



Building Trust: Can Courts Learn From Royal Commissions?

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ACADEMIC ARTICLE



ABSTRACT

Confidence in the administration of justice and in the courts is an essential feature of democracy. This paper examines Australian research on trust in courts and judges, noting that negative experiences in a particular court may be generalised to the whole judicial system. The converse may also hold true, so that measures adopted by particular courts to increase confidence may well heighten confidence in courts generally.

Governments frequently rely on community engagement to promote public confidence in their policy processes and institutions, though sometimes their methods for doing so backfire and actually reduce that confidence. The concept of community engagement has only recently been used to describe activities conducted by courts and quasi-judicial bodies such as Royal Commissions. Drawing on the author's experience as a judge and Royal Commissioner, the paper describes some techniques used by Royal Commissions —a different type of legal fact-finding and policy recommendation forum— to inform communities and create trust in their processes and findings. It argues that these techniques could be usefully adapted by courts to achieve the same end, and outlines initiatives already being adopted by some Victorian courts to build and maintain public confidence in their operations and integrity. Viewing these activities through the lens of 'community engagement' treats these types of activities as part of a continuum that could ultimately improve collaboration between the courts and the public to design more user-focussed court services. The paper concludes by proposing that initiatives to build public trust and confidence in courts should be shared and also systematically evaluated to establish 'what works'.

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KEYWORDS:

community trust; courts;
Royal Commissions;
community engagement

TO CITE THIS ARTICLE:

Marcia Neave, 'Building
Trust: Can Courts Learn
From Royal Commissions?'
(2021) 12(3) *International
Journal for Court
Administration* 5. DOI:
[https://doi.org/10.36745/
ijca.420](https://doi.org/10.36745/ijca.420)

Democracy is threatened when the community or particular groups within the community do not trust government, courts or the rule of law. Lack of trust reduces the effectiveness of laws and policies in responding to economic threats, disasters and pandemics. This effect has been illustrated in the United States, for example, during the course of the current COVID-19 pandemic, where research has shown a decline in levels of public trust in a key national government agency responsible for public health and safety.¹

Confidence in the administration of justice and in the courts is an essential feature of democracy.² Surveys suggest that trust in governments has declined in many countries over recent years,³ prompting social science research on the factors which are correlated with trust in governmental institutions, including courts, or its relative absence.⁴ The public sector has in recent years embraced strategies designated as 'community engagement' in order to engage more directly with those who use their services, and which are supported by a body of literature that supports the theory that such direct engagement is a more effective way to increase trust, and confidence, in an institution.

After briefly surveying the relevant literature on community engagement as it relates to courts, this paper briefly examines Australian research on the extent to which members of our community trust judges and courts to make accurate decisions and act fairly. While courts resolve disputes between individuals (including corporations) or between individuals and the State, the paper goes on to describe another kind of legal institution — the Royal Commission — a form of ad hoc official inquiry

1 M. S. Pollard, L. M. Davis, *Decline in Trust in the Centers for Disease Control and Prevention During the COVID-19 Pandemic*. Santa Monica, CA: RAND Corporation, 2021 at <https://www.rand.org/about/people/p/pollard_michael_s.html> [accessed 30 July 2021].

2 For a useful overview of this issue see Judicial Bias and Public Confidence: The Importance of Good Data. *Australian Law Reform Commission* (Web Page, 3 December 2020) <<https://www.alrc.gov.au/news/importance-of-good-data/>> [accessed 12 December 2020] ('Judicial Bias and Public Confidence').

3 OECD, *Trust and Public Policy: How Better Governance Can Help Rebuild Public Trust* (OECD Public Governance Review, 2017) p. 19. Research commissioned by the Institute for Governance and Policy Analysis (IGPA), University of Canberra on trust in the political system and attitudes to democracy in Australia showed that 'In general, levels of trust in government and politicians in Australia are at their lowest levels since times series data has been available: Museum of Australian Democracy, *Democracy 2025*, p. 9. Other research has found that, when asked to choose between five response options: 'almost always', 'most of the time', 'only some of the time', 'almost never', and 'don't know', in response to the question been 'How often do you think the government in Canberra can be trusted to do the right thing for the Australian people?', around 29% of 2017 survey participants responded 'almost always' or 'most of the time'. While there has been a drop in the level of those responding 'almost always' since 2007, and fluctuations over time, in 2020, in the context of the pandemic, the level of trust rose to 54%, the highest ever recorded: A. Markus, *Mapping Social Cohesion: The Scanlon Foundation Surveys 2017* (Report, 2020) pp. 37–40, 49, <https://scanlonfoundation.org.au/wp-content/uploads/2018/10/ScanlonFoundation_MappingSocialCohesion_2017-1.pdf> [accessed 19 December 2020] ('Scanlon 2017'). For a critical but now out of date examination of the contention that trust levels are declining see C. Bean, 'Is There a Crisis of Trust in Australia?', in S. Wilson et al (eds), *Australian Social Attitudes: The First Report*, UNSW Press, Sydney 2005, pp. 122–40.

4 OECD, *supra* note 2, pp. 20–3. The World Values Survey Time Series has shown some decline in levels of trust in the courts across the countries surveyed between 1981–4 and 2017–20: 'Online Data Analysis', World Values Survey (Web Database) <www.worldvaluessurvey.org/WVOnline.jsp?WAVE=5&COUNTRY=337> [accessed 19 December 2020].

established by governments to investigate matters of significant public concern, such as major accidents, disasters, corruption, and make recommendations about how to deal with difficult and controversial policy issues. The term derives from the Royal prerogative of the English Crown to order investigations, and so is more commonly found in countries with legal systems based on the English common law. However, Royal Commissions have their counterpart in other legal systems in the form of official inquiries of various kinds.

Although courts and Royal Commissions have very different roles, it is not uncommon for governments to appoint former judges to head, or serve on, Royal Commissions. This paper draws on the author's experience of leading and serving on two Royal Commissions, to describe techniques that Royal Commissions may use to engage with communities and create trust in their processes. It argues that some of these processes could be usefully adapted by courts for the same purpose, and outlines measures adopted by some courts in the Australian State of Victoria to build and maintain confidence in their operations and integrity.

COMMUNITY ENGAGEMENT

Community engagement can be defined in a variety of ways,⁵ and, as Bookman notes, is under-theorised, particularly in relation to justice.⁶ For courts, it has been suggested that it embodies the notion of a relationship between an institution and its community that is characterised by mutual exchange of knowledge and learning, with a view to improving understanding.⁷ Others see it in broader terms, with knowledge sharing as the beginning point on an engagement continuum, that can lead to activities that embody collaboration and co-design.⁸

It has been argued that the judiciary, as an institution, has a responsibility to practice community engagement (at least in its narrower sense); deriving both from its 'outward-facing' role, as a 'democratic actor' and in its 'inwards-facing', or decision-making role.⁹ Bookman argues that the outward-facing role requires the judiciary to present judges to the community 'as leaders who are competent and concerned with the same issues that confront members of the public',¹⁰ while the courts' decision-making role requires engagement to assist judges to understand contemporary community norms and standards relevant to their decision-making.¹¹

⁵ T. Haslett, C. Ballenden, L. Bassett, S. Bodbole and K. Walker, Framework for Development and Evaluation of Community Engagement. *International Journal for Court Administration* 4(2) pp. 31–32.

