

Research Article

ROYAL COMMISSIONS INTO POLICING—AUSTRALIA

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Royal Commissions and Inquiries have investigated every police force in Australia in relation to their integrity, accountability and effectiveness—a factor of major importance to every citizen in maintaining their freedom, safety and security. The crucial question this paper poses is whether such tribunals are effective or otherwise in terms of the benefits and outcomes accrued from their findings. The paper is in the form of a critical discussion which investigates and analyses the Inquiries using the method of desk research of official documents over the last 50 years from which it identifies common findings and recommendations contained in the official discourse. The research concludes that lessons have not been learned in relation to policing operations, accountability and integrity in a number of cases and highlights a variety of adverse issues that persist into current policing practice.

Keywords: Policing, corruption, misconduct, royal commissions, public inquiries

INTRODUCTION

The purpose of this paper is to address a vital question regarding the effectiveness of Royal Commissions and Inquiries in terms of the benefits and outcomes accrued from their findings. In other words, does this mode of official discourse achieve what it sets out to do? This paper examines only those inquiries which have investigated the police and policing organisations with the purposes of establishing their integrity, accountability or effectiveness, efficiency and economy or otherwise over the last 50 years in Australia.

These are important issues as they directly relate to the ability of a state or territory to maintain peace, tranquillity and good order within its jurisdiction in order to enhance the public safety and security of its citizens. Indeed, in

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democratic policing systems, “what the police do critically affects the character of government” (Bayley, 2006:17); it is that important. According to New South Wales Police Force (NSWPF, 2013), the modern mission of the police is to protect the community and property by: preventing, detecting and investigating crime; monitoring and promoting road safety; maintaining social order; performing and coordinating emergency and rescue operations. These functions relate back to the historical origins of the ‘New Police’ formed in the Nineteenth Century under the innovative Home Secretary, Sir Robert Peel in England who also established that the police could not operate effectively in democratic societies without the support of the public, as outlined in the famous nine principles of policing (Bronitt & Stenning, 2011). Royal Commissions and Inquiries are appointed to inquire into specific incidents or issues in society with the intention of the investigation being independent, objective and fair to ensure that the findings are accepted as valid by the majority of the stakeholders in society.

Readers might be surprised that the large number of such inquiries in Australia total more than 60, but the fashion for such formal inquiries changed during the 1990s when the first “independent oversight” bodies began to be appointed in a variety of models (den Heyer & Beckley, 2013). From that time the number of Royal Commissions diminished considerably in favour of inquiries originated by independent oversight bodies which were given their respective unique constitution by State and Federal governments. As reported elsewhere (den Heyer & Beckley, 2013), the oversight bodies in Australia all have different powers, roles and responsibilities, but the common feature is that they all have similar powers to those of Royal Commissions.

Independent oversight bodies were preferred because of their ‘standing’ nature; in that they could maintain a continuous and permanent scrutiny over the issue in question, whereas commissions and inquiries are set up as a ‘one-off’ organization whose work finishes after a final report when the inquiry team is disbanded. In addition, the oversight bodies were intended to build public support and trust over a longer period and several included facilities for research, investigation and training (Prenzler & Faulkner, 2010; Prenzler, 2011). Thus, the “set piece” *ad hoc* Royal Commission usually chaired by a high profile senior judge was superseded by statutorily defined organisations and their staffs of permanent or temporary investigators, sometimes of seconded police officers.

This paper will not examine the work of independent oversight bodies other than to identify them as the preferred method of the future to monitor police accountability (Prenzler, 2011). The content will include some descriptions of the topics investigated by Royal Commissions from around Australia and list the conclusions from these with the objective of identifying the changes (if any) of approach and attitude of the staff of police organisations (Lauchs et al., 2009) towards human rights and police ethics between 1963 and today. At the start of the period covered by this paper senior and executive police officers appeared reluctant to discuss or get involved in discussion (Finnane & Myrtle, 2011) about these subjects; indeed, they were accused of turning a blind eye to some human rights issues such as the treatment of indigenous people (Andrews, 1963; Sydney Morning Herald, 1963 May 4). From that date, the attitude of the police shows a more positive approach towards a duty of care for all citizens (e.g. NSWPS, 2007)

In fact, there was no independent oversight of police forces in Australia in 1963, the first Ombudsman being appointed soon after (den Heyer & Beckley, 2013). If there was a complaint against police actions or concerns about police corruption, these allegations were investigated internally by police officers, mostly operating from the “Internal Affairs” or “Professional Standards” department. For most onlookers, this was not a satisfactory situation of “the police investigating themselves” for a variety of reasons, not least the lack of openness, transparency and accountability (Lion, 2010).

