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Public Inquiries, Public Policy
and the Public Interest

Gary Banks

Peter Karmel Lecture in Public Policy 2013

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About Peter Karmel Lecture in Public Policy

The Academy of Social Sciences in Australia's Peter Karmel Lecture in Public Policy honours the late Professor Peter Karmel AC, CBE (1922–2008), an eminent social scientist and the President of the Academy from 1987–1990. Professor Karmel had a profound impact on higher education and public policy in Australia over many decades.

The Peter Karmel Lecture in Public Policy is intended to provoke public discussion of a particular policy of an Australian government, the policy-making process itself, or comparisons of policies or policy processes found in Australia with those found in other jurisdictions.

The Academy, in conjunction with the Australia and New Zealand School of Government (ANZSOG) presented the inaugural Peter Karmel Lecture in Public Policy by Professor Gary Banks AO, FASSA, at the Shine Dome, Canberra on July 3, 2013.



The Lecturer

Professor Gary Banks AO, FASSA, commenced as Dean of ANZSOG in January this year, after nearly 15 years heading the Productivity Commission. Trained in economics at Monash University and the ANU, his early career was spent at the GATT (now WTO) in Geneva and at the Trade Policy Research Centre in London. On returning to Australia in the mid-1980s, he worked at the Industries Assistance Commission and then as a consultant with the Centre for International Economics in Canberra. He was appointed a Commissioner with the Industry Commission in 1990 and as Chairman of the newly established Productivity Commission in 1998. During this time, he headed some 25 public inquiries, covering a wide range of nationally significant policy topics. He also participated in the 'West Review' of Higher Education in 1997 and chaired the Prime Minister's Regulation Taskforce in 2006. His writings have been published in various policy journals, and collections of his speeches were issued recently by the Productivity Commission.



Public Inquiries, Public Policy and the Public Interest

Introduction

I feel privileged to have been invited to give the inaugural lecture in this series in memory of Peter Karmel. Professor Karmel's important contributions to public policy in Australia are well known and well summarised this evening by Professor McGaw. The Academy of the Social Sciences' tribute is a fitting one, which should in itself make a useful contribution to public policy discussion in the years ahead.

For this first lecture, I have chosen to focus on a key strand of Peter Karmel's own contribution: namely, the role of public inquiries in securing better public policy. Professor Karmel led or participated in a number of such inquiries throughout his career, a notable early example being his influential 1973 report on school funding for the Whitlam Government¹.

As a young economics graduate, newly enlisted in the Public Service, I took a close interest in the Karmel Review and subsequent developments. But it was not until a few decades later, as a member of an education review committee myself – the West Review of higher education policy – that I first got to meet Peter Karmel in person.

Characteristically, he had asked to meet with the committee to warn us to the themes contained in his forthcoming submission. At that time he was not in good health, but he made a very strong impression on the committee. And the thinking in his submission had a significant influence on our subsequent report² What stood out was not just the power of his mind and his skill in constructing his case, but his resolute concern for the public interest, a concern that was often less apparent in other submissions.

It seems timely to be reflecting on the role of public inquiries. For one thing, we have seen an unprecedented number of them in recent years, in part resulting from the hyperactivity of the (first) Rudd administration. For another thing, the Federal Opposition has foreshadowed a good deal more, should it win government in a couple of months' time. Some of those reviews will be traversing territory covered by previous reviews, which raises questions about the value of these. Moreover, notwithstanding all this review activity, there has arguably never been a time when there has been so much contention and division about so many important public policy issues.

This stands in contrast to the experience of the economic reform era of the 1980s and 1990s, when public inquiries preceded most of the major reforms, yielding large and enduring benefits (the Campbell financial markets inquiry³, the Hilmer Competition Review⁴ and the Industry Commission energy markets inquiry⁵ being just three).

What, if anything, has changed? Have public inquiries lost some of their ability to foster 'successful' public policies: policies that not only do good but are accepted as such? If so, does it matter and what, if anything, can be done about it? These are some of the questions I would like to address in this lecture.

It will be obvious that the perspectives I bring are coloured by personal experience, particularly from many years spent at the Productivity Commission and its predecessors, but also by my involvement in the aforementioned West Review of 1997 and the Prime Minister's Regulation Taskforce in 2006⁶.