⁶ S. Bookman, Judges and community Engagement: An institutional obligation. *Journal of Judicial Administration* 26 p. 4.

⁷ Ibid, p. 5.

⁸ B. Head, Australian Experience: Civic Engagement as Symbol and Substance. *Public Administration and Development*. 31 pp.102, 105–106; International Association for Public Participation, *Spectrum of Public Participation* (2018, IAP2 International Federation at <https://iap2.org.au/wp-content/uploads/2020/01/2018_IAP2_Spectrum.pdf> [accessed 31 July 2021].

⁹ Bookman, *supra* note 6, p. 5.

¹⁰ Ibid, p. 4.

¹¹ Ibid.

The changing nature of the legal services market, and public expectations, provides another imperative. Our court system, as Kathy Laster observes, has now shifted from being a 'wholesale' environment for legal professionals, to a retail setting where many citizens engage directly with the system, often without benefit of lawyers to mediate or explain the experience.¹² Litigants come before the courts with assumptions about the appropriateness or usefulness of judicial processes. Some litigants come to court as savvy consumers with their own expectations of 'service'. Others may be less empowered, but will have expectations coloured by their own past experience, or that of others. All are likely to regularly share their stories of their court experience with their family, friends, neighbours, and on social media. All of those experiences, direct or indirect, are likely to influence public perceptions and so, engender, or diminish, trust and confidence in the courts.

WHAT WE KNOW ABOUT TRUST IN AUSTRALIAN COURTS AND IN ROYAL COMMISSIONS

RESEARCH ON TRUST IN AUSTRALIAN COURTS

Australian court data and population surveys provide some information about trust in judges and courts. The federal Productivity Commission publishes an annual report measuring government performance in a range of areas, including the justice sector. These annual reports review the performance of the Federal Court, the Family Court of Australia and the Federal Circuit Court, the criminal and civil jurisdictions of State courts, Coroners' Courts and the Family Court of Western Australia. They also examine the performance of police and corrective services, which can influence public perceptions of courts. In the case of courts, the reports cover matters such as case numbers, flows through the civil justice and criminal justice system and the administrative costs of managing court facilities, services and staffing.¹³

Although the annual report identifies encouraging public trust and confidence in courts as a key objective of court services,¹⁴ it does not attempt to measure these directly, though issues such as timeliness and access to interpreters are assessed. The 2019 Report defines 'perceptions of court integrity' as the proportion of the community who believe that courts in Australia treat people fairly, equally and respectfully. It comments that 'high or increasing proportions of perceived court integrity are desirable' but says that data is not yet available for reporting against this indicator.¹⁵

The Annual Australian Survey of Social Attitudes shows that Australians have a higher level of trust in judges than in a number of other professional occupations.

¹² Quoted in K. Derkley, 'Court Design for the People' 20 March 2018, *Law Institute Journal* at <<https://www.liv.asn.au/Staying-Informed/LIJ/LIJ/March-2018/Court-design-for-the-people-who-use-it>> [accessed 30 July 2021].

¹³ See, e.g., Productivity Commission, *Report on Government Services 2019* (Annual Report, 2019) at <<https://www.pc.gov.au/research/ongoing/report-on-government-services/2019/justice/courts>> [accessed 19 December 2020] ('ROGS 2019').

¹⁴ *Ibid*, pt C ch 7, box 7.1.

¹⁵ *Ibid*, box 7.13.

Contrary to some overseas research, it also suggests that confidence in the Australian courts and the legal system has remained relatively constant.¹⁶

The *Scanlon Foundation Surveys on Social Cohesion* have been investigating trust in the Australian legal system and the courts for some time, though the survey questions were relatively broad until the 2017 survey. The 2014 survey asked whether people trusted Australian courts and whether courts treated people with respect.¹⁷ In both this and the 2015 survey¹⁸ the responses to these questions were generally positive. The 2017 survey sought information about attitudes to particular courts for the first time. Participants were asked how much trust they had in the criminal justice system, the High Court and the Family Court of Australia. Fourteen and a half per cent of participants said they had 'a lot' of trust in the criminal justice system and 39.6 per cent had 'some', totalling 51.1 per cent.¹⁹ Levels of confidence in the police, however, were considerably higher (between 86.9 per cent and 88.6 per cent of participants had 'a lot', or 'some', confidence in the police in each of the 2013, 2015 and 2017 surveys).²⁰ Twenty seven per cent of participants said they had 'a lot' of trust in the High Court and 41.5 per cent said they had 'some trust', totalling 68.5 per cent.²¹ The corresponding figures for the Family Court were 12.2 per cent for 'a lot' and 39.8 per cent for 'some' (totalling 51.9 per cent).²²

Family law is one of the commonest areas²³ in which survey participants are likely to have had direct experience of courts, though not necessarily of adjudication.²⁴ As

¹⁶ Cited in 'Judicial Bias and Public Confidence', supra note 2. A media organisation survey of 54,000 people also found a high level of trust in judges (80% of all participants) though not as high as that in scientists or health professionals: 'Australia Talks: The Most and Least Trusted Professions', ABC News (News Article, 27 November 2019) <<https://www.abc.net.au/news/2019-11-27/the-professions-australians-trust-the-most/11725448>> [accessed 19 December 2020].

¹⁷ A. Markus, *Mapping Social Cohesion: The Scanlon Foundation Surveys 2014* (Report, 2014) <<https://scanlonfoundation.org.au/wp-content/uploads/2018/10/2014-Mapping-Social-Cohesion-Report.pdf>>. ('Scanlon 2014') p. 36.

¹⁸ Ibid, pp. 33, 45.

¹⁹ Markus, supra note 3, p. 42, table 20. There have been many other studies of community attitudes to the criminal justice system. For example, the regular Australian Surveys of Social Attitudes have examined community perceptions of the extent and severity of crime, the proportions of people who are convicted and whether sentencing is appropriate. See 'Australian Survey of Social Attitudes, 2007', Dataverse <<https://dataverse.ada.edu.au/dataset.xhtml?persistentId=doi:10.4225/87/1UPIZO>> [accessed 19 December 2020], discussed in L. Roberts and D. Indermaur, 'What Australians Think about Crime and Justice: Results from the 2007 Survey of Social Attitudes', Australian Institute of Criminology Reports, Research and Public Policy Series p. 101. For an excellent overview of research on confidence in the courts and sentencing based on a random survey of 1200 Victorians see K. Gelb, 'Sentencing Matters Predictors of Confidence' Community Views in Victoria (Sentencing Advisory Council, August 2011). For a UK comparison, see K. Jansson, Public Confidence in the Criminal Justice System – Findings from the Crime Survey for England and Wales 2013–14 (Ministry of Justice, 2015).

