



OFFICIAL REPORT
AITHISG OIFIGEIL

DRAFT

Finance and Public Administration Committee

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Session 6



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Tuesday 28 October 2025

CONTENTS

	Col.
SCOTTISH PUBLIC INQUIRIES (COST-EFFECTIVENESS)	1

FINANCE AND PUBLIC ADMINISTRATION COMMITTEE
28th Meeting 2025, Session 6

CONVENER

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DEPUTY CONVENER

*Michael Marra (North East Scotland) (Lab)

COMMITTEE MEMBERS

Ross Greer (West Scotland) (Green)

*Craig Hoy (South Scotland) (Con)

*John Mason (Glasgow Shettleston) (Ind)

*Liz Smith (Mid Scotland and Fife) (Con)

*Michelle Thomson (Falkirk East) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Professor Carl Dahlström (University of Gothenburg)

Wendy McGuinness (McGuinness Institute)

Dr Scott Prasser

CLERK TO THE COMMITTEE

Joanne McNaughton

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

Finance and Public Administration Committee

Tuesday 28 October 2025

[The Convener opened the meeting at 09:03]

Scottish Public Inquiries (Cost-effectiveness)

The Convener (Kenneth Gibson): Welcome to the 28th meeting in 2025 of the Finance and Public Administration Committee. Ross Greer sends his apologies and will join us when he can.

The first item on our agenda is to take evidence from two panels of witnesses on the cost effectiveness of Scottish public inquiries, looking specifically at international examples and comparisons. I am delighted to say that, for our first panel, we are joined remotely by Professor Carl Dahlström, professor of political science, University of Gothenburg, Sweden; and Dr Scott Prasser, a public policy consultant and commentator from Australia. I welcome you both to the meeting and thank you for taking the time to speak to the committee about your experience and knowledge of public inquiries in your jurisdictions. We will move straight to questions.

Good morning to you, Professor Dahlström. I note that, in your report “Public inquiries in Sweden and Norway”, you say that public inquiries are initiated by the Swedish Cabinet by issuing a commission directive. You say:

“This outlines the inquiry’s terms of reference, specifies the type of inquiry to be held, identifies the issue to be investigated, and sets a closing date.”

Are those terms generally stuck to?

Professor Carl Dahlström (University of Gothenburg): First of all, thank you very much for having me here. I should also say that the report that you referred to was written by Kira Pronin, who is a PhD.

In answer to your question, inquiries generally stick to the directives. The normal procedure is to have quite a lengthy directive. There has been some criticism about the directives becoming more and more precise, and thus framing the inquiry more and more, but they can be written in either an open or a more specific way. They are kept to, and the Cabinet can issue new directives if it feels that the inquiry needs further direction.

The Convener: Thank you for that.

One issue that we have, and which I will go into a wee bit more in a moment, is that there seem to be no cost controls or time limits on our inquiries. It is causing great concern. For example, one inquiry—the Sheku Bayoh inquiry—has been going for six years now; it has cost at least £51 million so far, with no end in sight. In fact, the judge chairing that inquiry resigned just last week. In England, we are having difficulties with the grooming inquiry, which has cost £186 million so far and is also having difficulty with chairs resigning et cetera. Therefore, I am interested in finding out how you in Sweden manage to ensure that inquiries are not only timeous and completed at a relatively modest cost, it seems, but still seem to be widely appreciated and accepted by the general public.

Professor Dahlström: First, the time by which the reports should be delivered is set out in the original directives; it is normally within two years, but I think that at the moment the mean time is 15 months. Inquiries can be shorter or longer; we certainly have examples of longer—almost permanent—committees, but they have been given a very specific, often analytic, on-going task.

As for cost controls, the budget is limited, and the committees involved have on-going contact with Government offices. They can, of course, ask for an extension of the budget; otherwise, they have to stay within the budget frame.

I do think that timing is the main issue. It seems from your example that no specific time limit was set at the outset. It is always the case with Swedish public inquiries that you have a delivery date at the outset; you have to ask the Government if you need more time, which it can obviously grant or not.

The Convener: I note that Olof Palme’s Government in 1982 was keen to restrict timeframes to two years and yet, ironically, the investigation into his own murder appears, at 57 months, to have been the longest inquiry in Sweden. That is interesting in itself.

Dr Prasser, you have had a number of inquiries in Australia. We have received a document from you that shows quite a seesaw in the number of inquiries over the eight Governments that you looked at. Over the period from the Menzies Government to the Albanese Government, there were 27 under Labor and 27 under the Liberals and National Party. Is there any real difference in the approach by the different Governments in Australia?

Dr Scott Prasser: Generally, Labor Governments—that is, socialist Governments—tend to appoint more inquiries than Liberal, or conservative, Governments, because Labor Governments tend to have a more programmatic

approach to issues and, in a way, want to do more things.

I think that you need to understand Australia in a federal way. We have a federal Government and state Governments. We have royal commissions that are appointed by the Governor-General on the advice of the Prime Minister, and we have public inquiries that have no statutory power at all. It is the royal commissions that cost the big money—the big bucks, if you like—because they tend to be run like courts. They might look like courts, but they are royal commissions.

In Australia, public inquiries, royal commissions and so on are totally ad hoc, unlike in Sweden or the Nordic countries, where commissions of inquiry are integrated into the policy process. An important issue might arise, but the Government of the day might not want to have a royal commission on it. That sort of game is going on all the time.

The unusual thing that happened between 2013 and 2022 was that the conservative and Liberal coalition Government that was in power appointed about nine royal commissions. That was fairly unusual, because it is usually Labor Governments that appoint lots of royal commissions. The Liberals lost power in 2022, and we have only had one royal commission under the current Albanese Government.

It all varies depending on what the issues are and which Government is under pressure. The pressure comes from the public; Parliament itself has no role in appointing, and has no involvement in, royal commissions or any inquiry. Parliament has its own committees, but they do not have public inquiries in that sense.

Does that help at all?

The Convener: It is interesting to look at the contrasts between here and Australia. The issue about inquiries here is that people want justice for a slight—or a perceived slight—or, indeed, want to look at how, say, a disaster that has happened can be avoided. An obvious example here in Scotland is the Piper Alpha disaster, in which 167 people died; that inquiry was actually brought in in 13 months at a fairly modest cost, and yet, as I have said, the costs of subsequent inquiries that we have had have gone up exponentially.

What is the trend in Australia with regard to that cost envelope? What kind of budgets are the Australian royal commissions brought in at? What controls do they have? Moreover, has there been an inflationary impact on budgets, or have they stayed much the same over the years?

Dr Prasser: Royal commissions tend to cost more, because of the involvement of lawyers—representing lawyers, prosecuting lawyers and

assistant lawyers—and because they tend to last longer.

Costs do vary widely, but two recent royal commissions have raised concerns about costs. The 2013 royal commission into institutional child sexual abuse cost 340 million Australian dollars, and it cost that much because it went on for about four years and because it was like a truth-telling commission. A lot of the people who had complaints about sexual abuse were allowed to express their viewpoints, and they did not have to give evidence under oath. That made the process longer, and people received assistance, too.

The second commission—and I remind you that these are federal royal commissions—is the royal commission into abuse of people with disability, which reported only last year and cost 600 million Australian dollars. That really caused a lot of people to hit the roof. The commission went on for four years, and the problem was that it was a multi-member royal commission and its recommendations were split. After all that money had been spent, and four years later, we did not get any definitive recommendations, and that raised concerns.

There are precedents in Australia for the Government closing down a royal commission or making it end more quickly. In 1984, we had a royal commission into agent orange, which was a chemical used by America in Vietnam. Australia was the only western country that had soldiers in Vietnam; we had a whole army and an air force there, and complaints were made that a lot of the soldiers were getting cancer. A royal commission was appointed; the royal commissioner found that there was no correlation and wanted to conduct a bigger and longer general study of the matter. However, the Government said no, and that royal commission came to an end.

09:15

The second royal commission that was closed down was the one on the activities of the painters and dockers union, called the Costigan royal commission after its chair. It went into trade union corruption, tax evasion and poor running of the Australian Taxation Office; it discovered a correlation between the union and tax evasion and bad practices by international banks, and as a result, it changed the Australian banking system.

However, it was closed down by the Hawke Labor Government. The Liberal Government had appointed it, but the Hawke Government closed it down, because many people thought it was getting too close to particular people in the Labor Party. After four years, the Government said, “We want you to submit a final report by such and such a date—and that’s it.” Moreover, if the royal

commission did not do so, the Governor-General had been instructed to withdraw its latest patent, and it would have lost all power and come to an end anyway.

There are couple of cases like that. Some royal commissions only cost 4 million or 5 million Australian dollars, which is fine. However, we should remember that, in Australia, we have had only 138 royal commissions since federation—that is, since 1901. Governments mostly appoint non-statutory inquiries to give policy advice on lots of things, but they have no power. However, they do cost money. A famous one in Australia was called the Gonski review of school funding, which cost 5 million Australian dollars; it did not cost very much and went on for two years.

That is how we do it. A lot of it is driven by the politics of the situation at the time.

The Convener: What is the public perception of royal commissions in Australia? Do people have a lot of confidence in them? We understand that the public in Sweden have confidence in the equivalent processes there, which seem to be relatively short, sharp and inexpensive compared with the ones that we have just discussed.

Dr Prasser: Australians are basically a bit—I am trying to think of the right word—sceptical of their Governments.

The Convener: No. *[Laughter.]*

Dr Prasser: There is a two-pronged process. We have royal commissions into matters such as bush fires, floods and major accidents in the same way that you do for issues there. Whenever there is a problem, everyone calls for a royal commission, because it is the most powerful body in what we might call public inquiry land. A royal commission can make people attend and give evidence, even if that evidence is self-incriminatory. A royal commission can tap people's phones and seize documents from their houses. It can also send them to jail if they do not attend. People have to answer its questions—it is an inquisitorial body.

Many people like royal commissions and call for them because they are usually chaired by a judge or a former judge. In Australia, we now have a policy of not appointing sitting judges to such commissions, because they would have to stand down from judicial office. Therefore, royal commissions have a lot of prestige. At the same time, they sometimes come out with answers that are not the ones that people want, so they are criticised. They are called a whitewash, considered not very effective and so on. Sometimes there are what we might call dud royal commissions, or ones that do not seem to be as effective as others.

