

Advancing Together



Rule of Law Updates and Perspectives from Australia

Volume 2 • Issue 1
June 2013

Contents

- Page 2** Exceptional politicians a threat to the rule of law
- Page 4** Periodic and overwhelming explosions of legislation: an update from the Rule of Law Institute of Australia
- Page 6** Rule of Law in the News
- Page 7** Miscarriages of Justice and the Rule of Law: the new South Australian appeal laws
- Page 9** Bringing the South Pacific Closer to the Rule of Law
- Page 11** Trafficking in Persons in Australia – Myths and Realities



A publication from
LexisNexis Capital Monitor
to advance the **Rule of Law** in Australia

Exceptional legislators are the greatest danger to the rule of law and civil liberties.

These men and women of great worth and status care deeply for their community. They care so extraordinarily that, in framing the rules of society, they make exceptions to deal with particular individuals or special groups now out of favour, or actively disliked.

because the patrolling police decide to single them out, or to make an example of their group. The police only need to have a vague suspicion that a person might be guilty of something to be able to strip away their right to privacy, and to freedom of assembly and non-interference by government. The only safeguard people have is that police officers are not likely to abuse their powers – or at least not all the time. Protected by the whim of police is not the type of safeguard we should have under the rule of law in Australia.



Exceptional politicians a threat to the rule of law

Bill Rowlings is the CEO of Civil Liberties Australia, an activist group dedicated to the promotion of civil liberties and the improvement of democratic processes.

The bikies or motorcycle clubs are the most outstanding current example of how supra-diligent lawmakers can steer society down the wrong path for perceived well-meaning reasons. The new bikie laws mushrooming around Australia stigmatise everyone who is a member of a motorcycle club. The actions of one or two people can shatter the rights of most members of some clubs to assemble freely or to speak to each other – even when they are related by birth.

Bikie laws are excessive compared with the normal operation of laws. What is more, Australia already has criminal laws that are more than adequate to deal with any bikie criminals.

When such excesses of law are prominent, it can be easy to forget that gross violations of law-making propriety are not the main danger. Civil liberties, the rule of law and its foundation stone – the presumption of innocence until proven guilty – are not usually lost by a massive sabre swathe of one draconian new law, but by a thousand cuts and nicks of little laws and little-known regulations that pass largely unnoticed.

One such nick happens in the nightclub district of Northbridge in Perth, where people can be stopped and searched for no reason, simply

Another nick happens in the garden state of the Australian Capital Territory, where people have to prove they were acting innocently and reasonably if they knock over a government-planted sapling – because it will be assumed they are guilty of an offence. Such ‘strict responsibility’ laws mean the park ranger and the government aren’t ‘burdened’ by the need to prove a person is guilty. This overturning of tradition is the ‘law-of-rule’, rather than the rule of law. Strict liability offences are breeding like rabbits around the country, particularly at state and local government level, because they make life easier for bureaucrats. Rulers rule, OK?

On the pretty, colonial streets of Hobart Town, a friendly dog may come up to you, sniff your pocket, nudge your crotch, and bunt your backside. If there’s a whiff of any substance the dog is trained to detect, you’ll be hauled off, possibly to be charged with a drug crime. On the streets of Hobart Town no personal privacy is to be had, because the space around a person’s body belongs to the police. This is a case of dog-nose-best rather than innocent until proven guilty.¹ No drugs are found in 99 out of 100 of these searches, yet governments still give police the power to stop and search innocent people.

In the dead centre, Alice Springs, you can be forced to go into an alcohol rehabilitation program if nabbed for being drunk a number of times over a few months. Naturally, it's Aborigines who are caught, because they drink on the streets, in the open: disorderly and often violent white people drink at home, behind closed doors, so their societal drinking problems don't attract special attention from lawmakers.

human rights of all of us, expressed in the term 'rule of law', are put at risk. If you can make a special law for this group, and for this type of person, why can't you make special laws for all sorts of groups, and all sorts of individuals you don't approve of?

The 'exceptional' law making exemplified above is described as a dangerous 'utilitarian' attempt to maximise the majority's welfare at the expense of

“Strict responsibility laws mean the park ranger and the government aren't 'burdened' by the need to prove a person is guilty. This overturning of tradition is the 'law-of-rule', rather than the rule of law.”

