Examples of Public Sector Inquiries: Commonwealth Paedophile Inquiry

Research Paper
No. 9 1996–97
Examples of Public Sector Inquiries: Commonwealth Paedophile Inquiry

Brendan Bailey
Law and Bills Digest Group
11 February 1997

Research Paper
No. 9 1996–97
Author's Note

No speculation, inference or assumption about the content of the awaited report from the Commonwealth Paedophile Inquiry, nor about any person associated with the Inquiry, is made or implied in this paper. Any comment made about the Commonwealth Paedophile Inquiry is based on publicly available documentation and is confined to the procedural aspects of the Inquiry. These procedural aspects were discussed in two separate but related Federal Court hearings in the latter half of 1996.

Inquiries

Further copies of this publication may be purchased from the:

Publications Distribution Officer
Telephone: (06) 277 2711

A full list of current Information and Research Services publications is available on the ISR database. On the Internet the Information and Research Services can be found at http://www.aph.gov.au/library/

A list of IRS publications may be obtained from the:

IRS Publications Office
Telephone: (06) 277 2760
Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Major Issues Summary</td>
<td>i</td>
</tr>
<tr>
<td>Introduction</td>
<td>1</td>
</tr>
<tr>
<td>Part 1</td>
<td>2</td>
</tr>
<tr>
<td>The Various Types of Public Inquiries Initiated by Executive Government:</td>
<td>2</td>
</tr>
<tr>
<td>Separation of Powers Doctrine</td>
<td></td>
</tr>
<tr>
<td>Royal Commissions: Judicial Inquiries</td>
<td>3</td>
</tr>
<tr>
<td>Permanent Watchdog Inquiries</td>
<td>4</td>
</tr>
<tr>
<td>Public Service Act Inquiries</td>
<td>6</td>
</tr>
<tr>
<td>Ad Hoc Advisory Committees of Inquiry or Task Forces</td>
<td>6</td>
</tr>
<tr>
<td>Law Reform Commission Inquiries</td>
<td>7</td>
</tr>
<tr>
<td>Departmental Inquiries</td>
<td>7</td>
</tr>
<tr>
<td>Specific Powers of a Royal Commission: Judicial Inquiry</td>
<td>8</td>
</tr>
<tr>
<td>Part 2</td>
<td>10</td>
</tr>
<tr>
<td>A Brief Observation of the Origin and Approach To An Inquiry Utilised by</td>
<td>10</td>
</tr>
<tr>
<td>the Commonwealth Paedophile Inquiry</td>
<td></td>
</tr>
<tr>
<td>Powers and Procedures of the Commonwealth Paedophile Inquiry</td>
<td>12</td>
</tr>
<tr>
<td>Some Observations about the Powers and Immunities of the Commonwealth</td>
<td>13</td>
</tr>
<tr>
<td>Paedophile Inquiry</td>
<td></td>
</tr>
<tr>
<td>Qualified Privilege</td>
<td>15</td>
</tr>
<tr>
<td>Costs Involved in an Inquiry: Example of a less formal Royal Commission</td>
<td>17</td>
</tr>
<tr>
<td>Concluding and General Observations on Public Sector Inquiries</td>
<td>19</td>
</tr>
<tr>
<td>Endnotes</td>
<td>20</td>
</tr>
<tr>
<td>Attachment A: Paedophile Inquiry Terms of Reference</td>
<td>25</td>
</tr>
</tbody>
</table>
It is now history that when the First Fleet sailed for Australia in 1787 it may have carried the seeds for corruption in the new colony. Actually, it was rice—which had been corruptly substituted in lieu of a larger entitlement of flour used to feed the convicts. The need for public inquiries in regard to public administration, public tenders, the opportunism of the colonial military force (later known as the 'Rum Corps') and patronage in government appointments began early in Australia. Public suspicion has endured. In a recent poll conducted in New South Wales by the Independent Commission Against Corruption, 96% of those polled believed that corruption in the public sector is a problem.

The most powerful form of inquiry is a Royal Commission. Australia has, however, departed from the English approach to Royal Commissions in that a Royal Commission in England is usually confined to establishing facts concerning economic and social issues. A Royal Commission in England operates in accordance with the common law. Australian Royal Commissions, in comparison, can be both investigatory and inquisitorial. Australian Royal Commissions, at both the Commonwealth and State level, draw their authority from the various Royal Commission Acts and, when necessary, from a specific statute passed for a particular inquiry. The enabling statute invariably includes coercive powers including the power to compel evidence including admissions which are self-incriminatory.

A Royal Commission (including a judicial inquiry) is not the only method of inquiry into public administration. In recent years several statutory Commissions have been established in Australia to investigate corruption in public office and in the police force. These independent bodies frequently engage retired judges or senior counsel to investigate specific references. There are also inquiries authorised by a statutory office-holder, such as the Public Service Commissioner. Other types of inquiry include ad hoc task forces, internal departmental inquiries and reviews conducted by advisory bodies on a range of topics including law reform. In addition, there are permanent or standing review bodies such as the Ombudsman, anti-discrimination bodies and merit protection agencies.

Although some of these inquiries operate under Acts of Parliament, they perform, essentially, an investigatory or advisory role for the executive Government. They are not Parliamentary Committees and they are not courts of law. Occasionally, it is necessary for the courts to intervene to ensure procedural fairness in the conduct of an inquiry and to reinforce one of the fundamental principles of a modern democracy—the separation of powers between the Parliament, the Executive and the Judiciary. The High Court has
Examples of Public Sector Inquiries: Commonwealth Paedophile Inquiry

recently reminded the Commonwealth Government that it can be, in certain circumstances, incompatible with the separation of powers doctrine in the Australian Constitution to appoint an already serving judge of the Federal Court to report on non-judicial matters.

Another major issue in any form of inquiry into public administration is whether or not the inquiry is open to public scrutiny. One option may be to ensure that all public inquiries are conducted in full public gaze with no scope for in camera hearings and confidential reports. The obvious problem with this approach is that once the stone of allegation is sent tumbling down the mountain it often creates an avalanche which claims the innocent and corrupt alike. Another option is to conduct inquiries in secret. The argument against closed inquiries is that they may not restore public confidence. The public has no assurance that the matter has been adequately addressed. Another variation is to have a combination of public and closed hearings with a full or partial public release of the inquiry's findings.

The choice of type of inquiry is often difficult for a government. Some inquiries are politically perilous and the fall-out from the inquiry may politically embarrass those who established it. The Royal Commission into Commercial Activities of Government and Other Matters (known as WA Inc) in 1991 and the notable Fitzgerald Inquiry (1987) into the enforcement of criminal law in Queensland are but two examples. Such inquiries can also produce positive results. They may restore public confidence and, in some cases, cause government administrative structures to be radically changed.

Other inquiries have the potential to produce or reinforce a strong and vocal public interest in ensuring that a matter is thoroughly examined. The extraordinary public demonstrations in Belgium over the deaths of children trapped by an alleged paedophile ring and the publicity surrounding the expansion of the Wood Royal Commission on the New South Wales Police Service into allegations of police protection of paedophiles clearly show the depth of current public concern over issues brought to light by some inquiries.

