

## Greater China Australia Dialogue on Public Administration

2016 Workshop: Sun Yat-sen University, Guangzhou

### Improving Public Policy Decision-making

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## Overview of Australian decision-making processes and challenges

### 1. A long history of inventive public policy

Australia enjoys and can vaunt a long history of inventive public policy dating well back into the nineteenth century when the Australasian colonies were 'social incubators' and wellsprings of pioneering 'state experiments'. Many of these developments were decentralised measures designed to civilise capitalism and provide a degree of 'certainty' in antipodean markets, such the 8-hour day, trade union and worker rights and workplace compensation, arbitration and award wages, tariffs, agricultural producer boards, licensing arrangements, and internal regulation, and also universal male suffrage followed by votes for women. Together they were substantially reaffirmed by the post-Federation national government.

The national government bolstered a protectionist regime that survived for almost 80 years, known colloquially as 'all-round-protection'. Subsequently the protectionist regime was substantially dismantled in the 1980s and 1990s (although not in its entirety and various forms of state assistance survive today). As a result, Australia has enjoyed uninterrupted growth, now stretching for nearly three decades.

Since the start of the 21<sup>st</sup> Century, however, Australian economic and social policy has arguably become less inventive, more timid, and increasingly 'all round compensatory' in its mindset. The causes of this malaise are manifold and are discussed below.

There are some exceptions where recent Australian ingenuity is internationally recognised and copied (policy learnings and transfers) such as income contingent loans for education and training, universal health insurance, gun control, environmental landcare programs, polymer banknotes etc.

This paper explores the decision-making processes in Australia which have led to this history of inventive public policy. The various constraints, challenges and conflicts are addressed in the following section, starting with the most significant structural feature of decision-making – Australia's federated system of government. The impact of a changing decision-making environment is then explored in section 3, including the pressures of globalisation, institutional sclerosis and representational disconnect, the communications revolution and the rising contestability of ideas. Australia's channels of policy analysis and formulation are described and assessed in section 4. The following section 5 dwells on Australia's somewhat unique adoption of public inquiries as a mechanism to foster open and transparent analysis and debate on policy issues prior to ultimate decision-making by governments. The concluding section addresses the question of where evidence-based policy may be heading in Australia.

### 2. Decision-making in a centralising federation: constraints, challenges, conflicts

Australia is a peculiar federation with strong centripetal tendencies (but some remaining centrifugal ones too) presiding over a largely empty continent with a relatively small population hugging the

coastline in metropolitan or provincial cities. Sovereignty is shared and increasingly coterminous, with national and sub-national governments enjoying few areas of exclusive power.

In the Australian Constitution, drawn up by the colonial premiers and other powerbrokers of the day in the 1890s, the Commonwealth was granted a specific list of enumerated powers, while the states largely retained their substantial residual (often inferred) powers. Under the Constitution, which has changed very little since it was proclaimed, the national government was allocated a small number of exclusive powers and a limited list of *concurrent* powers where it could exercise legislative authority (but so too could the states). The states, by contrast, were left with unspecified powers that give them 'possession powers' over things within their jurisdiction but limited 'head of power' authority. Over more than a century the federal government has gradually expanded its spheres of influence well beyond this colonial listing.

The national government has predominant powers in: defence and national security (but not police), most areas of taxation, income support and other entitlements, most primary health care, employment, aviation, etc. States and territories have principal responsibility for education, public hospitals and public health, community services, police and criminal justice, emergency services, housing, passenger transport, land management as well as oversight of the functions of municipal government. In practice, however, there are many overlaps, and the Commonwealth has exercised varying degrees of influence through the use of financial incentives (a consequence of Australia's vertical fiscal imbalance) and cajoling. Examples of policy areas where there are substantial shared responsibilities include: road and rail transport, agriculture and the environment, public housing, industrial relations, coastal management, business regulation.

One of the significant policy transformations of the 1980s and 1990s was the increasing recognition that Australia's economic progress was being thwarted by the existence of nine policy and regulatory regimes (one national and eight states and territories). It became accepted by the main stakeholders (governments and business peak bodies) that many public policy decisions should be co-ordinated at the national level.

Using a form of 'executive federalism', unsupported by any constitutional authority, the nine governments began meeting collectively in an *ad hoc* manner in the 1980s to resolve policy issues which required a national approach. By the early 1990s this had evolved into an institution – the Council of Australian Governments (COAG) – which continues to meet several times each year. <https://www.coag.gov.au/>.

