The Law Society
OF NEW SOUTH WALES

The Law Society of NSW

Principles for discussing the Rule of Law

A handbook for solicitors



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President's Foreword



One of my priorities as President of The Law Society of New South Wales in 2026 is to empower the profession to protect the rule of law and defend the integrity of the justice system.

Most Australians would have some appreciation that we enjoy a strong rule of law culture in this country. For many members of our community, particularly those who have lived in countries marked by high levels of violence and corruption, the way in which the rule of law protects our way of life would be very apparent. For others, the rule of law may carry on in the background to their everyday, and its contribution to ensuring our community is free, stable, peaceful and prosperous may not be immediately obvious.

As solicitors, we devote our professional lives to the practice of law. Throughout my own years of practice, I have often been asked by friends and acquaintances about different aspects of how the law operates, not just in my own field of expertise but in relation to more general rule of law questions. Many solicitors have similar experiences and are approached, mostly informally, by relatives or friends that may have come across a law-related issue and seek clarification on the system of law as it operates in NSW and Australia.

Many of these questions tie back to the central concept of the rule of law. This is why the Law Society has prepared this short handbook which outlines key principles for explaining the rule of law to a general audience. The handbook is intended as an education resource that presents the principles in as apolitical a manner as possible and responds to common questions that may arise.

We acknowledge that there are contested definitions and conceptions of the rule of law. After all, there is an entire body of legal jurisprudence devoted to this area. Most solicitors will also be familiar with debates around formal versus substantive definitions, or so-called "thin" and "thick" conceptions, of the rule of law. Further, different principles that are considered to underpin the rule of law can give rise to many layers of nuance.

This scholarship is deeply valuable. However, our intention in this document is to set out, in an accessible way, the key principles we suggest that could enliven informal discussions on the rule of law. It could be a chat with the children or other young people in your lives learning about democracy and civics at school, over a coffee with friends, or in the course of your engagement in the community.

Nurturing the rule of law is an enduring project for our times and for the generations to follow. I encourage you to join with me in using the skills and knowledge you have gained as lawyers to spark conversations about the rule of law and the value of this most precious asset to our democracy and way of life.

Ronan MacSweeney
2026 President
The Law Society of New South Wales

Contents

The rule of law in Australia: Summary of key principles 3

Part 1: Promoting the rule of law - The What, Why, When, Where and How 4

1.1 Purpose of this handbook 5

1.2 Why "100,000 conversations" on the rule of law matter 5

1.3 When and where to initiate a "rule of law conversation" 6

1.4 Respectful conversations on the rule of law 6

Part 2: The rule of law in the Australian context 7

2.1 A principles-based approach to rule of law discussions 8

2.2 The rule of law as an ongoing project for Australian democracy 8

2.3 The Australian Constitution 9

2.4 The rule of law and First Nations history 10

Part 3: Principles 12

I. Equality 13

Examples and case studies of the principle of equality 14

II. Independence 16

Examples and case studies of the principle of independence 17

III. Transparency 18

Examples and case studies of the principle of transparency 19

IV. Accountability 21

Examples and case studies of the principle of accountability 23

V. Dignity 26

Examples and case studies of the principle of dignity 28

Part 4: FAQs on the rule of law 32

The rule of law in Australia: Summary of key principles



Equality

All people are subject to the same laws and treated equally under the law.

Where groups are treated differently, this is based on objective, rational criteria.



Independence

Courts and judges are independent of Parliament and the executive.

Judges make decisions impartially, applying the law to the facts before them.



Transparency

Laws and regulations are clearly drafted, precisely defined, publicly known and available.



Accountability

There are rules and institutions to effectively scrutinise the exercise of power by the executive government, and to hold it to account.



Dignity

The legal system treats all people with dignity and in accordance with fair process.

Part 1: Promoting the rule of law - The What, Why, When, Where and How

Goals:

- To set out the purpose of this handbook.
- To explain the role that lawyers can play within their communities to assist in explaining and promoting the rule of law.
- To assist lawyers to identify opportunities to raise rule of law issues in everyday contexts.
- To provide guidance on how to discuss rule of law issues in an apolitical manner.

If each solicitor registered in NSW had just three conversations a year about why the rule of law matters, this would amount to more than 100,000 conversations. That is a collective, practical contribution which could make a significant impact on our communities, and of which the legal profession could be proud.

1.1 Purpose of this handbook

Australia is recognised across the world as a strong and resilient democracy. However, this success must not be taken for granted. The rule of law is a vital part of Australian democracy that must be understood, protected and nurtured across our society.

The Law Society of New South Wales recognises that lawyers are well-placed to contribute to the public's understanding of, and respect for, the rule of law, drawing on their legal training and experience and guided by the professional and ethical obligations to which they are bound. The purpose of this handbook is to assist with this important task.

1.2 Why "100,000 conversations" on the rule of law matter

The World Justice Project has identified a global decline in the rule of law, so much so that it has declared there to be a "rule of law recession". According to its 2025 index, the rule of law declined globally for the eighth year in a row. A rise in authoritarian governments has reduced accountability, including legislative and judicial checks on, and independent oversight of, government power. There has also been a decline in what is described as "civic space", particularly in relation to freedom of expression, assembly, and participation. Further, there have been increasing attacks on judicial independence, including through rising political interference.[1]

Australia currently enjoys a strong rule of law, but its enduring strength cannot be taken for granted. The principles, practices, institutions, and culture that uphold the rule of law must be broadly understood and supported, if they are to remain resilient. This requires robust scrutiny and accountability processes and strong integrity institutions, as well as an informed and engaged public that can participate meaningfully in the democratic process. Civics education in schools and broader public engagement are key elements of that work.