One of the more basic practical insights that I gained early on in the ‘inquiry game’ was that very few people actually *read* inquiry reports. And no-one, except perhaps the hapless review Chair, reads them in their *entirety*. Summaries are therefore essential to a report’s influence. Even then, a summary needs to be pretty engaging and no longer than ten pages if its content is to be widely absorbed, something that I must confess I had great trouble enforcing while Chairman of the Commission (even in my own inquiries).

Those with least time of all to read inquiry reports are the ministers to whom they are directed, who as a result tend to rely on the interpretations of others, including their personal advisors and the media (whose understanding of a report is often gained through a process akin to a ‘random walk’). With this in mind, the Commission introduced the innovation of a ‘key points’ box at the front of every one of its reports – so that even a very busy prime minister or opposition leader could find time to extract the essentials of a report at first hand.

And that is how I shall commence this lecture: for I fear that, in written form, it has breached the ten-page rule!

Key points

- Public inquiries can be a powerful device for securing better policies.
- There is an increasing need for them, reflecting
 - declining analytical capability of the public service
 - complexity and contention of many policy issues; and
 - a loss of trust in government.
- They can be of particular value to an *incoming* government
 - for ‘repositioning’, and credibly underpinning major changes to policies of the previous government.
- But their contribution is not assured and it has varied greatly in the past.
- How successful inquiries can be depends on how they are framed and constituted, and how well a government handles their reports.
 - Timing and governance matter a lot.
- It is also important that not too many are undertaken at once.
 - Close attention to prioritising and sequencing is needed.

What is a 'public inquiry'?

The essence of a public inquiry (or other reviews, taskforces, etc. covered here) is that it takes place as a discrete activity, with leadership at 'arm's length' from the Executive and from policy departments in particular. It is appointed by and provides recommendations to government, but it has no power or role in relation to their implementation or subsequent administration. In other words, it provides policy-relevant information and advice at the front end of the 'policy cycle' and on a 'take it or leave it' basis. Key features of that advice are its publicness: it responds to public terms of reference, draws on public submissions and is ultimately made public.

The definition of a public inquiry that I am adopting for this lecture is looser than that found in scholarly works, and notably those by Scott Prasser⁷, as it includes reviews conducted by the Productivity Commission. I defend that on the basis that although the Productivity Commission is a standing body, the inquiries that it conducts share the ad hoc and once-off character of royal commissions and other inquiries in relation to topics, and because they have played an important role over the years. They also happen to be the inquiries I know best! (I am not covering parliamentary inquiries, however. Although of relevance, they are birds of a different feather and would need separate consideration.)

It will also become apparent that I am not seeking to be 'comprehensive' in the reviews that I cite, even in relation to those by the Productivity Commission. Rather, I have erred on the side of using more recent or memorable examples that will still be familiar to a general audience. (It must be said that of the hundreds of inquiries and reviews that have taken place over the years, not many remain memorable.) This means that some reviews get multiple mentions in different contexts, even though examples from earlier periods could have served to make the same point.

How can a public inquiry 'add value'?

It seems self-evident from their extensive use of public inquiries and other arm's length reviews that governments see considerable value in them. Their motivations from a policy perspective vary, however, generally falling into one or more of three categories:

1. To vindicate or substantiate a policy course already being followed or intended (e.g. the review of Global Financial Crisis spending or the 2012 Review of the Fair Work Act).
2. To determine how preferred policy directions should be specifically framed or designed (e.g. the Productivity Commission's paid parental leave⁸ and disability⁹ inquiries).
3. To help establish what the policy approach in a specific area should be, whether by reviewing existing policies (e.g. taxation) or addressing a 'new' issue (e.g. greenhouse effects or population ageing).

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

My principal interest here, however, is not just in how inquiries can help governments get what they want, but rather in how they can help get better outcomes for society. Ultimately, if Harry S Truman's dictum that 'good policy is good politics' is correct, as I believe it is, there should be little difference — although observed behaviour suggests that this may not currently be widely believed.

So how in principle might public inquiries be able to contribute to achieving better policy outcomes for society? This is best answered by considering separately two dimensions of the 'policy challenge': the technical — determining *what* to do, and the political — getting it agreed. (There is a third dimension, getting it *implemented*, which is just as important, but not something that I need go into here.)

Technical support

Contrary to what many seem to think, few solutions to policy problems are self-evident or can be lifted from a textbook, or even from another country's practice. Some analysis of the specific nature of the problem and likely impacts of different options, including their interaction with existing policies, will generally be required. This should be core business for the bureaucracy, but, depending on the topic, there will not always be the necessary skills on tap, particularly where more specialised or in-depth research is required. Nor will there always be the capacity (or latitude) to undertake necessary public consultations. This is particularly relevant for policy issues that cut across different portfolios or jurisdictions, or where the problems or issues are new or highly contentious.