In 2016 COAG was supported by eight Ministerial Councils (Federal Financial Relations, Health, Education, Transport and Infrastructure etc.) Many line agency officials in diverse policy domains perform preliminary work that eventually goes to the institution of COAG as part of an ongoing national coordinating/authorising executive mechanism. The early 1990s was a period of significant reform by Australian governments at both levels, and COAG was seen as an important mechanism to prosecute that reform at the national level.

In addition to the vertical coordination mechanisms such as COAG and its Ministerial Councils, there are other dimensions of interconnectedness shaping policy responses, both global and local. These allow learning from international experience and policy forums, as well as develop patterns of interconnectedness across jurisdictions. Recent examples include the adoption of features of New Zealand's 'investment approach' to resolving social policy problems, and the development of consumer-oriented disability services involving intergovernmental collaboration and pooled funding arrangements to provide choices to people with disabilities.

In Australia, shared sovereignty has led to shared policy responsibilities and shared accountabilities. So although the Constitution provides some guidance on roles and responsibilities, Australia's model of 'executive federalism' (government-to-government policy-making by mutual agreement or executive fiat) has many creative ways to circumvent and get around any constitutional limitation.

### 3. The changing decision-making environment

The environmental and background context within which governmental decision-making takes place is changing. Here we identify four major themes (or dilemmas) which challenge today's decision-makers; namely: globalisation and increasing external influences, institutional sclerosis and representational disconnect, the communication revolution and mass availability of information, and the contestability of ideas in the policy domain.

#### 3.1 Globalisation and external influences

A number of significant public policy issues facing Australian governments are increasingly externally generated. Australia has a long history of engagement in the traditional areas of foreign policy, defence and peacekeeping missions, trade and quarantine, and labour regulation, It has been active in international forums since the 1940s, the role of H. V. Evatt in the establishment of the United Nations being a case in point. However the domestic agenda has more recently broadened to include a range of other internationally relevant matters such as responses to the GFC, climate change, terrorism, unauthorised refugee flows, human diseases such as SARS etc.

Confronted by these global influences in various policy sectors, public policy decision-making has been largely reactive with the aim of developing measures that mitigate the domestic impacts and enable adaptation where necessary, plus make a contribution to the forums to develop more fundamental solutions. Examples include Australia's sponsorship of renewable energy generation (wind and solar power often driven by government stipulated targets), but also our acceptance of the need to reduce greenhouse emissions, while not signing the Kyoto agreement until it almost expired, and reluctance to move away from coal mining and export.

#### 3.2 Institutional sclerosis and representational disconnect

Australia's political system is increasingly coming under strain. Traditional political systems once functioned to provide stability and predictability to a framework of political rule and a socially acceptable and defensible means of decision-making (political consent, tolerance, rule of law, institutional configurations etc.). Because of that, political systems were generally slow to change and adapt, a problem now made worse as the rapid pace of change accelerates.

Australia inherited its enduring political institutional framework from the UK's Westminster parliamentary traditions – that historically evolved over centuries with much simpler and smaller notions of government responsibilities and (now) almost naïve notions of conventional practices (heroic myths of 'ministerial responsibility' and 'parliamentary sovereignty' etc.). Early Westminster governments prior to universal franchise changed during parliamentary terms as a result of changing inter-parliamentary alliances between 'ministerialists'; but with the advent of disciplined adversarial political parties, governments now tend only to fall at elections when they lose.

Throughout the C20<sup>th</sup> our parliamentary systems were based on crown prerogative, strong executives cemented in place by enjoying the 'confidence' of the lower house of parliament, covert decision-making by a central Cabinet of ministers bound by confidentiality, disciplined two-party dynamics and an episodic electoral mechanism that inflicted either renewal or removal of rival executives. There is much constructive criticism that Westminster institutions and quaint notions of government are no longer 'fit for purpose'. Certainly, some changes have been introduced to temper these Westminster-

derived jurisdictions (freedom of information, administrative law and judicial review) but their systems perform essentially as before. Arguably, the reluctance to bring these anachronistic institutions into the C21<sup>st</sup> has compounded the widening disconnect between the political establishment and the wider society.

Although Australia is one of the oldest democratic nations in the world, over recent decades there is a sense that Australian institutions are failing to govern effectively. Many commentators have argued that representative democracy, and the associated institutional configuration, has failed to tackle many pressing problems and become sub-optimal. The historic organic representativeness of political parties with their large memberships and local branch structures have enervated such that almost all policy ideas come from an inner sanctum of career politicians, staffers and political advisers. These ideas (sometimes labelled 'thought bubbles' or 'pressers' – policy by media release) have relatively limited shelf-lives, and depending on media reception may be chopped, changed or dropped at short-notice.

