



THE DEATH
OF DEMOCRACY
ANNUAL REPORT 2021

WWW.RULEOFLAW.ORG.AU

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PRESIDENTS REPORT



The rule of law is often thought of as a strict body of rules governing the behaviour of society. However, the rule of law goes beyond values associated with law and order – it also offers veritable societal protections.

The rule of law is fundamental to restraining the abuse of governmental power through principles such as the separation of powers and independence of the judiciary and instituting a duty upon governments to be accountable to the people.

This defines a fundamental principle of the rule of law. That is, no one is above the law, regardless of their status.

Societies that enjoy the rule of law are afforded freedom, justice, and equality. The rule of law establishes societal conditions that offer an open field for the pursuit of legitimate aspirations and dignity for all classes of people. Individual rights are upheld by the rule of law through principles such as the presumption of innocence, which ensures a mere accusation does not prescribe guilt nor destroy an individual's liberty.

Overall, the rule of law provides protection for individuals and our society and is something that must be guarded and protected by all Australians.

MARGARET CUNNEEN SC
PRESIDENT, RULE OF LAW EDUCATION CENTRE

THE RULE OF LAW

All people should be ruled by just laws
subject to the following principles:



The rule of law must be supported by informed and active citizens



RULE OF LAW

EDUCATION CENTRE

WHAT IS THE RULE OF LAW?

The rule of law is a vital part of Australian culture, all people are to be ruled by just laws. No one is above the law and the law is to be applied equally and fairly.

We have a community duty to struggle to maintain governance by just laws.

To simply explain the principles of the rule of law, in 2021 the Rule of Law Education Centre developed the Rule of Law Wheel as seen on the opposite page.

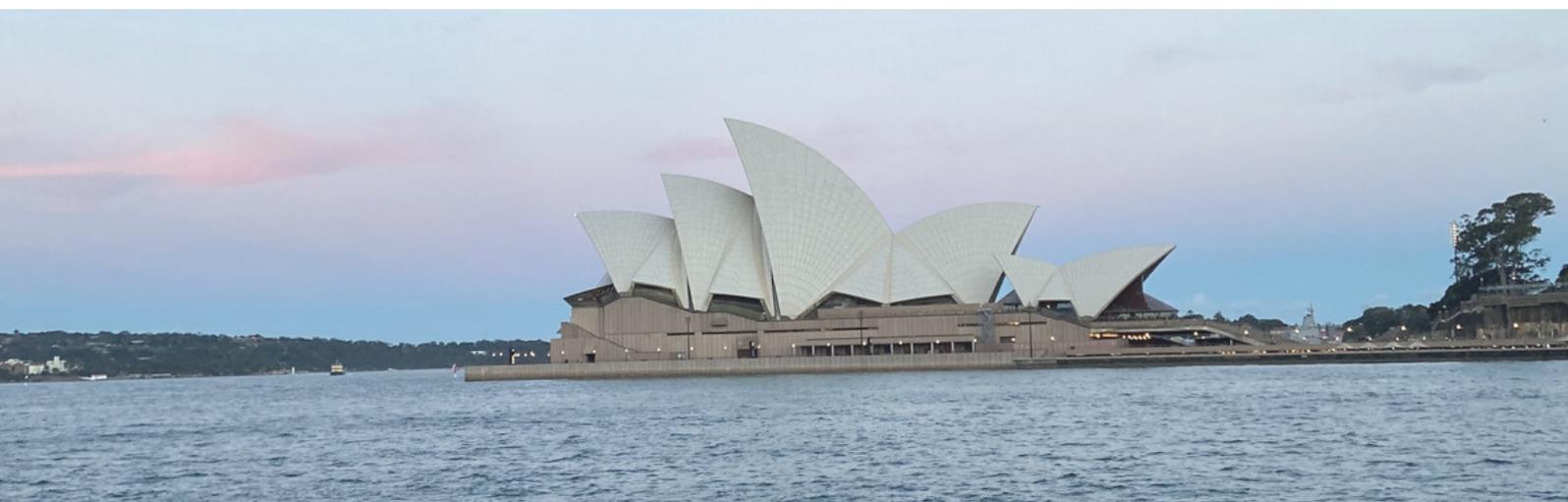
RULE OF LAW WHEEL STATS

300

views per day

42

downloads per day



THE DEATH OF DEMOCRACY

BY THE MANIPULATION OF THE FEW

For nearly 200 years, the State of Victoria proudly upheld democracy and the rule of law in Australia. To the credit of the Labor Party, it was the leader in recognising human rights with an impressive Bill of Rights Act.

