The implications of the Royal Commission and Regulator Activity on NFP Governance

3 AUGUST 2019



EVOLUTION OR REVOLUTION?

ROYAL COMMISSION INTO AGED CARE QUALITY & SAFETY

Hearing Dates

Date	City	Focus
18.02.19	Adelaide #1	Perspectives of regulators, unions and industry orgs
18.03.19	Adelaide #2	Perspectives from consumers. Regulatory Framework
06.05.19	Sydney	People in residential care with an emphasis on Dementia
17.06.19	Broome	Needs of ATSI and TSI, Rural and remote services
24.06.19	Perth	Person centred care, experiences, access to palliative care
08.07.19	Darwin	Wound, medication, continence and pain management
15.07.19	Cairns	Nutrition and Hydration, mobility and social supports
29.07.19	Mildura	Needs of family, informal and unpaid carers and respite care
05.08.19	Brisbane	Regulation
09.09.19	1 Week	
08.10.19	2 Weeks	
04.11.19	2 Weeks	
09.12.19	1 Week	

Recent Royal Commissions - Commonwealth

- Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (2017-2019)
- Royal Commission into Aged Care Quality & Safety (2018 – present)
- Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (2019 – present)

Recent Royal Commissions - State

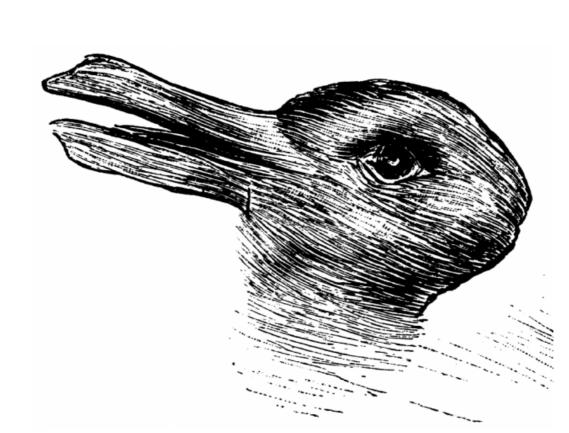
- Victoria
 - Mental Health Royal Commission (2018-present) (VIC)
 - Royal Commission into the Management of Police Informants (2018-present) (VIC)
- South Australia

– Murray-Darling Basin Royal Commission (2018-2019)

PARADIGM SHIFT







Paradigm Shift

- Fundamental change in an individual's or a society's view of how things work in the world
- It is not an evolutionary process its more transformational
- The paradigm we use is based on what we perceive to be true and accurate



"There appears to be a reluctance on providers to participate in the provision of information. What does this tell us about the approved provider's ability to be transparent."

Royal Commissioner Ms Lynelle Briggs

ABC News 19 February 2019

- In relation to the criticisms levelled at the regulators of the banking industry, an article produced by Stephen Long of the ABC with reference to the Australian Securities and Investments Commission (ASIC)
- "The corporate watchdog is contemplating more than 40 court cases – including criminal prosecutions – in the wake of the banking royal commission, as it adopts a litigate-first strategy."

- RC "Right. But you, obviously, as you've already indicated, don't have clinical training yourself, so you're relying on the managers reporting that to you?"
- RC "The manager at [the facility] and presently doesn't have nursing qualifications by way of background?"

- RC "So ultimately, you have, in a managerial sense, responsibility for each of the facilities."
- Witness Yes, I do.
- RC "Yes. And above you, though, or including you, there is the Board and the Board has ultimate responsibility, though, for what happens at places like [facility]; would you agree?"

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- Critical of seeking to shift blame
 - Staff changes
 - Regulator
 - Financial structure
- RC "..ultimately your responsibility"
- RC "...and then obviously the Board"

- Critical of lack of clinical expertise on the Board
 - 12 to 18 months on board
 - Still recruiting after approximately 12 months

Effects

- Expectations
- Increased costs
- Greater transparency
- Open disclosure
- Model of care
- Collaboration
- Increased reporting

Already implemented

- Quality of Care Amendment (Minimising the Use of Restraints) Principles 2019
- Aged Care Legislation Amendment (Quality Indicator Program) Principles 2019 – (weight loss, pressure injuries, restraint)
- Aged Care Legislation Amendment (Comparability of Home Care Pricing Information) Principles 2019

Stages of a Royal Commission

FROM WHOM MIGHT THE ROYAL COMMISSION GATHER INFORMATION? Residents/victims (current/ historic); Eamilies of residents Staff (as individuals): Unions representing staff; Advocacy groups; General public; Members of parliament Related industry organisations(allied health, health service providers) .

HOW WILL THE ROYAL COMMISSION GATHER INFORMATION?

- A Royal Commission has coercive inquisitorial powers and is not ultimately bound by the strict rules of evidence in reaching its findings Call centre Generally the initial point of contact; The call centre will review the information it receives and determine if the information within the Tarme of Reference:
- Generating the immediate of the information it receives and determine if the information is within the Terms of Reference; If the information is within the Terms of Reference the individual may be registered to attend a Private Session.
- Vritten Submissions There is not set format for a written submission, it can be a letter, email, report or any other document.
- vate Sessions
- The sessions are not open sessions and may be with a Commissioner, Information provided by individuals at a private session is not given under oath, or affirmation (residents, family members, staff, whistle-blowers);
- Individuals attending a private session are not considered witnesses at that stage. Their information is not treated as evidence before the Royal Commission and their information (or statements) are not cross
- The Royal Commission into Institutional responses to Child Sexua Abuse saw 8,000 private sessions conducted between May 2013 and November 2017 in 96 locations across Australia

earings Royal Commission hearings allow the Royal Commission to gathe evidence from individuals and organisations.

