

**Royal Commissions of Inquiry:
Perspectives in Rational Decision-Making Public Policy -
Including a Case Study of the Hope Royal Commission into
Intelligence and Security.**

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Introduction

The cause and causation of Royal Commissions of Inquiry make them a curious class of policy contributors to contemplate. The creation of a royal commission is itself a product of government public policy yet a royal commission takes on a life of its own as it researches and investigates an issue to provide hard facts and policy options for the government to consider. As both a product of public policy and a policy machine, royal commissions are themselves often considered an uneasy fit in a liberal democracy.¹

In one breath a royal commission may be seen as a democratic tool to impartially assess the effectiveness of public policy without political party politics hijacking the inquiry for political point scoring. Royal commissions may be staffed by expert representatives and may be seen as beyond the coercion of both the government and the executive through the legislation which royal commissions derive their investigative power from. Furthermore royal commissions derive their power via a government mandate and do not implement policy, they may merely be seen as policy entrepreneurs who provide options to the government.

In the second breath a royal commission may be seen as far from democratic or impartial. Royal commissions can be staffed by non-elected persons who in-turn are not directly accountable in the chain of responsibility to government ministers and thus the people.² Furthermore in Australia and New Zealand royal commissions have special powers attributed to them that enable the inquiry to issue warrants, enter premises, detain and question individuals and collect information using powers which some consider to infringe upon individual liberties.³

The findings of royal commissions are not binding on either the State or Federal governments, so why bother with a royal commission? For a government, the findings of a royal commission are useful if they endorse a government policy that can be used as a mandate for change of a current policy or have a legitimising effect whilst an alternative finding can be ignored. In light of these curious policy options I have taken this opportunity to explore the respective public policy processes in establishing

¹ Patrick Weller (ed), *Royal Commissions and The Making of Public Policy*, MacMillan Publishing, South Melbourne, 1994, xii.

² *Ibid.*

royal commissions of public inquiry. As such I shall begin by (1) defining what constitutes a public inquiry, (2) the motivations in establishing a royal commission, (3) the establishment of the Hope Royal Commission; (4) why the Hope Royal Commission was needed, (5) an analysis of the effectiveness of royal commissions including a consideration of rationalism, incrementalism, and mixed scanning models of policy making, (6) an overview of pluralism, policy streams and policy entrepreneurs in royal commissions. Then I shall conclude with acknowledging different perspectives of the Hope Royal Commission.

(1) Defining 'Royal Commission' and 'Public Inquiry'

The definition of a royal commission invariably differs between countries. In the United Kingdom (UK) a royal commission is similar to a basic public inquiry. It does not necessarily have coercive powers of collection of evidence or the power to call witnesses conferred to it via legislation. This may however be changing in the wake of ineffective findings into corruption and organised crime. Based on a comparison with the powers conferred on commissions in Australia there is a considerable difference in conferred power between the UK and Australia. The New South Wales (NSW) Independent Commission against Corruption, the Queensland (QLD) Criminal Justice Commission and the Hope Royal Commission all have Acts of Parliament conferring substantial powers of investigation.⁴ Aside from the differences in substantive powers available to royal commissions between different localities they never the less share a great number of similarities. In the UK, Canada, New Zealand and Australia the prefix of 'royal' denotes a certain prestige that may not generally be afforded to the typical public inquiry and so may influence the public mindset over such a commission.⁵ The only other identifiable difference between a commission/public inquiry and a royal commission is that a royal commission often has a high profile person heading the inquiry. Thus the primary difference between a royal commission and a public inquiry/commission may be more form

³ Patrick Weller (ed), *Op Cit*, 23-4; *See Appendix*.

⁴ Patrick Weller (ed), *Op Cit*, XI;

Austlii, (NSW) Independent Commission Against Corruption Act, 1988, Section 25, <http://www.austlii.edu.au/cgi-bin/disp.pl/au/legis/nsw/consol%5fact/ica1988442/s25.html?query=title+%28+%22independent+commission%22+%29,s25> **Privilege as regards entry on public premises** (1) This section applies to the powers of entry, inspection and copying conferred by section 23. (2) The powers shall not be exercised if it appears to the Commissioner or authorised officer that any person has a ground of privilege whereby, in proceedings in a court of law, the person might resist inspection of the premises or production of the document or other thing and it does not appear to the Commissioner or authorised officer that the person consents to the inspection or production. (3) The powers may however be exercised despite: (a) any rule of law which, in proceedings in a court of law, might justify an objection to an inspection of the premises or to production of the document or other thing on grounds of public interest, or (b) any privilege of a public authority or public official in that capacity which the authority or official could have claimed in a court of law, or (c) any duty of secrecy or other restriction on disclosure applying to a public authority or public official. *See also Appendix*.

