The Rule of Law Institute of Australia (RoLIA) is an independent not-for-profit body established under the Associations Incorporation Act 2009 (NSW). The Institute was formed to protect and promote the rule of law in Australia.

RoLIA’s objectives are to:

- Foster the rule of law in Australia
- Promote good governance in Australia by the rule of law
- Encourage truth and transparency in Australian Federal and State governments, government departments and agencies
- Reduce the complexity, arbitrariness and uncertainty of Australian laws and their administrative application

This is achieved by various means including:

- Addressing the relevance and significance of the rule of law in the community, universities and high schools
- Participating in public debate on rule of law issues
- Reviewing new legislation being enacted by Parliaments throughout Australia for compliance with the rule of law
- Monitoring government agencies’ compliance with the rule of law, including the model litigant rules, coercive powers, investigations and transparency
- Highlighting attempts to close court proceedings to the public and to undermine the independence of the judiciary

RoLIA receives no government funding and its activities are carried out on a pro bono basis, with events largely self-funded. It has an active Governing Board, all of whom act pro bono.

PATRON
The Hon. James Spigelman AC QC (former Chief Justice of NSW)

GOVERNING BOARD
Mr Robin Speed (President)
Mr Malcolm Stewart (Vice-President)
Mr Richard McHugh SC
Dr Melissa Perry QC
Emeritus Professor Geoffrey Walker
Mr Ben Giles (Secretary/Treasurer)
The Rule of Law and its Relevance

The Core Definition

Its Relevance Today

Letter from the President

Education Initiatives

Rule of Law Adjunct Professor, the Hon. Kevin Lindgren AM QC

NSW Legal Studies Association Conference

RIVSSTA Legal Studies Workshop

Business Educators Association Conference

Greater Coffs Harbour Legal Studies Study Day

School Visits and Initiatives

Videos and Resources

Awards and Competitions

NSW Teachers Excellence Prize

Queensland Rule of Law Essay Prize

UTS Journalism Prize

Conferences and Presentations

Rule of Law Contemporary Issues Conference

NSW Law Society Rule of Law Series – Bikie Legislation

New Website

Media Profile

Model Litigant Rules

Presumption of Innocence

Consorting

RoLIA Submissions and Publications
Tax Laws Amendment (Cross-Border Transfer Pricing) Bill 2012 ............................................ - 27 -
Crimes Legislation Amendment (Powers and Offences) Bill 2012.......................................... - 27 -
Civics and Citizenship - National Curriculum ........................................................................... - 28 -
Senate Scrutiny of Bills Committee .......................................................................................... - 30 -
THE CORE DEFINITION

Emeritus Professor, and RoLIA Governing Board member, Professor Geoffrey Walker has outlined the core definition of the Rule of Law in his book *The Rule of Law: foundation of constitutional democracy* (1st Ed, 1988)) in the following terms:

“..most of the content of the Rule of Law can be summed up in two points: (1) that the people (including, one should add, the government) should be ruled by the law and obey it and (2) that the law should be such that people will be able (and, one should add, willing) to be guided by it.”

ITS RELEVANCE TODAY

The relevance of the Rule of Law is the application of the following principles in practice.

- The law is made by representatives of the people in an open and transparent way.
- The law and its administration is subject to open and free criticism by the people, who may assemble without fear.
- The law is applied equally and fairly, so that no one is above the law.
- The law is capable of being known to everyone, so that everyone can comply.
- No one is subject to any action by any government agency other than in accordance with the law and the model litigant rules, no one is subject to any torture.
- The judicial system is independent, impartial, open and transparent and provides a fair and prompt trial.
• Everyone is presumed to be innocent and the prosecutor must prove their case

• Everyone may remain silent and is not required to incriminate themselves

• No one can be prosecuted, civilly or criminally, for any offence not known to the law when committed

• No one is subject adversely to a retrospective change of the law

The Rule of Law is an overarching principle which ensures that Australians are governed by laws which their elected representatives make and which reflect the Rule of Law. It requires that the laws are administered justly, fairly and reasonably.
Since its establishment in late 2009, the Rule of Law Institute of Australia has promoted the Rule of Law on the national platform. It is now common to find that the Rule of Law is frequently referred to in the media and in general discussion. The Institute is often asked to comment on matters of public interest. This is very encouraging.