High levels of legitimacy, integrity and accountability are essential to an effective system of policing in democratic countries. This recipe goes back to the founding principles of policing attributed to Sir Robert Peel (Bronitt & Stenning, 2011) and has been consistently asserted subsequently (Prenzler, 2004). Public and political pressure on police organisations has meant the necessity (Lewis, 1994:96) for the introduction of independent oversight arrangements for all police forces in Australia (den Heyer & Beckley, 2013), but this paper will examine the years between 1963 and 2004 which was the halcyon era of Royal Commissions.

TYPES AND FUNCTIONS OF INQUIRIES

In Australia it is recognised that there are three types of *ad hoc* tribunals of inquiry: Royal Commissions of inquiry; boards or commissions of inquiry; and parliamentary select committees. The functions of such inquiries, which are

invested with considerable means to uncover the truth using coercive powers, are to investigate socially impactful incidents such as: social evil; natural and man-made disasters; personal or corporate misdemeanour alleged or real (Borchardt, 1991:8). Borchardt, an expert on Royal Commissions through his assiduous tracking of their business (Borchardt, 1978), states that the history of inquiries such as Royal Commissions held under Royal Letters Patent goes back to the Twelfth Century in England. Several other authors (Gilligan, 2002; Hallett, 1982:17; Kennedy, 2004:13) trace the history back even further to “the first Royal Commission”; the Domesday Book commissioned by King William I (William the Conqueror) between the years of 1080 and 1086 with the purpose of recording all property from which to tax the people of England.

In Australia, since its European colonization, a different type of tribunal has been developed, generally regarded as inferior to the royal commission, but nevertheless as authoritative, influential and powerful as its royal cousin; called the “Board of Inquiry,” or committees or commissions of inquiry (Hallett, 1982:14). These appear to have been modelled on the military “Courts of Inquiry” and copied from the experiences of the early naval and military colonial governors in Australia (Hallett, 1982:19; Borchardt, 1991:10). The Chairman of the Beach Police Inquiry (1976), on day one of its sitting, made it very clear that for all practical purposes, there was no difference between a Board of Inquiry and a Royal Commission (Hallett, 1982:14).

The third type of inquiry, the parliamentary committee, is every bit as powerful but seems to be less popular in Australia than in England in the last few centuries. According to Borchardt (1991:11), there are three types of inquiry: “(i) Investigatory—appointed to establish the facts of a situation and to make recommendations to government on matters of policy; (ii) Inquisitorial – set up to determine, in the manner of the police, the facts of an incident or events of the past; (iii) Advisory—to formulate the basis of government policy.” The types of inquiry become apparent when one examines some issues that have been investigated.

TYPES OF ISSUES INVESTIGATED

Royal Commissions investigating policing frequently result from three basic sources: mass media “exposés” of police corruption/maladministration; political pressure to establish an inquiry (or sometimes to ease or defray political pressure) following exposure of police wrong-doing; “whistle-blowers” and internal

informants exposing corruption, misconduct or maladministration. A combination of this model formula is certainly how the Fitzgerald inquiry was initiated (Prenzler, 2009) and several others such as Wood (1997) which followed a similar process.

The formation of any sort of tribunal of inquiry is said (Borchardt, 1991:19) to be a last resort in politics as the legal systems in democratic countries such as Australia and the UK are perfectly capable of dealing with crimes directed against the state or persons. However, Borchardt (1991:20) argues that the composition of the commissioners appointed to inquiries is not impartial as they are nominated by the government of the day which could result in nepotism. In any event, the cost of inquiries is tremendous and the process takes a long time to eventually publish its report. According to Gilligan (2002) there have been too many Royal Commissions in Australia which have merely been used to “defuse an issue.”