²⁰ Markus, supra note 3, p. 42, Table 20.

²¹ Ibid, p. 41 Fig 23.

²² Ibid, 2017, p. 42 Table 20.

²³ It is often said that around one third of Australian marriages end in divorce, a figure that gathers some support from 'Marriages and Divorces, Australia', Australian Bureau of Statistics (Statistics Release, 27 November 2020) <<https://www.abs.gov.au/statistics/people/people-and-communities/marriages-and-divorces-australia/latest-release>> [accessed 22 December 2020].

²⁴ The majority of matters are settled without judicial determination, e.g. through mediation. See e.g. *Family Law Act 1975 (Cth)* s 60I.

part of a reference on reforms to family law,²⁵ the Australian Law Reform Commission ('ALRC') gave people the opportunity to contribute to a confidential on-line portal, 'Tell Us Your Story'. Of the 732 contributions, 504 included a complaint about the Family Court of Australia system and its procedures.²⁶ Many of these complaints commented that the family law system was biased against women or men, a view which clearly reflects distrust in that system.

The ALRC is currently undertaking a reference from the federal Attorney-General relevant to the issue of trust in judges, that requires it to consider the laws relating to impartiality and bias as they apply to the federal judiciary, including 'whether the law about actual or apprehended bias relating to judicial decision-making is appropriate and sufficient to maintain public confidence in the administration of justice.'²⁷ The Commission has emphasized the importance of good data to assess this issue.

Only a relatively small proportion of those who respond to surveys have actually attended a court.²⁸ The views of the many members of the Australian community who have not directly experienced court processes are likely to be influenced by whether they understand how courts operate, and by what they see on television news and current affairs programmes and on social media. Media stories about courts are likely to focus on areas such as criminal law, or on litigation between individuals of interest because of their wealth, celebrity status or political affiliation. Further, as Professors Sharyn Roach Anleu and Kathy Mack have commented, surveys of the public on issues of which they have no direct experience may 'create the phenomena they seek to document: members of the public may not have pre-existing, deeply held views about social or legal institutions, but form opinions when responding to particular survey questions.'²⁹

Levels of trust among survey participants who have had some experience of court processes either directly or through family members, is likely to be affected by the nature of the matter which the court considers, whether they had legal representation, court processes, the case load of the court and its effect on promptness of decision-making, and the services provided by court staff, legal aid and other organisations to which they may be referred for advice. As yet there is little research on the relationship between trust in the courts and these matters.

For these reasons, I argue that population surveys about levels of trust in the Australian court system only provide limited insights. Instead, it may be more useful to consider whether members of the Australian community trust particular courts and identify the features of those courts which garner higher levels of trust. At the same time, it is also important to acknowledge that an experience in a particular court may, to some extent, 'rub off' and influence attitudes to courts generally. Negative experiences

²⁵ *Family Law for the Future: An Inquiry into the Family Law System* (ALRC Report No 135, March 2019) <https://www.alrc.gov.au/wp-content/uploads/2019/08/alrc_report_135_final_report_web-min_12_optimized_1-1.pdf>[accessed 19 December 2020].

²⁶ *Ibid*, p. 31 [1.6].

²⁷ Review of Judicial Impartiality, *Australian Law Reform Commission* (Web Page, 11 September 2020) <<https://www.alrc.gov.au/inquiry/review-of-judicialimpartiality/>>[accessed 19 December 2020].

²⁸ S. Roach Anleu and K. Mack, The Work of the Australian Judiciary: Public and Judicial Attitudes. *Journal of Judicial Administration* 20(1) pp. 3–18, reporting on the 2007 Australian Survey of Social Attitudes.

²⁹ *Ibid*, p. 7.

in one court may influence general attitudes to the judicial system and conversely measures adopted by particular courts to increase confidence may well increase confidence in courts generally.

TRUST IN ROYAL COMMISSIONS

As far as the author is aware, there have been no surveys of public confidence in Royal Commissions of the kind that have been undertaken in relation to courts. Generally speaking, public confidence and trust in Royal Commissions as a form of inquiry may be evidenced by public pressure on governments to establish them to address disasters and scandals. One recent Australian example was the lobbying of State and federal governments to establish a Royal Commission into Institutional Responses to Child Sexual Abuse,³⁰ the recommendations of which have led to wide-ranging changes to State and federal laws. Another example was the establishment of a federal Royal Commission into misconduct in the banking industry.³¹ Although this was initially resisted by the government, the pressure brought to bear on it by media exposure of banking scandals, by consumer groups, by people subjected to dishonest or unethical treatment and by the Labor opposition meant that the government eventually had no option but to establish the Commission.

However, the level of public trust in Royal Commissions may depend on the circumstances and context of their creation and the extent to which the Government in power accepts and implements their recommendations.³² Factors which contribute to trust in Royal Commissions are summarised by Prasser and Tracey as follows:

Political decisions that defer to the authoritative advice of an independent public inquiry will generally be seen as proof, much needed, that politicians have taken the facts of the matter into account and acted accordingly. As a result, government will enjoy greater acceptance and legitimacy. In this way public inquiries have the potential to shore up the standing of politicians at the same time as they improve the quality of policy making.³³

It must also be acknowledged that Royal Commissions may be used by governments as a ploy to postpone decision-making on complex policy issues. On occasion they have been set up by an incoming government in the hope that the Commission's findings will embarrass the previous government.³⁴ Commissions with such overtly political purposes are likely to have a negative effect on public trust.

³⁰ See Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report* (15 December 2017) p. 2 [1.1]. See also vol 1, appendix 1.

³¹ Royal Commission into Misconduct in the Banking Superannuation and Financial Services Industry, *Final Report*, 1 February 2019.

³² For a useful overview of Royal Commissions, see especially S. Prasser and H. Tracey (eds.), *Royal Commissions and Public Inquiries Practice and Potential*, Connor Court Publishing, Brisbane Australia 2014, section 4.

³³ *Ibid*, p. 375.

³⁴ For a possible example see the Royal Commission on Trade Union Governance and Corruption, established on 13 March 2014. The Commission was chaired by a retired High Court Judge, Dyson Heydon. For a useful overview of these issues see Prasser & Tracey, *supra* note 32, Chapter 21.

