Roundtable
Royal Commissions and Public Inquiries –
Australian and International Trends and Issues

23 April 2013
# Roundtable
Royal Commissions and Public Inquiries – Australian and International Trends and Issues
23 April 2013
ACT Assembly Building, Canberra

## Program

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<td>9:00am-10.30am</td>
<td><strong>Session 1: Overview</strong></td>
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<td>Welcome</td>
<td>John Nethercote (Chair) Australian Catholic University</td>
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<td>Opening Remarks</td>
<td>The Hon Trevor Morling QC</td>
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<td>Overview: Trends and Issues</td>
<td>Professor Scott Prasser Australian Catholic University</td>
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<td>Royal Commissions and Integrity Systems</td>
<td>Professor Charles Sampford Griffith University</td>
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<td>Constitutional Issues and Royal Commissions</td>
<td>Professor Nicholas Aroney Law School, University of Queensland</td>
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<td>10.30am-11.00am</td>
<td><strong>Morning Tea</strong></td>
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<td>Time</td>
<td>Session 2: How inquiries work</td>
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<td>11.00am-12.30pm</td>
<td>The National Human Rights Consultation</td>
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<td>Professor Frank Brennan AO SJ, Australian Catholic University</td>
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<td>The Flood Inquiry into Australian Intelligence Agencies</td>
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<td>Philip Flood AO</td>
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<td>Inquiry Chair and former Secretary of Department of Foreign Affairs &amp; Trade</td>
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<td>The Finkelstein Media Inquiry</td>
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<td>Professor Rod Tiffen</td>
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<td>Department of Govt &amp; International Relations, University of Sydney</td>
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<td>A View of Inquiries from Inside the Bureaucrany</td>
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<td>Paddy Gourley</td>
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<td>former Commonwealth public servant</td>
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<td>12.30pm-1.30pm</td>
<td>Lunch</td>
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1.30pm-3.15pm

Session 3: Evaluating inquiries & their legislation

The 2009 ALRC Report on the Commonwealth Royal Commissions Act 1902

Whatever Happened to the Cole Inquiry into the AWB Affair?

The History and Outcomes of Child Abuse Inquiries

Seagulls at the Lawyers’ Picnic: Media Reporting and Perceptions of Inquiries

Professor Rosalind Croucher
President Australian Law Reform Commission

Stephen Bartos
Executive Director, ACIL Allen Consulting

Dr Adam Tomison
Director & Chief Executive, Australian Institute of Criminology

Christian Kerr
Senior Political Reporter, The Australian

3.15pm-3.30pm

Break
### Session 4: Inquiries – types, international trends and their place in govt

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<td>3.30pm - 5.00pm</td>
<td>Inquiries into Political Wrongdoing</td>
<td>Associate Professor Janet Ransley</td>
<td>School of Criminology &amp; Criminal Justice, Griffith University</td>
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<td>New Zealand Royal Commissions and Commissions of Inquiry</td>
<td>Dr Alan Simpson</td>
<td>University of Waikato</td>
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<td>Summary: Where do public inquiries fit in modern government?</td>
<td>Professor Scott Prasser</td>
<td>Public Policy Institute, ACU</td>
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<td>7.00pm</td>
<td>Conference Dinner</td>
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Speakers’ biographies and paper synopses

Nicholas Aroney

Nicholas is Professor of Constitutional Law at the T.C. Beirne School of Law at The University of Queensland. He is a member of the governing council of the Australian Association of Constitutional Law and was recently awarded an Australian Research Council fellowship to undertake research on comparative federalism. Professor Aroney has initiated and led several international collaborative research projects in constitutional law and legal theory, with particular emphasis on questions relating to the theory and practice of federalism, the design and performance of bicameral parliamentary systems, and freedom of speech.