We hope that supporting the legal profession to discuss rule of law issues will contribute to a strong culture of respect for the rule of law, including by:

- demonstrating how the rule of law intersects with daily life.
- helping people to understand and appreciate that the rule of law is fundamental to peace, stability, fairness and economic prosperity.
- addressing common misunderstandings about the rule of law in a principles-based and impartial way.
- promoting civic engagement across the community by supporting people, including young people and diverse communities, to stay informed, participate in democratic processes, and advocate for the rule of law.

If each solicitor registered in NSW had just three conversations a year about why the rule of law matters, this would amount to more than 100,000 conversations. That is a collective, practical contribution which could make a significant impact on our communities, and of which the legal profession could be proud.

1 World Justice Project, *WJP Rule of Law Index ®* (Web Page). See also World Justice Project, 'WJP Rule of Law Index 2025 Global Press Release' (Media Release, 28 October 2025).

1.3 When and where to initiate a "rule of law conversation"

There may be formal opportunities for you to use this handbook, for example in preparing presentations for local libraries, groups or other community events. More often, however, opportunities will arise through ordinary conversations with family, friends, or others in your community, when you are asked questions about the justice system, how the law works, or why the rule of law matters. We hope that the handbook may also help in navigating misunderstandings about the operation of the law and legal system in Australia.

Conversations on rule of law principles may arise in many different contexts. Opportunities to initiate such conversations may include when:

- The people around you are discussing the Australian legal system or democracy.
- The children or other young people in your lives and their friends are learning about civics and citizenship.
- You are questioned about your career as a lawyer, including why you chose to practice law.
- You are involved in a conversation where concern is expressed about emerging pressures on democracy in Australia or internationally.
- The value of fundamental rights or proper legal processes is questioned.

A good time to initiate a discussion may also be when you notice the rule of law invisibly doing its work in the background, and the opportunity presents itself to point this out. You could draw on examples in this booklet, or on your own experiences from practice, which may resonate with your family and friends.

1.4 Respectful conversations on the rule of law

As lawyers and members of the broader society, it is important that we help to foster a democratic culture in which people can discuss rule of law issues freely and respectfully. In an era of polarisation and mis- and disinformation, it can sometimes be challenging to engage in a robust but respectful conversation. The following suggestions may assist your discussions:

- Listen respectfully and approach all conversations with curiosity. There is no one "right" way of approaching a conversation on the rule of law and respectful discussion and debate is part of a healthy democracy.
- Be guided by the principles and examples in this handbook, but also draw on your own experiences from your work in legal practice.
- Consider whether it may be helpful to step back from a particular legal or political issue and ground your conversation in common values.
- Approach differences of opinion with respect and a willingness to understand different perspectives.
- Recognise and bring to an end a conversation that cannot be continued respectfully and safely for yourself, the other person and/or other listeners.

A good time to initiate a discussion may also be when you notice the rule of law invisibly doing its work in the background, and the opportunity presents itself to point this out.

Part 2: The rule of law in the Australian context

Goals:

- To introduce the five principles used in this handbook as a basis for discussing the rule of law.
- To frame the rule of law as an ongoing project for Australian democracy.
- To provide background information and suggestions for further reading on the Australian Constitution and First Nations' experiences in relation to the rule of law.

A key part of the democratic project of modern Australia is to ensure that the rule of law remains robust and, where it falls short, this is acknowledged and addressed through evidence-based reform to law, practice and/or education.

2.1 A principles-based approach to rule of law discussions

When we speak about the rule of law in a contemporary Australian sense, we are referring to a political and legal framework where it is the law (as opposed to the arbitrary exercise of power by any one individual or group of individuals) that governs Australia. The rule of law in Australia is shaped by our liberal democratic system of government, as well as the traditions and culture that flow from that system.

While the term rule of law is widely used, it can be challenging to break down its core elements and explain what it looks like in practice. In this handbook, we have chosen to focus on five core principles that we consider to be important touchstones for understanding how the rule of law operates in Australia.[2]

These are:

- Equality
- Independence
- Transparency
- Accountability
- Dignity

2.2 The rule of law as an ongoing project for Australian democracy

While Australia is undoubtedly a successful democratic rule of law society, it is important to acknowledge that there are instances where the principles contained in this book are not fully realised in practice. There may be a range of reasons for this, including historical injustices arising from our laws and legal system, challenges around access to justice, particularly for vulnerable cohorts, and instances of wrongdoing, corruption or other failures of ethical leadership.

The fact that the rule of law is not perfect, however, does not mean that it does not matter. Rather, we consider that a key part of the democratic project of modern Australia is to ensure that the rule of law remains robust and, where it falls short, this is acknowledged and addressed through evidence-based reform to law, practice and/or education.

As you engage with the concepts of this handbook in conversations on the rule of law, keep an open mind as to ways in which our system can be improved and our institutions strengthened.[3]

2 We are greatly indebted to the work of various individuals and organisations that have undertaken significant scholarship and public awareness-raising in relation to these principles in recent years. In particular, we note the significant contemporary contribution to the public understanding of the rule of law by Lord Bingham through his seminal work, *The Rule of Law*, as well as the articulation of key elements of the rule of law by the Law Council of Australia, whose work we draw on in explaining the principles within this handbook. See Tom Bingham, *The Rule of Law* (Allen Lane, 2010). See also the work of the Bingham Centre for the Rule of Law, and Law Council of Australia, 'Policy Statement: Rule of Law Principles' (Statement, March 2011).