The consequent need for 'outside help' of some kind has arguably increased in recent years. For one thing, the analytical capacity of the bureaucracy appears to have been in decline. Few departments today have in-house research units, and generalists have been displacing specialists at those levels of the bureaucracy where policy analysis has traditionally been undertaken. This is at least part of the reason why the Productivity Commission has been able to extend its influence into areas of policy that in earlier years policy departments would have jealously protected from outside interference. At the same time, we have also seen increasing resort to external consultancies, even for core policy development activities.

These developments are often attributed to budgetary pressures impacting on training and research, which no doubt has been a factor. In my view, another more fundamental contributor has been the shift to an ethos of 'responsiveness' (read 'passivity' and 'reactiveness') in the public service, the related power shift to ministerial offices, and the consequently reduced attractiveness of a public service career for smart analysts — compounded no doubt by the rise in alternative sources of employment. (But these are issues for another occasion.)

As well, the scope for public servants to engage externally on matters related to the development and design of policy appears to have become more circumscribed. There have been a number of 'mishaps' in recent years with unintended consequences that even cursory consultation with business would have helped avoid. (One example that I observed at close quarters was the ill-fated initial changes to tax rules for employee shares schemes, announced ahead of the Productivity Commission's inquiry into executive remuneration¹⁰.) Why this has been so is a matter for speculation, but more highly sensitised and short-termist politics have not helped.

In these circumstances, public inquiries provide a means of marshalling dedicated expertise, as well as enabling public consultation on policy options to occur without exposing government politically. For an *incoming* government, they offer the further advantage of providing some control over who does the job, in circumstances where a new government may feel uncertain about the

capability or 'inclination' of incumbent bureaucrats – particularly where these helped design the policies or programs that it wants to change. (The National Broadband Network and carbon policy may be cases in point.)

Political benefits

While public inquiries can in such ways help address technical challenges in policy development, their ability to improve the *political* environment for policy change is arguably even more important. There are multiple dimensions to this:

- *First*, a policy initiative based on the advice of credible outside experts will generally be easier to 'sell' to the public and the Parliament. (National Competition Policy (NCP) is an example.)
- *Second*, and related to this, public inquiry processes can serve to 'educate' the public and help build broader support for policy change. (National Disability Insurance Scheme.)
- *Third*, public inquiries can also diminish the credibility and influence of special interest groups, by exposing self-serving arguments and demonstrating adverse impacts on the community. (Gambling.)
- *Fourth*, they can enable a government to credibly defer taking action in response to an emerging 'issue' – allowing time for some of the heat or fuss to subside, as well as enabling a more considered response. (Executive remuneration.)
- *Fifth*, they can provide an opportunity for government to observe the behaviour of different interest groups and, in particular, how they react to different policy proposals, enabling better informed political judgements about what policy features will ultimately 'fly'. (Lifetime community rating in private health insurance.)
- *Finally*, in helping governments deliver policies that work and that demonstrably benefit the community, they can engender public support for genuine reform and promote trust in government itself.

A potential downside politically of course is that, once in train, public inquiries can make it harder for a government to avoid adopting policy options that the inquiries end up recommending. (The Regulation Taskforce, the gambling inquiries by the Productivity Commission¹¹ and Ross Garnaut's first climate change review are possible examples.)

Once again, for an incoming government, public inquiries can have further distinct political advantages. They can provide a credible pretext for modifying problematic parts of a policy platform developed in opposition. (This is less used than it should be in my view. The paid parental leave issue comes to mind as an opportunity.) They can also provide a new government with 'authority' to dismantle a policy introduced by its predecessors, in circumstances where this may otherwise be highly contentious or interpreted as merely ideological. In this way, they may secure policy outcomes that are not only in the public interest, but that will also be less vulnerable to reversal with another change in government. The most important example currently is industrial relations, where the Opposition has signalled that the Productivity Commission will be asked to

undertake a thorough review of the existing regulatory framework, on the strength of which it would take any substantive reform proposals to the subsequent election.

What connotes 'success'?

It follows that, to be judged 'successful' from a public interest perspective, an inquiry or review needs to achieve more than having an impact on policy: it needs to do so in a way that can ultimately lead to *better* outcomes.

