

## 7. Reports and Recommendations

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### Introduction

7.1 In Chapter 5, the ALRC recommends that the *Royal Commissions Act 1902* (Cth) should be renamed the *Inquiries Act* and amended to enable the establishment of Royal Commissions and Official Inquiries.<sup>1</sup> In this chapter, the ALRC considers issues relating to reports and recommendations of Royal Commissions and Official Inquiries established under the recommended *Inquiries Act*. In particular, the ALRC considers whether there should be any government follow-up in response to inquiry reports and recommendations.

7.2 As discussed in Chapter 2, the primary function of a public inquiry is to inquire into, and report on, the subject matter in respect of which it is established by the executive arm of government. Public inquiries, therefore, have an advisory function—the executive is not required to implement inquiry recommendations. Further, there are no obligations on the executive to table in Parliament reports of Royal Commissions or other public inquiries, respond to inquiry recommendations, or publish updates on implementation of recommendations.

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1 Recommendation 5-1.

## Inquiry reports

7.3 The reporting stage of an inquiry is an essential component of the inquiry process. Members of Royal Commissions make findings about wrongdoing or recommendations for action or reform, and deliver these findings to the Governor-General in the form of a report.<sup>2</sup>

7.4 The ALRC did not hear concerns from stakeholders about the process for delivering reports, and sees benefit in preserving a similar process for the delivery of reports of inquiries established under the recommended *Inquiries Act*. In other words, an inquiry established under the Act should report to the authority that establishes it. Further, while inquiry staff and others assisting an inquiry also may assist in the preparation of an inquiry report, the ALRC's view is that inquiry members should be responsible for an inquiry's report and recommendations.

7.5 If the ALRC's recommendations in Chapter 6 are accepted, Royal Commissions would continue to report to the Governor-General, and Official Inquiries would report to a minister. Generally, an Official Inquiry would report to the minister that established it, but in some circumstances it may be appropriate for it to report to another minister. The effect of s 19 of the *Acts Interpretation Act 1901* (Cth) is that a minister may authorise a non-portfolio minister or a parliamentary secretary to act on his or her behalf. Further, ss 19B and 19BA of the *Acts Interpretation Act* provide that the Governor-General may make orders directing that statutory provisions may have effect with respect to substituted ministers where: the ministerial position specified in a statutory provision no longer exists; or where a reference to a minister is inconsistent with changed administrative arrangements. In the ALRC's view, these provisions adequately address potential situations where it is no longer appropriate or possible for an Official Inquiry to report to the minister that established it.

**Recommendation 7-1** The recommended *Inquiries Act* should provide that:

- (a) Royal Commissions report to the Governor-General; and
- (b) Official Inquiries report to the minister that established the Official Inquiry.

## Tabling reports in Parliament

7.6 The effect of tabling a report in Parliament is that it is made public. The standing orders of the Senate and House of Representatives provide that all documents

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<sup>2</sup> *Royal Commissions Act 1902* (Cth) s 1A.

presented to the chamber are authorised for publication.<sup>3</sup> Further, significant documents tabled in either House of Parliament are contained in the *Parliamentary Papers Series*, which is distributed to several libraries in Australia.

7.7 The *Royal Commissions Act* does not require the tabling in Parliament of a report prepared as a result of an inquiry established under that Act. In this respect, the Act differs from other federal legislation that requires the tabling of reports of reviews or inquiries, such as s 12 of the *Productivity Commission Act 1998* (Cth), s 23 of the *Australian Law Reform Commission Act 1996* (Cth) and ss 46 and 46M of the *Australian Human Rights Commission Act 1986* (Cth).

7.8 In addition, several state and territory Acts address the tabling in Parliament of reports prepared by public inquiries. The Victorian and South Australian Parliaments have enacted legislation to provide for the tabling of reports resulting from specific inquiries.<sup>4</sup> In Queensland, the *Commissions of Inquiry Act 1950* (Qld) provides that a report received by a minister *may* be tabled in the Legislative Assembly.<sup>5</sup> In the ACT, the *Royal Commissions Act 1991* (ACT) and *Inquiries Act 1991* (ACT) also provide that the Chief Minister *may* present a report, or part of a report, to the Legislative Assembly.<sup>6</sup> If this does not take place, however, the Chief Minister is required to provide a written explanation to the Legislative Assembly.<sup>7</sup>

7.9 In practice, the Australian Government has tended to table Royal Commission reports promptly.<sup>8</sup> The tabling of Royal Commission reports is noted briefly in Australian Government guidelines that address the tabling of government documents.

Some documents are required to be tabled by statute. These include annual reports and reports of the Australian Law Reform Commission and the Productivity Commission. Other documents that are tabled include Treaties and reports of Royal Commissions. ...