But this all changed in 2021.

Victoria is no longer a democracy nor subject to the rule of law. It pretends to be, but the façade has been and is manipulated by a few in the Victorian Parliament.

The Public Health and Wellbeing Amendment (Pandemic Management) Act and how its predecessors were administered is living proof of this. All is exemplified in the Victorian Ombudsman report that stated "the effect of a complex and constrained bureaucracy meant some outcomes were downright unjust, even inhumane."

A small group in the Victorian Government has hijacked the political process and Parliament so that Parliament and those who apply the laws no longer primarily serve the interests of Victorians but serve the interests of those few.

This is not a political statement of Labor or Conservative, left or right politically, but the stark reality.

The Pandemic Management Act is law and must be obeyed. But democracy and the rule of law require laws to be maintained and made by the public, and to be just. The Act is not. What must be done and what has always been done to maintain our Australian values, is to **struggle and fight these unjust laws and their administration.**

INFORMED AND ACTIVE CITIZENS

With government reaction to the Covid-19 pandemic, it is understandable that our nation's citizens have focused internally on their own health, finances and their personal physical self-preservation, rather than the government's removal of basic freedoms; the freedom to associate, the freedom to speak, the freedom of movement and to have representatives to make laws and scrutinise government action. No-where in Australia was this more evident than it was in Victoria.

We now see with tens of thousands of Victorians publicly protesting that attention has changed, the resistance to the injustice resulting from the government's removal of these freedoms and sidelining of Parliament.

The cry of Eureka is heard from the protestors, a cry from history for the removal of unjust laws and unjust administration of laws.

When there is no citizen engagement and scrutiny, our nation ceases to have the rule of law and democracy, and ultimately a nation.



THE PRESUMPTION OF GUILT CONFERENCE

The presumption of innocence is a key principle of the rule of law that protects Australians from false accusations, discrimination and unfair trials.

The 2021 Presumption of Guilt Conference considered whether we are witnessing the death of the presumption of innocence in Australia. Speakers included Bret Walker AO SC, Margaret Cunneen SC, Ron Hoenig MP, Malcolm Stewart and Chris Merritt.

The conference examined the consequences of allowing this doctrine to be eroded by confining it to the formal processes of criminal justice and considered its application in light of recent sexual consent law proposals and failings of NSW's Independent Commission Against Corruption.

CONFERENCE STATS

612

registrations

3.5K

Youtube views

587

new people joined
mailing list

Presumption of
innocence

SPEAKERS



BRET WALKER AO SC



MARGARET CUNNEEN SC



RON HOENIG MP



MALCOLM STEWART



CHRIS MERRITT

I would very much like to see the presumption of innocence understood as being a cardinal principle of the fairness and propriety and decency of a criminal system that calls for accusations to be made good, rather than defences to be demonstrated.

BRET WALKER AO SC

Governments in Australia continue to make inroads into the presumption of innocence. Once these inroads into the presumption of innocence have been made, they become difficult to remove.

The rule of law and other common law reforms depend in large part on the public's attitude to these principles and freedoms.

MALCOLM STEWART

TRIAL BY MEDIA

In March 2021, following allegations laid against former Attorney General Christian Porter MP, the phrase 'rule of law' received increased public attention after the Prime Minister's statement:

*The **rule of law** is essential for liberal democracies and we weaken it at our great peril, it is that principle that undergirds our democracy itself, the **presumption of innocence**. The investigation of allegations involving criminal activity by competent and authorised bodies, that is, the police and to act in accordance with the decision of those bodies.*

HON SCOTT MORRISON MP

Following a call for the Attorney General to resign based upon an allegation, The Rule of Law Institute, together with the Rule of Law Education Centre highlighted the importance of a proper legal process when serious allegations are made rather than trial by media.

The Presumption of Innocence

Past vs PRESENT

What has changed?
and more importantly
...
What hasn't?

Past

An accusation has been made...