The Institute has also promoted the Model Litigant Rules which governments and their agencies should follow in disputes with the individual. We now have these rules adopted by the Full Federal Court when it stated:

“...being a model litigant requires the Commonwealth and its agencies, as parties to litigation, to act with complete propriety, fairly and in accordance with the highest professional standards.”

LVR (WA) Pty Ltd v Administrative Appeals Tribunal [2012] FCAFC 90 at [42]

Whilst these developments are important, they have shown a lack of understanding in the community of the meaning and relevance of the Rule of Law. Further, whilst we have won some battles and whilst the Rule of Law is now accepted as important, there is a general reluctance on the part of government and their agencies to apply all the Rule of Law principles, particularly in presuming people to be guilty in new legislation. To address these issues, we have decided it is now timely to place greater emphasis on explaining the Rule of Law and its relevance in schools and universities. We have appointed Nick Clark as Education Coordinator. He, with the assistance of Laura Hicks, has enthusiastically developed programs and resources for schools, lead presentations and arranged for eminent members of the judiciary such as the hon. Kevin Lindgren to lecture university students.

Richard Gilbert, our Chief Executive, has decided to retire and I would like to thank Richard for all his great work in promoting the Institute since its establishment. He has promised that he would be available to help on specific projects. I intend to take him up on this.

Robin Speed
This year the Institute has continued to keep the Rule of Law on the public stage and has moved its emphasis to promoting awareness of the Rule of Law in schools and universities.

Nick Clark has been welcomed onto the RoLIA staff as Education Coordinator. Nick is responsible for coordinating our work with schools and universities.

During the year we have sponsored a range of activities in schools and universities in NSW and Queensland.

**RULE OF LAW ADJUNCT PROFESSOR, THE HON KEVIN LINDGREN AM QC**

In 2012 RoLIA sponsored the Hon. Kevin Lindgren AM QC to be the first adjunct professor of the rule law at the University of Sydney. This position gives his honour the opportunity to provide law students at different levels in their studies a better understanding of the Rule of Law in relation to both its historical development and relevance to society and the law today.

Over the course of the year his honour has delivered three lectures to students undertaking a Bachelors of Laws or a Juris Doctorate. These lectures were very well attended and for the first year bachelor students provided a good Rule of Law context in which to base the rest of their studies. Students in later years, particularly JD students were interested to see how the Rule of Law relates to many current events such as the clash between the government of Papua New Guinea, and their judiciary, and the
relevance of *habeas corpus* in the context of recent High Court decisions.

During the lectures his honour presented his paper "The Rule of Law: its state of wellbeing in Australia" which can be accessed along with videos of the presentations on our website: theruleoflaw.org.au.

It is hoped that the adjunct professorship in the Rule of Law, which continues in 2013 will reinforce the value of the Rule of Law to the next generation of legal minds.

RoLIA would like to thank the Hon. Kevin Lindgren for his time.

**NSW Legal Studies Association Conference**

The NSW Legal Studies Association State Conference is a major event held to support Legal Studies teachers. Teachers from all over NSW attend to participate in practical workshops and hear a variety of legal professionals speak about contemporary issues in the criminal law, human rights, family law, and many other areas covered in the Legal Studies syllabus.

RoLIA Vice President, Mr Malcolm Stewart, presented to over 300 teachers on the value and importance of the Rule of Law. The presentation also discussed the highly topical anti-bikie legislation, its constitutional validity, and addressed a key theme in the syllabus: balancing the rights of the individual with the needs of the state.