- ase Studies The Royal Commission selects matters to be examined in more detail at a public hearing, for example where there are a large number of allegations against an organisation, where systemic issues have been identified across the industry

- sues and Consultation Papers Royal Commission will issue 'Issues and Consultation Papers' (ICP) based on its work;
- eased on its work; The ICPs provide individuals and organisations with an opportunity to contribute to the Royal Commission's consideration of systemic issues; Responses to the ICPs are likely to be published on the Royal Commission website.
- olicy and Research
- Policy and Research Consultations through roundtables on topic generally related to an ICP; Are more focussed consultation with government, NGOs, regulators, policy experts, academics, victims and advocacy groups.
- gadens Contact details:

Sabine Phillips

Partner Telephone: 03 9252 7720 Email: sabine.phillips@gadens.com

MISSION DO WITH THE DRMATION IT GATHERS

Where information is provided which indicates a contravention of the law, the Royal Commission can refer matters to the other regulatory authorities;

Use the information to identify which organisations the Royal Commission should consider for the public hearings and case studies;

May use the information to inform the development of

The Royal Commission m consider it appropriate to publish the names of the organisations which have been identified in the priva sessions and written submissions;

Identify systemic issues which should be considered for case studies.

Preparation for Public hearings In preparation for public hearings, the Royal Commission can: Issue notices or summons to produce specified

n: Issue notices or summons to produce specified documents and data; Review the documents and if required will seek further information; Identify potential witnesses; Request/Prepare witness statements;

PUBLIC HEARING PROCESS

- Request statements from organisations; Collate documents to be tendered at the public
- hearing;
- : Engage experts to give evidence (if appro
- Engage capets to give charactering in paperphase) (dentify the specific scope and run prose of the public hearing, including the details to be examined; Individuals and organisations are likely to be advised before the public hearing if adverse evidence is likely to be given against them.

 Hearings
 Opportunity for individuals to present their experiences;

 Examine and explore the response of orgather time of incidents;
 Examines systemic issues

:

Are open to the public and are likely to be broa streamed via the Royal Commission website Some hearings maybe a private hearing based Royal Commission's assessment of the need to protect withesses

The Royal Commission into Institutional responses Child Sexual Abuse had a total of 444 hearing days

- After a Public hearing Written submissions setting out the evidence and available findings to the Commission are prepared by the legal coursel assisting the Commissioners; Copy of the submissions are provided to those who had leave to appear and those who are at risk of an adverse finding; There is an opportunity to respond to the submissions;
- Submissions are usually subject to a non-publi order until all parties have replied.

- Case Study Report The Findings of the Commissioner who presided over each of the public hearings are set out in a Case Study Report which will be forwarded to the Governor-General, the State and Federal ministers and tabled in Parliament; Case study reports will be made public and available via the Royal Commission website.

WHAT INFORMATION CAN BE ADE AVAILABLE VIA THE ROYA COMMISSION WEBSITE?

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Hearing Sched Live streaming of hea

- Transcripts and exhibits (documents provided to the Royal Commission by an approved provider) associated with each case study;
- Issue and Consultation Papers and responses to the Issue and Consultation

Brochures and fact sheets:

Transcripts of speeches made by the Commissioner

All reports of the

The Royal Commission into Institutional Responses into Chi Sex Abuses' webpage was viewed 1,211,450 times in 60 countries other than Australia during the period of the Royal Commission, the public hearing: were viewed 880,000 times, which was a daily average of 4,766 viewers.

Previous Royal Commission have also established twitter accounts, Facebook accoun and have YouTube channels

AFTERMATH

- + Dealing with any recommendation Reputation
- Insurance
- Commercial risk Criminal and or civil acti
- •••• Action against in



Banking Royal Commission

- Inadequate oversight of non financial risks
- Unclear accountabilities
- Weaknesses in issue identification
- Complex and bureaucratic decision making
- Risk management better on paper than in practice

Standard 8 – Organisational Governance

Standard 8 : Organisational Governance

Consumer Outcome

I am confident the organisation is well run. I can partner in improving the delivery of care and services.

Organisation Statement

The organisation's governing body is accountable for the delivery of safe and quality care and services.

CLINICAL GOVERNANCE

The essence of clinical governance is to ensure that the right thing happens to patients more often (by making it easy to do the right thing) and wrong things happen to patients less often (by making it difficult to do the wrong thing).

Wolff and Taylor, Enhancing Patient Care, a practical guide to improving quality and safety in hospitals 2009, MJ Brooks Sydney page 5

Does the Board know?

- The capacity of staff to care for care recipients?
- How many care recipients and where?
- The infection rate
- If wound management is being done effectively?
- Resident's nutrition is achieving its outcome?
- Are we doing no harm?
- Are residents better off?
- If the residents are receiving quality care

Barriers to Clinical Governance

- If governance is effective then <u>all</u> systems are effective
- Clinical issues should be part of audit and risk
- We're accredited, that's enough
- We're only small, we don't need formal systems
- Tolerance of sub standard care
- Believing your own hype
- · Lack of expertise and skills
- No effective Whistleblower systems

Documentation

- Good Records = Good Defence
- Poor Records = Poor Defence
- No Records = No Defence

QUESTIONS?

Disclaimer

The information contained in this presentation is intended as general commentary and should not be regarded as legal advice. Should you require specific advice on the topics or areas discussed, please contact Sabine Phillips directly.

Sabine Phillips Partner T: +61 3 9252 7720 E: sabine.phillips@gadens.com