The [Department of the Prime Minister and Cabinet] Tabling Officer should be consulted well in advance in regard to the tabling of reports of Royal Commissions. Factors to be considered include whether:

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- 3 Parliament of Australia—House of Representatives, *Standing and Sessional Orders* (1 December 2008), Standing Order 203; Parliament of Australia—Senate, *Standing and Sessional Orders*, 1 June 2009, Senate Order 167.
  - 4 *Longford Royal Commission (Report) Act 1999* (Vic) s 4; *Commission of Inquiry (Children in State Care and Children on APY Lands) Act 2004* (SA) s 11. Also see the *Bushfires Royal Commission (Report) Act 2009* (Vic). The *Royal Commissions Act 1923* (NSW) sets out the requirements for tabling reports when the Parliament is not sitting: *Royal Commissions Act 1923* (NSW) s 14B.
  - 5 *Commissions of Inquiry Act 1950* (Qld) s 32.
  - 6 *Royal Commissions Act 1991* (ACT) s 16; *Inquiries Act 1991* (ACT) s 14A.
  - 7 *Royal Commissions Act 1991* (ACT) s 16A; *Inquiries Act 1991* (ACT) s 14B.
  - 8 For example, recent Royal Commission reports tabled in Parliament include D Hunt, *Report of the Inquiry into the Centenary House Lease* (2004) and T Cole, *Report of the Inquiry into Certain Australian Companies in Relation to the UN Oil-for-Food Programme* (2006): Commonwealth, *Parliamentary Debates*, House of Representatives, 9 December 2004, 101 (P Ruddock—Attorney-General); Commonwealth, *Parliamentary Debates*, House of Representatives, 27 November 2006, 45 (P Ruddock—Attorney-General).

- a ministerial statement is to be made by the Minister to coincide with the tabling of the report, and
- the volume of the report requires any special arrangements to be considered for copy requirements.<sup>9</sup>

7.10 Reports tabled in Parliament attract parliamentary privilege, which means that civil or criminal actions cannot be taken against ‘an officer of a House’ who lays a document before either House of Parliament.<sup>10</sup> Notwithstanding this, there may be reasons why there should be restrictions on the tabling of some parts of an inquiry report. For example, parts of a report may disclose national security information, or identify or adversely affect a person who was not the subject of an adverse finding.<sup>11</sup> Royal Commissions are also exempt from the operation of the *Privacy Act 1988* (Cth), which means that such inquiries do not need to comply with privacy principles such as those dealing with disclosure of personal information.<sup>12</sup>

7.11 In its Discussion Paper, *Royal Commissions and Official Inquiries* (DP 75), the ALRC proposed that the *Inquiries Act* should contain a presumption that reports of Royal Commissions and Official Inquiries should be tabled by the Australian Government within 15 sitting days of receiving the final report.<sup>13</sup> The ALRC noted that there may be reasons why the whole report of an inquiry should not be tabled in Parliament. In such circumstances, it proposed that, within 15 sitting days, the Australian Government should table a statement of reasons why the whole report is not being tabled.<sup>14</sup>

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9 Australian Government Department of the Prime Minister and Cabinet, *Guidelines for the Presentation of Government Documents to the Parliament (Including Government Responses to Committee Reports, Ministerial Statements, Annual Reports and Other Instruments)*, [2.2], [4.34].

10 *Parliamentary Privileges Act 1987* (Cth) s 10.

11 Also note that, in Ch 15, the ALRC recommends that an inquiry should not make any findings that are adverse to a person unless the inquiry has taken all reasonable steps to give notice of proposed adverse findings or the risk or likelihood of adverse findings, and disclose the relevant material relied upon and the reasons on which such a finding might be based. Further, the inquiry should take all reasonable steps to give that person an opportunity to respond to the proposed finding, and the inquiry should properly consider any response given: Recommendation 15–1.

12 *Privacy Act 1988* (Cth) s 7(1)(a)(v). In 2008, the ALRC expressed the view that Royal Commissions should continue to be exempt from the operation of the *Privacy Act*. It also recommended that the Department of the Prime Minister and Cabinet, in consultation with the Office of the Privacy Commissioner, should develop and publish information-handling guidelines for Royal Commissions: Australian Law Reform Commission, *For Your Information: Australian Privacy Law and Practice*, ALRC 108 (2008), Rec 38–1. If the ALRC’s recommendations in this Report are accepted, the *Privacy Act* may require consequential amendment to exclude acts and practices of Official Inquiries: see Appendix 6.

13 Australian Law Reform Commission, *Royal Commissions and Official Inquiries*, Discussion Paper 75 (2009), Proposal 7–2.

14 *Ibid.*

## Submissions and consultations

7.12 Most stakeholders supported the introduction of a tabling requirement for Royal Commission reports. For example, the Community and Public Sector Union (CPSU) submitted that, while the executive generally does table inquiry reports,

it would be preferable that such reporting requirements were contained in the legislation. ... In deciding to hold a Royal Commission inquiry, the Government has obviously determined that the particular issue is of such significance that the expense and time involved in Royal Commission proceedings are justified. It should follow, therefore, that it is incumbent on the Government to properly publish and respond to its findings.<sup>15</sup>

7.13 The Law Council of Australia (Law Council) supported a statutory requirement to table inquiry reports.

The need to formally inform Parliament of the recommendations of a Royal Commission or other form of public inquiry has been recognised in other jurisdictions. For example, section 26 of the [*Inquiries Act 2005* (UK)] provides a requirement that the findings of a public inquiry be laid before Parliament.<sup>16</sup>

7.14 Mr Kym Bills also supported a tabling requirement.

Under the *Transport Safety Investigation Act 2003* [Cth] the ATSB [Australian Transport Safety Bureau] is required to publish its investigation reports when completed and this works well. However, when the ATSB has occasionally conducted investigations for other jurisdictions under the legislation of the relevant State, the relevant Department and/or Minister has sometimes delayed release of the final report for many months because of perceived political sensitivities or other priorities. This can compromise action to improve future safety.

