

# COMPARING COMMISSIONS, INQUESTS AND INQUIRIES: LESSONS FROM PROCESSES CONCERNING FAMILY VIOLENCE AND CHILD PROTECTION IN VICTORIA

ANITA MACKAY\* AND JACOB MCCAHERN\*\*

*Inquisitorial processes such as royal commissions and parliamentary inquiries are regularly used in Victoria as a means of investigating a range of complex policy and legal problems or failings. This article provides an overview of the number and range of inquiries over the past decade (including under the new Inquiries Act 2014 (Vic)). It then undertakes a detailed analysis of recent commissions, inquests and inquiries concerning family violence and child protection. This focus is used to identify relevant themes for comparing commissions, inquests and inquiries, including the manner by which different processes gather evidence and allow for public participation. Based on the analysis of processes concerning family violence and child protection, some broader observations will be made about the advantages and disadvantages of each process for evidence-gathering and public participation.*

## I INTRODUCTION

Issues of special public importance are often subject to special investigation or inquiry. The means available to investigate such issues can be as varied as the issues themselves. The Victorian government has a wide range of investigative mechanisms at its disposal when thorough investigations or inquiries are required into complex problems or failings. These are: coronial inquests, royal commissions, parliamentary committee inquiries, boards of inquiry, formal reviews, and Victorian Law Reform Commission ('VLRC') examinations (hereafter described as 'processes').<sup>1</sup>

\* BA LLB (Hons) (Macquarie), LLM (Australian National University), PhD (Monash University); Senior Lecturer, La Trobe Law School.

\*\* BA (Melb) LLB (La Trobe); Senior Associate at the Supreme Court of Victoria.

<sup>1</sup> There are also integrity bodies in Victoria that carry out investigations, for example, the Victorian Ombudsman, the Independent Broad-Based Anti-Corruption Commission and Victorian Auditor-General. Pascoe terms these a 'third tier' of inquiry after royal commissions and official inquiries: Susan Pascoe, 'The 2009 Victorian Bushfires Royal Commission: Lessons for the Conduct of Inquiries in Australia' (2010) 69(4) *Australian Journal of Public Administration* 392, 394. Pascoe also includes human rights commissions and the Victorian State Services Authority in this category. These 'third tier' mechanisms have been excluded from this article because they have not investigated family violence or child protection (the focus themes of this article).

To date, academic literature has tended to focus on individual processes,<sup>2</sup> with limited attention given to the similarities and differences between them, and advantages and disadvantages of each process compared to others. There are solid justifications for this. The complexity of the undertaking is readily apparent when the wide-ranging topic areas covered by these processes are considered — even in the single jurisdiction of Victoria. For instance, there has been a Royal Commission into the 2009 Victorian Bushfires (2009–10) (‘Bushfires Royal Commission’),<sup>3</sup> parliamentary committee inquiries into drug law reform,<sup>4</sup> a high-profile coronial inquest into the death of a child shot by police officers (2011),<sup>5</sup> a Board of Inquiry into the Hazelwood Mine Fire (‘Hazelwood Mine Fire Inquiry’) (the first inquiry conducted after the introduction of the *Inquiries Act 2014* (Vic) (‘*Inquiries Act*’)),<sup>6</sup> and VLRC examinations into the *Crimes (Mental Impairment and Unfitness to Be Tried) Act 1997* (Vic) (2012–14)<sup>7</sup> and medicinal cannabis (2014–15).<sup>8</sup> The complexity is further heightened when varying legislative powers, resources, frequency of use, and purposes are taken into account.

This article attempts to compare the key processes that may be used for public inquiries into issues of significant public or political concern. The article compares the different possible approaches as a means of better understanding the

- 2 See, eg, Scott Prasser, *Royal Commissions and Public Inquiries in Australia* (LexisNexis Butterworths, 2006) (‘*Royal Commissions and Public Inquiries*’); Stephen Donaghue, *Royal Commissions and Permanent Commissions of Inquiry* (Butterworths, 2001); Matthew Dyson, James Lee and Shona Wilson Stark (eds), *Fifty Years of the Law Commissions: The Dynamics of Law Reform* (Hart Publishing, 2016); Ian Freckelton and David Ranson, *Death Investigation and the Coroner’s Inquest* (Oxford University Press, 2006); Ian Freckelton and Simon McGregor, ‘Coronial Law and Practice: A Human Rights Perspective’ (2014) 21(3) *Journal of Law and Medicine* 584; Laura Grenfell and Sarah Moulds, ‘The Role of Committees in Rights Protection in Federal and State Parliaments in Australia’ (2018) 41(1) *University of New South Wales Law Journal* 40; Ian Marsh and Darren Halpin, ‘Parliamentary Committees and Inquiries’ in Brian Head and Kate Crowley (eds), *Policy Analysis in Australia* (Policy Press, 2015) 137.
- 3 See *Royal Commission into 2009 Victorian Bushfires* (Final Report, July 2010) (‘*Bushfires Royal Commission Final Report*’).
- 4 See, eg, Law Reform, Road and Community Safety Committee, Parliament of Victoria, *Inquiry into Drug Law Reform* (Parliamentary Paper No 376, March 2018); Legal and Social Issues Committee, Parliament of Victoria, *Inquiry into the Drugs, Poisons and Controlled Substances Amendment (Pilot Medically Supervised Injecting Centre) Bill 2017* (Parliamentary Paper No 324, September 2017); Law Reform, Drugs and Crime Prevention Committee, Parliament of Victoria, *Inquiry into the Supply and Use of Methamphetamines, Particularly Ice, in Victoria* (Parliamentary Paper No 355, September 2014).
- 5 Jennifer Coate, State Coroner, *Redacted Finding into Death with Inquest: Tyler Jordan Cassidy* (Coroners Court of Victoria, 23 November 2011). This inquest has since been the subject of a communication to the United Nations Human Rights Committee: Freckelton and McGregor (n 2) 598–9.
- 6 The Hazelwood Mine Fire Inquiry was re-opened in 2015: ‘Appointment of a Board of Inquiry into the Hazelwood Coal Mine Fire’ in Victoria, *Victorian Government Gazette*, No S 123, 26 May 2015, 1–3 (‘Hazelwood Coal Mine Fire Board of Inquiry Appointment’). This was due to a series of deaths and discussion around mine rehabilitation at Hazelwood, Yallourn, and Loy Yang. The new inquiry was required to adhere to the requirements contained in the *Inquiries Act 2014* (Vic) (‘*Inquiries Act*’): see ‘Hazelwood Coal Mine Fire Board of Inquiry Appointment’ (n 6) 1; *Hazelwood Mine Fire Inquiry: Implementation of Recommendations and Affirmations* (Annual Report, 2017) (‘*Hazelwood Mine Fire Inquiry Annual Report 2017*’). Note that the original Hazelwood Mine Fire Inquiry was conducted prior to the *Inquiries Act* (n 6) becoming operational: see Board of Inquiry, *Hazelwood Mine Fire Inquiry Report* (Report, 2014) (‘*Hazelwood Mine Fire Inquiry Original Report*’).
- 7 Victorian Law Reform Commission, *Review of the Crimes (Mental Impairment and Unfitness to Be Tried) Act 1997* (Report, June 2014).
- 8 Victorian Law Reform Commission, *Medicinal Cannabis* (Report, August 2015).

advantages and disadvantages of each, both in their own right and in comparison to each other. This approach will enable consideration of key questions, such as whether one form of inquiry is particularly suited to the investigation of some issues but perhaps not others. It can also reveal which forms of inquiries may be informed and improved by the practise of others.

These quite general questions will be explored by examining Victorian inquiry processes into quite a specific area, within a defined period (1 January 2008 – 31 December 2017). The article will examine the major inquiry processes in the areas of child protection and family violence. These topic areas have been chosen for two reasons. The first is pragmatic. These topic areas provide at least one example of each key process in Victoria in the past decade. The only other topic of a royal commission in Victoria in this timeframe was bushfires, and there have not been any VLRC examinations or panel inquiries into bushfires.<sup>9</sup> The second is the political momentum and investment that surrounds these policy areas. Family violence has been ‘recognised as a significant issue facing Australians’ in recent years,<sup>10</sup> and the Victorian government’s commitment to implement all of the recommendations made by both the inquest into the death of Luke Batty (‘Luke Batty Inquest’) and the Royal Commission into Family Violence (‘Family Violence Royal Commission’) (the latter commitment was made at the time that the Royal Commission was announced) demonstrates the policy import of family violence in Victoria.<sup>11</sup>

The focus of the analysis is on how these processes gather evidence and facilitate public participation. This focus has been selected for two reasons. The first is because these are integral components common to all processes (both in Victoria and in other jurisdictions), so the analysis of these allows both comparison of the processes with each other, and observations that will be of relevance to other Australian jurisdictions. The second is that these provide a more nuanced means of assessing the impact of the particular processes. Often the main measure of the impact of inquiry processes is whether the recommendations

- 9 The Coroner conducts inquests into deaths caused by fires under the *Coroners Act 2008* (Vic) s 53 (‘*Coroners Act*’). There have been parliamentary inquiries into bushfires: see, eg, Environment and Natural Resources Committee, Parliament of Victoria, *Inquiry into the Impact of Public Land Management Practices on Bushfires in Victoria* (Parliamentary Paper No 116, June 2008); Environment and Planning Committee, Parliament of Victoria, *Inquiry into Fire Season Preparedness* (Parliamentary Paper No 295, June 2017).
- 10 Laura Tarzia, Cathy Humphreys and Kelsey Hegarty, ‘Translating Research about Domestic and Family Violence into Practice in Australia: Possibilities and Prospects’ (2016) 13(4) *Evidence and Policy* 709, 712.
- 11 Letter from Daniel Andrews, Premier of Victoria to Judge Ian Gray, 24 December 2015 (‘Letter from Daniel Andrews to Judge Ian Gray’); Victorian Government, Response to Coroners Court of Victoria, *Finding into Death with Inquest: Inquest into the Death of Luke Geoffrey Batty* (24 December 2015) (‘Victorian Government Response to Luke Batty Inquest’). The media release announcing the Family Violence Royal Commission noted ‘[t]he Andrews Labor Government will accept its recommendations’: Daniel Andrews, Premier of Victoria, ‘Premier Announces Royal Commission into Family Violence’ (Media Release, Victorian Government, 23 December 2014). For an overview of the response to recommendations made by the Family Violence Royal Commission, see Marcia Neave, ‘Victoria’s Response to the Royal Commission into Family Violence: Where Are We Now?’ (2019) 44(1) *Alternative Law Journal* 3 (‘Victoria’s Response to the Royal Commission into Family Violence’).

have been implemented or not. This is an important measure — and this article will outline the response to the recommendations made in the processes being examined — but too much emphasis on this may overshadow the value of the processes themselves: a value that applies irrespective of whether or not the recommendations are implemented.<sup>12</sup> The processes have separate value for the participants, giving some an avenue to be heard that they would not otherwise have<sup>13</sup> (this is sometimes an explicit objective when an inquiry is established).<sup>14</sup> They also allow for extensive consultation with a wide range of stakeholders, far beyond the consultation capacity that policy-makers have.<sup>15</sup> The evidence-gathering function of the processes, combined with their detailed assessment of this evidence (such as during hearings and in final reports) form a repository to inform future developments in the particular policy area for many years.

A good example of the value of the processes separate to the implementation of recommendations is the Royal Commission into Aboriginal Deaths in Custody. The 1991 report of this Commission, that gathered extensive evidence and made 339 recommendations,<sup>16</sup> is still frequently referred to in relation to Indigenous over-representation in prisons in Australia, despite the fact that the majority of the recommendations have not been implemented.<sup>17</sup> Another example is the Australian Law Reform Commission's ('ALRC') Inquiry into Aboriginal Customary Law. The recommendations were not implemented, but it has been observed by a former Deputy President of the ALRC that this is 'one of the most

12 For an example of a study that focuses on implementation of findings and recommendations as a measure of effectiveness, see Alan Beckley, 'Royal Commissions into Policing: Australia' (2013) 1(3) *Salus Journal* 33.

13 Katie Wright, 'Challenging Institutional Denial: Psychological Discourse, Therapeutic Culture and Public Inquiries' (2018) 42(2) *Journal of Australian Studies* 177, 188. Naylor and McAlinden have argued they can provide restorative justice for victims: Anne-Marie McAlinden and Bronwyn Naylor, 'Reframing Public Inquiries as "Procedural Justice" for Victims of Institutional Child Abuse: Towards a Hybrid Model of Justice' (2016) 38(3) *Sydney Law Review* 277, 279.

14 For example, the media release announcing the Royal Commission into Institutional Responses to Child Sexual Abuse ('Federal Child Sexual Abuse Royal Commission') noted: '[a]nyone who has ever suffered child abuse *deserves to have their voices heard* and their claims investigated. ... This Government will do everything it can to make sure that what happened to children in the past is never allowed to happen again, and that survivors receive the support and justice they deserve': Jenny Macklin, Julia Gillard and Nicola Roxon, 'Government Formally Establishes Royal Commission' (Joint Media Release, Australian Government, 11 January 2013) (emphasis added), quoted in Wright (n 13) 187.

15 In relation to parliamentary committees, Monk has highlighted that a number of 'individuals and groups are competing to push their political views through committees' and therefore the 'subjective perceptions' of those groups about the inquiry should be taken into account when assessing the impact of the inquiry: David Monk, 'A Framework for Evaluating the Performance of Committees in Westminster Parliaments' (2010) 16(1) *Journal of Legislative Studies* 1, 5.

16 *Royal Commission into Aboriginal Deaths in Custody* (National Report, 1991) vol 5, pt G.

17 Lorana Bartels, 'Twenty Years On: Indigenous Deaths in Police Custody and Lessons from the Frontline' in Isabelle Bartkowiak-Théron and Nicole L. Asquith (eds), *Policing Vulnerability* (Federation Press, 2012) 181, 183–92. For recent references to the Royal Commission into Aboriginal Deaths in Custody, see Human Rights Council, *Report of the Special Rapporteur on the Rights of Indigenous Peoples on Her Visit to Australia*, UN Doc A/HRC/36/46/Add.2 (8 August 2017) 12–13 [70]–[71]; Australian Law Reform Commission, *Pathways to Justice: An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (Final Report No 133, December 2017). The terms of reference for the Australian Law Reform Commission ('ALRC') inquiry specifically required the ALRC to take into account the Royal Commission into Aboriginal Deaths in Custody findings: at term 3(a).

frequently consulted and cited commission reports<sup>18</sup> and that subsequently, at least 16 ALRC reports have adopted the empirical methodology of that report.<sup>19</sup> Thus, these inquiry processes have significance beyond the implementation of the recommendations they make.

## A Overview

The structure of the article is as follows. Part II provides the legislative framework within which Victorian inquiry processes operate, with particular emphasis on legislated evidence-gathering powers and processes for facilitating public participation. Part II makes some limited observations of the nature of the processes as either permanent or ad hoc. Part II then offers a statistical snapshot of the use of the processes in the relevant timeframe. This provides evidence of frequency and context for discussion about their use in relation to the chosen topics.

Part III delves into a discussion of the processes concerning child protection and family violence in the past decade, with particular emphasis on how they gathered evidence and facilitated public participation. The processes by area and timeline are as follows:

- a VLRC examination into protection applications in the Children’s Court (‘Child Protection Examination’), which reported in 2010;<sup>20</sup>
- a panel inquiry on child protection, the Protecting Victoria’s Vulnerable Children Inquiry (‘Cummins Review’), which reported in 2012;<sup>21</sup>
- a parliamentary committee inquiry, the Inquiry into the Handling of Child Abuse by Religious and Other Non-Government Organisations (‘Betrayal of Trust Inquiry’), which reported in 2013;<sup>22</sup>
- a coronial inquest into the death of Luke Batty (in circumstances involving family violence), the Luke Batty Inquest, which reported in 2015;<sup>23</sup> and

18 Kathryn Cronin, ‘Law Reform in a Federal System: The Australian Example’ (2019) 21(1) *European Journal of Law Reform* 33, 39.

19 Ibid 38–41.

20 Victorian Law Reform Commission, *Protection Applications in the Children’s Court* (Final Report No 19, 1 June 2010) (‘*Child Protection Examination Final Report*’).

21 Philip Cummins, Dorothy Scott OAM and Bill Scales AO, *Protecting Victoria’s Vulnerable Children Inquiry* (Report, January 2012) (‘*Cummins Review Report*’).

22 Family and Community Development Committee, Parliament of Victoria, *Betrayal of Trust: Inquiry into the Handling of Child Abuse by Religious and Other Non-Government Organisations* (Report, November 2013) (‘*Betrayal of Trust Inquiry Report*’).

23 Ian L Gray, State Coroner, *Finding into Death with Inquest: Inquest into the Death of Luke Geoffrey Batty* (Coroners Court of Victoria, 28 September 2015) (‘*Luke Batty Inquest Findings*’).

- the Family Violence Royal Commission, which reported in 2016.<sup>24</sup>

This Part gives limited consideration to the political context surrounding the particular choice of inquiry mechanism. With the exception of coronial inquests that are triggered by deaths that fall within the parameters of the *Coroners Act 2008 (Vic)* (*'Coroners Act'*), the government has scope to choose a mechanism that best suits the topic. There are inevitably political imperatives that surround such choices. For example, royal commissions may be a 'last resort' when a high level of prestige and independence from government is required.<sup>25</sup>

Part IV compares the processes relating to child protection and family violence, with a view to highlighting the advantages and disadvantages of each for evidence-gathering and public participation. This will attempt to highlight which of the processes is the best for achieving these aims. It provides policy-makers with non-political reasons for selecting a particular process from the range of processes available.

The article will conclude in Part V. The conclusion reached is that royal commissions have the most to offer for both evidence-gathering and public participation, but they are not likely to be used frequently due to their resource-intensive nature. Some of the other processes have much to offer. For instance, parliamentary committee inquiries provide a better balance of evidence-gathering and public participation than coronial inquests, which tend to excel at evidence-gathering, but have been criticised for the way they deal with the public. VLRC inquiries are comparatively legalistic — they focus more on evidence-gathering and the views of specific stakeholders than on gauging the views of the general public.

## II VICTORIAN INQUIRY PROCESSES AND POWERS

This Part begins by exploring the different types of inquisitorial processes that exist in Victoria. The general legal framework for each of the processes is outlined and particular attention is paid to evidence-gathering powers and features for facilitating public participation. This is relevant background to the discussion of how these powers were used in the family violence and child protection inquiries examined in Part III.

Part II(B) makes some observations about the significance of the processes being permanent or ad hoc. The Coroners Court of Victoria (*'Coroners Court'*) is permanent; the VLRC is a permanent body that does bring on commissioners

24 *Royal Commission into Family Violence: Report and Recommendations* (Final Report, March 2016) (*'Family Violence Royal Commission Final Report'*).

25 Scott Prasser, 'When Should Royal Commissions Be Appointed?' [2005] (4) *Public Administration Today* 57, 60.

with particular expertise for particular inquiries; parliamentary committees fall somewhere in between (because they are re-constituted at the beginning of each four-year parliamentary term); and royal commissions, boards of inquiry and formal reviews are ad hoc.

Part II(C) then provides a brief statistical snapshot on the frequency of occurrence of the inquisitorial processes in the chosen timeframe.

## **A Legal Framework: General**

### **1 Inquiries Conducted under the Inquiries Act**

The significance of the introduction of the *Inquiries Act* is worth highlighting. The Act was introduced in response to a recommendation made by the Bushfires Royal Commission<sup>26</sup> and provided Victorian inquiries with a purpose-built legislative framework for the first time.<sup>27</sup> The Act provides for three types of inquiries outlined in this Part: royal commissions, boards of inquiry, and formal reviews. It achieves in Victoria what the ALRC recommended for Commonwealth inquiries in a 2009 report that has not been implemented.<sup>28</sup>

The *Inquiries Act* does not provide any parameters relating to subject matter; therefore, the government has unfettered discretion to establish a royal commission, board of inquiry or formal review into any matter it considers appropriate. To date, there has only been one of each under the *Inquiries Act*, and there have only been two royal commissions in the timeframe being examined in this article.<sup>29</sup> This may be explained by Prasser's observation that the convention is for royal commissions to be 'the institution of last resort'; '[t]hey are established when governments politically have nowhere else to go; when the issues warrant

26 Recommendation 67 provides that '[t]he State consider the development of legislation for the conduct of inquiries in Victoria — in particular, the conduct of royal commissions': *Bushfires Royal Commission Final Report* (n 3) 37. The second reading speech for the Inquiries Bill 2014 (Vic) noted that '[t]he existing legislation is dated and unwieldy, and has been strongly criticised by previous royal commissions as a consequence. The bill will address this by providing a legislative framework befitting of these inquiries and which will support their important work': Victoria, *Parliamentary Debates*, Legislative Assembly, 21 August 2014, 2923–4 (Denis Napthine, Premier).