Aroney Synopsis – Constitutional Issues and Royal Commissions

Royal Commissions are an exercise of the executive power of the state. Their legal status, functions, powers and immunities are ultimately derived from a combination of the common law prerogatives and capacities of the Crown and special powers and immunities conferred by statute. Their powers are in some ways similar to those of the courts, especially regarding the power to compel witnesses, and their processes enjoy the same immunity as judicial processes. However, they are not courts, and do not exercise judicial power in the full sense of making final and enforceable determinations of the guilt or innocence of persons said to have committed offences against the law. The line between the constitutional functions of royal commissions and the ordinary courts is nonetheless a fine one, especially when a commission is established to inquire into a matter which is at the same time the subject of judicial proceedings. There are also limitations on the capacity of the Commonwealth to authorise royal commissions to conduct inquiries on matters which fall outside the Commonwealth’s constitutional responsibilities. Recent developments in the law relating to both the judicial and the executive power of the Commonwealth may call for a reconsideration of these limitations on the constitutional capacities of royal commissions.

Stephen Bartos

As Executive Director of ACIL Allen Consulting, Stephen advises clients on economics, public policy, governance and risk. He is author of two books, Against the Grain – The AWB Scandal and Why it Happened and Public Sector Governance – Australia (CCH: 2004) together with numerous articles. Prior to consulting, Stephen was Professor of Governance and Director of the National Institute of Governance at the University of Canberra and was previously Deputy Secretary of the Commonwealth Department of Finance and head of the Commonwealth’s Budget Group.
Bartos Synopsis – Whatever Happened to the Cole Inquiry into the AWB Affair?

The multi-million dollar inquiry by the Hon Terence Cole into the AWB scandal (the Inquiry into Certain Australian Companies in Relation to the UN Oil-for-food Programme, Commonwealth of Australia, Nov 2006) was scathing in its condemnation of AWB's "closed culture of superiority and impregnability, of dominance and self-importance." Since then, the export wheat monopoly has ended, AWB privatised and sold to a multinational, all the senior executives of AWB moved on. However, questions remain. The Cole Inquiry was not allowed by its terms of reference to investigate the extent of government complicity in AWB's actions. Court cases that might have shed light on this via the discovery process have been quietly settled rather than litigated. As a result, we run the risk that too little has been learned from the experience. The AWB scandal was not a one off lapse by a rogue trader, but a consequence of a misguided internal culture and a closed policy circle which meant government and its advisors were not alert to the problems. The paper argues that greater transparency and institutional reform within government is a necessary step to avoid a similarly huge scandal (in different circumstances) at some future time.

Frank Brennan AO SJ

Fr Brennan is Professor of Law, Director of Strategic Research Projects (Social Justice and Ethics), Australian Catholic University Frank Brennan who had been a self-confessed fence sitter on a Human Rights Act is a Jesuit priest, professor of law at Australian Catholic University and Adjunct Professor at the Australian National University College of Law and National Centre for Indigenous Studies. He was the founding director of Uniya, the Australian Jesuit Social Justice Centre. He is a board member of St Vincent’s Health Australia and chairs the policy committee of Jesuit Social Services. In 2009, he chaired the Australian National Human Rights Consultation Committee.

Brennan Synopsis – The National Human Rights Consultation

The National Human Rights Consultation was a broad ranging community consultation about the protection of human rights in Australia. Its major critics saw it as a stalking horse for a bill of rights. The Committee engaged focus groups and random polling as well as over 60 community roundtables, a three day national symposium and received tens of thousands of submissions. The Committee put forward a cascading set of recommendations in the light of the findings. Government declined to proceed with a Human Rights Act, but enacted measures enhancing parliamentary scrutiny of legislation and executive compliance with key international human rights instruments.
**Professor Rosalind Croucher** (BA (Hons) LLB PhD AMusA FRSA FACLM(Hon) FAAL TEP)

Rosalind was appointed to the Australian Law Reform Commission in February 2007 and in December 2009 as President, after a distinguished period of 25 years in university teaching and management, including as Dean of Law at Macquarie University (1999-2007), where she still holds a Chair. She has lectured and published extensively, principally in the fields of equity, trusts, property, inheritance and legal history. At the ALRC Professor Croucher has been the Commissioner of six inquiries (2007–2013) including, most recently, the Inquiry into Legal Barriers in Commonwealth Laws to Older Persons participating in the Workforce or Other Productive Work.


Professor Croucher will outline the key recommendations from the 82 made in the ALRC’s 2010 Report into the operation of the Royal Commissions Act 1902 (Cth): *Making Inquiries: A New Statutory Framework* (ALRC Report 111). The ALRC report considered a number of matters including whether there was any need to develop an alternative form or forms of Commonwealth executive inquiry, with statutory foundations, to provide more flexibility, less formality and greater cost-effectiveness than a royal commission.