There is fierce disagreement on the symptoms or causes of the malaise. To some the malaise is due to the inherent shortcomings of our representative institutions, the hollowed-out political parties, the increasing influence of 'rent-seeking' interest groups, or the disconnection between the ruling political class and citizens. To others, governing has become infinitely more difficult because: rising community expectations cannot be managed or curtailed; reforms attempt to produce only winners; cultures of complaint have proliferated as the complexities involved in making any changes have deterred rational action; and disruption and turmoil are the new normal. In addition, the media which once reported politics more matter-of-factly has become an active player in the arena, occasionally acting as fickle cheer-squad or 'gotcha' watchdog, but prone to proselytising, deprecating and hypocritical humbug.

Party legislators (and political careerist backbenchers) have become nervous and skittish over opinion polls, spooked by media opinion and commentary, fearful of the reactions of any 'losers' from policy change and anxiously examining their present leadership configurations. This has created the preconditions for frequent leadership tests and leadership spills, leading to greater ministerial changes as new Ministers are rewarded for their loyalty to the new leader. In turn, this reverberates further down the system with many changes to ministerial staff, top officials, and gatekeepers. The end result of this instability is that the professional political class has become even more inwardly focused, pre-occupied with itself and its own survival.

### 3.3 The communication revolution and information availability

The platforms and channels of communication between governments and their constituencies is changing markedly and rapidly. There are both benefits and limitations to the policy-making process from this communication revolution. The 24/7 media cycle, the simplification of messages to sound-bites, twitter feeds, Instagram and Facebook, are all jeopardising careful, thoughtful rational analysis, consultation and debate on significant policy issues. And many of the agendas are being generated from outside of government. Some government leaders are emboldening the initiators by announcing significant responses within the 24-hour cycle.

The social and technological context within which government operates also contributes to the difficulties of managing public policy, especially in the 'new information age' with instantaneous communicative capacities. The rise of the 'hyper-connected society' and 'hyper-connected citizens' has emerged as a potent social force – not so much (as was often expected) as a decisive influence in the decision-making processes of policy formation, but in the blocking of options, vetoing of mooted propositions, and undermining of austerity policy measures. Social media enables minorities or alienated groups to campaign for iconic issues (such as animal liberation, voluntary euthanasia, LGBTI

issues, the deniers of climate change, anti-mining activists) but has also empowered the digitally-rich to mount 'click-and-send' protests creating instantaneous 'moral panics', hoping to stampede the major parties, but not necessarily enabling them to propose better alternatives, or build social bases of support for unpopular remedies.

Governments have become too electorally sensitive, too open to diverse voices, too much subject to democratic vetoes, such that they cannot make headway. Rather than suffering from a 'democratic deficit' (insufficient popular input and meaningful accountabilities), these open, information-rich democratic societies are faced with too much competing input such that they are becoming dysfunctional and can't cope.

Governments and the former bastions of the traditional print/broadcast media have lost their authoritative voice and social control over ideas and beliefs, attitudes and opinions, agendas and policy menus. Sources of official information are distrusted and discounted. New social media has allowed the individual (in their networks) to adopt thoughts or convictions irrespective of anything governments might say, do or not do. In part, society has become 'uncontrollable' with its own platforms to indulge in cultures of complaint. Too much influence has produced governments that are indecisive and nervous.

Disruptive technologies also typically rely on social connectivity putting decisions directly in the hands of users and providers (on-line media content, on-line shopping, Uber services, bitcoin). Technologically literate consumers can source products, services or access information/data without going through government channels and by bypassing regulatory regimes. They are more agile and digitally savvy, preferring to use technologies to enhance their self-reliance as consumers and providers. They initiate their own customised exchange relations without going through traditional regulated markets.

### 3.4 Greater contestability of ideas

While acknowledging the following to be a generalisation, policy analysis and policy development were previously the domain of only a few sources who had the skills, the funding and the perceived mandate – the public service and a small number of 'think-tanks', peak stakeholder groups and wealthy vested interests. Commentary was offered by lobbyists and media magnates and interpretation of the policy ideas was filtered through the underlying ideology of the individual political parties and the predilections of individual leaders and their ministers.