27 Prior to the *Inquiries Act* (n 6), inquisitorial processes were more ad hoc and informal: see, eg, Kevin Victor Anderson, *The Board of Inquiry into Scientology* (Report, 1965) ('*Inquiry into Scientology Report*'); *Royal Commission into the Failure of West Gate Bridge* (Report, 1971) ('*West Gate Bridge Royal Commission Report*'); *Royal Commission into Metropolitan Ambulance Service* (Report, May 2001) ('*Ambulance Royal Commission Report*').

28 Australian Law Reform Commission, *Making Inquiries: A New Statutory Framework* (Report No 111, October 2009) ('*A New Statutory Framework*'). Recommendation 5–1 reads: '[t]he *Royal Commissions Act 1902* (Cth) should be: (a) amended to provide for the establishment of two tiers of public inquiry — Royal Commissions and Official Inquiries; (b) renamed the *Inquiries Act*; and (c) updated to reflect modern drafting practices': at 11.

29 See below app 4.

an investigation by a body with such coercive powers and prestige'.<sup>30</sup>

### (a) *Royal Commissions*

Royal commissions have a great degree of prestige and have been described as 'the most powerful and independent instrument of review'.<sup>31</sup> This power and independence from the executive stems from their appointment by the Crown, the qualifications of commissions and their establishment under separate legislation. In Victoria the 'quasi-judicial'<sup>32</sup> rules and powers conferred on royal commissions are now set out in pt 2 of the *Inquiries Act*.

Royal commissions are formally appointed by the Governor issuing letters patent<sup>33</sup> and once created, commissioner(s) are empowered to hire staff and commence operations.<sup>34</sup> As long as it is consistent with procedural fairness and the terms of reference, a royal commission 'may conduct its inquiry in any manner that it considers appropriate'.<sup>35</sup> Importantly, royal commissions are not bound by formal rules of evidence and courtroom procedure.<sup>36</sup> By extension, a royal commission 'may inform itself on any matter as it sees fit'.<sup>37</sup>

The powers of royal commissions include:

- compelling the production of evidence and attendance of witnesses,<sup>38</sup>

30 Prasser, 'When Should Royal Commissions Be Appointed?' (n 25) 60. In a similar vein, Pascoe notes that '[t]he establishment of a royal commission attests to the gravity of the subject as governments reserve this elevated mode of public inquiry for the most weighty matters': Pascoe (n 1) 393.

31 Scott Prasser, 'Royal Commissions in Australia: When Should Governments Appoint Them?' (2006) 65(3) *Australian Journal of Public Administration* 28, 33 ('Royal Commissions in Australia'); Prasser, 'When Should Royal Commissions Be Appointed?' (n 25) 58.

32 Adam Delacorn, 'Royal Commissions in Victoria: 1854–2009' (Research Paper No 2, Parliamentary Research Service, Parliament of Victoria, July 2011) 45, citing DH Borchardt, *Commissions of Inquiry in Australia: A Brief Survey* (La Trobe University Press, 1991) 7.

33 *Inquiries Act* (n 6) s 5(1). The letters patent will feature the seal of the Crown and detail the appointed commissioner(s) and terms of reference: at ss 5(1)–(2)(a); see also Delacorn (n 32) 2. Prasser notes that the appointment by the Crown gives royal commissions more prestige and they are seen to be more independent from other executive-appointed public inquiries: Prasser, 'When Should Royal Commissions Be Appointed?' (n 25) 58.

34 *Inquiries Act* (n 6) s 9. Commencing operations includes arranging a working and hearing space, meeting technology requirements and appointing individuals and teams to provide assistance. Under the *Inquiries Act* (n 6), a royal commission may use staff services from government departments, statutory authorities and other public bodies (by agreement) and engage experienced and qualified consultants: at s 9(2)(a)–(b). All royal commission staff are to adhere to the directions of the chairperson: at s 9(4).

35 *Inquiries Act* (n 6) s 12. The discretion granted to royal commissions and other types of inquiry bodies over how to conduct their inquiries would extend to matters such as whether to conduct proceedings in public or in private. This may lead to difficulty determining which is the most appropriate way to proceed. This is illustrated by the decision in *AB v Judicial Commission of New South Wales (Conduct Division)* (2018) 365 ALR 163 (*AB v Judicial Commission*'), which concerned the discretion to hold a hearing in public or private under s 24(2) of the *Judicial Officers Act 1986* (NSW).

36 *Inquiries Act* (n 6) s 14.

37 *Ibid*.

38 *Ibid* s 17.



- inspecting, copying and retaining documents submitted;<sup>39</sup>
- restricting publication of information;<sup>40</sup>
- searching premises;<sup>41</sup>
- suspending the applicability of legal professional privilege, privilege against self-incrimination and statutory secrecy and confidentiality;<sup>42</sup>
- providing contributors with parliamentary privilege;<sup>43</sup> and
- preventing an employer from punishing a participating employee.<sup>44</sup>

Royal commissions are in control of the persons and bodies who appear and participate in inquiries, whether they should have legal representation and if it is desirable for them to give evidence under oath or affirmation.<sup>45</sup> Convention is for legal counsel to assist royal commissions in the testing of witnesses.<sup>46</sup>

Commissioners are typically drawn from the senior ranks of the legal profession, including judges.<sup>47</sup> However, their subject matter expertise and public perceptions about their qualifications to conduct the inquiry will also be taken into account. For example, the Hon Margaret McMurdo AC has been appointed to chair the Victorian Royal Commission into the Management of Police Informants. Her Honour is a retired President of the Court of Appeal of the Supreme Court of Queensland and, given the subject matter of that Royal Commission, this is important to ensure her independence from the Victorian legal profession.<sup>48</sup>

When the Royal Commission into the Protection and Detention of Children in the Northern Territory was announced, there was widespread public criticism about the lack of consultation with the Indigenous community. The Hon Brian Ross

39 Ibid s 22.

40 Ibid s 26.

41 Ibid s 28.

42 Ibid ss 32–4. See at ss 46–52 for all offences attached to the failure to adhere to a royal commission's directions.

43 Ibid s 39. 'Parliamentary privilege' is used as a term in this article to describe people being immune from oral or written evidence they give to an inquiry being used against them in a subsequent civil or criminal legal proceeding.

44 Ibid s 51. See at ss 46–52 for all offences attached to the failure to adhere to a royal commission's directions.

45 Ibid ss 15, 21.

46 See generally *Bushfires Royal Commission Final Report* (n 3); *Ambulance Royal Commission Report* (n 27); Sir Daryl Michael Dawson and Brian John Brooks, *The Esso Longford Gas Plant Accident: Report of the Longford Royal Commission* (Report, June 1999). See also *Inquiries Act* (n 6) ss 9(2)(c), (3) which state that a royal commission may only appoint one or more assisting legal practitioners with the approval of the Premier.

47 Prasser, 'Royal Commissions in Australia' (n 31) 33.

48 The first paragraph of the terms of reference for this Commission is to consider '[t]he number of, and extent to which, cases may have been affected by the conduct of EF as a human source': 'Terms of Reference', *Royal Commission into the Management of Police Informants* (Web Page, 3 October 2019) <[www.rcmpi.vic.gov.au/terms-of-reference](http://www.rcmpi.vic.gov.au/terms-of-reference)>.

Martin AO QC, who was initially appointed as Commissioner, resigned from the position reportedly because of the perception that ‘he lacked the confidence of key sections of the Indigenous community’.<sup>49</sup> Commissioner Martin was replaced by the Hon Margaret White AO (who was appointed Chair of the Commission), and the Aboriginal and Torres Strait Islander Social Justice Commissioner, Mr Michael Gooda.<sup>50</sup>

### **(b) Boards of Inquiry**

As of 1 August 2015, the powers of boards of inquiry are contained in the *Inquiries Act*.<sup>51</sup> These are wide, but not as extensive as those possessed by royal commissions.<sup>52</sup> Following recommendation by the Premier, boards of inquiry are established by order of the Governor in Council.<sup>53</sup> The order will specify the persons appointed, the chair of the board and its terms of reference.<sup>54</sup> Once established, the board may employ people to perform certain functions.<sup>55</sup>

As long as it maintains consistency with procedural fairness and the establishing order, a board of inquiry ‘may conduct its inquiry in any manner that it considers appropriate’.<sup>56</sup> This means it ‘may inform itself on any manner as it sees fit’<sup>57</sup> and is not bound by the formal rules of evidence and courtroom procedure.<sup>58</sup> This discretion extends to control over people and bodies who participate and decisions concerning their legal representation.<sup>59</sup> Boards of inquiry may be assisted by legal counsel if the Premier provides consent.<sup>60</sup>

49 Katharine Murphy and Helen Davidson, ‘Mick Gooda and Margaret White to Lead Royal Commission into NT Juvenile Detention’, *The Guardian* (online, 1 August 2016) <[www.theguardian.com/australia-news/2016/aug/01/mick-gooda-and-margaret-white-to-lead-royal-commission-into-nt-juvenile-detention](http://www.theguardian.com/australia-news/2016/aug/01/mick-gooda-and-margaret-white-to-lead-royal-commission-into-nt-juvenile-detention)>.

50 George Brandis, Attorney-General (Cth), ‘Press Conference with Mr Mick Gooda and Justice Margaret White’ (Press Conference, 1 August 2016). Mr Gooda resigned as Aboriginal and Torres Strait Islander Social Justice Commissioner to take up the appointment as Royal Commissioner.

51 *Inquiries Act* (n 6) pt 3.

52 *Ibid* pts 2–3.

53 *Ibid* s 53(1).

54 *Ibid* s 53(2)(a).

55 *Ibid* s 56. Mirroring the provision relating to royal commissions, the chairperson is able to arrange assistance from staff services of government departments, statutory agencies and other public bodies: at s 9. Boards of inquiry may also engage assistance from qualified and experienced consultants: at s 56(2)(b).

56 *Ibid* s 59.

57 *Ibid* s 61. Despite the extensive powers given to boards of inquiry (including mandating evidence be given under oath or affirmation: at s 68), unlike royal commissions, they do not have authority to apply for search warrants or suspend legal professional privilege and privilege against self-incrimination: at ss 28, 32–3.

58 *Ibid* s 61.

59 *Ibid* s 62(1).

60 *Ibid* ss 56(2)–(3).

Other boards of inquiry powers include:

- demanding a person or body produce a document or appear at an inquiry;<sup>61</sup>
- inspecting, copying and retaining documents submitted for as long as is reasonably required;<sup>62</sup> and
- drafting a final report (likely to contain recommendations) that will be submitted to government.<sup>63</sup>

### (c) *Formal Reviews*

As of 1 August 2015, the parameters for formal reviews have been set out in the *Inquiries Act*.<sup>64</sup> Formal reviews have less powers than boards of inquiry and royal commissions.<sup>65</sup> Formal reviews are established by the Premier.<sup>66</sup> Once created, reviewers are empowered to employ any person to assist with inquiries (including staff from a government department, statutory authority or other public body, or qualified consultants).<sup>67</sup>

As long as it is procedurally fair and consistent with the establishing instrument (like royal commissions and boards of inquiry), a formal review ‘may conduct its inquiry in any manner that it considers appropriate’.<sup>68</sup> This includes not being bound by formal rules of evidence and courtroom procedure and being able to ‘inform itself on any matter as it sees fit’.<sup>69</sup> Formal reviews also have the ability to gather evidence via other (including technology-based) mediums.<sup>70</sup>

Formal reviews have control over inquiry participants and deciding whether they should be legally represented.<sup>71</sup> When satisfied, reviewers will deliberate and

61 Ibid s 64(1). In doing so, the board may require a person ‘to give evidence or answer questions on oath or affirmation’: at s 68(1). However, note the applicability of parliamentary privilege: at ss 79(4), 80(1)–(2).

62 Ibid s 69(1).

63 Ibid ss 75(1)–(2). Note this report must be tabled before Parliament: at s 77.

64 Ibid pt 4.

65 Cf *ibid* pts 2–3.

66 Ibid ss 93(1)–(2). The establishing instrument will specify the formal reviewer(s), the chair of the formal review and the terms of reference: at s 93(3)(a). It will likely document the report deadline, financial matters and the manner in which the inquiry is to be conducted: at s 93(3)(b).

67 Ibid ss 96(1)–(2).

68 Ibid s 99.

69 Ibid s 101. Despite their extensive powers, unlike boards of inquiry, formal reviews are not authorised to compel the production of evidence and/or the attendance of witnesses; require evidence be given under oath or affirmation; inspect, copy and retain documents submitted for as long as reasonably required; and suspend statutory secrecy and confidentiality: cf ss 64, 68–70, 74.

70 Ibid s 99. This includes receiving oral evidence via hearings or otherwise: at s 102.

71 Ibid s 102(1). However, ‘[a] person who gives information or evidence to a Formal Review has the same protection and immunity as a witness has in proceedings in the Supreme Court’: at s 111(4). Further, parliamentary privilege applies: at s 112.

draft a final report (likely to contain recommendations) for Parliament.<sup>72</sup>

#### (d) *Key Provisions of the Inquiries Act*

Evidence-gathering and public participation within royal commissions, boards of inquiry and formal reviews are facilitated by the *Inquiries Act*. Specifically, all three processes are empowered to utilise the expertise of public employees,<sup>73</sup> decide on the activities to be undertaken and control the questioning of witnesses.<sup>74</sup>

The wide evidence-gathering of royal commissions is demonstrated by their search powers.<sup>75</sup> Royal commissions and boards of inquiry are also empowered to serve notices on people to produce specific documents or things or to attend to answer questions.<sup>76</sup> The power of compulsion is also demonstrated by being able to require people to swear that their answers and/or evidence are truthful.<sup>77</sup>

Within royal commissions, legal professional privilege and privilege against self-incrimination have no application.<sup>78</sup> However, if information, a document or another thing relates to an external offence or proceeding, a person may legitimately refuse to furnish it.<sup>79</sup> Parliamentary privilege also provides a layer of protection to contributors in royal commissions, boards of inquiry and formal reviews.<sup>80</sup>

Within all three processes, the inquiry has control over the identity and involvement of participants,<sup>81</sup> and legal representation is commonplace.<sup>82</sup> To protect those giving evidence, royal commissions, boards of inquiry and formal reviews are empowered to prevent the publication of names and other sensitive information.<sup>83</sup> Public participation is encouraged in royal commissions and boards of inquiry

72 Ibid s 107. See, eg, David O'Byrne, *Report of the Victorian Fire Services Review: Drawing a Line, Building Stronger Services* (Final Report, October 2015) app I. The formal review's final report may be delivered in multiple volumes and complement other reports drafted during the process (including interim reports): *Inquiries Act* (n 6) s 103.

73 *Inquiries Act* (n 6) ss 9, 56, 96.

74 Ibid ss 14, 61, 101. See also at ss 12, 59, 99.

75 See ibid s 28(1). A magistrate may then issue a search warrant allowing for the entry, search, copy and possession of any document or thing reasonably relevant to the inquiry: at s 28(2).

76 Ibid ss 17(1), 64(1). See also at ss 23(1), 70(1) for the power of a chairperson to apply to the Supreme Court for an order directing a person to comply with a notice to produce or notice to attend, if they have unreasonably failed to do so.

77 Ibid ss 21, 68.

78 Ibid ss 32–3(1).

79 Ibid s 33(2).

80 Ibid ss 40, 80, 112.

81 Ibid ss 15, 62, 102.

82 Cf *Coroners Act* (n 9) s 65. See also Department of Premier and Cabinet (Vic), *Guidelines for Appearing Before and Producing Documents to Victorian Inquiries* (Guidelines, December 2017) [138]–[141] ('*Guidelines for Victorian Inquiries*') for a comparison of legal representation in parliamentary committee inquiries with legal representation in royal commissions and boards of inquiry.

83 *Inquiries Act* (n 6) ss 26, 73, 106.

due to assurances that they will be immune from punishment (both from parties they implicate<sup>84</sup> and their employer<sup>85</sup>).

## 2 Coronial Inquests

The powers of coroners to conduct inquests is set out in the *Coroners Act*. Inquests may commence after a coroner investigates ‘reportable’ deaths and/or fires.<sup>86</sup> During inquests, coroners identify who has died and find out why and how their death occurred.<sup>87</sup> In doing so, coroners have the power to:

- ‘summon a person to attend as a witness or to produce any document or other materials’;
- ‘inspect, copy and ... hold for a reasonable period any thing produced at the inquest’;
- ‘order a witness to answer questions’; and
- ‘give any other directions and do anything else the coroner believes necessary’.<sup>88</sup>

The coroner is required to ‘publish the date, time, place and subject [matter] of an inquest’<sup>89</sup> and must conduct inquests with ‘little formality and technicality’ and in a way that is comprehensible to lay people present.<sup>90</sup> Coroners have wide discretion<sup>91</sup> and are not bound by the formal rules of evidence and courtroom procedure.<sup>92</sup>

‘Interested parties’ have extra rights during inquests. They are able to suggest witnesses to give evidence, examine witnesses and make submissions.<sup>93</sup> This is

84 Ibid ss 40, 80.

85 Ibid ss 51, 91. See also *Guidelines for Victorian Inquiries* (n 82). This document acts as an aid for Members of the executive who are required to give evidence before a royal commission or board of inquiry. It stipulates what one should do when asked to provide documents or give oral evidence and dictates that the appropriate response will depend on the form of the inquiry and its subject matter. For instance, advice on document requests from royal commissions and boards of inquiry (at pt 3.3), hearing appearance preparation (at pt 4.1) and guidance on appropriate conduct during one’s appearance at an inquiry hearing (at pt 4.2). The legal status of these guidelines has not yet been tested, but it may be noted that New South Wales guidelines established under s 10 of the *Judicial Officers Act 1986* (NSW) were recently held by the New South Wales Court of Appeal as unlikely to have any legal effect: see *AB v Judicial Commission* (n 35) 174–5 [47]–[49] (Basten, Meagher and Gleeson JJA).

86 *Coroners Act* (n 9) ss 12, 14–15, 52(1), 53. A death is ‘reportable’ if it falls within the criteria provided by s 4.

87 Ibid ss 67–8.

88 Ibid s 55(2). See also the powers contained in ibid ss 62, 64.

89 Ibid s 61.

90 Ibid s 65.

91 ‘A coroner ... may ... conduct an inquest in any manner that ... [he/she] reasonably thinks fit’: ibid s 62(1).

92 Ibid s 62.

93 Ibid ss 66(1), (3). See at s 56 for more on interested parties. Note, decisions relating to interested parties are the domain of the coroner.

part of public involvement in inquests, as is the ability to request an inquest during the investigation phase.<sup>94</sup> Importantly, the coroner cannot simply disregard such a plea. They must write to the person (within three months) advising them of their decision and their reasons for it.<sup>95</sup> Despite their court-like appearance, inquests will not result directly in findings of guilt<sup>96</sup> or civil liability.<sup>97</sup>

At the conclusion of an inquest, coroners' written findings may contain 'recommendations to any Minister, public statutory authority or entity'.<sup>98</sup> The public recipient must respond to these recommendation(s) and this response should be open to the public.<sup>99</sup> A 'distinctive feature' of coronial law in Victoria is that written responses from government to coroners' recommendations are required within three months of their submission.<sup>100</sup>

Evidence-gathering powers and factors promoting public participation are set out in the *Coroners Act*. Importantly, many evidence-gathering functions are provided to coroners in the investigation phase. Investigation takes place prior to an inquest and will inform if an inquest is required.<sup>101</sup> An investigation will commence if the death occurred in Victoria, in the previous 50 years, and is a 'reportable death'.<sup>102</sup> The *Coroners Act* contains a number of provisions to aid evidence-gathering, including requiring police officers to give information to the coroner about a death or fire.<sup>103</sup> In addition, if considered important, a coroner may demand a person to provide them with a document or prepare a statement; one must not refuse this request without lawful excuse.<sup>104</sup>

If an investigation leads to an inquest, evidence-gathering adjusts to a hearing setting.<sup>105</sup> In this format, coroners' powers are wide, and include: 'summon[ing] a person to attend as a witness or to produce any document or other materials'; copying and holding 'any thing produced at the inquest'; 'order[ing] a witness to answer questions'; and 'giv[ing] any other directions and do[ing] anything else the

94 Ibid s 52(5).

95 Ibid s 52(6).

96 Ibid s 69.

97 Ian Freckelton, 'Minimising the Counter-Therapeutic Effects of Coronial Investigations: In Search of Balance' (2016) 16(3) *Queensland University of Technology Law Review* 4, 16–18.