The inaugural Rule of Law Teaching Excellence Awards were
presented at the conference dinner by the Hon. Justice Peter McClellan. His Honour’s comments regarding the role of judges, and the complex range of legal and social factors which influence the sentencing of criminal offenders provided a detailed explanation for teachers on the importance of an independent judiciary. His Honour also acknowledged the role of community standards in ensuring public confidence in the administration of justice, as well as the right and value of media commentary on the actions of the courts. The Sydney Morning Herald published an article on Justice McClellan’s comments entitled ‘Shock Jocks play part in keeping crimes sentences real, says judge’ which discussed his Honour’s thoughts on community expectations, sentencing and the media.

RIVSSTA LEGAL STUDIES WORKSHOP

Research Officer, Laura Hicks, travelled to Corowa to present on issues regarding family law and discussed a retrospective amendment to the Family Law Act. Laura and Richard Gilbert, RoLIA’s CEO, fielded questions from teachers on a variety of topics.

The presentation also covered contemporary issues with adoption, birth technologies and surrogacy arrangements, while giving a general overview of the structure of the Family Law Act.

This was a great experience for RoLIA and provided a valuable resource for teachers in more remote areas of the Riverina. RoLIA is looking to support further professional development events for teachers in regional areas over the coming year.
BUSINESS EDUCATORS ASSOCIATION CONFERENCE

The conference was held at the Brisbane Exhibition Centre and attended by over 300 teachers completing professional development on a range of subjects including Legal Studies, Economics and Business Studies.

Nick Clark and Laura Hicks attended the Business Educators Association of Queensland’s Annual Conference and operated a RoLIA stall offering a resource pack containing the worksheets and case studies for use with RoLIA’s videos. The event was a great way to meet teachers and make great contacts by talking about Rule of Law issues when they arose in the presentations and also during the operation of the stall.
GREATER COFFS HARBOUR LEGAL STUDIES STUDY DAY

Coffs Harbour Senior College hosted a Legal Studies Study Day for all students in the Coffs Harbour region as preparation for the HSC examinations.

Nick Clark presented on human rights, the separation of powers and refugees and asylum seekers making reference to two High Court Cases, *Plaintiff M61/2010# v Commonwealth* and *Plaintiff M69 of 2010 v Commonwealth (2010) HCA 41* which dealt with the power of the executive and the right of asylum seekers to seek judicial review on the procedural fairness of applications for refugee status.

*Plaintiff M70/2011 v Minister for Immigration and Citizenship (2011)*, the Malaysian Solution case was also considered. It found that the Minister for Immigration and Citizenship's decisions relating to a declared country were based on assumptions rather than facts and therefore inadequate to pass the test in s198A (now repealed) of the Migration Act 1958 (Cth).

These cases were illustrative of the judiciary making decisions about a controversial issue based on the law, and showed the importance of the Rule of Law in the power dynamics between the executive and the judiciary.

SCHOOL VISITS AND INITIATIVES

Nick Clark spoke at St Luke's Grammar, Moorebank High School, and St Patricks at Sutherland to Year 11 and 12 students about Rule of Law issues surrounding bikie gangs and the updated offence of consorting with criminal offenders in the Crimes Act 1900 (NSW).

He also presented RoLIA’s resources to the Catholic Education Office’s Professional Learning Group for Legal Studies, and received valuable...
feedback for future projects to provide useful resources for teachers. Some key feedback and directions for future projects were:

- Need to develop resources accessible to students with low literacy

- Initiatives to enhance better learning outcomes from court visits

Nick also presented a Rule of Law case study on the ACCC to the Board of the Economics and Business Educators of NSW, and authored a paper for their journal on the relevance of the Rule of Law to consumers and business.
All of RoLIA’s educational resources are easily accessible on the website and provide a portal for students to develop an understanding of key Rule of Law concepts, and explore case studies of relevance to their studies and the Rule of Law. Educational resources are publicised via email newsletter and are posted regularly on social media websites Facebook, Twitter and YouTube.