Various examples come to mind of inquiries, or at least key recommendations, that managed to pass the first test of having an impact, but failed the second one of achieving better outcomes. One of the more recent is the inquiry into coastal shipping¹² – admittedly, by a parliamentary committee – which led to legislative changes that may benefit Australian ship making and our local marine workforce, but at significant net cost to the Australian economy and community.

By the same token, there have been many review recommendations that would have met the second test but did not clear the *first* hurdle relating to impact. The Productivity Commission has a long list of them (see my 2012 speech on the 'To Do List'¹³). Its inquiry into restrictions on book imports is a recent high profile example¹⁴; its recommendation for a public interest test in anti-dumping processes¹⁵ is another. Among some from the Howard Government era were the Commission's Broadcasting Report¹⁶ and its inquiry recommending an end to freight-equalisation subsidies for Bass Strait shipping¹⁷.

Occasionally, a public inquiry will fail on *all* counts, its recommendations neither being taken forward by government nor likely to benefit the community in the long term. A very recent example is the Finkelstein Inquiry¹⁸ recommendations relating to freedom of the press.

Increasing the prospects of success

So what are the preconditions for a 'successful' inquiry? While the performance of those involved in one is obviously a factor, the most important determinants are in government's own hands. There are six areas in my view that are particularly important.

Selecting the right topic

Public inquiries or reviews can involve considerable set-up costs and extensive public participation. They therefore need to be reserved for issues that warrant the effort. It follows from points already made that inquiries will generally be best suited to issues that are both technically complex and politically contentious, and where there is much at stake for society in 'getting it right'. Complexity alone is unlikely to provide sufficient justification, as experts can always be called in without the need for a full-blown inquiry (unless complexity relates to the potential for creating losers and winners, which might then satisfy the 'contentious' criterion). However, an issue which is not technically very complex, but is highly contentious, could still warrant an arm's-length review if the gains from getting policy change are potentially large. Tariff protection is a case in point. It has always been relatively simple to analyse, but reforms in the national interest have confronted strong and politically influential resistance from sectional interests. Inquiries have enabled their

claims to be publicly scrutinised, faulty arguments exposed, and for the benefits (and beneficiaries) from specific reforms to be identified and quantified.

Scanning the large number of reviews that have taken place over the past decade or so, it is hard to find many areas that involved no political sensitivities at all. And most reviews, seen in isolation, address issues or topics where the benefits from improved policy outcomes would more than outweigh the costs of the reviews. However the stakes for Australia have varied greatly. This is true even for the Productivity Commission, where significant effort has generally been devoted to screening and selecting topics. Thus, in my time, the Commission undertook reviews on such topics as private health insurance, consumer policy, electricity network regulation and broadcasting, at one end of the scale; and battery egg sales in the ACT and local government exemptions from section 20 of the Trade Practices Act at the other end.

Perversely, the sheer number of reviews at times has diminished their contribution, including for some of the most important ones. For example, in 2008-09 major reviews were simultaneously underway for higher education,¹⁹ health and hospitals,²⁰ taxation,²¹ defence,²² climate change,²³ innovation,²⁴ quarantine,²⁵ 457 migration visas,²⁶ national infrastructure,²⁷ and assistance to the car and textiles industries.²⁸ This is aside from several important inquiries by the Productivity Commission (including consumer policy, paid parental leave and drought policy) and many others of lesser significance.

The failure of some of the most important of these inquiries to realise their potential can no doubt be attributed at least in part to the inability of government to devote the attention to them that was needed – particularly, at the crucial response and implementation stage. Arguably, advancing tax reform or health system reform *alone* on the scale envisaged could have fully occupied the first term of even the most ambitious government.

Asking the right questions

The old saying about ‘asking a silly question’ is apt for public inquiries. The potential contribution of an inquiry obviously depends on what it is expressly required to report on within a particular area of public policy. It will always be important to the commissioning government that an inquiry be *directed*; that it not become a happy hunting ground or loose cannon. However if it is directed to do unproductive things as part of its brief, or is excluded from doing things that, from a public interest perspective, should be examined, then the inquiry is predestined to fail, or at least to make a lesser contribution than desirable.

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

In some cases, a government may wish to exclude some part of the policy terrain subject to review. This is procedurally legitimate, and indeed understandable, but for it to avoid debilitating the inquiry, the issues need to be ‘separable’ and not integral to the main thrust of the review.