98 *Coroners Act* (n 9) s 72(2). This power is part of the coroners' role to protect the public and promote justice. The coroner is able to make comments on a death, in its findings, if it concerns 'public health and safety' or 'justice': at s 67(3).

99 See generally *ibid* s 72.

100 Ian Freckelton and David Ranson, 'Death, Investigation and the Role of the Coroner' in Ian Freckelton and Kerry Peterson (eds), *Tensions and Traumas in Health Law* (Federation Press, 2017) 561, 581 ('Role of the Coroner').

101 See *Coroners Act* (n 9) pt 4.

102 *Ibid* ss 4(1) (definition of 'reportable death'), 15 (obliging the investigation of reportable deaths).

103 *Ibid* s 36.

104 *Ibid* s 42.

105 *Ibid* s 55(2).

coroner believes necessary'.<sup>106</sup> During both the investigation and inquest, people being questioned are unable to rely on privilege against self-incrimination.<sup>107</sup>

Nevertheless, once an inquest commences, public participation is constrained by the court. While the procedures are not designed to replicate a traditional courtroom environment and the overarching purpose of the *Coroners Act* is 'to establish the Coroners Court of Victoria as a specialist inquisitorial court',<sup>108</sup> there are still many adversarial features. For example, proceedings occur in a court setting, coroners are also judges, the inquiry is assisted by counsel, parties are legally represented and witnesses are examined and cross-examined. Eburn and Dovers note: 'Given that the inquiry is chaired by a lawyer, assisted by lawyers, and effectively managed by lawyers, it is not surprising that the lawyers fall into traditional adversarial modes of operation.'<sup>109</sup>

Academic literature has acknowledged the divide between the Coroners Court's non-adversarial aims and the public's experience. In practice, coroners have been observed making matters intimidating and traumatising for participants due to poor lines of communication, allowing for unreasonable delays and not providing sufficient support services (including counselling and restorative justice conferences).<sup>110</sup> Eburn and Dovers have observed: 'The fact that a coroner may find fault on the part of individuals, individuals who are, of course, part of larger institutions and involved in complex events must, necessarily, make people nervous about appearing before such an inquiry.'<sup>111</sup>

This observation is supported by a qualitative study conducted in Victoria. Freckelton discusses a 2011 Sweeney Research report entitled: 'A Qualitative Research Report on DOJ Coronial Council'.<sup>112</sup> This report reveals emergency service, medical, mental, health, police and social service workers (who had given evidence in coronial inquests) found their processes adversarial and confronting.<sup>113</sup> Interviewees felt it was 'accusatory in nature' and had the effect of compounding their guilt.<sup>114</sup> Many believed the cross-examination of witnesses

106 Ibid s 55.

107 Ibid s 58. Note this section excludes the applicability of the *Evidence Act 2008* (Vic) ss 128, 128A, 131A.

108 *Coroners Act* (n 9) s 1(d).

109 Michael Eburn and Stephen Dovers, 'Learning Lessons from Disasters: Alternatives to Royal Commissions and Other Quasi-Judicial Inquiries' (2015) 74(4) *Australian Journal of Public Administration* 495, 497.

110 Freckelton (n 97) 8, 15, discussing Sweeney Research, 'Families Information Needs and Experiences of the Victorian Coronial System' (Report No 16828, Department of Justice (Vic), October 2008) 18, 24. See also Freckelton (n 97) 13–14, quoting Sweeney Research, 'A Qualitative Research Report on DOJ Coronial Council' (Report No 20823, Department of Justice (Vic), 27 July 2011) 8 ('A Qualitative Research Report on DOJ Coronial Council'), which reveals participants are often ill-prepared on what to expect when giving evidence to an inquest.

111 Eburn and Dovers (n 109) 499.

112 'A Qualitative Research Report on DOJ Coronial Council' (n 110).

113 Freckelton (n 97) 14, quoting *ibid* 11.

114 Freckelton (n 97) 13, quoting 'A Qualitative Research Report on DOJ Coronial Council' (n 110) 8.

was about “‘pointing fingers’”, not ‘uncovering the truth’, and this forced them to be on the back foot.<sup>115</sup> Interviewees also felt compelled to defend their actions because the families wanted someone to blame.<sup>116</sup> Some of the interviewees even reflected that appearing before an inquest had a ‘long term emotional impact’.<sup>117</sup>

These experiences demonstrate that the coronial jurisdiction can be confronting for professionals — let alone members of the public — who are involved in the process. Many felt that blame was being apportioned despite the fact that the overarching aim of inquests is to make recommendations to improve community safety and avoid future preventable deaths.<sup>118</sup> These elements contribute to the notion of practical incongruity that exists between coronial processes and public participation.

### 3 *Parliamentary Committee Inquiries*

The powers of joint investigatory parliamentary committees when undertaking inquiries are set out in the *Parliamentary Committees Act 2003* (Vic) (*‘Parliamentary Committees Act’*).<sup>119</sup> All subsequent references to parliamentary committees in this article are to joint investigatory parliamentary committees as established under this Act.

Parliamentary committees will undertake inquiries following resolution by a house of Parliament or order by the Governor.<sup>120</sup> Permission is required to enable parliamentary committees to arrange research<sup>121</sup> and public service assistance.<sup>122</sup>

115 Freckelton (n 97) 14, quoting ‘A Qualitative Research Report on DOJ Coronial Council’ (n 110) 11. Here, participants were reluctant to contribute and tell the truth because they did not want to make the family’s grief worse: Freckelton (n 97) 14, quoting ‘A Qualitative Research Report on DOJ Coronial Council’ (n 110) 12.

116 Freckelton (n 97) 14, quoting ‘A Qualitative Research Report on DOJ Coronial Council’ (n 110) 11–12.

117 Freckelton (n 97) 15, quoting ‘A Qualitative Research Report on DOJ Coronial Council’ (n 110) 18.

118 See *Coroners Act* (n 9) s 1(c).

119 Note the *Parliamentary Committees Act 2003* (Vic) (*‘Parliamentary Committees Act’*) does not provide substantial elucidation on how committees should conduct inquiries. It offers mere guidance: see generally at pts 2–4. Joint investigatory committees in operation until the end of the 58<sup>th</sup> Parliament (2014–18) included Accountability and Oversight, Family and Community Development and Law Reform, Road and Community Safety: see Parliament of Victoria, ‘Former Committees’, *Committees* (Web Page, 21 March 2019) <[www.parliament.vic.gov.au/committees/list-of-committees/former-committees](http://www.parliament.vic.gov.au/committees/list-of-committees/former-committees)> (‘Former Committees Web Page’). Other types of Victorian committees included Standing (featuring Economy and Infrastructure), Select (Penalty Rates and Fair Pay) and Domestic (Council Procedure): ‘Former Committees Web Page’ (n 119). Differences between the committees are outlined in *Guidelines for Victorian Inquiries* (n 82) [12]. An interesting feature of parliamentary committees, compared with other processes, is that the government may have less control of them because of their membership. Standing committees that are made up of Members of the Legislative Council (where the government does not have a majority) can be particularly unpredictable. Moreover, in the 58<sup>th</sup> term of Parliament, the joint investigative committees did not have government majorities either (or indeed government chairs). This led to the unprecedented step of the Chair of a committee and two Members (all from the party in government) tabling a minority report, following an inquiry: see, eg, Law Reform, Road and Community Safety Committee, Parliament of Victoria, *Inquiry into Lowering the Probationary Driving Age in Victoria to Seventeen* (Final Report, March 2017).

120 *Parliamentary Committees Act* (n 119) s 33(1).

121 *Ibid* s 30(1).

122 *Ibid* s 30(2).



The general practice is for a committee to establish a secretariat, normally comprising of at least an executive officer, research officer and administrative officer. These people are employed for the duration of the term of Parliament in which the committee operates.

Other powers of parliamentary committee inquiries include:

- deciding who is able to present evidence at a hearing and what information is to be accepted;<sup>123</sup>
- providing participants with parliamentary privilege;<sup>124</sup>
- receiving evidence through various means and deciding on the weight to be attached;<sup>125</sup> and
- drafting a final report (potentially in addition to interim reports and a draft Bill) that the government is obliged to respond to.<sup>126</sup>

Parliamentary committees are required to ensure evidence is taken in public<sup>127</sup> and that people are able to make written contributions.<sup>128</sup> In fact, '[a]ny person may make a written submission to a ... Committee with respect to any proposal, matter or thing being inquired into or being considered by the Committee'.<sup>129</sup> Committees must keep a record of all evidence submitted during their inquiry and all determinations made.<sup>130</sup> These records may then be accessed by members of the public, on request.<sup>131</sup>

The *Parliamentary Committees Act* provides committees with wide evidence-gathering powers and prioritises public participation. This can be seen in the context of public hearings,<sup>132</sup> including the expectation that participants are not legally represented.<sup>133</sup> Evidence-gathering is further facilitated thanks to the

123 Ibid ss 27(2)–(3), 28(1).

124 See Family and Community Development Committee, Parliament of Victoria, *Parliamentary Privilege and the Child Abuse Inquiry* (Report, 28 August 2012). 'Statements which attract Parliamentary privilege, such as submissions and evidence given in hearings, may not form the basis of civil proceedings (including defamation or breach of confidence) or criminal proceedings (including proceedings for perjury) under any circumstances': at 1. Note this information is provided in the context of the Betrayal of Trust Inquiry. See also *Parliamentary Committees Act* (n 119) s 50.

125 *Parliamentary Committees Act* (n 119) ss 28(3A)–(3B).

126 Ibid ss 34–6.

127 Ibid s 28(2). However, a parliamentary committee 'may take evidence in private if the Committee resolves that special circumstances make it desirable': at s 28(3).

128 Ibid s 28(8).

129 Ibid.

130 Ibid s 28(9).

131 Ibid s 37(1).

132 Ibid s 27(1).

133 Ibid s 27(3).

committee's power to summon 'persons, documents and other things'<sup>134</sup> and instruct that evidence given before it be under oath or affirmation.<sup>135</sup>

Despite the public nature of committees, there are elements that run contrary. For example, committees may refuse to accept information from the public if they believe it is 'irrelevant' or 'unnecessary'.<sup>136</sup> Committees also do not need to publicise evidence, reports or determinations if they are 'of the opinion that special circumstances exist that make it undesirable'<sup>137</sup> or such has been received 'on the basis that it remains private'.<sup>138</sup> Moreover, despite the power to receive information in various forms (including: written, in person, by video or by audio), committees possess discretion over the weight to place on each.<sup>139</sup>

#### 4 VLRC Examinations

The VLRC conducts examinations in accordance with the *Victorian Law Reform Commission Act 2000* (Vic) ('*VLRC Act*'). The VLRC is 'a central agency for developing law reform in Victoria'.<sup>140</sup> It is in place 'to report to the Attorney-General on law reform proposals referred to it', 'suggest references and undertake relevant educational programs' and 'supply information to Parliament and Parliamentary Committees'.<sup>141</sup>

The VLRC is also empowered to undertake examinations following self-referrals. However, these may only concern 'relatively minor legal issues that are of general community concern'.<sup>142</sup> Further, the VLRC may only commence self-referrals if it 'is satisfied that the examination of that matter will not require a significant deployment of the resources'.<sup>143</sup> The VLRC terms these inquiries 'community law

134 *Ibid* s 28(1). This broad power is not always sufficient. See, for example, Anita Mackay and John Aliferis, 'A Watershed in Committee Evidence Gathering: Victorian Parliament's Inquiry into the CFA Training College at Fiskville' (2018) 33(2) *Australasian Parliamentary Review* 94.

135 *Parliamentary Committees Act* (n 119) s 28(4).

136 *Ibid* s 27(2).

137 *Ibid* s 37(1).

138 *Ibid* s 37A(2).

139 *Ibid* ss 28(3A)–(3B). See *Guidelines for Victorian Inquiries* (n 82) [10]–[15] (the types and powers of parliamentary committees), [44]–[61] (parliamentary committees and their request for documents), [80]–[151] (advice for a Member of the executive before, during and after their appearance at a committee hearing). See also Department of Premier and Cabinet (Vic), *Guidelines for Victorian Government Submissions and Responses to Inquiries* (Guidelines, May 2016). This document provides Members of the executive with a tool to advise on what is appropriate when making submissions to inquiries or reviews, or preparing responses to inquiries or reviews: at 4–5 [11]–[19]. This includes advice on the need to gain approval for a submission or response, protocol around the publication of submissions and responses and assistance to those who make a submission in a personal capacity: at 5–7 [20]–[32]. See app 1 for a checklist of information to be included in 'the letter' to be sent to the Department of Premier and Cabinet when one receives a request, and app 2 for an outline of the approval process for submissions and responses.

140 *Victorian Law Reform Commission Act 2000* (Vic) s 1(1) ('*VLRC Act*').

141 *Ibid* s 1(2).

142 *Ibid* s 5(1)(b).

143 *Ibid*.

reform projects'.<sup>144</sup>

Despite not being in the legislation, convention is for the Attorney-General to provide the VLRC with terms of reference.<sup>145</sup> Once terms of reference are issued, the VLRC is empowered to employ as many people 'as are necessary to enable the Commission to perform its functions'.<sup>146</sup>

When undertaking examinations, the VLRC is likely to engage in research, encourage submissions from members of the public and receive opinions from stakeholders and industry experts. When satisfied, the VLRC drafts a final report (likely to contain recommendations).<sup>147</sup> All reports drafted by the VLRC must be tabled in both houses of Parliament and made available to the public.<sup>148</sup>

Importantly, the VLRC 'has power to do all things necessary or convenient to be done for, or in connection with, performing its functions'.<sup>149</sup> This means the VLRC is able to rely on the research skills of its current members and appoint others to provide assistance (including expert consultants).<sup>150</sup> The VLRC is also able to effectively outsource evidence-gathering endeavours to suitable organisations. Nevertheless, as stipulated above, these pursuits are dependent on the organisation's budgetary position.<sup>151</sup>

The VLRC's promotion of public participation is reflected in its invitation for written public submissions and its hosting of forums. Its self-referral powers on matters of general societal concern are reflective of the VLRC's expectation to be accessible to and connected with the community.<sup>152</sup>

While the provisions contained in the *VLRC Act* that empower the organisation to gather evidence and involve members of the public are limited,<sup>153</sup> Cronin and Barnes have observed in relation to state and federal generalist law reform agencies that such agencies consult widely, enjoy a sense of independence in writing reports free from government direction or interference, and possess

144 A recent project within this category relates to neighbourhood tree disputes. See 'Neighbourhood Tree Disputes', *Victorian Law Reform Commission* (Web Page, 19 August 2019) <[www.lawreform.vic.gov.au/all-projects/neighbourhood-tree-disputes](http://www.lawreform.vic.gov.au/all-projects/neighbourhood-tree-disputes)>.

145 See, eg, Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process* (Report, August 2016) viii ('*Victims of Crime*'); Victorian Law Reform Commission, *Review of the Adoption Act 1984* (Report, February 2017) viii–ix ('*Adoption Act Review*').

146 *VLRC Act* (n 140) s 15(2).

147 *Ibid* ss 5(1)(a), 21(2).

148 *Ibid* ss 21(4)–(5).

149 *Ibid* s 6(1).

150 *Ibid* s 16(1).

151 *Ibid* ss 15(3), 16(2).

152 *Ibid* s 5(1)(b).

153 See generally *VLRC Act* (n 140).

democratic legitimacy.<sup>154</sup>

## **B Permanent versus Ad Hoc Status of the Processes**

Of the processes being examined in this article, two of them are permanent (the Coroners Court and the VLRC<sup>155</sup>), one is established for four-yearly terms (parliamentary committees) and the remaining three are ad hoc — established only when required and for a specific duration (royal commissions, boards of inquiry and formal reviews). There are both advantages and disadvantages of permanent status.

The advantages include that they can employ staff with relevant expertise who continue to develop their expertise by carrying out specialised work within the field. Staff have the capacity to recognise systemic issues, which is certainly evident in the coronial jurisdiction.<sup>156</sup> It is also more straightforward for permanent bodies to monitor their recommendations.<sup>157</sup>

The disadvantages of permanent bodies include the danger that they will become imbued with particular cultural norms that impact on the inquiry process and recommendations made. This is a criticism that has been levelled at the federal Productivity Commission, with Corr and Carey arguing that it has become ‘constrained by institutionalised norms and values’ (in their case study relating to child care these relate to gender), which they submit makes the Commission’s advice ‘questionable’.<sup>158</sup>

While it is beyond the scope of this article to investigate the institutional norms of each of the processes, there are some significant advantages to ad hoc inquiries that avoid the development of such requirements. These are: (1) the appointment of commissioners and experts to lead the process, who have particular expertise in the subject matter of the inquiry (while they may not have been involved in similar inquiries, it is their subject matter knowledge that is crucial rather than their knowledge of inquiry processes); (2) the appointment of prestigious commissioners and experts who are perceived to have independence (often

154 Cronin (n 18) 34; Jeffrey Barnes, ‘On the Ground and on Tap: Law Reform, Australian Style’ (2018) 6(2) *Theory and Practice of Legislation* 193, 214.

155 However, it should be noted that the VLRC employs research officers for the term of particular inquiries so that they have the relevant subject matter expertise.

156 See, eg, the report about suicide reporting in Victoria: Coronial Council of Victoria, *Suicide Reporting in the Coronial Jurisdiction* (Reference 3, Report, 17 June 2014).

157 For example, the Victorian Ombudsman closely monitors the implementation of recommendations. See Ombudsman Victoria, *Ombudsman’s Recommendations: Third Report on Their Implementation* (Report, 19 February 2014). The VLRC is a permanent body but does not track the implementation of its recommendations. Its recommendations are sometimes repeated by other reviews or inquiries.

158 Lara Corr and Gemma Carey, ‘Investigating the Institutional Norms and Values of the Productivity Commission: The 2011 and 2015 Childcare Inquiries’ (2017) 76(2) *Australian Journal of Public Administration* 147, 157.

former judges);<sup>159</sup> (3) significant legislative powers and flexibility to conduct the inquiry with a methodology that is best suited to the subject matter — particularly under the *Inquiries Act* (this will be developed further in Part III where it may be seen that inquiries into child protection and family violence took advantage of this versatility); and (4) the ability to investigate government agencies (including some of the aforementioned permanent inquiry bodies) that may be perceived to be part of the problem.<sup>160</sup>

When recommending a new federal *Inquiries Act*, the ALRC considered the advantages and disadvantages of establishing a permanent inquiry body. The ALRC suggested that a new permanent inquiries body was not required, noting that there are already a number of permanent bodies that can carry out inquiries.<sup>161</sup> It considered it was preferable for major inquiries, such as royal commissions, to be established on an ad hoc basis, because

Royal Commissions and other public inquiries may differ greatly with respect to both subject matter and process. There may be limited utility in the Australian Government funding a new permanent body staffed by persons with knowledge, skills and experience specific to only certain types of inquiry.<sup>162</sup>

The ALRC also noted that staff could be seconded from permanent inquiry bodies (such as the Commonwealth Ombudsman) to royal commissions, to assist with matters of process.<sup>163</sup>

The main disadvantage of ad hoc inquiries is that they may cause the same recommendations to be made repeatedly by inquiry after inquiry. This problem has been identified at the national level in relation to inquiries into extreme events, such as floods and bushfires. Eburn and Dovers have documented 50 inquiries in 75 years in this area that they argue represent a form of ‘insanity’; inquiries are ‘reviewing these events in the same way and expecting the quasi-judicial process to identify how to prevent the next one’.<sup>164</sup>

This is not always a problem. Implementation has not been a problem for the Family Violence Royal Commission, for example. The government has committed to implementing all 227 recommendations of the *Royal Commission into Family*

159 Prasser, ‘Royal Commissions in Australia’ (n 31) 33. On the application of the bias rule to royal commissioners, see Matthew Groves, ‘A Man for All Seasons? The Fair Minded Observer and Royal Commissioners’ (2016) 23(4) *Australian Journal of Administrative Law* 201.

160 Prasser, ‘Royal Commissions in Australia’ (n 31) 39, gives two Queensland examples where public agencies (including the Coroners Court and the Director of Public Prosecutions) needed to be investigated as part of royal commissions: James Royal Commission and Davies Royal Commission. Prasser goes on to note that in such circumstances, ‘[p]arliamentary committees are seen as too partisan and lacking in expertise’: at 40.

161 *A New Statutory Framework* (n 28) 102–3 [5.47].

