim to prevent child abuse and neglect, reduce the impact when it does occur, and improve the outcomes for children and young people in the statutory child protection system.	Universal service system - system wide reform.
Prevention and early intervention	Our strategic goals are: Prevent abuse and neglect Act earlier when children are vulnerable. Vulnerable families and children will have access to high-quality services at the right time to help them to maintain the family unit. Child protection practice will be focused on engaging with families earlier and, where appropriate, keeping children safely at home.	We also know that we need to focus more effort on early intervention and support for vulnerable families.	Prevention and early intervention. <ul style="list-style-type: none"> Enhanced service provision, including prevention and early intervention services and acute services.
Aboriginal and Torres Strait Islander children	Aboriginal and Torres Strait Islander children and families will have access to culturally appropriate	Tailored, flexible approaches must be available for groups or communities with specific needs or preferences,	Support Aboriginal and Torres Strait Islander children.

	Indigenous-specific and mainstream services and care.	including Aboriginal children and their families.	<ul style="list-style-type: none"> Providing better services to Aboriginal children and young people, with the aim of reducing their over-representation in the child protection system.
Collaboration	Government, non-government agencies and communities are working together to build an integrated child and family support system that will deliver efficient, effective and sustainable support to Queensland children, young people, families and communities.	We need to join up government and community leadership at a more local level if we are to achieve the community ownership necessary to achieve change.	Strengthen partnerships with non-government organisations.
Geographic reform and focus	Central and regional governance structures established to oversee the reform program and promote strong collaborative partnerships across the government and non-government sectors.	There are geographic areas and specific communities in Victoria where disadvantage is significant and entrenched, and the Victorian Government will concentrate effort in these areas to reach those families who are most in need of support. We will work in local areas.	Regional /local focus <ul style="list-style-type: none"> Establishing Child Wellbeing Units in the major government reporting agencies. Establishing a network of Family Referral Services.
Better, more accountable services	<ul style="list-style-type: none"> Services provided to vulnerable children and families will be high-quality and provided in an efficient, transparent and accountable manner. <p>The Queensland Family and Child Commission will provide independent advice on the effectiveness of child protection reforms to help make Queensland the safest place in Australia to raise a child.</p> <p>A new, independent and multidisciplinary Child Death Case Review Panel has been established.</p>	A performance and accountability framework – with clear goals, measurable outcomes and monitoring and reporting at both state and local levels. In addition, this government will take a number of steps to better ensure public accountability for services provided to vulnerable children and families. We will improve oversight mechanisms and structures, and bring a new focus to measuring client outcomes, in both government provided services and services delivered by the community services sector.	Better accountability and transparency.
Changes to mandatory reporting	Consolidation of mandatory reporting requirements Changes to the mandatory reporting requirements have	Changes to threshold and reporting of risk of significant harm	Changes to mandatory reporting

	clarified when a report must be made to Child Safety about a child.		<ul style="list-style-type: none"> Increasing the threshold for reporting children and young people to the Child Protection Helpline from 'risk of harm' to 'risk of significant harm'.
Out of home care	Where there are no acceptable alternatives, children and young people will be taken into care, and protected and cared for. In care, they will receive the support they need to enjoy their childhood, feel safe and cared for, and develop into adulthood	Providing safe, stable and supportive out of home care.	<ul style="list-style-type: none"> Changes to out of home care.
Children's court processes	Improved Children's Court processes. Amendments to the <i>Child Protection Act 1999</i> to give Chief Magistrate powers, functions and associated responsibility to ensure that Children's Court matters, including child protection, youth justice and adoption matters are dealt with by magistrates and justices of the peace in an efficient and orderly manner. The changes also facilitate the development and implementation of a judicially-led case management system.	Making a child friendly legal system. Amendments to <i>The Children, Youth and Families Amendment (Permanent Care and Other Matters) Act 2014</i> .	<ul style="list-style-type: none"> Changes to processes in the Children's Court. Legal changes: <i>Children Legislation Amendment (Wood Inquiry Recommendations) Act 2009</i>.
Participation and child focus	In collaboration with our non-government partners, we are also engaging directly with Queensland children and families to ensure their views and needs are at the centre of the new child and family support system. Children and young people will be at the centre of the new system, with supported and supportive parents, families and communities.	Place the needs of their children front and centre. Vulnerable children at the centre of reform.	<ul style="list-style-type: none"> The child protection system should be child-focused, with the child's or young person's safety, welfare, and wellbeing of paramount concern, while recognising that supporting parents is usually in the best interests of the child or young person.
Enhanced workforce	Vulnerable children and families will receive quality services from a highly skilled, capable and professional workforce across government and non-	Expanding service, workforce and system capacity.	Enhanced workforce.