3 The Law Society of New South Wales undertakes extensive advocacy on rule of law issues across a range of practice areas, including through its public submissions available here.

2.3 The Australian Constitution

To have a discussion on the way in which the rule of law operates in modern Australia, it is important to explain some of the key elements of the Constitution of Australia. This is because of the way in which the rule of law in modern Australia is underpinned by the system of government established by the Constitution, and the liberal democratic tradition and values that inform this foundational legal document. The points below may assist in explaining Australia's system of government and its relationship to the rule of law.



1. **The Constitution is modern Australia's "national rule book".**
   It establishes our system of government and is the fundamental law that binds the Commonwealth Parliament and the Parliaments of each State. The Constitution is superior to all other laws.



2. **The Constitution establishes our national system of government, including:**
   - **Federalism:** Power is distributed between the Commonwealth Government and the six states.
   - **Representative Democracy:** Representatives of the people are elected by the people. Each adult has an equal vote.
   - **The Crown and Responsible Government:** The Crown is the Head of State and is represented by the Governor General. Except in exceptional circumstances, the Crown acts on the advice of Commonwealth Ministers, who are answerable to the Parliament.



3. **The Constitution sets out the separation of powers.**
   - **Chapter I** confers legislative (or law-making) power on the Parliament (also known as the legislature).
   - **Chapter II** confers executive power on the executive, which allows for the administration of laws and the carrying out of the business of government.
   - **Chapter III** confers judicial power on the judicature (i.e., the courts), which allows for disputes to be conclusively determined according to law. Only courts can make binding decisions around the rights and obligations arising from the law in relation to past events or conduct. They are also the only branch of government that can rule definitively on the interpretation of legislation, and that can make a judgement on and punish criminal guilt.

     There is a strict separation of power between the legislature/executive on the one hand, and the judicature on the other.



4. **The Constitution can only be changed through referendum.**
   Any proposed change must be put to a national vote and obtain a "double majority" to be implemented. This means that a majority of voters in Australia, and a majority of the voters in at least four of the six states, must vote in favour of the change.



5. **The Constitution does not contain a Bill of Rights.**
   Unlike in the United States of America, the Constitution does not contain a Bill of Rights. It does, however, have some limited rights such as requiring an acquisition of property by the Commonwealth to be on just terms[4] and trial by jury in relation to federal indictable criminal offences.[5] The High Court has also identified some limits contained in the Constitution on the exercise of legislative and executive power, including the implied freedom of political communication.[6]

4 *Australian Constitution* s 51 (xxxi).

5 Ibid s 80.

6 *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520.

Further reading and resources:

- Commonwealth Parliamentary Education Office
  A comprehensive set of resources directed to the way in which Australian democracy works, including fact sheets specific to the Australian Constitution.
- Annabel Crabb's Civic Duty
  An engaging overview of Australia's democratic system by ABC journalist Annabel Crabb.
- The Constitutional Clarion
  YouTube channel of Anne Twomey, Professor Emerita of the University of Sydney, to keep viewers informed about Australian constitutional developments (as well as those occurring overseas). Professor Emerita Twomey's project also includes videos relevant to school students.

2.4 The rule of law and First Nations history

Any discussion on the rule of law in the Australian context invites reflection on Aboriginal and Torres Strait Islander peoples' experiences. This includes recognition of the cultural authority and sophisticated system of what is sometimes described as "Aboriginal Law and Lore" that has been practiced by the First Nations of this country for over 65,000 years.

As a starting point, we encourage you to reflect on the words of Jason Behrendt, Yuwaalaraay man and Co-Chair of the Law Society's Indigenous Issues Committee:

> In truth, the rule of law has existed in NSW since time immemorial. As Justice Blackburn who, after considering the evidence of the traditional laws and customs of the Yirrkala people in *Milirrpum v Nabalco* stated: "If ever a system could be called "a government of laws, and not of men", it is that shown in the evidence before me".[7] While not dependent on the common law, the laws and custom of Aboriginal societies finds some (albeit imperfect) recognition through the common law and statutory recognition of native title rights and interests, and some statutory recognition in other contexts.

Considering the rule of law is also an opportunity to learn more about the history of Australia, including the impacts of colonisation and the profound injustices experienced by Aboriginal and Torres Strait Islander people. As noted by Mr Behrendt,

> The ongoing intergenerational trauma and harm arising from legislation such as the *Aborigines Protection Act 1909* (NSW), which regulated all aspects of the lives of Aboriginal people has been well documented by the *Royal Commission into Aboriginal Deaths in Custody*[8] and the *Bringing them Home Report.*[9] The current over representation of Aboriginal people in custody or in state care remains a matter of national shame.

It is important that we approach discussions on the rule of law with an awareness of this history. In a 2017 speech, the Hon. Justice Jayne Jagot (at that time, a Judge of the Federal Court of Australia) noted that while one of the touchstones of an orthodox conception of the rule of law is that laws apply equally to all people, for many years this did not mean equality in the way we understand that concept today:

> It is extraordinary how often in the past the concept of "all people" has meant only some people – history shows us that "all people" has meant many things including:
>
> - only male people, provided they own land;
> - only white male people;
> - only white male and white female people.
>
> If that is how you conceive of "people" then it is not hard to see why you would think a law enfranchising only white males who own property upheld the rule of law.