The Commonwealth Paedophile Inquiry, which was established in May 1996 under the authority of the Public Service Act 1922, is scheduled to release its report in Autumn 1997 on allegations of paedophile activity (and the handling of those allegations) within the Department of Foreign Affairs and Trade, AusAID and Austrade. The Inquiry has been beset with controversy in relation to the legal issue of procedural fairness. The type of inquiry chosen by the Government and the procedures employed by the Commonwealth Paedophile Inquiry are worth examining from a public administration point of view. It is also an issue which has been already raised in Parliament. A primary issue is that an inquiry under the Public Service Act 1922 may not have the breadth in powers and privileges to obtain necessary evidence, particularly from non-public servants.

The subject matter of the Commonwealth Paedophile Inquiry is, of course, distressing and tragic and, in any event, it is inappropriate to make any observations on the subject matter in advance of the release of any report by the inquiry.
Introduction

The early 1900s saw the first inquiry into the activities of a Minister of the Crown in the State of New South Wales. The subject matter was land and allegations of corruption. The former Minister under investigation was Paddy Crick. It is interesting to note that this Royal Commission, in 1905, exhibited most of the features that are found in the more recent commissions of inquiry in Australia.¹ There was a 'bagman'. The former Minister refused to answer questions. There were indemnified informants. A key witness, the 'bagman', initially fled the jurisdiction on a boat to South Africa but then returned (no doubt to the annoyance of some). The Commissioner was challenged in the courts (for not administering an oath properly). The Royal Commissioner persevered to present a finding of corruption. Crick's removal from the service of the House was no less dramatic. He was physically removed by the Sergeant-at-Arms while threatening an action for assault.²

Historically, a Royal Commission was an inquiry established under Royal prerogative. The information obtained was given on a voluntary basis. A significant change occurred in England under Thomas Cromwell, the Lord Protector, who armed his particular commissions of inquiry in 1535 with special powers of compulsion. Cromwell’s inquiries into monastic habits and morals, and monastic revenues, are now regarded as examples of a political ruse to first establish that there is a problem and, secondly, recommend a solution which profits the Crown.³ In that, and other respects, they set in place many of the attributes that may be associated with such inquiries.

Political use of inquiries can sometimes bring mixed results. Commissioners are, by definition, meant to be fearless and independent. Like a dedicated retriever they sometimes unearth some unpleasant surprises. It is now established that a commission of inquiry, with broad terms of reference, is not bound by the rules of evidence. The inquiry may follow leads which appear to be outside the terms of reference, provided the evidence sought is a bona fide attempt to establish a relevant connection with the subject matter of the inquiry (Lloyd v Costigan No. 2).⁴ Consequently, a commission of inquiry can rely upon what would otherwise be inadmissible evidence to reach a conclusion (Jackson v Slattery).⁵

Procedural fairness is, therefore, an important and necessary requirement for such inquiries. While the courts in Australia may be reluctant to pay much interest to such inquiries, they are concerned to ensure that natural justice is observed; and when that requires judicial review of inquiries, the courts are usually prompt in ensuring that it is
delivered. The avenue of judicial review of commissions of inquiry, at least at the Commonwealth level, is also available under statutes such as the Administrative Decisions (Judicial Review) Act 1977. Australian courts, however, allow commissions of inquiry more latitude in their terms of reference compared to the courts in other countries. In New Zealand, for example, courts will not allow a commission of inquiry to usurp the criminal courts by inquiring into whether crimes have been committed. The only restriction in Australia applies when criminal charges have already been made against a particular witness.

The coercive powers available to compel evidence vary according to the type of inquiry. This issue, combined with the difficult question of whether the inquiry should be conducted in public or in camera (a hearing in private), needs to be considered carefully when initiating an inquiry.

Part 1

The Various Types of Public Inquiries Initiated by Executive Government: Separation of Powers Doctrine

The term 'Executive government' means the Crown in its administrative aspect. In other words, it includes all government departments and agencies controlled by the Government of the day. It is distinct from Parliament and the courts (the judiciary).

Public inquiries initiated by the Executive government, or under the authority of an Act of Parliament, include:

• a Royal Commission
• a Judicial Inquiry
• an inquiry by a permanent watchdog, such as the New South Wales Independent Commission Against Corruption
• an inquiry conducted by a delegate of an appointed statutory office-holder, such as the Public Service Commissioner
• an ad hoc advisory committee of inquiry or task force
• a permanent advisory and inquiry body such as the Law Reform Commission
• a single purpose inquiry body such as the Constitutional Commission
Examples of Public Sector Inquiries: Commonwealth Paedophile Inquiry

• a departmental inquiry

• an industry inquiry by a consultant.

The common feature of these inquiries is that they are, essentially, inquiries by the Executive government, either on its own initiative or through one of its agencies. These inquiries are not courts of law (the judiciary) nor are they the Parliament. Care must be taken in establishing and conducting these inquiries not to breach the doctrine of the separation of powers. Under the *Australian Constitution*, the doctrine operates in the following way:

This Constitution vests the legislative, executive and judicial powers respectively in distinct organs; and, though no specific definition of these powers is attempted, it is conceived that the distinction is peremptory, and that the clear invasion of judicial functions by the executive or by the legislature, or any allotment to the judiciary of executive or legislative functions would be equally unconstitutional. 8

It was this latter issue which was examined in the recent High Court decision on the incompatibility of a serving judge of the Federal Court reporting on a non-judicial matter concerning Aboriginal heritage protection and the proposed Hindmarsh Bridge in South Australia (*Dorothy Ann Wilson & Ors v. Minister for Aboriginal and Torres Strait Islander Affairs & Anor*)9 The High Court pointed out that under the Commonwealth's *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*, the person appointed to conduct the inquiry performs that role "...as an integral part of the Minister's exercise of power." The performance of such a function by a judge places the judge firmly in the echelons of administration, liable to removal by the Minister before the report is made and shorn of the usual judicial protections, in a position equivalent to that of a ministerial adviser.10 The Court concluded that the function was not one which the Minister could confer on Justice Jane Matthews nor was it one which her Honour was capable of accepting. The Court also noted that the separation of powers is not so rigid as to preclude a serving judge from performing a non-judicial function such as a presidential member of the Administrative Appeals Tribunal, provided true judicial independence is observed.

Royal Commissions: Judicial Inquiries

A Royal Commission and a Judicial Inquiry are both commissions of inquiry and both are authorised under Letters Patent (formal authority of the Crown) issued by the Governor-General for matters arising at Commonwealth level, and by a Governor of a State for State matters. For Commonwealth matters, the Governor-General is authorised to issue Letters Patent by the *Royal Commissions Act 1902*. That Act also specifies the coercive powers and the privileges attaching to a commission of inquiry.
At common law, any person can make an inquiry. In contrast to the Australian approach, in the United Kingdom a Royal Commission is governed by common law only rather than by statute. Consequently, Royal Commissions in the United Kingdom are confined to social and economic issues and they rely upon the public volunteering information. Inquiries into wrongdoing in the United Kingdom are conducted by tribunals appointed under statute and with the approval of both Houses of Parliament.