162 *Ibid* 103 [5.48].

163 *Ibid* 118 [5.109].

164 Eburn and Dovers (n 109) 505.

*Violence: Report and Recommendations* ('*Family Violence Royal Commission Final Report*')<sup>165</sup> (as detailed in Part III(B)(2) of this article), but it is recognised that this is unprecedented.

Some ad hoc inquiries direct that the implementation of their recommendations be monitored as a way of addressing the risk that recommendations will be ignored. This can be seen in the Inspector-General for Emergency Management being tasked with reporting on the implementation of the recommendations made by the Bushfires Royal Commission.<sup>166</sup>

## C Statistical Snapshot

This Part moves on to provide a statistical snapshot of the processes to have taken place in Victoria within the chosen timeframe (1 January 2008 – 31 December 2017). This contextualises the discussion of processes relating to child protection and family violence contained in the following Part.

### 1 Coronial Inquests

As set out in app 1, the number of 'investigations opened', 'findings into death with inquest', 'findings containing recommendations' and 'recommendations contained in findings' have fluctuated over the period.

There were 6,341 **investigations opened** in 2008<sup>167</sup> and 6,248 opened in 2016.<sup>168</sup> The lowest number was 4,857 in 2010.<sup>169</sup> The highest was 6,336 in 2014.<sup>170</sup>

The number of **findings into death with inquest** was 142 in 2010<sup>171</sup> before the figure climbed each year to peak at 221 in 2013,<sup>172</sup> then fell each year following

<sup>165</sup> *Family Violence Royal Commission Final Report* (n 24).

<sup>166</sup> Eburn and Dovers (n 109) 500. This was in response to recommendation 66 made by the *Bushfires Royal Commission Final Report* (n 3) summary 37; the first inquiry to make such a recommendation. The most recent report was produced in 2017: see *Hazelwood Mine Fire Inquiry Annual Report 2017* (n 6). The Federal Child Sexual Abuse Royal Commission made a number of specific recommendations about ongoing monitoring of implementation of its recommendations, including by the National Office for Child Safety: *Royal Commission into Institutional Responses to Child Sexual Abuse* (Final Report, 2017) vol 17, 51–55 [2.2.1]–[2.2.5] ('*Federal Child Sexual Abuse Royal Commission Final Report*').

<sup>167</sup> Coroners Court of Victoria, *2009–10 Annual Report* (Report, 10 September 2010) 40 ('*Coroners Court 2009–10 Annual Report*').

<sup>168</sup> Coroners Court of Victoria, *2017 Annual Report* (Report, October 2017) 17 ('*Coroners Court 2017 Annual Report*').

<sup>169</sup> Coroners Court of Victoria, *2010–2011 Annual Report* (Report, 31 October 2011) 47 ('*Coroners Court 2010–11 Annual Report*').

<sup>170</sup> Coroners Court of Victoria, *2014–15 Annual Report* (Report, 19 September 2015) 38 ('*Coroners Court 2014–15 Annual Report*').

<sup>171</sup> *Coroners Court 2010–11 Annual Report* (n 169) 48.

<sup>172</sup> Coroners Court of Victoria, *2013–14 Annual Report* (Report, 19 September 2014) 39 ('*Coroners Court 2013–14 Annual Report*').

to finish at 82 in 2016.<sup>173</sup>

The numbers of **findings into death without inquest** dropped progressively for the first four years and consolidated in the last two. There were 5,050 in 2010<sup>174</sup> and 3,340 in 2016.<sup>175</sup>

The number of **findings containing recommendations** also start low, peak and then drop. There were 53 in 2011. This rose each year to 2014 and fell in the last two years (105 and 65<sup>176</sup> respectively).

The number of **recommendations contained in findings** was 159 in 2009,<sup>177</sup> before increasing in each of the following years. The figure rose to 294<sup>178</sup> and 296<sup>179</sup> in 2014 and 2015, and sharply dropped to 127 in 2016.<sup>180</sup>

## 2 VLRC Examinations

As set out in app 3, there have been 22 examinations commenced in the timeframe. The period that appears inconsistent is 2010–11. Here, only one examination was commenced. This is in contrast to two in 2008, four in 2009, three in 2012, and three in 2013. In recent times, the frequency of examinations has been consistent (two in 2014, two in 2015, two in 2016, and three in 2017).

In total, there have been 16 referrals from the Attorney-General and six VLRC-initiated examinations. The dip in 2010–11 may be due to budgetary restrictions, change in government and/or the need to focus on completing the four examinations commenced in 2009. Further exploration of the discrepancy is beyond the scope of this article.

## 3 Royal Commissions, Boards of Inquiry and Formal Reviews

As set out in app 4, there have been two royal commissions, one board of inquiry, and one formal review in the timeframe. These numbers demonstrate the rarity of these processes.<sup>181</sup> Their occurrence is best understood in light of the longer-term

173 *Coroners Court 2017 Annual Report* (n 168) 17.

174 *Coroners Court 2010–11 Annual Report* (n 169) 48.

175 *Coroners Court 2017 Annual Report* (n 168) 17.

176 *Ibid* 26.

177 *Coroners Court 2009–10 Annual Report* (n 167) 48.

178 *Coroners Court 2014–15 Annual Report* (n 170) 39.

179 Coroners Court of Victoria, *2016 Annual Report* (Report, 19 September 2015) 26 ('*Coroners Court 2016 Annual Report*').

180 *Coroners Court 2017 Annual Report* (n 168) 26.

181 Delacorn (n 32) 53. Pascoe notes these processes are being 'appointed with decreasing frequency': Pascoe (n 1) 393. Delacorn (n 32) 44, 51–4 also notes that the public often fails to identify the distinction between federal inquiries and those under the *Inquiries Act* (n 6). This adds to the misapprehension that such formal inquiries are increasing in occurrence.

historical trends. Delacorn highlights that there were 156 royal commissions in Victoria between 1854 and 1986.<sup>182</sup> Since 1986, there have only been five.<sup>183</sup>

As demonstrated by the ‘Details’ section in app 4, the four inquiries were large. This is not to say earlier royal commissions, boards of inquiry and formal reviews were small. Instead, it is to demonstrate that the importance attached to them has increased, and this has resulted in greater allocation of resources, wider media exposure and more extensive public participation.<sup>184</sup>

In addition to size, the nature of royal commission inquiries has changed. Delacorn illustrates that in the 160 royal commissions held in Victoria to date, 114 have been ‘policy advisory’ (64 of 69 between 1850 to 1899<sup>185</sup> and only 5 of 21 between 1950 to present).<sup>186</sup> The 17 other royal commissions (between 1950 to present) have been ‘inquisitorial’ — including the last four.<sup>187</sup> Subsequently, Delacorn describes the general trend in the following way: ‘the primary function of royal commissions has shifted from “policy advisory” to “inquisitorial”’.<sup>188</sup>

182 Delacorn (n 32) 5–24.

183 See below app 4.

184 In relation to boards of inquiry, *Hazelwood Mine Fire Inquiry Original Report* (n 6); Board of Inquiry, *Hazelwood Mine Fire Inquiry Report 2015/2016* (Report, 31 August 2015) (*‘Hazelwood Mine Fire Inquiry Re-Opened Report’*); cf Board of Inquiry, *Allegations against Members of the Victorian Police Force* (Report No 32–5821/78, 10 May 1978); Board of Inquiry, *The Purchases and Sales of Land in Victoria by Alan Humphrey Croxford* (Report No 40–1477/73, 18 January 1973); *Inquiry into Scientology Report* (n 27). In relation to royal commissions, *Family Violence Royal Commission Final Report* (n 24); *Bushfires Royal Commission Final Report* (n 3); cf *Royal Commission on the Activities of the Federated Ship Painters and Dockers Union* (Final Report, 1984); *Royal Commission into Certain Housing Commission Land Purchases and Other Matters* (Final Report, 1981); *West Gate Bridge Royal Commission Report* (n 27). The public may also be under the impression that the incidence of such inquiries has increased because the state government has arranged a high volume of informal reviews in recent years. See, eg, Victorian Public Sector Commission, *Review of Victoria’s Executive Officer Employment and Remuneration Framework* (Summary Report, August 2016) (*‘Review of Victoria’s Executive Officer Employment and Remuneration Framework’*); Martin Pakula, Attorney-General (Vic), ‘Review to Strengthen Victoria’s Charter of Human Rights’ (Media Release, Victorian Government, 2 March 2015); BMT WBM Pty Ltd, *Lonsdale Bight Investigations Review and Options Overview* (Report, January 2017); Department of Environment, Land, Water and Planning, ‘Fishermans Bend Planning Review Panel’, *Planning* (Web Page, 2 March 2018) <[www.planning.vic.gov.au/new-page/panels/project/fishermans-bend-planning-review-panel](http://www.planning.vic.gov.au/new-page/panels/project/fishermans-bend-planning-review-panel)>. For a detailed examination of royal commission media coverage that is illustrative, see Kate Fitz-Gibbon, ‘The Treatment of Australian Children in Detention: A Human Rights Law Analysis of Media Coverage in the Wake of Abuses at the Don Dale Detention Centre’ (2018) 41(1) *University of New South Wales Law Journal* 100.

185 Delacorn (n 32) 51.

186 *Ibid* 22–4.

187 *Ibid* 24. Nevertheless, the policy-based elements of the *Family Violence Royal Commission Final Report* (n 24), should be acknowledged.

188 Delacorn (n 32) 53. This is largely replicated at the federal level, where 60% of royal commissions since 1902 have been ‘policy advisory’ and over 60% of royal commissions since 1972 have been ‘inquisitorial’: at 53–4, citing Prasser, *Royal Commissions and Public Inquiries* (n 2) 48. Only 3 have been ‘policy advisory’ since 1979.



### III RECENT COMMISSIONS, INQUESTS AND INQUIRIES INTO CHILD PROTECTION AND FAMILY VIOLENCE

Having outlined the general powers of the various processes in Part II, as well as their relative frequency in the chosen timeframe, this Part narrows in focus to processes relating to two specific policy areas: child protection and family violence. Over the period there have been multiple processes undertaken on these topics that have been high profile, resource-intensive and effective because they have led to significant policy change, as well as the establishment of a new agency dedicated to family violence (Family Safety Victoria). This Part will analyse how the chosen processes utilised evidence-gathering and public participation and will detail the outcome of each (including government responses to recommendations).

This Part commences in Section A with an overview of processes relating to child protection. These include a VLRC examination that reported in 2010, an independent inquiry that reported in 2012 and a parliamentary committee report finalised in 2013. It then moves on to consider processes relating to family violence in Section B. These include a coronial inquest that reported in 2015 and a royal commission that reported in 2016. Together, these topics illustrate the gamut of processes being examined by this article — within the chosen timeframe.

#### A Child Protection

Due to concerns about the functioning of the *Children, Youth and Families Act 2005* (Vic), the Attorney-General instructed the VLRC to commence the Child Protection Examination in November 2009. The *Protection Applications in the Children's Court* ('*Child Protection Examination Final Report*') was tabled in Parliament on 5 October 2010.<sup>189</sup> Recommendations contained in this report contributed to the Cummins Review<sup>190</sup> on 31 January 2011. It is referred to as the Cummins Review because it was chaired by the Hon Philip Cummins, who was a former Victorian Supreme Court judge. The *Protecting Victoria's Vulnerable Children Inquiry Report* ('*Cummins Review Report*') was delivered to the government on 27 January 2012.<sup>191</sup>

In an attempt to clarify its child protection position and strategies, the government launched the Betrayal of Trust Inquiry on 17 April 2012. The *Betrayal of Trust: Inquiry into the Handling of Child Abuse by Religious and Other Non-Government Organisations Report* ('*Betrayal of Trust Inquiry Report*') was

189 *Child Protection Examination Final Report* (n 20).

190 See 'Child Protection', *Victorian Law Reform Commission* (Web Page, 19 August 2019) <[www.lawreform.vic.gov.au/all-projects/child-protection](http://www.lawreform.vic.gov.au/all-projects/child-protection)>.

191 *Cummins Review Report* (n 21).

tabled in Parliament on 13 November 2013.<sup>192</sup> The government's response to the recommendations contained has been significant, but has been overshadowed to an extent by the national Royal Commission into Institutional Responses to Child Sexual Abuse ('Federal Child Sexual Abuse Royal Commission').

## 1 VLRC Examination

The Child Protection Examination was prompted by a Victorian Ombudsman's own motion investigation into child protection that led the Ombudsman to make the following recommendation:

The Attorney-General provide a reference to the Victorian Law Reform Commission to examine alternative models for child protection legislative arrangements that would reduce the degree of disputation and encourage a focus on the best interests of children.<sup>193</sup>

The Child Protection Examination evaluated Children's Court of Victoria ('Children's Court') processes and suggested changes as appropriate.<sup>194</sup> The VLRC was instructed to place a focus on: (1) protecting Victorian children 'from abuse and neglect'; (2) processes for applications and orders within the Family Division of the Children's Court; and (3) determining the extent to which the system is consistent with rights contained in the *Charter of Human Rights and Responsibilities Act 2006* (Vic).<sup>195</sup>

Despite its budgetary limitations, the VLRC was effective in ensuring wide evidence-gathering and public participation. It offered guidance to the public on how to make submissions<sup>196</sup> and published contributions on its website. The VLRC provided news updates and issued media releases.<sup>197</sup>

192 *Betrayal of Trust Inquiry Report* (n 22).

193 Office of the Victorian Ombudsman, *Own Motion Investigation into the Department of Human Services Child Protection Program* (Report, November 2009) 17. See discussion in *Child Protection Examination Final Report* (n 20) 28–9.

194 *Child Protection Examination Final Report* (n 20) 10. Here, the VLRC was to focus on minimising disputes and upholding the best interests of the child. It was encouraged to consider arrangements in other jurisdictions (including other Australian states, England and Scotland).

195 *Ibid.* The VLRC was also instructed to: be aware of 'previous reviews of Victoria's child protection system' (including the report of the Victorian government taskforce); place emphasis on the Attorney-General's Justice Statements (2004 and 2008); and focus on non-adversarialism and alternative dispute resolution.

196 Victorian Law Reform Commission, *Review of Victoria's Child Protection Legislative Arrangements* (Information Paper, February 2010) 11–12 ('*Child Protection Legislative Arrangements Information Paper*').

197 See 'Timeline', *Victorian Law Reform Commission* (Web Page, 19 August 2019) <[www.lawreform.vic.gov.au/timeline/54](http://www.lawreform.vic.gov.au/timeline/54)> ('VLRC Timeline Web Page'). These include: 'Child Protection Information Paper Released', *Victorian Law Reform Commission* (Web Page, 28 July 2009) <[www.lawreform.vic.gov.au/news/child-protection-information-paper-released](http://www.lawreform.vic.gov.au/news/child-protection-information-paper-released)>; 'Child Protection Procedures Report Released', *Victorian Law Reform Commission* (Web Page, 5 October 2010) <[www.lawreform.vic.gov.au/news/child-protection-procedures-report-released](http://www.lawreform.vic.gov.au/news/child-protection-procedures-report-released)>; 'Child Protection Final Report Delivered to the Attorney-General', *Victorian Law Reform Commission* (Web Page, 30 June 2010) <[www.lawreform.vic.gov.au/news/child-protection-final-report-delivered-attorney-general](http://www.lawreform.vic.gov.au/news/child-protection-final-report-delivered-attorney-general)>.

The Child Protection Examination engaged in 28 community consultations.<sup>198</sup> It also met with members of the Children's Court, the Department of Health and Human Services ('DHHS') and child protection practitioners.<sup>199</sup> Further, the VLRC employed CREATE Foundation Victoria, Foster Care Association Victoria and MyriaD Consultants<sup>200</sup> to hold sessions with young people, foster carers and parents. Reports were drafted and made publicly available. Details within (including primary accounts from individuals personally impacted) assisted the VLRC to develop its options for reform.<sup>201</sup>

The VLRC staff also undertook extensive research endeavours, including analysis of child protection systems in neighbouring jurisdictions, protection of children principles in other Australian states and analysis of previous child protection reports.<sup>202</sup>

A key aspect of the Child Protection Examination was the *Review of Victoria's Child Protection Legislative Arrangements* ('*Child Protection Legislative Arrangements Information Paper*').<sup>203</sup> This focused on refining statutory provisions and requested responses from the public to complex and legalistic questions.<sup>204</sup> An example is 2.1: '[a]re the existing grounds for finding that "a child is in need of protection" in s 162 of the *Children, Youth and Families Act 2005* adequate?'.<sup>205</sup>

On balance, it appears the VLRC did well to incorporate evidence-gathering and public participation during the Child Protection Examination. It widely promoted the undertaking, provided guidance on submission-making, facilitated community consultation sessions, used specialist organisations to connect with young people and completed valuable comparative research. Having said that, its focus was legalistic and complex, and this most likely prevented members of the

198 *Child Protection Examination Final Report* (n 20) app B (consultations).

199 *Ibid.*

200 'Child Protection: Community Group Devolved Consultation Reports', *Victorian Law Reform Commission* (Web Page, 19 August 2019) <[www.lawreform.vic.gov.au/projects/child-protection/child-protection-community-group-devolved-consultation-reports](http://www.lawreform.vic.gov.au/projects/child-protection/child-protection-community-group-devolved-consultation-reports)>. See also *Child Protection Examination Final Report* (n 20) 15.

201 *Child Protection Examination Final Report* (n 20) 15, 17–19.

202 See *ibid* chs 4–5, apps C–E, N, P.

203 *Child Protection Legislative Arrangements Information Paper* (n 196).

204 *Ibid* 3.

205 *Ibid* 6. Other examples include:

2.15 Should all (or some) of the provisions of Division 12A of Part VII of the *Family Law Act 1975* (Cth) which seek to encourage Less Adversarial Trials be adopted in the Children's Court?

...

3.1 Does the Secretary of the Department of Human Services have too many functions under the *Children, Youth and Families Act 2005*?

3.2 If yes, should some of those functions be given to an independent statutory commissioner?

*Ibid* 7–8.

public from contributing.<sup>206</sup> This is reflected by the Child Protection Examination only receiving 53 written responses.<sup>207</sup>

The *Child Protection Examination Final Report* was based around the VLRC's five options for reform.<sup>208</sup> However, the government did not provide a direct response to these. It instead focused its energies on establishing a new process (Cummins Review). The government indicated in the terms of reference establishing the Cummins Review that the efforts of the VLRC were not in vain because the Cummins Review was to consider its recommendations.<sup>209</sup>

## 2 Cummins Review

The Cummins Review of child protection resulted in the *Cummins Review Report*. As noted above, it was chaired by the Hon Philip Cummins who in 1993 'was the judge in the Supreme Court trial for the murder of Daniel Valerio, which was a catalyst for the introduction in Victoria of mandatory reporting of child abuse, which he recommended'.<sup>210</sup> The Chair was assisted by Emeritus Professor Dorothy Scott OAM and Mr Bill Scales AO. This informal type of panel review or inquiry is not a mechanism detailed in the *Inquiries Act*. The *Inquiries Act* instead details formal reviews. The explanatory memorandum to the Inquiries Bill 2014 (Vic) noted that formal reviews were intended to provide a legislative basis for informal inquiries and expert reviews:

The Bill will also provide for a less formal model of inquiry, known as the Formal Review under the Bill. Inquiries of this type have been established by the executive Government (e.g. the Protecting Victoria's Vulnerable Children Inquiry), but currently lack any legislative basis or recognition.<sup>211</sup>

The Cummins Review was asked to 'assess the system as a whole examine all reports and reviews made to date and engage with service providers, child protection workers, families and young people to identify the key gaps and recommend key strategies'.<sup>212</sup> The terms of reference required the panel to

206 See generally *Child Protection Legislative Arrangements Information Paper* (n 196). See also *Child Protection Examination Final Report* (n 20) apps I, N, O, R.

207 *Child Protection Examination Final Report* (n 20) app A.

208 Ibid chs 7–11. An example is the suggestion contained in option for reform 3 at 367: '[create an] Office of the Children and Youth Advocate (OCYA): A New Multi-Disciplinary Body to Advance the Interests of Children and Young People'.

209 See *Cummins Review Report* (n 21) vol 1, xxi.

210 'The Panel', *Protecting Victoria's Vulnerable Children Inquiry* (Web Page, 7 March 2012) <[www.childprotectioninquiry.vic.gov.au/the-panel.html](http://www.childprotectioninquiry.vic.gov.au/the-panel.html)>.

211 Explanatory Memorandum, Inquiries Bill 2014 (Vic) 1. There are still inquiries taking place that could be classified as 'informal reviews', but these are outside the scope of this article.