7 *Milirrpum v Nabalco Pty Ltd* (1971) 17 FLR 141, 267 (Blackburn J). See also Justice John Basten, 'Human Rights and the Rule of Law' (Speech, 2008 Ninian Stephen Lecture, University of Newcastle, 3 April 2008).

8 Royal Commission into Aboriginal Deaths in Custody, *National Reports* (15 April 1991).

9 Human Rights and Equal Opportunity Commission, *Bringing them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families* (April 1997).

> As lawyers we should educate ourselves about the history of our country and, in particular, those parts of our history where the full effects of the rule of law have not held sway. Almost invariably, those parts relate to the lives of the disenfranchised athe disempowered. The history of our Indigenous peoples has been one of legally mandated disenfranchisement and disempowerment until recent decades.[10]

We recognise that there is a difficulty in seeking to articulate and promote the rule of law in as accessible a manner as possible, while acknowledging the complexity of this concept set against the history of Australia. As noted by Professor Kristen Rundle, while prominent theorists such as A.V. Dicey focused on equality as a central tenet of the rule of law, they did not pay attention to "why it is persistently the case that some people are missing from - or missing out within - the rule of law".[11]

We encourage you to seek out opportunities to learn about the history of the rule of law and listen to the perspectives of different thinkers, including Aboriginal and Torres Strait Islander people, so your conversations are grounded in greater understanding and nuance of Australian legal history in all its complexity.

Further reading and resources:

- Australia's Defining Moments Digital Classroom
  The National Museum of Australia has created an interactive timeline, which charts defining historical moments in Australian history, including curriculum resources for school children.
- ABC 'Deep Time'
  The ABC News Story Lab project focuses on the ancient history of Aboriginal and Torres Strait Islander people, including a section on "law and lore".
- National Agreement on Closing the Gap
  A National Agreement to address inequality experienced by Aboriginal and Torres Strait Islander people, developed in partnership between Australian governments and the Coalition of Aboriginal and Torres Strait Islander Peak Organisations.
- A Fair and Just Future for First Peoples
  Report by the Australian Human Rights Commission on how the rights of First Nations people contained in the UN Declaration on the Rights of Indigenous Peoples, can be better realised in Australian law, policy and practice.
- National Bench Book on Aboriginal and Torres Strait Islander Peoples and the Legal System
  A publication of the barriers to justice faced by First Nations people published by the Australasian Institute of Judicial Administration.

10 Justice Jayne Jagot, 'The Rule of Law and Reconciliation' (Speech, Law Society of New South Wales Young Lawyers' Conference, 20 October 2017).

11 Kristen Rundle, *Revisiting the Rule of Law* (Cambridge University Press, 2023) 61.

Part 3: Principles

Goals:

- To introduce five key principles to assist your discussions on the rule of law.
- To answer common questions that arise in relation to the principles.
- To provide examples and case studies to illustrate the five principles.

I. Equality

All people are subject to the same laws and treated equally under the law. Where groups are treated differently, this is based on objective, rational criteria.

What does equality mean for the rule of law?

When we say "all people are equal before the law" or "no person is above the law", we are referring to the way in which laws are applied equally to everyone rather than in a way that advantages or discriminates against certain groups of people.

Equality before the law means that:

- Personal characteristics such as your wealth, gender, race or religion should typically play no part in how the law is enforced or administered.
- The law applies equally to you, regardless of whether you hold a public office (e.g., Prime Minister, parliamentarian, member of the police force, Judge, or public servant) or not.

You might also hear the term "non-discriminatory" used in conversations on the rule of law. This means that when courts, tribunals or government entities apply the law, they must do so in a fair and consistent manner to all people.



Does equality mean people receive the "same treatment all of the time"?

Not necessarily. In some circumstances, laws may distinguish between the treatment of certain groups of people. This is because the community recognises and accepts that these groups may require different treatment in some circumstances, as a matter of fairness. These circumstances are set out in the law so that where there are differences, these are made on an objective, rational basis and are clear to everyone.[12]

Children and young people in the criminal justice system, for example, are generally dealt with differently to adults. In NSW, for example, their matters are usually heard by the Children's Court, a specialised court with processes and procedures designed to better meet the needs of young people. This is because the law recognises, based on the objective evidence, the particular vulnerabilities of children and adolescents, including differences in their socio-moral, psychological and physiological development, maturity and life experience compared to adults.

Another example is the way in which courts will consider factors specific to an individual in sentencing a person found guilty of a criminal offence. For example, consideration may be given to the impact of a mental health or cognitive disability on offending. The law also recognises that profound childhood and social disadvantage does not fade over time and must be factored into criminal sentencing.[13]

12 See further discussion in Tom Bingham, *The Rule of Law* (Allen Lane, 2010) 55-9.

13 *Bugmy v The Queen* (2013) 249 CLR 571. See also Bugmy Bar Book Project Committee, *The Bugmy Bar Book* (Web Page, April 2026).

Examples and case studies of the principle of equality

Fictional Example

1. Equal treatment:

A local Member of Parliament (MP) is caught drink driving

The Hon. James Lockwood, a local MP, is driving home after a social event in his electorate, when he is pulled over by the NSW Police for a random breath test.