In the Commission's 1997-8 inquiry into private health insurance²⁹, the rest of the health system was ruled out of scope, as at the time the government was responding to more targeted community concerns (price rises for premiums). While this veto was obviously respected, the Commission felt it necessary to consider different possible reform directions for the health machine as a whole, to ensure that recommendations to improve this one 'cog' would be complementary.

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

The recent review of industrial relations legislation³⁰ (Fair Work Act) contained no explicit exclusions, but its terms of reference were framed to ensure a focus on legalistic aspects of the Act's implementation, rather than broader impacts on industry and the economy. This was justified on the basis that it was merely a 'post implementation review' (PIR), triggered by the failure to undertake a regulation impact statement (RIS) when the regulations were being formulated. However, as the Productivity Commission argued in reports that immediately preceded that review³¹, a PIR should be as wide in scope as the RIS for which it is effectively a substitute.

The report was welcomed by unions and many of its recommendations were accepted by the Government. However business groups expressed disappointment that it had not addressed their most substantive concerns, arguing that the inquiry should have been conducted by the Productivity Commission. A member of the review panel defended its report by asserting that the Commission could have done no better given the same terms of reference. I have to say that I consider this unlikely, given the Commission's economy-wide analytical framework and its statutory ability to look at 'related matters'.

Getting the timing right

It is said of the art of comedy that 'timing is everything'. The same could be said about public inquiries (although provoking laughter is not normally a positive sign). There are several areas where timing can make the difference between success and failure.

The most basic is choosing the right time to *hold* an inquiry. Borrowing another catch phrase, 'the right thing at the wrong time is the *wrong* thing'. For example, if the political obstacles to desirable change in some policy areas vary inversely with business conditions, it will generally be better to tackle such areas when conditions are good than when they are bad. I could but appreciate the irony, for example, in the long-awaited NCP review of the anti-dumping system (which protects imports from 'unfairly low' prices) finally being sent to the Productivity Commission in 2010 when an appreciated dollar was placing extra competitive pressure on local manufacturers. The predictable outcome was the rejection of the Commission's key public interest recommendation and the recasting of the anti-dumping regime to make it more 'receptive' to an industry's complaints about imports (with the Opposition urging a harder line). Right topic, wrong time.

For similar reasons, it is not smart to time an inquiry on a sensitive matter such that it will issue its report close to an election. At that point, the report will inevitably become a political football, regardless of the merits of its recommendations. This no doubt was part of the story with the Henry Tax Review. Compounding factors in that case were that the Government had had the report for

some six months before releasing it; and then chose to respond only to the politically most contentious recommendations in it, in isolation of other balancing recommendations.

There have been plenty of examples over the years of Productivity Commission reports being rejected, or responses to them distorted, because of a looming election, to the point where the Commission in later years found pretexts for delaying the completion of a number of its draft reports. Those on NCP³² and consumer policy³³ come to mind. Both reports were far better received and more influential for having been released just after an election rather than just before.

On the other hand, it can be politically smart to *initiate* an inquiry in the lead-up to an election. A government is thereby seen to be taking an issue seriously, while ensuring that no action will be necessary until the next term (and possibly by the other side). At the Productivity Commission, the arrival of a pork inquiry (an industry spanning key electorates) invariably heralded a looming election.

Another important consideration is *duration* – how much time is allowed for an inquiry. If consultation is to be more than token, and a draft report is released as part of this (see below), it is hard to complete a public inquiry in less than six months. There are of course plenty of examples of reviews meeting tighter deadlines, but they are not heavily represented among the success stories.

A short sharp review can help a government get the answer it needs (depending on who undertakes it) in a politically convenient timeframe. But lack of consultation will rebound on the review's credibility and can make it look like a set-up job, in turn reducing its political value. It can also make it hard to get the right answer where complexity is a factor. These sorts of issues clouded the public's reaction to such reports as the Howard Government's review of carbon abatement policies³⁴ and the current Government's review of population policy³⁵.

Selecting the right people (in the right settings)

The contribution of an inquiry often comes down to who does the job and what incentives or disciplines they face. Getting either of these wrong can predestine failure against at least one of the dual tests of 'influence' and 'outcome'. Controversy around appointments makes it hard for an inquiry to develop the public credibility that is needed. Over the years, a number of major inquiries have got off to a bad start in this respect, including the Warburton/Hendy tax comparison review³⁶, the West review of higher education, the Bracks auto review, the Orgill review of the 'Building the Education Revolution' funding³⁷ and, most recently, the McCallum (et al) review of the Fair Work Act.