**Philip Flood AO**

Philip was former Secretary Department of Foreign Affairs and Trade; Ambassador to Indonesia; High Commissioner to the United Kingdom and chaired the Inquiry into Australian Intelligence Agencies (2004), the Inquiry into Immigration Detention (2001) and the Inquiry into Australia’s Plasma Fractionation Arrangements (2006).

**Flood Synopsis – The Flood Inquiry into Australian Intelligence Agencies & Other Inquiries**

Political and administrative aspects of official public inquiries will be considered in this presentation. The Australian Law Reform Commission’s Report 111, *Making Inquiries*, while comprehensive and extremely valuable, risks making federal inquiries more time consuming, expensive and hence less effective.
**Paddy Gourley**

Paddy was recruited to the Australian Public Service in the late 1960s and spent a long time in the Public Service Board until it was abolished. He was subsequently employed in the departments of Industrial Relations and Defence retiring in 2000. Since then he has been on the boards of several private companies and at present is a non-executive director of the Sydney Airport. Paddy is a regular contributor to the Public Sector Informant of the Canberra Times.

**Gourley Synopsis – A View of Inquiries from Inside the Bureaucracy**

This presentation will consider issues concerning public inquiries from the perspective of a Commonwealth public servant who has seen and in some cases experienced them at first hand. It will review some of the circumstances in which public inquiries have been used to examine management problems in the Australian Public Service, speculate about where they have been more successful and where less and how they might have affected management attitudes.

**Christian Kerr**

Christian is currently Senior Political Reporter for *The Australian* based in Canberra. He has worked for two federal cabinet ministers and a State premier and several state ministers.

**Kerr Synopsis – Seagulls at the Lawyers’ Picnic: Media Reporting and Perceptions of Inquiries**

The presentation will outline how the media portray different types of public inquiries, what they find interesting and newsworthy and how this impacts on public perceptions of such bodies.

**The Hon Trevor Morling QC**

Trevor was a judge of the Federal Court of Australia and then a member of the Supreme Courts in ACT and Northern Territory. He also held commissions as an appeal judge in Tonga, Vanuatu and Western Samoa and was for many years Chairman of the Australian Electoral Commission. Mr Morling chaired the Royal Commission into Chamberlain Convictions (1986) and the Royal Commission into the Leasing by the Commonwealth of Accommodation in Centenary House (1994). Since retiring he has been actively engaged as an arbitrator and mediator, particularly in Europe.
Scott Prasser

Scott is the Executive Director of the Public Policy Institute (PPI) of the Australian Catholic University based in Canberra. Prior to joining the PPI Scott worked in senior policy and research positions in State and Federal governments. He published *Royal Commissions and Public Inquiries in Australia* (Lexis/Nexis) in 2006 and has written extensively on this area.

**Prasser Synopsis – Overview: Trends and Issues of Public Inquiries**

This paper outlines recent trends concerning the use of public inquiries and highlights key issues about their roles and place in modern government.

Janet Ransley

Janet is Associate Professor and current head of the School of Criminology and Criminal Justice at Griffith University. Previously, she held senior positions as Research Director at the Queensland Legislative Assembly and at the Criminal Justice Commission (now the CMC). She has co-authored/edited 4 books and collections and over 30 research articles and chapters on topics including policing, commissions of inquiry, and criminal justice policy. She has received research grants for research into: illicit drug interventions; asylum seeker detention; counter-terrorism; and the prosecution of workplace violence.