PRESENT

That woman is a witch!

That politician is corrupt!



A mere allegation does not mean someone is guilty. Due legal process should be followed and not some alternative, unofficial process without any safeguards.

ROBIN SPEED AO

The rule of law prevails in this country. Everyone is innocent until proven guilty in a court of law.

CHRIS MERRITT

THE PRESUMPTION OF INNOCENCE VIDEO: PAST V. PRESENT

Past

Trial by Ordeal

The Presumption of Innocence was often drowned out by public fervor.

The accused could not avoid damage to their life and reputation, regardless of the verdict.

Countless innocent people had their lives **destroyed** on the basis of allegations that were not upheld by proof.



PRESENT

TRIAL BY MEDIA

The media is now taking on the role of judges and prosecutors.

Any accusation without proof could damage the reputation and career of an individual.

Countless innocent people continue to have their lives **destroyed** on the basis of mere allegations.



Does this sound familiar?

NSW ICAC

The liberties of all Australians rest on the principle that everyone is free to engage in an activity that does not amount to a breach of the law. **Liability under the law, findings of guilt and the imposition of penalties are the exclusive prerogative of independent courts, not integrity bodies such as ICAC.**



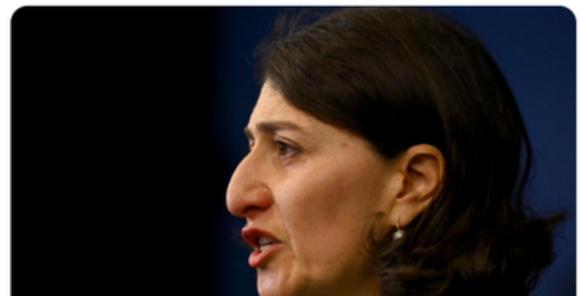
theaustralian.com.au
In technical terms, this is madness
Scott Morrison has clearly been paying attention. The show trial in Sydney starring Gladys Berejiklian is indeed shameful not because the...



skynews.com.au
Difference between IBAC and ICAC comes down to 'three things'
Rule of Law Institute Vice President Chris Merritt says the difference between ICAC and IBAC comes down to three things. "Public hearings...



theaustralian.com.au
Questions over setting up of Berejiklian inquiry
In a little over a week, former NSW premier Gladys Berejiklian appears before the most important public hearing of the Independent ...



ICAC sentences a Premier to the roughest injustice
For Australians, the rule of law is a birthright of incalculable value. Yet what has just happened to Gladys Berejiklian means the nations oldest...
theaustralian.com.au



theaustralian.com.au
Conviction vindicates legal system, not ICAC
This weeks conviction of former NSW ministers Ian Macdonald and Eddie Obeid, along with Obeids son Moses, is a major achievement.



theaustralian.com.au
ICAC on trial as judge rules on Obeid inquiry
On Monday morning, Justice Elizabeth Fullerton of the NSW Supreme Court will hand down a judgment that will have an immense impact no...

People can only
be punished
in accordance
with the law

The Rule of Law Institute, together with the Rule of Law Education Centre have continued to highlight the flaws in NSW ICAC, in particular the role of public hearings. Chris Merritt has critiqued this **flawed system of justice** in the Australian newspaper, on Sky News and at multiple conferences.

They (ICAC) choose their own targets and they operate for maximum shame and humiliation on the way through, by then, it doesn't matter whether anyone is ever found to be guilty or not guilty, your reputation is gone, and your job is gone.

Why does New South Wales have public hearings? If they insist on public hearings there must be a quid pro quo and that must be a public apology and exoneration for the many, many times that it gets it wrong.

MARGARET CUNNEEN SC

This comes very close to being what I consider to be a show trial. If there's to be a place, a continuing place for a commission, a commission like this, for an anti-corruption watchdog, it needs to be brought more into line with the orthodox mainstream justice system

CHRIS MERRITT

BORDER CLOSURES



The Constitution, Australia's supreme law, binds all Australians, including those in power.

Section 92 of the Constitution says that movement between the States shall be **absolutely free**.

The original intention at Federation was a unified nation, with people moving freely between the states.