The Australian public also tend to like royal commissions because they appear to be more independent than normal public inquiries and can attract much more money. For example, a royal commission into corruption can get more money than an anti-corruption commission. We have anti-corruption commissions in every state and also federally, but a royal commission can get 60 million bucks and no one will query that at all.

We like the prestige and independence of royal commissions. We also like that they hold public hearings, all their evidence is released, and sometimes they get the people they are after. At the same time, sometimes such a commission does not give the answers that the people who called for it wanted or expected, so there can be disappointments.

Although the public attitude to royal commissions is ambivalent, in general when a problem arises the default reaction is to call for one. For example, as the committee will know, in Australia we have sharks that sometimes attack people. Some of those who have suffered such incidents have called for the establishment of a royal commission into them, which no Government has yet appointed.

Overall, though, what I am trying to get across is the high regard in which royal commissions are held in Australia.

The Convener: I get the impression that you are not necessarily a big fan of royal commissions, that you feel that there is a preponderance of them, and that the knee-jerk reaction to almost any kind of event there is to call for one to be established. We have similar concerns here, in that everyone seems to think that a public inquiry is the answer. As you have pointed out, though, even if an inquiry is held sometimes people do not get from it the answers that they think they will.

Dr Prasser: One debate in Australia was about whether we should have had a royal commission into the handling of the Covid pandemic. Scotland held a public inquiry, Sweden had a commission of inquiry, as did Norway, and New Zealand had a royal commission.

As the committee will know, in Australia, constitutionally, all decisions about health and policing are taken by the states. The Commonwealth Government cannot hold a royal commission into a state area of responsibility unless the states agree to it. From time to time we have federal state royal commissions. The inquiry into child sexual abuse was one such example.

The big issue was whether we should have had a federal state royal commission into the handling of the Covid pandemic. When the Labor federal Government came to power it appointed a public inquiry. However, such an inquiry has no power—

it cannot make anyone do anything. Also, its terms of reference did not include examining what the states were doing, so many people said that it was a whitewash to protect the Labor states that had been in power during the pandemic.

Therefore, we have not had a proper federal inquiry, and in Australia there is a lot of debate about whether we should have had one. I am in the camp with the many other people who say that we should have had a proper open royal commission. Some Senate committees have also advocated for that position.

The big royal commission that we have just finished is the one examining the Robodebt scheme. That was a Government programme to work out what people should get in social welfare benefits, which the Morrison Government—the previous Government—had brought in. The scheme went awry, and people who did not owe money were sent bills. That inquiry was closed down by the previous Government. However, the new Labor Government has put a royal commission in place to find out, first, how the scheme could have been such a shambles, and why no one knew that the thing was illegal, and, secondly, to get at the previous Government. Therefore, what happens can be quite political, in a sense.

That debate has raised some very good points. I agree that there should have been a royal commission into that issue. However, could they appoint a royal commission into that issue and not one into the pandemic?

The Convener: Thank you. Professor Dahlström, do you want to come in?

Professor Dahlström: I point out that there is quite a big difference between public inquiries in Sweden and the royal commissions that Dr Prasser has just discussed. In Sweden there are no investigative inquiries that have powers equal to those of royal commissions. One should also note that most public inquiries consider policy, give policy advice and suggest legislation. Fewer than 1 per cent of all such inquiries are investigative inquiries of the sort that we have just discussed. It is important to keep that in mind.

As for costs, I think that the cost of the entire system in Sweden—all the public inquiries, including all the commissions—is about £40 million to £50 million a year. We are talking about around 150 different commissions sitting per year.

The Convener: Thank you for that. One of the significant points made in your report is that Government offices provide

“administrative services to commissions of inquiry. These services include fully furnished office rooms, IT and telecommunications equipment, and information and advice on administrative matters and archives”.

From our perspective, that sounds like a remarkably sensible approach, given that, often, when we have inquiries we have to reinvent the wheel. Before an inquiry can kick off, it can take many months not only to find an appropriate chair but to find premises and get a secretariat together. How impactful is that set-up on the ability in Sweden to make sure that commissions start promptly and also rein in costs?

Professor Dahlström: It is hard for me to say how important it is for keeping costs down. However, I can say that, given that there are between 60 and 100 new commissions every year in Sweden, the routine for setting up such commissions or public inquiries is extensive. Also, as you have just noted, a special unit at the Government offices handles only those issues and helps with all the practicalities for public inquiries.

The Convener: Your report also said that

“commissions have no specific power to compel private individuals or entities to provide them information or testimony”.

What are the implications of that? Will you also tell us about the role of the legal profession in inquiries in Sweden?

Professor Dahlström: We need to think about the role of public inquiries in Sweden generally. They are part of the ordinary policy process, so we should think about them more as ad hoc agencies with powers similar to those of normal government agencies. Compared with the royal commissions that Dr Prasser discussed, they are more like policing bodies or something similar. I am not sure whether Dr Prasser will agree with that. He is much more knowledgeable when it comes to such matters, though, so I urge members to listen to him on those. In Sweden, an inquiry is more of an ad hoc agency with powers that include looking into new policy suggestions, comparing evidence statistically and interviewing people.

I do not know whether that is helpful to you, but that is what I can say. We could go into more detail on the coronavirus pandemic commission. That was one positive example I can think of about how an investigative inquiry can function.

The Convener: I want to let my colleagues in so I do not want to go on for too much longer. I am thinking about major investigative inquiries, such as the inquiry into the MS Estonia maritime disaster, which lasted 24.9 months. Some 852 people died in that disaster, which I remember very vividly. I looked at the memorial in Tallin when the committee was in Estonia last year. For events that are as emotive as that, if you cannot compel witnesses, how difficult is it to get the kind of outcome that would be desired by the families of the victims and so on? The report talks about how the system has a very high level of public

acceptance in Sweden. In cases like the Estonia disaster, how would the legal profession be involved and what would the impact of that be on the delivery of that inquiry?

09:30

Professor Dahlström: You are right to point to that inquiry. It has not been accepted by the victims and the victims' families as a definitive answer to what happened during that disaster. That is definitely a downside of the Swedish system. There might have been a higher acceptance of that inquiry if there had been the possibility to compel witnesses to give evidence. That might be one example of the Swedish system not working as it should. But again, I point to the fact that the general system is designed not to deliver investigative inquiries but to give policy advice and to look at the broader implications of new policies as well as laying the ground for compromise and consensus.

The Convener: Finally, although you are not allowed to compel witnesses under the Swedish system, is there a feeling that people, although not compelled to attend, generally do so? The implication is that perhaps one or two vital witnesses in the Estonian inquiry decided not to give evidence. Is that the case? One would have thought that, even though people are not compelled to attend, the general pressure would mean that they feel obliged to participate.

Professor Dahlström: I have no systematic evidence to lean on so we need to be quite careful. However, my impression is that people generally bear witness and that they feel the pressure to do so. That is how it generally works.

The Convener: Thank you very much for that. I will move on now to other colleagues.

Liz Smith (Mid Scotland and Fife) (Con): Good morning. Thank you very much for coming to speak to us from your various parts of the world.

One of the issues that we face in Scotland is that we are being asked to conduct an increasing number of public inquiries because of a perceived failure of public services. We have had quite a number of inquiries set up because services—whether it is the health service, the education service or justice service—are just not performing. Are you seeing that trend in relation to your royal commissions or investigations in Sweden or Australia? I will go to Professor Dahlström first.

Professor Dahlström: No, I do not think that I see a trend of people asking for more investigative inquiries. They are less than 1 per cent of the total number of public inquiries in Sweden. Of around 3,000 inquiries between 1990 and 2016, only 16 or 17 were investigative inquiries. However, there are

some examples of important inquiries, such as the corona commission—where we had legal and other experts going through the handling of the coronavirus pandemic—that have delivered quite critical reports.

Liz Smith: On that topic, I will ask about the Australian situation. You mentioned in an answer to the convener that there are occasions where new directives are set out. Could you give an example of where the terms of reference have been changed or extended?

Professor Dahlström: It quite common to issue new directives for public inquiries. That could happen, for example, after an election, when a new Government comes in. A new Government will typically have around 100 sitting inquiries, which it can shut down totally if it wants to—a new Government might do that with some of them. It could also give new directives to some of them—perhaps if it would like to suggest a policy, but maybe not exactly the same policy as the previous Government.

Liz Smith: That is very helpful. In those circumstances, would the people who want the public inquiry—perhaps they are victims of some perceived malpractice—be pressurising the Government to make changes?

Professor Dahlström: Again, we should make a distinction between the absolute majority of inquiries, which are the policy public inquiries and the very few investigative inquiries. We had the corona commission and if a new Government had come in and wanted to shut down that inquiry, that would have been a hard sell in the eyes of the public. There is definitely a pressure not to do that when it comes to investigative inquiries and it is also less common to give new directives to those kinds of inquiries. However, when it comes to policy inquiries, it is quite common for a new Government to give them new directives or to shut them down.

I also note that the Swedish Government has the power to shut down all inquiries on one day and to start new ones. It can do that if it wants to—that power lies with the Government, which does not need to check with Parliament or anyone else. It is within the Government's own powers.

Liz Smith: I will come back to the question of the policy inquiries in just a minute. First, I want to ask you, Dr Prasser, about the Australian situation. Do you perceive that there is growing disquiet with public services?

Dr Prasser: No. There are a lot of reviews—public inquiries that are not royal commissions, and have no power—into a range of different areas of policy, but they are all about trying to make things better. How can we improve the curriculum, for example? We have had three

inquiries into teacher education issues. They are not regarded as big failures. There are lots of policies. Governments want to do new things.

A famous inquiry, a non-statutory inquiry in Australia, was the Campbell inquiry into financial deregulation appointed by the conservative Fraser Government, which reported in 1981 and had not been implemented very much. The incoming new Government had another inquiry into the same issue, which endorsed the same recommendations, and that is how Australia got a floating dollar deregulation banking system—it came from that inquiry.