Mr Lockwood refuses to agree to the test, saying to one of the police officers, *"Come on, mate. I'm just on my way home from a community event. Literally three minutes from my driveway. Give us a break, would you? Don't you know who I am?"*

Principle in action:

Equality before the law means that, regardless of the fact that Mr Lockwood is the local MP, he must be treated the same as any other member of the public who disobeys the law.

If he continued to refuse to comply with the test, he may be required to accompany the police to the nearest breath analysis station.

If he was found to be over the legal alcohol limit, Mr Lockwood would be charged in the same way as any other member of the public.

Case Study

2. Differential treatment under the law based on an objective difference:

Australia introduces a social media ban for children under 16 years

Since 10 December 2025, there has been a minimum age (16 years) for use of specified social media platforms in Australia such as Facebook, Instagram, Kick, Reddit, Snapchat, Threads, TikTok, Twitch, X (formerly Twitter) and YouTube.

Social media companies are required to take reasonable steps to ensure that children under 16 years do not set up accounts on their platforms.

Principle in action:

Not all laws apply to everyone in exactly the same way all of the time. Like a range of laws in Australia, the social media ban is an age-specific law as it draws a distinction between those who will be prevented from accessing the platforms (children under 16) and those who will not be banned (children and adults 16 years and older).

This is an example of different treatment under the law (based on an objective difference i.e. age) which is intended to protect children from the harms of social media.

Case Study

3. Equal treatment:

Celebrity Yorkshire terriers, Pistol and Boo, enter Australia via private jet

On 21 April 2015, Johnny Depp flew into Australia with his then-wife Amber Heard to film *Pirates of the Caribbean: Dead Men Tell No Tales*.[14] On board were the couples' two Yorkshire terriers, Pistol and Boo. Ms Heard falsely declared on her Incoming Passenger Card that she was not bringing any live animals into Australia.

As a result, Pistol and Boo were quarantined and Ms Heard was required to appear before Southport Magistrates' Court, where she pleaded guilty to providing false information on the Passenger Card. She received a one-month good behaviour bond.

Principle in action:

Even though Ms Heard was a high-profile celebrity, she was held to account in line with Australia's law. The case made headlines around the world when Ms Heard and Mr Depp issued a video apologising for not obeying Australia's biosecurity regime.



14 We are grateful to David Clark, *Introduction to Australian Public Law* (LexisNexis Butterworths Australia, 5th edition) 63 for this example.

II. Independence

Courts and judges are independent of Parliament and the executive. Judges make decisions impartially, applying the law to the facts before them.

What does judicial independence mean?

Judicial independence can be broken down into two parts - constitutional independence, and independence in the way in which judges make decisions.

- **Constitutional independence** is required by the Australian system of government which is premised on the doctrine of the "separation of powers" i.e., that the judiciary must be independent from the legislative and executive branches of government and make decisions free from interference of the other two branches.
- **Independence in the way in which judges make decisions** requires judges to ensure that their conduct, both when they are working as judges and in their private lives, does not undermine (or have the appearance of undermining) their independence.

Why is judicial independence a central principle of the rule of law?

In a rule of law society, judges make binding decisions on the facts and evidence properly in front of them and according to the law. A judge's personal preferences or beliefs are not relevant when they are making a decision. They must also be free from political interference or any other form of improper influence or pressure, for example from business or other interest groups.

No one can direct a judge how to decide a case. Judges sometimes make decisions that may be unpopular, inconvenient or undesirable to someone (be that government, industry, a group or an individual). This is no reason for a judge not to apply the law independently and impartially.



What else helps to reinforce judicial independence?

In addition to the separation of powers, other protections also help to ensure the independence of judges. For example:

- **Security of tenure** means that, once appointed, judges are able to remain in their position until retirement age, unless removed from office due to serious misconduct or because they are no longer able to perform their role. This means they do not need to reapply for their role, which makes them more likely to make decisions based on law (rather than with a view to their reappointment) and for those decisions to be respected.
- **Security of remuneration** means that judges' salaries and pensions should not be decreased or interfered with by the executive. If the executive were able to reduce judges' salaries, this may tempt judges to make decisions in favour of the government of the day to avoid a pay cut. Even though this would be highly unlikely in our current judicial system, it may give the impression to the public that judges are not independent from the government, thereby undermining confidence in the rule of law.

Is the independence of the legal profession also important?

An independent legal profession reinforces the rule of law. When people consult a lawyer, they should be able to disclose all relevant information about their legal problem. This right, also known as "client legal privilege", is fundamental to helping lawyers provide accurate advice and defend their clients in accordance with the law.

Lawyers should not be targeted for carrying out their profession. It would be highly improper and damaging to the rule of law if the government targeted legal professionals or law firms for the sole reason that they decided to act in matters against the government's own interests.

Examples and case studies of the principle of independence

Fictional Example

1. Constitutional independence of the judiciary:

A Federal Court Judge declines the offer to sit on a Commonwealth Government board

Before Justice Park was appointed to the Federal Court of Australia, she was an experienced commercial solicitor, with expertise in corporations law. She headed up the governance practice at a leading international law firm and was well-known for her expertise in technology, cyber and Artificial Intelligence (AI).

Last week, Justice Park was offered a part-time position on a board established by the Commonwealth Government to advise on the AI roadmap for Australia. The role is unpaid.

Principle in action:

While Justice Park would be well qualified to undertake the role and there was no present conflict of interest in doing so, she correctly declined the offer. Serving on a government advisory board of this kind could create the impression that a judge is involved in government decision-making or aligned with government policies.