*Australia shall be free- free on borders, free everywhere- in its trade and intercourse between its own people; that **there shall be no impediment of any kind - that there shall be no barrier of any kind between one section of the Australian people and another**; but that the trade and general communication of these people shall flow on from one end of the continent to the other, with no one to stay its progress or to call it to account*

SIR HENRY PARKES

In 2021, the High Court ruled in the Clive Palmer case that the States can shut their borders so long as the closures are proportionate and for a legitimate purpose.

Chris Merritt and the team at the Rule of Law Education Centre have written numerous articles in the Australian newspaper and created explainers that **question whether border closures are lawful and a proportionate response** to the pandemic- especially now that vaccination targets have been met.



RuleofLawAustralia @RoLAustralia · Apr 12 ...
The PM has sought co-operation from States who do not want to cooperate .. he has walked away from legal challenges to State border closures and has not taken up the exclusive power over Quarantine. Appeasement has not worked [#borderclosures](#)



theaustralian.com.au
Sorry PM, the states are now the boss
COVID is the virus that keeps on giving. Every day, we realise one of its spikes has locked with another part of our lives, and things will never ...

RuleofLawAustralia @RoLAustralia · Aug 27 ...
If McGowan's victory signalled a shift to parochialism, then AstraZeneca and Pfizer are doing more to restore the settled constitutional order than battalions of lawyers [@australian](#) [#covidnsw](#) [#auspol](#) [#COVID19Aus](#) [#section92](#) [#constitution](#)



theaustralian.com.au
Closed borders may face High Court challenge
Last year, when Western Australia's border closure faced a legal challenge, Scott Morrison wimped it. He chose not to defend the ...

RuleofLawAustralia @RoLAustralia · Sep 3 ...
Whatever happens in the courts cannot diminish the fact that Cash was right to calmly state constitutional reality: the legal arguments upholding the validity of all state border closures will weaken once the nation hits an 80% vax coverage [@ChrisMerritt](#) [ruleoflaw.org.au/constitution/b...](#)



RuleofLawAustralia @RoLAustralia · Nov 8 ...
Legal basis for border closures fades



theaustralian.com.au
Legal basis for border closures fades
As national vaccination rates edge closer to 80 per cent, its time to restore our frayed federation. And unless two premiers see the light, ...

PROTESTING UNJUST LAWS

INTERVIEWS HIGHLIGHTING UNJUST LAWS



**INTERVIEW WITH PROF
GEORGE WILLIAMS
FROM UNSW TO
DISCUSS LAW-MAKING
AND LIBERTY DURING
THE PANDEMIC**

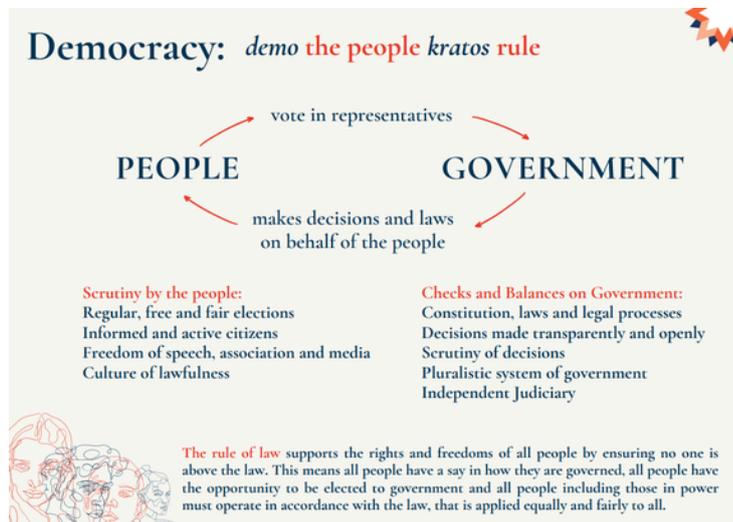
The Federal Health Minister, once you have these kinds of emergencies can make any direction, can make any declaration he thinks is necessary to meet the threat of the pandemic. Not only that, his declarations override any other law, including laws made by Parliament, and Parliament is prevented from disallowing any of his declarations. That's as close to a dictatorship as you can get