7.15 On the other hand, the Australian Government Solicitor (AGS) did not support a statutory requirement to table inquiry reports.

In our experience, it is the usual practice of governments to table in Parliament reports by Royal Commissions and other public inquiries. ... [W]e see these as matters for the government of the day.<sup>17</sup>

7.16 Further, the AGS was concerned that

[a] requirement to table an inquiry report within a specific time period such as 15 days may only hinder best effect being given to some recommendations of an inquiry or lead to them being treated with a higher secrecy than might have been the case where there was unfettered discretion as to when to table the report.

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15 Community and Public Sector Union, *Submission RC 10*, 22 May 2009. See also Accountability Round Table, *Submission RC 29*, 30 September 2009; Liberty Victoria, *Submission RC 26*, 27 September 2009; Community and Public Sector Union, *Submission RC 25*, 22 September 2009; K Bills, *Submission RC 19*, 17 September 2009.

16 Law Council of Australia, *Submission RC 9*, 19 May 2009. See also Law Council of Australia, *Submission RC 30*, 2 October 2009.

17 Australian Government Solicitor, *Submission RC 15*, 18 June 2009.

In our view, Parliamentary accountability itself will generally be an adequate guard against any excessive disposition to secrecy by governments in handling inquiry reports.<sup>18</sup>

7.17 It was also suggested in consultations that there was no need to include a tabling requirement in inquiries legislation because an inquiry report would be tabled in Parliament to attract parliamentary privilege. It was also noted that, even if there was a requirement to table inquiry reports, this would not guarantee parliamentary scrutiny of a report tabled at a busy time.

7.18 Some stakeholders directly addressed the tabling of reports arising from non-Royal Commission forms of inquiry. In consultations, concerns were expressed that a failure to table reports of any inquiry would create public suspicion—particularly if hearings were held in private, or an inquiry found there was no wrongdoing.

7.19 Stakeholders noted that a requirement to table the report of an inquiry should not always require the tabling of that report in its entirety. For example, Liberty Victoria submitted that ‘reports from public inquiries should be tabled in Parliament (redacted or amended as necessary)’.<sup>19</sup> Further, the Law Council suggested that consideration should be given to ‘means to protect personal information or information concerning national security’.<sup>20</sup> Mr Graham Millar noted that a requirement to table reports should be ‘subject to any confidentiality requirements for part or all of a particular report’.<sup>21</sup>

7.20 The CPSU suggested that a statutory tabling requirement should set out a specified time period in which that report should be tabled.<sup>22</sup> Another stakeholder supported a mandatory tabling period of 15 days.<sup>23</sup> On the other hand, Millar submitted that

a requirement that reports of such inquiries be tabled within 15 sitting days could result in the government having a little over a month to respond to the reports if the Parliament is sitting at the time. This may not be an adequate timeframe for the government to provide a considered response.<sup>24</sup>

7.21 The Australian Intelligence Community (AIC) supported a requirement to table inquiry reports. It also suggested that

consideration be given to clarifying that Commission members would be able to seek advice from the IGIS [Inspector-General of Intelligence and Security] for the purpose of determining whether to table a report or part of a report.<sup>25</sup>

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18 Australian Government Solicitor, *Submission RC 31*, 6 October 2009.

19 Liberty Victoria, *Submission RC 1*, 6 May 2009.

20 Law Council of Australia, *Submission RC 9*, 19 May 2009.

21 G Millar, *Submission RC 5*, 17 May 2009.

22 Community and Public Sector Union, *Submission RC 10*, 22 May 2009.

23 K Bills, *Submission RC 19*, 17 September 2009.

24 G Millar, *Submission RC 21*, 21 September 2009.

25 Australian Intelligence Community, *Submission RC 28*, 28 September 2009.

### ALRC's view

7.22 The *Inquiries Act* recommended in this Report should contain a presumption that reports of Royal Commissions and Official Inquiries will be tabled. With respect to Royal Commissions, such a requirement merely formalises an existing practice and should not result in a significant additional burden on government. Further, a tabling requirement for Royal Commissions and Official Inquiries is in keeping with principles of government openness, transparency and accountability, and requirements in similar federal, state and territory legislation.

