

# RULE OF LAW

## INSTITUTE OF AUSTRALIA

*Presentation to Media, democracy and the rule  
of law conference*

*6 Sep 2011*

**Richard Gilbert**

Chief Executive Officer

Rule of Law Institute of Australia

# RoLIA

The Rule of Law Institute is an independent non-profit association formed to uphold the rule of law in Australia.

The Institute's objectives are:

- To foster the rule of law in Australia.
- To promote good governance in Australia by the rule of law.
- To encourage truth and transparency in Australian Federal and State governments, and government departments and agencies.
- To reduce the complexity, arbitrariness and uncertainty of Australian laws.
- To reduce the complexity, arbitrariness and uncertainty of the administrative application of Australian laws

# RoLIA advocates:

- On legislation which respects the rule of law.
- On the need for education on the rule of law.
- Against excessive use of power by the executive.
- On enhanced parliamentary scrutiny of our regulators
- On the need for a free press
- On the independence of open courts

# Three themes

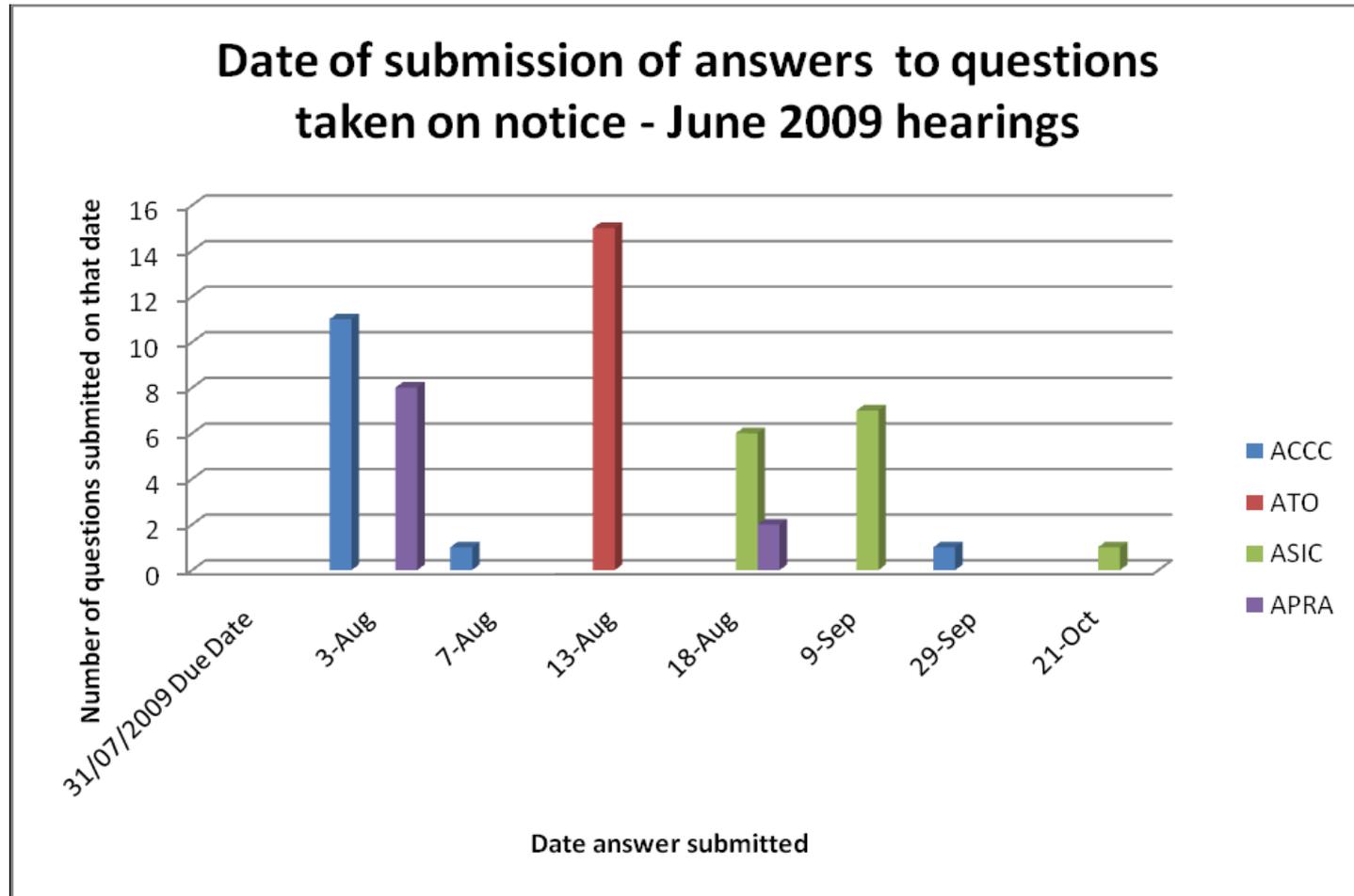
- Regulatory accountability
- New law to respect rule of law
- Media/privacy regulation