What's wrong with all these examples is that lawmakers have singled out special groups or activities they don't like. Having set them apart, politicians then create special laws or rules that purport to affect them only. But law-making by exception is one of the most dangerous activities in civilised society: as such, by their own approach and standards, politicians should make a law against it!

Bikies have as much right to freedom of association as you or I do (and they have as much right as the rest of us to be charged and convicted, if they commit crimes). Any law that limits the right of any group to freedom of association limits the rights of all groups to associate freely. The insidious bikie laws passed by several states around the country don't name 'bikies' as the target of their 'specialness'. Instead, they name 'groups' that can be declared 'outlaw' by government at the government's whim. Governments five or ten years from now will find another 'special' target group. It could be grey nomads, or surfers, or internet surfers. Martin Niemöller's poem 'First they came...' dramatises how this creepy function is in the very nature of repressive governments. Niemöller reminds us that the greatest danger to society is people's apathy towards liberties and rights – the rule of law – being whittled away.

More people need to speak up for the bikies, for the noisy nightclubbers of Perth, for the ACT's miscalculating drivers, for the innocent walkers of the southern capital, and for the drunks of central Australia too.

When any of these groups or individuals have their normal liberties and rights removed by 'special' laws, created just for them or for the singular things they do, the traditional civil liberties and

individual rights. Legal Scholars Stephen Bottomley and Simon Bronitt caution that this exceptional law making leads to: 'unjustified restrictions on civil rights, preventative forms of detention and penalisation of the innocent through overcriminalisation'.²

They also explain that: 'A key idea [of the rule of law] is that no person should be punished except for a breach of law established in the ordinary manner before the courts. Another important component is that no person is above the law – that every person is subject to these laws without exception, thus ensuring equality before the law'.

Thus we come full circle. The politicians of today, particularly the 'exceptional' ones, are reverting to arbitrary control by government, and that is the direct opposite of the rule of law.

Bill Rowlings is the CEO of Civil Liberties Australia. He is a former journalist, PR counsellor/author and senior manager in the private and public sectors. He is editor of CLArion, the monthly newsletter of Civil Liberties Australia, which can be downloaded free of charge [here](#).

Endnotes

1. The error rate in a properly controlled study by the NSW Ombudsman was about 73%: that is, the dogs are wrong more than 7 out of 10 times that they identify someone as possibly carrying drugs. One dog in the study was wrong 93% of the time. See Review of the *Police Powers (Drug Detection Dogs) Act 2001*, June 2006. ISBN 1 921131 36 5
2. Law in Context 4edn Prof Stephen Bottomley and Prof Simon Bronitt, Federation Press 2012, p18. <http://www.federationpress.com.au/bookstore/book.asp?isbn=9781862878426>



Periodic and overwhelming explosions of legislation

An update from
The Rule of
Law Institute
of Australia

The Rule of Law Institute of Australia team. Pictured from left to right: Jackie Charles (Education Officer) Kate Burns (Chief Executive Officer) and Nick Clark (Education Coordinator)

Kate Burns took up her appointment as CEO of the Rule of Law Institute in March 2013. Most recently she was senior solicitor and special counsel with the NSW Crown Solicitor's Office, where she handled several significant public interest test cases, specialising in anti-discrimination law and public interest immunity. She has also practised in the areas of criminal law, family law and child protection, and charitable trusts. Ms Burns is also a legal academic and prolific author. She has taught at a number of Sydney universities, including the University of New South Wales, where she currently teaches a legal ethics course. **Ms Burns** shared her perspectives on the Rule of Law in Australia with **Antoaneta Dimitrova**, Senior Manager of LexisNexis Capital Monitor.

Where is the rule of law presently at in Australia?

The rule of law is fundamentally at a good place in Australia. As former Chief Justice James Spigelman has pointed out, our legal system and constitutional democracy has been finely tuned over a period of 800 years by responding in a considered way to changing values. But, at the risk of sounding clichéd, 'eternal vigilance' is the price of placing adherence to the law at the heart of governance and public life. Sophisticated criminal activity, technological developments with privacy implications, budget crises, and the worldwide movement of people experiencing conflict and poverty – these are all evolving challenges that governments need to deal with. Civil society should measure those responses against the rule of law and challenge governments when they fall short.

Has the rule of law progressed or relapsed recently?