PROF GEORGE WILLIAMS AO



**INTERVIEW WITH
CHRIS BLANDEN QC,
PRESIDENT OF
VICTORIAN BAR ON
CONCERNS WITH
VICTORIAN PANDEMIC
MANAGEMENT BILL**

RESOURCES EXPLAINING DEMOCRACY



PROMOTION OF EUREKA ANNIVERSARY

Victorian Democracy Timeline

- 1788** The First Fleet arrives in Sydney Cove, bringing British Law. The colony of New South Wales is ruled by a governor and officials.
- 1823** **THE NEW SOUTH WALES ACT 1823 (UK)**
A Legislative Council is established to advise the Governor. Its members were all appointed by Britain's Secretary of State and had the power to advise the New South Wales Governor in the exercise of his legislative powers.
- 1838** In England, the People's Charter was signed by leaders of the British working class, called the **Chartists**. Chartists demanded electoral reforms, including the vote for all men, and the secret ballot. The British Government considered these people to be 'trouble-makers' and were imprisoned or sent to Australia as convicts.
Chartism was a British movement for political reform from 1836 - 1848. Its aims included gaining equality, political rights, and influence for the working class.
- 1843** The colony of New South Wales held the first elections for Legislative Council. Mostly a dangerous affair, elections were controlled by wealthy landowners who would only support those who voted for them, or severely punished those who didn't.
- 1850** Port Phillip separated from New South Wales to become the colony of Victoria.
- 1851** The Victorian Gold Rush began around this time. Gold licences were introduced to help the government keep track of the large number of people who were rapidly moving to areas that were previously sparsely populated. Taxes raised money to pay for roads, administration, and police.
The licence was expensive and unfair, and required to be paid whether gold was found or not. Miners were taxed, but not represented in the government as they did not own the land. They did not have the right to vote or to stand for election to Victoria's Legislative Council. Policing methods grew more punitive and brutal as disaffection amongst the miners grew. Gold commissioners, assisted by police, conducted regular 'licence hunts' treating miners with cruelty and contempt. Assistant Commissioner Armstrong was particularly brutal.

The Rule of Law Education Centre created resources for teachers in schools to teach the next generations of Australians about the critical role of Eureka in securing the rights and freedoms we enjoy in Australia today.

42K

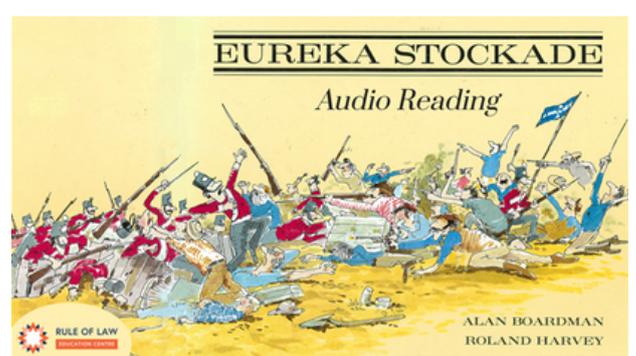
People reached on Social Media regarding Eureka resources

SCHOOL PROGRAMS

Since the start of the pandemic in Australia in 2020, the Courts have been closed to school students. As a result, the Law Day Out Court Excursions have been on hold until the social distancing requirements are removed. The team at the Rule of Law Education Centre have used this time to develop new videos, posters, explainers and case notes to bring the rule of law to life in the classroom.

VIDEOS

In 2021, the Rule of Law Youtube channel had over 50,000 views. These videos include the Virtual Law Day Out, Bail explainers, the Magna Carta in Australia, the Eureka Audio reading and the principles of the rule of law.



CASE NOTES AND EXPLAINERS

Case studies are important for students to develop their knowledge, understanding and critical thinking skills in relation to the Australian legal system. New case studies were developed in 2021 such as the Singh, Skaf and WA Covid restrictions cases that enabled students to understand sentencing, presumption of innocence, juries, bias, the role of media, evidence and the role of legal processes to provide a fair trial.

POSTERS

Printable Posters and downloads are important visual tools to explain the rule of law. In 2021, 140,000 PDF's were downloaded from the Rule of Law Website.

