# BOOK REVIEW*

*Royal Commissions and Permanent Commissions of Inquiry*
by STEPHEN DONAGHUE
(Australia: Butterworths, 2001) pp 328.
Recommended retail price AUD$159.50 (ISBN 0 409 31782 9).

Governments appoint Royal Commissions for a wide range of reasons. Sometimes they genuinely want an inquiry into and report upon a defined topic of public importance. But often the motivation is ignoble, for example to score points off political opponents, or to shelve a controversial issue and thus buy time. An interesting book remains to be written as to the reasons, which may be multiple, why particular Royal Commissions were convened, and the extent to which expectations were realised or otherwise. No doubt such a work would be best written by a political scientist.

Royal Commissions are popular with, or at least frequently resorted to by, Australian governments at both federal and State level. At the time of writing, three are current – one practically complete in Victoria, one halfway through in Western Australia, and one in its early stages at the federal level, with hearings in Sydney. Whether such Commissions are popular with the people may be doubted: generally they cost much more and take much longer than is estimated at the outset. The last two decades have also seen the establishment of permanent bodies having such a wide range of powers that they may be looked upon as standing Royal Commissions. The most notable of these are the National Crime Authority, the Independent Commission Against Corruption and the State Crime Commission in New South Wales, and the Criminal Justice Commission.

Dr Donaghue's book deals with all such bodies. There is one limitation upon its scope which is not apparent from the title. Having noted that 'Both ad hoc and standing commissions have much more extensive powers than the police', the author states that his book 'is concerned with the legal issues that arise from the use of those powers'. The focus is upon the use of such powers to investigate and report upon crime. The topic is an important one, and is very well dealt with. This is a learned and thorough work, and the publishers also deserve credit for providing a handsome book.

The author is, where necessary, forthright as well as erudite. A good example concerns his treatment of the High Court's rushed decision in *Hammond v*

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* Ian Temby QC; Barrister and former Commissioner of the New South Wales Independent Commission Against Corruption. He is presently conducting a Royal Commission into the Finance Broking Industry in Western Australia.

*Commonwealth*.[1] The reasons for the decision in that case are subjected to searching and critical scrutiny. While it is uncontroversial to say that if an accused is bound 'to answer questions designed to establish that he is guilty of the offence with which he is charged ... there is real risk that the administration of justice will be interfered with',[2] much depends upon whether 'designed' has connotations of intent, as Toohey J concluded in *Hamilton v Oades*.[3] There are two difficulties with this, as Donaghue argues. One is that the rules governing contempt prevent interference with the due administration of justice, and it is therefore the effect of an inquiry on pending proceedings, rather than the intent and purpose of that inquiry, that is relevant to the question of contempt or otherwise. Second, if the doctrine is so confined it would have almost no content, as the use of coercive powers in a manner intended to interfere with pending court proceedings would reveal an improper purpose, and could thus be restrained simply as an abuse of power.

While the laying of criminal charges may be an indirect consequence of a coercive administrative inquiry, that will very rarely be its purpose. Indeed, if problems can be dealt with by ordinary investigation and criminal prosecution, that is precisely what should happen. If a hearing is conducted in public and is followed by a public report, the prime purpose must always be to ascertain and record the reasons for some failure, perhaps coupled with recommendations, all aimed at preventing repetition. At least ordinarily, such inquiries and reports are best viewed as an alternative, rather than a precursor, to criminal prosecution.

Very different considerations apply to bodies which are required to, or do habitually, conduct hearings in private with a view to building a prosecution brief. What has just been said aptly describes the National Crime Authority and the NSW State Crime Commission respectively. They use coercive powers, particularly to make reluctant witnesses talk. Such bodies, if well run, can be extremely effective, particularly against hardened malefactors. To provide one topical example, one could imagine the powers of such a body being used with good effect to investigate activities by terrorists – but not, it is to be hoped, refugees.

It is fair to anticipate that *Royal Commissions and Permanent Commissions of Inquiry* will become standard reading for lawyers appearing before such bodies.

1 (1982) 152 CLR 18.
2 Ibid 199 (Gibbs CJ, Mason and Murphy JJ concurring).
3 (1989) 16 CLR 486.