The chipping away at the presumption of innocence is a worrying trend. We see that in recent changes to the New South Wales criminal law and increasing coercive powers being given to state and federal investigative agencies such as crime commissions. There is a trend towards giving these agencies powers to 'name and shame' rather than to afford procedural fairness to suspects.

Access to justice as a casualty of shifting government priorities is another area of concern. That includes cuts to legal aid and the increase in the sheer volume of legislation, much of it delegated or conferring broad discretionary powers on the executive. It is simply too much and too complicated to keep up with.

The increasing volume and complexity of regulation strikes at the rule of law, which Professor Walker, adopting the formulation of Joseph Raz, identified as having two guiding principles: first, that the people and institutions should be ruled by the law and obey it and, secondly, that the law should be such that people are able (and willing) to be guided by it.¹

Are any specific cases likely to build on those trends this year?

The testing of journalist shield laws may be one area. The attempts by governments to confer additional powers on courts and tell them how those powers are to be exercised, as we have seen in the series of bikie cases, is likely to continue to cause friction. The High Court's forthcoming decision in *Lee v New South Wales Crime Commission* concerning the protection against self-incrimination will be interesting. Likewise, restricted access to justice and the consequent strain on the court system in dealing with unrepresented litigants may pit the judiciary against government. We see this in Victoria, where the limits on legal aid funding seem to invite a 'Dietrich-type' response. By that I am referring to criminal trials of serious offences being stayed indefinitely because of concerns that the accused person cannot get a fair trial. According to the [High Court in *Dietrich v R* \[1992\]](#), in those circumstances, if there is a risk of a miscarriage of justice, the trial judge should stay the proceedings.

In addition to these there are the ongoing challenges to the mandatory detention of asylum seekers.

Do you consider the reversal of the onus of proof in unexplained wealth laws a problem from the point of view of rule of law?

Yes. The reversal of the onus of proof started in tax cases, where there was some justification because the taxpayer obviously had a better knowledge of their own tax affairs than the Australian Taxation Office. But the reversal of the onus is increasingly being applied in situations where there is no justification for it. Unexplained wealth laws provide for the wholesale confiscation of property

on the basis that it has been obtained illegally or is the proceeds of illegal activity. Those seeking to confiscate the property should bear the onus in the same way a prosecutor bears the onus in cases involving illegality.

Early in April the Prime Minister announced a \$40 million National Crime Prevention Fund to be funded from confiscated proceeds of crime. The fact that authorities can directly benefit from cracking down on crime is arguably a perverse incentive to maximise the number of prosecutions. This alternative way of funding crime prevention activities seems especially problematic in the context of budget cuts. What is your take on this?

Justice is a public good, it is not a user-pays market. RoLIA opposes the trend towards increasing court filing fees for the same reason. Moreover, the trend towards stereotyping and demonising certain groups to justify curtailing the rights of their members without due process is contrary to the rule of law.

What are the key priority areas for RoLIA's work this year?

RoLIA is committed to introducing rule of law concepts into the classroom to enable students to actively understand and articulate the guiding principles such as the presumption of innocence and freedom of speech, including the reasons why they are so important. This will eventually feed into the civics component of the proposed National Curriculum.

In order to deliver these programs RoLIA employs two full-time teachers and sponsors a Professional Chair at the University of Sydney. Our expanding educational programs resource teachers to promote rule of law concepts and provide school and university students with a critical framework to engage as citizens. This type of program contributes to keeping our democracy in good shape for the future.

As part of RoLIA's ongoing program of critiquing existing and proposed legislation, we recently made a number of submissions to inquiries on significant rule of law issues. These include increases in federal court fees, the proposed federal whistleblower legislation, procedural fairness issues relating to the Royal Commission on Institutional responses to Child Sexual Abuse,

and transparency in the tax system. We have also expressed strong views on the diminution of the right to silence in New South Wales and potential implications of the expansion of the powers of the Australian Sports Anti-Doping Authority.

I think all governments need to be kept under close scrutiny and rule of law criteria applied to their actions. We have seen numerous politically contentious issues in recent times – asylum seekers, Julian Assange, same-sex marriage

“I think all governments need to be kept under close scrutiny and rule of law criteria applied to their actions. We have seen numerous politically contentious issues in recent times – asylum seekers, Julian Assange, same-sex marriage – that command strong views on many sides, but no easy answers. Regardless of the strong views and the lack of clear-cut solutions, rule of law criteria should enable these issues to be scrutinised in a non-political way.”

