EDITIORAL

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Inquiries conducted by the non-judicial arms of government are not a novelty. The first public inquiries in Australia were held by the pre-Federation colonial governments.1 In England, royal commissions find their origins in William the Conqueror’s Domesday survey of 1086.2 In this sense, inquiries have had a longer history than many fundamental institutions of government in our legal system, such as an elected parliament3 and an independent judiciary.4

Despite their ancient origins, inquiries have not lost their contemporary relevance. On the contrary, they are being used for an increasingly diverse range of purposes.5 Anti-corruption commissions and royal commissions are frequently given the task of making findings in relation to potential criminal conduct,6 a function resembling that which is performed by the courts. To enforce the statutes they administer, bodies like the Australian Securities and Investments Commission 7 and the Office of the Australian Information Commissioner (‘OAIC’)8 conduct inquiries into alleged breaches of those statutes. Meanwhile, institutions like the Australian Human Rights Commission inquire into controversial areas of law to advise the government on potential areas of law reform.9 In these ways, the activities of inquiries are suggestive of the functions of all three branches of government.

* Editor, Issue 38(3), 2015.
1 See Scott Frasser, Royal Commissions and Public Inquiries in Australia (LexisNexis Butterworths, 2006) 2 [1.3].
5 See Frasser, above n 1, 2 [1.4].
7 Australian Securities and Investments Commission Act 2001 (Cth) pt 3.
8 Privacy Act 1988 (Cth) pt V.
9 Frasser, above n 1, 104 [5.6] ff; Gilligan, above n 2, 302.
For this and other reasons, the place that inquiries have in our legal system has been subject to some debate. Although calling an inquiry is conventionally described as an executive function, inquiries are usually conducted with a considerable level of independence from other executive agencies. This has led to suggestions that commissions of inquiry might belong to a fourth, ‘integrity’ branch of government. Inquiries chaired by serving or former judicial officers have been a particular source of confusion. Even though such inquiries involve the exercise of executive rather than judicial power, they are often described as ‘judicial’ inquiries. The ambiguities surrounding inquiries conducted by the non-judicial arms of government illustrate the need to clarify how such inquiries are conducted, what purposes they serve and how they interact with the other institutions of government.

These are precisely the issues examined by the four articles in the thematic component of this Issue. Fiona Roughley’s article considers the judiciary’s influence on the establishment and subsequent conduct of royal commissions. More specifically, the article examines how the law of contempt might prevent the executive from establishing a royal commission, and when a court might be able to restrain a royal commission from conducting further inquiries that could amount to contempt. The next article, written by Jodie Siganto and Mark Burdon, considers the method of inquiry that the OAIC adopts for its own-motion investigations into potential breaches of the Privacy Act 1988 (Cth). It continues to explore the interrelationship between inquiries and other parts of government by discussing how the OAIC’s lack of powers and resources might impede the efficient conduct of its own-motion investigations. The third article, written by Elen Seymour and Marina Nehme, analyses law reforms relating to the regulation


11 Prasser, above n 1, 20–1 [2.23]; Donaghue, above n 6, 16–18 [1.12]; Hallett, above n 2, 48–51.


of the not-for-profit sector. In doing so, the article exemplifies how non-judicial inquiries like the Senate Repeal Inquiry and the National Commission of Audit can shape the policies adopted by the political organs of government. In the last article in this Issue, Meg Brodie considers the conduct of national inquiries by national human rights institutions (‘NHRIs’). The article captures the complexities of the interactions between independent inquiries and other parts of the executive by documenting politicians’ responses to NHRIs’ findings, and emphasising the importance of protecting NHRIs’ independence.

The issues explored in these articles are wide-ranging, and the institutions which they examine might at first sight appear to be rather loosely related. However, as illustrated above, there are common threads running through all the articles. I hope that readers will keep searching for these overarching principles and will find the thematic component of this Issue useful in clarifying the roles that non-judicial inquiries play in our legal system.

Over the course of the last 14 months, I have received the generous support of many people. They have helped me transform what was then just an idea into a proposal, and then into this Issue in print. I would like to take this opportunity to express my deepest gratitude to everyone who has contributed to this process.

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17 Elen Seymour and Marina Nehme, ‘The ACNC, the Senate, the Commission of Audit and the Not-for-Profit Sector’ (2015) 38 University of New South Wales Law Journal 1186.
thoughtful comments, which have been indispensable in assisting the Journal to make its publication decisions.

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