Judicial independence requires judges to remain separate from the executive branch of government and to be seen as impartial by the public.

Fictional Example

2. Independence in the discharge of judicial duties:

The judicial surfer who must decline an invitation to MC at a Sydney surf club fundraising event

In his youth, Judge Durand was a keen surfer and took out several surfing titles. While his glory days on the waves are well behind him, he nevertheless remains in contact with many members of the Australian surfing community.

One of the surf clubs on Sydney's Northern Beaches asks Judge Durand whether he might host a fundraising event for their club. He would not be paid for the gig, but the club is keen to welcome an old-timer from the Sydney surf scene. Judge Durand, however, has been allocated to sit on a two-week trial concerning a "slip and fall" negligence case to which the surf club is a party.

Principle in action:

In this case, Judge Durand would need to decline the invitation. Participating in the festivities, even in an unpaid capacity, would cast doubt on Judge Durand's independence and impartiality. In this case, depending on the nature of any former connections with the respondent surf club, Judge Durand may also be required to take the additional step of not hearing the "slip and fall" case at all.

III. Transparency

Laws and regulations are clearly drafted, precisely defined, publicly known and available.

What is transparency of the law?

The rule of law requires laws and regulations to be clearly drafted, precisely defined, publicly known and available. They should be drafted consistently as far as possible to avoid unintended consequences arising from overlapping regulatory and other regimes.

Laws giving rise to criminal penalties should apply to future conduct only i.e., they should not apply to actions or events that occurred before the law was made (sometimes known as "retrospectively"), except in the most exceptional circumstances.

Court hearings should generally be held in public. You may hear this referred to as "open justice" or described through the famous maxim, "justice must not only be done but must be seen to be done". There are certain circumstances where a matter may be heard, or partly heard, in "closed court" i.e., the public and/or media would not be able to watch the proceedings. Examples include proceedings involving children, proceedings in relation to certain sexual offences, or proceedings involving national security issues. Further, a judge may order a "suppression"/"non-publication" order, for example in relation to the naming of a particular witness or to prevent disclosure of in-confidence trade secrets, in accordance with the laws on these matters.

Judges are required to publish judgments containing their reasons for reaching a decision.

Why does transparency matter to the rule of law?

Transparency means people understand in advance if their actions or behaviours would break the law and thereby give rise to a civil or criminal penalty. This means that society is able to conduct its affairs with confidence, knowing what is and is not permitted under law. If a criminal law is not drafted precisely, there is a risk that it may accidently capture non-criminal conduct.

Transparency of the law has important practical implications and also matters for business. Clear and predictable laws and certainty across regulatory settings is important for attracting investment and enabling economic growth.

The availability of written judgments means that the reasons adopted by the judge are open to scrutiny and can reveal possible grounds for appeal.



Examples and case studies of the principle of transparency

Case Study

1. Laws and regulations must be publicly known and available:

Winding your watch forward for daylight savings

Time, and our system of time, impacts every aspect of our lives, from when we set our alarm to get up, to when we must arrive at school or work, and myriad other appointments we schedule throughout the course of a day.

In NSW, the *Standard Time Act 1987* (NSW) governs standard time and daylight saving. The regulation of time is a state responsibility, and the time may be different, depending on where you are. For example, New South Wales, Victoria, South Australia, Tasmania, and the Australian Capital Territory observe daylight saving, whereas Queensland, Western Australia, and the Northern Territory do not.

Principle in action:

The transparency of the law regarding our system of time is critical to everyone's daily life. Time changes across Australia are set out clearly in the law. They are widely communicated through government and media outlets, so that people know when to turn their clocks forward or back and continue to conduct their affairs in an orderly way.

Case Study

2. Laws and regulations must be clearly drafted, precisely defined, publicly known and available:

Driving in accordance with the road rules

In Australia, road rules are made by the states and territories. When you take a trip in any form of transport on the roads, you rely on the fact that everyone knows the rules and is generally committed to following them. If a sizeable number of the vehicle-driving public decided overnight to drive on the right-hand side, for example, this would result in mayhem on Australian roads.

Principle in action:

Road rules are an example of law (by delegated legislation) that must be clearly defined, readily known and publicly available. The transparency of the law is central to its practical operation and objectives, including the movement of people and public safety.

If there were ever to be a major change in the road rules, this would need to be accompanied by a widespread public campaign. This has occurred in other countries, for example in Sweden on 8 November 1967, when that country switched from driving from the left-hand to the right-hand side of the road[15]

15 Maddy Savage, 'A 'thrilling' mission to get the Swedish to change overnight', *BBC* (online, 18 April 2018).

Case Study

3. Laws must be administered transparently and with precision:

NSW Government withdraws COVID-19 fines

At the height of the COVID-19 pandemic, the NSW Government issued a large number of Public Health Orders, which were intended as a public health response to stop the spread of the virus and protect vulnerable people. The NSW Police issued fines to people who did not obey these orders, for example if they were caught not wearing a face mask.