What does RoLIA’s wish-list for a possible change of Government include?

As with any government, we expect legislation and policies to be consistent with rule of law principles as they operate in the federal sphere.

More specifically, we look to RoLIA’s submissions on issues such as the federal whistleblower legislation, limits on coercive powers and access to justice being properly considered. We also expect the process of community consultation on proposed legislation and policy to be undertaken in a meaningful way, to allow the public to identify any relevant rule of law implications. Realistic timeframes are crucial to facilitate real public input on periodic and overwhelming explosions of legislation we have seen in recent times.

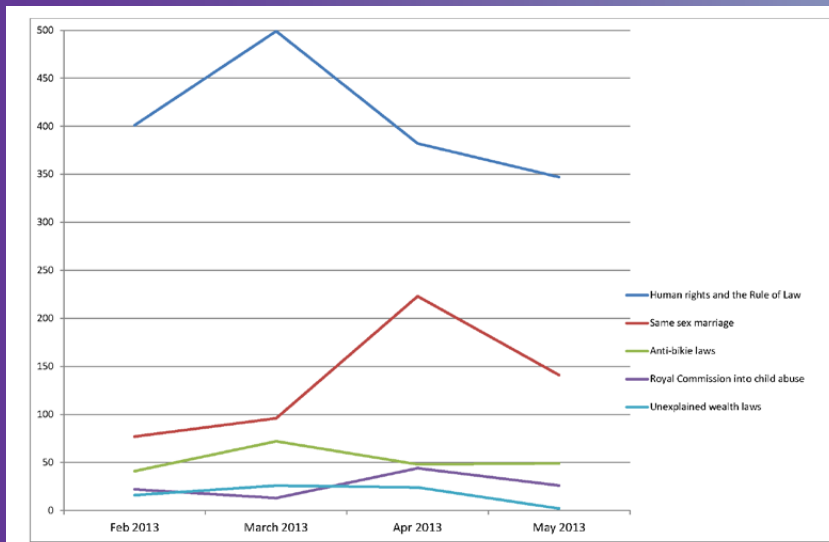
– that command strong views on many sides, but no easy answers. Regardless of the strong views and the lack of clear-cut solutions, rule of law criteria should enable these issues to be scrutinised in a non-political way.

These are exciting, if difficult, times from the perspective of the rule of law. Insofar as the law is in the hands of lawyers and well-informed citizens, I feel very positive about the place for the rule of law in Australia.

Endnote

1. Geoffrey de Q Walker, *The Rule of Law*, Melbourne University Press, 1988 referring to J Raz, ‘The Rule of Law and its Virtue, (1977) LQR 195

RULE OF LAW
INSTITUTE OF AUSTRALIA



Rule
of Law
in the
News

Source: Nexis News database, which covers more than 200 Australian publications, from national broadsheets to local and regional publications.

The LexisNexis Media Coverage Analyser tracks how much attention Australia’s major newspapers have been giving to the issues that affect the rule of law around the country. The question of human rights, in particular its relation with asylum seekers, has attracted considerable attention from the Australian media in the first half of 2013.

Miscarriages of Justice and the Rule of Law: the new South Australian appeal laws



Bob Moles and Bibi Sangha at the 2010 launch of their joint study into miscarriages of justice in Britain, Canada and Australia: *Forensic Investigations and Miscarriages of Justice - The Rhetoric Meets the Reality* (Federation Press and Irwin Law)

On 5 May 2013 the *Statutes Amendment (Criminal Appeals) Act 2013* took effect in South Australia. Under this new Act, South Australian courts can hear a second or even third appeal where new evidence shows that earlier judgements may have led to a miscarriage of justice. What appears to be a modest amendment to criminal appeal rights has important national implications for the rule of law principles in Australia.

Australia's appeal rights are based upon the UK *Criminal Appeal Act 1907* and were implemented by each state and territory soon after. To date, appeal rights have remained in 'common form' across the various states and territories (with a minor variation in the ACT). The problem that the South Australian law aims to solve arises from the fact that the interpretation of those rights in Australia has been more restricted than the interpretation of similar provisions by UK courts, which have accepted that there is an 'inherent right' to a second or further appeal.