⁵ Patrick Weller, *Op Cit*, 5

than substance.⁶ In this paper, the definition of royal commission and commission/public inquiry shall be treated from this point on as substantially the same form of inquiry.

In either a royal commission or public inquiry there are certain unique features that distinguish them from other methods of inquiry that exist to assess, contribute to, or critique public policy. Seven notable identifiers of a public inquiry or (royal commission) are (1) public inquiries are non-permanent, (2) public inquiries are created by the government and may be abolished at the whim of the government, (3) public inquiries should be insulated from the coercion of the executive and thus will not be part of an existing government agency, department or permanent advisory body, (4) the majority of the membership should be sourced from outside the public service and should not include current parliamentarians (including back benchers), (5) public inquiries should have clearly defined objectives, boundaries and expectations and should be actively pursued, (6) the public should be encouraged to participate through public hearings, forums, interviews and submissions; (7) the findings of such inquiries should be made public.

Elements of the seven criteria listed above exclude institutes like the Law Reform Commission (LRC) or the Ombudsman's office from being an organisation of public inquiry. Whilst the LRC critique public policy and often make submissions to the government on the topic of public policy they fail to meet the criterion of being a non-permanent organisation. The Cabinet in Government although vulnerable to a change of government is a permanent organisation and is also excluded from being a public inquiry. It is also excluded as it is comprised of parliamentarians, its deliberations are often confidential and cabinet and thus does not meet the criterion of making public its findings. Whilst all of these institutions engage in public inquiry type projects, they never-the-less are not seen to be satisfactorily neutral to be considered devoid of self-interested utility maximising fact-finding.

(2) Motivations in establishing a Royal Commission

The negative aspects sometimes associated with royal commissions are that they may merely be a symbolic act of reform rather than a substantive tool used in identifying and addressing problems.⁷ The Fraser Liberal Government was thought to have used public inquiries to shift blame for

⁶ Patrick Weller, *Op Cit*, 5

⁷ Patrick Weller, *Op Cit*, 9

unemployment levels from the government on to (then) current institutional arrangements.⁸ This theme is not unusual in royal commissions and allegations of the strategic use of public inquiries are not restricted to one political party. The Hawke Labor Government is thought to have used the Shipping Reform Task Force as a delaying tactic in pursuing environmental reform.⁹ Furthermore the Hawke Government allegedly used the method of public inquiry in both the Hill Independent Economic Inquiry into Northern Territory Transport and the Gutman Inquiry into Taxation of the Gold Industry as tools to avoid the implementation of election promises.¹⁰

These observations illustrate that royal commissions can be hijacked for political gain by governments seeking to legitimise top-down policy processes. There are never-the-less bottom-up pluralist influences that can motivate governments to seek apolitical solutions to social concerns. An example of pluralist influence is illustrated in the mounting concern over Aboriginal deaths in custody as portrayed through the media, through international public policy analysis conducted by the United Nations and through university and other intellectual circles that may well have provided otherwise disinterested public choice theorists in parliament the motivation to pursue an inquiry into this issue.¹¹ Tiffin writes:

After Aboriginal suicides in police custody became an issue in 1987, acknowledged as politically and a major problem, any subsequent death became headline news, while earlier ones had largely passed with little attention.¹²

In this regard, the government's decision to call for a royal commission may have been driven to 'do something' through bottom-up pressure from the media. Yet there is utility in its high profile (and high media) image portraying the government as *proactively doing something* about the problem and being seen to be *taking the problem seriously*. The Hope Royal Commission may even afford a better analysis of royal commissions and the process of agenda-setting, implementation, pluralism, rationalism, ideology and political culture.

(3) The Establishment of the Hope Royal Commission

⁸ Ibid.

⁹ Ibid.