Although Royal Commissions in England were largely replaced by departmental committees, their popularity remained in Australia; for example, overall, there were 74 Royal Commissions in Australia since 1970 but only 11 in England (Gilligan, 2002). Royal Commissions are conferred with wide-ranging and effective coercive powers for compelling attendance, producing documents, interviewing and compelling answers, and “contempt of court” (den Heyer & Beckley, 2013). Normal rules of criminal law evidence do not apply as there is no “defence” and “prosecution” but witnesses need to be prepared for all eventualities. For example, during the Teague Inquiry (2009) into the Victorian Bushfires, Ms Christine Nixon, ex-Chief Commissioner of Victoria Police claimed to be a victim when giving her evidence as she did not anticipate, nor was prepared, that the press and politicians were looking for a scapegoat for the loss of life from the fires (Nixon, 2011:318).

METHOD

The author conducted a survey of Royal Commissions and Inquiries in Australia that were commissioned between 1963 and the current day in order to establishing the number and types. The focus of the survey was related to policing, human rights, and police ethics issues that have occurred in all Australian States and Territories. The numbers are: Australian Federal Police 1; Commonwealth 17; New South Wales 14; Northern Territories 1; Queensland 7; South Australia 5; Tasmania 2; Victoria 9; Western Australia 4; total 60. These

data were obtained from a number of literature searches over a period of several years.

The main sources of information were: official reports of Royal Commissions and Inquiries; peer-reviewed journal articles and books relevant to the subject matter; information in the public domain from websites such as state, territory and government websites, and newspaper and television reports. Initial searches were conducted from the Australian National Library (Trove); the Australian Institute of Police Management (AIPM) Catalogue, and; the Library & Information Services of the NSW Police Force (Goulburn). Keywords for the searches were: “accountability,” “ethics,” “integrity,” “inquiries,” “oversight,” “police as subject of law & civil proceedings,” “police corruption,” “police or policing,” “royal commissions.”

The Inquiries disclosed by the searches were analysed from the perspectives of their themes and the human rights and fundamental freedoms that were infringed. Having described a brief history of Royal Commissions and Inquiries into policing in Australia, this paper will now move on to an analysis of their investigations.

ANALYSIS OF THE RESEARCH ON ROYAL COMMISSIONS AND INQUIRIES

The author considers that the Inquiries which had the most impact in terms of their wide-ranging effects on policing policies, practices and procedures and police organization structures were, in chronological order: the Beach Inquiry (1976) in Victoria; the Grieve Inquiry (1983) in South Australia; the Fitzgerald Inquiry (1989) in Queensland; the Wood Inquiry (1997) in New South Wales; the Harrison Inquiry (1997) into the Australian Federal Police; the Kennedy Inquiry (2004) in Western Australia. Upon analysis of relevant documents, what strikes the researcher is the remarkable consistency of the 60 Royal Commissions over the 50 years that were studied. That consistency is in the specific themes of the investigations, those lines of inquiry that they were asked to carry out in their terms of reference, which can be condensed into four major themes.

Themes of Inquiries

The largest number of investigations was into police accountability (19) or perhaps lack of accountability to operate in an open, honest and ethical manner.

The worst example of this is the horrifying complacency and lack of care displayed in some of the cases relating to deaths in police custody of Indigenous people (Johnston, 1991). The Johnston Royal Commission actually drew together the findings of inquiries into 99 aboriginal deaths in custody and despite the “no smoke without fire” suppositions and suspicions, the final report stated: “Commissioners did not find that the deaths were the product of deliberate violence or brutality by police or prison officers” (paragraph 1.2.2). However, the Commissioners did find that police officers lacked training in safeguarding the care, health and welfare of persons in custody.

The second highest subject of inquiry was corruption (15), and several Royal Commissions found systemic corruption; for example the Fitzgerald Inquiry found corruption (Prenzler, 2009:45) from the bottom to the very top of the Queensland Police Service; the Police Commissioner was found guilty of corruption and served a sentence of imprisonment. The other top themes were about the structure (Lusher, 1981), infrastructure or formation of police organisations (13) such as the establishment of the Australian Federal Police (Mark, 1978) and about specific police operations that went badly wrong (12) such as that examined by Morling (1987). This Royal Commission inquired into the wrongful conviction of Lindy Chamberlain over the death of her child who she rightly identified as being abducted and killed by a dingo in Northern Territory. The Chamberlain family was finally exonerated in July 2012 (after four inquests) from involvement in the death of baby Azaria at Uluru in 1980 (Bradley, 2013: 185–186); from the outset there were concerns over the police investigation and collection of evidence at the crime scene (Puddy, 2012).