There are always different reviews of legislation, school funding, the health system and so on. They are not seen as particularly problematic but rather as a consideration of how we can make something better. That is the general view. There is not a sense of Government failure or public service failure, as such.

There was a royal commission into the Commonwealth public service in 1974 or 1975 but that was not because there was anything dramatically wrong. There had not been a royal commission for 50 years into that topic and the Government thought that it should have one. We had a royal commission into whether we should have FM broadcasting in Australia. There have been lots of inquiries into a range of different policy issues, which have often been quite important in making a difference. A famous one in the 1950s was an inquiry into universities. The Commonwealth Government did not give money to universities until the 1960s because it had no constitutional power. However, the prime minister at the time, Robert Menzies, was a very big believer in education. So we had the inquiry, which led to the Commonwealth Government taking over, and eventually running, all universities in Australia. They are now all run by the Commonwealth Government. That may or may not help you.

Liz Smith: Yes, it is very helpful. The more that each of you talks about your own jurisdiction, the more it comes across that your situation is very different from what is happening in Scotland. Namely, quite a lot of your inquiries or commissions are about policy issues, whereas we are seeing an increasing number of investigative public inquiries.

In the investigative inquiries that you have—though they may be few in number—do you find that those who have asked for the inquiry or who are involved in the situation that is being investigated are generally satisfied at the end of the inquiry? Do you find that there is general satisfaction that the inquiry has come up with the right result and has been able to ascertain where blame might lie or has increased accountability?

Dr Prasser: The general view of the child sexual abuse inquiry in 2013 was that it raised the right issues and was very effective. We have had a royal commission into veteran suicide in Australia, which only reported last year. How we tackle veteran suicide and how we prevent it is, to me, a very difficult issue. I think that there are still some families who are not happy. It was quite an involved royal commission. The person who chaired it was a former deputy commissioner of police at state level.

There has been some concern from the royal commission on aged care quality that the Government is not spending enough money on aged care, which is a Commonwealth responsibility. There are always those sorts of stories around those sorts of inquiries. Some people think that a royal commission can solve all problems. We had a royal commission on banking because people were very unhappy about the private banking system, foreclosures and those sorts of things. Although the commission found lots of issues, there is still some agitation and people are still unhappy. I do not know that too many people are happy about their bank, but that is the problem.

There are all those sorts of examples. In the state of Queensland, where I come from, we had what was called the overseas doctor scandal. Overseas doctors were being employed in the public health system who had not been checked properly and who were not properly qualified or had bad records. We had two royal commissions into that topic and the second one is an outstanding example of a royal commission. It exposed the problems in both state and Commonwealth Governments and resulted in the tightening up of the procedures for employing people with overseas qualifications in the Australian or Queensland health systems. Those are some examples that may help you.

Liz Smith: Thank you very much. Is it the case in Sweden as well, that generally speaking, there is reasonable satisfaction with the process?

Professor Dahlström: Yes. I think so. There is reasonable satisfaction. However, as we discussed earlier, there are important examples of investigative inquiries that have not reached that level of satisfaction. The sinking of the MS Estonia is one such example. Another example would be the inquiry looking into the investigations and handling of the murder of our prime minister, Olof Palme. They are both examples of inquiries where the general public were not satisfied. The corona commission that I mentioned earlier is an example of the opposite case, where we had much more satisfaction among the general public after the delivery of that report.

09:45

Liz Smith: Thank you both. Lastly, is the public generally satisfied that these inquiries do not cost too much and that the timescale is acceptable or do you have kickback from the public in your countries about such inquiries becoming a bit too expensive or that too much time is taken up on them?

Professor Dahlström: In Sweden, that is not a big issue at all. I do not think that there is any discussion going on about the cost of the inquiry system. There is satisfaction with the policy process as a whole. Especially when it comes to policy proposals and how those are handled, acceptance is quite high.

Dr Prasser: In Australia, every now and again, the media run a story about the cost of royal commissions or a particular royal commission—not the non-statutory ones, which are at the cheaper end of the scale. I may get a phone call about what a list of these royal commissions have cost, how many days they have sat, blah, blah, blah, and so on and so forth. Every now and again, when the media maybe have nothing else to do or are looking for a story, they will run a story like that and you will get the cynical, sceptical comment, “Oh, well, another royal commission—”

Our royal commissioners get paid, by the way—they get paid millions of dollars. A person could become a millionaire from chairing a royal commission. The commissioners are paid and all the lawyers who are assisting the royal commission and so on, are paid, so it becomes what is called a lawyers’ picnic, where everyone gets in on the bandwagon.

Non-statutory inquiries are different. I have worked for ministers where we have managed a non-statutory inquiry and we were pretty tight on how the budget was spent. The chair of one committee I was involved in overseeing wanted to go to the United States. I said no and that was the end of the story: “You are not going, okay? The minister said no.” That was not a royal commission, which is a different game altogether. You have to appreciate the difference.

Liz Smith: Thank you very much for your evidence. It has been extremely helpful.

Michelle Thomson (Falkirk East) (SNP): Good morning. Thank you very much for joining us. I reflect what my colleague Liz Smith said.

I am interested in you thinking about your cultures. I mean culture not just within your states or sub-states, but in your legal profession, culture in general, in the media and so on. To what extent is culture and trust a consideration in the type of inquiry that is agreed in your jurisdictions?

The reason why I ask that question is that I find myself reflecting on whether it is the case that within the United Kingdom, trust in institutions is very low and that has, in people’s eyes, necessitated the need for these judge-led inquiries with the resultant issues. I think that both of you may have a reflection or a perspective on the UK, and indeed Scotland, from the outside looking in, that I would be interested in hearing about. Perhaps you could go first, Professor Dahlström, and reflect a little on trust and culture within Sweden and then give us some reflections on what you see from the outside looking in.

Professor Dahlström: That is a very interesting but also a difficult question. Looking at the Swedish system, I think that trust in Government and the policy process is an important part of the story. The public inquiry system over the past couple of decades has been part of building that trust.

Looking back to the 1950s, 1960s, 1970s and even the 1980s, several of the inquiries included members from both sides of the political aisle. The Opposition was represented in the commission, giving them full access to all investigations and so on. That built trust. That was an important part of how those policy inquiries worked and outside observers looking at Sweden have praised that in different reports. However, over time, and today, those inquiries that I would call parliamentary inquiries or parliamentary commissions have gone from being around 50 per cent of all the inquiries in the 1970s to maybe 2 or 3 per cent today. That kind of compromise building is no longer a big part of the Swedish system but it was then and it was held in high regard.

Looking at Scotland, I think that you are on to something with your question, for sure, when it comes to how citizens in general view the state. I think that trust is higher in Sweden generally, but I am a bit hesitant to say anything more than that. Making causal claims of how this works is a little bit tough.

Michelle Thomson: You are being very diplomatic. Perhaps I can hear from Dr Prasser, with similar reflections.

Dr Prasser: All the surveys in western countries and in Australia say that there has been a decline in trust. I do not quite buy that in a sense. If you ask someone in a certain way, “Do you trust the Government?”, you will get a negative sort of answer. We basically do not like politicians—they are all in it for what they are going to get—even though I think that politicians are underpaid and overworked and all that sort of stuff. I will give you an example of what I mean.

The first federal royal commission in Australia was in 1902. Before we were federated, the

Australian states sent soldiers to the Boer war to help the British or the English. On the way back, on the boat, 16 died. That led to the new federal Government appointing a royal commission. They appointed a royal commission, but it had no power. Then they passed the Royal Commissions Act 1902. The report came out and said a number of things—[*Inaudible.*—people knocking what the royal commission was saying.

Michelle Thomson: Dr Prasser, sorry, we lost you for a minute there. Would you mind going back to the story about the boat and the point at which a royal commission was set up? Thank you very much.

Dr Prasser: Okay. Can you hear me okay?

Michelle Thomson: Yes, I can.

Dr Prasser: So, the first Australian federal royal commission was in 1901-02, after soldiers coming back from the Boer war died. Australian states—colonies—sent soldiers to the Boer war to help the British Empire and, on the way back, a number of soldiers died. The new federal Government decided to appoint a royal commission. The Governor-General issued the letters patent, but the commission had no power. The Parliament then passed the Royal Commissions Act 1902, which is still operational, although greatly changed. The royal commission reported and a lot of people said that it was a whitewash—there was criticism that that royal commission was not effective.

Our second royal commission was about where we should locate the capital of the country. The recommendation that the commission made was not the one that was followed. So, from the word go, Australia has had a sort of scepticism about these things.

Overall, there is a culture of what you may have heard called the tall poppy syndrome in Australia, in that we do not really like some people, no matter how rich they might be, how smart they might be, or whatever. There is a view about politicians and Governments that is overall a bit negative, even though we dramatically rely on Governments to do just about everything—to build the railways, run a national health system and so on. There is that sort of scepticism.

What people like about public inquiries and royal commissions, if they are properly set up, is their independence. Sometimes, they criticise the Government that appoints them, or people get found out with their hands in the till or for fraud or whatever. In many ways, royal commissions, although being critical, have helped to highlight problems about things.

There is always a culture of being critical of politicians—and you know, our politicians were

paid a wage before English politicians were, and so on. We had universal suffrage in 1902, before many other countries. We have a very strong democratic tradition. Our senate has always been elected, even before the American senate was directly elected. We have a very strong democratic tradition, but also a tradition of being very sceptical about people's motivations, if you like. I think that that feeds into the point that you are making.

As for the Scottish model, we are quite fascinated that Scotland has its own Parliament, of course—it is an interesting development—and that there is this sort of independence structure. We understand that Scotland is a small country of five million or so people and therefore needs to be economical about what it does. You can have too many inquiries, and too many public inquiries, which leads to policy inertia. In the end, I believe that elected politicians should make the decisions, which should not be governed by commissions or by public inquiries. Inquiries and commissions are merely advisory mechanisms to the Government of the day.

There was a comment in Australia, when we had nine royal commissions established under the coalition Government in last 10 years, that we had a cult of the royal commission. That is, we were flicking too many things to a royal commission to solve both the policy problem and the political problem. Governments could not cope with the fragmentation of public opinion that was going on, which is affecting all western societies. Scotland should be wary of thinking that an inquiry can solve every policy problem, and solve the politics. In the end, the elected politician should be the one making the decisions, not the commissions.