# Theme #1

## Regulators – accountable to who?

- The Parliament?
- The Minister?
- The community?
- Those who pay the freight?
- Consumers?
- The role of the media – an issue

# Adherence to Senate Orders



# Publication of data in annual reports 2009-2010 – re coercive powers

Reporting item	ACCC	ACC	APRA	ATO	ASIC	ABCC
Number of notices	x	x				x
Notices by type (for interview or document production)	x	x				x
Notices by area of compliance		x				
Challenges to the validity of notices	x	x				x
Search warrants sought	x					
Warrants executed/granted	x			x*		
Description of matters for which warrants sought	x					
Explanation of the powers and how they work		x				x
State by state breakdown						x
Proceedings begun for failure to attend examination		x				x
Breakdown by type of examinee Eg management or employees						x
Outcome of examinations (proceedings commenced, investigation closed etc).						x
Legal representation at interview						x
Explanation of why increase/decrease in number of notices		x				
Telecommunications warrants						

# Theme #2

## Legislation must respect rule of law

- Truth in labels
- Henry VIII clauses
- Unclear provisions
- Reversal of onuses
- Excess discretionary powers

## *Truth in labels #1 - anti spin*

# *Tax Laws Amendment (Confidentiality of Taxpayer Information) Bill 2010*

- Makes it an offence for taxation officers to disclose tax information that identifies an entity, or is reasonably capable of being used to identify an entity, except in *certain specified circumstances*.
- Actually sets out more ways for taxpayer information to be disclosed to agencies and ministers, where the title implies that taxpayer information is being restricted. (50 state and federal agencies listed)
- Sanctions for disclosing data to Parliament

# *Financial Framework Legislation Amendment Bill 2010*

While there were changes to the financial status of the ALRC and several other agencies, substantial management changes to the ALRC were also included in the Bill:

- The office of 'Deputy President' is abolished.
- The ALRC-controlled Board of Management is abolished and Attorney-General controlled Management Advisory Committee created in its place.
- The Attorney-General can now appoint part-time Commission members under the Act.
- The Attorney-General can direct policies of the ALRC on administrative matters.

# Theme #3 Media regulation

Two issues have cause RoLIA concern:

Journalist shield laws – fig leaf protection.

- Critical that sources be protected – news will dry up
- Onus on source to sustain a shield – costly and risky
- Gives large corporates and government an advantage in court proceedings
- Federal courts (not state courts) bound by new laws

# Tort of privacy?

Paper by Robin Speed

- Potential to limit free speech in small groups
- Liability even if truth is spoken
- Public interest defence and uncertain (and costly to sustain)
- Damages difficult to assess

Onus on the Australian Government to produce the privacy transgressions which sustain a case for the new law – case studies over the past five years

Rule of Law Institute of Australia

[www.ruleoflaw.org.au](http://www.ruleoflaw.org.au)

(02) 9251 8000

Thank you