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

The minimum requirement at the personal level could be expressed as 'competence without conflicts'. Desirable additional qualities are integrity, openness of mind and independence of spirit. Admittedly, these are demanding requirements, and people with all of them are not in abundant supply.

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

There will generally be scope to find such people if a government tries hard enough. Professor Karmel's appointment to the schools review that reported in 1973 exemplifies this. And I could cite several others. 'Trying hard' in this area is important, as such appointments typically receive intense scrutiny from interested stakeholders. They will rightly see the qualities and connections of an appointee as having an important bearing on their chances of at least getting a good hearing, if not the outcome they want. A review that cannot withstand such scrutiny will struggle to get broad participation in its processes or for its recommendations to be accepted as being in the public interest.

Another positive feature of the Productivity Commission in this respect is that 'presiding commissioners' for particular inquiries are appointed by the Commission's Chairman, not by the government of the day. That said, governments determine over time the make-up of the Commission through appointments via the Governor-General. Also they can appoint associate commissioners to participate in particular inquiries and there have been many such appointments made over the years. Most have brought considerable benefits through their experience or expertise. Only a few could be said to have failed the test of 'competence without conflicts'. This has mainly been an issue for industry assistance inquiries (notably for the troubled auto and textiles, clothing and footwear sectors). Even in this vexed policy area, a 'safe' appointee has sometimes 'gone native', and signed up to liberalising reforms.

This illustrates the complementary importance of governance arrangements and processes to getting the best out of those involved in an inquiry. Arguably, the more independent the institutional setting for an inquiry, and the more rigorous and transparent are its procedures, the less reliance need be placed on the qualities of the appointees heading it. I used to muse on the ability of the Productivity Commission and its predecessors to produce consistently good reports, despite the unavoidable variation in the abilities of those involved. The explanation was in the quality of its processes and the dedication of its core support staff.

Many inquiries have been supported by departmental secretariats. This has pros and cons, depending on the topic and the department. Central agencies have generally performed much better than line agencies, reflecting their broader responsibilities. The Hilmer review of competition policy is a good example, contrasting say with the Hogan Review³⁸ of pricing in residential aged care. The Regulation Taskforce was allocated a secretariat drawn from several departments, with representation also from the Productivity Commission. This proved challenging to manage, but was ultimately very effective, as I have related elsewhere³⁹.

A recent development is the appointment of departmental heads to lead policy reviews alongside external appointees. Examples include the Shergold, Harmer⁴⁰ and Henry reviews. This approach benefits from the undoubted policy skills and experience of agency heads, but deprives a government of those benefits to be had from 'deniability' and policy-learning at one remove. And there will always be suspicions that the inquiry's findings and recommendations have been discussed with government ministers in advance. This is an understandable concern, and indeed this practice appears to be a common one even for arm's-length reviews.

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

Ensuring 'transparency'

This leads to my fifth requirement for a successful inquiry or review – transparency – which is a key source of the value that an inquiry can add to public policy development.

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

An arm's-length review has value to government precisely because it is *not* seen as co-extensive with it. This enables findings to be tested and policy options floated before reaching a settled position and without implicating government itself. It thereby also provides an opportunity for political learning about likely reactions to different courses of action without incurring the pain of actually experiencing the worst of them. Moreover, as just noted, the public testing of preliminary ideas can serve to reveal unintended potential consequences while there is still the opportunity to avert them, and to do so on the front foot rather than the *back* one.

Transparency amounts to more than mere consultation. A lot of policy consultations and 'conversations' take place these days, but few transmit meaningful information. Transparency requires that relevant interests can be fully informed about the nature of policy problems and how particular proposals might be expected to address them. In other words, it requires that people understand what is going on in the minds of policy makers, so that they are in a position of being able to tell government whether that accords with their own experience 'on the ground' and how they are likely to be affected by particular measures.

When done openly and thoroughly, the informational and political value of public consultation can be great. The Productivity Commission's inquiry into the impacts of the NCP on 'the bush'⁴¹ is one that immediately comes to mind, debunking a number of misperceptions. Private consultations, on the other hand, can result in very bad policy decisions indeed, being vulnerable to capture by the organised (or the 'impassioned'), whose interests rarely coincide with those of the wider community.