¹⁰ Patrick Weller, *Op Cit*, 10.

¹¹ Patrick Weller, *Op Cit*, 80-95.

¹² R. Tiffin, *News and Power*, Allen and Unwin, Sydney, 1989, 181.

In 1974 a Royal Commission was established to conduct a public inquiry into the activities of the intelligence and security agencies. Of particular focus in the inquiry was the only legislatively empowered and autonomous intelligence agency in Australia, the Australian Security Intelligence Organisation (ASIO). ASIO, as the name suggests is an intelligence organisation originally set-up to monitor Soviet spies operating in Australia. In 1949 ASIO was established via an administrative action, it was then legislated in 1956 in the Australian Security Intelligence Organization Act 1956.¹³

In 1974 the Whitlam executive council informed the Governor-General that they wished the Honourable Robert Marsden Hope, a judge of the Supreme Court of New South Wales to be appointed to head the Royal Commission.¹⁴ The Governor-General followed the convention of being an agent of the government and pursuant to the Royal Commissions Act 1902-1973 made Justice Hope the Commissioner of the inquiry.

The Hope Royal Commission fits all the criteria for both a royal commission and a public inquiry. The esteemed qualifications and public status of Justice Hope chairing the inquiry is consistent with the degree of prestige required of a "Royal" commission. It should be noted that as is common with royal commissions, the chairperson of the inquiry lends his or her name to the inquiry. The Royal Commission was mandated by the government of the day (albeit through the office of the Governor General). The inquiry had a life span only as long as was needed to reach a conclusion (3 years) and whose membership was comprised of private citizens with no presiding current parliamentarians. The findings of the Hope Royal Commission were to be a public document, with only three restricted sections for the purpose of national security in mind. The public were invited to participate as the inquiry traveled to every capital city in Australia hearing submissions in public or with the option of the hearings being held privately in camera. Furthermore public input to the inquiry was flexible enough to enable written submissions to the inquiry. In this regard the process of inquiry was pluralistic in seeking contributors to the inquiry and the subsequent suggested policy reform which the commission would eventually present to government.

(4) The Need for a Royal Commission to Conduct a Public Policy Assessment of ASIO

¹³ Intelligence and Security, Second Report, 3.

¹⁴ The Parliament of the Commonwealth of Australia, *Intelligence and Security Royal Commission: First Report*, 1977, Appendix 1-A.

In December 1972 the Australian Labor Party (ALP) under Gough Whitlam was elected as the Australian Federal Government. Soon after the election the then Attorney-General, Senator Lionel Murphy QC announced he intended to take greater control of ASIO. Aside from authors who assert that ever since ASIO were established they had been hostile towards the ALP between 1949-1972, of the many examples of the need to reform ASIO, I shall cite one summary example to indicate that ASIO were far from being an apolitical organisation and furthermore were thought to be deliberately providing inaccurate information to the government in 1973.

Evidence surrounding the visit of Yugoslav Prime Minister, Mr Bijedic in March 1973 suggests two very conflicting perspectives between the (then named) Commonwealth Police and ASIO.¹⁵ The latter had close links and an ideological identification with many European exiles living in Australia. The Commonwealth Police (now the Australian Federal Police) claimed that they could not guarantee protection for the Yugoslav Prime Minister during his Australian visit because of the internal threat from anti-Yugoslav groups. ASIO and the Liberal opposition party took the opposing position and claimed it was safe for the Yugoslav Prime Minister to visit Australia as no Australian based Croatian organisations were involved in terrorist activities.

The investigations of ASIO had often found Croatian extremists innocent of 'anything more than political high spirits'.¹⁶ The Commonwealth Police however found considerable evidence of terrorist activity by Croatians living in Australia. Furthermore a leaked source had informed the Attorney-General that ASIO had been manipulating an inter-departmental committee regarding the issues of Croatian political extremism in Australia and the safety of the Yugoslav Prime Minister in Australia in order that the statements of the previous Liberal government would not be contradicted. The Attorney-General exploded with anger and the Labor government's motivation to reform ASIO was set in stone.

Richard Hall asks the rhetorical question: "What does a ministerial head of a security service do when one of the organisations under his control, in this case the Commonwealth Police, puts a view which leads him to believe that another body, in this case ASIO, is in error and trying to 'cook the records' to cover up?".¹⁷ Moreover the options available to address this dilemma were reduced by the vehement defense of ASIO by the Liberal party.