	government family and child sectors.		
Summary of reforms	<p>Changes to mandatory reporting.</p> <p>Increased role for non-government sector.</p> <p>Diverting families away from the child protection system.</p> <p>Supporting those who have left care until the age of 21.</p> <p>Reducing overrepresentation of ATSI children.</p> <p>Amending legislation and the role of children and families in court (<i>Child Protection Reform Amendment Act 2014</i>).</p> <p>Forming a new Family and Child Commission to oversee the child protection system and align Queensland with other jurisdictions.</p> <p>Independent statutory body to provide individual advocacy for children in child protection system and will have the right to administer a child visiting program and appear in legal proceedings to assist children.</p> <p>Increasing the use of boarding schools for children in care.</p> <p>Working with Children checks to be undertaken by Queensland police.</p> <p>Child death review panel.</p> <p>Sharing information between agencies.</p> <p>More resources to prevention and early intervention.</p>	<p>Building effective and connected services.</p> <p>Enhancing education and capacity building.</p> <p>Making a child friendly legal system.</p> <p>Providing safe, stable and supportive out of home care.</p> <p>Introducing accountability and transparency.</p>	<p>Changes to mandatory reporting.</p> <p>Establishment of Child Wellbeing Units in major Government Departments.</p> <p>Regional Intake and referral services.</p> <p>A bigger role for the NGO sector.</p> <p>Building the capacity of Aboriginal organisations.</p> <p>Prevention and early intervention.</p> <p>Enhanced interagency cooperation.</p>

Table 15. Measures of success as articulated by governments in their response to the child protection Inquiry ⁶²

Queensland Government ⁶³	Victorian Government ⁶⁴	NSW Government ⁶⁵
<p>Reduce the number of children and young people in the child protection system.</p> <p>Revitalise frontline services.</p> <p>Refocus on learning, improving and taking responsibility for a better child protection system.</p>	<p>Better health outcomes for vulnerable children.</p> <p>Improved participation and attainment of children in universal services, especially school.</p> <p>Earlier and appropriate attention by adult services to the needs of children.</p> <p>Reduction in the impact of parental risk factors that contribute most to child abuse and neglect.</p> <p>Lower rates of abuse and neglect.</p> <p>Lower rates of children requiring out of home care.</p> <p>Improved placement stability for children and young people in out of home care.</p> <p>Improved life outcomes for children and young people in out of home care.</p>	<p>Children have a safe and healthy start to life.</p> <p>Children develop well and are ready for school.</p> <p>Children and young people meet developmental and educational milestones at school.</p> <p>Children and young people live in families where their physical, emotional and social needs are met.</p> <p>Children and young people are safe from harm and injury.</p> <p>Children, young people and their families have access to appropriate and responsive services if needed.</p>

⁶² Please note: some of these measures have shifted over time as new governments in both Queensland and Victoria have ‘repackaged’ their responses to the Queensland and Victorian Inquiries respectively. Current Queensland and Victorian Government responses can be found at:

<https://www.communities.qld.gov.au/campaign/supporting-families/background> and <https://www.vic.gov.au/health-community/children/child-protection.html>