In Australia, Royal Commissions and judicial inquiries (essentially they are the same) stand outside Government and the courts. Nevertheless, they are regarded as an instrument of the Executive government used to obtain evidence, establish facts and to make recommendations for policy changes and, where necessary, to refer matters to other authorities for possible prosecution of offenders. Courts in Australia are increasingly asked to examine the activities of commissions of inquiry. As noted above, this is because commissions of inquiry can conceptually distort the conventional understanding of the separation of powers.

The Royal Commission into the New South Wales Police Service is an example. The issue of Letters Patent by the Governor occurred on 13 May 1994 and was followed by a special Act of the New South Wales Parliament, the Royal Commission (Police Service) Act 1994. The Act only applies to that particular inquiry but its application can be extended to any replacement or amended terms of reference for a Royal Commission on the same or similar terms. The Act relates its coercive powers and privileges to both the Royal Commissions Act 1923 (NSW) and the Independent Commission Against Corruption Act 1988 (NSW).

The Inquiry into the Relations Between the Civil Aviation Authority and Seaview Air is an example of a commission of inquiry authorised by the Governor-General by the issue of Letters Patent under the Commonwealth's Royal Commissions Act 1902. For convenience, this is referred to as a 'judicial inquiry'.

Permanent Watchdog Inquiries

In the past decade there has been a trend in Australia to establish permanent statutory authorities to deal with corruption. These permanent watchdogs are, in effect, a standing Royal Commission or judicial inquiry. The main purpose of these statutory authorities is to provide a continuing focus on crime and corruption, rather than relying on public calls for ad hoc inquiries when corruption spills over into the public arena. In addition, traditional methods of combating corruption usually involve utilising the very investigatory and enforcement agencies of government which may themselves be part of the corruption problem. Consequently, it is necessary to turn to independent permanent watchdogs which have the power to investigate the very people whose duty it is to enforce...
Examples of Public Sector Inquiries: Commonwealth Paedophile Inquiry

the law. Such authorities can also be pro-active in unearthing crime and corruption. They are also a vehicle for generating systemic reform in the public sector.

These authorities include the Queensland Criminal Justice Commission (CJC), the New South Wales Independent Commission Against Corruption (ICAC) and the National Crime Authority (NCA).

Independent watchdogs like the Queensland CJC are established to receive complaints concerning allegations of corruption and misconduct in public administration and to conduct necessary investigations. The main focus of the CJC is the administration of criminal justice generally. It has the following divisions and tribunals:

- official misconduct
- misconduct tribunals
- witness protection division
- research and coordination division
- intelligence division.

Reports by the CJC are tabled in Parliament, unless they deal with the Courts (such reports go to the head of the relevant Court), or, in the opinion of the CJC, the report contains confidential material.

The CJC has statutory coercive powers (including the authority to use listening devices) and the protection of privileges accorded under its enabling statute.

These CJC inquiries are, by their very nature, matters of keen public and parliamentary interest. The controversial Carruthers official inquiry into alleged irregularities in the Queensland election campaign was an independent inquiry established by the CJC pursuant to the Criminal Justice Act 1989 (Qld). Kenneth Carruthers QC, a retired judge from New South Wales, resigned his commission on 29 October 1996 before completing his report, following the appointment by the State Government of a separate judicial inquiry into the workings of the CJC itself. Reports of the resignation of Kenneth Carruthers QC indicate that the reason for his resignation was a perception by him of interference in his inquiry. In turn, that reason has been refuted by the commissioner appointed to inquire into the workings of the Criminal Justice Commission, Peter Connolly QC.

A no-confidence motion moved against the Queensland Government in the State Parliament over the resignation of Kenneth Carruthers QC was defeated on 31 October 1996. Mr Bob Gotterson QC was appointed by the Criminal Justice Commission to review
Examples of Public Sector Inquiries: Commonwealth Paedophile Inquiry

the material gathered by Kenneth Carruthers QC. The cost of the Carruthers inquiry is estimated at $3 million.\(^\text{18}\)

A finding of the inquiry was that the Queensland Police Commissioner, the Hon Russell Cooper, was cleared of allegations of involvement in electoral irregularities.\(^\text{19}\)

The equivalent Commission in New South Wales, the Independent Commission Against Corruption (ICAC), revealed in its Annual Report, issued in October 1996, that it has conducted polling which reveals that 96% of those polled believed that corruption in the public sector is a problem. The ICAC receives nearly 900 complaints a year of which 35% allege corruption in local government and 25% allege corruption in the New South Wales Police Service.\(^\text{20}\)

Public Service Act Inquiries

The Commonwealth's Public Service Act 1922 empowers the Public Service Commissioner to enter any Department, summon any person whose evidence appears material to an inquiry, take evidence and require the production of documents in relation to any inquiry or investigation into the Public Service.\(^\text{21}\) Under the Public Service Act 1922, the Commissioner may appoint a delegate to carry out such inquiries.

An example of such an inquiry was the examination in 1988 of recruitment practices and certain aspects of personnel management in the then Department of Aboriginal Affairs.\(^\text{22}\)

Another is the Public Service Act inquiry which was announced in May 1996 to examine the manner in which allegations of paedophile activities have been dealt with by the relevant departments and agencies of Government. Aspects of the powers and procedures for that inquiry are discussed in more detail later in this paper.

Ad Hoc Advisory Committees of Inquiry or Task Forces

An example of a task force inquiry is the Small Business Deregulation Task Force and its report Time for Business (November 1996).\(^\text{23}\) Such a task force is established at the prerogative of the Government of the day and usually operates by way of terms of reference. An inquiry of this kind is advisory only and it has no coercive powers or privileges. At best, there may be the protection of the common law defence of qualified privilege in certain exceptional circumstances, such as a criticism made in good faith which was later shown to be erroneous.
These types of inquiries usually contain a range of recommendations which aim to assist the Government formulate a response in terms of policy changes or legislation in relation to a matter of national significance.

**Law Reform Commission Inquiries**

Law Reform Commissions (or equivalent Committees) are established at the Commonwealth, State and Territory level to receive references from the Government of the day to examine proposals for reform of laws. Some of these reports are far reaching and, in time, are referred to by the name of the Commissioner in charge of the inquiry. For example, the Australian Law Reform Commission's report *General Insolvency Inquiry* (1988) is known as the 'Harmer Report' after Mr R W Harmer, the Commissioner-in-charge. The recommendations in that report are still relevant to legislative reform today, particularly in the area of bankruptcy and company insolvency.

At the Commonwealth level, references to the Australian Law Reform Commission are issued by the Attorney-General pursuant to the *Law Reform Commission Act 1973*. The Australian Law Reform Commission does not have coercive powers.

Most States in Australia have a Law Reform Commission. Victoria, however, disbanded its statutory Law Reform Commission in November 1992. Some law reform references in that State are carried-out by the Law Reform Committee of the Victorian Parliament pursuant to the *Parliamentary Committees Act 1968* (Vic). In addition to the Victorian Parliament's Law Reform Committee, there is an advisory body to the Victorian Attorney-General called the Law Reform Advisory Council. The reports of that body are not made public but it advises the Government of issues of suggested law reform.