To the extent that there is anything akin to 'revealed truth' in public policy, it depends more on iteration than revelation. In public inquiries the key conduits for this are the public availability of submissions and, to repeat, the exposure of *preliminary* findings and recommendations.

I cannot think of any inquiry by the Productivity Commission during my years there that didn't benefit from feedback on a draft report. Indeed in many cases, the Commission's final recommendations have differed significantly from those in its draft reports as a result of such feedback. The convention that no recommendations go to government without first having undergone a draft reporting process has, in my view, been crucial to the effectiveness of the Commission's contribution to public policy. (This experience led me to press the New Zealand Government, unsuccessfully, to entrench a requirement to this effect in the enabling statute for New Zealand's own Productivity Commission.)

Yet there have been many instances of other reviews in which submissions are released late or kept secret, or recommendations are not tested in advance. The lack of a draft report might have been the undoing of the Tax Review in relation to mining taxation, even if the Government had been more adept in how it chose to respond to it. The review of the Fair Work Act also suffered for

want of a draft report, which reinforced suspicions that it was merely about endorsing the status quo and closing down debate.

'Handling' the report well

One of the numerous sayings associated with Lord Maynard Keynes is 'many a slip 'twixt cup and lip'. This is very true of public inquiries. Even the best inquiry may come to nought if its report is mis-handled by the commissioning government. Once again, a number of elements come into play. The key point, though, is that a public inquiry can only be an input to a policy decision-making process. Decisions will ultimately be made in a *political* realm, where the views and skills of leaders – including how they read the politics and their capacity to influence these – play a decisive role.

It may be that, akin to 'sticker shock', a government finds a report's key recommendations unpalatable, whether on ideological or political grounds (assuming it is 'technically' sound), and simply rejects them out of hand. That has happened to numerous reports, including by the Productivity Commission and its predecessors. Vintage examples are Prime Minister Howard's rejection of the Commission's draft recommendation to remove subsidies for Bass Strait shipping the night before its report was released, and the pre-emptive rejection of 'student centred funding' (vouchers) following the West Review of higher education policy. A more contemporary one is from the Commission's inquiry into 'default' superannuation provisions in industrial awards⁴², where the minister concerned publicly indicated a policy position in relation to the union funds' role that was contrary to the Commission's draft recommendation and issued before it finalised its report.

The rejection or setting aside of key recommendations need not negate an inquiry's longer-term value. Many inquiries have had their recommendations spurned initially only to see them revisited and implemented at a later date, following a change of government or when the political climate improved. Taxation is a classic example. Recommendations of the Asprey Committee⁴³, commissioned by the Fraser Government in 1975, languished for a decade before being revived under the Hawke Government, with a further decade passing before one of them, a consumption tax, was finally implemented. The report of the Henry Tax Review similarly contains many recommendations of enduring relevance, despite the short shrift they received. Tariff reform provides another illustration, with the Industries Assistance Commission's advocacy of top-down general reductions⁴⁴ taking several years to be reflected in policy, again under the Hawke Government. And developments in higher education financing and regulation have seen many of the West Review's proposals gradually adopted over time. These and other cases demonstrate that it can take quite a while for novel policy ideas to be properly understood and to gain acceptance.

Where a government is broadly supportive of an inquiry's findings from the outset, a number of factors come into play that influence its ability to get them implemented.

One is how and when it chooses to *release* the report, relative to its own response. There is no rule book here; it is a matter for political judgement. There are two main options: one is to release a report ahead of a (full) response; the other is to release it *with* a response. Both options have been exercised often, but not always to good effect.

Early release of a report enables additional lobbying to occur. It will be directed politically and behind 'closed doors', with the attendant problems that a public inquiry is intended to avoid in the first place. This approach is therefore best reserved for reports where complexity and implementation detail warrant additional 'testing', or where for some reason there has been no

opportunity to adequately test a report's findings in advance. Simultaneous release is most valuable where an issue is politically very contentious, where due process has been upheld and (of course) where the government is confident that the recommended course of action is in the best interest of the public.

In my view, minority government has tipped the balance in favour of the simultaneous release of inquiry reports with a government response. Otherwise, lobbyists have the additional avenue of targeting those individual parliamentarians who find themselves fortuitously in a position of great influence, but who may lack the knowledge or incentive to distinguish the national interest from their own electoral or personal interests. The unsatisfactory outcomes for gambling regulation and carbon policy, for example, were in large part due to the leverage that pressure groups were able to apply through one or two 'independents'.