DIFFERENCES BETWEEN ROYAL COMMISSIONS AND COURTS

In Australia, in common with other countries with common law systems, a Royal Commission is an inquiry that is formally established by the Crown (or its representative) on the advice of Government. Government funds and sets the parameters of the Commission's inquiry — its terms of reference — as well as appointing the commissioners.³⁵

There are significant differences between the roles of courts and Royal Commissions. Whilst courts resolve civil disputes between parties and try criminal offences, Royal Commissions have an investigative and/or policy advice role.³⁶ Some Commissions are largely concerned with investigating the occurrence and causes of past events, others focus on making recommendations to address controversial or difficult policy issues and many do both. Since the nineteenth century Australia's federal government and individual States have established many Royal Commissions.³⁷

Historically, the source of the power to create these bodies lay in the royal prerogative,³⁸ but in Australia their powers are now defined and limited by legislation.³⁹ Issues considered by federal Royal Commissions in the past nine years have included Royal Commissions into

- Detention and Protection of Children in Australia's Northern Territory
- Misconduct in the Banking, Superannuation and Financial Services Industry
- Aged Care Quality and Safety
- Violence, Abuse, Neglect and Exploitation of People with Disability
- National Natural Disaster Arrangements.

Since 2015, one State, Victoria, has set up Royal Commissions to consider family violence, management of police informants, mental health, and the operations of the State-licensed casino. The author chaired the Royal Commission into Family Violence in 2015.

There have also been a number of joint federal–state Royal Commissions, the most recent of which, the Royal Commission into Institutional Responses to Child Sexual Abuse, operated between 2012 and 2017 and exposed widespread abuse in church and other institutions.

To members of the community, Royal Commissions may seem similar to courts. They are often presided over by judges or retired judges, who are perceived to have

³⁵ M. Mintrom, D. O'Neill & R. O'Connor, Royal Commissions and Policy Influence, *Australian Journal of Public Administration* 80(1) pp. 80–96, p.81.

³⁶ Ibid.

³⁷ The first federal Royal Commission was established in 1902, to examine the facts which had led to poor conditions on troop ships and the death of 17 soldiers. States had held Royal Commissions from the mid-nineteenth century. For a useful overview of the history of Royal Commissions see L. A. Hallet, *Royal Commissions and Boards of Inquiry: Some Legal and Procedural Aspects*, Law Book Co, Sydney 1982. See also Prasser & Tracey, *supra* note 32, Section 1 pp. 1–7.

³⁸ This is reflected in the fact that the Commissioners are appointed under Letters Patent issued by the Governor or Governor-General. Although that is the formal legal position, the issue of Letters Patent is based on the advice of the government in power.

³⁹ See, e.g. *Royal Commissions Act 1902* (Cth); *Inquiries Act 2014* (Vic) Pt.2.

the necessary forensic expertise as well as a reputation for independence⁴⁰ though other Commissioners with relevant expertise, who are not lawyers, may also be appointed.⁴¹ Like courts, Royal Commissions operate independently of government or the bureaucracy, though technically they are part of the executive rather than the judiciary.

Subject to some exceptions, Royal Commissions, like courts, can compel witnesses to give evidence, provide information and produce documents.⁴² Penalties apply to people who refuse to comply with these coercive orders or who give misleading evidence.⁴³

Like courts, Royal Commissions conduct public hearings. But unlike courts, Commissions usually appoint lawyers to advise them and to examine witnesses on their behalf. Although Royal Commissions use inquisitorial, rather than adversarial processes, witnesses may still be subject to gruelling examination about their behaviour by counsel assisting the Commission.⁴⁴ Witnesses who may be affected by adverse findings about their conduct will often be given permission by the Commission to be legally represented. Sometimes the cost of their representation is borne by the government. In addition to hearing evidence in public hearings, Commissions usually call for public submissions, undertake their own research, consult with groups with an interest or expertise in the relevant topic, and often give individuals an opportunity to talk about their own experiences.

Unlike court orders, findings made by a Royal Commission about negligence, corruption or other criminal conduct do not have direct legal consequences. For example, a Royal Commission may report that criminal offences occurred, but the relevant individuals will not be criminally liable unless they are subsequently charged, tried and convicted by a criminal court. A Commission makes recommendations to the government in power, which must then decide on the extent to which they should be implemented through legislation, procedural or practice changes supported by the commitment of appropriate funding.

⁴⁰ Ibid, p. 3. In Victoria, sitting Supreme Court judges have rarely accepted appointment to Royal Commissions, considering that this would be undesirable.

⁴¹ In the Royal Commission into Family Violence one Deputy Commissioner headed a non-government organisation which provided services to the disadvantaged and advocated for changes to laws and policies in that area and the other had previously headed a government department which oversaw provision of social services, including the protection of children: Royal Commission into Family Violence, 'Our Commissioners' at <<http://rcfv.archive.royalcommission.vic.gov.au/Our-Commissioners.html>> [accessed 26 February 2021].

⁴² See *Royal Commissions Act 1902* (Cth) pt 2 and e.g. *Inquiries Act 2014* (Vic) s 17.

⁴³ *Royal Commissions Act 1902* (Cth) ss 6, 6H; *Inquiries Act 2014* (Vic) s 50. The relevant legislation often abrogates the privilege against self-incrimination; see e.g. *Royal Commissions Act 1902* (Cth) s 6A; *Inquiries Act 2014* (Vic) s 33, but limits are placed on the admissibility of evidence heard by a Royal Commission in later criminal proceedings see e.g. *Royal Commissions Act 1902* (Cth) s 7C; *Inquiries Act 2014* (Vic) s 40.

⁴⁴ Excerpts from the examination of senior staff of the major banks in the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, were frequently played on nightly television news services.

PROCESSES USED BY ROYAL COMMISSIONS TO BUILD PUBLIC TRUST AND THEIR RELEVANCE TO COURTS

In recent years it has become increasingly common for Royal Commissions to gather information by processes other than formal public hearings. A broad range of inquiry powers is often authorised by the relevant legislation. For example, the Victorian *Inquiries Act 2014* provides that:

A Royal Commission may conduct its inquiry in any manner that it considers appropriate, subject to—

(a) the requirements of procedural fairness...⁴⁵

The techniques used by many recent Royal Commissions have contributed to public trust in a variety of ways. These include Royal Commissions informing the public and potential witnesses about the work of the Commission and supporting individuals to ‘tell their stories’ and contribute their views and expertise to the investigation and policy formulation. Royal Commissions also educate the community as a means of bringing about cultural change.

In the material which follows I illustrate these approaches by referring to the work of a number of recent Royal Commissions and particularly to the Victorian Royal Commission into Family Violence.⁴⁶ The role and functions of Royal Commissions differ substantially from the role of courts. Despite these differences, I suggest that some of the processes used by Royal Commissions could help to build trust in courts as well.