South Australia does not have a Law Reform Commission. Law reform in that State is primarily a policy function of the State Attorney-General's Department.

**Departmental Inquiries**

Departmental inquiries are usually initiated by a senior official in a department, but they can be carried out at the request of a Minister. In public service terms the authority for such an inquiry derives from the fact that the officers in the department who are directed to prepare summaries on matters related to the inquiry are operating under a lawful direction. The lawfulness of such directions stems from the employer/employee relationship and expressly from section 56 of the *Public Service Act 1922*. 
During 1992-93, the Commonwealth Government encountered difficulties with the tendering process associated with licenses for the introduction of Pay TV. The then Prime Minister, the Hon Paul Keating MP, issued a statement on 17 May 1993 to advise that the Government had decided '...to abrogate the current tender process for new Multipoint Distribution System Licences because of legal flaws'.

The Pay TV matter involved a departmental inquiry which involved the compilation of a departmental report on inconsistencies, as well as a departmental chronology of events. In turn, these reports were assessed as to their comprehensiveness by Professor Dennis Pearce pursuant to terms of reference. Professor Pearce's inquiry followed a request of him by the Secretary of the Department of Transport and Communications. Both departmental documents were favourably reported on by Professor Pearce. In his report, Professor Pearce also made a number of suggestions for improving some aspects of the operation of the department.

In the case of Professor Pearce, his involvement and authority stems from an official request from the Secretary of the Commonwealth Department to conduct an independent analysis on behalf of the Secretary.

**Specific Powers of a Royal Commission: Judicial Inquiry**

The Commonwealth's *Royal Commissions Act 1902* includes the following coercive powers:

- power to summons witnesses and take evidence (section 2)
- power to apply to a judge for a search warrant (section 4)
- power to compel a witness to give evidence, even if that evidence is self-incriminating (section 6A)
- authority to issue a warrant for arrest of a witness failing to appear (section 6B)
- power to protect the Commission and the Commissioner from contempt (section 60).

Royal Commissions are not bound by the rules of evidence and they may, at their discretion, adopt an inquisitorial approach. These coercive powers, however, do not remove the need for a commission of inquiry to observe rules which promote procedural fairness. These rules include the rules of natural justice which require an unbiased Commission and an opportunity for any person named at an inquiry to be heard on any allegation of wrongdoing. For example, in *Ainsworth and Another v Criminal Justice Commission* (1992), the High Court held that it was unfair to table a report of a
commission of inquiry (dealing with the poker machine industry) without affording the opportunity for persons named in the report to be heard. The High Court explained that such reports may have practical consequences for personal reputations both at the time of the report and into the future. The rules of natural justice must be observed to ensure procedural fairness.

Royal Commissioners, in the exercise of their duty, have the same protection and immunity as a judge of the High Court. This means that the common law of contempt applies to a Royal Commission as if it were a superior court, as distinct from an inferior court such as a Magistrates Court which has its contempt powers conferred by statute. The common law of contempt empowers a presiding judge to control behaviour within, and in the vicinity of, the court. A judge may expel disruptive persons from the court. He or she may also decide whether a person is guilty of contempt in the face of the court. The same judge may determine whether contempt has occurred and impose a penalty. A witness or a legal practitioner appearing before the Royal Commission have the same immunities and protection as if they were appearing in the High Court (e.g. in that interference by way of obstruction or threat of such persons would be a contempt).28

Not all contempts involve aggressive insults, blasphemous remarks and threats of, or actual, assault. Contempt findings have been made in the case of a person who released laughing gas into a court (Balogh v St Albans Crown Court),29 and a person who disrobed and lay naked in a court (Gohoho v Linthas Export Advertising Services).30

Royal Commissions do not lay charges but the recommendations or findings of the Commission may include matters leading to subsequent prosecutions (e.g. Fitzgerald Inquiry in Queensland (1987)—Committee of Inquiry into Possible Illegal Activities and Associated Police Misconduct).

The reports of Royal Commissions are usually delivered to the Government of the day for tabling in the Parliament.
Part 2

The purpose of this part of the paper is to assemble the key issues and criteria relevant to the various forms of public sector inquiries and to apply them, in a comparative sense, to a current public sector inquiry, the Commonwealth Paedophile Inquiry.

The key issues and criteria include:

- what circumstances precipitated the establishment of the inquiry
- the form of inquiry chosen
- the powers and privileges applicable to the inquiry
- whether the inquiry is open to public scrutiny
- procedural fairness issues (in how the inquiry conducts its affairs)
- the role of the courts in addressing fundamental rights such as natural justice
- the cost of such inquiries
- the public interest issue.

This comparison is concerned with the form and procedure of inquiries and it does not focus on the content of the Commonwealth Paedophile Inquiry, the hearings for which are conducted in private. Also, the Inquiry is yet to report.

A Brief Observation of the Origin and Approach To An Inquiry Utilised by the Commonwealth Paedophile Inquiry

On 29 May 1996, the Minister for Foreign Affairs, Hon Alexander Downer, announced in the House of Representatives the establishment of a Paedophile Inquiry. Mr Christopher Terence Hunt, a respected senior officer in the ACT Government Service, was appointed to conduct the Inquiry. The purpose of the Inquiry was to consider the manner in which allegations of paedophile activities by officers and former officers of the Department of Foreign Affairs and Trade (as well as AusAID and Austrade) have been dealt with by the relevant departments and agencies of Government. The Terms of Reference for the inquiry accompanied the Ministerial statement (see Attachment A). The inquiry was subsequently named the Commonwealth Paedophile Inquiry. In passing, it is suggested that this is a somewhat ambitious title since it is not really an inquiry into paedophilia per se but an
Examples of Public Sector Inquiries: Commonwealth Paedophile Inquiry

inquiry into how certain paedophile-related allegations have been handled by the bureaucracy. The title does, however, offer the convenience of brevity.  

The reason given by the Minister for Foreign Affairs for the Inquiry was that it was necessary to examine the repeated allegations that officers within his portfolio had been involved in paedophile activity and that management had tolerated such activity. The Minister rightly commented that, along with all Australians, he detested and condemned paedophilia. The Minister has stated that he is determined to expose any paedophile activity and any cover-ups (if found) within his portfolio. He has also said that should allegations be unfounded, the opportunity will be taken to allow individual officers to have their names cleared of suspicion.

On 11 October 1996, the Federal Court of Australia delivered its decision on a challenge to the continuation of the Inquiry under Mr Christopher Terence Hunt (Alastair John Gaisford v Christopher Terence Hunt and the Commonwealth). The case arose from an article in a newspaper which attributed certain reported comments to 'sources close to the inquiry'. One comment so attributed was that the Inquiry "has so far uncovered loose language and a possible homophobic vendetta rather than a "nest" of paedophiles" and another was "...Some people have made a quantum leap from a white male DFAT officer with an Asian male partner, who was young when the relationship started, to paedophile activity. Whether it is deliberate homophobia or a bona fide quantum leap, it is not justified, the source said".