The Australian appeal courts have said that once an unsuccessful appeal against conviction has been 'perfected' they cannot re-open an appeal or hear a second appeal – *R v Edwards (No 2)* [1931]. The Australian High Court has said that for constitutional reasons it is not permitted to receive fresh evidence which might indicate that the conviction is unsound – *Mickelberg v The Queen* (1989). The only remaining procedure is to petition the Attorney-General (via the Governor) for a referral back to the court of appeal. However, there is authority to say that this procedure is the subject of an 'unfettered discretion' – *Von Einem v Griffin* (1998), and experience shows that even meritorious appeals may not be referred.

In a submission to the South Australian Parliament's Inquiry into the Criminal Cases Review Commission Bill 2010 the [Australian Human Rights Commission \(AHRC\)](#) took the view that, in combination, the existing rules rendered appeal procedures throughout Australia to be in breach of international human rights obligations. In our submission to the committee we also explained that the current arrangements were in breach of the rule of law provisions as discussed by the Australian High Court in *South Australia v Totani* [2010] and *Wainohu v New South Wales* [2011]. In particular, we argued that no legal official should be given or attempt to exercise an 'unfettered' discretion. The exercise of official or legal power should always be constrained by rules, or as Neil MacCormick put it, there must always be some 'warrant' to authorise the exercise of power.

This view is supported by recent scholarship about the rule of law, in particular by Tom Bingham and Neil MacCormick.

The South Australian committee recommended establishing a new statutory right of appeal, in addition to a Forensic Review Panel and a review of the way in which expert evidence was used in criminal trials. In November 2012 the state government decided not to proceed with the review panel or the expert evidence review, but it did put forward a Bill to correct the situation on appeals. Starting on 5 May 2013, South Australian courts may hear a second or subsequent appeal where there is 'fresh and compelling evidence' of a possible miscarriage of justice.

But in fixing up one rule of law problem this new South Australian Act appears to have created at least two more.

The first problem is that on an application for leave for a second or further appeal, the test is whether there is fresh and compelling evidence. This was the very test criticised by the Federal Court of Australia in *Martens v Commonwealth of Australia* (2009) as being 'overly rigorous'.

The second problem was pointed out by the AHRC in its submission to the committee. The International Covenant on Civil and Political Rights requires that the procedural protections of Art 14 of the Covenant apply *at each level* of appeal. Art 14 (5) says that on each appeal there should be an entitlement to a review of the conviction on *law* and facts. Yet the new South Australian statutory right of appeal does not allow for an appeal on the basis of error of law, which is, of course, available on a first appeal. In this respect

states and territories. This means that the appeal provisions in all states and territories in Australia (apart now from South Australia) continue to be non-compliant with international human rights obligations. At the same time, the discrepancy in appeal rights between those now available in South Australia and those available elsewhere means that Australia fails to comply with the principle of equality before the law, which is an important component of the rule of law.

As Tom Bingham explained, differentiation in laws can be justified where there is an objective basis upon which a distinction can be made. However, residence in one state as opposed to another cannot provide any objective justification for discrimination in respect of a fundamental right such as a right of appeal.

Civil Liberties Australia has recently raised these issues with the Premier and senior members of the Opposition and Greens parties in Tasmania. The Attorney-General of South Australia has undertaken to raise the issue of the new appeal right with the Standing Committee on Law and Justice (the committee of Attorneys-General) at the earliest opportunity.

Michael Kirby, former justice of the High Court of Australia has recently stated that 'the desire of human minds for neatness and finality is only sometimes eclipsed by the desire of human minds for truth and justice. There will always be a disinclination to reopen a conviction, particularly where it has been reached after a lengthy trial and a verdict of guilty from a jury of citizens. Sometimes, however, that disinclination has to be confronted and overcome.'

“The discrepancy in appeal rights between those now available in South Australia and those available elsewhere means that Australia fails to comply with the principle of equality before the law, which is an important component of the rule of law.”

the new law may be said to be still in breach of international human rights obligations. It may also be in breach of the rule of law, which requires compliance with international human rights obligations except where explicitly derogated from, which is not the situation here.