Redfern Legal Centre, a community legal centre in Sydney, challenged the validity of some of the notices issued for contraventions of the Public Health Orders on the basis that the notices did not provide a sufficiently detailed description of the offence committed. On account of this, in November 2022, the Commissioner of Fines Administration decided to withdraw 33,121 fines. Revenue NSW acknowledged that "limited information contained in some penalty notices made it difficult for fine recipients to understand the nature of the offence and did not comply with the specificity requirement of the *Fines Act 1996*". [16]

In November 2024, the Commissioner decided to withdraw the remaining 23,539 penalty notices.[17]

Principle in action:

Transparency is important in all aspects of the law, from the legislation itself to the way in which the law is administered. In this case, the NSW Government acknowledged that the penalty notices had not reached the required threshold of transparency and therefore withdrew any unpaid fines.

16 NSW Government, 'NSW to withdraw remaining Covid-19 fines' (Departmental release, 26 November 2024).

17 Ibid.

IV. Accountability

There are rules and institutions to effectively scrutinise the exercise of power by the executive government, and to hold it to account.

What is executive accountability?

Accountability refers to the ability to hold the executive government to account. The executive government includes the Head of State, the Prime Minister, government ministers and government departments and agencies who put laws and policies into practice each day.

Accountability is important as the executive branch of government is given broad discretion under law to make decisions which impact the everyday lives of individuals. Examples include applying for a driver's licence, visa or social security benefit, paying a fine or undertaking checks required by your employer.

Accountability is of critical importance where the actions of the government significantly impinge on the freedom of the individual, including powers to:

- Detain a person by force.
- Enter premises.
- Access and seize property or information.
- Intercept telecommunications or stored communications.
- Compel the attendance or cooperation of a person.
- Deport a person.[18]

What happens when government ministers or officials make decisions that are not within their powers under law?

Government ministers or officials must make decisions within the limits of the powers given to them under law. Where they make decisions that are beyond their powers, or fail to follow a fair process, they are acting unlawfully.

In a rule of law society, there are ways in which individuals that are subject to unlawful decisions can challenge them and seek a remedy. For example, a person may be able to go to a tribunal to have the decision against them reconsidered and remade. If the person remains unsatisfied, there are sometimes options to go to a court to determine whether the decision was made unlawfully or that the decision-maker did not follow a fair process. The court may look at different factors, such as whether the decision-maker had power to make the decision, whether they followed the rules that were required to be observed in making the decision and whether they based their decision on evidence. The Constitution provides that the legislature cannot prevent federal or state courts from reviewing executive decisions that are gravely wrong in law.[19]



18 See Law Council of Australia, 'Policy Statement - Rule of Law Principle', March 2011.

19 *Kirk v Industrial Relations Commission of New South Wales* [2010] HCA 1.

Who, apart from the courts, helps to ensure accountability in our system?

A rule of law society such as Australia has different ways to ensure that the executive is exercising its powers lawfully and in the public interest.

Parliament is a key accountability institution. Government ministers are accountable for the actions of their departments. They can be called to account for their decisions on the floor of the Parliament, before cross-party parliamentary committees, and are ultimately responsible to the voters in their own electorates.

There are now also a variety of independent institutions and agencies in Australia that assist with the task of oversight and scrutiny of government action, particularly given the complexity of modern government. These agencies are sometimes referred to as "watchdogs" and include:

- Anti-corruption bodies to help prevent corrupt conduct by public officials.
- Electoral commissions to ensure impartial and independent electoral systems.
- Police oversight bodies to review and investigate misconduct by police.
- Ombudsman schemes to investigate complaints and oversee the quality of public administration.
- Audit offices to look at the way in which government programs are delivered, including whether they are efficient, effective and within law.
- Freedom of Information regimes to allow citizens to request information held by the government.

On issues considered to be of major public concern and importance, there may also be Royal Commissions and Commissions of Inquiry. Recent examples include the Royal Commission into the Robodebt Scheme and the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability.

In a rule of law society, it is vital that such "watchdog" institutions are independent and adequately resourced to undertake their roles. Similarly, it is important to ensure the effective design of such institutions, including, where appropriate, oversight of their own functions, to ensure full compliance with the law.

A free press which engages in fair and accurate reporting is another important mechanism in a democratic rule of law society to hold government and other powerful individuals to account. You may hear this referred to as the "fourth estate", with some commentators even referring to new media as a "fifth estate".[20] There is also a broad range of civil society actors that contribute to accountability, including universities, professional associations, trade unions and not-for-profit organisations.

Is accountability also relevant to the other branches of government?

Citizens keep legislatures (Commonwealth State and Territory Parliaments) accountable by voting in regular free and fair elections.

The courts may be seen to be accountable through the fact that hearings are held in open court and they are required to give reasons which explain how they reached a decision.

Is accountability also relevant to the private sector?

Yes. There are a range of independent government bodies to ensure that private sector operators in major sectors are compliant with government laws and regulations. Examples of regulators include:

- The Australian Securities and Investments Commission (ASIC), which regulates corporate markets, financial services and consumer credit.
- The Australian Competition and Consumer Commission (ACCC), which promotes competition, fair trading and the protection of consumers.
- The Telecommunications Industry Ombudsman, which assists individuals and small businesses to resolve complaints about phone and internet providers.

20 The Hon. Andrew Bell AC KC, Chief Justice of New South Wales, 'The Third Arm and the Fourth (and Fifth) Estates' (Speech, Senior Courts Judges' Conference, Auckland, 16 April 2025)

Examples and case studies of the principle of accountability

Fictional Example

1. Ability to challenge administrative decisions:

A medical student challenges a decision in relation to her Youth Allowance payments

Holly is four years into her six-year medical degree when she receives a letter that she is no longer eligible for student support payments. The letter states that the Commonwealth Government understands that she has completed her degree and therefore no longer qualifies for the fortnightly payments.