7.23 The ALRC agrees there are circumstances in which parts of a report should not be tabled in Parliament—for example, when an inquiry report deals with matters of national security. One option is to prescribe in the *Inquiries Act* categories of information that may form the basis of excisions from an inquiry report. In the ALRC's view, this is not the best approach. An exhaustive list in such a provision may not cover all relevant situations, and, if it includes a catch-all provision, may leave too much discretion in the hands of the executive. Instead, the ALRC recommends that the Australian Government should table the entire final report of a Royal Commission or Official Inquiry, and if it does not table a part or parts of the report, it should also table a statement of reasons explaining why it has not tabled the whole report. This is comparable to the ACT inquiries legislation, discussed above. It is a flexible approach that preserves the accountability of the executive to Parliament.

7.24 The ALRC notes that the Australian Government may consult with a number of stakeholders in determining whether to table a whole report. For example, if the inquiry report contains matters relevant to national security, it may be appropriate to consult with the IGIS and similar bodies. It also may be appropriate for inquiry members to conduct such consultations so that they can advise the Australian Government to treat particular parts of a report as confidential.

7.25 Inquiry reports should be tabled within a specified time period. Legislation requiring the tabling in Parliament of the reports of inquiries conducted by standing bodies generally include a requirement that such reports are to be tabled by the relevant minister within 15 sitting days, and occasionally within 25 sitting days.<sup>26</sup>

7.26 Given that the inquiries established under the *Inquiries Act* should consider matters of public importance—and, in the case of Royal Commissions, substantial public importance—reports should be tabled in a period less than 25 sitting days after their receipt by the Australian Government. In the ALRC's view, a period of 15 sitting days is a reasonable time for the Australian Government to make an inquiry report public.

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26 For examples of statutory provisions requiring the tabling of comparable reports within 15 sitting days, see *Australian Law Reform Commission Act 1996* (Cth) s 23; *Ombudsman Act 1976* (Cth) s 19; *Australian Human Rights Commission Act 1986* (Cth) s 46. Section 12 of the *Productivity Commission Act 1998* (Cth) provides that a comparable report needs to be tabled within 25 sitting days.

7.27 Finally, if Recommendation 7–1 is accepted, Royal Commissions will report to the Governor-General. As a matter of practice, therefore, the Governor-General should ensure that the relevant minister has a copy of the report of a Royal Commission soon after the Governor-General receives it, so that the minister is able to table that report within the required time period.

**Recommendation 7–2** The recommended *Inquiries Act* should provide that, within 15 sitting days of receiving the final report from a Royal Commission or Official Inquiry, the Australian Government should table in Parliament the report or, if a part of the report is not being tabled, a statement of reasons why the whole report is not being tabled.

## Government responses to public inquiries

7.28 Another issue for this Inquiry is whether the recommended *Inquiries Act* should require the Australian Government to respond formally to recommendations made in an inquiry report. This response could be in the form of a ministerial statement or other formal response in Parliament, or in another form. Currently, the *Royal Commissions Act* does not contain any such requirement.

7.29 In practice, the federal minister tabling a report from an inquiry appointed under the *Royal Commissions Act* may inform Parliament of the government’s position on the report generally. For example, when tabling the report of the Inquiry into Certain Australian Companies in Relation to the UN Oil-for-Food Programme (2006), the Hon Philip Ruddock MP stated that, ‘[a]s recommended, the government will establish a task force of relevant Australian government agencies to consider possible prosecutions in consultation with the Commonwealth Director of Public Prosecutions’ and would ‘move speedily’ to consider other recommendations made in the inquiry.<sup>27</sup>

7.30 Further, a federal minister may deliver a formal ministerial statement. When tabling the report of the Royal Commission to Inquire into the Centenary House Lease, the then Attorney-General, the Hon Philip Ruddock MP, made a ministerial statement supporting the findings of the Royal Commission.<sup>28</sup>

7.31 A recent South Australian Act expressly sets out an obligation for the government to respond to recommendations made in two specific inquiries. The *Commissions of Inquiry (Children in State Care and Children on APY Lands) Act 2004*

27 Commonwealth, *Parliamentary Debates*, House of Representatives, 27 November 2006, 45 (P Ruddock—Attorney-General).

28 Commonwealth, *Parliamentary Debates*, House of Representatives, 9 December 2004, 101 (P Ruddock—Attorney-General).

(SA) required the minister responsible for administering the Act to respond in Parliament to the recommendations made in those two inquiries.<sup>29</sup>

7.32 In addition to making a formal response in Parliament to a report of a Royal Commission or other public inquiry, federal ministers may make a public statement through a press release.<sup>30</sup> The Australian Government also has published official responses to some Royal Commission recommendations.<sup>31</sup>

7.33 In December 2008, the Australian Government released its response to an inquiry that was not established under the *Royal Commissions Act*—the Clarke Inquiry into the Case of Dr Mohamed Haneef (Clarke Inquiry). The Clarke Inquiry has its own website, which contains the report from the inquiry and other information.<sup>32</sup> In addition, this website contains a hyperlink to the website of the Australian Government Attorney-General's Department, which contains the Government's response to the Clarke Inquiry.<sup>33</sup>

7.34 In IP 35, the ALRC asked whether the Australian Government should be required by statute within a specific time frame to respond to recommendations made by Royal Commissions and other public inquiries.<sup>34</sup> In DP 75, the ALRC expressed the view that the proposed *Inquiries Act* should not require the government to provide a response to recommendations made by Royal Commissions and Official Inquiries.<sup>35</sup>

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29 *Commission of Inquiry (Children in State Care and Children on APY Lands) Act 2004* (SA) s 11A. This Act provided for the establishment of two inquiries to consider: allegations of failure on the part of government agencies, employees or other relevant persons to investigate or appropriately deal with allegations concerning sexual offences against children under the guardianship, custody, care or control of the South Australian Minister responsible for the protection of children; and the incidence of sexual offences against children resident on the Anangu Pitjantjatjara Yankunytjatjara lands in Central Australia.