¹⁵ Richard Hall, *The Secret State: Australia's Spy Industry*, Cassell Australia Ltd, New South Wales, 1978, 83-99.

¹⁶ Richard Hall, *Op Cit*, 83.

The events of 1972 illustrate the scale of the problems in ASIO. The ALP needed a clear and articulate summary of ASIO's faults and findings so that a preventative stance to cover-ups could be taken rather than the government constantly pursuing retrospective reprimands of the agency. A royal commission offered the apolitical assessment to begin to address these problems in a rationalist manner.

The need for rational policy review of the core policies in ASIO was soon articulated by Justice Hope in his inquiry:

"The nature of the world political system has changed greatly since the Edwardian era, when the present Australian espionage law was drafted. It may no longer be appropriate for Australian law to punish acts prejudicial to the safety of, "any part of the Queen's dominions". It seems strange to punish someone for obtaining information in Australia to help overthrow the government of Barbados (which is still one of the Queen's dominions), while one similarly acting to overthrow the government of Jamaica or Puerto Rico will go unpunished." ¹⁸

As ASIO policies incrementally evolved, the agency's funding was improved as fears of the Cold War grew. ASIO's role had inflated into monitoring all espionage, terrorism, subversion and sabotage internal to Australia. The definition of subversion that often universally applied to 'communists' had blurred into being deemed applicable to the social left. Thus left leaning political parties like the ALP were becoming targets for surveillance. It can well be argued that the policy process pursued by ASIO met the definition of Cohen's 'garbage can' policy in the eyes of many Australian Labor supporters.¹⁹ The policy I suggest that may have been taken from the 'garbage can' and re-used was the policy previously applied to subversive communists. The forms of surveillance, record keeping and exclusion from certain public sector employment that had been applied to communists were then applied to labour members, trade unions and social democrats as they were simultaneously labeled 'socialists'.

A policy of belligerency towards the ALP opposition and later the ALP government from ASIO (an organ of the executive) does not notionally sit well in a liberal democracy. It can be seen how the anti-ALP policies were born out of incrementalist 'garbage can' policy yet reformulating the ASIO agenda posed greater dilemmas. The previous Liberal Prime Minister Menzies had never shared intelligence with the ALP Shadow Minister for Defense and thus the ALP had no expertise in the mechanisms of intelligence agencies. How then could the ALP reign in an intelligence agency without leaving

¹⁷ Richard Hall, *Op Cit*, 84

¹⁸ Intelligence and Security, *Royal Commission*, Fourth Report, Volume II, 42.

Australia vulnerable to security incursion? This was a critical problem for the ALP as our US and UK allies had already criticised the ALP management of Australian security when the ALP last governed Australia. So detrimental was their perception of the Australian 'leaking intelligence community' that Australia was cut from the network, reclassified and only considered a 'possible ally'.

Bruce Stone comments that "expectations of royal commissions are often too high; they are not executives".²⁰ So it may then be asked what can we expect from royal commissions? It is true that royal commissions are susceptible to the whim of the Government as royal commissions do not generate their own working capital to fund inquiries. However ultimately we can expect royal commissions to table at least one "best possible policy" perspective for the government to consider. These policy options are more often arrived at through rational policy making rather than incrementally addressing policy flaws. This I feel is the great advantage of royal commissions that may not be truly realised.²¹ Rational policy making provides the opportunity to separate fact from opinion and allows the examination all information with the benefit of hindsight and specifically focusing on a single issue.

(5) Effectiveness of: Rationalism, Incrementalism & Mixed Scanning Models of Policy

To claim policy making as entirely rational is a grand claim yet is essential when current policy is not working and where the danger exists that a current policy may be so ineffective or dysfunctional that the incremental changes to the policy will continue to reinvent bad strategies. There are six steps in rational policy that should be satisfied for a policy to have been derived from a rational process.²²

1. A complete set of goals with weights should be established.
2. An inventory of values and resources should be prepared.
3. A complete set of strategies or solutions should be generated.
4. The cost of strategy or solution should be prepared.
5. The effectiveness (value) for each alternative should be compared.
6. The choice with the highest expected value should be chosen.