Michelle Thomson: Thank you very much for that.

John Mason (Glasgow Shettleston) (Ind): Thank you for all the evidence so far. It has been most interesting.

If I may start with yourself, Professor Dahlström, I was interested that there was general public acceptance of the Coronavirus Commission and its results—and it was incredibly quick. It started, as I understand it, in June 2020 and completed in February 2022, which was under two years, and cost very little money.

Sweden was very interesting and a lot of people here felt that we should be copying Sweden, instead of the people that we did copy. In one sense, what your country did was quite controversial and yet the inquiry happened very quickly. Was it too quick? Would there have been an advantage if it had either started a bit later or gone on a bit longer?

Professor Dahlström: Of course, it is very hard to say whether the commission could have gone

further, but I stand by my previous conclusion that the result was quite generally accepted. I think that the reason for that is that the chairperson was a legal scholar, but the members of the commission were all experts, mainly from academia, with no ties to any political parties. The commission had a reasonable budget, not super large, but they reached out to the academic community and started many sub-inquiries, you might say, looking into, for example, deaths in elder care home facilities and presenting academic reports on the reasons for that. They looked into ownership structures, whether private care homes had more deaths than, for example, public ones, or whether for-profit was worse than non-profit and so on. I think that the structure of the commission and its leaning very heavily on neutral expertise are the key reasons why its conclusions were accepted.

10:00

John Mason: I understand that, in both Sweden and Australia, commissions have a number of people on them, not just one chair. Our tendency is to have one chair who does everything. Is having more people on a commission an advantage? We had the example from Australia, I think, of where of a commission was split, so it may not have been helpful there, but do you feel that having a group of people as the commission is better than having one person?

Professor Dahlström: It depends very much on what you want to achieve. I should say that, even though I am referring to commissions and public inquiries in the plural, there are also quite often what in Sweden are referred to as special investigators. They operate within the same system and in those cases there is a single person. She or he could be backed up by a secretary and he or she could have the powers to reach out to experts and so on, but it is one person. That is not uncommon and it has become more common over time. We have more special investigators today in Sweden than we had in the 1980s or 1990s; that is for sure.

When it comes to more investigative inquiries, it is quite important that they involve a group of people, and political neutrality is important for the general public. It is also important that they often work together with experts; it might even be the case that a majority of those involved will be experts in the field who are there for their academic merits rather than other issues.

John Mason: Thanks. That is helpful.

Dr Prasser, is it the same in Australia? Is having a group of people rather than just one person the norm?

Dr Prasser: Yes and no. The royal commissions that are probing corruption are the

ones that should be single person; for example, the Costigan royal commission was a single person. The royal commissions around the states into corruption tend to be single people. However, the royal commission into disability and abuse and so on had seven people on it. With that number, it starts to become more a representative group of people, trying to get everyone from all sorts of angle. That royal commission was the one that cost \$600 million and came up with split decisions on a number of key issues, such as whether we should have special schools or not, which is a big issue.

I suppose that I am in the camp that thinks that, on issues that have broader policy areas, there should be a couple of people. The royal commission into the detention of youth had two people on it. The royal commission into banking had one person on it. The veteran suicide royal commission had three. Someone from the veterans community had to be on that commission. It is horses for courses in a sense.

It is in the non-statutory inquiries where you will see a much wider range of membership, because they tend to try to include not just experts but people who represent different interests and so on. An inquisitorial royal commission should be seeking the truth, not trying to have an approximation of what people find acceptable. It is a problem if you have too many people on board. I have talked to chairs of inquiries about trying to get everyone to agree to the final report. We do not have too many minority reports from royal commissions. We have a couple, but it is rare. If you have too many on a commission, that will happen, and when it does, the commission's value declines. The Government can say, "Part of this royal commission said A and part of it said B, so we will make our own decision what to do about that royal commission recommendation."

John Mason: Thanks—that is also helpful.

As I understand it, most inquiries in Sweden—and it is the same in Norway—take place in private, not public. Professor Dahlström, can you tell us why that is the case and whether you feel that it is an advantage or a disadvantage?

Professor Dahlström: For policy inquiries, in which you need to discuss the different positions of different parties and so on, it is important to have that opportunity to discuss different standpoints. That is right.

There are also of course negative aspects. The system might have less legitimacy if inquiries take place in private. However, I do not believe that that is a big issue when it comes to the public inquiries. All the documentation and so on are open and transparent in the Swedish system. When you say that inquiries take place in private, you are

referring to the fact that almost all discussions are behind closed doors, unless there is a public hearing.

John Mason: Maybe I can press you on that a little bit. For example, one of the big aims of the Covid inquiry here has been to allow victims, such as family members who lost somebody in a care home, to have the opportunity to speak and share their experience and all that kind of thing. Would that aspect be public in Sweden?

Professor Dahlström: It could be if it was a public hearing but, when people give evidence to the commission, the interviews will not necessarily be public.

John Mason: I have a couple of other points, both of which relate to Sweden. As I understand it, if there are recommendations, there has to be a proposal as to how those will be funded. Is that the case?

Professor Dahlström: If a recommendation affects Sweden financially, it needs to be cleared, so to speak. It has to be discussed. That needs to be obvious from the investigation. However, inquiries do not necessarily need to come up with a proposal for how it will be funded. That could be part of a different inquiry if that is needed.

John Mason: When the proposals come up, if I understand this correctly, they get circulated around a number of bodies and those bodies can then respond. The suggestion is that, if a lot are negative, the Government might not go ahead with it. Is it always the case that the final proposal is put out for consultation?

Professor Dahlström: That is correct. That is called the referral system in Sweden, and that is protected in the constitution. The Government needs to take advice from those bodies in society that are affected. It does not have to follow their advice, but it has to ask for their advice. The policy process is such that the minister might have an idea and then put together an inquiry that looks into the issue at hand and makes a proposal. That proposal goes out to, for example, trade unions, business organisations, municipalities, agencies and so on. Those organisations write short written reports back to the Government and the Government then decides how to proceed. Either it writes a bill, maybe with a slightly updated proposal, or it decides to throw everything in the bin, or something in between.

John Mason: Thanks very much, both of you. That was helpful.

Craig Hoy (South Scotland) (Con): Good morning. It has been put to us by some witnesses who have come before us that there is essentially, in the Scottish context, a trade-off between the time and cost of public inquiries and their quality.

Given that both of your jurisdictions seem to be doing them more quickly than we do, it would be interesting to get your reflections on that observation. That is one position that has been put to us quite regularly by those who have been involved in UK public inquiries—if you make inquiries shorter, you are potentially diluting the quality of the inquiry. It would be interesting to get reflections from both of your jurisdictions. Perhaps, Professor Dahlström, you might want to come in first from a Swedish perspective.

Professor Dahlström: I can be quite brief here. I can say that over time—I am talking about a 40-year period—inquiries have become shorter in Sweden. That has also led to some criticism that they are not serving the same purpose as before, which is to lay the ground for compromise and find rational solutions to policy problems. We have that kind of criticism also in Sweden but, again, even given that fact, the system is still accepted.

Dr Prasser: Australian royal commissions, if we are talking about those sorts of bodies, can report within a range of five months to four years. The average length of a royal commission is about two years overall. The royal commission into bushfires was 10 months, so it was very quick. The non-statutory inquiries that we talk about are usually less than 12 months; they might be six to seven months.

Where you get into a royal commission such as the aged care one, where people want to come forth and give their experiences, or the disability one, it is becoming a truth and reconciliation type of body and it can consume vast amounts of time and resources. I think that you need separate processes. The aged care royal commission could have been done much more quickly if it had just gone to the crux of the issue and not tried to do all that other process. It was the same with the royal commission into child sexual abuse, which took three or four years, a lot of which was taken up with that sort of process.

You have to decide what you want the royal commission to be. Will it get at the truth of the matter, or will it be a truth-telling, reconciliation type of body? Trying to do both adds to the problem and clouds what the royal commission can do.

10:15

Certainly in Australia, you are right. In Australia, there has certainly been a concern that we have had a Government that was appointing too many commissions. The Whitlam Labor Government, in three years of office, appointed 13 royal commissions and it was regarded as out of control. You have that political game going on, in

which the electorate expresses its frustration about yet another commission.

You have to be careful how you structure a royal commission. Some royal commissions are efficient because they are run by someone competent who knows how to run one. The second royal commission into the overseas doctor scandal in Queensland was run by Geoff Davies, a former head of the Queensland Court of Appeal. Its report is a brilliantly written royal commission report—everyone should read it. He picked up the pieces of the previous one that was closed down and he did it extremely quickly. He did it in six months, basically. There we are—it is about the competence of the people running it. A commission not quite knowing what it is there for and why it has been appointed leads it to go for a fishing expedition, and that becomes an expensive fishing expedition.

Craig Hoy: Dr Prasser, from your comments, I think that you are saying that certain Governments may have a similar problem to Governments here. It has been put to us by some witnesses that, when a political storm hits, be that post-Covid or in relation to a death in police custody, the minister wants the issue off their desk so, regardless of the best solution to address the issue, they gold-plate it by going for a public inquiry. Have you seen something similar in Australia? How do you guard against that in the social media age, when it is much easier to inflame public opinion?

Dr Prasser: That can happen. Our greatest Prime Minister was Robert Menzies, who was Prime Minister for 16 years. In his whole time as Prime Minister, we had only five royal commissions. He was a great lawyer, too, of course, and he was reluctant to appoint royal commissions, because he had this very odd idea that, essentially, the Government makes the decisions. We had the famous royal commission on espionage, which related to the Petrov case and which was quite controversial. I am sorry, but it is about the quality of your politicians and whether they are willing to say, “We’re not going to have a royal commission in this area.”

In 2016, the Turnbull Government dilly-dallied for 12 months about whether there should be a royal commission into banking and referred the issue to the stock exchange people to look at. Turnbull was under such pressure after he almost lost the 2016 election that he eventually appointed a royal commission. He would have been better doing it straight away and ending all the trauma but, for 12 months, he said, “We don’t need it,” and then, suddenly, we got one. It is about the politics and where the Government is in its electoral cycle.