212 Cathy Humphreys, Marilyn Webster and Julian Pocock, 'The Role of Inquiries in Shaping Child Care Practice: Is There a Role for Evidence to Inform Policy?' (2014) 10(4) *Evidence and Policy* 497, 506 (citations omitted).

undertake a ‘whole-of-system approach’,<sup>213</sup> and in accordance with these instructions, the Cummins Review decided not to consider individual cases nor organisations; it would instead ‘focus on policy and the service system’.<sup>214</sup>

Prioritising evidence concerning the child protection system made the process relatively impersonal. Nevertheless, one panel priority was research.<sup>215</sup> This included:

- commissioning a Deloitte Access Economics report ‘into the long-term economic costs of child abuse in Victoria’;<sup>216</sup>
- its own data analysis into the percentage of Victorian children born likely to be reported to the Department of Human Services in need of protection; and
- employing CREATE Foundation Victoria to gain views of young people impacted by out-of-home care, child abuse and/or neglect.<sup>217</sup>

The flexibility and expertise of the panel (which featured a retired judge, an emeritus professor of social work and a public administrator possessing experience in inquiries)<sup>218</sup> assisted with evidence-gathering. Namely, the personnel helped the Cummins Review solicit information from academics and industry experts.<sup>219</sup> Further, the panel’s experience aided the establishment of a 20-member reference group (featuring people from peak bodies, industry experts, representatives of the child protection system and members of client bodies) (‘Reference Group’).<sup>220</sup> In the three meetings held by the Reference Group, they raised priority issues, explored relevant topics and discussed policy options.<sup>221</sup>

The panel held 18 days of public hearings in Melbourne and regional Victoria.<sup>222</sup>

213 Humphreys, Webster and Pocock (n 212) 509.

214 *Cummins Review Report* (n 21) vol 1, xxi.

215 *Ibid* vol 1, xxiv. This includes a review of the projections contained in the 2009–10 and 2010–11 child protection reports by the University of Melbourne’s Statistical Consulting Centre: at vol 3, app 5, 613.

216 Humphreys, Webster and Pocock (n 212) 506 (citations omitted).

217 *Cummins Review Report* (n 21) vol 3, app 3, 601; *ibid* 506–7.

218 Humphreys, Webster and Pocock (n 212) 506.

219 These include CREATE Foundation, Deloitte Access Economics, Child First, DHS and the Australian Institute of Family Studies: *Cummins Review Report* (n 21) vol 3, app 2.

220 *Cummins Review Report* (n 21) vol 2, 25 [1.3].

221 *Ibid*. Members of the Reference Group included: Ann Rowley (Acting State Coordinator, CREATE Foundation), Fiona McCormack (CEO, Domestic Violence Victoria), Dr Peter Eastaugh (Pediatrician, Shepparton), Wendy Steendam (Assistant Commissioner, Victoria Police) and Greg Hancock (Principal, Lilydale Heights Secondary School): at vol 3, app 2, 600 [6].

222 *Ibid* vol 3, app 2, 592–5 [3]. The 18 inquiry public sitting days were held in the following locations: Melbourne (3), Geelong (1), Ballarat (1), Bendigo (1), Morwell (1), Mildura (1), Shepparton (1), Broadmeadows (1), Werribee (1), Dandenong (1), Warrnambool (1), Horsham (1), Bairnsdale (1), Wodonga (1), Echuca (1) and Swan Hill (1). Here, 140 witnesses (individuals, organisations and ‘private’) gave oral evidence.

Unlike other processes, these were not investigative in nature.<sup>223</sup> Information given during these forums was ‘not legally privileged and was subject to the ordinary rules of self-incrimination and of defamation’.<sup>224</sup> The panel used other means of engaging with the public, including online surveys for young people, focus groups, site visits and meetings, consulting with the workforce and culturally and linguistically-diverse communities, and engaging with Aboriginal groups.<sup>225</sup>

The 90 recommendations contained in the *Cummins Review Report* did not receive direct response from the government.<sup>226</sup> Justifying the choice not to directly respond, the government insisted the Cummins Review has contributed to various Victorian child protection initiatives since implemented. These include: (1) the *Commission for Children and Young People Act 2012* (Vic); and (2) Victoria’s *Vulnerable Children: Our Shared Responsibility Strategy 2013–2022* (May 2013) (‘Strategy’).

The Strategy included multiple priorities, including a commitment in March 2014 to invest \$128 million to ‘Out-of-Home Care: A Five Year Plan’.<sup>227</sup> As part of the Strategy, the government also introduced the *Children, Youth and Families Amendment (Permanent Care and Other Matters Bill) 2014* (Vic) (‘Bill’) on 7 August 2014.<sup>228</sup>

The Bill became the *Children, Youth and Families Amendment (Permanent Care and Other Matters) Act 2014* (Vic) on 2 September 2014. The legislation made ‘a number of long overdue and positive changes’ (it repealed ‘antiquated notions of “custody” and “guardianship”’ and replaced them with modern conceptions of parental responsibility).<sup>229</sup> Nevertheless, the Act ‘surprised and disappointed

223 Ibid vol 2, 20–4.

The Inquiry did not have the investigative powers of a Royal Commission or the Victorian Ombudsman. Material to assist the Inquiry’s examination and consideration of the issues raised by the Terms of Reference was provided by the willing cooperation of government departments, officials and agencies as well as by community service organisations (CSOs).

Ibid vol 2, 21.

224 ‘Public Sittings’, *Protecting Victoria’s Vulnerable Children Inquiry* (Web Page, 7 March 2012) <[www.childprotectioninquiry.vic.gov.au/public-sittings.html](http://www.childprotectioninquiry.vic.gov.au/public-sittings.html)>.

225 *Cummins Review Report* (n 21) vol 2, 21–5 [1.2.1]–[1.2.6]. Cf the approach of the Cummins Review with the investigative nature of the Bushfires Royal Commission.

226 The panel’s support for the VLRC options for reform can be seen in its recommendations. See especially *ibid* vol 1, lvii–lviii recommendations 55–7. See also *ibid* lviii recommendations 58, 60, 62–3. Here, the panel showed support for the VLRC’s suggestion of less adversarial processes in the Children’s Court and encouraging structured support for children — where court is a last resort. See *Child Protection Examination Final Report* (n 20) chs 7, 9.

227 Department of Human Services (Vic), *Annual Report 2013–14* (Report, 8 September 2014) 12.

228 It suggested doing so was part of implementing the recommendations delivered by the Cummins Review: Judith Bessant and Rob Watts, ‘Continuing Subversion of the Children’s Court: A Review of Victoria’s New Child Protection Laws 2014’ (2015) 40(2) *Alternative Law Journal* 105, 105.

229 *Ibid*.

experts in the Children’s Court, child and family lawyers and numerous others’.<sup>230</sup> This was because of the secrecy around the Bill’s formation<sup>231</sup> and

[the] significant inconsistencies between the 2012 [Cummins Review] report and the new legislation ... Bill would decrease the Children’s Court’s power to hold the DHS accountable, and how that breached Victoria’s obligations pursuant to the United Nations *Convention on the Rights of the Child* and Victoria’s *Charter of Human Rights and Responsibilities Act 2006*.<sup>232</sup>

Other commentators have been more positive about the impact of the Cummins Review. For example, Fernandez reports that the review ‘initiated an extensive reform agenda including child protection, workforce reform, establishment of a child friendly legal system and a Commissioner for Children and Young People, and expanded use of Family Group Conferencing and ATSI family decision making’.<sup>233</sup>

The Victorian government was asked to provide a report to the Federal Child Sexual Abuse Royal Commission about its implementation of recommendations of previous relevant inquiries in 2015. In that response the Victorian government made the following comment about the Cummins Review:

The Government reported that five recommendations from the 2012 Cummins Inquiry were being progressively implemented. The Government noted that, ‘the recommendations were being considered by the Government as an input to the Government’s consideration of child protection system reforms (rather than being implemented on a recommendation-by-recommendation approach)’.<sup>234</sup>

This implies that in 2015 there was ongoing consideration of recommendations made by the Cummins Review. However, it has had continued impact in itself including the establishment of another inquiry, leading to the investigation of

230 Ibid.

231 Ibid. Bessant and Watts describe the process as ‘legislation by stealth’. Its lead-up consisted of secret conversations between Cabinet and the DHHS. There was no white paper and no open, consultative process. ‘Those “lucky” enough to be invited [to take part in the consultative process] were told they were not to talk about the content of the meetings or even the fact there were such meetings’.

232 Ibid, citing Law Institute of Victoria, Submission to Victorian Government, *Protecting Victoria’s Vulnerable Children Inquiry* (5 December 2012) 2–4. See also Peter Power, *Amendments to CYFA: Act Nr 61 of 2014* (Summary for Court Officials and Court Users, 27 March 2015) 3:

The writer [Reserve Magistrate Peter Power] believes that abolition of both interim protection orders and supervised custody orders — especially the latter — are likely to have a significant adverse effect on the settlement rates from conciliation conferences and hence result in many more contested hearings leading to concomitant delay, the antithesis of what the amendments are said to be trying to achieve.

233 Elizabeth Fernandez, ‘Child Protection and Vulnerable Families: Trends and Issues in the Australian Context’ (2014) 3(4) *Social Sciences* 785, 792.

234 Parenting Research Centre, ‘Implementation of Recommendations Arising from Previous Inquiries of Relevance to the Royal Commission into Institutional Responses to Child Sexual Abuse’ (Final Report, Royal Commission into Institutional Responses to Child Sexual Abuse, May 2015) 54–5 (emphasis in original) (citations omitted).

religious and non-government organisation responses to criminal abuse of children (Betrayal of Trust Inquiry).<sup>235</sup>

### 3 *Betrayal of Trust Inquiry*

The Betrayal of Trust Inquiry was established in 2012,<sup>236</sup> requiring the Family and Community Development Committee ('Committee') to investigate the actions and inactions of individuals within organisations accused of child abuse and report on:

- how allegations of criminal child abuse had been handled;
- whether there had been efforts made to prevent or discourage the giving of critical information about criminal child abuse to authorities; and
- what amendments to law and changes to organisations are required to prevent the criminal abuse of children and ensure abuse allegations are appropriately dealt with.<sup>237</sup>

Public involvement was promoted by media comments, statements, releases and alerts.<sup>238</sup> The Committee also attempted to make the written submission process accessible: it allowed public, name withheld, confidential, supplementary and additional contributions (following in-camera hearings).<sup>239</sup> In response to these efforts and outside exposure, the Committee received and closely considered 578 written submissions.<sup>240</sup>

Due to police investigations and matters before the courts, offensive content, information relating to minors, details concerning victims and content outside the terms of reference, many submissions were disregarded or extensively redacted.<sup>241</sup> Notably, after the *Betrayal of Trust Inquiry Report* was tabled in Parliament, the Committee continued to review and process submissions.<sup>242</sup>

The Committee held 33 public hearings in Melbourne, Ballarat, Geelong and

235 *Betrayal of Trust Inquiry Report* (n 22) vol 1, v.

236 *Ibid* vol 1, xxv–xxvi. One of the reasons for establishment was to assist the government in developing the Strategy. See, eg, *ibid* vol 1, 122.

237 *Ibid* vol 1, v.

238 Parliament of Victoria, 'News', *Inquiry into the Handling of Child Abuse by Religious and Other Organisations* (Web Page, 20 February 2014) <[www.parliament.vic.gov.au/fcdc/article/1785](http://www.parliament.vic.gov.au/fcdc/article/1785)>. These included: Parliament of Victoria, 'Call for Submissions' (Media Release, 18 June 2012); Parliament of Victoria, 'First Hearing Dates Announced for Inquiry into the Handling of Child Abuse' (Media Alert, 2 October 2012); Georgie Crozier, 'Media Comment Regarding Announcement of Royal Commission' (Media Release, Parliament of Victoria, 13 November 2012). The Committee also issued a media alert to inform members of the public that submissions could be made through its website.

239 *Betrayal of Trust Inquiry Report* (n 22) vol 1, 34–5 [2.5.1].

240 *Ibid* vol 1, 38. These included: public, name withheld, confidential and supplementary to oral evidence given.

241 *Ibid* vol 1, 40 [2.6.2].

242 *Ibid*.



Bendigo.<sup>243</sup> These featured contributions from academics, child protection workers, government departments, implicated bodies and concerned members of the public.<sup>244</sup> Despite verbal submissions being published, the transcripts were often deemed classified or subject to private recordings.<sup>245</sup>

During the public hearings, people and organisations were given a right of reply to evidence presented against them. There were 31 replies by those given the opportunity.<sup>246</sup> An example is the reply provided by the Catholic Diocese of Ballarat Education:

The Catholic Diocese of Ballarat, for example, explained that there is an agreement ensuring that any allegations made against teachers in schools of the Diocese will be investigated by an officer from the Office for Professional Conduct Ethics and Investigations (OPCEI) from the Catholic Education Office Melbourne, in order to ensure that an officer from outside the Diocese investigates the allegation.<sup>247</sup>

Individuals and groups were also encouraged to provide evidence in public hearings due to the assurance that there would be no legal repercussions for doing so.<sup>248</sup> The Committee published a ‘Frequently Asked Questions’ section on its website to explain how parliamentary privilege works and why it was applicable to the Betrayal of Trust Inquiry.<sup>249</sup>

Contribution was also encouraged by promoting the Betrayal of Trust Inquiry as a warm and welcoming environment.<sup>250</sup> Given the sensitive subject matter, the Committee employed the Victims Support Agency to provide psychological assistance and made the Victims of Crime Helpline available.<sup>251</sup>

On balance, the Betrayal of Trust Inquiry was a public process. This is consistent

243 Ibid vol 2, app 14, 657.

244 Ibid vol 1, 36 [2.5.2]. These include: John Frederiksen (4 March 2013), Dianne Hadden (28 February 2013), Sandra Higgs (15 February 2013) and Gordon Hill (26 March 2013): at vol 2, app 14, 660–2.

245 Ibid vol 1, 35 [2.5.1], 40 [2.6.2].

246 Ibid vol 2, app 15.

247 Ibid vol 2, 350, citing Catholic Diocese of Ballarat Education, Right of Reply to Family and Community Development Committee, *Betrayal of Trust Inquiry into the Handling of Child Abuse by Religious and Other Non-Government Organisations* (23 July 2013).

248 Potential contributors were advised parliamentary privilege would apply to all written submissions and other evidence given in hearings: *Betrayal of Trust Inquiry Report* (n 22) vol 1, 32 [2.3]. This was in accordance with the *Parliamentary Committees Act* (n 119) s 50(2).

249 See Parliament of Victoria, ‘Parliamentary Privilege’, *Inquiry into the Handling of Child Abuse by Religious and Other Organisations* (Web Page, 31 May 2013) <[www.parliament.vic.gov.au/fcdc/article/1915](http://www.parliament.vic.gov.au/fcdc/article/1915)>. *Parliamentary Committees Act* (n 119) s 50(1) states: ‘[t]he proceedings of a Joint Investigatory Committee ... (a) do not give rise to a cause of action in law; (b) must not be the subject of, or in any way be called into question in, a proceeding before a court’.

250 *Betrayal of Trust Inquiry Report* (n 22) vol 1, 32–4 [2.4].

251 Ibid 33–4 [2.4]. Here, victims were supported by a case manager and many commenced victim assistance and counselling programs in metropolitan and regional locations. Many were given confidence to report incidents to police and engage other support services.

with the intentions of the *Parliamentary Committees Act* (including the need to record all evidence presented and the ability for members of the public to access inquiry documents).<sup>252</sup> The extensive promotion, ease and flexibility of submission, numerous open hearing days (in Melbourne and regional Victoria), absence of legal representation, contributor control over evidence classification, explanation of parliamentary privilege and publication of verbal submissions, reflect the public nature of the process.<sup>253</sup>

Evidence-gathering included the right of reply offered to persons and organisations adversely implicated. This demonstrated the Committee's flexibility, focus on natural justice and desire to receive balanced evidence.

Other important components, including: research, accessing files, suspending legal professional privilege and privilege against self-incrimination and requiring witnesses to answer questions on oath or affirmation, further assisted evidence-gathering.<sup>254</sup>

The recommendations contained in the *Betrayal of Trust Inquiry Report* placed a focus on government action, statutory change and desirable policy positions.<sup>255</sup> The government response was tabled in Parliament on 8 May 2014. The government acknowledged the significance of the Committee's findings<sup>256</sup> and supported 'in principle' all recommendations contained.<sup>257</sup> It indicated it had already acted urgently to implement three recommendations.<sup>258</sup> This is a particularly positive response to a parliamentary committee inquiry. In a comprehensive study of the implementation of recommendations made by federal parliamentary committees, Monk found that 'the government formally accepted three out of 11 recommendations, but actual implementation was closer to two and a half recommendations'.<sup>259</sup> While an equivalent study of Victorian parliamentary

252 *Parliamentary Committees Act* (n 119) ss 28(9), 32(1).

253 See generally *Betrayal of Trust Inquiry Report* (n 22) vol 1, 29–41 [2.1]–[2.6.2].

254 See *ibid* vol 1, 34–8 [2.5.1]–[2.5.5].

255 See especially *ibid* vol 2, 287 recommendation 12.1, 374 recommendation 18.1, 502 recommendation 23.1, 543 recommendation 26.3.

256 Victorian Government, Response to Family and Community Development Committee, *Inquiry into the Handling of Child Abuse by Religious and Other Non-Government Organisations* (8 May 2014) ('Betrayal of Trust Inquiry Government Response') 1–2. 'There is no doubt this represented an enormous betrayal of trust by institutions that were entrusted with the wellbeing of children. ... [T]here was also a feeling of betrayal at a deeply personal, spiritual level': at 1.

257 *Ibid* 1, 5–9.

258 *Ibid* 1. The government's prompt response to the most urgent recommendations include introducing: a new grooming law to prevent sexual-related communications (*Crimes Amendment (Grooming) Act 2014* (Vic)); a new offence for a failure by a person in a position of authority to prevent abuse when reasonably aware (*Crimes Amendment (Protection of Children) Act 2014* (Vic) s 3 ('*Protection of Children Act*')); and a new offence for an individual not to inform police if they know or believe a child has been abused (*Protection of Children Act* (n 258) s 4).

259 David Monk, 'Committee Inquiries in the Australian Parliament and Their Influence on Government: Government Acceptance of Recommendations as a Measure of Parliamentary Performance' (2012) 18(2) *Journal of Legislative Studies* 137, 157.

committee inquiries would be necessary to make any firm conclusions about how the Betrayal of Trust Inquiry compared to other Victorian parliamentary committee reports, the federal study suggests that this response rate is above average.

The government acknowledged the need to consult with the community and to be mindful of the Federal Child Sexual Abuse Royal Commission, before implementing other recommendations.<sup>260</sup> This reflects the complexity surrounding the Betrayal of Trust Inquiry. The Federal Child Sexual Abuse Royal Commission was announced seven months after the inquiry began. This made a difficult endeavour more challenging. It went for over five years (its final report was tabled in Parliament on 15 December 2017).<sup>261</sup> The Victorian government deemed it necessary to wait for its conclusion before implementing various child protection measures.<sup>262</sup> Despite being somewhat overshadowed by the Federal Child Sexual Abuse Royal Commission, the Betrayal of Trust Inquiry was still instrumental in contributing to the Strategy<sup>263</sup> and other important government initiatives, including: expanding the role of the Commission for Children and Young People,<sup>264</sup> extending the Working with Children Check ('WWCC') requirements<sup>265</sup> and adjusting the Victims of Crime Assistance Tribunal.<sup>266</sup>

260 Betrayal of Trust Inquiry Government Response (n 256) 1. Its next steps are set out at 2: strengthening the capacity of organisations to deal with childhood safety by working with the Commission for Children and Young People; expanding Working with Children Check provisions to extend to religious organisations; and developing a civil redress scheme for victims of criminal child abuse.

261 *Federal Child Sexual Abuse Royal Commission Final Report* (n 166). For an analysis, see Katie Wright, 'Remaking Collective Knowledge: An Analysis of the Complex and Multiple Effects of Inquiries into Historical Institutional Child Abuse' (2017) 74 *Child Abuse and Neglect* 10, 17.

262 See, eg. Premier of Victoria, 'New Laws Clear Pathway for Child Abuse Survivors to Sue' (Media Release, Victorian Government, 6 March 2018); Georgie Moore, 'Vic Set to Abolish Abuse Compo Loophole', *The Courier* (online, 6 March 2018) <[www.thecourier.com.au/story/5266724/vic-set-to-abolish-abuse-compo-loophole/](http://www.thecourier.com.au/story/5266724/vic-set-to-abolish-abuse-compo-loophole/)>.