The worst strategy of all is to keep a report under wraps for too long, or not to respond to it. This can only serve to diminish the standing and the value of a public review, including ultimately in political terms. The first tactic has recently been adopted by some state governments for their commissions of audit. An ironic instance of the second is the Federal Government's failure to release its response to a report it commissioned in 2009 from the Australian Law Reform Commission⁴⁵ – into the efficiency and effectiveness of public inquiries!

Another good feature of the Productivity Commission Act, therefore, is a requirement that all inquiry reports be tabled in Parliament within 25 'sitting days'. (In New Zealand, there is a statutory requirement that the Government release the reports of their Productivity Commission 'as soon as practicable'.)

Irrespective of the timing of a report's release, better or worse outcomes can be achieved depending on how skilfully any negotiations are conducted. Again, this is not just about clinching a deal (any deal) for the sake of early agreement and a triumphant press conference. Perhaps the best illustration of this is the Minerals Resource Rent Tax, which emerged from quick and exclusive negotiations and whose outcome might best be characterised as throwing the revenue baby out with the Resource Super Profits Tax bathwater. The Coalition Government's deal with the Democrats a decade before to get the GST over the line is another, less extreme, example. To succeed in introducing a consumption-based tax, even an imperfect one, was better than failing for a third time, but the exemptions and design inflexibility that formed the *quid pro quo* have left an increasingly costly legacy.

Political negotiation can be rendered more tractable where an inquiry has helped educate the public about what is at stake. The negotiations on the National Disability Insurance Scheme and in particular the support of the Opposition – an uncommon thing – were assisted by the broadening of the public's own support for it following the Productivity Commission's inquiry. The Aged Care Package, though only a single step forward when a few were called for, was at least not a step *backwards*. The same could not be said of gambling 'reform', where sound evidence, broad community support and even signs of political will, failed ultimately to prevail over vested interests.

The gambling story illustrates the risks that political deals, even with 'allies', can get to a point where they weaken the integrity of the policy package itself. Removing a measure that is complementary to others, or changing the sequencing of a program's rollout from what had deliberately been devised, may end up strengthening the hand of those opposing reform. In the gambling case, the perceived 'need for speed' to satisfy a key independent – contrary to the more cautious, incremental approach advised by the Productivity Commission – was ultimately the undoing of real reform.

Although I did not want to get into policy implementation in any detail here, if this is not well addressed it can bring even a sound and ‘agreed’ policy initiative unstuck. The history of COAG is replete with examples of pretty good deals in principle degenerating into pretty poor outcomes in practice – just think water, transport, or indeed infrastructure generally.

All policy initiatives are essentially *experimental* in the sense that, even with the best evidence and preparation, their future impacts can never be known with certainty. Monitoring these impacts and, where appropriate, taking corrective action, is therefore fundamental to successful outcomes over time. That is why, in Commission reports, a final recommendation is often to review how responses to its other recommendations turned out in practice. This is particularly important where these are novel, or there are many complex influences at work. (A recent example is the Commission’s recommendation to review the ‘Two Strikes Rule’, for shareholder approval of executive remuneration, after it had been in operation for a few years – a cautious approach that seems to have been vindicated.) However ‘ex post evaluations’ are not conducted very often, and rarely as an integral part of the policy regime itself.

In conclusion

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

The accumulated deadweight cost of poor policy can be substantial. But, as Adam Smith reportedly replied to a young Hanrahan of his time, ‘be assured: there is a great deal of ruin in a nation’. Up to a point that is of course true – and just as well. Smith himself, however, campaigned consistently and eloquently against policies (such as protection) that he saw as potentially the *most* ruinous. For there are areas of policy where bad decisions can indeed inflict a heavy price. Unfortunately, these also tend to be policy areas that have a greater predisposition to bad decision-making than good – areas where complexity and ignorance can often be exploited for private gain at public cost.

When they are well targeted and properly conducted, public inquiries provide a useful mechanism for penetrating complexity and countering asymmetric political pressures on government. As will have become apparent, I consider that there is more cause for employing such arrangements today than ever before. Loss of policy analytic capability within the public service, compounded by erosion of procedural protections, have in some areas made policy ‘co-production’ with special commissions and taskforces more of a necessity than luxury.

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

All that being said, policy experience in ‘sensitive’ areas, epitomised most recently by the 457 visa episode, has led me to the view that even a poorly structured public inquiry may sometimes be better than the alternative.

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