As we have noted, the appeal rights in Australia have been in force for around 100 years and throughout that time they have been consistent and substantially unchanged across the various

Commenting on the South Australian *Statutes Amendment (Criminal Appeals) Act 2013* he added, 'I hope that other jurisdictions in Australia will take steps to enact legislation for the same purpose. Wrongful convictions and miscarriages of justice haunt the conscience of a civilised society.'

Bibi Sangha is Senior Lecturer in Law at Flinders University of South Australia.

Dr Bob Moles is Director of Networked Knowledge.



Bringing the South Pacific Closer to the Rule of Law



The LexisNexis Pacific Rule of Law team members (from left) Jae Redden, Dominique Kane, Brett Watson, Rebecca Whalen, Jessie Perwick, and (inset) Bruce Shearer.

The Pacific Islands are Australia and New Zealand's closest neighbours. In many cases, it is much quicker to travel from Australia or New Zealand to an island in the Pacific than to another capital city within the same country. As geographically close as they may be, the way in which the rule of law is upheld in these smaller island nations in the Pacific is worlds apart from their two larger neighbours.

The Rationale

The concept of the rule of law is multifaceted, but for a provider of legal content solutions like LexisNexis, there is one aspect of the rule of law that stands out. 'We cannot talk about the rule of law unless we know that we have access to the basic primary materials, namely legislation and case law', says TJ Viljoen, CEO of LexisNexis Pacific.

'In the Pacific it is quite critical for us to realise that there are quite a few countries, particularly the smaller island nations, who do not have access to the primary materials, or have never had access to the primary materials. If you do not have access, the effective administration of justice can be impeded and you cannot have basic rule of law principles in place if that is the case,' he says.

“Several nations, including Papua New Guinea and Samoa, have common law systems based on English case law and use a combination of English and Australian case law as the basis for their own body of common law precedents.”

At LexisNexis, our company mission statement is to uphold and advance the rule of law across each of our offices around the world. Here in the Pacific, one of the ways we have been working to fulfil this charter and make a meaningful contribution to the state of the justice system in the Pacific's smaller nations is through our Pacific Rule of Law Project.

The primary legal materials needed across the Pacific are varied. Several nations, including Papua New Guinea and Samoa, have common law systems based on English case law and use a combination of English and Australian case law as the basis for their own body of common law precedents. Being able to access this wide range

of historical material is imperative for the common law development of these nations.

‘The main question for us is: how do we assist those smaller nations to gain access to primary materials from the Pacific region?’ asks Mr Viljoen.

The answer comes in the form of the Pacific Rule of Law Project.

in Fiji, for instance, does not have a permanent office due to government restrictions on holding meetings. Smaller jurisdictions such as Kiribati and Nauru do not keep registers of practising lawyers.

As an alternate means of establishing contact, the project team has been grateful for the assistance of representatives from the Commonwealth

“The Law Society in Fiji, for instance, does not have a permanent office due to government restrictions on holding meetings. Smaller jurisdictions such as Kiribati and Nauru do not keep registers of practising lawyers.”

The Project

The genesis for the LexisNexis Pacific Rule of Law Project came in 2011, as a result of interactions with Chief Justice Geoffrey Eames of Nauru.

‘In 2011 we sponsored the judiciary of Nauru by providing some of our products for it to use’, said Jae Redden, Project Manager. ‘The Chief Justice approached [project member] Anthony Robjohns at a conference and said how fantastic it was for LexisNexis to provide these materials and that other Chief Justices in the region would be interested in seeing the same benefit for their countries’.

Later that year, a project team from LexisNexis Pacific was granted funding by LexisNexis International to pursue the provision of Australian, New Zealand and English primary legal materials to judicial and other legal agencies across the Pacific.

Progress and learnings

The project team has found that technological constraints have made establishing direct contact with relevant persons in the Pacific challenging. For example, limited internet infrastructure across the Pacific means that legal directories of contact persons from each Pacific nation are either unavailable or often out of date.

This is not a unique experience. Research conducted in the Pacific by the South Pacific Lawyers’ Association in 2011¹ highlighted a number of administrative issues relating to the legal profession in the Pacific. The Law Society

Attorney-General’s Pacific Library Twinning Program, which facilitates resource sharing between selected legal agencies in the Pacific and Australian law libraries.