The proliferation of readily accessible 'data' has meant that a much wider range of entities and individuals are able to draw on 'evidence' to support their particular cause, and the proliferation of communication platforms enables them to advocate for this cause to a wider audience. Ministerial offices are responding to this broader (and sometimes shallower) quantum of policy advice by expanding their 'in-house' public policy decision-making, inevitably giving greater weight to the politics and to the desire to get the issue out of the public spotlight as quickly as possible.

Yet, the explosion of information sources widely available to society more generally has (thus far) not resulted in full-blown 'open government', despite the claims this ideal as now arrived, but led to information overload with governments and the community both being unsure of which data are reliable, robust or authoritative. Information overload has not made policy solutions easier, but more complicated and contested, making the commodity of information more relativistic and nuanced. The combination of instantaneous digital media together with the creation of 'big data' has also changed the power relations between government and citizens, and has the potential to change it far more into the future. Citizens are able to search and probe data bases making their own analyses and

findings. They can search the vast collections of public records (local environmental issues, personal records, future planning intentions) to challenge the interpretations or determinations of official decision-makers. Increasingly, more accessible software and search tools can be used to find and analyse data, enabling citizens to make sense of information, often assisted by specialist organisations, community groups and think tanks that can help filter or marshal information.

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To sum up, Australia's governments, in facing an increasing speed of change, have arguably become activity-driven entities but not effective managers of policy outcomes. They operate from a sense that 'something must always be done' on every conceivable social, economic and ecological problem, even if the resulting activity is not necessarily productive or serves to alleviate the problems. To make matters worse, most sectors of society look to government to fix their problems or provide services, leading to critiques that state largesse has contributed to generating 'great expectations' and has bred a 'culture of entitlement' (Tingle 2012). Policy-makers may have little understanding or commitment to the ideas they espouse, or to critical audience responses to these ideas. Bureaucratic interests have been less important in providing new ideas and strategic direction, but tend to share the political incentives to engage in high levels of activism for activism's sake.

#### 4. Channels of policy analysis and formulation: within and between governments

Australian channels of policy formulation are a mixture of top-down and bottom-up processes, together with lateral learning and borrowing.

##### 4.1 Cabinet processes and coordination

Within government, the highest decision-making body is the cabinet, comprising the Prime Minister (or Premier/Chief Minister in the state/territory jurisdictions) and senior Ministers. Cabinet is the pinnacle of executive power, the final decision-making committee of government, even though the prime minister and a smaller number of senior ministers can also authorise decisions. Australian cabinets tend to deal with considerable routine business of government: political decisions and declarations of government positions, strategic issues, legislative proposals and draft bills, policy submissions and briefs, policy updates, budgets and fiscal policy, government appointments. Most of the order of business for the parliament is endorsed by the cabinet prior to making its way to the legislature.

Specific policy submissions are developed by individual ministers and their departments/agencies, but often then discussed at an inter-departmental committee (IDC) to provide input and feedback, with final submissions having separate briefings from central ministries (the Department of the Prime Minister and Cabinet, Treasury, Finance and Attorney-General's Department when relevant). Departments are formally meant to engage in consultation with other affected arms of government, and often with external stakeholders or affected constituencies (but this can break down in the heat of politics – e.g. the mining rent resource tax proposal). There have been many attempts to enhance the strategic capacities of cabinet, to encourage it to focus on longer-term issues and overall directions, while reducing the amount of time spent on routine matters, but often these have been temporary exhortations.

In practice, however, each government has had its own variations to these decision-making codes and conventions, and typically processes of decision-making vary over time and between governments. Often governments operate without a well-developed policy analysis and formulation stage supporting their decision-making. At the Australian government level despite formal commitments to 'good processes of cabinet government', some Prime Ministers have made various presidential-like

unilateral decisions (Rudd's fiscal stimulus measures, Gillard's decision to establish a carbon tax, Abbott's 'captain's calls' on decisions about business subsidies and other matters such as knighthoods, candidate selections). More frequently, Prime Ministers have chosen to govern by relying on an inner cabinet of trusted and loyal ministers (kitchen cabinets) possibly involving less than a handful of ministers. This was true of Keating, Rudd, Abbott and at times Turnbull.

Cabinet is supported by a small secretariat, the Cabinet Office, which forms part of the Prime Minister's department. Its main role is routine administrative servicing of cabinet (circulation of papers, agenda items, recording of decisions etc.); it is not a strategic policy unit or part of the decision-making chain, though at times it has been given a role in following up on the implementation of cabinet decisions.