The present Government has just won a big election victory and has two thirds of the

representatives in the House of Representatives, so it can thumb its nose at anyone who says that it should have a royal commission to do anything. It probably should have a commission on some issues, but it is not going to do that. The political vibrancy of the Government of the day and the leadership affects these things, because royal commissions are all decided by the Government—no one else decides that there will be a royal commission. There is no parliamentary input. It is just political—everything is politics, and that is the way it is.

Craig Hoy: Professor Dahlström, does Sweden have a similar political dynamic or are things done slightly more rationally?

Professor Dahlström: We definitely have the criticism that the Government might want to get things off its table and that putting together a public inquiry is a convenient way of doing that, as it gives the Government a little bit of space to not need to discuss what might be a controversial issue.

However, if one looks systematically and over time at the timing of when public inquiries are put together, that points clearly to the fact that almost all public inquiries are set up at the beginning of the mandate period and report during the mandate period, and very few are set up towards the end of the mandate period. If the situation had been otherwise, that could have indicated that Governments want to get rid of things before an upcoming election, for example. The evidence points to the fact that inquiries are used as they are supposed to be used—namely, to look into problems, come up with policy solutions, and then lay the ground for a bill from the Government.

There is little evidence to suggest that inquiries are actually used to get things off the table. That is the scientific evidence in this field. However, having said that, the point is still quite often made by political commentators and may affect the public’s view of commissions.

Craig Hoy: Those were my more general questions. I have two specific questions—one for each of you. Professor Dahlström, the remuneration that those who chair inquiries receive has been referred to. In Scotland, there is a concern that some lawyers and chairs have received significant amounts of public money for their involvement in inquiries. I noted that, in Sweden, the chair or those who lead inquiries can receive either a lump sum or a monthly fee. Our concern about a monthly fee is that, potentially, someone could run down the clock on that. What is the mechanism for determining how those who lead inquiries are paid?

Professor Dahlström: I cannot give a specific answer on what decides whether someone gets a

monthly salary or a lump sum. That is specific to each inquiry. However, on what was said here earlier—that you can become a millionaire by running a public inquiry—that is certainly not the case in Sweden. The chair would have a monthly salary comparable to what she or he has earned before and not more than that. As for the members, they will get very little. They will get compensation only for income that they did not get. If they do one day, they might be compensated for the income loss from their ordinary job, but they will not get anything extra.

I do not know whether that helps. I am sorry that I cannot say why people sometimes get a lump sum and sometimes a monthly salary. It is more to do with the individual and whether they are employed somewhere else at the time.

Craig Hoy: That is helpful. You referred to the fact that someone cannot become a millionaire doing this in Sweden, but that is a concern here.

Another concern—both of you might want to address this point—is that organisations such as Police Scotland say that they face significant costs because they have to tool up and provide the manpower to engage with almost all public inquiries here. What provision is made for those third-party groups, which often form part of the state, either as Government bodies or law enforcement agencies? How are they funded, if at all, for their engagement and for the costs that are incurred in engaging with public inquiries in Australia and Sweden?

Dr Prasser: In Australia, there is no funding. If such organisations want to, or are requested to, appear before a parliamentary committee, that is their role and duty. In Australia, we have Senate estimates committees, which might involve 20 people from a Government department sitting in a room for a whole day.

In a royal commission, if you are called to give evidence, you come and give evidence, and that is it. If we are having an inquiry into police corruption, we do not care whether you are out of pocket or whatever. We are investigating you because we think that you are corrupt. Not all royal commissions are like that but, generally, it is up to the individuals.

With non-statutory inquiries, it is up to people whether they want to participate so, if they do not want to get involved, they do not have to. However, if it is an important inquiry and they do not appear, their views will not be expressed and they could be criticised and so on. They have to make those decisions. In my discussions, I have never heard of any idea of the Government paying people for giving evidence or for being taken out of the workforce to do certain things. That is how the system operates.

I understand the problem that Police Scotland has. If you have lots of inquiries, they take up time. The chief executive officer has to appear before them. That is a big take of time and that issue has to be managed. Too many inquiries can be problematic.

Professor Dahlström: The situation is similar in Sweden, in that people do not get any compensation and there is definitely none for other agencies. However, if, for example, you ordered a statistical investigation into something or needed an analysis of large registers, that might, so to speak, be bought from another agency. That might be the only exception, but then one specific transaction is needed.

Craig Hoy: Dr Prasser, I note that the state of Victoria has introduced a formal mechanism that is intended to ensure that recommendations are implemented. Do you have any insight into how effective that mechanism is and how it is formulated?

Dr Prasser: There are two views about making recommendations. One is that a commission or inquiry goes ahead and recommends what it thinks should happen, and that is it. It does not take any into account the cost or whether it is politically acceptable. It says, “We’re the experts, and this is what we think.” The other view, which has been expressed by some chairmen, is that they try to work out what is practical and what will be accepted and then try to modify the recommendations so that they are not over the top.

The complaint against some royal commissions into disasters is that they think that the Government has no other call on its funding except for the disaster. Royal commissions often come up with recommendations that are too expensive and have no appreciation that Governments cannot do everything, and those commissions tend to be sidelined quickly. It is no use a federal royal commission recommending something that the Commonwealth Government has no power over because it is a state responsibility. It is no use saying that the Commonwealth Government should do something about classrooms, because the Commonwealth does not run schools, so it cannot do anything about classrooms. It can negotiate, but it cannot do anything about that.

To me, the commissions or committees that look at things much more practically can do lots of things to make their recommendations more acceptable in the way in which they frame them and the timeframes for them. A take-it-or-leave-it approach often means that the Government will leave it rather than take it.

Craig Hoy: Dr Prasser, your book has a chapter by Dr Anita Mackay on what is happening in Victoria, which offers insight for other jurisdictions. That identifies that a formal mechanism is in place to monitor the implementation of recommendations in the state of Victoria. Could you elaborate on that? How effective is that mechanism and what are the specific mechanics?

10:30

Dr Prasser: That is in new inquiries legislation. In 2009, the Australian Law Reform Commission reviewed the Royal Commissions Act 1902 and did not impose the idea that there should be a formal mechanism. Victoria has gone down a slightly different path. At federal level, there is no mechanism for oversight of what happens to recommendations. With reports of parliamentary committees, the Government must respond within six months. With royal commission reports, the Government does not have to respond at all.

At the state level, that mechanism has been developed. We have already had a royal commission in Victoria—the lawyer X royal commission—for which, basically, the Government disbanded the follow-up process. Again, that is driven by the politics. Governments do not like being told what they should do with recommendations. Federally, there is no mechanism to do that, and any attempt to do it would not get a start at all.

Michael Marra (North East Scotland) (Lab): Professor Dahlström, in Sweden, the Government has a special unit called the commission service. Could you tell us a little bit about the operation of that office?

Professor Dahlström: It helps with all the practical issues for each public inquiry. It helps with setting up, salaries, location and so on. It is very much a unit that handles practical issues.

Michael Marra: In Scotland, those issues are handled case by case by the chair of the inquiry. We have had some evidence so far that there might be concerns if a central unit was provided. There might be questions of independence around how those different commissions—inquiries, in our case—were being run. Have there been any such concerns in Sweden?

Professor Dahlström: No, not really, and the reason is that the power already lies with the Government. As I said, the Government could formally abandon all sitting commissions, although the system is built on trust that the Government will not do so. From that perspective, having a central unit is a quite small thing.

Michael Marra: Dr Prasser, does the Australian model have a similar facility?

Dr Prasser: Federally, the Department of the Prime Minister and Cabinet, which is quite a big department of 300 people, has a unit that looks after royal commissions. They are recommended by the Prime Minister to the Governor-General, so the Prime Minister's department has some carriage of them, but it is a pretty minor post-op mailbox sort of role.

Once a royal commission is established, the relevant department gets involved in giving it support. People are usually seconded from the department, but they start from scratch. Normally, before a Government announces a royal commission, it has already sorted out who will be the chair. There would even have been some discussion of the supporting legal team before it is announced.

I like the Swedish model, by the way. A lot of inquiries go around looking for a room to meet in and all that sort of stuff. The Swedish model is a sensible idea. In Australia however, there is not really anything similar federally, and definitely not at the state level.

Michael Marra: Where would a new chair of one of the commissions find a statement of precedent or best practice on how to go about their work? Is there such a thing?

Dr Prasser: I think that you should look at the Australian Law Reform Commission report on the Royal Commissions Act 1902, which is all about royal commissions. Several royal commissioners were on that review, which talked about developing a guideline or guidebook for royal commissions, although that was strongly resisted by the former royal commissioners—former judges—who were on that committee. I was with them—I was on the committee, too. They said that they would decide the process that they would use and that it was not for anyone to tell them how to run their royal commission. We had two quite different former judges from different sides of the political fence who were in agreement that they did not want a guideline on how to run a royal commission.

That Law Reform Commission report lays out a lot of the issues and discusses recommendations, reporting mechanisms and so on. However, there is no best practice guideline. Certainly, the non-statutory public inquiries are individualistic. Some have consultations, some have forums, some roam around the country while others do not and so forth. It is an individualistic, bespoke type of arrangement.

Michael Marra: My question for Professor Dahlström is on the same area. Do the different commissioners in Sweden adopt a statement of precedent and best practice?

Professor Dahlström: Yes, indeed. All new inquiries are given a 170-page-long handbook that contains advice on how to set up the commission, how to report language issues, how to deal with legal proposals and so on.

Michael Marra: Does that save the commission time? To be frank, one issue that we have is how long the set-up period takes in Scotland.

Professor Dahlström: I believe that it does. Again, I have not seen any systematic evidence that looks into the issue, so I am speculating a little, but I believe so. I think that the Government officers think that, too and that that is reasonable.

The Convener: Thank you very much. Before we wind up, I have one final question for Professor Dahlström. The research says:

“The government is under no formal obligation to implement the inquiry’s recommendations. In practice, since policy advisory inquiries are an integrated part of the overall policy process, many inquiries have led to institutional or legislative change.”