You Tube Videos

RoLIA has produced a number of videos this year including:

- What is the Rule of Law
- Human Rights
- Dispute Resolution: Individuals
- Dispute Resolution: State
- Torts
- Consorting Laws
- Part 1: The Role of a Prosecutor and the Presumption on Innocence with Senior Crown Prosecutor, Mark Tedeschi QC
- A four part short lecture series on the Rule of Law:
  o What is the Rule of Law?
  o AV Dicey and the Rule of Law
  o The Rule of Law and the Magna Carta
  o Habeas Corpus and the Petition of Right
- Passing a Bill Through Federal Parliament

These are publicly available and have been a great success with students and teachers.

RoLIA has also produced videos by utilizing the knowledge of skilled legal professionals. For example, the Hon Kevin Lindgren’s speeches at the University of Sydney have been edited...
into videos on the Rule of Law issues in Papua New Guinea, and the development of the Rule of Law alongside British Common Law and Statute.

Senior Crown Prosecutor, Mark Tedeschi QC, also visited the RoLIA studio and spoke about the role of a prosecutor, the presumption of innocence and the standard of proof, beyond a reasonable doubt.

RoLIA has developed worksheets, study aids and poster infographics for classroom use with some of the videos and case studies. Next year RoLIA will be branching out and developing some interactive content on its website for revision such as multiple choice tests, and resources to support game based learning in Legal Studies.

Nick Clark, RoLIA’s Education Coordinator, also authored a study guide for high school students based on Mr Tedeschi’s book, Eugenia. The book and guide focus on a murder trial from the 1920s and provide an excellent example of the operation of the criminal trial process, and the importance of a court system free of influence by sensational media coverage.

Overall the education initiatives have been very successful. The YouTube videos have received over 3,000 views and RoLIA has received feedback that the various study guides and other materials have catered to their intended use and are not only great complements to the videos but also excellent resources that can be used on their own. Providing such a wide range of resources has allowed teachers to engage the students in different ways that suit particular lessons, students and teaching styles.
NSW Teachers Excellence Prize

RoLIA instituted and awarded prizes at the NSW Legal Studies Association Conference for excellence in teaching legal studies. The Hon. Justice Peter McClellan presented the awards on RoLIA’s behalf.

RoLIA would like to congratulate the winners of the inaugural Rule of Law Teachers Excellence prizes, Wayne Gleeson of Woolooware High School, Renuka Senthevadivel of Cecil Hills High School and Claire Golledge of Monte Sant’ Angelo Mercy College, North Sydney.

Renuka, who was awarded the prize for excellence in teaching within the first 10 years of practice, uses cutting edge technology and internet tools, which she shared with conference attendees to keep her students motivated and engaged. Claire often supports her fellow teachers by presenting on various areas of the syllabus and she too presented at the conference. Wayne in his capacity of Vice-President of the LSA not only shared a variety of resources for the benefits of the
other teachers at the conference, he also provided valuable assistance and support to all teachers of Legal Studies throughout the year.

RoLIA believes that it is important to reward teaching excellence and looks forward to hearing of the successes and achievements of many other talented teachers in NSW and across Australia.

**QUEENSLAND RULE OF LAW ESSAY PRIZE**

RoLIA instituted and awarded prizes to students in Queensland for an essay on the Rule of Law.

Students completed a 1500 word essay on the following question:

'Discuss the relevance of the Rule of Law in Australia at a local, state or federal level.'

The awards for 1st, 2nd and 3rd place were presented at the BEAQ conference.

The Attorney General of Queensland, the Hon Jarrod Bleijie MP, presented the prize to three students, and spoke about the importance of the Rule of Law, the competing interests of an MP who is Attorney General and the member of a political party. He concluded his speech describing some of the ways in which he intends to uphold the Rule of Law in Queensland.
The Institute awarded three students from the University of Technology, Sydney, with prizes for their essays on the Rule of Law and regulation of the media. The Dean of the Faculty of Arts and Social Sciences, Theo van Leeuwen, and RoLIA Vice President, Malcolm Stewart presented awards to Una Butorac, James Pennington and Julian van der Zee.

Mr Stewart said, ‘Effective journalism and a free press are critical in ensuring Australia remains a country with a legal system that operates and is underpinned by the principles of the Rule of Law.’