Mr Hunt had in fact given an 'off the record' briefing to the journalist concerning the Inquiry and this briefing gave rise to the article. This came to the attention of Mr Gaisford who had been called to give evidence before the Inquiry and he asked Mr Hunt to disqualify himself. Mr Hunt declined, and Mr Gaisford sought from the Federal Court an order that Mr Hunt not continue the Inquiry on the ground that the briefing and the reported comments would give rise to a reasonable apprehension of bias on his part, in that he had formed a concluded view on matters that were still to be investigated by the Inquiry. Solely for the purpose of arguing the case, the case proceeded on the basis that the 'source' was Mr Hunt and that the comments were largely attributable to him.

The Court, at first instance, concluded, after examining the newspaper article and some related correspondence, that the assertion of a reasonable apprehension of bias was not sustained. This decision was unanimously overturned on appeal to the Full Bench of the Federal Court. Mr Hunt was ordered to not proceed with the Inquiry.

The Full Bench decision on the successful appeal by Mr Gaisford was delivered on 6 December 1996. The Full Bench analysed the newspaper article and came to the conclusion that the views which could be attributed to Mr Hunt were not tentative nor preliminary but that "...some of the comments are explicit in their expression of a conclusion." The Full Bench further concluded that when the whole of the circumstances
Examples of Public Sector Inquiries: Commonwealth Paedophile Inquiry

were taken into account (and not just the tenor of the article) a case of ostensible bias had been made out and '...that the application of the rules of natural justice requires that Mr Hunt not proceed further with his Inquiry'.

It must be clearly noted that this court action was concerned with the procedural issue of natural justice. This paper is looking at the forms of inquiries and related issues such as procedural fairness. The discussion of these cases should not be taken as a comment on any issue before the Inquiry, on the conduct of any person who may give evidence to the Inquiry, or the conduct of anyone involved in the Gaisford cases. The evidence taken by the Inquiry is heard in private.

In a separate legal action, Mr Alastair Gaisford was also successful in obtaining a ruling from Justice Paul Finn of the Federal Court that Gaisford's suspension of security clearance and suspension from the Department of Foreign Affairs and Trade for possible involvement in whistleblowing about alleged paedophile activities was procedurally unfair and invalid.

The purpose for mentioning these court actions is to demonstrate the role of judicial review of matters which touch upon inquiries into public administration, even when the greater part of the inquiry is not conducted in public.

On 9 December 1996, the Minister for Foreign Affairs, Hon Alexander Downer, responded to a Question Without Notice from Hon L Brereton MP, to advise that the Public Service Commissioner had now appointed Ms Pam O'Neil to carry on the Inquiry.

Powers and Procedures of the Commonwealth Paedophile Inquiry

On 21 June 1996, the Commonwealth Paedophile Inquiry wrote to staff in the Department of Foreign Affairs and Trade, AusAID and Austrade outlining the powers and procedures for the Inquiry. This documentation was made publicly available. The details included:

• advertisements to be placed in all major newspapers seeking submissions by 19 July 1996

• the Inquiry is not a criminal investigation; any evidence of criminal activity received by the Inquiry will be referred to the Australian Federal Police for investigation

• the Inquiry hearings are to be conducted in private, with no other party present or represented

• confidentiality and anonymity will apply but, in the interests of natural justice, certain material may have to be put to another person
Examples of Public Sector Inquiries: Commonwealth Paedophile Inquiry

- natural justice will be afforded to all who may be affected by the Inquiry's report
- the Inquiry will result in a public report but it may be necessary to present some material in a confidential annexure.

The authority for the Inquiry is derived from a delegation by the Public Service Commissioner of his investigatory powers under section 19 of the Public Service Act 1922 (initially to Mr Christopher Hunt). Section 89A of the Public Service Act 1922 also provides statutory protection from an action in defamation for any person who makes a report, in good faith, concerning matters of work and conduct of officers in the Public Service. The Inquiry also recognises the duty specified under Regulation 72A of the Public Service Regulations which imposes on the Public Service Commissioner a duty to inquire into matters within the service which, in his opinion, should be investigated.

Section 19 of the Public Service Act 1922 contains coercive powers to the extent that an officer of the Public Service who, without reasonable cause, fails or neglects to comply with a summons or to answer questions can be found guilty of an offence which is punishable by an term of imprisonment of up to 6 months. Any other person who fails to comply with the requirements of the Inquiry, in that they have information '...relevant to the subject of the inspection, inquiry or investigation...', is also guilty of an equivalent offence.

Some Observations about the Powers and Immunities of the Commonwealth Paedophile Inquiry

An important qualification on the extent of the coercive nature of the power in section 19 of the Public Service Act 1922 is subsection (4), which states:

(4) Nothing in this section shall be construed as compelling a person to answer any question which would tend to incriminate him.

The ability to avoid self-incrimination in public service inquiries is in marked contrast to section 6A of the Royal Commissions Act 1902, which provides that it is not a reasonable excuse to refuse to answer because of self-incrimination. The only basis for declining an answer in a Royal Commission is that the question touches upon matters in respect of which the person has already been charged.

When the Inquiry was announced in the House of Representatives on 29 May 1996, the Hon Laurie Brereton responded on behalf of the Opposition. Mr Brereton considered that the type of inquiry chosen by the Government would be limited in terms of its powers because those powers may not apply with the same effect in relation to non-public servants. Hence they could not be effectively compelled to give evidence as witnesses or
otherwise assist the inquiry in its task. For example, it is worth considering the effect of subsection 19(3) of the Public Service Act 1922, which purports to apply to non-public servants. It states:

Any person, not being an officer, who, after payment or tender of reasonable expenses, neglects or fails, without reasonable cause, to attend in obedience to the summons, or to be sworn, or to answer questions or produce documents relevant to the subject of the inspection, inquiry or investigation, shall be guilty of an offence. (italics added)

A person who is a not a public servant but who is inadvertently named by a witness before the Inquiry may take the perfectly understandable attitude that a mistake has been made and that the Inquiry has nothing to do with them. In other words, their association is not relevant to the subject of the Inquiry. The simple example is a neighbour who socialises with public servants from these particular departments. It is difficult to see why that person should, technically, be subject to a penalty under the Public Service Act 1922 if they chose to ignore the Inquiry. If paedophilia is the issue, the non-public servant may rightly consider that any comment they may feel obliged to make should be directed to child welfare authorities or the police and not necessarily their neighbour’s public service employer. Equally, as noted above, if a non-public servant was brought before the Inquiry under summons, that person does not have to say anything which is self-incriminating.

Concern over the assumed breadth of the Commissioner’s power to summons a non-public servant is not new. As far back as 1901, the debate in the House of Representatives on the initial Public Service legislation revealed that there had been a divergence in approach between New South Wales and Victoria in the use of such a provision in State Public Service legislation. Victoria had such a provision while New South Wales did not. In the Commonwealth Parliament the debate, in June 1901, on an equivalent provision in Commonwealth legislation raised the issue of creating what was almost a court process for administrative matters. In addition, the express example of a non-public servant witness in Perth being called before a Public Service hearing in Melbourne gave rise to an amendment to the Bill to insert authority for the payment of reasonable expenses to the witness, rather than it just being treated as a duty in the public interest.46

A further problem is the possible imbalance in the types of protection available to witnesses. Public servants clearly have available to them section 33 of the Public Service Act 1922 which applies the merit principle to transfers and promotions and proscribes discrimination in a range of matters including sexual preference (e.g. homosexuality or bisexuality). This would be relevant if, say, a witness was identified as having a particular sexual preference and they suffered discrimination in their career in the service because of that admission (which, in theory, could become public in the report—allowing for the fact that the Inquiry has the option to include certain matters in a confidential annex). For obvious reasons, section 33 has no relevance to persons who are not public servants. Other
Examples of Public Sector Inquiries: Commonwealth Paedophile Inquiry

statutes (at the Commonwealth, State and Territory level) which prohibit discrimination on
the grounds of sex or race, are, of course, generally available for non-public servants.