⁶³ viewed 1 November 2016, <https://www.communities.qld.gov.au/campaign/supporting-families/background>

⁶⁴ viewed 15 November 2016, <https://trove.nla.gov.au/work/191083011?selectedversion=NBD52841837>

⁶⁵ viewed 8 November 2015, <http://www.keepthemsafe.nsw.gov.au/>

Appendix 6

Child protection data

Trends in rates of children in the child protection system

National data from annual Australian Institute of Health and Welfare (AIHW) Child Protection Reports shows that over the 5 year period between 2010-11 and 2014-15, the rate of children in substantiations,⁶⁶ on care and protection orders⁶⁷ and in out-of-home care⁶⁸ continued to rise. Between 2011 to 2012, and 2015 to 2016, rates per 1,000 children (AIHW Child Protection Report 2015-2016, p. vii):

- in substantiations rose from 7.4 to 8.5
- on care and protection orders rose from 7.9 to 9.6
- in out-of-home care rose from 7.7 to 8.6.

With specific reference to Queensland data, the following is taken from AIHW Child Protection Reports for each of the specified years.

Table 16. Queensland child protection data, 2009-10 to 2014-15

Queensland	Notifications ⁶⁹	Substantiations	Children on care and protection orders
2009-2010	21,885	6,22 (31.6%)	n/a
2010-2011	21,655	6,598 (30.5%)	4,353
2011-2012	24,823	7,681 (30.9%)	4,282
2012-2013	24,763	8,069 (32.6%)	4,368
2013-2014	23256	7406 (31.8%)	3808
2014-2015	22350	6435 (28.8%)	1841

⁶⁶ Substantiation of notification: Child protection notification made to relevant authorities during the current year that was investigated (with the investigation finalised by the relevant reporting date) and where it was concluded that there was reasonable cause to believe that the child had been, was being, or was likely to be, abused, neglected or otherwise harmed. Substantiation does not necessarily require sufficient evidence for a successful prosecution and does not imply that treatment or case management was provided. Substantiations may also include cases where there is no suitable caregiver, such as children who have been abandoned or whose parents are deceased. Glossary, viewed 17 December 2017, <https://www.aihw.gov.au/getmedia/bce377ec-1b76-4cc5-87d9-d0541fca586c/20479.pdf.aspx?inline=true>

⁶⁷ Care and protection order: A legal order or arrangement that gives child protection departments some responsibility for a child's welfare, viewed 17 December 2017, <https://www.aihw.gov.au/getmedia/bce377ec-1b76-4cc5-87d9-d0541fca586c/20479.pdf.aspx?inline=true>

⁶⁸ Out-of-home care: Overnight care for children aged 0 to 17, where the state makes a financial payment or where a financial payment has been offered but has been declined by the carer, viewed 17 December 2017, <https://www.aihw.gov.au/getmedia/bce377ec-1b76-4cc5-87d9-d0541fca586c/20479.pdf.aspx?inline=true>

⁶⁹ Notification: Contact made to an authorised department by persons or other bodies alleging child abuse or neglect, child maltreatment or harm to a child, Glossary, viewed 17 December 2017, <https://www.aihw.gov.au/getmedia/bce377ec-1b76-4cc5-87d9-d0541fca586c/20479.pdf.aspx?inline=true>,

The QCPCI reported in 2013. There is a slight drop in notifications and substantiations from 2012-2013 to 2014-2015. However, the ratio of substantiations to notifications remains steady at about 30 percent each year except in 2014-2015 when it drops to 28.8 percent. Children on care and protection orders has steadily declined from 2012-2013 to 2014-2015.

Table 17. Children in Out of Home Care (OOHC) in Queensland, 2010 to 2015

Year	Number of children in OOHC (number per 1,000 children)
2010	7,350 (6.9)
2011	7,602 (7.1)
2012	7,999 (7.3)
2013	8,136 (7.4)
2014	8,185 (7.3)
2015	8,448 (7.5)

The number of children in OOHC has continued to grow in Queensland.