The students’ lecturer for their subject on regulation of the media, radio broadcaster Phillip Clark, was also present to congratulate the students.

The question students were required to address was:

“In the wake of the Murdoch phone hacking scandal in the UK, Lord Justice Leveson opened the public inquiry on 14 November 2011, saying: “The press provides an essential check on all aspects of public life. That is why any failure within the media affects all of us. At the heart of this Inquiry, therefore, may be one simple question: who guards the guardians?”
Critically examine the role of the media as the “fourth estate” in the context of issues raised in the Leveson hearings and the Finkelstein Inquiry. To what extent should journalists be held accountable in a society governed by Rule of Law?

RoLIA would like to thank all the participants in the competition and Associate Professor Tom Morton, Director of the Australian Centre for Independent Journalism.
RULE OF LAW CONTEMPORARY ISSUES CONFERENCE

RoLIA convened the 2012 Brisbane Rule of Law Conference, *The Rule of Law Contemporary Issues*, in association with the Centre for Public, International and Comparative Law of the TC Beirne School of Law, the University of Queensland.

The conference, opened by Professor Gerard Carney (Dean, TC Beirne School of Law, UQ), featured a highly distinguished panel of senior judges, members of Parliament and academics, and lead to lively debate on important issues arising in contemporary legal development. RoLIA is very pleased with the success of the day and is looking forward to future Rule of Law events in Queensland.

Session one, *The Australian Parliament and the Rule of Law* provided insights into the influence of the Rule of Law in the political sphere.
from Senator The Hon. George Brandis SC (Shadow Federal Attorney-General) and The Hon. Graham Perrett MP (Chair, House of Representatives Standing Committee on Social Policy and Legal Affairs).

Session two, *The Rule of Law and Land Management Issues – Points of Conflict*, chaired by the Hon. Justice Catherine E Holmes (Queensland Court of Appeal) shifted the focus of the conference to environmental issues and the Rule of Law. Professor Douglas Fisher (Faculty of Law, QUT) presented on Environmental Governance and Professor Suri Ratnapala (TC Beirne School of Law, UQ) spoke about vegetation management legislation.

Session three, *The Rule of Law and Legal Ethics – Points of Interest*, chaired by Professor James Allan (TC Beirne School of Law, UQ) concluded the first part of the conference. Professor Reid Mortensen (School of Law, USQ) spoke on the Legal Profession National Law and the Hon Justice James Douglas (Supreme Court of Queensland) gave insights into the issues of access to justice and self-representation, including what he terms a “querulous litigant”.
The conference was concluded with a luncheon address by the Hon. David F Jackson AM QC (Barrister at Law, former Judge of the Federal Court of Australia) at which attendees enjoyed hearing about his Honour’s dynamic career.

RoLIA would like to thank its partner in the event, the Centre for Public, International and Comparative Law, particularly Professor Suri Ratnapala and Beth Williams for their contribution. Thanks must also go to the Queensland Bar Association for their assistance and finally to all those who attended. This was RoLIA’s first large event in Queensland and it was a success due to the large and engaged audience.

Please see the RoLIA webpage: www.ruleoflaw.org.au for links to videos of the speakers and copies of the papers delivered.

NSW LAW SOCIETY RULE OF LAW SERIES – BIKIE LEGISLATION

RoLIA Vice President, Malcolm Stewart joined a panel which also included Professor Andreas Schloenhardt (of the TC Beirne School of Law, University of Queensland) and Wayne Baffsky (Barrister) in discussing “anti-bikie” legislation.

Malcolm identified that the arbitrary powers and lack of independence of the judiciary within the bikie legislation are the primary reasons why many of the new laws aimed at “otlaw” bikie gangs are against the Rule of Law. Malcolm also noted that the failure in the Crimes
(Criminal Organisations Control) Act 2009 (NSW) to provide reasons is what caused this legislation to be arbitrary and ultimately invalidated in *Wainohu v NSW* [2011] HCA 24. In contrast the *Serious and Organised Crime (Control) Act 2008* (SA) provided for magistrates to rubber stamp previously made decisions thus removing the independence of the judiciary. In *South Australia v Totani* [2010] HCA 39 this was held not to be a valid approach.