Unlike a non-public servant, a public servant also has the avenue of an independent review
by way of a grievance concerning departmental action, or inaction, under the Merit

Qualified Privilege

Qualified privilege is a principle in law which recognises that a person who has a duty to
report suspicions about a particular matter to, say, a supervisor, should not be penalised if
they make a comment to the supervisor, in good faith, and that comment is later shown to
be inaccurate. The broad principle is:

A communication made bona fide upon any subject matter in which the party
communicating has an interest, or in reference to which he has a duty, is privileged, if
made to a person having a corresponding interest or duty, although it contain
criminatory matter which, without this privilege, would be slanderous and actionable
(per Campbell C.J. in Harrison v. Bush)\(^7\)

An example of the application of the principle of qualified privilege (and its limitations) is
found in the High Court decision in Guise v. Kouvelis.\(^48\) In that case a committee member
of a Greek club was looking on at a card game in the club. There was a dispute between
the players. The committee member called one of the players a 'crook' within the hearing of
a number of persons within the club. In an action for defamation, the committee member
raised the defence of qualified privilege. The High Court held that qualified privilege did
not apply because the committee member was looking on as just another member of the
club. The defence of qualified privilege would only apply if the Committee member had a
duty to make a report to the club's Committee itself. There was no duty for the
committee member to speak out amongst members within the club. The High Court said:

In the present case the defendant was not defending or protecting his own purely
personal interests—i.e. interests otherwise than as a member of the club. Protection of
such interests did not require any statement about the plaintiff to any other person. The
defendant could protect himself against the plaintiff by abstaining from having anything
to do with him and there was, from this point of view, no warrant for making any
statement to any other person that the plaintiff was dishonest, even if the defendant
honestly believed that to be the case.\(^49\)

Section 89A of the Public Service Act 1922, is the statutory application of the common
law principle of qualified privilege. This is a defence to an action for defamation. It is
suggested that section 89A, however, could be read narrowly to confine its statutory
Examples of Public Sector Inquiries: Commonwealth Paedophile Inquiry

protection to an oral or written report about the work and conduct at work of a public servant and not to activities outside the workplace.

The protection of qualified privilege is available but it may have limited or no application for a non-public servant who is asked to give evidence about the social behaviour of a public servant. This is because a non-public servant has no 'duty' to identify a public servant as, say, a homosexual or bisexual, nor, it is suggested, has the Commissioner a 'duty' to report on that matter. This may be the basis for the point made by Hon L Brereton MP in his statement of concern to the House of Representatives about the type of inquiry and that some non-public servant witnesses '...will have no real protection against defamation'.

It could be argued that a public servant who is called to provide the Commonwealth Paedophile Inquiry with evidence is under a duty, by virtue of being a serving officer, to provide information which may include confirmation, say, to deny that a colleague is a paedophile but rather someone who socialises with young adults of the same sex (thus possibly implying homosexuality or bisexuality). Ideally, the officer giving the information might simply confine the evidence to clarifying that he or she has no reason to believe that a colleague is a paedophile. There is no need to further speculate on the colleague's sexual preference because, consistent with section 33 of the Public Service Act 1922, such an issue is irrelevant. It is suggested that a non-public servant is in a quite different relationship with the Inquiry. If the non-public servant believes that another person is engaged in paedophile activity then the forum to discuss that is with the police or child protection services, and not with the suspect's employer. The discussion of other matters, such as sexual preference, with the public servant's employer is irrelevant to that person's employment and potentially defamatory.

It is acknowledged that there may be an argument that a slightly different interpretation of qualified privilege is applied when the public servants belong to a diplomatic enclave in a foreign country. In such a situation, the social behaviour of colleagues (albeit irrelevant under the Public Service Act 1922) may have consequences in terms of the reputation and standing of the Embassy or High Commission. Consequently, other serving officers may feel they have a need to comment officially on such behaviour. In addition, there may be slightly more latitude for residents of that country also to address an inquiry on a variety of examples of social interaction with Australian diplomatic staff. In both cases, however, matters of alleged criminality are still, primarily, a police or child welfare matter.

As a suggestion for further reform in the public sector, it may be timely to revisit the issue of the lack of whistleblowing legislation at the Commonwealth level. The Public Service Guidelines on Official Conduct contain a de facto recognition of the concept of whistleblowing. Public Service Regulation 30 places a positive obligation upon public servants in supervisory positions to report to the Secretary of the department all breaches of the Regulations which come to their attention. A public servant may also complain to
Examples of Public Sector Inquiries: Commonwealth Paedophile Inquiry

the Ombudsman about administrative decision making. Ironically, a public servant is proscribed from revealing departmental information to the public without official permission (Regulation 35 and section 70 of the Crimes Act 1914). The Senate Select Committee on Public Interest Whistleblowing (1994) saw merit in the establishment of an independent Public Interest Disclosure Agency but also recognised the complexities in Australian law caused by the lack of uniformity in defamation laws across Australia. 52

Costs Involved in an Inquiry: Example of a less formal Royal Commission

Public inquiries are expensive. As noted above, the disrupted Carruthers Inquiry into alleged irregularities in a Queensland election campaign had cost $3 million at the time Kenneth Carruthers QC resigned on 29 October 1996. The Commonwealth's appropriation for the legal expenses of the Member for Fremantle, Hon Carmen Lawrence, for legal representation before the Marks Royal Commission was $800,000 (Appropriation Act (No. 4) 1995-96). Of that appropriation, $319,927 was paid before appropriation lapsed on 30 June 1996. A new and further appropriation Bill for $50,000 is now proposed. 53

The Hon L Brereton has sought details of the costs already involved in the Commonwealth Paedophile Inquiry. His Question Without Notice was asked towards the close of the Sittings in December 1996 and the financial details are yet to be made public by the Minister. Initial estimates put the likely cost of the Inquiry at $1 million. 54

The Commonwealth Paedophile Inquiry has issued guidelines on Financial Assistance for Legal Costs Before the Commonwealth Paedophile Inquiry. These guidelines indicate that the Commonwealth may grant financial assistance for legal costs and related expenses where the person appearing before the Inquiry is considered to be a central figure. A 'central figure' means:

• the person had made or proposed to make allegations of paedophile activities; or

• the person is the subject of allegations; or

• the person is alleged to have been a manager who actively covered up information relating to paedophile activities.