The Royal Commissions and Inquiries in the preceding section illustrate how, if the accountability of police is less than optimum it can have fatal and terrible consequences. Being armed with lethal weapons and having additional coercive powers to those of the general public, police officers have been criticized many times for using excessive force (HLRC, 2011) out of proportion to the threat they faced (OPI, 2009; Ralston, 2013; Sydney Morning Herald, 2013). Also, criticisms have been levelled by the use of “less than lethal force” options such as Taser weapons (CCC, 2010; Olding & Davies, 2013) which sometimes end in fatal injuries.

On the subject of police corruption, Punch (2000) stated it is not possible to eradicate it entirely, although there is a need to monitor its presence constantly (Beckley, 2012:287) and take measures to reduce or mitigate its effects within

the police service and on members of the community (Beckley et al., 2012). Following from this point, one of the Inquiries into the structure of police (Lusher, 1981) found that there were serious management deficiencies in the police and there were inadequate procedures towards the prevention of likelihood of corruption.

Police forces in Australia are generally managed through a centralised structure with a “command and control” style of leadership; perhaps it is time to devolve power and finance away from headquarters and adopt a more localised and service-oriented approach (Goodman-Delahunty et al., 2012). This comment could be utilised to address the criticisms of failings of police operations and management (Beckley, 1997:211) as professional police officers should not make assumptions or rely on “stereotypes” when dealing with incidents; there should be an emphasis on customer service and quality of service (NSWPF, 2009).

Human Rights Issues

The subject matter of the investigations of the Royal Commissions and Inquiries can also be viewed from the perspective of the human rights and fundamental freedoms of citizens of Australia; Inquiries have been held into a wide ranging variety of police infringements on personal liberty and human rights. Because not all Australian States and Territories have specific human rights legislation (Gans et al., 2011:9–10), the contents of Inquiries were analysed against the Articles of the international standard of the United Nations Universal Declaration of Human Rights (UN, 1948).

Not surprisingly, because the fundamental principle of policing is to safeguard the safety and security of members of the community, the overwhelming majority (38) of the Inquiries’ investigations were in that category. Inquiries into safety and security are exemplified in Fitzgerald (1989) leading to Operation Tesco (CMC, 2011) and in New South Wales, the Wood Commission (1997). There have also been a number of inquiries into child protection (Sturgess, 1985; Wood, 2008).

Relating to the fundamental right of the right to life, the inquiry into deaths in custody (Johnston, 1991) is a prime example. The case of the wrongful conviction of Lindy Chamberlain (Morling, 1987; Puddy, 2012) and other cases of wrongful conviction following unlawful arrest have been the subject of inquiries (Lee, 1990). There have been many inquiries which relate to privacy or

the right to private and family life which mainly revolve around freedom from government “snooping,” interception of communications or unlawfully keeping information on citizens (Hope, 1977; Mitchell, 1978; Samuels & Codd, 1995; Stewart, 1986; White, 1977). An inquiry into freedom of assembly investigated police tactics at a public demonstration that was held in Adelaide, South Australia (Bright, 1971). An example of discrimination against police staff internally in the organization was disclosed by the Ronalds (2006) inquiry which found sexual harassment and sexual discrimination in New South Wales Police Force (then “Service”).

Research by Goodman-Delahunty et al. (n.d.) identified 14 human rights specifically relevant to operational policing issues within the Declaration of Human Rights (UN, 1948) whereby actions of police officers could infringe the human rights of citizens in the process of the use of their police powers. Police powers should be used judiciously, fairly and proportionately (Beckley, 2000:18); the Inquiries listed above have investigated police for possible infringements of six or more of the human rights discussed in Goodman-Delahunty et al. (n.d.); many have found that police powers were used indiscriminately or excessively. This paper will now examine some of the findings and recommendations of the Inquiries.