What about investigative inquiries? In response to the adoption commission, the Swedish Government said:

“The government takes the commission’s presentation very seriously, and we will now carefully analyze their conclusions and proposals to make well-considered decisions moving forward.”

Is there a difference between policy and investigative inquiries in terms of how recommendations are implemented? It seems that policy proposals are much more likely to be implemented. Is that just my reading of it, or are the recommendations of both inquiry types being implemented effectively?

Professor Dahlström: You are right, but, formally, there are no differences between the two. The Government can do whatever it likes with both types of advice, but given that the inquiry report will be public, it will be hard for the Government to ignore it. For example, if a public inquiry has pointed to malfunctions in adoption, it will be hard for the Government to ignore that. It would need to provide some answer. However, formally, there are no differences.

The Convener: Thank you for that. I ask our guests whether, in winding up, they want to make any final points or emphasise any issue or area that they feel that we have not covered yet. Dr Prasser would you like to go first?

Dr Prasser: Doing what you are doing is interesting, but you have to be careful not to be overprescriptive. The virtue of these bodies is that they are ad hoc and can be appointed as you need them. If you get overprescriptive, you undermine that. You do not want them to become another part of the bureaucracy; you want them to

be much more freewheeling than that. If there are too many inquiries, that is a political issue for the politicians to resolve, as opposed to putting in some kind of breaker.

New Zealand’s Inquiries Act 2013 says that an inquiry should not go for more than two years unless it gets an extension from the Government, or something like that. That is probably not a bad suggestion to think about. If you put a time limit on them, that also means that you put a limit on the expense account. The current royal commission into the Covid pandemic has been going for more than two years, but it has been given an extension.

The Convener: Professor Dahlström, the last word is yours.

Professor Dahlström: I do not have any final thoughts, other than to thank you for allowing me to give evidence here today. Thanks a lot.

The Convener: I want to thank you both. The committee appreciates your professionalism, your expertise and the time that you have surrendered to give evidence to us today. It is much appreciated and your evidence will certainly be included in our report. Thank you both very much, gentlemen.

I suspend the meeting for five minutes to allow a changeover of witnesses and to give members a break.

10:41

Meeting suspended.

10:47

On resuming—

The Convener: We move to our second panel on the cost-effectiveness of Scottish public inquiries. I welcome Wendy McGuinness, who is the chief executive of the McGuinness Institute in New Zealand. Will you tell us a wee bit about yourself, Wendy?

Wendy McGuinness (McGuinness Institute): Thank you very much. It is a pleasure to be here, and what a fantastic topic for discussion.

By way of background, I am a chartered accountant and became a fellow chartered accountant. I moved into risk management, then moved into foresight and future studies. For me, inquiries are the inquiry of last resort. They provide us with the ability to deal with things for which we cannot have other mechanisms. That is why I have an extreme interest and focus on the importance of getting inquiries to work effectively.

The Convener: Thank you very much for that. You used the term “last resort”. What would you consider to be a last resort?

Wendy McGuinness: It is when existing systems are hit by a shock, whether that be a disaster or a pandemic—in other words, the systems are hit by something that is unusual and they are not used to dealing with and therefore an independent inquiry is required to look into that. I can talk a little bit more about that if you would like.

The Convener: Yes, I would. One broad concern that we have is that the number of inquiries in Scotland and the UK have ratcheted up over the years. It seems as though inquiries are perhaps not becoming a first resort but are perhaps not far off it in some cases. It almost becomes a go-to approach when something is not working as perhaps it should.

Will you talk us through how you feel that we have arrived at that situation, and how we can counter that? I think it is the case that no one here believes that public inquiries are not necessary. However, that does not mean that every public inquiry is necessary.

Wendy McGuinness: My view is that the world is changing at quite a significant pace, and that there is a lag in democratic systems’ ability to deal with those shocks, so we will probably see more inquiries.

I am from a farming family. If you have an extreme number of different animals, you cannot easily position, design, describe or manage them in the same way. You need to be open to what comes before you that does not fit the usual system and frame and develop inquiries to deal with that. Some inquiries should be quite short and some inquiries will be quite long. In some inquiries, as the previous two speakers said, the commissioners are there to hear and reflect, whereas in other inquiries there is a requirement for a short, quick answer because society needs a quick, short answer to be able to deal with something.

New Zealand has had a very long inquiry into the pandemic. That is not uncommon, but my view is that better mechanisms should have been designed within the inquiry frame so that we could prepare the world for the next pandemic. Instead, it has lagged, which will cause issues.

Although every animal in the field is different, certain commonalities exist. Some inquiries require fast speed while others require long consideration and a careful hearing of people and—this is the lovely word that they used—reflection, so that society knows that those views have been heard. Those two types of inquiries have very different purposes.

The Convener: It is important to acknowledge that all inquiries are unique and have different sets of circumstances, but would it be helpful if the Government took a consistent approach, with broad parameters set whereby members of the public would know whether an inquiry could and should be called for or, for example, whether what they are looking for, perhaps, is outwith the scope of a potential inquiry and that they should pursue other avenues of justice?

Wendy McGuinness: That is a good question. Given my work previously on inquiries, I knew that having a Covid inquiry was a no-brainer. One thing that I tried to push hard for was for an historian to be employed early, because one way in which to reduce the cost of an inquiry is to have the data to hand. I did not have much luck with that, so I wrote a book, “COVID-19 Nation Dates”. That, I know, has been useful to the commissioners and their advisory staff. However, when an organisation is stressed, data is often not collected. One suggestion that I would make is that there should be early engagement with an issue. When you know an inquiry is imminent is the exact time when you should put your foot down on the accelerator and invest in that work.

I heard your earlier comments about the police, for example. They should have very good records. They are in the intelligence business, so their data should be good and their systems should be effective. If they are not, the police should be mindful of that when something has the potential to turn into an inquiry.

The Convener: As John Mason pointed out—it was in the report that we had from Professor Dahlström—the Swedish Covid inquiry started in June 2020 and had produced a report within a matter of months. Do you feel that adopting an early approach, when a problem is building, is needed? In this country, we sometimes find that things come out of the blue—disasters can happen; I mentioned Piper Alpha earlier, for example. However, sometimes things build and build. As you said, with Covid, everyone knew that there would be an inquiry into the pandemic. Did you feel that starting that was perhaps delayed too long in Scotland and in the UK?

Wendy McGuinness: That was definitely the case in New Zealand. There were a lot of calls for a Covid inquiry, but it became a political issue, and it continues to play out as a political issue.

I have provided a paper for you, which will have hit your inboxes probably only around half an hour ago. I wanted to outline or make you aware of the issues that we have had in New Zealand with our Covid inquiry because they are particularly relevant for you. The terms of reference for phase 1 were not agreed and there were concerns about their being too narrow, which I agreed with—so

much so that, when the new Government came in, it reassessed that.

One political party wanted to get rid of phase 1 completely. We call it phase 1, but, at the time, it was called the Covid inquiry. The politicians decided to create phase 2, which had slightly different purposes, and that has caused a lot of problems—so much so that I could list them. One is that the commissioners for phase 2 wanted to have a public panel event with the previous Prime Minister and three of her ministers, but they got legal counsel and were advised not to attend in public but to do so in private.

I have added all that information, including a few articles, in my paper. I suspect that the Covid inquiry is a great illustration of when an inquiry goes wrong and probably becomes unnecessarily expensive. It comes back to the purpose and not getting agreement on the terms of reference in Parliament, with parties making it a political issue.

The Convener: One of the things that the committee is looking at is how we can provide a level of justice or restitution for victims in a way that is more timeous and fair to the taxpayer and wider society. As I understand it, New Zealand is trying to ensure a two-year timeframe for royal commissions. Is that realistic and deliverable? Is it likely to be breached in many cases or does it provide a discipline that enables much more efficient and effective working?

Wendy McGuinness: I agree with that period of two years, but the ability to extend an inquiry is completely acceptable, to my mind. That provides a gate for people to go through to the next steps; it gives an ability to review and assess things. It should not be policed to the extent that issues will arise if you have not done it in two years, but you should have good reasons for going beyond that period.

The Convener: You were saying earlier that it has to be completed in two years and that is best practice. You aim for two years but, if it goes beyond that, that is the situation, although they must give good reasons for doing so.

Wendy McGuinness: Yes. I have been advocating that every royal commission produces an annual report on costs, risks, benefits and what has happened in the past 12 months, so that it meets that public accountability requirement.

The Convener: We have heard from a number of witnesses that interim reports from inquiries would be helpful, not least to ensure that people do not wait until the end of an inquiry to implement any improvements. Some witnesses who have been the subject of inquiries—or whose organisations have—have said that they work to improve things as they go along.

Looking both at the New Zealand experience and approach to public inquiries and at Scotland and the UK, what advantages, if any, does the New Zealand system have that we could benefit or learn from?

11:00

Wendy McGuinness: The New Zealand Law Commission reported in 2008, and I have put the summary in the massive document you will get because it is terribly interesting to read. In it, Geoffrey Palmer, who had been Prime Minister and was at the time the president of the Law Commission, writes a good explanation of the importance of creating a simple framework. He did not want royal commissions to be one of those three types that we have in New Zealand.

Arguably, we do not have three types of inquiries. I have a little diagram in my paper—sorry that it is scribbled, but you will get the picture. We have royal inquiries, public inquiries and government inquiries, but in reality every public inquiry has been considered a royal inquiry. We put the words “royal inquiry” on it. We have not had a situation where we have had a public inquiry that is not a royal inquiry. Basically, we like “royal” because it creates independence from Government. It may be a marketing facade, but it is a useful marketing facade—to draw the distinction from government inquiries.

In 2008, the intention was that “royal” would not continue to be there—that “royal” would relate back to the 1908 legislation until it died off, if you know what I mean. In my reading, the intention was to keep the situation terribly simple, so that there would be just public inquiries and Government inquiries that are statutory inquiries.

The second aspect is non-statutory inquiries, which basically do not have legal teeth. A minister can set one up, but those inquiries do not have the ability to seek or require information or witnesses. I have to follow that up, but it is hard to follow up because, as they are non-statutory, they are not recorded well and I do not know whether we have had any of them recently, which is—

The Convener: The public do not consider those inquiries to be particularly credible then, do they?