263 This includes releasing a new resource called 'Building Respectful Relationships: Stepping Out against Gender-Based Violence' (providing a whole-school approach to gender-based violence in the hope of better protecting children from abuse): Betrayal of Trust Inquiry Government Response (n 256) 4.

264 Ibid 2, 5–6, acting on the recommendations of the *Betrayal of Trust Inquiry Report* (n 22) vol 2, 287 recommendation 12.1, 296 recommendation 13.1, 303 recommendation 13.2.

265 Betrayal of Trust Inquiry Government Response (n 256) 2, 5, acting on the recommendation of the *Betrayal of Trust Inquiry Report* (n 22) 246 recommendation 10.1.

266 Betrayal of Trust Inquiry Government Response (n 256) 9, acting on the recommendation of the *Betrayal of Trust Inquiry Report* (n 22) vol 2, 574 recommendation 28.1.

## B Family Violence

There were many attempts to reform Victoria's family violence system prior to the chosen timeframe.<sup>267</sup> For various reasons, these endeavours were unsuccessful.<sup>268</sup> Consequently, Victoria's family violence system continued to be in need of improvement.

Victorian boy, Luke Batty, was killed by his father Gregory Anderson on 12 February 2014. Luke's mother Rosie Batty had not been informed that there were charges pending against Luke's father, and she was therefore not on her guard when Luke went to practice cricket further with his father at a public oval after his formal cricket training finished. The event attracted a great deal of publicity in Victoria<sup>269</sup> and the issue of police communication became a key area of examination in response to the tragedy. State coroner, Judge Ian Gray, conducted an investigation and coronial inquest. The coroner delivered findings into Luke's death on 28 September 2015.<sup>270</sup> Luke's mother Rosie Batty became 'a key voice influencing' movements toward changing Australian cultural perceptions of family violence<sup>271</sup> and her advocacy was recognised when she was made Australian of the Year in 2015.

The Luke Batty Inquest and other family violence-related deaths in Victoria highlighted the need to address problems in the family violence system holistically. The government responded by establishing the Family Violence Royal Commission on 22 February 2015. The Commission tabled its final report in Parliament on 29 March 2016.<sup>272</sup> The government's response to these undertakings has been substantial. The government's acceptance of all of the 227 recommendations of the Royal Commission is unprecedented. The investment of \$572 million in funding is substantial, as is the creation of a new agency. These

267 See Marcia Neave, 'The Victorian Royal Commission into Family Violence: Responding to an Entrenched Social Problem' (2016) 14(2) *Otago Law Review* 229 ('Responding to an Entrenched Social Problem'). Attempts include: the Victoria Police, *Code of Practice for the Investigation of Family Violence* (Code of Practice); Neave, 'Responding to an Entrenched Social Problem' (n 267) 235; the Women's Safety Strategy 2002–7, which featured a common risk assessment framework: at 235 n 25–6, citing *Family Violence Royal Commission Final Report* (n 24) vol I, 64–5; a state-wide steering committee to reduce family violence: Neave, 'Responding to an Entrenched Social Problem' (n 267) 235 n 27, citing *Family Violence Royal Commission Final Report* (n 24) vol I, 64; a family violence division in the Magistrates' Court of Victoria 'where family violence intervention orders are made' and male perpetrator behaviour change programs are ordered: Neave, 'Responding to an Entrenched Social Problem' (n 267) 235–6; and the Indigenous Family Violence Taskforce and Indigenous Family Violence Forum: at 236 n 28, citing *Family Violence Royal Commission Final Report* (n 24) vol I, 64.

268 Neave, 'Responding to an Entrenched Social Problem' (n 267) 236–7.

269 For an analysis of this coverage see Janine Little, "'Family Violence Happens to Everybody': Gender, Mental Health and Violence in Australian Media Representations of Filicide 2010–2014' (2015) 29(4) *Continuum* 605, 608–10.

270 *Luke Batty Inquest Findings* (n 23).

271 Shawni-Rose Fisher, 'Family Violence and Protection Orders in the Australian Capital Territory' (2015) 13(1) *Canberra Law Review* 28, 38.

272 *Family Violence Royal Commission Final Report* (n 24).

responses are discussed in more detail below.

The combined recommendations of the Luke Batty Inquest and the Family Violence Royal Commission have led to new legislation in Victoria relating to information sharing: the *Family Violence Protection Amendment (Information Sharing) Act 2017* (Vic) (*Protection Amendment Act*).<sup>273</sup>

## 1 Coronial Inquest

Luke's death was preceded by other high-profile family violence incidents<sup>274</sup> and attracted substantial media attention and community comment.<sup>275</sup> The inquest was held because his death occurred in Victoria and was the result of homicide committed by Gregory Anderson.<sup>276</sup> During the 13 hearing days, 34 witnesses gave evidence. Of these, everyone except Rosemary Batty (Luke's mother) gave evidence in their professional capacity.<sup>277</sup>

The coroner established an Expert Family Violence Panel featuring police officers, members of the judiciary, and academics by relying on the broad power conferred in s 62(1) of the *Coroners Act*, which provides: '[a] coroner holding an inquest is not bound by the rules of evidence and may be informed and conduct an inquest in any manner that the coroner reasonably thinks fit'. The inquest findings note that the Panel made comment on 'how the system is, and should be, responding to family violence in Victoria'.<sup>278</sup>

In undertaking the inquiry, the coroner decided to focus on the following:

[M]atters relating to public health and safety and the administration of justice approximately 12–18 months prior to Luke's death, for the purposes of examining whether it could have been prevented, improving systems for responding to and preventing family violence, in particular family violence causing death or serious injury to children.<sup>279</sup>

In accordance with this focus, the coroner scrutinised the actions of the State Commissioner of Police, DHHS and Rosemary Batty<sup>280</sup> — and each were granted

273 Gavin Jennings, Special Minister of State, 'Better Information Sharing to Keep Women and Children Safe' (Media Release, Legislative Council, 27 February 2018).

274 Neave, 'Responding to an Entrenched Social Problem' (n 267) 230. This includes Robert Farquharson allegedly driving his children into a lake.

275 Freckelton (n 110) 21. Rosemary Batty released her autobiography on the day the Coroner submitted the *Luke Batty Inquest Findings* (n 23).

276 *Luke Batty Inquest Findings* (n 23) 17 [92]–[93].

277 *Ibid* 17–19 [94].

278 *Ibid* 19 [95].

279 *Ibid* 19 [96].

280 *Ibid* 19 [97].

legal representation and an opportunity to answer questions.<sup>281</sup>

On balance, coronial processes have wide evidence-gathering powers and aim to incorporate public participation where possible. However, due to the private and sensitive nature of coronial processes, and the fact that they are often confined to close friends and family, it is rare for them to involve extensive community involvement. The private character is reflected in the coroner's use of suppression and non-publication orders.<sup>282</sup> Nevertheless, an important feature of the coroner's role is to prevent similar deaths from occurring in the future.<sup>283</sup> Subsequently, it appears suitable to make coronial processes open to the public and accessible to lay people. Some commitment to this is demonstrated by the requirement to publish details of coronial inquests and make proceedings easily understandable.<sup>284</sup>

Moreover, the public role of coroners is heightened by certain deaths occurring in the public spotlight — as was the case with Luke. Nevertheless, autonomy provided to coroners (including control over the choice and actions of 'interested parties' and the suspension of privilege against self-incrimination) means public participation is inevitably limited. This reflects the coroner's control being omnipresent.<sup>285</sup>

This is linked with evidence-gathering powers, where the coroner may conduct his/her inquiry in any manner she/he deems fit. The powers of entry, search and inspection include ordering the presentation and confiscation of documents, applying for arrest warrants against those who are non-compliant and deciding which witnesses are to be called during inquests.

Evidence-gathering autonomy was on display during the Luke Batty Inquest. The coroner had discretion to decide on the focus of the inquest, who was to provide evidence, who was to sit on an Expert Family Violence Panel and how the Panel was to function. The coroner's actions in this inquest demonstrate why there is criticism contained in academic literature concerning coronial process' isolation of members of the public and interested persons.<sup>286</sup>

Nevertheless, in response to the coroner's findings, the Premier committed to

281 Ibid 1. In accordance with the *Coroners Act* (n 9) s 60, Ms Rachel Ellyard and Ms Jodie Burns acted as Counsel Assisting. Rosemary Batty, DHHS, the Chief Commissioner of Police and Counsel Assisting filed written submissions on 16 February 2015: *Luke Batty Inquest Findings* (n 23) 78 [433]. These were exchanged between the parties and all were able to submit replies by 27 February 2015. Contained within these materials were concessions by DHHS (via information submitted by Dr Miller).

282 *Open Courts Act 2013* (Vic) s 17.

283 *Coroners Act* (n 9) s 1(c).

284 Ibid ss 62, 65, 73.

285 See, eg, Freckelton (n 110) 26. In Luke's hearing a photo of him was displayed in the courtroom. However, this was only allowed because the coroner deemed it appropriate.

286 See above Part II(A)(2).

implement all recommendations.<sup>287</sup> Specifically, the Premier noted that the government had begun or will soon commence implementing recommendations 1–24.<sup>288</sup> This reflected the strength of the government’s desire to tackle family violence in Victoria. Nationally, there is generally a low rate of implementation of coroners’ recommendations. Analyses of implementation of coronial recommendations have found that the implementation rate ranges between 39% and 60% when recommendations that were partially implemented are included alongside those that were fully implemented.<sup>289</sup> Therefore the Victorian government’s commitment to implement all of the recommendations arising from this particular inquest is significant.

Both in response to the Luke Batty Inquest and the government’s desire to develop an informed and effective family violence prevention strategy, the Family Violence Royal Commission was established.<sup>290</sup> The Hon Marcia Neave AO was appointed to chair the Commission, with Ms Patricia Faulkner AO and Mr Tony Nicholson appointed as part-time Deputy Commissioners. Commissioner Neave was a Justice of Appeal of the Supreme Court of Victoria prior to her appointment as Chair and had been made an ‘Officer of the Order of Australia for her services to law reform, particularly in relation to issues affecting women’.<sup>291</sup> Ms Faulkner and Mr Nicholson were both heads of community organisations.<sup>292</sup> They were tasked with tackling what was described to be “‘the most urgent law and order emergency [in Australia]’”.<sup>293</sup>

287 Letter from Daniel Andrews to Judge Ian Gray (n 11). A ‘distinctive feature’ of coronial law in Victoria is that a written response to coroners’ recommendations is required within three months of receipt: see Freckelton and Ranson, ‘Role of the Coroner’ (n 100) 581.

288 Victorian Government Response to Luke Batty Inquest (n 11) 1–13. It should be noted that recommendations 13–15 were addressed separately by the government. These were classified as ‘under consideration’ because they concerned Victoria police operations that the government was completing family violence response strategies for at the time: at 14.

289 Eburn and Dovers (n 109) 500–1 (citations omitted). The first figure cited relates to a study of coronial inquests in 2004 where 9% had been partially implemented. The second figure relates to a Queensland study of inquests from 2002–3 where 16.2% were partially implemented. An ongoing concern about lack of implementation of coronial recommendations has led to calls that there should be a national scheme for monitoring implementation of recommendations: Rebecca Scott Bray and Greg Martin, ‘Exploring Fatal Facts: Current Issues in Coronial Law, Policy and Practice’ (2016) 12(2) *International Journal of Law in Context* 115, 135. For a discussion of the implementation of coronial recommendations relating to Indigenous deaths in custody see Ray Watterson, Penny Brown and John McKenzie, ‘Coronial Recommendations and the Prevention of Indigenous Deaths’ (2008) 12 (special ed 2) *Australian Indigenous Law Review* 4.

290 Neave, ‘Responding to an Entrenched Social Problem’ (n 267) 229.

291 Premier of Victoria, ‘Premier Announces Royal Commission into Family Violence’ (Media Release, Victorian Government, 23 December 2014).

292 ‘Our Commissioners’, *Royal Commission into Family Violence* (Web Page, 17 November 2017) <[www.rcfv.com.au/Commissioners](http://www.rcfv.com.au/Commissioners)>.

293 *Family Violence Royal Commission Final Report* (n 24) summary and recommendations, 1. This remark came following the death of Luke Batty, on 12 February 2014, and other high-profile family violence incidents in Victoria.

## 2 Royal Commission

The terms of reference required the Commission to investigate and recommend ways to improve Victoria's family violence system, including:

- preventing the escalation of family violence;
- increasing the awareness of family violence harm; and
- ensuring the safety of victims through early intervention.<sup>294</sup>

The Commission's engagement with the members of the public, victims and family violence workers was extensive and deliberate.<sup>295</sup> Public awareness of the Commission's work was promoted by making media releases, statements and comments, and ensuring newspaper coverage.<sup>296</sup> The Commission received almost 1000 written submissions.<sup>297</sup> Commissioners undertook site visits and were briefed by family violence industry experts with a view to identifying themes for the public hearings and roundtables.<sup>298</sup>

In total, there were 25 days of public hearings 'to examine and evaluate strategies, frameworks, policies, programs and services'.<sup>299</sup> Commissioners were selective on who was to provide evidence and 220 witnesses appeared in total.<sup>300</sup> Listening to people personally affected guided the Commission's work and helped shape its recommendations.<sup>301</sup> Specifically, commissioners invited eight people, who had

294 Ibid vol I, app A, 206–7.

295 Ibid summary and recommendations, 3–4.

296 See 'Latest News', *Royal Commission into Family Violence* (Web Page, 17 November 2017) <www.rcfv.com.au/Media>. Examples of self-promotion include: Tracey Matters, 'Royal Commission into Family Violence Releases Issues Paper' (Media Release, Royal Commission into Family Violence, 31 March 2015); Tracey Matters, 'Royal Commission Begins Community Consultations' (Media Release, Royal Commission into Family Violence, 10 April 2015); Tracey Matters, 'Royal Commission Visits Eastern Victoria' (Media Release, Royal Commission into Family Violence, 15 May 2015); Tracey Matters, 'Family Violence Hearings Begin' (Media Release, Royal Commission into Family Violence, 9 July 2015).

297 'Written Submissions', *Royal Commission into Family Violence* (Web Page, 17 November 2017) <www.rcfv.com.au/Submission-Review>.

298 See *Family Violence Royal Commission Final Report* (n 24) vol I, app E. Hearing day themes included: 'What is family violence and who experiences it — including causes and contributing factors' (Day 1: Monday 13 July 2015); 'Mental Health' (Day 8: Wednesday 22 July 2015); 'Overlapping jurisdictions — the role of family law and child protection law' (Day 15: Friday 7 August 2015); and 'Developing the workforce' (Day 22: Tuesday 13 October 2015). The topics and participants of the roundtable discussions are contained in *Family Violence Royal Commission Final Report* (n 24) vol I, app G. Topics included: 'Sustainable reform' (22 September 2015) and 'Magistrates' roundtable' (23 September 2015). Participants in roundtable discussions included: Chief Justice Diana Bryant (Family Court of Australia), Chief Magistrate Peter Lauritsen (Magistrates' Court of Victoria), and Christine Nixon APM (former Victorian Chief Commissioner of Police).

299 'How We Work', *Royal Commission into Family Violence* (Web Page, 17 November 2017) <www.rcfv.com.au/How-We-Work>.

300 *Family Violence Royal Commission Final Report* (n 24) vol I, 6. See also witness list: at vol I, app D; lay witnesses: at vol I, app F. Chief Commissioner, the Hon Marcia Neave, spoke of the Commission's focus on witness selectivity: Marcia Neave, 'Family Violence Royal Commission' (Sir Zelman Cowen Twilight Lecture, Victoria University, 5 March 2018) ('Family Violence Speech').

301 Neave, 'Responding to an Entrenched Social Problem' (n 267) 237.



been exposed to family violence, to share their experiences.<sup>302</sup> These accounts are presented in the *Family Violence Royal Commission Final Report* as detailed case studies.<sup>303</sup> In addition to public hearings and submissions, commissioners were informed by informal briefings, roundtable discussions with experts, family violence workers and 44 community consultations (across Melbourne and regional Victoria).<sup>304</sup>

Accessibility was an area of focus.<sup>305</sup> Victims who wished to, and those overseas, had the opportunity to provide their input online.<sup>306</sup> The witnesses who appeared in person were made to feel comfortable by non-adversarial features.<sup>307</sup> Counsel for the state did not call witnesses nor cross-examine victims during the public hearings because ‘this was not a fact-finding endeavour reliant on the testing of evidence’.<sup>308</sup> Public participation was also promoted by informing participants that their evidence would not result in criminal sanctions, civil sanctions, or punishment from their employer.<sup>309</sup> All hearing days were live-streamed, which ‘allowed the public to follow ... [the Commission’s] work and understand debates about contentious issues’.<sup>310</sup>

The Commission’s evidence-gathering was extensive and one indication of this is that the *Family Violence Royal Commission Final Report* consisted of seven volumes, with each volume covering a different focus area.<sup>311</sup> As part of the Commission’s evidence-gathering, the Australian National Research Organisation for Women’s Safety was employed to undertake a detailed analysis of Australian

302 *Family Violence Royal Commission Final Report* (n 24) vol I, app F.

303 *Ibid.* For example, Susan Jones’ personal accounts are set out with the following sub-headings: ‘Background’, ‘Initial contact with the health system’, ‘Police response’, ‘Isolating and controlling behaviours’, ‘Role of the education system in identifying the abuse’, ‘Access to a women’s refuge’, ‘Homelessness and access to housing’, ‘Intervention Order’, ‘Financial abuse’, ‘Further family violence’, ‘Criminal Justice System’, ‘Integrating services and structural impediments’ and ‘Recommendations’: at vol I, app F, 223–231.

304 The five-week targeted community consultation program featured 850 people: *Family Violence Royal Commission Final Report* (n 24) vol I, 3–4. The roundtable meetings with experts and family violence workers were open and relaxed and people were asked to speak in a ‘frank and candid way’: ‘Community Consultations’, *Royal Commission into Family Violence* (Web Page, 17 November 2017) <[www.rcfv.com.au/Community-Consultations](http://www.rcfv.com.au/Community-Consultations)>. These sessions assisted to refine issues and ‘test [their] tentative thinking’: Neave, ‘Responding to an Entrenched Social Problem’ (n 267) 237.

305 *Family Violence Royal Commission Final Report* (n 24) vol I, ch 1, vol II, ch 10. Consistent with its focus on establishing a culture of non-violence and gender-equality, the Commission engaged in community consultation sessions with sex workers, perpetrators, Aboriginal services, women with disabilities, representatives from gay, lesbian, transgender and intersex communities, Islamic women and Islamic community leaders: at summary and recommendations, 3–4.

306 Neave, ‘Responding to an Entrenched Social Problem’ (n 267) 238.

307 *Ibid.* 237. See also Neave, ‘Family Violence Speech’ (n 300).

308 Neave, ‘Family Violence Speech’ (n 300).

309 *Inquiries Act* (n 9) ss 39, 51(1).

310 Neave, ‘Responding to an Entrenched Social Problem’ (n 267) 237. See also Neave, ‘Family Violence Speech’ (n 300).

311 See generally *Family Violence Royal Commission Final Report* (n 24). For example, vol II discusses pathways to services and vol IV looks at future investment.

Bureau of Statistics family violence data.<sup>312</sup> Data from the Children’s Court, Specialist Family Violence Court Services and the Supported Accommodation Assistance Program were also accessed.<sup>313</sup> Commissioners closely considered a Department of Justice and Regulation report on the impact of family violence on the Magistrates’ Court of Victoria.<sup>314</sup>

In May 2016, the government announced the first phase of its response to the Commission’s 227 recommendations. This was a \$572 million state-wide funding package. As a part of this, the government declared its commitment to immediately implement the 65 most urgent recommendations.<sup>315</sup> These included:

- the introduction of 17 support and safety hubs, across Victoria, to facilitate the integration of family violence services;<sup>316</sup>
- the use of Family Safety Victoria as a secure central information point, storing crucial information about victims and perpetrators and sharing this as required;<sup>317</sup> and
- emergency housing and psychological support for at-risk ‘victims’.<sup>318</sup>

312 Neave, ‘Responding to an Entrenched Social Problem’ (n 267) 232 n 12, citing *Family Violence Royal Commission Final Report* (n 24) vol I, 51. This led to a 2009–14 family violence data analysis report by the Crime Statistics Agency. The commissioned research report is available in full in the *Family Violence Royal Commission Final Report* (n 24) vol VII, 3–159.