INFORMING THE PUBLIC AND POTENTIAL WITNESSES ABOUT THE WORK OF ROYAL COMMISSIONS, AND SUPPORTING INDIVIDUALS TO ‘TELL THEIR STORIES’

Royal Commissions actively work to inform the public, and potential witnesses, about their ongoing work. This includes lay witnesses with direct experience of the subject matter the Commission has been tasked with considering, as well as experts or other stakeholders who can provide input into the Commission’s inquiry.

The Royal Commission into Family Violence, for example, took steps to hear from victim/survivors of violence about whether police and court processes had protected them from further violence, the kinds of services they needed and the responsiveness of existing services. It also sought input from perpetrators to obtain views about the support that could have helped them to change their behaviour. The Commission encouraged service providers, including the police, health practitioners, drug and alcohol service providers, men’s behaviour change programs and victim support services to make submissions or give evidence about necessary or desirable changes to law and practice.

⁴⁵ See s 12. Other limitations can be imposed by the Letters Patent creating the Commission or the Act and regulations.

⁴⁶ For an overview of processes it used, see Royal Commission into Family Violence, *Final Report* (Victorian Government Printer, March 2016, (‘RCFV’) pp. 3–4 at <http://rcfv.archive.royalcommission.vic.gov.au/MediaLibraries/RCFamilyViolence/Reports/RCFV_Full_Report_Interactive.pdf> [accessed 26 February 2021]. See also Royal Commission into Misconduct in the Banking Superannuation and Financial Services Industry, *Interim Report*, Chapter 1.

The Royal Commission into Family Violence hired community liaison officers to take phone calls from members of the public and to refer people looking for help to relevant organisations. In some cases, the community liaison officers were able to identify witnesses who could give evidence either about their direct experiences of family violence, or could make suggestions about necessary legal or policy changes.

To inform its work, the Royal Commission into Family Violence organised 44 structured consultation sessions, throughout metropolitan and regional Victoria. Participants were asked to discuss strategies to prevent violence and to ensure the safety of victims and accountability of perpetrators. The experiences of people affected by family violence helped the Commission to identify themes to be pursued in formal hearings and to frame its final recommendations.⁴⁷

The Royal Commission into Family Violence also held confidential roundtables on particular topics, which helped to refine issues, test our tentative thinking on policy questions, and inform recommendations.⁴⁸ One example was a roundtable of senior public servants, which was convened to discuss the structures needed to encourage greater cooperation and information exchange between different Government Departments with responsibility for aspects of family violence.

During hearings themselves, Royal Commissions use a variety of approaches to support witnesses to 'tell their stories' and give evidence. This is particularly important where the subject matter concerns traumatic experiences or matters of a private nature.

Unlike court hearings, which are normally conducted in public,⁴⁹ Royal Commissions are not confined to holding public hearings, and some Commissions have held private sessions in which people who feel unable to give formal evidence can tell a Commissioner about their own experiences.⁵⁰

This power was extensively used by the Royal Commission into Institutional Responses to Child Sexual Abuse. Individuals who wished to do so were invited to a private meeting with a Commissioner, which gave them the opportunity to talk about what had happened to them. Although their identities were not recorded, the information was used to compile statistics on the numbers of people abused in institutions and the demographic characteristics of victims and perpetrators. A psychologist was present to support the victim, who could also bring along a family member or friend for support. Some participants who had been abused as children many years previously were able to speak about what happened to them for the first time in their lives. A similar process is being used by the Tasmanian Commission of Inquiry (a Royal Commission) into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings.

⁴⁷ Royal Commission into Family Violence, 'How We Work' (2019) Royal Commission into Family Violence (Victoria) 23 December 2015, pp. 2–3 at <<http://rcfv.archive.royalcommission.vic.gov.au/MediaLibraries/RCFamilyViolence/UploadedDocs/How-We-Work-23-December-2015.docx>> [accessed 6 August 2021].

⁴⁸ Ibid, p. 5.

⁴⁹ Australian courts have power to close courts or make orders preventing publication of reports of some types of proceedings. See, e.g. *Open Courts Act 2013* (Vic) Part 5. In addition states generally prohibit the publication of the name of a witness alleging sexual assault: see, e.g. *Judicial Proceedings Reports Act 1958* (Vic) s.4(1A).

⁵⁰ The *Royal Commissions Act 1902* (Cth) was amended to include power to do this in Part 4.

Royal Commissions dealing with sensitive issues may also consult affected groups — especially those with less knowledge about or lower levels of trust in the legal system — to find out the best ways to facilitate their participation in the Commission. The Royal Commission into Family Violence, for instance, arranged for counsellors to be present during public hearings and consultations to provide support to people who needed it.

Meaningful public participation of this nature is not only valuable to the work of Royal Commissions in shaping their findings and recommendations but, unsurprisingly, increases public trust and confidence in the Commission itself.

Supporting Court Users

Unlike Royal Commissions, court practices have historically focussed primarily on responding to the requirements of those who use the courts regularly, for example, police and lawyers. Lesser emphasis was placed on considering and meeting the needs of other court participants and court users. This tendency has been exacerbated by the pressure, particularly in busy Magistrates Courts, to get through their heavy caseloads as efficiently as possible.

However, courts have becoming increasingly aware of the need to support court users and the ways in which this can, in turn, improve levels of trust and confidence in the courts. Victorian Courts have already taken a number of steps in this regard, for example by creating links with community organisations. The Court Network organisation has for the past 40 years used trained volunteers to provide non-legal support, information and referral services on an impartial and non-judgemental basis to all persons, including applicants, respondents, victims, witnesses, defendants, and their families and friends who attend court with them. The service operates at all levels of the court hierarchy within court buildings in both Victoria and Queensland. About 450 trained volunteers work in these two States.⁵¹

As well as supporting court users, Court Network benefits the administration of justice by reducing the demands on other services inside and outside the courtroom. It is not uncommon for judicial officers to ask a Networker to come to the court room to support a witness or party to proceedings. Networkers receive extensive and ongoing professional training. The overall program is managed by professionally qualified Program Managers who support and supervise Networkers, and are involved in ongoing communication with court personnel and community agencies.

In more recent years a small number of Victorian courts designated as specialist family violence courts have appointed counsellors⁵² to assist family violence victim/survivors and alleged perpetrators. Some courts have provided other services, for example links to drug and alcohol treatment programs and men's behaviour change programs. These services may now be physically present in a Magistrates' Court building, though they are usually funded by the provider organisations, rather than by the Court.

51 'Our Volunteers', *Court Network* <<https://courtnetwork.com.au/volunteer/our-volunteers/>> [accessed 22 December 2020].

52 They are known as applicant and respondent support workers because they assist parties in applications for intervention orders: see Magistrates Court of Victoria, 'Family Violence Court Division' at <<https://www.mcv.vic.gov.au/about/family-violence-courts-and-counselling-orders>> [accessed 6 August 2021].