The Five Main Forms of Governance

- Monarchy**: In an absolute monarchy, the monarch holds supreme political authority. Systems held by a royal family that inherits rule from one generation to the next. In recent times, the majority of monarchial governments have limited powers. The people's consent is required to make laws. Examples include the United Kingdom, Spain, and Japan.
- Democracy**: A government system where the people determine the law of the land. The law holds supreme power over rules set out in a written constitution. The government is elected by representatives chosen by the people, working for their rights. Universal suffrage is conducted regularly by secret ballot. Democracy supports human rights and fundamental freedoms with power limited through checks and balances. Decisions are made transparently, and an independent judiciary, the people and media organisations, regularly scrutinised by whistle-blowers to investigate their own rights and responsibilities, promoting a culture of lawfulness.
- Republic**: A government system without a monarch. Republics can be authoritarian or democratic. In a democratic republic, laws are made by representatives chosen by the people. Republics usually comply with a constitution, and a bill of rights that specifically protects the rights of the minority. Examples include Germany, France, Brazil, the Czech Republic, and the United States of America.
- Communism**: A government system of social organisation based on a communist ideology of a single party or group, which controls the state. A communist vision which...
- Dictatorship**: A single person who has absolute authority to rule the state. An authoritarian form of government where one person makes the law and controls how the law is enforced, usually through brutal means. This system often includes military organisation and backing, unfair elections (if any).

SEPARATION OF POWERS
Maintaining the rule of law under the Constitution

PARLIAMENT
makes and changes laws

EXECUTIVE
carries out laws and puts them into action through government agencies

JUDICIARY
interprets the law and administers justice

NSW PARLIAMENT BICAMERAL SYSTEM

LEGISLATIVE ASSEMBLY LOWER HOUSE	LEGISLATIVE COUNCIL UPPER HOUSE
All Members of Parliament (MP) are elected by the people in an electorate to represent them in Parliament. New South Wales is divided into 93 electorates.	The 42 Members of the Legislative Council (MLC) are elected to represent the people from the whole of NSW rather than a single electorate.
Executive Government is formed by the political party with the highest number of MPs. The leader of this party becomes the Premier. MPs serve for a term of 4 years and are generally members of a major political party, voting along party lines.	MLCs serve for a term of 4 years with one half elected at each State election. Members are drawn from a state-wide electorate and often include minor and independent parties, representing a wider diversity of views than the Lower House.
A bill must be introduced, debated and agreed by both Houses before it can become a law. Both Houses can introduce bills but only the Lower House can introduce a bill for Government spending (money bills).	Bills from the Lower House are introduced into the Upper House to be debated, amended, or passed all over again. This process may require a bill to be passed between Houses until both agree on details before the bill can become a law.
The Lower House initiates and approves money bills. The activities of the Executive Government are scrutinised by the Lower House to ensure it is accountable to the people.	The Upper House is often called the <i>House of Review</i> as it scrutinises the actions and decisions of the Executive Government, holding them to account.

PRESUMPTION OF INNOCENCE

The presumption of innocence is the legal principle that the prosecution must prove guilt. The accused does not have to prove innocence and is considered to be innocent until proven guilty.

KEY PRINCIPLES

- All people are considered **innocent**. This means all people, no matter their race, gender, religion or association are considered good, honest and free from blame.
- It is a **presumption** and imposes on the accuser the burden of proving an assertion as correct. Excluding or modifying the presumption should **never be easy**.
- Where one's freedom and wellbeing are at stake, society should be very careful to protect a person's presumption of innocence.

IMPLICATIONS

- It is better for a crime to go **unpunished** than an innocent person be condemned - even if the crime is heinous.
- The **onus of proof** is on the accuser to prove guilt. This protects the accused and ensures they are:
 - informed of the charge and any relevant evidence
 - provided the right to defence in an open court
 - protected from coercion (or torture) where their testimony might incriminate them (right to silence)
 - not disadvantaged where the accuser has greater financial resources and power; and
 - tried for a specific crime that is against the law and not for their race, religion, association or crime of another person.
- A person cannot be convicted unless there is **satisfactory legal evidence** that relates to the accusation and not merely vague, unsubstantiated stories or evidence.

www.ruleoflaw.org.au

The rule of law must be supported by informed and active citizens



The work of the Rule of Law Education Centre is critical in restoring national pride to Australian students.

We teach Australians to value their democratic freedoms and to know and protect the rule of law. The presumption of innocence, fair trials, independence of the judiciary and freedom of speech (as well as many other principles of the rule of law) are important protections for every Australian and critical foundations for the ongoing success and prosperity of our nation.