¹⁹ Parsons, *Public Policy*, 434.

²⁰ Patrick Weller, *Op Cit*, 266

²¹ Patrick Weller, *Op Cit*, 140

²² Rhode Island University, *Evaluating and Selecting Strategies*, <http://www.cba.uri.edu/Faculty/Comerford/Text/Chapter4.html> , p1,

As can be seen from the list above, rational policy making does not need to fit a new policy to a current policy in order to instigate change as would be the case in incremental policy making. The Hope Royal Commission is rational in much of its policy formulation through satisfying many of the points listed above. The first criterion was satisfied when the goals of the inquiry were delivered in the letters patent to Justice Hope defining his terms of reference as:

"in light of past experience, and having regard to the security of Australia as a nation, the rights and responsibilities of individual persons and future as well as present needs, to make recommendations on the intelligence and security services which the nation should have available to and on the way in which the relevant organisations can most efficiently and effectively serve the interests of the Australian people and government with particular reference to:²³

- Arrangements for co-ordinating and evaluating the available intelligence;
- The distribution and use of intelligence material available;
- The relationship between the intelligence organisations, between those organisations... and departments and authorities of the Australian Government."

And:

"To review the machinery for Ministerial and official control, direction and co-ordination of the activities of the intelligence and security services and make recommendations on any changes desirable, in particular to ensure that there are clear lines of responsibility and proper arrangements for accountability for funds."

Secondly, an *inventory of values and resources* was sought from anyone who cared to contribute a submission to the inquiry. The Australian Federal Police (AFP) submitted that Australia did not need ASIO and that the work currently undertaken by ASIO could be handled by the AFP. Other submissions claimed that Australia did not have "secrets" that needed protection and therefore did not need any intelligence service. ASIO submitted that they needed more resources and more power to combat threats to Australian security. Collectively these submissions were compared and were considered by Justice Hope in his written reports.

Thirdly, *Steiner et al*, suggests that rationalism requires *a complete set of strategies and solutions should be prepared* to anchor rational policy making. The Royal Commissions Act 1902-1973 (Cth)

accessed 28/06/2001.

²³ Royal Commission into Intelligence and Security, *Intelligence and Security Parliamentary Paper No. 248/1977*, Fourth Report,

provides a complete framework for a royal commission to operate within and the Hope Royal Commission did this successfully. *In futuro*, the method of reporting and methods to be used in public hearings were decided upon in private on the 5th of March 1975 and were consistent with other methods of public hearings.²⁴

In the micro-strategic approach the Hope Royal Commission does not seem to articulate a complete set of strategies to follow. Never-the-less a strategy can be seen in the reports of the inquiry of examining each submission for quality and reliability to highlight unreliable data or person(s) or branches of the executive that require further in-depth inquiry. Justice Hope at one stage reported that:

“I received submissions and information papers in some number from ASIO. But I must say that those submitted in the early part of my inquiry, on examination, proved to be of neither the quality nor reliability one might have wished.”²⁵

Fourthly, the criterion of *the cost of each solution should be prepared* may have arguably been met if 'cost' is not measured in pure economic terms. Whilst the financial cost of establishing a Commissioner for Intelligence and a Security Review Tribunal was not addressed in the Hope report, other costs were considered. The cost of trade-related intelligence leaks were acknowledged as being measured in dollars and the Hope report went further in stating that measuring the cost of the unknown was difficult. The salaries of ASIO were compared with other public servants and were considered 'too low' and the report issued a reminder that the wages of intelligence agencies in Australia should constantly be re-assessed with that of other countries.²⁶ A deductional approach to the Hope Report suggests that wage reform might help block the climate of 'leaks' and 'disclosures' from within the intelligence community.²⁷

Fifth, *the effectiveness for each value should be compared*. Unlike other royal commissions, for example into taxation and wages which have tended to be positivist in their policy making, the Hope Royal commission subject matter is more concerned with fitting intelligence policy into the Australian liberal democratic system rather than with fiscal measurement. Calculating the value of policy alternatives were never-the-less psychologically evaluated and calculated through prolonged

Volume 1, 1978, 3.

²⁴ Intelligence and Security, Royal Commission, First Report, Volume I, 6.

²⁵ Intelligence and Security, Royal Commission, Fourth Report, Volume I, 6.