FINDINGS

When researching the findings and allegations from the Royal Commissions and Inquiries there are again some consistencies and similarities that stretch across the years. Those depicted in the table 1 are from six authoritative Royal Commissions that cross Australia and have had the most impact on policing.

Between the Inquiries dated 1976 and 2004, a period of 28 years, the main allegations relate to police corruption and police involvement in serious criminal activities. This can only lead to the assumption that many of the conclusions of the royal commissions have not been heeded or effectively addressed by police organisations and police executives over the many years since 1963; the evidence is clear if the few sources listed in previous sections of this article are investigated (e.g. Fitzgerald, 1989).

Table 1: Findings/Allegations of Inquiries (not all proved)

	Beach, 1976 Victoria	Grieve, 1983 South Australia	Fitzgerald , 1989	Queenslan	Wood, 1997 NSW	Harrison, 1997 Federal	Kennedy, 2004 Western Australia
Serious criminal activity	✓		✓		✓	✓	✓
Corruption	✓		✓		✓	✓	✓
Excessive political interference			✓				
Negative police culture	✓		✓		✓		
Conspiring to give false evidence	✓		✓		✓		
Assault/excessive use of force	✓						
Harassment and intimidation	✓						
Perjury and fabrication of evidence	✓				✓		
Failing to investigate complaints effectively / lack of independence	✓	✓	✓				
Suppression of evidence	✓				✓		
Unlawful arrest	✓				✓		
Improper disclosure of information			✓		✓	✓	✓
Poor leadership			✓		✓		
Gender Issues							✓

Harrison (2004) made the point that the very same issues were the subject of that investigation as the recommendations from the Wood Royal Commission (Wood, 1997) 14 years earlier. A 2010 inquiry in Queensland identified the same issues (CMC, 2010). In table 1 readers might suspect apparent wilful blindness or complacency by police organisations into the frequency and lack of response to serious problems such as serious criminal activity, corruption and improper disclosure of information featuring strongly in Inquiries across the years. When the recommendations from Inquiries are studied, they again appear consistent and are depicted in the table 2.

Table 2: Recommendations of Inquiries

	Beach, 1976 Victoria	Grieve, 1983 South Australia	Fitzgerald , 1989	Queensland Wood, 1997 NSW	Harrison, 1997 Federal	Kennedy, 2004 Western Australia
Independent Oversight of Police	✓	✓	✓	✓	✓	✓
New Police Complaints system	✓	✓	✓		✓	✓
New corruption prevention strategy			✓			✓
Civilian input/ Tertiary training			✓	✓		✓
Change to recruitment			✓			✓
New promotion / appraisal system			✓			
New organizational structure				✓		
Community policing			✓			
Professionalization				✓		
New police procedures	✓					

Two of the most consistently present recommendations in the six main Inquiries into policing in Australia were that of independent oversight of the police and new systems to manage complaints against police. As outlined in the introduction to this paper, before 1963 police organisations carried out investigations into their own staff internally whether the matter was minor or major and without the safeguard of scrutiny from any outside agency.

The above Inquiries recommended that the former situation was not adequate or acceptable to achieve integrity and accountability into police forces; such matters were too important to leave to the good intentions, competency and rigour of internal investigators. They should be subject to the intense external scrutiny of an independent, open, transparent and unimpeachable nature (Goodman-Delahunty et al., 2012). Further research by the author has not revealed that ideal situation (den Heyer & Beckley, 2013) and it should be noted that the recommendations in the Inquiries were implemented somewhat haphazardly.

In Victoria, although Beach reported in 1976, none of his recommendations were activated (Skelton & Shiel, 2004) until a subsequent report implemented a selection of them (Norris, 1978). A Deputy Ombudsman (Police Complaints) was appointed in 1988, then the Office of Police Integrity (2004) and finally (2012), the Independent Broad-based Anti-Corruption Commission (IBAC) which covers all public sector organisations (Proust, 2012). South Australia did, in fact, introduce the Police Complaints Authority in 1985 following the Grieve Report and will shortly introduce a wider based corruption commission similar to that in Victoria. Queensland introduced the Criminal Justice Commission during the Fitzgerald Inquiry (1989) which developed into the broader-based Crime and Misconduct Commission in 2001. New South Wales had appointed an Ombudsman in 1979 and, as a result of the Wood Commission, formed the Police Integrity Commission in 1996.