SALLY LAYSON

The Rule of Law's Submission to ACARA's Curriculum Review highlighted the flaws in the proposed national curriculum and called for changes to the curriculum to:

1. Encourage students to value the role of laws in society
2. Encourage students to develop a proper understanding of key democratic beliefs
3. Value significant achievements in Australia's past, such as the Eureka Rebellion



Unless changes are made to the Australian curriculum, we will continue to create a **generation of students who do not understand nor value** their role in participating and engaging productively in Australian society, and we will continue to see the death of democracy in Australia.

Government
agencies to
behave as
model litigants

ABC AS A MODEL LITIGANT?

The model litigant rules (obligations) are **guidelines for how a government ought to behave** before, during, and after litigation with another government body, a private company, or an individual.

In light of ABC's conduct during the defamation case involving ABC reporter Louise Milligan, Chris Merritt and Robin Speed have continued to highlight the need for improved enforcement of the model litigant obligations.

After witnessing the way the ABC conducted itself in the Milligan litigation, the time has come to revisit this issue.

And a good starting point is a 2017 bill that might have prevented the ABC from conducting itself like some sort of government-backed litigation funder – had the bill not been allowed to lapse

CHRIS MERRITT

FINANCIAL OVERVIEW

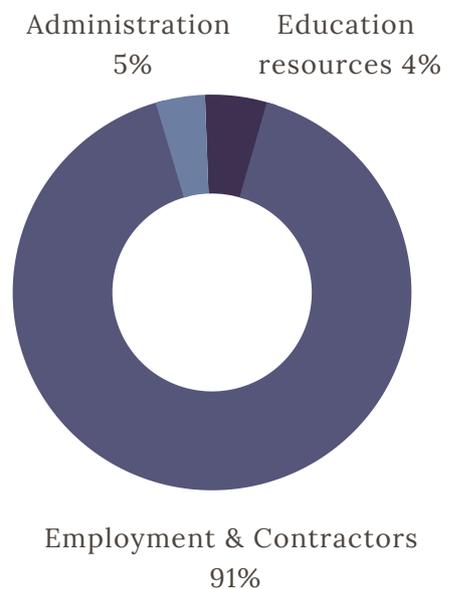
The Rule of Law Education Centre is an independent, politically non-partisan, gift deductible entity formed to uphold the rule of law in Australia.

INCOME STATEMENTS

In 2021, Rule of Law Education Centre received \$325,561 in donations and \$40,222 from the Australian and NSW government for Covid relief.

As seen in the chart, 91% of expenses relate to staffing for the education programs. The staff team at the Rule of Law Education Centre comprises of:

Sally Layson	General Manager
Chris Merritt	Legal Affairs
Leanne Davis	Education Consultant
Virginia Valiozis	Legal Researcher/Educator
Genevieve Longman	Legal Researcher
Heidi Windybank	Paralegal; and
Aaron Martano	Paralegal.



In 2021, the Rule of Law Education Centre focused on creating free online resources for schools and universities about the rule of law.

482K

Website Page views

49K

Youtube views

1.2K

Australian Classrooms received Poster packs

SUPPORTERS

The Rule of Law Education Centre relies upon the support of passionate individuals who donate both time and money to promote the rule of law in Australia.

MEMBERSHIP

We are sometimes asked why we do not add to our membership. We do this because we are not a political party representing and serving the changing needs of members. Rather we have one function and that is to represent a fundamental principle, the rule of law.