²⁶ Intelligence and Security, Third Report (Abridged Report), 17.

²⁷ *Ibid.*

consideration by Justice Hope throughout the inquiry. Arguably the ability to psychologically compute the value of policy is a skill honed in the judiciary and this might explain the reasoning behind “lawyers” so often heading both commissions and royal commissions.

Finally, *the choice with the highest expected value should be chosen* in order for the Hope Royal Commission to be a rational policy making process. There has been no indication in the Hope Report that anything but the 'best' policy decisions were tabled for the government to consider. Parliament gave bipartisan endorsement to the recommendations of the inquiry as appropriate and legislated for the creation of the Security Review Tribunal, the creation of an Intelligence Commissioner and the updating of the Australian Security Intelligence Organization Act in 1979 to define otherwise vague and implied powers. Moreover the summary findings in the 1984 Royal Commission in Intelligence and Security found the improvements since 1974 to be ‘immeasurably better’.²⁸

Rational policy making in royal commissions can step outside the immediate political spectrum to invite all those skeptical of the past, present or future policy processes to contribute to the policy equation. The retrospective nature of rational policy making allows the core presumptions of a policy to be reconsidered or modified without the political stigmatism of a partisan political policy. The Weekend Australian on the 30th of October 1993, in talking of the ability of parliament to make rational policy regarding the Criminal Justice Committee (CJC) stated that *"Parliament is not able to deal with it. You can have fast and furious debates, you can have committees, but they will inevitably become polarised politically"*.²⁹ An inability by the Labor and Coalition political parties to depart from an adversarial approach to policies endorsed by the other creates an inability to pursue rationalist policy and leaves incrementalist policy as the alternative method in parliament. Thus the options of royal commissions are a valuable mediator to parliament.

The Hope Inquiry’s ability to ask reasonable questions such as “what is meant by *intelligence*”; “do we need an intelligence service?”; “how do Canada, New Zealand, the USA and the UK define subversion compared with Australia?;” all demonstrate the retrospective and near rational reassessment of core assumptions in intelligence policies by the Hope Royal Commission.³⁰ Whether the Hope Royal Commission was truly a rationalist policy making exercise is never the less debatable. Dror maintains

²⁸ Royal Commission on Australia's Security and Intelligence Agencies, *Intelligence and Security*, December 1984, 6.

²⁹ Patrick Weller, *Op Cit*, 226

³⁰ Royal Commission into Intelligence and Security, *Intelligence and Security Parliamentary Paper No. 248/1977*, Fourth Report, Volume 1, 1978, 3, 10-35.

that *'pure rationality in policymaking is in fact impossible'*.³¹ This may be true, however elements of the Hope inquiry were arguably as close to rational as can reasonably be achieved by the inquiry (ie: the very detailed analysis of ways of defining "subversion"). The opposite side of the coin in discussing the submission that the Commonwealth Police could handle the role of ASIO seems to have been dismissed without a serious desire to compute the value of the policy option. Whilst my initial impression is that this alternative would have been inappropriate and possibly was excluded by the terms of reference it never the less remains a sane policy, and one that rationalist policy should explore yet wasn't in this instance.³² As such the Hope Royal Commission may be better described as an example of a hybrid rationalist/incrementalist policy making process or as Etzioni coined it a *mixed scanning model* of combining a comprehensive overview of policy options with incrementally determined policy details as many fundamental views were not challenged in the Hope Inquiry.³³

(6) Royal Commissions : Pluralism, Policy Stream and Policy Entrepreneurs

The discussions (above) of the policy making methods raises issues of how the rationalist or hybrid rationalist/incrementalist Hope inquiry has sourced policy. A great advantage to the process of royal commissions is that the skills and expertise of policy entrepreneurs may be tapped. The process of sourcing the policy entrepreneurs was conducted through complying with a criterion of public inquiry, that of, *the broad public being encouraged to submit reports to the inquiry*. This pluralist tradition was pursued in the Hope Royal Commission through conducting hearings in all capital cities and treating anyone interested as belonging to a policy community. Past and present government ministers (including Prime Ministers), past and present ASIO agents, those in the community who had been affected by ASIO decisions, civil liberty groups and senior foreign intelligence officers from other countries were interviewed throughout the inquiry. The merits in pursuing a pluralist approach to the inquiry were quickly found to be a productive tool in targeting dishonest or inconsistent evidence, as different submissions from different quarters of the community conflicted in both facts and opinion. It seems that the wider the scope of submissions sought in a royal commission in turn provide a greater scope to illuminate conflicting claims. This process may well provide the machiavellian data needed to see the real agenda of those submitting reports to the public inquiry.