30 Upon the tabling of the report of the inquiry into the HIH Royal Commission, the then Treasurer, the Hon Peter Costello MP, suggested in a press release that the Australian Government supported 'in-principle' some of the inquiry's recommendations, and would 'consider expeditiously the Report's other recommendations and announce further details of its response': P Costello (Treasurer), 'Report of the HIH Royal Commission' (Press Release, 16 April 2003).

31 For example, in 1992 the Keating Government released a response to the Royal Commission into Aboriginal Deaths in Custody (1991): Australian Government, *Aboriginal Deaths in Custody—Response by Governments to the Royal Commission* (1992).

32 *Clarke Inquiry into the Case of Dr Mohamed Haneef* (2008) <[www.haneefcaseinquiry.gov.au/](http://www.haneefcaseinquiry.gov.au/)> at 4 August 2009.

33 Australian Government Attorney-General's Department, *Australian Government Responses to the Clarke Inquiry and other Counter-Terrorism Reviews—December 2008* (2008) <[www.ag.gov.au/](http://www.ag.gov.au/)> at 4 August 2009.

34 Australian Law Reform Commission, *Review of the Royal Commissions Act*, Issues Paper 35 (2009), Question 5–5(b).

35 Australian Law Reform Commission, *Royal Commissions and Official Inquiries*, Discussion Paper 75 (2009), [7.34].

### **Submissions and consultations**

7.35 Liberty Victoria submitted that inquiry reports should ‘require a formal government response within 90 days. Ideally both the report and the government’s response should be available online’.<sup>36</sup>

7.36 The CPSU agreed that the Australian Government should be required to respond to recommendations made by an inquiry.

Royal Commissions have often inquired into matters that are highly controversial, such as the AWB Inquiry. If the Government can hide behind the auspices of a Royal Commission inquiry without ever having to deal with the substantive issues and recommendations coming out of that inquiry in a meaningful way, Royal Commissions will be a potential tool for eroding openness and transparency in government, rather than enhancing it.<sup>37</sup>

7.37 The Law Council suggested that new inquiries legislation could include a more formal requirement for a minister to respond in Parliament. It cautioned, however, that

[w]hile Governments are generally quick to provide some form of public statement in response to the findings of a Royal Commission, this is generally not followed by any formal commitment to implement the recommendations.<sup>38</sup>

7.38 In its submission on DP 75, the Law Council further submitted that

the Government should also provide reasons why it has not accepted certain recommendations and should provide its response to the recommendations as soon as practicable after it has received them.<sup>39</sup>

7.39 The AGS did not support a statutory requirement for the Australian Government to respond publicly to recommendations made by Royal Commissions and other public inquiries. It suggested that responding to inquiry recommendations was usual practice, and, in any event, a matter for the government of the day.<sup>40</sup>

7.40 In consultations, a number of stakeholders queried the utility of requiring the Australian Government to provide a response to inquiry recommendations.

### **ALRC’s view**

7.41 The recommended *Inquiries Act* should not require the Australian Government to provide a formal response in Parliament, or any other response, to reports of Royal Commissions and Official Inquiries. If the ALRC’s recommendation with respect to tabling inquiry reports is accepted, a minister tabling a report or statement generally

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36 Liberty Victoria, *Submission RC 1*, 6 May 2009.

37 Community and Public Sector Union, *Submission RC 10*, 22 May 2009.

38 Law Council of Australia, *Submission RC 9*, 19 May 2009.

39 Law Council of Australia, *Submission RC 30*, 2 October 2009.

40 Australian Government Solicitor, *Submission RC 15*, 18 June 2009. See also Australian Government Solicitor, *Submission RC 31*, 6 October 2009.

will make some comment about the Australian Government's response to recommendations. If members of Parliament are concerned that a minister does not do so, or disagree with his or her comments, that minister will be subject to parliamentary scrutiny in the usual way.

7.42 The ALRC notes concerns that positive comments about inquiry recommendations, made by the Australian Government at the time it releases an inquiry report, do not always mean that those recommendations will be implemented. The Australian Government may need some months to consider precisely how to implement recommendations made by Royal Commissions and Official Inquiries. The ALRC's view, therefore, is that requiring the Australian Government to respond to inquiry recommendations at the time of tabling an inquiry report would be of limited practical benefit to the public. A more pressing issue is whether there should be a requirement to provide information about actual implementation of inquiry recommendations.