## 4.2 Departments of State

While departments are expected to draw on long and deep administrative experience and understanding of issues within their realm of responsibilities, there is a tendency for them to focus on short-term issues they can remedy. Most policy proposals emanating from government still tend to come out of the department's own thinking informed by their practical experience in delivering advice and services, and at times supported by commissioned consultant reports. In general, adaptations to policy are shaped by administrative concerns and policy objectives not necessarily by extensive evaluation of outcomes. Moreover, the capacity of departments to undertake detailed analysis is generally decreasing, although there are notable exceptions. Governments have rarely used a Green Paper/White Paper fine line to distinguish between frank and fearless advice and the development of policy that meets the minister's requirements.

Departments are engaged in inter-departmental committees (IDCs) which vary from policy consultative forums to implementation liaison coordinators. Some IDCs function as turf protection mechanisms, although departments can also use them to build partnerships and delivery networks. However, departments generally remain very risk averse in consultation, engaging in the minimal requirements to satisfy procedure.

Some Australian portfolios (usually at the federal level) have research agencies within them, but are not used as extensively as they are in China, where often the Chinese institutes and academies will also scope and supervise higher degree research. Australian research agencies tend to undertake research within an established remit or at the specific request of ministers rather than undertake original research at their own behest. They can produce policy relevant evidence and occasionally policy reviews, although they do not usually develop policy proposals themselves other than as input to the department's policy work. Examples here of specialist research agencies include the Australian Bureau of Agricultural and Resource Economics, the Australian Institute of Health and Welfare and Infrastructure Australia). Hence, when a research agency receives a reference to investigate a particular topic it is generally seen as a signal that the government is interested in the field of inquiry but may not have a preferred policy or actual proposal in mind.

## 4.3 Parliamentary Committees (standing, select, joint bodies), party forums and ministerial councils

Parliamentary committees were once active in policy deliberation and consultation, but appear less so today (except as political forums or for matters of high political importance such as investigative inquiries, electoral matters, finance and audit, accountability matters). Parliamentary committees could once be thought to operate as a pre-cabinet stage in the decision-making process, gathering evidence in public, agenda-setting, refining options and informing stakeholders. They were active in building acceptance for proposed changes to legislation. Today they are rarely used in this way, but

may take on responsibility for reviewing legislation, examining legal issues, human rights, privacy matters, and implementation of long-running programs (e.g. the roll-out of the National Broadband Network, immigration policy). Most committees are standing committees (running the entire life of the parliament), with 15 general purpose and domestic committees established by the House and around the same number set up by the Senate (as at 2016). There are also 17 joint committees with members drawn from both houses of parliament, which are generally more independent from government and powerful in their own right (e.g. the Joint Committee of Public Accounts and Audit – JCPAA).

Parliament has the power to establish a select committee for a particular purpose or to inquire into a specific topic usually with a defined timeframe; although these are sparingly used these-days (e.g. Aboriginal recognition in the Constitution and Northern Australia development). The public visibility of parliamentary committees has tended to reduce the interest that governments have shown in using them to inform policy. The regular party meetings of the major political parties (party room and caucus) are forums where the ministers and other members of the parliament of the respective parties can debate issues in private with a view to reaching internal compromise (although leaks and debriefings are common after the event).

The channels of policy analysis and formulation between governments are centred on intergovernmental ministerial councils. They are long-standing coordination mechanisms between levels of government (federal-state) and across levels (states and territories). Historically, they came into existence when governments felt the need to align responsibilities and agree priorities (e.g. over agriculture and land use, policing and national security, the regulation of inland water); and they tended to proliferate over time. The pre-eminent ministerial council is the Council of Australian Governments (COAG) which comprises the Prime minister and the Premiers/Chief Ministers. Some of the second level ministerial councils are predominantly policy deliberation and coordination bodies, but some have responsibilities enshrined in supporting legislation that has been adopted by all jurisdictions in their own sovereign parliaments. Usually they involve the Commonwealth government even if it has limited (or no) constitutional authority, especially because the Commonwealth may be expected to contribute to the funding of policy initiatives and policy reviews. The chairing and agenda-setting functions and secretariat roles normally rotate between the nine jurisdictions (10 in some cases where New Zealand is also a member of the Ministerial Council, though retaining its own sovereign powers).

Traditionally, ministerial councils made their own decisions in relation to their sectoral responsibilities, approving policy proposals of joint interest and reviewing policy areas. Sectoral policy specialists could make joint decisions with their specialist counterparts in other jurisdictions, carving out a policy space for sectoral autonomy sometimes even against the wishes of their own central agencies. More recently there has been a rationalisation of these councils (reducing their number and broadening their responsibilities), and some discussion that COAG would develop and decide strategic policy issues, leaving the implementation to second level sectoral councils which would report progress back to COAG.