Wendy McGuinness: That is right.

My view is that we have only two types. I know that I am taking a step away from the way the law is written but, in practice, we have only two forms of statutory inquiry—public and government—and then our statutory inquiries in organisations such as the Auditor General. Interestingly, those inquiries are increasing.

One mechanism that you might like to think about is having public inquiries and government inquiries sitting in one place and then increasing the ability of statutory organisations to run their own inquiries. Using the analogy of a pot with a top on it, you want to let as much of the steam out of the system as possible. Using statutory inquiries such as those of the Auditor General is a great mechanism because it enables those organisations to quickly see a problem, get into it, get it solved and come out with a report.

In New Zealand, select committees can do inquiries as well, which, weirdly, is not easily apparent in the narrative. I have been trying to argue for some of the select committees to run their own inquiries. For example, they could have done some early quick reports on aspects of the Covid inquiry that could have been managed quite quickly and cheaply and would have helped with the longer, broader inquiry that took place.

The Convener: Dr Prasser, who spoke in the previous session, talked about some of the inquiries and royal commissions being a lawyers' picnic—that it is almost like there is a dripping roast for the legal profession. He talked about folk becoming millionaires for chairing these royal commissions. I am wondering about the role of the legal profession in inquiries in New Zealand.

Wendy McGuinness: We often have lawyers as commissioners, or at least one of the commissioners—they are normally the chair. I do not think that we have picnics. I put a table in my document comparing the costs of the budget versus the total costs for the last three royal commissions—it is on page 3 of the document. At the moment, we are within budget with all of them. In my experience, I have never seen that before, but the commissioners are committed, diligent and responsible. They want to do the right thing.

The Convener: Do they want to come and work over here?

Wendy McGuinness: You have made me realise that it may be because of the Department of Internal Affairs. The DIA is the central unit, and it manages—actually “manage” is the wrong word. It helps to administer the inquiries, and it may have a strong ability to manage the budget and the processes and probably have a word in a few people's ears if things are going off track.

The Convener: We have not read your paper yet because it was emailed out only half an hour ago and we have been taking evidence. We have not had a chance to read it.

As well as a recommendation of having two years for inquiries, you talked about them staying within budget. I take it therefore that, when inquiries are set up, a budget is allocated.

Wendy McGuinness: Yes, the budget forms part of the terms of reference. I have the two Covid inquiries' terms of reference in the document exactly for that reason. You could check, but I am pretty sure that the budget is mentioned. It is definitely within the broader correspondence.

The Convener: Although you said that people are kept within budget, you talked earlier on about how the two-year timeframe can be extended. Is that the same for budgets—but that it is unlikely and does not happen often?

Wendy McGuinness: Yes. I think that it has happened with the Covid inquiry phase 1, but I need to check that.

It is acceptable to seek to expand budget and timeframes, and even change the terms of reference, as happened in the move from phase 1 to phase 2. A process needs to be followed to deliver that, and there needs to be a public acknowledgement that it is happening. For example, the Covid inquiry has a website, and all the updates and minutes are there—I refer you to them in some parts of my document.

As an accountant, I find the inquiries well administered. I know where I can find things and what is happening. I have also talked to those who run inquiries, and I feel confident in our public inquiry processes.

The Convener: Does the confidence extend to the implementation of recommendations? One issue we have is that inquiries can often last years. Many people who feel that they have been the victims of an injustice look to an inquiry to deliver on their behalf. The Government takes the recommendations and says, “We will examine them”, and then years pass and they fade away.

That does not always happen—sometimes recommendations are implemented—but what is the delivery mechanism for recommendations in New Zealand? Does the Government feel almost compelled to implement recommendations, or does it take a more Australian perspective, shall we say?

Wendy McGuinness: I am not quite sure what the Australian perspective is, but—

The Convener: Maybe aye, maybe no.

Wendy McGuinness: It probably is that.

One thing that makes me angry is when a report is not even acknowledged. A report is written and the Government just accepts it. I will give you an example: a report may be given to the Governor-General for one moment and then taken out of their hands and given to the Government. We could make more of the passing of the report to the Governor-General in that situation. We should

make more of the fact that it has been acknowledged and read by the Government, and the Government should go to the extent of saying, "We will read it." The process could be simple but, in other words, we need a proper acknowledgement and not just, "Thanks". A more detailed analysis should then come out to summarise what the Government will do and what the Government will not do.

The Convener: Generally, are recommendations in New Zealand implemented timeously, or is it very much a mixed bag?

Wendy McGuinness: It is a mixed bag. From the royal commission of inquiry into genetic modification, we analysed 47 or 49 recommendations and a lot fewer than half were implemented within the shortish timeframe of five years. I could clarify that for you, but my experience is that the New Zealand Government generally is not good at looking after royal commissions of inquiries and their recommendations. That is so much the case that in the book, "Nation Dates", which I have marked in my document, we reviewed all the royal commissions in New Zealand to get soft copies for a website, and a significant amount were not found anywhere. We did not have soft copies.

The Convener: The first witness we took evidence from for our work on public inquiries said that his inquiry, which looked into child abuse in Jersey, went back subsequently, a year or two later, to look at the effectiveness of the recommendations being implemented and what had changed. Is there any follow-up on what happens in New Zealand?

Wendy McGuinness: That would align with us. I would like the commissioners to be called upon or sought to do a review of the recommendations five years hence. There are two reasons for that. One is that the public has spent so much money, time and effort on getting the best brains on the job. Secondly, getting the reflections, say five years later, provides an ability to get those individuals' last thoughts.

I always think that about the last chapter of the book—when you have finished the book, published it and then thought, "I should have added this bit". Often, that observation is key, and we lose the opportunity to get it because of the way that the files are basically closed. Everything goes off to Archives New Zealand and that is it. It is a disappointment and a poor investment in the process.

The Convener: Thank you for that. I will open up the session to colleagues around the table. The first will be Liz Smith, to be followed by John Mason.

Liz Smith: Good morning. You said that the world is changing in terms of how democracy operates and so on. Is that change one of the reasons for some of the issues that public inquiries face, and could you tell us what that is?

Wendy McGuinness: In the past six weeks, I have been at the Organisation for Economic Co-operation and Development's expert group on strategic foresight, which gets together for two days, and I have spent five days with the Oxford scenarios development programme. It is well acknowledged that change stays linear for a long period and then jumps all over the place. In many ways, change has been relatively linear since world war two. However, the change that we are going to see is quite significant, and we are already seeing it—we are in the middle of it at the moment.

In my notes—my wad of notes—I cited the Government inquiry into operation Burnham, which was a military inquiry, because I thought that it might play into your understanding with the police. It was a Government inquiry, and we should understand that we will see a lot more of those, unfortunately.

If you are looking at trends, I recommend the Ministry of Defence's defence futures report on global trends, which was published in 2004. I think that it is the best on the planet. It is not an easy read—it is a big, solid thing.

Sorry—I am not answering your question. Do you want to come back?

Liz Smith: You are—that is an interesting dimension. However, do you think that, in the much more unsettled world that we are living in today, the change in democracy is causing frustration—perhaps, in some cases, anger—among the public, who want to try to press Governments to deliver something that they are not delivering? Is there a frustration that Governments are failing?

11:15

Wendy McGuinness: Absolutely. There is a massive lag, and democracy has to catch up with this world. I always saw it with inquiries, but I now see that inquiries are terribly important because the number of bad actors who are going to influence democracy, Governments and policy will be quite overwhelming. We need to create what I would call "safe rooms" in which we can have discussions to deal with the issues that we face.

Liz Smith: When I asked the two gentlemen in the first session today whether Sweden and Australia have seen a growth in investigative public inquiries, as distinct from policy ones, because that frustration is growing, I think that

both answered that they have probably not, but we are definitely seeing that in Scotland. There is a concern and a frustration out there—which some of our witnesses have put to us already—that Government agencies are not delivering public services of the right quality, particularly in health, justice and education, and that is raising the tempo. Is it the same in New Zealand?

Wendy McGuinness: Yes—absolutely. I would not throw stones at democracy or the institutions; I would do the reverse and build them up. I would also have a lot of them, because they are going to be targeted individually. Sorry—I am not trying to be depressing. You want a whole lot of institutions that are doing inquiries and that have high standards for their processes, so that you build a network of trust within the democratic system.

Liz Smith: Do you think that trust might grow if one particular body or one committee, let us say, within a jurisdiction looked after the administration of public inquiries, so that people would know how it would be done and that we approved of it? Might it help to have that rather than what we tend to have here, which is a bit all over the place?

Wendy McGuinness: Yes. There is a difference between administration and what I would call the strategic leadership of an inquiry. The administration is the commonality—the common knowledge and the common processes. For the decision making, the thinking and the discussion, the most important thing is that people go out and seek the right people to talk to.

At the Oxford course that I mentioned, there was a fantastic analogy. The course involved doing scenarios, but it was about the same thing—the importance of the horizon that you are looking at and the importance of the scope and the purpose, which you have talked about. Someone used a great analogy, and I thought, “Gosh, that is such a gem—I will take it to the committee.” He said that, when they do scenarios, so many people think that the focus is the heart attack. They strongly believe that that is where they should put the effort. However, if you do not think more broadly and seek out diverse views, you will not find out that it happened because someone stubbed their toe and they had blood poisoning.

Liz Smith: That is a good reason for allowing inquiries to be independent of the Government. Do you tend to agree with the Swedish perspective, whereby you want inquiries to have that independence but, at the same time, you want to put a time limit on how long an inquiry can last?

Wendy McGuinness: Yes. I like the idea of a two-year review. We had an inquiry into historical abuse in state care that took about five years. For obvious reasons, those voices needed to be heard. You are looking for—to use scenario

language—patterns, triggers and wildcards, so that you can understand what went wrong, and in that case a long inquiry was required. However, with the inquiry into the attack on the Christchurch mosques, there was a massive need to try to be complete but also to try to build capability and be seen, as a country, to acknowledge the terrible thing that had happened, so there was definitely pace behind that one. In terms of investment and timeframes, you would probably want to spend twice as much money to make such an inquiry shorter, whereas there was a need to make the other one longer.