Despite these positive improvements, there is still scope for courts to learn from, and adopt, strategies implemented by Royal Commissions to engage and assist members of the public in their processes. For example, the establishment by the Victorian Magistrates' Court of a centralised telephone contact centre staffed by trained staff to respond to calls from people who have a forthcoming court appearance and, where necessary to link them to an appropriate service, was put in place in response to needs identified by the Royal Commission into Family Violence. That innovation was reminiscent of the Commission's use of community liaison officers.

A broader range of non-legal services within court buildings or at other convenient places — again, as recommended by the Royal Commission into Family Violence⁵³ — could be implemented, mirroring the on-site counselling available to participants and witnesses in Royal Commissions. Already, for example, the Victorian Office of Public Prosecutions includes an adult witness support service and there is a specialised Child Witness Support Service for children giving evidence in sexual offence cases. Some court buildings also include services for defendants in criminal cases.

Such measures are likely to build trust and confidence among court users who benefit from them. In addition, publicising the assistance provided could help to build confidence in the justice system among the broader public.

EDUCATING THE COMMUNITY ABOUT THE WORK AND FINDINGS OF ROYAL COMMISSIONS

In addition to drawing on the community as a valuable source of information Royal Commissions engage with the public in order to further what is often one of their most important functions. That is to educate the community, members of relevant professions and others affected by the issue that the Commission is investigating about the nature of the problem and better ways of responding to it. Addressing complex social problems generally requires cultural as well as legal, institutional and practice reform. This is demonstrated by the fact that matters referred to Royal Commissions have sometimes been previously considered by less formal inquiries, without bringing about any substantial change.

Educating the public about the work and findings of a Royal Commission is important to fostering trust and confidence in the Commission. It ensures that the public is aware of not only the outcomes of the Commission — which often concern important issues of social and legal policy — but also the process by which the findings and recommendations were formulated — including the participation of experts and members of the community.

The Royal Commission into Family Violence found that family violence was often not recognised by other family members or friends, or at least minimised. It also found there was lack of knowledge about violence and how to respond to it amongst some professionals, including lawyers, social workers, child protection workers, judicial officers, court staff, health services, and other service providers. The Royal Commission into Family Violence sought to quash myths about family violence and

⁵³ *Royal Commission into Family Violence*, (Final Report, March 2016) Recommendation 60, pp. 72 & 160.

educate the community about its various forms,⁵⁴ including economic, psychological and technological abuse, and its serious effects.

It also recognised that community leadership and the involvement of workplaces and other civil society institutions is vital in creating cultural and consequent practice change. Important work on community values about gender inequality and family violence was underway well before the Royal Commission, but we made recommendations to support and expand these activities. The Commission recommended family violence training for all key workforces, including hospitals and schools and that Respectful Relationships education become a mandatory part of the curriculum at all school year levels, to challenge negative attitudes to women and to change broader social attitudes about the use of violence.⁵⁵

Improving community understanding of the work of judges and courts

Like Royal Commissions, courts can contribute to community understanding of what they do and how they do it. My personal conversations with members of the public suggest that fundamental features of the legal system which are taken for granted by lawyers, for example the idea of an independent judiciary and the importance of the rule of law, are not readily understood by the public. Courts should consider supporting projects and working with organisations which help less privileged groups in the community, in particular,⁵⁶ to ensure they have accurate information about how the legal system works.⁵⁷

Australia, in common with many other countries, has civics education programs. Civics education has formed part of the Australian school curriculum since 2004, although the current Federal Minister for Education has described the level of student achievement in this area as 'woeful'.⁵⁸ This appears to be due, at least in part, to an approach that simply aims to provide students with knowledge, rather than equipping them with skills and empowering them to actively use that knowledge as citizens.⁵⁹ Research suggests that effective civics education programs require the incorporation

⁵⁴ For example the myth that leaving a violent partner will prevent family violence, though in fact separation is the most dangerous time for women leaving violent partners and may result in their death or serious injury; see *Royal Commission into Family Violence*, (Final Report, March 2016) pp. 21–22.

⁵⁵ Ibid, pp. 14–15. For more detailed discussion of the Commission's approach see M. Neave, '20th Annual New Zealand Law Foundation Ethel Benjamin Commemorative Address 2016 'The Victorian Royal Commission into Family Violence-Responding to an Entrenched Social Problem' (2016) *Otago Law Review* 14 p. 229.

⁵⁶ A. Markus, 'Trust in the Australian Political System' (Papers on Parliament, 11 April 2014) 7–10.

⁵⁷ The Victorian non-government organisation, Justice Connect, has adopted strategies to do this including online tools to provide people with the information needed to navigate the legal system: see 'Our Services', Justice Connect (Web Page, 2020) <<https://justiceconnect.org.au/our-services/>> [accessed 22 December 2020]. See also Justice Connect, *Making the Law Work for Good: Annual Report 2019–20* (Report, 2020)

⁵⁸ M. McGowan, 'Naplan scores: Australia's civics education 'woeful', minister says' *The Guardian* (online, 13 December 2017) at <<https://www.theguardian.com/australia-news/2017/dec/13/naplan-scores-australias-civics-education-woeful-minister-says>> [accessed 6 August 2021] quoting the then Commonwealth Minister for Education, Simon Birmingham.

⁵⁹ K. Heggart, J. Arvanitakis, and I. Matthews. *Civics and Citizenship Education: What Have We Learned and What Does It Mean for the Future of Australian Democracy?* *Education, Citizenship and Social Justice* 14(2) pp.103–108.

of 'hands on' activities to engage students, or indeed, adult learners,⁶⁰ and courts are ideally placed to support these types of programs. For example, high school students who choose to undertake a course on Legal Studies are usually required to attend a court hearing and may also be given an opportunity to meet the sitting judge and ask general questions.⁶¹ Current or retired judges may volunteer to adjudicate advocacy competitions for secondary school students run by University law schools.⁶²

In Victoria there are other strategies to familiarise the community with the legal system. Every year there is a celebration of Law Week, in which the Law Institute (the professional association for solicitors) and the Victorian Bar hold various functions which give the public an opportunity to learn about courts and the law. The Supreme Court of Victoria holds an Open Day on which people are taken on a tour of the courts.⁶³ At the end of the tour, the participants sit in a court room and have the opportunity to ask a judge questions about the legal system. It would be useful to work together with recently arrived communities to make them aware of these opportunities. The County Court has for instance piloted a program with the Sir Zelman Cowen Centre to train community leaders so that they can share their knowledge with their communities.⁶⁴

As is the case for Royal Commissions, courts can set up websites to provide information to the public and guide them on where they can have queries answered. For some time now, court websites have been moving beyond the passive provision of information to court users to incorporate features, such as blogging and social media applications, to enable more interactive engagement with the public and court users.⁶⁵ This development has been facilitated by a new class of professional court employees.