Other applicants who are not central figures will have their claims for costs considered on a case by case basis. 55 The Inquiry has expressly stated that it intends to conduct its proceedings as informally as possible. 56

The Commonwealth Paedophile Inquiry should, because of its informality and Terms of Reference, incur less public expenditure than a Royal Commission. The separate but recent example of the Commonwealth's contribution to the legal costs of the Hon Carmen
Lawrence before the Marks Royal Commission shows that Royal Commissions can involve significant costs. It may, however, be a false economy if the Commonwealth Paedophile Inquiry finds that it is limited in relation to its powers and immunities and is therefore unable to compile as comprehensive a report as it might wish. The Full Bench of the Federal Court in its decision on the appeal in the Alastair Gaisford case (supra) involving this Inquiry expressly noted that its orders would mean that considerable time and resources already expended will have been wasted but that such a result was unavoidable given the finding of a reasonable apprehension of bias.57

A Royal Commission into the public service is certainly not without precedent. Even in colonial times in Australia there were eleven separate Royal Commissions into various aspects of the civil service in the Australian colonies.58 The colonial experience probably reflected the impact of the ground-breaking Northcote-Trevelyan report on the British Civil Service in 1854 which identified the inefficiency and inappropriateness of patronage in appointments to the civil service. Economic hardship in Australia during the 1870s also focussed attention on the alleged '...extravagances and maladministration of the civil service'.59 A Royal Commission on Postal Services to inquire into the workings of the Postmaster-General's Department was appointed in 1908. It was comprised entirely of politicians.60 In more recent times, Royal Commissions into the Australian Public Service and related activities have included major inquiries, such as the Coombs Royal Commission on Australian Government Administration (1974), as well as the single purpose Mitchell Royal Commission of Inquiry Arising from the Social Security Conspiracy Prosecutions (1986).

The Mitchell Royal Commission is worth noting because the Letters Patent issued by the Governor-General directed Dame Roma Mitchell to conduct the inquiry '...with as little formality as circumstances will allow...' and that '...it is not desirable that proceedings under this Commission be prolonged.'61 The Mitchell Royal Commission was formed to consider compensation claims for a group of welfare recipients who were arrested and charged with conspiracy to defraud the Commonwealth in 1978. Almost all of the charges were later withdrawn.62 It is suggested that the Commonwealth Paedophile Inquiry could, equally, have been established as a single purpose commission of inquiry under the Commonwealth's Royal Commissions Act 1902, just like the Mitchell Royal Commission, instead of an inquiry under the Public Service Act 1922.

Another approach may have been to take advantage of a current, and relevant, Royal Commission and add to its inquiry topics, as was done in New South Wales with the Wood Royal Commission.63

A concern over costs is not meant to diminish the importance of the subject matter of the Commonwealth Paedophile Inquiry. The observation is simply made (albeit, with the advantage of hindsight) that a single purpose Royal Commission may have been a more suitable form of inquiry in the long-run. Worldwide concern and condemnation over the
subject matter is evidenced by such significant and tragic events which have occurred recently in Belgium and in Great Britain.\textsuperscript{64}

**Concluding and General Observations on Public Sector Inquiries**

It is surprising to note the similarity in events which produce and accompany some commissions of inquiry into public administration. The fact that there can still be legal challenges to the conduct of inquiries speaks well for the vigilance of the courts and the strength of fundamental principles, such as the separation of powers and the rules of natural justice.

The selection by any Executive government of the type of inquiry may not necessarily be motivated by political imperatives. Sometimes the subject matter of the inquiry can be so sensitive that to allow unrestricted public access and publicity may be counterproductive. In such cases, any benefit obtained by the inquiry would be outweighed by the damage to innocent parties who become subjected to the passions of the mob. This cautious approach must be weighed against those who argue for public hearings. For example, Lord Justice Salmon said in 1966:

> When there is a crisis of public confidence about the alleged misconduct of persons in high places, the public naturally distrusts any investigation carried out behind closed doors. Investigations so conducted will always tend to promote the suspicion, however unjustified, that they are not being conducted sufficiently vigorously and thoroughly or that something is being hushed up ... Unless these inquiries are held in public they are unlikely to achieve their main purpose, namely, that of restoring the confidence of the public in the integrity of our public life. And without this confidence no democracy can long survive.\textsuperscript{65}

Another feature of inquiries into public administration is that they can take various forms. Some inquiries operate with full coercive powers to compel evidence, even evidence which is self-incriminating. Others have more limited coercive powers. Some have no coercive powers at all. In setting up an inquiry, the Executive government must be mindful of the need to arm the inquiry with appropriate powers and privileges.

At the Commonwealth level, there seems to be scope again to consider the establishment of a Public Interest Disclosure Agency to assist whistle blowers. Such an agency may generate appropriate reforms in the public sector on a systematic basis, rather than achieve such reforms by the use of \textit{ad hoc} inquiries. Consideration might be given to the enactment of a more comprehensive statutory basis for inquiries into the Public Service.
Examples of Public Sector Inquiries: Commonwealth Paedophile Inquiry

Endnotes

1 Such as the Fitzgerald Royal Commission (1989), *Report of a Commission of Inquiry Pursuant to Orders in Council—Inquiry into Possible Illegal Activities and Associated Police Misconduct*, which brought to light a police 'bagman', and the Wood Royal Commission into the New South Wales Police Service which has provided immunity to certain key witnesses.


5 (1984) 1 NSW LR 599


10 Ibid: 752.


12 Section 3 *Royal Commission (Police Service) Act 1994*.


14 See section 19 of the *Criminal Justice Act 1989 (Qld)*.

15 See sections 26 and 27 of the *Criminal Justice Act 1989 (Qld)*.


17 Ibid.


19 See Dore, C. 'Untested Act added to Carruthers' weighty woes', *The Weekend Australian*, 21 December 1996. The article also mentions that the State Premier, Hon R. Borbidge, was also cleared of allegations.
Examples of Public Sector Inquiries: Commonwealth Paedophile Inquiry


21 Section 19 of the Public Service Act 1922 and Regulation 72A.

22 MacDonald, B. Report on Allegations About Certain Aspects of Personnel Management in the Department of Aboriginal Affairs, Australian Government Public Service, Canberra, March 1989 (Parliamentary Paper No. 74 of 1989). The report was tabled in Parliament on 11 April 1989. The Inquiry found that claims of widespread malpractice in DAA's recruitment and staffing were not substantiated but that certain changes in personnel practices were desirable. The Commissioner's delegate for that inquiry was Mr Bruce MacDonald.


24 As a parliamentary committee, the Victorian Law Reform Committee attracts the privileges and powers of a Committee of Parliament.

A set of three significant Victorian reports on matters related to company insolvency (Curbing the Phoenix Company), over the period 1994 to 1995, resulted in a cross-over into Commonwealth areas of responsibility. When a company fails and is unable to pay its employees and creditors, but a company emerges shortly afterwards (usually in the same industry) with a similar name, with the same directors or with assets obtained from the previous failed company, the emerging entity is called a 'phoenix company'. As noted in the Summary to the Committee's Third Report (November 1995), on 1 August 1995, the Commonwealth Attorney-General announced that the Commonwealth's Corporations Law Simplification Task Force would also examine the issue of the 'phoenix company'.