³¹ Davis, G and others (eds.), *Public Policy in Australia*, 2nd Edition, Allen and Unwin, Sydney, 1993. 168-9.

³² Joan Coxsedg, et al, 163.

"Whitlam's instructions to Hope (Letters Patent, 21 August 1974) make it clear that the object was not to question the necessity for nor the activities of the secret organisations but to co-ordinate them and increase their efficiency".

³³ Patrick Weller, *Op Cit*, 226

³³ G.D Smith, D.May, *The Artificial Debate between Rationalism and Incrementalist Models of Decision-making*, Policy and Politics 8,

Finally the process of “*question and answer pluralist inquiry*” helps to educate the commission staff to the subject matter of the inquiry. Whilst the benefit to sourcing royal commission staff from outside the intelligence community reduces the likelihood of the self-interest axiom influencing policy this also creates the potential problem of royal commissioners and staff not understanding the technical issues being discussed. Question and answer pluralist inquiry helps to improve the general and specific understanding of the inquiry and helps develop specialised policy for specialised purposes.

The pluralist nature of the Hope submission process appropriately meets Kingdon's 'Policy Stream' definition in the sense that through seeking input from multiple policy entrepreneurs the best policy may jump from the ‘primeval soup’ as a process of natural selection takes place within the policy community.³⁴ Furthermore in keeping with Kingdon's visualisation of the policy stream, the inclusive pluralist nature of royal commissions invariably provides a great variety of policy entrepreneurs ‘swimming in the soup’ who are willing to invest resources of their own in the self-interested expectation that their policy option might become implemented policy.³⁵

Conclusion

The statements of the Senator and Attorney-General Murphy in 1972 illustrate that a policy to reform ASIO was decided before the ALP held government and that the ALP were merely waiting for the opportunity to implement a policy of reform. When ASIO began to manipulate documents the Attorney-General reacted by storming the ASIO offices in Canberra with Commonwealth Police leading the way, an ad hoc incremental fix for a break-down in control of the bureaucracy.

A Royal Commission was really the only alternative the government had to pursue for two reasons. Firstly, the ALP had not held government for the previous twenty-three years and thus were inexperienced in managing the executive.³⁶ Secondly (and building on the first issue), in 1950 Menzies had decided not to follow the British convention of keeping the Leader of the Opposition briefed on intelligence and security, therefore after twenty three years in opposition Labor knew little of

Ham and Hill, 1980, 152-3; Davis, *Op Cit*, 166-167.

³⁴ Parsons, 435-436.

³⁵ *Ibid.*

³⁶ Richard Hall, *Op Cit*, 95.

intelligence and security procedures, even from opposition.³⁷ It seems then that the decision to take a very capable Judge and allow him to focus on ASIO, conduct a three year investigation into the agency and then provide advice and policy on what to do about that agency's practices and policies, makes both logical and political sense.

The Hope Report was given to the Liberal government in early 1977 and tabled in parliament in October 1977.³⁸ The report suggested an increase in funding to ASIO to increase surveillance of diplomats, and in recognition of this the government increased ASIO's funding from \$7.8million to \$10 million.³⁹ This was further increased by a massive 26% for the 1978-79 financial year.⁴⁰

Another recommendation of the report was the establishment of a security appeal tribunal for public servants adversely affected by ASIO security reports. Hope recommended that the tribunal be staffed by *former* public servants or military officers and a panel of individuals with no past or present connection with the public service or defence forces. Hope believed that the creation of such a tribunal would result in the most equitable system of review of public security and intelligence services.⁴¹

Finally in tying my introductory comments with my conclusions I should note that whilst considerable policy reform was made by the Hope Royal Commission and subsequently implemented by the Fraser Liberal Government there are numerous criticisms made of the standard of inquiry conducted. Those sceptical of royal commissions often fear a neo-pluralist position will be taken by a commissioner in taking a biased and favoured stance towards groups wielding disproportionate power. The authors of *Rooted in Secrecy* make the following claims about the Hope Inquiry:

“We took great interest in the Hope Commission. We attempted to lift the veil of secrecy that was a basic part of the whole experience. When we first contacted the secretary we were (jokingly?) asked not to bring along our cameras. Our first meetings with the learned judge were affable. However, we are sure that Hope became subverted to the ASIO point of view along the way, after his fellow-judge, Woodward, was installed as ASIO's Director-General in 1976.”⁴²

³⁷ *Ibid.*

³⁸ Richard Hall, *Op Cit*, 104.