Professor Schloenhardt provided great insight into the history of laws that target organised crime and offered insights into the different approaches across Australia and the world. It was noted that the Australian approach is unique and very stringent.

Mr Baffsky, counsel for the United Motor Cycle Council gave many examples of how these laws provide too much power to various authorities. Mr Baffsky is also counsel for Charles Foster, the first person convicted under the new NSW consorting laws and stated that while the laws were intended to target bikies the unfair nature is heightened by the conviction of intellectually impaired Charles Foster who has no connections to an outlaw motor cycle gangs rather he is just a “pain in the neck for Inverall police”. An appeal is currently underway and RoLIA will be closely following the outcome. Please see the Media Profile section for an article by RoLIA on the consorting laws.
The Institute’s website was upgraded during the year to provide a more user friendly interface, allowing the site to be navigated more easily and placing our resources and current issues at the forefront. The upgrade has been beneficial and has generated an increase in traffic to the site.

An important change made was to allow information on current issues to be accessed in different ways, whether it is by topic or document type. The information can now be accessed by topic, for example by, model litigant rules, retrospective laws and freedom of speech or by document type such as press release or submissions to parliament.

The education site was also remodelled to provide an engaging and dynamic site for teachers and students. The videos and resources tab facilitates easy access to a suite of information on a particular area of the syllabus and the posters and infographics tab provides access to visual guides on key topics. The Case Studies page complements these.
The current case studies available on the website include:

- Control Orders, Consorting and Tattoo Parlours
- Refugees Asylum Seekers and the Rule of Law
- Paul Hogan and the Freedom of Movement
- Flood of Legislation
- Stern Hu and the Right to a Fair Trial
- Ark Tribe and the ABCC
- NSW Crime Commission and Journalistic Privilege
- Judge or Jury? Trial by Jury in Australia
- A History of the Rule of Law
- The ACCC and Heinz "The Pineapple Case"
Over the past year RoLIA has maintained a strong media presence and has commented on a variety of issues including model litigant rules, the presumption of innocence, consorting laws and other rules governing conduct of government.

**MODEL LITIGANT RULES**

The Institute has been at the forefront of ensuring Government and their agencies observe the Model Litigant Rules.

The Full Federal Court has stated that Australian governments, their agencies and their legal representatives have an overriding obligation to act as model litigators; *LVR (WA) Pty Ltd v Administrative Appeals Tribunal* [2012] FCAFC 90. The Full Court stated that:

“...being a model litigant requires the Commonwealth and its agencies as parties to litigation, to act with complete propriety, fairly and in accordance with the highest professional standards.”

This year RoLIA continued to monitor government and achieved media in relation to the Model Litigant Rules and the Legal Service Directions generally.

Adherence to the Model Litigant Rules is critical to the Rule of Law as it ensures that the power of government does not adversely affect individuals and thus that the law applies equally to all.

In an article published in the Australian on 13 April by Chris Merritt, RoLIA CEO, Richard Gilbert was quoted as saying “The government ignores legitimate judicial comment on model litigant behavior by the Crown at its own peril”. The government on numerous occasions has ignored criticism from the judiciary for their conduct in court and denies that these are examples of breaches of the Model Litigant Rules. However, it is highlighted by RoLIA, that if the opinions of the judiciary are not to be considered it is essential that the government identifies what test it applies in cases to ensure that there has not been a breach
of the Model Litigant Rules. Although RoLIA had hoped that bringing the cases of judicial criticism to the attention of government would lead to a review of the Model Litigant Rules, this has not occurred.