313 This data is available on the Family Violence Royal Commission website: ‘Report and Recommendations’, *Royal Commission into Family Violence* (Web Page, 2019) <[www.rcfv.com.au/Report-Recommendations](http://www.rcfv.com.au/Report-Recommendations)>.

314 Karen Gelb, ‘Understanding Family Violence Court Proceedings: The Impact of Family Violence on the Magistrates’ Court of Victoria’ (Research Report, Royal Commission into Family Violence, 2016), contained in the *Family Violence Royal Commission Final Report* (n 24) vol VII, 161–236.

315 Minister for Prevention of Family Violence and Premier of Victoria, ‘Urgent Family Violence Investment Will Help Keep Women and Children Safe’ (Media Release, 13 April 2016). See also Family Safety Victoria, *Building from Strength: 10-Year Industry Plan for Family Violence Prevention and Response* (Victorian Government, 2017) (*‘10-Year Industry Plan for Family Violence Prevention and Response’*); Department of Premier and Cabinet (Vic), *Family Violence: Rolling Action Plan 2017–2020* (Plan, 2017) (*‘Rolling Action Plan’*); Department of Health and Human Services (Vic), *Roadmap for Reform: Strong Families, Safe Children* (Report, April 2016) <[www.dhhs.vic.gov.au/publications/roadmap-reform-strong-families-safe-children](http://www.dhhs.vic.gov.au/publications/roadmap-reform-strong-families-safe-children)>. Other parts of the Roadmap for Reform include a Ministerial Advisory Group (May 2016), a Working Group (September 2016), creation of an evidence-informed Practice Report (November 2016) and two symposiums (August 2016 and June 2017). Included in these initiatives was money for victim housing and funding for impacted children and family services.

316 Neave, ‘Responding to an Entrenched Social Problem’ (n 267) 240.

317 Ibid 241. The central information point includes police representatives, and court, child protection and corrections workers, who together compile information on perpetrators and prepare central information point reports. At the moment, it is only support and safety hubs that can access central information point reports: ‘The Central Information Point’, *Victorian Government* (Web Page, 4 July 2019) <[www.vic.gov.au/help-professionals-working-victims-domestic-violence](http://www.vic.gov.au/help-professionals-working-victims-domestic-violence)>.

318 Neave, ‘Responding to an Entrenched Social Problem’ (n 267) 242.

In November 2016, under its 10-year family violence response plan,<sup>319</sup> the government declared its commitment to act on all of the Commission's 227 recommendations. In accordance with the Commissioners' recommendation, the government has established an agency (Family Safety Victoria) to implement the changes.<sup>320</sup>

There has been significant progress towards implementation. The government has largely implemented all the legislative changes recommended by the Family Violence Royal Commission (this includes the *Protection Amendment Act* referred to above). A central information point has been established, some safety hubs have commenced operation and the Judicial College of Victoria has been given funding to educate Victorian judicial officers about family violence.<sup>321</sup>

The above response means the process may be regarded as 'successful'. It is thus worth reflecting what made this process such a success? Commissioner Neave suggested that the success of the inquiry was dependent on 'leadership, implementation strategies and a whole-of-government approach'.<sup>322</sup> For example, the Commission advocated for implementing recommendations over a 10-year period, and gave deadlines by which recommendations should be acted upon, as well as specific funding allocations.<sup>323</sup> Commissioners proposed establishing a cabinet subcommittee and a bipartisan parliamentary committee to facilitate the roll-out.<sup>324</sup> The Commission also suggested that an independent statutory family violence agency be established to undertake continued and valuable family

319 *10-Year Industry Plan for Family Violence Prevention and Response* (n 315) 11; 'Ending Family Violence: Delivering Change', *Victorian Government* (Web Page) <[www.vic.gov.au/familyviolence.html](http://www.vic.gov.au/familyviolence.html)> ('Ending Family Violence Web Page'). The 10-year industry plan is contained in Department of Premier and Cabinet (Vic), *Ending Family Violence: Victoria's Plan for Change* (Report, 2016) 62–3. This includes Rolling Action Plans: at 67 (see, eg, *Rolling Action Plan* (n 315)). There is also a website dedicated to the industry plan: 'Ending Family Violence Webpage' (n 319). On this website, the government's commitment to the Commission's recommendations are reflected in a diagram showing how many of the 227 recommendations have been implemented (currently 120, with 107 in progress). Another feature is the Family Violence Reform Implementation Monitor ('Implementation Monitor'), which is based on the Inspector-General for Emergency Management model used following the Hazelwood Mine Fire Boards of Inquiry. The Implementation Monitor is an independent check on how the family violence reforms are being implemented in Victoria: 'The Family Violence Reform Implementation Monitor', *Victorian Government* (Web Page, 24 September 2019) <[fvrim.vic.gov.au/family-violence-reform-implementation-monitor](http://fvrim.vic.gov.au/family-violence-reform-implementation-monitor)>.

320 'Family Safety Victoria', *Victorian Government* (Web Page, 21 October 2019) <[www.vic.gov.au/family-safety-victoria](http://www.vic.gov.au/family-safety-victoria)>. See also Neave, 'Family Violence Speech' (n 300). The Victoria Government also recently announced \$500 million additional funding to implement the Family Violence Royal Commission's recommendations: Victoria Government, *Getting It Done: Victorian Budget 16/17 Overview* (Budget, April 2016) 22. The most significant investment in implementing the Family Violence Royal Commission's recommendations was \$1.91 billion allocated in the 2017–18 budget (the previous year's spending was to set up the response: Daniel Andrews, Premier of Victoria, 'Unprecedented Investment to End Family Violence' (Media Release, Victorian Government, 2 May 2017)). Family Safety Victoria is an administrative agency. Unlike the Implementation Monitor, Family Safety Victoria is independent of government and does not perform all of what is contained in recommendation 199: *Family Violence Royal Commission Final Report* (n 24) summary and recommendations, 100.

321 Neave, 'Victoria's Response to the Royal Commission into Family Violence' (n 11).

322 Neave, 'Responding to an Entrenched Social Problem' (n 267) 238.

323 *Ibid* 238, 241–2.

324 *Ibid* 238–9.

violence research, as well as assessment of the reforms (which became Family Safety Victoria).<sup>325</sup>

## **IV ADVANTAGES AND DISADVANTAGES OF THE PROCESSES FOR EVIDENCE-GATHERING AND FACILITATING PUBLIC PARTICIPATION**

It will be clear from the foregoing discussion that all the processes analysed in this article have the ability to gather evidence and facilitate public participation to varying degrees. This Part analyses which of the processes has the most to offer in the areas of evidence-gathering and public participation.<sup>326</sup> Some broader observations will be made drawing from the strengths and weaknesses identified in the detailed analysis of the processes concerning child protection and family violence in Part III.

### **A Evidence-Gathering**

Coronial inquests and royal commissions offer the most advantages for evidence-gathering because of the comprehensive powers at the disposal of coroners and commissioners. The types of evidence are necessarily constrained in coronial inquests (by the nature of inquests) and royal commissions therefore offer the ability to gather the broadest range of evidence; however, royal commissions are resource-intensive processes that are best suited for complex subjects. It is therefore worth noting that parliamentary committees offer scope to gather a broad range of evidence on less complex inquiries, while VLRC inquiries can be used for narrower legalistic endeavours that collect evidence from more targeted stakeholders.

As detailed in Part II, the coroner is provided with extensive powers during investigation and inquest. These include bypassing the formal rules of evidence and courtroom procedure and collecting materials via inspections, examinations and requests. This was on display during the Luke Batty Inquest, where the coroner received a coronial brief compiled by two police officers, heard evidence from 34 witnesses and was guided by an Expert Family Violence Panel.<sup>327</sup>

These measures demonstrate the evidence-gathering advantages of coronial

<sup>325</sup> Ibid 240, citing *Family Violence Royal Commission Final Report* (n 24) vol VI, 133.

<sup>326</sup> It should be noted that the discussion in this Part does not include the strengths and weaknesses of the Cummins Review because the introduction of the *Inquiries Act* (n 9) in 2014 means that the processes employed there would no longer be followed. It also does not include a discussion of boards of inquiry or formal reviews under the *Inquiries Act* (n 9), because the article has not examined a case study concerning these processes (due to neither having been employed in relation to family violence or child protection since the introduction of the *Inquiries Act* (n 9)).

<sup>327</sup> *Luke Batty Inquest Findings* (n 23) 17–19 [94]–[95], 103 [580].

processes. Coroners may compel information from people and solicit expert assistance (from police officers, Counsel Assisting and other public agencies). Here, the coroner possesses autonomy and will decide on the way in which an inquest is to be conducted. In the Luke Batty Inquest, the coroner decided to focus on the events and actions in the 18 months prior to Luke's death, and critique the missed opportunities for effective intervention.<sup>328</sup> While the coroner has impressive evidence-gathering powers, the process is necessarily limited by the types of matters in which one may inquire. When an investigation not limited to death is required, other processes will necessarily need to be employed.

Coronial processes are also limited by only looking at the circumstances of one death. For example, there were problems in the family violence system not relevant to the death of Luke, which could not be fully examined (hence the need for a royal commission into the family violence system in Victoria that took a holistic approach).

As detailed in Part II, the powers granted to royal commissions under the *Inquiries Act* are extensive and evidence-gathering by royal commissions is assisted by the wide powers they possess.<sup>329</sup> These are supplemented by the extensive resources typically granted. Here, the process may utilise the skills of public service personnel from relevant departments. This was on display during the Family Violence Royal Commission, where its 'open cheque book'<sup>330</sup> enabled the Commission to: take part in site visits and roundtable discussions, employ experienced Counsel Assisting, utilise the insight of domestic and international experts and commission data reports from public agencies.<sup>331</sup> Moreover, royal commissions are able to conduct inquiries in any manner seen fit, compel the production of documents and attendance of witnesses (with offences attached

328 Ibid 21–75 [106]–[425]. Examples of recommendations made by the coroner to address systemic problems and ensure process failures do not happen again include:

4. I recommend the State of Victoria identify legislative, or policy impediments to the sharing of relevant information, and remove such impediments, so that all agencies, including the Magistrates' Court of Victoria, operating within the integrated family violence system, are able to share relevant information in relation to a person at risk of family violence.

...

8. I recommend that the State of Victoria, implement Risk Assessment and Management Panels (RAMPs) in all police regions as soon as possible.

...

10. I recommend that the State of Victoria give consideration to the creation and resourcing of a Family Violence Advocate service to provide advocacy services for women and families modelled on the UK Domestic Advocate position.

Ibid 105–7.

329 Nicholas Aroney, 'The Constitutional First Principles of Royal Commissions' in Scott Prasser and Helen Tracey (eds), *Royal Commissions & Public Inquiries: Practice & Potential* (Connor Court Publishing, 2014) 23, 34.

330 *Family Violence Royal Commission Final Report* (n 24) vol I, 2–9. The projected final figure for the Commission was \$13,465,037: at vol I, app C. 'The Government was very generous with resources because they wanted to make this one work': Neave, 'Family Violence Speech' (n 300).

331 *Family Violence Royal Commission Final Report* (n 24) summary and recommendations, 3–4.

for non-compliance), suspend legal professional privilege, exclude privilege against self-incrimination, require answers be given on oath or affirmation, and circumvent statutory secrecy or confidentiality.<sup>332</sup>

It does not appear the other processes examined can match the royal commission in breadth, profile and overall effectiveness. The status of royal commissions enables the appointment of prestigious people as commissioners. This opens up doors in terms of expert consultation and engagement.<sup>333</sup>

A royal commission is in many ways the ““Rolls Royce”” of inquiry mechanisms.<sup>334</sup> Due to the prestigious commissioners, extensive resources, wide public exposure, and infrequency in which they occur (two within the decade examined in this article), royal commissions are best reserved for complex matters or those with political significance. Therefore, it is necessary to now look to standing mechanisms such as parliamentary committee inquiries and VLRC examinations.

Parliamentary committee inquiries have broad evidence-gathering powers, which were outlined in Part II, and all evidence obtained is protected by parliamentary privilege. During the Betrayal of Trust Inquiry, the Committee was able to suspend privilege against self-incrimination, use its power to compel documents, apply parliamentary privilege, become informed through government agencies and have dialogue with members of the public and specialist groups (to access important material from implicated religious groups and individuals).

However, parliamentary committees do face limitations when compared with royal commissions and coronial inquests. One restriction is committee members lack expertise. McAlinden and Naylor go so far as to suggest that the parliamentary committee inquiry process is flawed because parliamentary committee inquiry members are not subject matter experts.<sup>335</sup> This is countered by undertaking study tours and site visits and meeting with industry specialists and academics — but this cannot put parliamentary committees on the same level as other processes in relation to evidence-gathering.

Another limitation is limited resources generally available to committees. During the Betrayal of Trust Inquiry, allegations were made by police, victims, families

332 See generally *Inquiries Act* (n 9).

333 This is demonstrated by the Family Violence Royal Commission, which was able to arrange informal briefings from experts, visits to multiple organisations and roundtable discussions with stakeholders and experts from within and outside the family violence sector: *Family Violence Royal Commission Final Report* (n 24) summary and recommendations, 3–4, vol I, 2–9.

334 They are described in these terms by Prasser and Tracey: Scott Prasser and Helen Tracey, ‘Introduction’ in Scott Prasser and Helen Tracey (eds), *Royal Commissions & Public Inquiries: Practice & Potential* (Connor Court Publishing, 2014) 225, 231. They suggest ‘a royal commission set up to deal with impropriety, a disaster, incompetence or corruption, [is] intrinsically newsworthy’.

335 McAlinden and Naylor (n 13) 289. See also Prasser, ‘Royal Commissions in Australia’ (n 31) who notes that ‘[p]arliamentary committees are seen as too partisan and lacking in expertise’: at 40.

and victim advocacy groups about inadequate past handling of complaints.<sup>336</sup> The Betrayal of Trust Inquiry responded by directing the Salvation Army, the Melbourne Response, George Pell, Melbourne Archdiocese, Ballarat Diocese, Christian Brothers, Hospitaller Order of St John of God, Salesians of don Bosco, Towards Healing and the Anglican Church to furnish apology and compensation letters.<sup>337</sup> However, the Committee was only in a position to request ‘a representative sample of past complaint files to review’.<sup>338</sup> A ‘bigger’ process (such as the Federal Child Sexual Abuse Royal Commission) could have asked organisations and individuals to furnish more.

The VLRC is the most limited process in evidence-gathering. As outlined in Part II, the primary mechanisms are reliance on research skills of employees and engagement of consultants. This is highly dependent on the budgetary position of the organisation. The VLRC typically hires one to two researchers per examination so that they can hire people with specialised knowledge in the topic of the examination for the duration of the examination. This results in examinations by small teams and has the potential to restrict activities when compared to the staffing levels of other types of processes.<sup>339</sup>

During the Child Protection Examination, VLRC staff were able to utilise their research expertise and execute extensive and important evidence-gathering. This included: a high-quality analysis of Children’s Court proceedings in neighbouring jurisdictions; meeting with child protection academics and a retired Family Court Judge; and recording observations following visits to the Children’s Court in metropolitan and regional locations.<sup>340</sup> All of this evidence was finely tuned to the terms of reference of the inquiry.

## **B Public Participation**

Royal commissions offer the broadest scope for public participation at a large scale, with a range of mechanisms and extensive state-wide consultation usually carried out. Parliamentary committees offer the next best coverage because they tend to engage members of the public widely in their inquiries. VLRC examinations involve more targeted consultation, and may have a greater focus on stakeholders than laypeople.<sup>341</sup> Then the least advantageous process for public

336 *Betrayal of Trust Inquiry Report* (n 22) vol 2, 607.

337 These are contained in *ibid* vol 2, apps 9, 11.

338 *Ibid* vol 2, 607.

339 See, eg, *Victims of Crime* (n 145); *Medicinal Cannabis* (n 8); *Adoption Act Review* (n 145).

340 *Child Protection Examination Final Report* (n 20) 14–15.

341 The focus of this discussion is VLRC examinations in response to terms of reference issued by the Attorney-General, rather than community law reform projects. This is because the VLRC Child Protection Examination was a formal inquiry. It may be the case that community law reform projects offer different avenues for public participation, but this is outside the scope of this article.

participation is the coronial inquest, which involve comparatively limited input from the public. They instead emphasise contribution from experts and public servants, which is appropriate given their focus is to ‘enhance public safety by learning from avoidable deaths’.<sup>342</sup>

The resources available to royal commissions offer advantages for public participation in the same way they do for evidence-gathering. This is demonstrated by the Family Violence Royal Commission holding 44 group consultation sessions, public hearings featuring 220 witnesses and processing 968 written submissions.<sup>343</sup>

However, the formalities associated with royal commissions, boards of inquiry and formal reviews can act as a disadvantage to public participation. Holmes has persuasively argued that when there is too much emphasis on adversarial approaches and the apportioning of blame, this detracts from people’s opportunity to come to terms with the events being investigated.<sup>344</sup> For example, royal commissions can grant orders to prevent involvement in an inquiry from any person — and need not provide justification for doing so.<sup>345</sup> Further, the presence of Counsel Assisting and other legal representation adds to the impression that these are legal and intimidating processes.

Formalities can be reduced if commissioners deem this appropriate because the powers granted to royal commissions are flexible. Commissioners may conduct inquiries in any manner they consider appropriate — so long as these are procedurally fair and consistent with the terms of reference.<sup>346</sup> This is possible for two reasons; the first is that the *Inquiries Act*<sup>347</sup> is not prescriptive about how royal commissions are to be undertaken, and the second is that royal commissions are rare and each can ‘begin anew’<sup>348</sup> — where commissioners may design a suitable approach.

Due to this flexibility, the Family Violence Royal Commission was able to make its processes therapeutic, supportive and welcoming. There was legal representation

342 Freckelton and Ranson, ‘Role of the Coroner’ (n 100) 561.

343 *Family Violence Royal Commission Final Report* (n 24) vol I, 3, 5–6.

344 Allan Holmes, ‘A Reflection on the Bushfire Royal Commission: Blame, Accountability and Responsibility’ (2010) 69(4) *Australian Journal of Public Administration* 387, 387.

345 *Inquiries Act* (n 9) s 24(1).

346 *Ibid* ss 12, 59, 99. For a discussion of how the flexibility of the powers under the Commonwealth and Northern Territory legislation were employed see Taylah Cramp and Anita Mackay, ‘Protecting Victims and Vulnerable Witnesses Participating in Royal Commissions: Lessons from the 2016–2017 Royal Commission into the Protection and Detention of Children in the Northern Territory’ (2019) 29(1) *Journal of Judicial Administration* 3. Note that the power to hold ‘private sessions’ was specifically conferred on the Federal Child Sexual Abuse Royal Commission by the insertion of ‘Part 4—Private sessions for certain Royal Commissions’ into the *Royal Commissions Act 1902* (Cth), giving this particular royal commission additional flexibility.

347 As outlined above in Part II(A)(1).

348 Pascoe (n 1) 392.



present, but because of the sensitive subject matter, victims were not pressed on personal accounts. There was also a psychologist employed to provide assistance to victims.

Commissioner Neave suggests a strength of royal commissions is their ability to adapt to the subject matter and focus of each inquest: '[w]e should not assume that all royal commissions have to be conducted in the same way'.<sup>349</sup> This feature moves towards reconciliation for the participants because 'those directly affected by the tragedy' are being 'heard'.<sup>350</sup>

Moving on to parliamentary committees, the fact that parliamentary committees are comprised of members of Parliament who have been elected to represent their constituents is a strength for public engagement. Public engagement was on display during the Betrayal of Trust Inquiry, where there were 33 public hearings (across metropolitan and regional Victoria). There were also parliamentary privilege explanatory documents on the Committee's website. The above, in addition to victim support endeavours, acted to engender a sense of trust in the process.

Other aspects of public engagement include evidence predominantly being presented in public (with the ability for members of the public to observe the hearings), the absence of legal representation within hearings such that the Committee members speak directly to witnesses, and copies of inquiry documents (including submissions) being made available to members of the public if on the Committee's website.

Furthermore, the Betrayal of Trust Inquiry focused on victim empowerment. This is demonstrated by: (1) prioritising informal and conversational hearings and meetings with victims and members of the public; (2) offering closed hearings so people could tell their stories in a 'safe' place; and (3) drafting a final report that was in plain-language and contained victim-focused recommendations (including a compensatory scheme for victims and independent redress to replace the Church's internal systems).<sup>351</sup>

The *VLRC Act* is silent on examination procedure. This could be construed as a limitation on public participation, but in fact law reform commissions consult in various targeted ways. As part of the Child Protection Examination, the VLRC distributed an information paper, the *Child Protection Legislative Arrangements*

349 Neave, 'Family Violence Speech' (n 300). An example of this flexibility enabling specialisation is contained in the Bushfires Royal Commission. Here, the Commission 'learnt a lot from [community consultations] and went around Victoria to all places impacted by bushfires through site visits': Bernard Teague, 'Royal Commissions, How Do They Shape Public Policy?' (Sir Zelman Cowen Twilight Lecture, Victoria University, 5 March 2018).