Liz Smith: I have a final question. Do you believe that public inquiries should generally be judge led, so that there is a good level of trust?

Wendy McGuinness: Having that analytical approach has some enormous advantages. I do not think that lawyers have it all, but they have an ability to gather the information on the table before a decision is made. As a general rule, lawyers are taught to gather the data and the evidence, to seek opinions, to seek documents, to get people on a witness stand, and to dig deep and hard until they can make sense of something. It would be terrible to have commissioners who thought they already knew the answer.

Liz Smith: Thanks so much. That was very helpful.

John Mason: That leads on to what I was thinking of asking you about. Is it a disadvantage that judges are used to court cases that can go on and on for ever? I should say that I am also an accountant. Lawyers, in my opinion, do not seem to operate within timescales. It will take them as long as it takes. We had the impression from the Australian witness that the royal commissions become like courtrooms. There are lawyers supporting the victims. There are lawyers supporting the police. There are lawyers everywhere. Is that a downside, that too many lawyers are involved?

Wendy McGuinness: My simple answer is yes, but it can be managed. Your questions have made me realise perhaps how important and useful the DIA's centralised administration has been for us, because I have not felt that in our processes.

In a couple of situations relating to the Covid inquiry, the DIA published a minute. That is interesting because it has never happened in New Zealand before. If I put a submission in for phase 1, I am not allowed to publish it and they are not allowed to publish it until their report comes out. The same thing has happened with phase 2 of the inquiry. I disagree with that strongly, but I understand that there are probably reasons behind it and I, as a member of the public, have to trust that perhaps they were worried about vulnerability.

There has been a lot of tension in New Zealand and there have been a lot of threats. I am taking the opinion that perhaps that was why they did it that way.

John Mason: That raises the question of privacy as against everything being in public. I had had the impression from what we had read that inquiries in Sweden are largely in private, but I now think that that is not the case. They discuss certain things in private and have other evidence in public. Is there any argument for maybe doing more of an inquiry in private? Would people be more open in their evidence if it were in private?

Wendy McGuinness: That is interesting. I included in my notes the example of the New Zealand defence force inquiry because it raises concerns about even the commissioners getting the information that they wanted on time and in a complete manner. In other words, the restrictions hampered their ability to deliver results.

John Mason: I am also thinking about who is chairing or whatever. Obviously, you need a person as a chair, but we have the impression that both Australia and Sweden often have a panel or a group or however they describe it, that would include experts or different people who are interested. We seem to be very focused on having one person. The problem with that is that, if the one person resigns, we are back to square one—I do not know where we go. That is happening. Have you views on that? Should the chairing of an inquiry be focused on one person?

Wendy McGuinness: I will give you the pros and cons, which I am sure that you know. I quite like one commissioner. I have noticed that in the UK, you have one commissioner and an advisory panel or group. I am not sure—you could probably tell me—whether that has been successful. Processes are definitely slowed down when you have three or four people, even to get together for a meeting. You also have the additional costs and different advisers and whatever.

My view is that it comes down to the purpose and the expertise that is needed to deliver on the purpose. My view is that they could easily have dealt with the Covid inquiry by having a medical advisory team that were not commissioners, if you see what I mean. It is unique to each case, but I am hearing you because we probably agree that, given the costs of having three or four commissioners, why would you do that in this world?

John Mason: The answer to your question whether we think that the present system is working is no. We are doing our inquiry because we think that the system is not working. We are certainly keen to learn from other jurisdictions and so on.

As a comment on what you said, we have certainly had evidence that in one or two inquiries in Scotland, the chair has lost the confidence of almost everyone. Then there is no balance and no comeback because the inquiry is entirely based on the one person. You probably know of the current inquiry from which the chair has resigned. We are still to see how that will be taken forward. It seems to me that a lot is based on the one person. However, I take your point about the cost if we start having a bigger panel and so on.

Wendy McGuinness: Our Covid inquiry might be interesting for you to look at. It had three commissioners and the new Government did not approve of the chair. He was thought to be compromised because he had been involved as an adviser to the Prime Minister at the time. That is my understanding; I will put it that way.

When they made a new set of commissioners for phase 2, they had the chair of phase 2 sit in for a little bit of phase 1 to try to carry that institutional knowledge further. They kept, in my understanding, a lot of the same staff who were involved in phase 1. Definitely, my view is that the Covid inquiry, phase 1 and phase 2, was a disaster that you could see happening early on when it was very narrow. There was already political contention. It was not embedded.

My thinking is that, instead, a select committee needs to agree the terms of reference. If people around the select committee table have a different view, they can and should write down their different view. You might have a majority and a minority opinion on the terms of reference, which would be an official document. That would enable everyone going through the process to be aware of those different views.

In this case, institutional knowledge was gained from phase 1 of the Covid inquiry and the report was comprehensive, but it might not have been and we might have lost a lot of institutional knowledge that was collected at significant public cost.

John Mason: I fear that that is where we are at the moment.

In answer to Liz Smith, you talked about building trust in institutions. You are a little bit more optimistic than I am. I am not sure whether that is even possible, because we have social media nowadays. I know that, in the past, newspapers and other things were always undermining institutions, but there was so much negative stuff, even to the extent that Covid did not exist and all that sort of thing. Is it possible to build up public trust or do we have to accept that trust is falling and, even if standards stay the same, there will be more demand for inquiries, blame, vengeance and all those things?

11:30

Wendy McGuinness: We have never before had to deal at such scale and pace with the bad actors, whether they are nation states or whether they are mafia and so on. The wealth that is collected with bad actors is so significant that interests will be at play that we do not see or know. My view is that this is the time to do what you are doing. Right now is the time to build robust, resilient and trustworthy institutions. You are putting in the effort and time to tell your people that you are working hard to try to create inquiry and report mechanisms so that you can deliver to them trusted reports, data, people and so forth—but it will be ugly.

John Mason: Yes. I will finish on that note.

The Convener: Cheery as always, John. [Laughter.]

I want to follow up on a point that Liz Smith made about judge-led inquiries. An interesting point that came out of the previous evidence session was that, in Australia, the judges are retired. Here in Scotland, they are not retired, generally speaking, and, as a result, 10 per cent of our judges are involved in public inquiries, which means that trials and so on are delayed. That has an impact on the justice system and, indeed, on justice for people who are involved in the trials, including victims and relatives. I wonder whether you think that we should adopt that approach for our inquiries. Should judges, assuming that they are available, be retired or should they be serving judges?

Wendy McGuinness: Given what you have said, my opinion would be that the serving judges should do their business, which is not inquiries. Justice is extremely important and you need to put all the necessary resources into that. You need good legal advice on processes. You do not need to be the person in the room running an inquiry. Does that make sense to you? In other words—

The Convener: It does make sense. Organisations and lawyers representing the families of victims and so on put on pressure to have judge-led inquiries because that is perceived as the gold standard. We are now in a situation whereby, if a judge does not lead an inquiry, it almost devalues it even before it starts. That is the public perception. We have heard from other witnesses how effective non-judge-led inquiries can be but, if the public is not listening to that and if the people who feel that they have been wronged and on whose behalf the inquiry is being held do not accept that, it is difficult. That does not mean that it should not be a retired judge as opposed to a judge who is serving. That would, hopefully, stop some of the bottlenecks in the court system that result from judge-led inquiries.

Wendy McGuinness: You can train people to chair processes. I will give you the example of the Institute of Directors in New Zealand. I am sure that you have something similar. You go through a training course and you get your qualification that shows that you are aware of all the laws that relate to directors. You do not need to have expertise across a particular field; you are just dealing with expertise across a narrow area. There is also no reason why you cannot have a judge as an advisory person who could be pulled in, for example, for aspects of a public inquiry—you talked about witnesses. That is where I would go. I would try to create a mechanism to give the public trust that the chosen people have been trained and have not only the expertise but the support of so-and-so behind them.

The Convener: We have only 36 judges in Scotland. If three or four of them are tied up in inquiries, it is a 10 per cent hit straight away to the court process.

We have no further questions from colleagues around the table so, as you will have heard me do in the previous session, I want to give you an opportunity to make any points or emphasise areas that you think that we have not covered.

Wendy McGuinness: I might, if it is all right, quickly go through my six points on the cover page. I will be quick.

The Convener: Fine. I am happy with that.

Wendy McGuinness: To summarise, we have two types of statutory inquiries. I would not have any more than that. The public inquiry terms of reference should be signed off by a select committee. That enables parties—

The Convener: We do not have select committees. Do you mean a parliamentary committee?

Wendy McGuinness: Yes. Sorry. Thank you. That would enable a minority interest to be put forward. That would have picked up our situation with Winston Peters and the Covid inquiry and it would have been embedded early in the process. He made those statements publicly; I am not aware that there was a document otherwise.

I like how Government inquiries in New Zealand have an appropriate minister. Basically, the distinction is that a public inquiry goes to a parliamentary committee, whereas a government inquiry goes to a minister. Keeping those operating separately is extremely important.

I mentioned briefly inquiries producing an annual report. I like that line, “Sunlight is the best disinfectant.” Get those regular mechanisms in place. You may, for example, even want to go to six-monthly reporting by an inquiry to enable the public to be engaged in the process.

The fifth point is that

“Government should focus on setting the purpose and engaging the right commissioner/s, and largely leave the timeframe, scope and process to the commissioner/s”

to use the heart and body analogy.

Finally, you have talked about and are highly aware of the need for centralised support for inquiries and how important it is to have that administrative core working effectively.

The Convener: Thank you very much for that. I want to thank you in particular for taking the time and the trouble to come all the way to Edinburgh to give evidence. The committee very much appreciates that. It is always best when people come here in person.

Our final evidence session on this inquiry will take place on 25 November. We will hear from the Deputy First Minister and Cabinet Secretary for Economy and Gaelic in person. We will then publish a report setting out recommendations to the Scottish Government before the end of the year.

That concludes the public part of today's meeting. We will now move into private session to consider two draft reports and a work programme. I will call a five-minute break to enable the official report and broadcasting teams to leave. Thank you very much.

11:38

Meeting continued in private until 12:44.

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