RoLIA Vice President, Malcolm Stewart, shared his knowledge and understanding of the Legal Services Directions in an article in the Australian, “The government has been challenged to release advice Nicola Roxon Received” by Chris Merritt. The article concerned the settlement made in the case between the Attorney General and the Hon. Peter Slipper MP accuser, James Ashby. Malcolm identified that in order for the Commonwealth to have complied with the directions in settling the matter the Commonwealth would have needed to believe that there was at least a meaningful prospect that it would be unsuccessful in court.

RoLIA will continue to scrutinise Government in relation to their model litigant obligations.

**Presumption of Innocence**

RoLIA President, Robin Speed, drew attention to the Crimes Legislation (Powers and Offences) Bill 2011 that if passed in its original form would have effectively removed the presumption of innocence. The contentious power would have allowed information gathered by the Australian Crime Commission (ACC), a highly secretive and avid user of coercive powers, to be shared with the chief executives of private sector business without offering any protections to employees whom the information could be about. Due to the influential nature of the ACC a private sector chief executive officer could be placed in a position where they would have to act on the information provided by the ACC and dismiss staff without a proper investigation. Below is an extract from an article in the Australian from 20 January, “Crime law powers violate basic human rights” authored by Robin.

“At present the ACC Act contains the minimum Rule of Law safeguards. Namely that the ACC is an investigator and it is a matter for the law enforcement agencies to decide whether to act on the information collected by it. The ACC does not have power to prosecute; that is the role of the independent
Commonwealth Director of Public Prosecutions. The ACC does not have the power to find a person has committed a criminal offence and send him to jail; that is the role of the independent courts whose proceedings are open to the Australian public.

Inherent in the Bill is the risk of bypassing these safeguards, sweeping away the presumption of innocence, having the employee damned as a “rogue employee” and having the private sector do the dirty work of “dealing” with the employee; and all behind closed doors. No proper protections are provided to the employee. Nor is an employer protected who dismisses an employee when it turns out the ACC was wrong or its information defective or it failed to disclose the information in its possession disclosing innocence”.

**CONSORTING**

RoLIA President, Robin Speed had an article, “Consort law sends the wrong message” published in the Australian on 24 August 2012. The article concerns a NSW Act that forms part of a suite of legislation aimed at organised crime, the *Crimes Amendment (Consorting and Organised Crime) Act 2012* and the first person found guilty under this law.

It is stated in the article:

“The full horror of the new consorting laws was played out at Inverell, far from the bikie gangs and shootings of the cities when Charles Foster was the first person found guilty under the new consorting laws and sent to jail for 12 months, with a non-parole period of 9 months.”

This far reaching police power is too open to abuse and will achieve little:
“By sending the person consorting to jail, what is achieved? It is said that you keep him away from associating with some criminals – but he is sent to jail where there are only criminals. It is said that you break up gangs, but what evidence was there that Mr Foster was part of a criminal gang or even wanted to join one? And what effect is all of this on the persons with whom he has consorted? It makes a pariah of them, isolating them in their community and thereby presenting a greater threat. The sentencing of Mr Foster to 12 months in jail certainly sends a clear message to the community. That is the consorting law is bad and the sentence harsh and oppressive.”

Foster, originally entered a guilty plea but has successfully appealed to have the guilty plea withdrawn leading to the case being remitted for hearing.
RoLIA submitted to the Senate Standing Committee on Economics in relation to their inquiry on the Tax Laws amendment (Cross-Border Transfer Pricing) Bill (No. 1) 2012 outlining its concerns with the Bill’s retrospective elements. The Bill dealt with transfer pricing, an important and complex area of the law.

Specifically, it was submitted that there was no justification for the retrospectively back until 2004. Retrospectivity in legislation is at odds with the Rule of Law and is only justified where it is clearly for the public benefit. The retrospectivity sought by this bill of over 7 years was not for the public benefit, no justification for it could be identified.

Despite our efforts, the Bill was passed and unfortunately showed Australia to the world as a place where they could not rely on the existing law to order their activities.

RoLIA submitted to the House of Representatives Standing Committee on Social Policy and Legal Affairs that the Bill did not comply with the Rule of Law due to:

1) A lack of recognition of the presumption of innocence that flows from the Bill’s underlying presumption that the view of the ACC as to the guilt of a person is correct and the requirement that the
information disclosed is complete, accurate, admissible in court and has been independently verified.