At Federal level, an Ombudsman was in place in 1976 but oversight was enhanced with the introduction of the Commonwealth Law Enforcement Integrity Commissioner in 2006. In Western Australia an Ombudsman was appointed in 1971 followed by the Anti-Corruption Commission (1996) which in turn, as a result of the Kennedy Inquiry, was succeeded by the Corruption and Crime Commission (2004). Northern Territory appointed an Ombudsman in 1976 and that arrangement remains to this day. Tasmania appointed an Ombudsman in 1978 but decided to enhance the capability against corruption by

introducing a wide-ranging Integrity Commission in 2011. (Further details of these arrangements are discussed in another paper by the author: den Heyer and Beckley, 2013) This paper will draw together some conclusions from the recommendations of the Inquiries and whether they were actually implemented.

CONCLUSION

The question arises as to whether royal commissions add value to or are effective in the process of anti-corruption measures in police organisations. Christine Nixon, when answering calls for a royal commission into police corruption during her tenure as chief commissioner in Victoria, while agreeing that the Wood Commission in New South Wales was probably the right thing, she did not want one on her watch:

But I had also seen the damage the process of a royal commission could bring down on an organization. The paralysing effect on its everyday operations; the devastation of morale, reputation and motivation, the wounds inflicted on public confidence and good police; the loss of community trust; the massive costs; and the exploitation of the ponderousness of the process by some of the very worst offenders, who so often managed to make a quick, clean getaway. There had to be a way to elicit the gains of a royal commission without the time-wasting and the pain, and I felt we were on the right track for that. (Nixon, 2011: 259–260)

In addition to their gargantuan size, cost and their ponderous nature (Chan, 2007; Prasser & Aroney, 2009), one of the major problems, it seems, with Royal Commissions and Inquiries is their lack of authority following their publication. Sometimes this is because a change of government, a change of the situation (Ransley, 2009), but more commonly it is because of lack of will to follow through (Weller, 1994). The problem could even be diminution of political will or lack of perseverance when yielding to opposition by powerful bodies such as police unions (Finnane, 2002:1,8,83; Skelton & Shiel, 2004) as was experienced following the Beach Inquiry (Beach, 1976) and unethical use of political power and/or position (Fitzgerald, 1989; OPI, 2011).

Commissioner Moffitt claimed that his terms of reference were too narrow and that many of his recommendations were not activated and ignored by government (1985:71–75). The Woodward Royal Commission (1979) into Drug Trafficking also made numerous recommendations that were ignored and the

Williams Royal Commission (1980) made 246 recommendations on Drug Trafficking which were largely ignored.

One area in which the Royal Commissions and Inquiries were successful is that they recommended the introduction of the independent oversight bodies which now scrutinise the activities of police forces in most states and territories of Australia (den Heyer & Beckley, 2013:133). In fact only Northern Territory does not have an independent oversight body, contenting itself with oversight by the Ombudsman. It seems timely to consider the future worth and value of Royal Commission and Inquiries, although it should be noted that an investigation was commenced recently into a related matter (McClellan, 2013).

Gilligan (2002) concluded his article on Royal Commissions: “So, love them or hate them, Royal Commissions of Inquiry seem set to remain very much part of Australia’s political landscape for much of the next century as well.” It seems to this author that Gilligan arrived at that conclusion a little too soon in terms of policing inquiries as since that time in the author’s reckoning, there have been only 15 Inquiries, many of which were Parliamentary Inquiries and they appear to be settling down at the rate of only three per year across the whole of Australia. Whereas, if one looks at work being completed by the independent oversight bodies formed in the last few years, their work is plentiful (den Heyer & Beckley, 2013).

The conclusion this study arrives at is that although Royal Commissions commenced with good intentions, they did not achieve many of their objectives, recommendations or outcomes. Subsequent developments introducing independent oversight bodies for police and public sector organisations made the use of Royal Commissions and Inquiries obsolete (den Heyer & Beckley, 2013). Further research should be completed in the area of “official discourse” (Gilligan & Pratt, 2004, p.3) to substantiate this assertion and establish the cost-effectiveness of the ostensible conscience of the nation: Royal Commissions and Inquiries.

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