Table 18. Indigenous children in OOHC in Queensland, 2011-12 to 2014-15

Year	Number of Indigenous children in OOHC
2011-12	3,041
2012-13	3,095
2013-14	3,659
2014-15	3,864

The number of indigenous children in OOHC in Queensland continues to increase.

Appendix 7

Government implementation of the recommendations of the Queensland Floods Commission of Inquiry

State government agencies⁷⁰

In each relevant State Government agency implementation groups were established which were tasked with implementing the agreed recommendations of the QFCI.

Five key streams of activity were described:

- Planning group which would implement recommendations from Chapters 2-8, QFCI Report 2012;
- Building group which would implement recommendations from Chapters 9-10 QFCI Report 2012;
- Environment and mines group which would implement recommendations from Chapter 13 QFCI Report 2012;
- Emergency management which would implement recommendations from Chapter 15 QFCI Report 2012; and
- Dams group which would implement recommendations from Chapters 16-17 QFCI Report 2012.

Each implementation group was chaired by the Director-General of the most relevant agency. Progress of the implementation groups was monitored by a CEO committee chaired by the Director-General of the Department of Premier and Cabinet.

For each implementation group the purpose, membership, key responsibilities, lead agency, milestones, completion date are included (Queensland Government Response to Final Report of QFCI, Appendix 2, pp. 51-62). Annual Reports of the each of the relevant agencies includes detail on progress of the implementation of the Inquiry's recommendations.

Implementation updates were provided by the Queensland Government in 2013, 2014 and 2015.⁷¹ Each update details those recommendations which had been completed and those

⁷⁰ Information is taken from the Queensland Government response to the Queensland Floods Commission of Inquiry, n.d. viewed 15 July 2016, <https://www.premiers.qld.gov.au/publications/categories/reports/assets/gov-response-floods-commission-inquiry.pdf>

⁷¹ viewed 15 July 2016, <https://www.premiers.qld.gov.au/publications/categories/reports/response-to-flood-inquiry.aspx>

which were still ongoing. The updates, however, only detail the areas for which the State government is responsible. The updates do not detail the progress on recommendations where the lead agencies are Local Councils, the Commonwealth, or the private sector.

By October 2014 the remaining 17 recommendations noted as 'ongoing' had all been transferred to the relevant Chief Executives as part of their agencies' core business. Some of the most sensitive recommendations regarding the operations of the Wivenhoe, Somerset and North Pine Dams were reported as completed in the 2015 update (2015 update, p. 3). One series of recommendations relating to the Brisbane River Catchment studies is not due to be completed till 2018 (2015 update, p. 4).

Commonwealth Agencies

In the Commonwealth Response to the Final Report of the Queensland Floods Commission of Inquiry 2012, the Commonwealth outlines its position on the recommendations directed to it, as well as those that are of relevance to the Commonwealth. In relation to those recommendations specifically directed to it, the Commonwealth states the following:

- In relation to the recommendation that the Commonwealth keep a repository of data of the type used in flood studies (Recommendation 2.11) the Commonwealth supported the recommendation in part and referred to 'progressing a range of projects that will address some of the intent of the recommendation (2012, p. 2).
- With respect to telecommunications carriers, councils and the Australian Communications and Media Authority (ACMA) should take into account the risk of flooding when considering the placement of telecommunications facilities (Recommendation 10.22), the Commonwealth supported this recommendation in part, but stated that this Recommendation misinterprets the role of the ACMA (2012, p. 10).
- The Commonwealth supported Recommendation 13.5 that it should work collaboratively with the Queensland Government and mine operators to ensure co-ordinated and effective monitoring of salts, metals and other contaminants in marine environments that may be affected by mine discharges (2012, p. 13).

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