See <https://www.coag.gov.au/sites/default/files/files/guidance-on-coag-councils.pdf>

## 5. The extensive use of policy reviews

One of the features of the Australian landscape for public policy decision-making that sets it apart from many other established governmental systems is its long history of undertaking broad ranging, evidence-based, consultative and policy-oriented reviews.



Such reviews can be very broad in their scope and deep in their analysis – such as the various Committees of Inquiry into the Australian Financial System. Some reviews are set up to develop reform frameworks that form the blueprint for reform over the medium term, such as the Australian Productivity Commission inquiries into Caring for Older Australians and Disability Care and Support. Some reviews address fundamental issues of societal behaviour that may have been long known about but only finally publicly acknowledged and addressed, such as the Royal Commissions into Aboriginal Deaths in Custody and Institutional Responses to Child Sexual Abuse.

These policy reviews take various forms, from having coercive powers to compel the production of evidence (Royal Commissions), to being led by eminent persons, to being undertaken by a purpose-specific standing agency established by an act of parliament (e.g. the Productivity Commission).

Importantly, the reviews do not make policy, but they aim to provide an objective evidence base upon which the government can make informed decisions.

### 5.1 Royal commissions

A Royal Commission is an inquiry initiated by the Commonwealth or a state government to examine and report on issues of public importance or concern. One feature of Royal Commissions that differs from Eminent Persons' reviews is that the enabling legislation under which they are set up enable the Commissioner/s to compel people to attend and to answer questions under oath. Penalties apply for non-compliance. They also provide protection to witnesses and inquiry members from legal action such as defamation.

While the commissioner/s conduct the inquiry independently of the government, the government appoints the commissioner/s, determines the terms of reference, sets the duration of the inquiry, and provides the funding. Hearings are mainly held in public, submissions from stakeholders are published and draft reports are often released to prompt further consultation.

Commissions can be inquisitorial/investigatory by nature and process. They are appointed to investigate allegations of impropriety and maladministration or some catastrophic event (e.g. flood, bushfire or accident) and focus on finding the “truth” about an allegation or incident. This is where their powers of investigation are most used. They make findings of unlawful conduct, but any prosecution is still a matter for judicial processes, not the Commission itself. Alternatively, commissions can be established to provide advice, information, research and options to governments about a particular policy problem.

Prior to the 1990s, Royal Commissions were used extensively across a wide range of issues, including inquiries into strategic sectors of the economy (railways, maritime services, and communications), matters of national security and investigations into government contracts that were of concern. The two decades from the 1970s saw an increase in their use to provide frameworks for reform, such as the inquiries into drug use, the efficiency of public hospitals, public administration, and Aboriginal deaths in custody. Inquiries into matters of national security also continued during this period. Royal Commissions are a lesser used mechanism for inquiry in recent times, although several have been established for essentially political purposes in the last three years, focussing on matters relating to the performance of the previous government or the performance of their related organisations (the Trade Unions). One notable exception, that has strong bipartisan support, is the current (2017) Royal Commission into Institutional Responses to Child Sexual Abuse.

[http://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/Browse\\_by\\_Topic/law/royalcommissions](http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/Browse_by_Topic/law/royalcommissions)

## 5.2 Eminent persons/committees reviews

Governments frequently establish 'arms-length' inquiries, chaired by eminent persons, to review policies or programs, and to recommend reform. While such processes do not have the legislative backing that Royal Commissions have, nor the same powers to compel the production of evidence, they are similar in most other respects. Governments set the terms of reference and reporting dates, provide funding and usually require the holding of public hearings and the publication of submissions.

These inquiries may not always be fully independent from the government. At times, the person selected to head the inquiry may be closely aligned with the government, and the supporting secretariats may be appointed by the government, and drawn from government departments.

The scope of the inquiries may be narrow, dealing with a specific policy issue or performance of a specific program, or may be broad ranging. Examples of the latter include:

- Commission of Inquiry into Poverty in Australia (Henderson, 1972)
- Inquiries into the Australian Financial System (Campbell, 1981), (Wallis, 1997), (Murray, 2014)
- The review into Australia's Future Tax System (Henry, 2008-10)
- Review of Funding for Schooling (Gonski, 2011)
- National Competition Policy Reviews (Hilmer, 1993) and (Harper, 2015).