2) The practical avoidance of the existing safeguards of the Rule of Law contained in the Australian Crime Commission Act 2002. Specifically, the ACC is an investigative body that should not directly or indirectly undertake the role of the Director of Public Prosecutions and prosecute for perceived wrongs, nor should the ACC usurp the role of the courts and determine guilt.

3) The general lack of transparency, as the whole procedure is highly secretive.

Following the submission RoLIA President, Robin Speed and RoLIA CEO Richard Gilbert were invited to give evidence at the Committees’ hearing into the Bill.

At the hearing the Committee members were impressed by the issues that RoLIA raised and recommended that the Bill be amended to prevent employees being named during the information sharing process.

RoLIA also received press in relation to this bill – please see the media profile for more information.

CIVICS AND CITIZENSHIP – NATIONAL CURRICULUM

The Civics and Citizenship Shape Document for the National Curriculum was published by the Australian Curriculum, Assessment and Reporting Authority (ACARA) in August. RoLIA made a submission encouraging and praising the inclusion of the Rule of Law as a key value in the Shape Document. Our submission provided some insights into the concept of the Rule of Law and discussed the relevance of the concept. We urged ACARA to keep the definition of the Rule of Law to its essential qualities to avoid it being used in an overtly political context, and highlighted its role as a stabilising factor in ensuring the independence of the judiciary, freedom of speech, and fairness in government. The necessity for students to experience civic institutions such as courts, and the parliaments of Australia was put forward as a
requirement for inclusion in the curriculum to encourage the development of more extensive programmes to introduce students to the workings of the legal system and government. RoLIA strongly believes that positive experiences with civic institutions are the best way to shape the youth of today into citizens who respect the law, themselves and the society in which they live.

We eagerly await the final draft of the Shape Document and hope the curriculum can realise its potential as an instrument which encourages participation in civil society. Most importantly, from RoLIA’s point of view, we hope every student in Australia will come to an understanding of the importance of the Rule of Law in protecting their rights and ensuring their responsibilities are enforced by a fair and transparent legal system.
RoLIA undertook an investigation of the Senate Scrutiny of Bills Committee which highlighted its value in protecting the Rule of Law and also to identify trends in provisions of bills in possible conflict with the Committee’s terms of reference. The Committee is a unique feature of Australian scrutiny and is not replicated in any other country.

In general terms the task that the Committee undertakes is valuable to the Rule of Law as scrutiny provides an opportunity for Rule of Law issues to be debated and identified. Even in the absence of amendments to bills, it is clear that Parliament has at the very least turned its mind to provisions that may for example, trespass on human rights or other Rule of Law issues. Further the Rule of Law is also vital in the process of scrutiny and the Australian Constitution is framed on the assumption of the Rule of Law and that the Rule of Law can be used in its interpretation\(^1\). As a result all legislation should be scrutinised against the Rule of Law.

A trend identified in the investigation was that the prevalence of clauses in bills that have retrospective elements has actually decreased, which is a good outcome for the Rule of Law.

**Graph 1: Trend in Raw Numbers of Instances of Retrospectivity**

![Retrospectivity Graph](image)

**Graph 2: Trend in % of Total Bills of Retrospectivity**

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\(^1\) Australian Communist Party v Commonwealth (1951) 83 CLR 1 at 193 per Dixon J
However, it was identified that there is an increase in general trespass on rights and liberties and also an increase in the use of Henry VIII clauses. These are not good outcomes for the Rule of Law and certainly need continued scrutiny.

Graph 3: Trend in Raw Numbers – Instances of Trespass on Rights and Liberties
Graph 4: Trend in % of Total Bills of Rights and Liberties

Graph 5: Trend in Raw Numbers of instances of Henry VIII Clauses

Graph 6: Trend in % of Total Bills of Henry VIII Clauses
For the full report please see the campaigns section of our website.