³⁹ *Ibid.*

⁴⁰ *Ibid.*

⁴¹ Richard Hall, *Op Cit*, 104-105.

⁴² Joan Coxsedg, Ken Coldicutt, Gerry Harant, *Rooted in Secrecy: The Clandestine Element in Australian Politics*, Committee for the Abolition of Political Police (CAPP), Victoria, 1982, 164.

For some the Hope Royal Commission may be a triumph of pluralism and rationalistic policy making in an otherwise unregulated area of the bureaucracy in many parts of the world. Yet many civil rights libertarians may well claim that this royal commission was merely a method for the ALP to reconcile its position with ASIO at the expense of democratic governance as ASIO continues to have extremely wide scope in deciding whom, in society, are subversive.⁴³ Moreover for Marxists, who have been specifically targeted by ASIO, the Hope Royal Commission is yet another chapter in the same old story of the bourgeoisie class ruling over the working class through puppet Royal Commissions.

⁴³ Richard Hall, *Op Cit*, 108-109.

Extract: When the Royal Commissioner moved from the in-between areas to 'subversive' itself, he acknowledged that it was a difficult concept to define. But was 'none the less a very real, and maybe a very dangerous form of activity'. He did reject the proposal that the definition should be left to security officer themselves and set out to arrive at a definition which could be incorporated in legislation. He came down finally with:

The activities of the individuals referred to... which should be included within the definition of 'subversion' are those activities which involve, or will involve, or are intended ultimately to involve, the use of force or violence or other unlawful acts (whether by themselves or others) for the purposes of: overthrowing the constitutional government of the Commonwealth of Australia or of a State or Territory; or obstructing, hindering or interfering with the taking of measures by the Commonwealth Government in the interests of the security of Australia. The problem with this attempted definition is that it is so wide that it would justify almost anything a zealous security officer might get into his head.

Acronyms and Definitions Section

ACRONYM	DEFINITION
AFP	Australian Federal Police
ALP	Australian Labor Party
ASIO	Australian Security Intelligence Organisation
Bourgeoisie	Exploitative middle class: the social class that, according to Marxist theory, owns the means of producing wealth and exploits the working class. ⁴⁴
Commission and Royal Commission	Any Commission of inquiry issued by the governor-general by Letters Patent in pursuance of the Royal Commissions Act or of any other power, and includes the members of the Commission, or a quorum thereof, or the sole Commissioner, sitting for the purposes of the inquiry. ⁴⁵
Egalitarianism	believing in equality: maintaining, relating to, or based on a belief that all people are, in principle, equal and should enjoy equal social, political, and economic rights and opportunities ⁴⁶
Pluralism	society with different internal groups: the existence of groups with different ethnic, religious, or political backgrounds within one society ⁴⁷
Utilitarianism	the ethical doctrine that the greatest happiness of the greatest number should be the criterion of the virtue of action. ⁴⁸

⁴⁴ Encarta® World English Dictionary © & (P) 1999, 2000 Microsoft Corporation. All rights reserved. Developed for Microsoft by Bloomsbury Publishing Plc.

⁴⁵ Austlii, *Royal Commissions ACT 1902*, SECT 1B

<http://www.austlii.edu.au/cgi-bin/disp.pl/au/legis/cth/consol%5fact/rca1902224/s1b.html?query=title+%28+%22royal+commission%22+%29>, accessed 7/07/2001.

⁴⁶ Encarta® World English Dictionary © & (P) 1999, 2000 Microsoft Corporation. All rights reserved. Developed for Microsoft by Bloomsbury Publishing Plc.

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Appendix

Royal Commission Act 1902

TABLE OF PROVISIONS

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