Some governments establish broad ranging inquiries when coming in to power, to help re-set the agenda. They create Terms of Reference for a 'Commission of Audit' by eminent persons (usually from the business sector), often with a secretariat drawn from the Treasury and Department of Finance. These inquiries are required to undertake a critical audit of the state of the economy and the fiscal position and the policies and programs of the outgoing government. Their investigations, and ensuing recommendations, range across many areas of government policy, though not often in great depth. Examples include:

- NSW Commission of Audit 1988
- Commonwealth National Commission of Audit 1996
- Commonwealth National Commission of Audit 2013
- Queensland Commission of Audit 2013

[http://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/rp/rp1314/CommOfAudit](http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1314/CommOfAudit)

While most eminent person's inquiries follow the principles of independence, public consultation and transparency of process, there are some notable exceptions. In 2013 the Commonwealth government established a broad ranging inquiry into Australia's welfare payments system, led by an appointed expert (McClure). Little was known about this inquiry publicly, prompting the Parliamentary Library of the Australian Parliament to investigate. It came to the following conclusion:

"... the current review has no website, no formal terms of reference and no process for receiving public submissions. The Government has not given an indication of whether and in what form the findings of the review will be released to the public."

[http://www.aph.gov.au/about\\_parliament/parliamentary\\_departments/parliamentary\\_library/flagpost/2014/march/mcclure\\_welfare\\_review](http://www.aph.gov.au/about_parliament/parliamentary_departments/parliamentary_library/flagpost/2014/march/mcclure_welfare_review)

### 5.3 Specialist public policy inquiry organisations

In 1998 the Commonwealth government created a specialist public policy inquiry organisation, the Productivity Commission. To ensure its independence from government, it was established under an act of the Parliament. A permanent panel of commissioners is appointed, each having a term of up to 5 years, and being eligible for reappointment. The government is not able to influence the conduct of inquiries or the recommendations of the commissioners, and all reports are required to be published. Commissioners can require the production of evidence. The commission must operate in an open and transparent manner, hold public hearings, publish submissions and produce a draft report for further consultation.

<https://www.pc.gov.au/about/glance/quick-guide>

The Commonwealth government determines the terms of reference, either by itself for matters under its own jurisdiction, or with the states and territories (through the Council of Australian Governments) for matters of national scope. The commission also undertakes research on matters of its own choosing and publishes those reports. The Commonwealth provides the Commission with an annual untied budget and the Commission does not undertake work on a fee for service basis as that could be seen to compromise its independence.

The productivity Commission has been very successful in developing an international reputation for independent high-quality policy review that recommends reforms that are in the wider public interest. It consults widely with stakeholders, assists in building coalitions of support for reform, is technically proficient in its analytical skills, and uses evidence-based data and methodologies. Its inquiries span the performance of many sectors of the economy and the role of government in those sectors, as well as international trade, social policies (including aged care, disability support services, gambling and health care) and environmental policies.

New Zealand has recently created its own Productivity Commission and several other countries have closely studied the model.

### 5.4 The value of independent public reviews

A recent analysis of reviews undertaken into Australia's welfare system over the period 1941 to 2013 (Regan 2014) identified several common factors which were seen to explain the value of undertaking independent policy reviews as part of the policy formulation process. The factors could be seen to apply equally to most policy reviews and inquiries across a diversity of public policy topics.

- They are versatile and multi-functional (combining research, consultation, consensus-building and analysis in one entity and to fit the task at hand).
- They provide time and a space outside of the day-to-day demands of government (and beyond the limits of departmental or institutional boundaries) to refresh knowledge and think critically, creatively and long-term.
- They are 'public' - involving stakeholders and the wider public, publishing terms of reference and reports and thereby engendering transparency in process and findings.
- They are usually led by, and involve, external experts, bringing expertise and knowledge to the policy process that is often not available within government.
- They are (to varying degrees) independent, operating at a distance from government and populated mainly by external members.
- But, they are also connected to government - commissioned by government, resourced by government and frequently involve public servants in their membership.

[https://coombs-forum.crawford.anu.edu.au/sites/default/files/publication/coombs\\_forum\\_crawford\\_anu\\_edu\\_au/2014-07/review\\_of\\_reviews\\_june\\_2014.pdf](https://coombs-forum.crawford.anu.edu.au/sites/default/files/publication/coombs_forum_crawford_anu_edu_au/2014-07/review_of_reviews_june_2014.pdf)

## 6. Recent developments – where is evidence-based policy heading?

Australian policy decision-making, with a relatively weak tradition of policy and program evaluation, has in recent decades been reoriented toward a much greater need for an evidential basis for decisions and the evaluation of criteria based on effectiveness, efficiency, equity and sustainability (see APSC 2008, PC 2009). However, the recent mantra of ‘evidence-based policy’ is simultaneously both laudable and questionable.