The Attorney-General’s department has provided the project team with a new avenue through which contact with relevant persons in the Pacific can be made and, already, the team is in the early stages of a relationship with the Justice Department of Tonga. We also remain grateful for the ongoing assistance of Chief Justice Eames of Nauru in spreading the word about the Pacific Rule of Law Project amongst his judicial colleagues.

The Road Ahead

In 2013, the Pacific Rule of Law Project Team will continue to pursue all available avenues to make contact with legal agencies in the Pacific. It is a source of pride for the project team that LexisNexis is committed to the cause of advancing the rule of law in the Pacific. Ultimately, we hope to be in a position to visit legal agencies in the Pacific to provide training and guidance on how to maximise the benefit of our legal materials to assist in ensuring greater transparency and access to justice systems across these countries.

Brett Watson is Managing Editor in LexisNexis Pacific and Staff Ambassador for the Pacific Rule of Law Project.

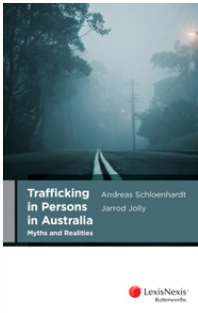
Endnote

1. South Pacific Lawyers Association. *Needs Evaluation Survey for South Pacific Lawyer Associations Final Report*, October 2011.

Trafficking in Persons in Australia – Myths and Realities

First comprehensive analysis of trafficking in persons in Australia published by LexisNexis

Press Release!



SYDNEY, May 1, 2013 — LexisNexis® Pacific (www.lexisnexis.com.au), a leading provider of content and technology solutions, announced the launch of the first comprehensive analysis of Australian trafficking in persons. In the captivating new book *Trafficking Persons in Australia: Myths and Realities*, authors Andreas Schloenhardt and Jarrod M Jolly expose the disturbing phenomenon of trafficking in persons as it exists in Australia and examine the Government's response to this heinous crime.

'While trafficking in persons is receiving more attention than at any time in history, it remains a phenomenon not well understood and too often characterised by simplistic generalisations and stereotypes,' note the two authors. 'Ten years after the Australian Government first announced its *Action Plan to Eradicate Trafficking in Persons*, much of the common perception of trafficking is based on myths rather than reality.'

'What inspired us to write this book,' remarks Professor Schloenhardt, 'is that sober assessments of the nature and scale of trafficking in persons in Australia, backed by a critical analysis of the available evidence, are few and far between, especially insofar as research on trafficking outside the sex industry is concerned.'

'Trafficking in persons is by no means a new phenomenon,' adds Jarrod Jolly. 'What is new are the *modi operandi*, routes, victims and offenders, who adapt to changes in law enforcement and to fluctuations in supply and demand in this vile trade. Politicians, government agencies and academics alike struggle to adapt their work to a phenomenon that is constantly changing.'

Trafficking Persons in Australia: Myths and Realities seeks to displace the sensationalist claims made about trafficking in persons, challenge the many myths about trafficking, and highlight the contemporary realities of this crime. The book identifies and analyses reported and suspected instances of trafficking in persons in Australia in all its forms, including trafficking for commercial sexual exploitation, domestic servitude, forced marriage, labour trafficking, child trafficking, and trafficking for the purpose of organ removal. It explores the evolution and operation of international and domestic law and critically evaluates the Australian Government's response to trafficking in persons against international law and best practice guidelines. The book outlines and evaluates the legislative, regulatory and policy responses of Australian Governments at Federal and State Territory levels in prosecuting traffickers, protecting victims of trafficking and preventing trafficking.



Co-authors UQ Law graduate Jarrod Jolly and Professor Andreas Schloenhardt have been shortlisted for the LexisNexis Centenary Book Award for their book *Trafficking Persons in Australia: Myths and Realities*.

'Our book seeks to give greater prominence and provide accurate analysis of the topic of trafficking in persons in Australia,' says Schloenhardt. 'It is designed to inform key stakeholders and generate public debate on this topic, and make a significant contribution to the scholarship in this field.'

'It is hoped that this book is a catalyst in improving Australia's international and national record on combating trafficking in persons,' adds Jolly.

Schloenhardt and Jolly lead the [Human Trafficking Working Group at The University of Queensland](#), which was set up in March 2008 to comprehensively document, explore, and analyse trafficking in persons and develop recommendations to prevent and suppress this crime and protect the rights of trafficked persons. Since the inception of the Working Group five years ago, over 100 undergraduate and postgraduate students have participated in this research initiative.