### Implementation of recommendations

7.43 Given the many and varied functions of public inquiries, their effectiveness is measured in a number of ways, for example, by implementation of reports, critical feedback from experts, judicial and academic citation of reports, or even the way that recommendations affect popular thinking on social issues.<sup>41</sup> Implementation of recommendations is one important measure of the effectiveness of inquiries. In this section, the ALRC considers whether the recommended *Inquiries Act* should require the Australian Government to provide information about implementation of recommendations made by Royal Commissions and Official Inquiries.

7.44 The *Royal Commissions Act* does not require the Australian Government to provide updates on implementation of Royal Commission recommendations. The *Commissions of Inquiry (Children in State Care and Children on APY Lands) Act 2004* (SA) again provides a contrast. The minister responsible for administering that Act is required to provide a number of ongoing reports in Parliament on the implementation of the recommendations arising from these inquiries.<sup>42</sup>

7.45 Currently, the Australian Government provides ad hoc updates on implementation of recommendations made by public inquiries. One example of comprehensive online reporting relates to a recent inquiry that was appointed under the *Quarantine Act 1908* (Cth). The website of the Equine Influenza Inquiry (2008) contains the report from, and other information about, the inquiry.<sup>43</sup> It also contains a

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41 B Opeskin, 'Measuring Success' in B Opeskin and D Weisbrot (eds), *The Promise of Law Reform* (2005) 202, 216–220.

42 *Commission of Inquiry (Children in State Care and Children on APY Lands) Act 2004* (SA) s 11A.

43 *Equine Influenza Inquiry* (2008) <[www.equineinfluenzainquiry.gov.au/](http://www.equineinfluenzainquiry.gov.au/)> at 4 August 2009. Note that the Equine Influenza Inquiry had many of the same powers as commissions established under the *Royal Commissions Act 1902* (Cth).

link to the Australian Government Department of Agriculture, Fisheries and Forestry (DAFF) website.<sup>44</sup> It also provides access to the Government's official response to the inquiry report, and a telephone number for general inquiries about the report and the Government's response. The DAFF website also provides a link to the website of the Australian Quarantine Inspection Service, which provides extensive information about ongoing implementation of recommendations, including Implementation Status Reports.<sup>45</sup>

7.46 There is no central body or website, however, that provides access to official responses to Royal Commission recommendations. Further, there is no central body or website that tracks implementation of accepted recommendations. The most recent inquiries conducted under the *Royal Commissions Act* have their own websites from which the inquiry reports, and other material, may be downloaded. These websites, however, do not contain information about the Government's response to the reports or actual implementation of recommendations.<sup>46</sup>

7.47 In Australia, there is no dedicated body that assists with the implementation of recommendations made by Royal Commissions or other public inquiries.<sup>47</sup> This may be contrasted with recent amendments to New Zealand Cabinet practice. Upon the completion of a project referred to the New Zealand Law Commission (NZLC) by the New Zealand Government, the NZLC prepares on behalf of the relevant minister the Cabinet position paper on the report.<sup>48</sup> If the minister and relevant Cabinet Committee approves of the paper, it is submitted to a Cabinet committee for approval of the recommendations.<sup>49</sup> If Cabinet accepts the recommendations, and a Bill is required,

44 Australian Government Department of Agriculture Fisheries and Forestry, *Equine Influenza Inquiry Report and Response* (2008) <[www.daff.gov.au/about/publications/eiinquiry/](http://www.daff.gov.au/about/publications/eiinquiry/)> at 4 August 2009.

45 Australian Government Australian Quarantine and Inspection Service, *Equine Influenza Inquiry—The Government's Response* (2008) <[www.daff.gov.au/aqis/about/eiimplementation](http://www.daff.gov.au/aqis/about/eiimplementation)> at 4 August 2009.

46 See, eg, *The HIH Royal Commission* (2003) <[www.pandora.nla.gov.au/pan/23212/20030418-0000/www.hihroyalcom.gov.au/index.html](http://www.pandora.nla.gov.au/pan/23212/20030418-0000/www.hihroyalcom.gov.au/index.html)> at 4 August 2009; *Royal Commission into the Building and Construction Industry* (2003) <[www.pandora.nla.gov.au/pan/24143/20040427-0000/www.royalcombc.gov.au/index.html](http://www.pandora.nla.gov.au/pan/24143/20040427-0000/www.royalcombc.gov.au/index.html)> at 4 August 2009; *Inquiry into the Centenary House Lease* (2004) <[www.ag.gov.au/agd/www/centenaryhome.nsf](http://www.ag.gov.au/agd/www/centenaryhome.nsf)> at 4 August 2009; *Inquiry into Certain Australian Companies in Relation to the UN Oil-For-Food Programme* (2006) <[www.oilforfoodinquiry.gov.au/](http://www.oilforfoodinquiry.gov.au/)> at 4 August 2009.

47 The establishment in 2005 of the Office of the Building and Construction Commissioner represents a partial implementation of a recommendation of the Royal Commission into the Building and Construction Industry: T Cole, *Final Report of the Royal Commission into the Building and Construction Industry* (2003), vol 1, 27, 29; Australian Government Office of the Building and Construction Commissioner, *About Us* (2009) <[www.abcc.gov.au/abcc/AboutUs/](http://www.abcc.gov.au/abcc/AboutUs/)> at 4 August 2009.