**Ransley Synopsis – Inquiries into Political Wrongdoing**

Australia has a long history of appointing royal commissions and other forms of official inquiry to investigate corruption, crime and associated police and political misconduct. These inquiries usually have access to extensive coercive powers and in recent times at least, to significant investigative and administrative resources. Yet like inquiries more generally, there has been limited assessment of how successful these inquiries have been in firstly uncovering wrongdoing, especially in highly charged political circumstances; and secondly, in strengthening preventive measures. Given that over the last 20 years many permanent statutory agencies have been established across Australia with these functions, this paper asks what makes a misconduct inquiry effective, and are royal commissions still an appropriate vehicle for this type of issue?
Charles Sampford

Charles is Director of the The Institute for Ethics, Governance and Law (a joint initiative of the United Nations University, Griffith, QUT, ANU, Center for Asian Integrity in Manila and OP Jindal Global University, Delhi) based at Griffith University. He was previously Foundation Dean of Law and Foundation Director of the Key Centre for Ethics, Law, Justice and Governance (the only ARC centre in either law or governance). Foreign fellowships include St John’s (Oxford) Senior Visiting Fellow and a Senior Fulbright to Harvard. His 117 essays/articles and 27 books include pioneering and ongoing Australian and international work on integrity systems.

Sampford Synopsis – Royal Commissions and Integrity Systems

Integrity systems work has generally concentrated on continuing institutions. However, the role of short term (and not so short term) inquiries within integrity systems also needs consideration which will be the focus of this presentation.

Dr Alan Simpson

Alan is Senior Lecturer, Department of Political Studies at Waikato University, New Zealand. He completed his Masters at Victoria University, Wellington and PhD at University College, London and has been teaching at Waikato University since 1977. Alan has enjoyed several careers at Waikato University including undergraduate teaching, graduate teaching and now doctoral supervision. He has spent many years serving on a range of University committees and on administration as Associate Dean and then Acting Dean of the Faculty of Arts and Social Sciences. Alan has written on a wide range of topics including royal commissions in New Zealand.

Simpson Synopsis – New Zealand Royal Commissions and Commissions of Inquiry

This paper will outline the royal commissions’ functions, powers, status in law and relation to other forms of inquiry in New Zealand. Their use over time from 1908 to the present day is summarised, with the main categories of the issues referred to commissions identified. An outline of how, when and why New Zealand governments have used the commission of inquiry process is provided followed by a brief analysis of the different circumstances giving rise to the use of the royal commission. The New Zealand Law Commission’s recent report and suggestions for A New Inquiries Act published in 2008 will be outlined and comments offered on the future of the commission of inquiry instrument and its impact for government and society.
Professor Rod Tiffen

Rodney Tiffen is Emeritus Professor in Government and International Relations at the University of Sydney. He has written extensively on media and politics, with books including: *News and Power and Scandals, Media, Politics and Corruption in Contemporary Australia*. His latest book (with Ross Gittins) is the second edition of *How Australia Compares*. He is currently working on a book on Rupert Murdoch and was a consultant to the Finkelstein Inquiry.

Tiffen Synopsis – *The Finkelstein Media Inquiry*

With the defeat of Senator Conroy’s media legislation in March 2013, the Finkelstein Report will almost certainly become just a historical curiosity. It was born from an unpromising mix of concerns and had to operate under very tight time constraints. Its key recommendation concerned avenues of redress. It looked at the chronic and perhaps intrinsic weaknesses of the Australian Press Council as a means of offering media accountability and opted instead for a body with similar standards and composition, whose one and only sanction would be the publication of adjudication, but which would have statutory underpinning. The report was then subjected to a frenzy of misrepresentation and became caught up in various political conflicts.

Dr Adam Tomison

Dr Tomison was appointed Director of the Australian Institute of Criminology in July 2009. He is an internationally recognised expert in child maltreatment and child protection systems. Previous positions include: Director of the Northern Territory’s statutory child protection services; Director of Policy and Research for the NT *Little Children are Sacred* Inquiry into the Protection of Aboriginal Children from Sexual Abuse. He is an Honorary Professor at the Australian Catholic University and sits on a number of Boards, including the International Centre for the Prevention of Crime and the International Society for the Prevention of Child Abuse and Neglect.

Tomison Synopsis – *The History and Outcomes of Child Abuse Inquiries*

The protection of children from child abuse and neglect has, more than many other areas of social concern, been driven by individual tragedies and the community’s concern that systems put in place to make children safe from harm fail too often. These concerns have led to the regular reporting and review of all child deaths, specialist child death reviews and inquiries, and a series of broader inquiries into child protection and child protection systems – current and
past practices – in most jurisdictions in Australia and across the western world. The nature of these reviews and their impact on child protection systems and approaches are discussed.

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