The Victorian example demonstrates how a State-based inquiry into problems encountered by local businesses and Victorian subcontractors can have ramifications for the public administration of company law on a national basis.


26 See Ministerial Statement by the then Minister for Transport and Communications, Senator Hon Bob Collins, Senate, Hansard, 26 May 1993: 1383.

27 (1992) 175 CLR 564

28 Section 7, Royal Commissions Act 1902.

29 [1975] QB 73.

30 Times (21 January 1964).

The Macquarie Dictionary defines 'paedophilia' as 'sexual attraction in an adult towards children'. The definition given in the Commonwealth Paedophile Inquiry is 'paedophile activities' mean 'activities arising from the sexual attraction in an adult towards children, including young adolescents'.

As noted in the text, the main purpose of the Commonwealth Paedophile Inquiry is to ascertain the manner in which allegations of paedophile activities have been handled in agencies which have responsibilities for foreign affairs, trade and overseas aid. The terms of reference for the Inquiry (see Attachment A) conclude with the clause that allegations of paedophile activities will be referred to the Australian Federal Police.


Ibid: see pp. 7 and 8 of the issued court decision of Justice Mansfield.

In a statement issued by Mr Hunt on 6 December 1996, following the announcement of the Appeal Court decision, he stated 'I should like to make it plain that at no time, either here or whilst furthering our inquiries in South East Asia, have I formed any view, or stated that I have formed a view, as to the existence of a so-called "homophobic vendetta"'.


In the statement issued by Mr Hunt on the day that the Appeal Court decision was delivered (6 December 1996), he confirmed that he had an 'isolated and limited contact with a journalist' and this contact was a bona fide attempt to obtain 'free publicity'. Mr Hunt indicates in his statement that he assumes that there may have been 'misunderstandings between the journalist and me'. Mr Hunt also makes the point that the legal challenge against him was over an alleged appearance of bias not that he had actually prejudged any issues. Mr Hunt also stated that legal advice to him was that he 'should not become actively involved in those proceedings by giving evidence...'.


Ibid: p. 15.

See Campbell, R. 'Action on whistleblower ruled "unfair, invalid"', The Canberra Times, 30 November 1996.
Examples of Public Sector Inquiries: Commonwealth Paedophile Inquiry

49 Ibid: 111.
50 Op cit
52 See Australia, Senate Select Committee on Public Interest Whistleblowing, In the Public Interest, Canberra, August 1994.
54 House of Representatives, Hansard, 9 December 1996: 7674 (Proof). An estimate of $1 million has been mentioned in relation to the likely costs of the Commonwealth Paedophile Inquiry (see report of the Senate Finance and Public Administration Legislation Committee, Examination of Budget Estimates 1996-97: Additional Information Received, Volume 1, Prime Minister's Portfolio, December 1996).
55 Guidelines issued by the Commonwealth Paedophile Inquiry on 21 June 1996.
56 Practice and Procedure issued by the Commonwealth Paedophile Inquiry on 21 June 1996.
59 Ibid.
The long-running Royal Commission into the New South Wales Police Service was due to report in June 1996. Justice James Wood, the Royal Commissioner, has been examining the conduct of police in that State. The Commission's terms of reference have been expanded and the date for reporting extended until 1997 to allow the Commissioner to report on allegations of police protection of paedophiles. (Henry S. 'Paedophile allegations extends police inquiry', The Australian, 3 February 1995). It is reported that the allegations made to the NSW Royal Commission on the extent of alleged paedophile activity has resulted in no less than six smaller inquiries. (Rayner, M. 'Children's rights must have priority', The Australian, 1 April 1996). The political juggling within the Government's own caucus in New South Wales has also cascaded into the public arena as an attempt is made to strike a balance in the expanded terms of reference so as to avoid an unedifying witch hunt while at the same time avoiding a white wash. (McClymont, K. and Humphries, D. 'Pursuing pedophiles: rebels with a cause' The Sydney Morning Herald, 26 October 1996).

In a national out-pouring of grief and anger, Belgians went on a national strike on 16 October 1996 as a protest against the dismissal of an investigating Magistrate Jean-Marc Connerotte because he had attended a fund-raising event for missing children. Connerotte had been elevated to the status of a national hero when he secured the arrest of an alleged perpetrator and alleged accomplices suspected of involvement in a paedophile ring. The investigations also uncovered the tragedy of the cruel treatment and death of some child victims. Connerotte's political masters had dismissed him because of an apprehension that his attendance at the fund raiser indicated bias against the accused. (Associated Press, The Sydney Morning Herald, 17 October 1996).

So serious has the response of citizens been in Belgium that the Prime Minister, Mr Dehaene, has now promised sweeping changes to the criminal justice system, including the end of political involvement in judicial promotions. Public reaction culminated in a march of more than 300,000 people through the streets of Brussels to protest the government's handling of the matter. (Linton, L. 'Child sex protest wins legal changes', The Australian, 22 October 1996).

In Britain, Prime Minister John Major has moved quickly to announce government-sponsored Bills (in lieu of Private Members' Bills) to curb stalkers and to establish a national register of child sex offenders. The Prime Minister has taken up a promise of support from the Opposition and the Liberal Democrat's so that the Bills would be on the statute books without delay. (Jones, G. 'Major to introduce paedophile legislation' The Age, 25 October 1995).

Attachment A: Paedophile Inquiry Terms of Reference

1. To consider the manner in which allegations of paedophile activities by officers and former officers of the Department of Foreign Affairs and Trade (including AusAID) and Austrade have been dealt with and, in particular, to determine:

   a. Whether they have previously been brought to the attention of the Department, AusAID or Austrade by any means;

   b. What actions were taken by the Department, AusAID or Austrade in response to the allegations and whether they were appropriate in terms of the Public Service Act, the Australian Trade Commission Act, departmental or agency instructions and guidelines or the criminal law;

   c. Whether appropriate mechanisms and procedures are and were in place to provide officers of the Department, AusAID or Austrade with an avenue to inform management confidentially of possible inappropriate or criminal activity by fellow officers and to allow those allegations to be properly investigated;

   d. Whether administrative decisions have been taken and aid or DAP funds committed or disbursed to facilitate or result in paedophile activities, and whether sufficient and appropriate mechanisms are in place for the scrutiny and accountability of the disbursement of aid funds, including the Direct Aid Program (DAP), previously named the Head of Mission Discretionary Aid Fund (HOMDAF), to ensure that opportunities to use such funds for paedophile activities do not arise;

   e. Whether there has been any basis to claims that the Department, AusAID or Austrade have sought to cover up paedophile behaviour.

2. To examine any other issue which appears to bear directly on the handling of allegations of paedophile activities, even if it does not fall strictly into the above terms, if Mr Hunt judges it to be of sufficient seriousness and relevant to this inquiry.

3. To recommend an appropriate and practicable code of conduct beyond that applying to public servants in general to apply to all staff representing the Australian Government in other countries.

4. To recommend whether and, if so, what additional mechanisms and procedures are required to allow officers of the Department, AusAID and Austrade to inform management of possible inappropriate or criminal activity by fellow officers, taking account of any Government proposals for service-wide procedures of this kind.

5. To refer all allegations of paedophile activities to the Australian Federal Police.