48 New Zealand Department of the Prime Minister and Cabinet, *Cabinet Office Circular [CO (07) 4]—Law Commission: Processes for Project Selection and Government Response to Reports*, 2 August 2007, [12]. This Cabinet paper is to reflect 'the views of the Minister and all relevant agencies, and incorporating split recommendations where there is no consensus'. This takes place unless the NZLC is otherwise directed by the relevant minister.

49 Ibid.

Cabinet will add this Bill to the Legislation Programme.<sup>50</sup> The New Zealand Cabinet Office monitors the progress of responses to NZLC reports.<sup>51</sup>

7.48 In IP 35, the ALRC asked whether the Australian Government should be required to make publicly available information about its implementation of recommendations made by Royal Commissions or other public inquiries.<sup>52</sup> In addition, the ALRC asked whether a government department or some other permanent body should be required to coordinate the government's response to, and monitor the implementation of, recommendations made by Royal Commissions or other public inquiries.<sup>53</sup>

7.49 In DP 75, the ALRC proposed that the *Inquiries Act* should require the Australian Government to publish an update on implementation of recommendations of an inquiry that it accepts: one year after the tabling of the final report of a Royal Commission or Official Inquiry; and periodically thereafter to reflect any ongoing implementation activity.<sup>54</sup> The ALRC also expressed the view that the Australian Government should have primary responsibility for tracking the implementation of recommendations made by inquiries established under the Act.<sup>55</sup>

### Submissions and consultations

7.50 Stakeholders almost uniformly agreed that the decision to implement inquiry recommendations is a matter for government. The Law Council also noted, however, that:

[t]he failure to implement key recommendations threatens to undermine the public's confidence in Royal Commissions as an effective form of public scrutiny of executive action. It also challenges the effectiveness of Royal Commissions and other forms of Inquiry as mechanisms to achieve policy change.<sup>56</sup>

7.51 Other stakeholders supported the introduction of a requirement to provide information about implementation of recommendations. For example, the Construction, Forestry, Mining and Energy Union submitted that, where an inquiry recommends an ongoing process of reform, the Australian Government should provide periodic updates to Parliament on the status of each recommendation.

In our experience, the present lack of any positive obligation in this respect gives too much scope for the Government to avoid dealing with controversial or inconvenient recommendations and fails to provide sufficient finality to the proceedings,

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50 Ibid, [13]–[14].

51 Ibid, [11].

52 Australian Law Reform Commission, *Review of the Royal Commissions Act*, Issues Paper 35 (2009), Question 5–5(c).

53 Ibid, Question 5–6.

54 Australian Law Reform Commission, *Royal Commissions and Official Inquiries*, Discussion Paper 75 (2009), Proposal 7–2.

55 Ibid, [7.52].

56 Law Council of Australia, *Submission RC 9*, 19 May 2009. See also Law Council of Australia, *Submission RC 30*, 2 October 2009.

particularly for individuals or organisations against whom adverse findings have been made.<sup>57</sup>

7.52 Liberty Victoria suggested that the Australian Government should provide such information ‘in a timely manner’ once an inquiry had concluded.<sup>58</sup> In its submission on DP 75, Liberty submitted that

the Government should be *required* to provide post tabling updates; ideally after 1, 2 and 5 years and responding to each and every recommendation within a given Report. Finally, Liberty urges that any requirement to provide progress reports be applied to tabled, partially tabled and non-tabled reports.<sup>59</sup>

7.53 Millar submitted that, to ensure ‘more accountability and transparency in the follow-up of Royal Commission reports’, inquiries legislation could require:

within a period between one year and two years after the inquiry report is tabled, the tabling of a report by the government (which could be in the form of a ministerial statement) on the outcome of the government’s response to the inquiry report; the government’s report should specify whether any subsequent such reports will be made to the Parliament (an interim government report to the Parliament could also be presented before the one to two year period).<sup>60</sup>

7.54 In the context of recommending a new framework for public inquiries, Civil Liberties Australia suggested that the executive

should be required to report, one month before any election, the recommendations/implementation from National Commissions held in the current and preceding parliamentary term, including noting those under way.<sup>61</sup>

7.55 The CPSU emphasised the importance of adequate funding for government agencies tasked with implementing inquiry recommendations.

We also note that the value and viability of recommendations coming out of Royal Commissions or public inquiries depends on the Government’s willingness to appropriately resource and fund the implementation of those recommendations.<sup>62</sup>

7.56 On the other hand, it was suggested in consultations that funding the implementation of inquiry recommendations may prioritise funding of some issues over other issues that, while important, were not the subject of inquiry.

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57 Construction, Forestry, Mining and Energy Union, *Submission RC 8*, 17 May 2009. See also Accountability Round Table, *Submission RC 29*, 30 September 2009; Australian Collaboration, *Submission RC 24*, 22 September 2009.