Australian courts, in common with courts in the United Kingdom, the United States and Canada, have for many years employed trained media, or communications staff, whose tasks include direct liaison with journalists – responding to questions, preparing summaries of judgments in cases which are likely to attract public interest

60 Ibid, pp. 114–115.

61 See, e.g. New South Wales, 'Legal Studies', *Education Standards Authority* at <<https://www.educationstandards.nsw.edu.au/wps/portal/nesa/11-12/stage-6-learning-areas/hse/legal-studies>> [accessed 22 December 2020], Tasmania (see 'Legal Studies', Office of Tasmanian Assessment, Standards & Certification <<https://www.tasc.tas.gov.au/students/courses/humanities-and-social-sciences/lst315117/>> [accessed 22 December 2020]), Queensland (see 'Legal Studies General Senior Syllabus 2019', *Queensland Curriculum & Assessment Authority* <<https://www.qcaa.qld.edu.au/senior/senior-subjects/humanities-social-sciences/legal-studies>> [accessed 22 December 2020]) and South Australia (see 'Stage 1: Legal Studies', *South Australian Certificate of Education* <<https://www.sace.sa.edu.au/web/legal-studies/stage-1>> [accessed 22 December 2020]).

62 See, for example, 'National High School Mooting Competition', *Bond University* <<https://bond.edu.au/future-students/study-bond/see-yourself/high-school-mooting-competition>> [accessed 22 December 2020]; Queensland University of Technology, 'High School Moot' at <<https://qutmooting.wixsite.com/highschoolmoot>> [accessed 10 August 2021], La Trobe University 'Secondary School Mooting Competition' at <<https://www.latrobe.edu.au/law/study/mooting>> [accessed 6 August 2021].

63 Supreme Court of Victoria, *Annual Report 2019–2020*, 14, at <https://www.supremecourt.vic.gov.au/about-the-court/annual-reports/supreme-court-of-victoria-2019-20-annual-report> [accessed 6 August 2021].

64 County Court of Victoria, 'The County Court's Community Engagement Day' 15 November 2018 at <<https://www.countycourt.vic.gov.au/news-and-media/news-listing/2018-11-15-county-courts-community-engagement-day>> [accessed 6 August 2021].

65 A. Wallace, *Courts and their Publics – Technology and the Way Forward in Australian Courts: Serving Democracy and its Publics*, Australasian Institute of Judicial Administration 2013, pp. 17–38, 28–35.

or concern, and, on occasion, arranging for streaming, or broadcasting, of significant decisions. In a number of jurisdictions, those roles have been expanded to include the development and implementation of strategic communication policies, directed to the public, as well as the media.⁶⁶

One example of an initiative that reflects this strategic focus is a regular podcast known as Gertie's Law, linked to the website of the Supreme Court of Victoria, which is intended to provide the public 'an unprecedented look inside Victoria's justice system.'⁶⁷ The podcast introduces the work of courts, explains ideas such as judicial independence and gives examples of the issues which have been decided in court cases. It includes interviews with current and retired judges who talk about complex and poorly misunderstood aspects of what the court does.

Courts could also learn from the approach taken by Royal Commissions to build engagement with groups, such as migrant and faith-based communities, whose cultural background and past experiences of trauma, may affect their levels of trust and confidence in courts, as well as in other institutions of government. Collaborative strategies – reaching out to organisations such as community groups, educational institutions and religious leaders – and undertaking joint initiatives, have much to offer. Recent examples in Victoria include a number of programs developed by the Sir Zelman Cowen Centre at Victoria University for Muslim women to learn about the law and exercise leadership in educating other members of their communities.⁶⁸

In the same way that careful selection of Royal Commissioners is intended to assure the public that the Commission has the necessary expertise to investigate the issue concerned,⁶⁹ trust and confidence in the courts could also be further enhanced by publicising the fact that professional development programs made available to judges now often include topics on socio-legal issues relating to the community which they serve, such as contemporary research on gender and cultural biases which could unconsciously affect judicial decision-making. The Judicial College of Victoria, for example, publishes a range of resources and conducts training for judicial officers on topics including the social context of family violence, making courts accessible for

⁶⁶ J. Johnston, *A History of Public Information Officers in Australian Courts: 25 Years Assisting Public Perceptions and Understanding of the Administration of Justice*, Australasian Institute of Judicial Administration 2018 & The Court-Media Interface: Bridging the Divide. *Australian Journalism Review* 30(1) pp. 27–37.

⁶⁷ 'Gertie's Law Podcast', Supreme Court of Victoria (Web Page, January 2020) at <<https://www.supremecourt.vic.gov.au/podcast>> [accessed 22 December 2020]. 'Gertie' is the colloquial name given by those working in the court to the statue of the goddess of Themis (Greek) or Justitia (Roman) above the main entrance to the court.

⁶⁸ 'Aspire: Young Muslim Women's Governance & Leadership Program', Victoria University (Web Page, 2020) <<https://www.vu.edu.au/sir-zelman-cowen-centre/community-outreach-programs/aspire-young-muslim-womens-governance-leadership-program>> [accessed 22 December 2020]; 'Muslim Women's Legal Training Program and Legal Workshops for Imams', Governor of Victoria at <<https://www.governor.vic.gov.au/all-speeches/muslim-womens-legal-training-program-and-legal-workshops-imams>> [accessed 22 December 2020].

⁶⁹ See, e.g., the emphasis placed on the 'strong investigative skills and extensive experience in corporate and public sector governance' brought to their roles by the Commissioners for the Royal Commission into Aged Care in the Australian State of South Australia: Prime Minister of Australia 'Appointment of Royal Commissioners and Terms of Reference' Media Release, 8 October 2018 at <<https://www.pm.gov.au/media/appointment-royal-commissioners-and-terms-reference>> [accessed 10 August 2021]. See Prasser & Tracy *supra* note 32, pp. 389–390 for a discussion of the types of expertise commonly utilised.

people with disabilities, and issues affecting Aboriginal Victorians.⁷⁰ Not only can such training improve outcomes for court users, but more widespread public understanding of the emphasis now placed such matters in judicial education could help address perceptions of judges as being ‘out of touch’.

ROYAL COMMISSIONS, COURTS AND COMMUNITY ENGAGEMENT

Many of the activities that have been described above — of both Royal Commissions and courts— can be characterised as ‘community engagement’. Traditionally, this has not been an activity that has been viewed as part of the judicial role. As Bookman notes, ‘The classic notion of the judge’s role casts them as an independent and intellectual adjudicator, aloof from the everyday life of their local community.’⁷¹ Judges have also been cautious about engaging in forums where they may be drawn into commenting on individual cases. In the past, in common law jurisdictions, the task of responding to comments or concerns about the judiciary was left to a minister of the executive government, the Attorney-General. However, over recent decades, Australian Attorneys-General have declined this role, placing increased pressure on the courts to engage more directly with the communities they serve.