350 Holmes (n 344) 389. McAlinden and Naylor (n 13) argue that royal commissions can achieve restorative justice for victims if 'appropriately designed': at 277.

351 McAlinden and Naylor (n 13) 290.

*Information Paper*, which contained draft options for reform. The draft options contained legalistic and complex questions, including: ‘3.1 Does the Secretary of the Department of Human Services have too many functions under the *Children, Youth and Families Act 2005*?’; ‘4.2 Is it desirable to change the composition of the Family Division of the Children’s Court to include people other than judicial officers in decision-making panels?’; and ‘4.3 What people other than judicial officers should comprise decision-making panels?’<sup>352</sup>

The *Child Protection Legislative Arrangements Information Paper* acted as a disincentive towards public participation because it was difficult for laypeople to understand. It was appropriate for those with legal experience and knowledge of Children’s Court processes. This lack of accessibility is reflected in the VLRC receiving a limited number of responses (53) (compared to the other processes examined in this article).<sup>353</sup>

Nevertheless, it is important to acknowledge the VLRC is empowered to do all things necessary in order to perform its functions as a legal advisory body tasked with reviewing, and recommending reforms to, complex legislation. This was on display during the Child Protection Examination. Namely, the VLRC engaged specialist organisations to conduct community consultations with people personally exposed to child protection.<sup>354</sup> Members of organisations had experience with young people who had faced similar challenges, and were subsequently better able to guide them through the process.<sup>355</sup> This is not something the VLRC would have been able to do on its own, given its small team of legal professionals. On balance, the VLRC is at the lower end of the promoting public participation spectrum.<sup>356</sup>

Finally, the Coroners Court is perceived as a private and sensitive domain. The legislation makes some attempt to address this by lessening formality, promoting the use of plain-language and enfranchising people by classifying them as ‘interested part[ies]’. Nevertheless, as demonstrated by the Luke Batty Inquest, proceedings are often private and involve suppression orders. During the Inquest, the only witness not to provide evidence in a professional capacity was Rosemary Batty. On the whole, it was an investigative undertaking, dominated by

352 *Child Protection Legislative Arrangements Information Paper* (n 196) 8–9.

353 *Child Protection Examination Final Report* (n 20) app A. This is not a feature unique to the Child Protection Examination. The VLRC’s review of the *Adoption Act 1984* (Vic) employed a similarly complex statutory focus. It received only 61 written submissions: *Adoption Act Review* (n 145) xii [6].

354 See *Child Protection Examination Final Report* (n 20) app B.

355 *Ibid* 15.

356 Nevertheless, the VLRC does attempt to encourage public involvement. During the Child Protection Examination, it made media releases, media alerts, chair speeches and held promotional events. It also engaged with specialist child protection groups so it could conduct welcoming consultations with people directly impacted. Further, it arranged 28 roundtable discussions with industry experts, court personnel and child protection workers: *ibid*. Moreover, it may be argued its targeted approach was strategic because it wanted to receive qualified submissions instead of uninformed ones. In this way, the VLRC was able to promote an efficient process, featuring expert voices.

academics, members of the judiciary, government officials, and family violence professionals.

Furthermore, public participation within coronial inquests is restricted by the coroner's powers of entry, inspection, possession, direction to produce documents and suspension of privilege against self-incrimination.<sup>357</sup> It is also limited by collaboration with police, including: creating coronial briefs, calling police officers as witnesses and instructing police to arrest people who are non-compliant with investigations. These features place coronial inquests in a conundrum with the need to balance rigorous fact-finding endeavours and provide healing and therapy.<sup>358</sup> They also re-enforce the perception that coronial processes are intimidating and non-accessible.<sup>359</sup> This viewpoint is supported by Freckelton, who suggests a lack of counselling, support services, restorative justice conferences, mediations and opportunities for family members to submit statements about the personal impact of death make coronial processes isolating and potentially traumatic experiences.<sup>360</sup>

## V CONCLUSION

The processes examined in this article — coronial inquests, royal commissions, parliamentary committee inquiries, boards of inquiry, formal reviews and VLRC examinations — have been used across the selected timeframe of 1 January 2008 to 31 December 2017 at varying levels of frequency (as detailed in Part I(A) and apps 1–4). The areas of child protection and family violence examined in this article provide instructive examples to assess the processes of evidence-gathering and public participation.

This article has demonstrated that each of the processes has its own benefits in its respective domain. Royal commissions offer the broadest scope, due to their extensive powers, and also the prestige and expertise of the commissioners. Royal commissions are, however, very resource-intensive and therefore likely to be used sparingly and best reserved for the most complex policy problems. In the words of Prasser, they should be reserved for 'when the issues warrant an investigation by a body with such coercive powers and prestige'.<sup>361</sup>

Coronial inquests offer significant advantages for evidence-gathering, but the least utility for public engagement. This is because of the process' focus on forensic examination and reliance on expert testimony.

357 *Coroners Act* (n 9) ss 40–2, 57.

358 Freckelton (n 110) 6.

359 *Coroners Act* (n 9) s 1(d).

360 Freckelton (n 110) 8, 11–13.

361 Prasser, 'When Should Royal Commissions Be Appointed?' (n 25) 60.

The parliamentary committee inquiry proves to be an all-round performer because it is a standing mechanism with broad evidence-gathering functions and power and necessary interpersonal skills to engage members of the public and experts. These features compensate for the fact committee members are unlikely to be subject matter experts.

Finally, VLRC examinations can provide a more targeted mechanism for complex legalistic inquiries that the public are less likely to engage in, but from which important recommendations leading to law reform can arise.

Irrespective of the impact of the individual recommendations stemming from the processes used in the case study (in this case child protection and family violence), this article has emphasised that the processes themselves warrant examination. This article fills a gap in the academic literature by comparing different types of processes. There is significant scope for additional research to be undertaken in this area by exploring different topic areas, different jurisdictions and additional domains. This analysis will be of increasing importance as the Victorian government<sup>362</sup> and other governments around Australia<sup>363</sup> continue investing substantial resources into such processes.

362 A Royal Commission into the Management of Police Informants was established on 13 December 2018 with a budget of \$7.5 million: Royal Commission into the Management of Police Informants, *Terms of Reference: Letters Patent* (13 December 2018). A Royal Commission into Victoria's Mental Health System with a budget allocation of \$13.6 million was announced on 22 February 2019: Royal Commission into Victoria's Mental Health System *Terms of Reference: Letters Patent* (22 February 2019).

363 A federal Royal Commission into Aged Care Quality and Safety commenced on 8 October 2018 with a budget of \$104.3 million: 'Royal Commission into Aged Care Quality and Safety', *Australian Government* (Web Page) <agedcare.royalcommission.gov.au>; Greg Hunt, Minister for Health, 'Interim Report from the Royal Commission into Aged Care Quality and Safety' (Media Release, 31 October 2019). A federal Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability was established on 5 April 2019 with a budget of \$527.9 million: 'Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability', *Australian Government* (Web Page, 5 April 2019) <www.dss.gov.au/disability-and-carers-royal-commission-into-violence-abuse-neglect-and-exploitation-of-people-with-disability/royal-commission-into-violence-abuse-neglect-and-exploitation-of-people-with-disability-fact-sheet?HTML>.

## APPENDIX 1 – CORONIAL INQUESTS<sup>364</sup>

	1 July 2016 – 30 June 2017	1 July 2015 – 30 June 2016	1 July 2014 – 30 June 2015	1 July 2013 – 30 June 2014	1 July 2012 – 30 June 2013	1 July 2011 – 30 June 2012	1 July 2010 – 30 June 2011	1 July 2009 – 30 June 2010	1 July 2008 – 30 June 2009
Investigations opened	6,248	6,366	6,336	6,267	5,934	5,029	4,857	5,305	6,341
Investigations closed	6,285	6,582	6,884	7,270	5,342	4,949	5,586	5,573	4,728
Lodgements pending	-	3,493	3,865	4,209	5,300	4,956	4,509	5,586	5,628
Findings into death with inquest	82	131	195	221	209	182	142	-	-
Findings into fire with inquest	0	1	0	0	0	0	2	-	-
Findings into death without inquest	3,340	3,389	3,207	4,032	4,243	4,437	5,050	-	-
Findings into fire without inquest	1	5	0	6	3	1	2	-	-
Findings containing recommendations	65	105	104	90	71	78	53	-	-
No. of recommendations contained in findings	127	296	294	261	243	217	144	159	-
No. of responses to findings containing recommendations	-	-	223	282	106	90	52	-	-

<sup>364</sup> Data derived from *Coroners Court 2009–10 Annual Report* (n 167) 40, 47–8; *Coroners Court 2010–11 Annual Report* (n 168) 47–9; Coroners Court of Victoria, *2011–2012 Annual Report* (Report, 18 February 2013) 53–5; Coroners Court of Victoria, *2012–13 Annual Report* (Report, 6 May 2014) 42–3; *Coroners Court 2013–14 Annual Report* (n 172) 39–40; *Coroners Court 2014–15 Annual Report* (n 170) 38–9; *Coroners Court 2016 Annual Report* (n 179) 26, 37; *Coroners Court 2017 Annual Report* (n 168) 17, 26. Note a new annual report is made each financial year. See *Coroners Court 2017 Annual Report* (n 168) for a table of data concerning homicides by relationship: at 33. Note data between 1 January 2008 to 30 June 2008 and 1 July 2017 to 31 December 2017 has not been made available.

## APPENDIX 2 – PARLIAMENTARY COMMITTEE INQUIRIES<sup>365</sup>

Name of committee	'08	'09	'10	'11	'12	'13	'14	'15	'16	'17	Total
Accountability and Oversight (JIC)*	-	-	-	-	-	-	1	2	1	1	5
Economic, Education, Jobs and Skills (JIC)*	-	-	-	-	-	-	-	-	1	1	2
Electoral Matters (JIC)	1	2	2	0	1	0	2	0	1	1	10
Environment, Natural Resources and Regional Development (JIC)*	-	-	-	-	-	-	-	-	1	1	2
Family and Community Development (JIC)*	1	0	2	0	2	1	1	0	1	1	9
Independent Broad-Based Anti-Corruption Commission Committee (JIC)*	-	-	-	-	-	-	-	-	2	3	5
Law Reform, Road and Community Safety (JIC)*	-	-	-	-	-	-	-	-	1	1	2
Public Accounts and Estimates (JIC)	2	1	8	1	5	3	2	2	6	2	32
Economy and Infrastructure (SC)	-	-	-	1	2	1	1	1	3	4	13
Environment and Planning (SC)	-	-	-	-	2	1	0	2	0	4	9
Legal and Social Issues (SC)	-	-	-	-	2	0	2	1	2	3	10
Port of Melbourne (Sel)*	-	-	-	-	-	-	-	1	0	0	1
Fire Services Bill (Sel)*	-	-	-	-	-	-	-	-	-	1	1
Penalty Rates and Fair Pay (Sel)*	-	-	-	-	-	-	-	-	-	-	0
Drugs and Crime Prevention*	0	1	3	1	1	1	-	-	-	-	7
Economic Development and Infrastructure*	2	1	2	0	1	1	-	-	-	-	7
Economic Development, Infrastructure and Outer Suburban / Interface Services*	-	-	-	-	-	-	1	-	-	-	1
Education and Training*	0	2	3	0	2	1	1	-	-	-	9
Environment and Natural Resources*	1	1	3	1	2	1	1	-	-	-	10
Law Reform*	2	2	3	0	1	2	-	-	-	-	10
Law Reform, Drugs and Crime Prevention*	-	-	-	-	-	-	1	-	-	-	1
Outer Suburban / Interface Services and Development*	1	1	2	0	1	1	-	-	-	-	6
Road Safety*	2	1	2	0	1	0	1	-	-	-	7
Rural and Regional*	1	1	3	0	1	1	2	-	-	-	9
<b>Total</b>	<b>13</b>	<b>13</b>	<b>33</b>	<b>4</b>	<b>24</b>	<b>14</b>	<b>16</b>	<b>9</b>	<b>19</b>	<b>23</b>	<b>168</b>

365 Data derived from 'Former Committees Web Page' (n 119); Parliament of Victoria, 'List of Committees', *Committees* (Web Page, 3 May 2019) <[www.parliament.vic.gov.au/committees/list-of-committees](http://www.parliament.vic.gov.au/committees/list-of-committees)>.

## KEY

-	Not in existence at the time
*	No longer in existence (up-to-date in line with the Joint Investigatory Committee structure in the 59 <sup>th</sup> Parliament that commenced in November 2018; amendments were made to the <i>Parliamentary Committees Act</i> in 2019)
SC	Standing committee
JIC	Joint investigatory committee
Sel	Select committee

## APPENDIX 3 — VICTORIAN LAW REFORM COMMISSION

### *Attorney-General Referred Examinations*<sup>366</sup>

Name of examination	Year examination commenced
Jury Directions	2008
Property	2009
Child Protection	2009
Guardianship	2009
Sex Offenders Registration	2010
Succession Laws	2012
Crimes (Mental Impairment)	2012
Jury Empanelment	2013
Forfeiture	2013
Trading Trusts — Oppression Remedies	2013
Medicinal Cannabis	2014
Regulatory Regimes Preventing the Infiltration of Organised Crime into Lawful Occupations and Industries	2014
<i>Adoption Act 1984</i> (Vic)	2015
Victims of Crime in the Criminal Trial Process	2016
Litigation Funding and Group Proceedings	2016
<i>Victims of Crime Assistance Act 1996</i> (Vic)	2017
<b>Total</b>	<b>16</b>

### *VLRC-Initiated Examinations (community law reform projects)*<sup>367</sup>

Name of examination	Year examination commenced
Assistance Animals	2008
Supporting Young People in Police Interviews	2009
Birth Registration and Birth Certificates	2012
Photographing and Filming Tenants' Possessions for Advertising Purposes	2015
Funeral and Burial Instructions	2015
Neighbourhood Tree Disputes	2017
<b>Total</b>	<b>6</b>

366 Data derived from 'All Completed Projects', *Victorian Law Reform Commission* (Web Page, 8 October 2019) <[www.lawreform.vic.gov.au/all-projects/all-completed-projects](http://www.lawreform.vic.gov.au/all-projects/all-completed-projects)>.

367 *Ibid.*



## APPENDIX 4 – ROYAL COMMISSIONS, BOARDS OF INQUIRIES AND FORMAL REVIEWS

Inquiry	Type	Year Commenced	Details
<b>Royal Commission into the Victorian Bushfires</b>	Royal commission	2009	<ul style="list-style-type: none"> <li>• Chaired by the Hon Bernard Teague AO;</li> <li>• held 26 community consultations;<sup>368</sup></li> <li>• held 155 days of hearings featuring 100 witnesses ('including eight days of regional hearings and 23 days examining 173 fire-related deaths');<sup>369</sup></li> <li>• 1,260 written submissions received;<sup>370</sup></li> <li>• final report contained 67 recommendations;<sup>371</sup></li> <li>• \$90,000,000 incurred by state agencies in complying with Royal Commission inquiries;<sup>372</sup> and</li> <li>• the Inspector-General for Emergency Management tasked with reporting on implementation of Royal Commission's recommendations.<sup>373</sup></li> </ul>
<b>Board of Inquiry into the Hazelwood Mine Fire</b>	Board of inquiry	2014	<ul style="list-style-type: none"> <li>• Final report, <i>Hazelwood Mine Fire Inquiry Report</i> ('<i>Hazelwood Mine Fire Inquiry Original Report</i>'), tabled in Parliament on 2 September 2014;<sup>374</sup></li> <li>• following submission of <i>Hazelwood Mine Fire Inquiry Original Report</i>, the Board of Inquiry was given an increased terms of reference and re-opened on 26 May 2015;<sup>375</sup></li> <li>• original Board of Inquiry acted under the <i>Evidence (Miscellaneous Provisions) Act 1958</i> (Vic);<sup>376</sup></li> <li>• the re-opened Board of Inquiry undertook its operations in accordance with the <i>Inquiries Act</i>;<sup>377</sup> and</li> <li>• the final report from the re-opened Board of Inquiry consisted of four volumes: <i>Anglesea Mine; Investigations into 2009–2014 Deaths; Health Improvement; and Mine Rehabilitation</i>.<sup>378</sup></li> </ul>

368 *Bushfires Royal Commission Final Report* (n 3) summary, 1.

369 *Ibid.*

370 *Royal Commission into 2009 Victorian Bushfires* (Interim Report, August 2009) 104 [3.4].

371 *Bushfires Royal Commission Final Report* (n 3) summary, 23–37.

372 *Ibid* vol 1, app A, 345.

373 This was in response to recommendation 66 made by the *Bushfires Royal Commission Final Report* (n 3) summary, 37. The Bushfires Royal Commission was the first inquiry to make such a recommendation: Eburn and Dovers (n 109) 500. The most recent report was produced in 2017: *Hazelwood Mine Fire Inquiry Annual Report 2017* (n 6).

374 *Hazelwood Mine Fire Inquiry Original Report* (n 6).

375 *Hazelwood Mine Fire Inquiry: Implementation of Recommendations and Affirmations* (Annual Report, 2016) 8.

376 'Appointment of a Board of Inquiry into the Hazelwood Coal Mine Fire' in Victoria, *Victorian Government Gazette*, No S 91, 21 March 2014, 2.

377 'Hazelwood Coal Mine Fire Board of Inquiry Appointment' (n 6) 3 [14].

378 *Hazelwood Mine Fire Inquiry Re-Opened Report* (n 184) vols 1–4.

Inquiry	Type	Year Commenced	Details
<b>Royal Commission into Family Violence</b>	Royal commission	2015	<ul style="list-style-type: none"> <li>• 13-month inquiry;</li> <li>• chaired by the Hon Marcia Neave AO;</li> <li>• 227 recommendations provided in the <i>Family Violence Royal Commission Final Report</i>;<sup>379</sup></li> <li>• 850 people participated in 44 group consultations (in Melbourne and regional Victoria);<sup>380</sup></li> <li>• received almost 1,000 written submissions;<sup>381</sup></li> <li>• held 25 days of hearings (each focussing on different topics and featuring 220 witnesses);<sup>382</sup> and</li> <li>• estimated total expenditure: \$13,465,037.<sup>383</sup></li> </ul>
<b>Review into Fire Services</b>	Formal review	2015	<ul style="list-style-type: none"> <li>• 180 written submissions made (mostly by individuals, including many firefighters. Other submissions made by brigades, CFA groups and districts and stakeholders);<sup>384</sup></li> <li>• met with nine fire services stakeholders;<sup>385</sup></li> <li>• 18 site visits made to CFA and MFB brigades;<sup>386</sup></li> <li>• analysis of previous reviews, 'plans, operational documents, academic articles and discussion papers';<sup>387</sup></li> <li>• received guidance from the Inspector-General for Emergency Management;<sup>388</sup></li> <li>• 20 recommendations made in app 1 of final report;<sup>389</sup> and</li> <li>• table detailing complex governance structure for fire services in Australia set out in app 2 of final report.<sup>390</sup></li> </ul>

379 *Family Violence Royal Commission Final Report* (n 24) summary and recommendations, 45–106.

380 *Ibid* vol 1, 3.

381 *Ibid*.

382 *Ibid* vol 1, 6.

383 *Ibid* vol 1, 211.

384 O'Byrne (n 72) 10.

385 *Ibid*.

386 *Ibid*.

387 *Ibid*.

388 *Ibid*.

389 *Ibid* app 1.

390 *Ibid* app 2. Informal inquiries and expert reviews continue to occur in Victoria and are not included in the above table. The table is concerned with formal reviews. Examples of recent informal inquiries and expert reviews include: *Review of Victoria's Executive Officer Employment and Remuneration Framework* (n 184); Michael Brett Young, *From Commitment to Culture: The 2015 Review of the Charter of Human Rights and Responsibilities Act 2006* (Report, 1 September 2015); Department of Environment, Land, Water and Planning, 'Lonsdale Bight Coastal Processes', *Engage Victoria* (Web Page, 3 April 2017) <[www.engage.vic.gov.au/lonsdale-bight](http://www.engage.vic.gov.au/lonsdale-bight)>; Planning Panels Victoria, *Fishermans Bend Planning Review Panel* (Reports, 19 July 2018).