58 Liberty Victoria, *Submission RC 1*, 6 May 2009.

59 Liberty Victoria, *Submission RC 26*, 27 September 2009.

60 G Millar, *Submission RC 5*, 17 May 2009.

61 Civil Liberties Australia, *Submission RC 17*, 19 May 2009.

62 Community and Public Sector Union, *Submission RC 10*, 22 May 2009. See also Community and Public Sector Union, *Submission RC 25*, 22 September 2009.

7.57 With respect to coordinating the implementation of inquiry recommendations, Liberty Victoria supported the creation of a new small body to ‘be tasked with coordinating and tracking all public inquiries’. It suggested that such a body could publish information about inquiries on a public inquiries website.<sup>63</sup> In consultations, another stakeholder suggested that existing bodies, such as the Commonwealth Ombudsman, could be responsible for reviewing implementation of recommendations.

7.58 Mr Ian Mackintosh suggested that

updates should be published at not more than 6 month intervals on a website maintained by a permanent ‘Inquiries Body’ that accepts, registers, collates, publishes, acts as a Public First Face for all ‘Royal and Official Inquiries’.<sup>64</sup>

7.59 The CPSU was concerned that the creation of a coordinating department or body may be counterproductive if this meant that

other agencies did not have to take responsibility for problems within that agency or that the coordinating department merely impeded the implementation of recommendations within other agencies by creating another level of oversight. It is also likely that implementation by the relevant agency of the specific recommendations of a Royal Commission serves to enhance that agency’s processes and procedures more generally.<sup>65</sup>

7.60 The AGS submitted that:

In practice, relevant investigatory and prosecution agencies are responsible for acting on a Royal Commission or Inquiry’s recommendations, once the government response has been decided on. With policy inquiries the relevant department with responsibility for the area of policy in question will be responsible for coordinating the implementation of the government’s policy response.

Whether the establishment of a permanent body to undertake these roles would be justifiable and if so the extent of its resources would be a matter for government to assess having regard to the past trends in the establishment of such inquiries. The sporadic nature of Royal Commissions and similar inquiries is likely to be a relevant factor to consider in assessing whether such a role would be justified.<sup>66</sup>

### **ALRC’s view**

7.61 The decision to implement recommendations made by Royal Commissions and Official Inquiries should be a matter for the Australian Government. The ALRC notes, however, that it is difficult to ascertain whether recommendations made by most recent Royal Commissions and other public inquiries have been implemented, and agrees that there should be more information available about implementation of recommendations made by Royal Commissions. As the same principles of government openness, transparency and accountability apply to Official Inquiries, there should be an

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63 Liberty Victoria, *Submission RC 1*, 6 May 2009.

64 I Mackintosh, *Submission RC 23*, 21 September 2009.

65 Community and Public Sector Union, *Submission RC 10*, 22 May 2009.

66 Australian Government Solicitor, *Submission RC 15*, 18 June 2009.

obligation on government to track implementation of recommendations made by both tiers of inquiry established under the recommended *Inquiries Act*, and make the results of such tracking publicly available.

7.62 The ALRC is also of the view that there is no need to create a permanent body solely for the purpose of tracking implementation. The ALRC is concerned about placing an onerous burden for tracking implementation of recommendations on small existing bodies, such as the Commonwealth Ombudsman and the IGIS. This does not preclude the Australian Government from delegating this function to existing bodies, as appropriate.

7.63 Further, the Australian Government should not be required to table in Parliament information about the implementation of inquiry recommendations that it has accepted. Instead, the Australian Government should publish this information in electronic form, for example, on a website. While inquiry reports should be tabled in Parliament, the ALRC sees no need to require the Australian Government to account to Parliament on an ongoing basis about recommendations it is not required to implement. The ALRC notes that, if this recommendation is accepted, the Australian Government still may be questioned in Parliament about information published online. Further, it is the ALRC's view that a requirement to provide updates on implementation should apply only to recommendations that the Australian Government accepts.

7.64 With respect to appropriate time periods for the publication of information about implementation of recommendations, the Australian Government should be required to publish this information one year after tabling the report of an inquiry or the statement of reasons why part of a report is not being tabled. This time period allows appropriate time for the Australian Government to determine how to deal with the issues raised by an inquiry. Further, it does not preclude the Australian Government from publishing information about implementation of inquiry recommendations within the year following the tabling of an inquiry report. The ALRC also recommends that, after one year, the Australian Government should publish, on a periodic basis, information that reflects any ongoing implementation activity.

7.65 Finally, the ALRC notes there are already government processes in place for the coordination of implementation of recommendations made by Royal Commissions. If the ALRC's recommendation to introduce Official Inquiries is accepted, these processes should extend to the coordination of recommendations made by Official Inquiries. The ALRC, therefore, does not recommend that a particular government department or some other permanent body be responsible for the coordination of implementation of recommendations established under the *Inquiries Act*.

**Recommendation 7-3** The recommended *Inquiries Act* should provide that the Australian Government should publish an update on implementation of recommendations of an inquiry that it accepts: one year after the tabling of the final report of a Royal Commission or Official Inquiry; and periodically thereafter to reflect any ongoing implementation activity.