In recent years the language of community engagement has been increasingly incorporated in speeches by judges, and in court discussions and strategies concerned with managing their relationships with court users and the general public.⁷² However, closer examination suggests that court efforts in this regard are focussed on a narrower range of the community engagement spectrum than those of Royal Commissions.

Community engagement activities undertaken by Royal Commissions can be classified at various points along the continuum of community engagement. Most commonly, as I have described, Commissions engage in activities that are designed to *build knowledge and awareness*, of the Commission, of its processes, and of the issues that it is investigating, as well as the options and processes for individuals and organisations to contribute to its work.

Courts too, increasingly undertake activities that are designed to build knowledge and awareness, among users and potential users, of their processes. However, the emphasis in courts often tends to be simply on the provision of information to the public, supplemented, more recently, by efforts to educating themselves about their communities and their perspectives. In a seminal report that examined the relationship between the Australian courts and the public in 1998, Professor Stephen Parker cautioned that real engagement needs to be ‘two-way’, that is, in addition to providing information, ‘Courts also need to institute mechanisms for two-way communication, through measures such as effective complaints procedures, user

70 Judicial College of Victoria, ‘Events’ at <<https://www.judicialcollege.vic.edu.au/programs-and-events>> [accessed 10 August 2021].

71 Bookman, *supra* note 6, p. 3.

72 See, e.g. Haslett et al, *supra* note 5; S. Rares, ‘Open and accessible courts: Community engagement, public education and awareness’ Speech given to AIJA Cultural Diversity and the Law conference, Sydney, 15 March 2015 at <<https://www.fedcourt.gov.au/digital-law-library/judges-speeches/justice-raises-raises-j-20150313>> [accessed 10 August 2021], Court Services Queensland, *Strategic Plan 2018–2021*, 6,10, at 10 August 2021].

forums, feedback evaluations and user surveys operated in a way that ... should stimulate regular re-evaluation of supposedly fundamental premises.⁷³

Where Royal Commissions have gained particular expertise has been in undertaking activities directed to a more active mode of community engagement that involves *building capacity; supporting and empowering* individuals or organisations to engage effectively and confidently with them. Courts have been slower to take this path but the activities that I have described in relation to supporting court users, show that there has been progress in this direction, although there is potential to do much more.

The far end of the community engagement continuum can be labelled as ‘co-design and consultation’. These are activities in which an institution is genuinely consults with, and learns from, citizens, to reshape services and institutions and keeps citizens informed of the impact of the community’s contributions. A number of activities of Royal Commissions fall within this category, and are also practised in the community court and therapeutic justice sector in the form of court users groups and consultation forums where community members play an active role in setting court policies and procedures.⁷⁴ Methods such as user-centred design offer further opportunities to actively further collaborations with court-users, and the broader public.⁷⁵

Community engagement activities also need to be undertaken in a way that is strategic, and guided by an informed understanding of the needs of court users. Their needs, in common with members of the public affected by issues investigated by Royal Commissions, may vary depending on the nature of the community and the jurisdiction of the court. The Parker report noted a lack of a systemic approach to court engagement.⁷⁶ This is often still the case; although there are some community engagement activities co-ordinated by the courts at the institutional level, many others are left to the discretion of individual judges who choose, for example, which community speaking engagements they accept or which external committees they service. Ad hoc initiatives may have some benefit, but co-ordination and sustained engagement might reasonably be supposed to have greater long-term impact. This is true, not only within individual courts and jurisdictions, but nationally. An encouraging development in the context of cross-cultural development, as the former Chief Justice of Victoria has pointed out, has been the formation of a national Judicial Council on Cultural Diversity, whose work on issues such as the experience of migrant women in the justice system and the availability of interpreters in legal proceedings, has drawn heavily on engagement with individuals and community organisations affected by these issues.⁷⁷

Techniques and tools for community engagement need not only to be shared, but also evaluated. We tend to assume that community engagement activities do help to build public confidence in law and the courts. To date, though, social science evaluation methods to assess the impact of such programs have not been systematically employed. Yet we do need to establish that the resources increasingly

⁷³ *Courts and the Public* Australian Institute of Judicial Administration 1998, p. 31.

⁷⁴ See, e.g. Haslett et al, *supra* note 5, pp. 5–6.

⁷⁵ I. Karpen and M. Senova, *Designing for Trust: Role and Benefits of Human-centered Design in the Legal System*. *International Journal for Court Administration* 12(3).

⁷⁶ *Supra* note 73, p. 32.

⁷⁷ M. Warren, *Connection with Victoria’s culturally diverse communities: Enhancing public trust and confidence in courts and tribunals*, *Journal of Judicial Administration* 25 p. 8.

being invested in community engagement programs are being used strategically and effectively. As Wallace and Delahunty point out,⁷⁸ effective methods of measurement and use of appropriate methodologies, are critical to meaningful evaluation.

CONCLUSION

This paper has argued that some of the approaches used by Royal Commissions can also be useful to courts in the task of building, or enhancing, public trust and confidence. Courts and Royal Commissions perform quite different functions. By their nature, Royal Commissions are focused on the wider public and the need to communicate sensitive information about controversial matters as clearly and as engagingly as possible. Traditionally courts are primarily focussed on the litigants before them so their purview is much narrower, but courts as institutions now need to see their adjudicative responsibilities from a wider perspective.

By engaging more directly with the communities they serve, both Royal Commissions and courts can contribute to improving public understanding of their work, and to supporting members of the public to engage with that work or use their services. They can go further, building collaborative partnerships with the community to structure their work and their processes in ways which are more directly responsive to community needs, rather than focussed on resolving the issues presented by the preferences of the institution and those that work within it.

Embracing opportunities to evaluate this community engagement work, is key to understanding its effectiveness, both in terms of improving services to the public, but also in building trust and confidence. We need to know ‘what works’ in building public trust in institutions, trust which is foundational to the maintenance of democracy and the rule of law.

ACKNOWLEDGEMENTS

My thanks to James Wallace and Ross Gunn for their assistance with research, footnoting and helpful comments. I am particularly grateful for the expert assistance of Ryan Kornhauser, of the Victorian Bar, for his insightful structural editing which not only gave the paper greater clarity but refined the argument in significant ways.

COMPETING INTERESTS

The author has no competing interests to declare.

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⁷⁸ A. Wallace and J. Goodman-Delahunty, *Measuring Trust and Confidence in Courts*. *International Journal for Court Administration* 12(3).

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*International Journal
for Court Administration*
DOI: 10.36745/ijca.420

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TO CITE THIS ARTICLE:
Marcia Neave, 'Building Trust: Can Courts Learn From Royal Commissions?' (2021) 12(3) *International Journal for Court Administration* 5. DOI: <https://doi.org/10.36745/ijca.420>

Published: 23 December 2021

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