GOVERNING COMMITTEE

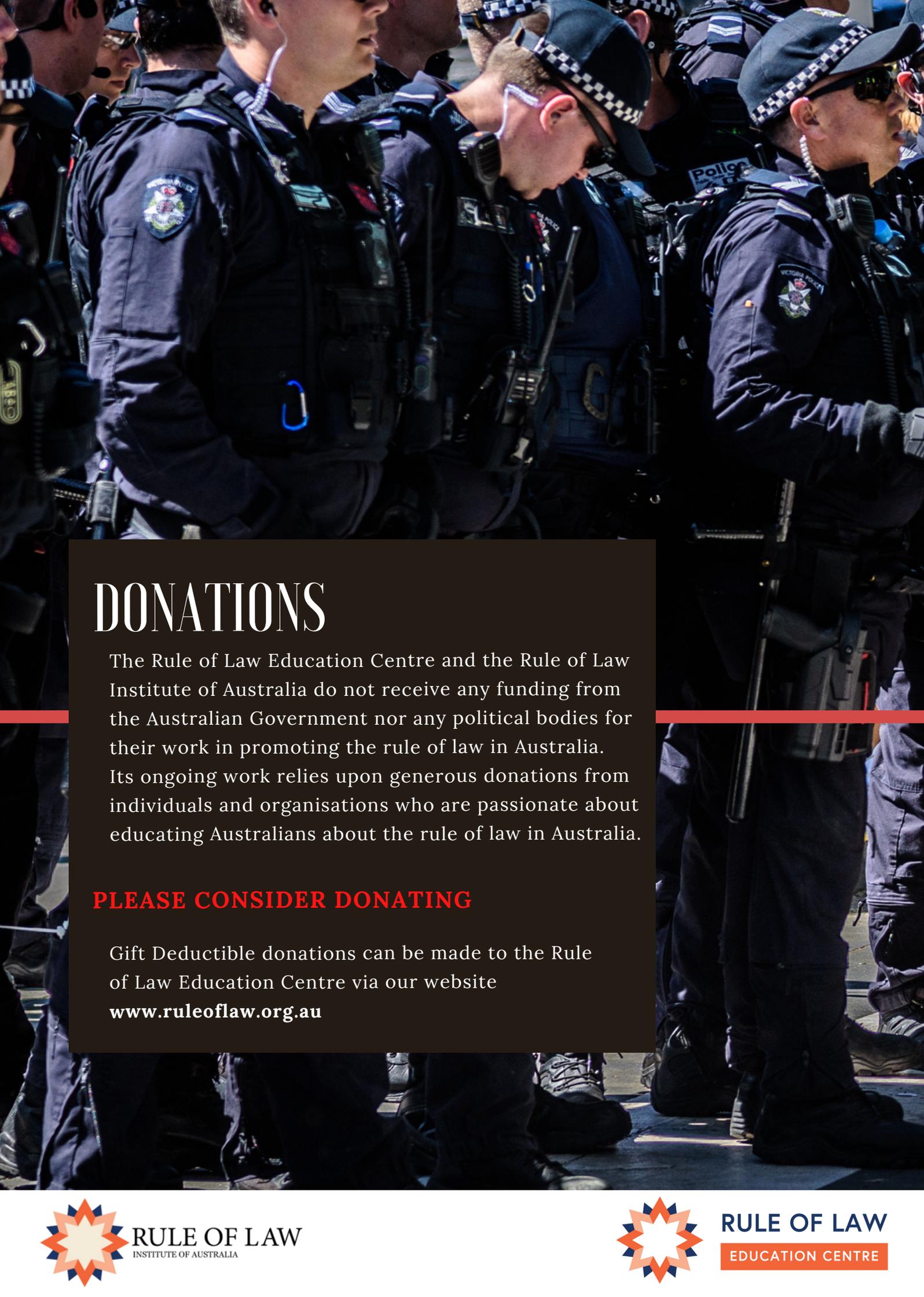
Margaret Cunneen SC (President)
Robin Speed AO (Founder)
Malcolm Stewart (Senior Vice President)
Chris Merritt (Vice President)
Sally Layson (Treasurer)

David Lowy AM (Board Member)
Hugh Morgan AC (Board Member)
John Roskam (Board Member)
Emeritus Prof Geoffrey Walker (Board Member)

SPECIAL THANKS

The Governing Committee thank the Lowy Family Group, Robin Speed AO and Speed and Stracey Lawyers for their support of the Rule of Law Education Centre.

The law and
its administration
is subject to
open and free
criticism



DONATIONS

The Rule of Law Education Centre and the Rule of Law Institute of Australia do not receive any funding from the Australian Government nor any political bodies for their work in promoting the rule of law in Australia. Its ongoing work relies upon generous donations from individuals and organisations who are passionate about educating Australians about the rule of law in Australia.

PLEASE CONSIDER DONATING

Gift Deductible donations can be made to the Rule of Law Education Centre via our website www.ruleoflaw.org.au