It is laudable, for instance, if one professes that there should be a scientific or technically-driven basis for policy. Many areas of policy are now replete with extensive longitudinal and comparative data bases with sectoral experts advocating policy adaptation based on data metrics and analysis. The alternatives include remaining with established custom and practice, following unfounded beliefs and ideologies, and *ad hocery* or making things up as we go along. One could question whether, when attending a doctor with an ailment, the patient would want anything other than evidence-based medicine. And yet, somewhat sadly, there is a large body of evidence that many currently accepted medical practices and procedures are not underpinned by sound evidence. Assessments of medical practice often highlight the over-supply of either ineffective or potentially harmful treatments where incentives to deliver the service are based on the payments received for delivering particular treatments and procedures, not on improving patient wellbeing.

It is questionable, because what is known about the partial or selective evidence base drawn on in medicine holds equally true in various other fields of public policy. There is rarely an unambiguous single body of evidence to rely on for policy advice, and almost never universal agreement on the evidential record or what course of action it implies we take. Evidence is a contested terrain where rivalrous protagonists compete for influence.

In Australia, at the political level, the rhetorical moral high ground on evidence-based policy was perhaps reached by the administration headed by Prime Minister Kevin Rudd from 2007. Rudd regularly preached the merits of evidence-based policy, as indicated in the following quote:

Policy innovation and evidence-based policy making is at the heart of being a reformist government (Rudd 2008).

However, in government, he was often accused of opting for expediency and resorting to contingency measures. One commentator observed that Rudd’s immediate interest was in framing a policy issue or position and then moving on, with little interest in subsequent negotiations or in the implementation of decisions (Marr 2010). State governments have generally been less interested in talking about embracing evidence-based policy making, probably because they are more grounded in their policy responsibilities, more involved in policy implementation and service delivery, or often more reluctant to embrace major changes.

Other public agencies have endorsed evidence-based policy-making as a new normative discipline for improving traditional policy-making norms – but their exhortations are not universally adopted (PC 2009; APSC 2008).

<http://www.pc.gov.au/research/supporting/strengthening-evidence/roundtable-proceedings-volume1.pdf>

Others have commented on the complexities of undertaking evidence-based policy effectively, suggesting that undertaking multi-criteria prudential decision-making processes were a more pragmatic alternative. The academic Brian Head argued that in the 'craft of policy development' a single prism of evidence-based thinking was insufficient to reflect on policy issues. Rather he argued that three separate but interconnected lenses ought to be used to reflect the more nuanced nature of evidence gathering and interpretation. The three lenses that needed 'weaving together' were: systematic scientific research, program management experience from the field, and political judgement (Head 2008).

<http://www.sciencedirect.com/science/article/pii/S1449403510000020>

There are many explanations offered as to why Australian jurisdictions have struggled with embracing evidence-based policy. Here we conclude this paper with eight key reasons.

1. The disconnect between evidence and policy:
  - Evidence assembles 'inconvenient truths'. It provides data that challenges political preferences or ideologies
    - Admittedly, an evidence-based approach can make life harder for policy-makers and politicians. Lord Keynes, whose ideas appear to have made a bit of a come-back recently, said in the 1930s: There is nothing a government hates more than to be well-informed; for it makes the process of arriving at decisions much more complicated and difficult
  - Governments are in the business of brokering political compromises. They show a preference for expediency, negotiated outcomes (see section 3 on sclerotic institutions and governments looking for short-term 'fixes') and the imperative of not producing 'losers'
2. The disconnect between policy and implementation
  - A lack of foresight and anticipatory policy-making
  - The structural separation of policy design from implementation, leading to poor policy or program design, 3<sup>rd</sup> or 4<sup>th</sup> best options
  - Poor public service capabilities in policy analysis, program design and outcome monitoring
3. The intractable nature of some wicked issues. In some problematic areas no matter how much data and funding is generated by governments, there is no discernible improvement in results
4. The impact of constrained policy timeframes, the difficulties in sustaining political attention to problems, and the compromises adopted to fit within inadequate resource envelopes
5. The underdeveloped theoretical bases for modelling and inadequate methodologies
6. Incomplete data and inadequate proxies for rigorous decision-making
7. Under-investment in research (declining government funding of its own research institutions)
8. The uncertainty of innovation and the regular emergence of unforeseen consequences.