Published by LexisNexis Pacific, *Trafficking Persons in Australia: and Realities* is the first LexisNexis textbook in Australia to directly support the company's purpose: to advance the Rule of Law around the world.

'The unjust economic exploitation of vulnerable people, especially women and children, through trafficking is a direct consequence of the absence of Rule of Law' said **TJ Viljoen, CEO at LexisNexis Pacific**. 'In a society not adequately governed by the Rule of Law, human beings will be traded as goods'

LexisNexis Pacific is committed to combating human trafficking by offering direct financial support and legal and technical advice to organisations working to eradicate the illegal trade wherever it exists. The primary focus has been on building awareness, providing legal capacity for pro bono and staff volunteer work, and working to promote the Rule of Law by providing access to the primary sources of law.

Trafficking Persons in Australia: Myths and Realities is available from 1 May 2013 on the LexisNexis online bookstore. For every copy of *Trafficking Persons in Australia: Myths and Realities* purchased, LexisNexis will donate one dollar toward the **United Nations Voluntary Trust Fund for Victims of Trafficking in Persons**. To make a contribution of your own or find out more, visit <http://www.unodc.org/unodc/en/human-trafficking-fund/human-trafficking-fund.html>.

Notes:

Trafficking Persons in Australia: Myths and Realities is a product of the LexisNexis Centenary Book Award Competition, Australia's most prestigious prize for legal literature. Authors Andreas Schloenhardt and Jarrod M Jolly are one of eight finalists who received a publishing contract with LexisNexis as part of the book award competition, including full editorial and marketing support and royalties from sales of their published work in 2011. The winner of the LexisNexis Centenary Book Award will be announced this September and awarded a \$30,000 cash prize.

Copies of the book will be made available for review purposes.

About the Authors

Professor Andreas Schloenhardt PhD is Professor of Criminal Law at The University of Queensland TC Beirne School of Law in Brisbane, specialising in Australian criminal law, organised crime, migrant smuggling, trafficking in persons, narco-trafficking, wildlife and forest crime, as well as immigration and refugee law. He completed his PhD thesis on the topic of migrant smuggling at The University of Adelaide in 2002. Andreas has an extensive track record of publications, presentations, grants and consultancies on the topic of trafficking in persons and in related fields. He is the coordinator of The University of Queensland's Human Trafficking Working Group.

Jarrold M Jolly is an LLM candidate at Washington University in St Louis and a collaborator in the UQ Human Trafficking Working Group. He is involved in a range of research projects on international law and best practice principles relating to trafficking in persons and has published several papers on these topics. Andreas and Jarrod have also been involved in a number of consultancies for the United Nations Office of Drugs and Crime in relation to trafficking in persons and migrant smuggling.

LexisNexis Capital Monitor's editorial team produced the *Advancing Together, Rule of Law Updates and Perspectives from Australia* newsletter. The team is located in the Press Gallery of Parliament House, Canberra.

EDITORIAL TEAM

Carolina Caliaba Crespo
Managing Editor, LexisNexis Capital Monitor

PUBLISHERS

Dr Marc K Peter
Executive Director, LexisNexis
Antoaneta Dimitrova
Snr Manager, LexisNexis Capital Monitor

LexisNexis Rule of Law
LexisNexis News & Business Intelligence

www.lexisnexis.com.au/ruleoflaw
www.lexisnexis.com.au/newsandbusiness

LexisNexis Capital Monitor provides parliamentary, political, legislative, regulatory and judicial news and information to its subscribers through alerts and via online databases.

LexisNexis provides no warranty in respect of the contents of this newsletter and accepts no liability for any loss or damage whatsoever and however arising whether directly or indirectly as a result of access to and use of this newsletter without limitation acting or failing to act in reliance on any information contained herein.

© 2013 Reed International Books Australia Pty Ltd trading as LexisNexis

LexisNexis® Capital Monitor®



2013 Election eNewsletter
Stay on top of the latest federal election news

How will you stay on top of the party policies that impact you and your business?

From the Parliament Press Gallery to your desktop, **Capital Monitor's Election eNewsletter** is the source you can trust for the most relevant election-related news

To download a complimentary sample or subscribe: Visit www.lexisnexis.com.au/2013election or call Customer Relations on 1800 772 772