Holly is concerned by the letter, particularly as she lives without parental support and requires the allowance to meet her rental payments. She knows there has been a mistake, as she still has two years left of her degree.

Principle in action:

A government agency has made a decision that affects Holly's benefits and entitlements. Accountability under the rule of law means that Holly and others in similar situations should have a way to challenge the decisions that affect them and request a review.

Holly could contact the relevant government agency in the first instance and explain that a mistake has been made. If the issue is not resolved informally, she could ask for the decision to be formally reviewed. If she still disagrees with the outcome, she may be able to take the matter to an independent tribunal for the decision to be reconsidered.

Case Study

2. Oversight of systemic issues by an integrity agency:

The NSW Ombudsman scrutinises and makes recommendations with respect to the use of AI or automated decision-making (ADM) by NSW government agencies

The NSW Ombudsman observed that the public had limited visibility of the way in which NSW government agencies were using AI and other digital tools to make decisions, despite their "widespread" and "rapidly increasing" use. In 2021 and 2024[21], it published two reports on this subject, the second of which involved a point-in-time mapping exercise of 275 ADM systems "to comprehensively identify and publish the ways in which the public sector is using, or planning to use, ADM systems in the performance of their functions".[22]

The NSW Ombudsman was prompted to undertake this work when it became aware that one agency (Revenue NSW) had been relying on machine technology to make decisions around the recovery of unpaid fine debts, including with respect to people experiencing significant financial vulnerability.

Principle in action:

While the primary function of the NSW Ombudsman is to respond to complaints about maladministration by public officials and within government agencies, in this case, the Ombudsman took a proactive approach to alert agencies across the NSW public sector about the need to design ADM systems that are lawful, responsive to the principles of good government, transparent and subject to ongoing monitoring, audit and review processes.

21 NSW Ombudsman, *The new machinery of government: using machine technology in administrative decision-making* (Special Report, 29 November 2021); Kimberlee Weatherall et al, *Automated Decision-Making in NSW: Mapping and Analysis of the use of ADM systems by state and local governments* (Executive Report, March 2024).

22 NSW Ombudsman, 'A map of automated decision-making in the NSW Public Sector: A special report under section 31 of the Ombudsman Act 1974 - tabled in Parliament' (Media Release, 8 March 2024) [1].

Case Study

3. Findings of corrupt conduct by an integrity agency:

A government official is investigated for accepting bribes from a member of the public

The NSW Independent Commission Against Corruption (ICAC) conducted an investigation after receiving a report that an officer in the Western Sydney Regional Illegal Dumping Squad (WS RIDS) had deliberately failed to investigate unlawful waste disposal, including asbestos dumping, in return for benefits such as cash payments and mobile telephones. Following its investigations and a public hearing, the ICAC published a report in 2017, which made findings of serious corrupt conduct in relation to the officer (as well as two other individuals who were involved). It also made various recommendations to improve the governance framework of WS RIDS and prevent such conduct in the future, including the introduction of a criminal offence for asbestos dumping.[23]

Principle in action:

The absence of corruption is a hallmark of a well-functioning rule of law society, and accountability agencies such as the ICAC help to hold officials accountable who use their position in public office for private gain. In this case, the conduct by the official was not only corrupt but also could have had negative impacts on public health and the environment. As a result of the investigation, the NSW Parliament passed laws in 2018 that included new offences were introduced for asbestos waste dumping.[24]

23 NSW Independent Commission Against Corruption, Investigation into the conduct of a regional illegal dumping squad officer and others (ICAC Report, June 2017).

24 *Protection of the Environment Operations Amendment (Asbestos Waste) Act 2018* (NSW) sch 1.

V. Dignity

The legal system treats all people with dignity and in accordance with fair process.

Why is dignity inherent to the rule of law?

A rule of law society is one where the law and the legal system respects the inherent dignity of all people and operates according to certain minimum standards.

How does dignity inform the criminal law?

The principle of "dignity" is particularly important in the context of criminal law. As a minimum, the following rights and principles in relation to the accused person must be upheld. We note that many of these concepts are derived from the common law.

- **Right to silence:** The "right to silence" means that a person accused of a crime is not required to assist the police in identifying evidence that could help to prove their guilt in a court of law. Further, a judge and jury cannot use the accused "silence" against them. The "right to silence" also means that a person is not required to produce a document that would expose them to conviction for a crime.
- **Presumed innocence:** An accused person should not be punished until an independent court has decided that they have committed the crime of which they are accused.
- **Trial without delay:** People should be tried for the crime for which they have been charged without extensive delay. It is not appropriate to keep people in detention for long periods without trial.
- **Right to a lawyer:** An accused has a right to be assisted by a lawyer. While there is no blanket rule that the state should provide legal aid to persons who cannot afford a lawyer, there are times when, depending on the seriousness of the crime, a trial may only proceed if the accused has legal representation, although not necessarily of their choice.
- **Right to a fair trial:** A trial must take place in an independent, impartial, and open court established by law.
- **Guilt beyond reasonable doubt:** In criminal matters, all elements of the case against the accused must be proven "beyond reasonable doubt".
- **Punishment:** The principle of dignity is also relevant to the way in which offenders are punished. Minimum standards include ensuring that no person is subject to torture or cruel, inhuman or degrading treatment or punishment. The death penalty is antithetical to the inherent dignity of the human being and does not belong in Australia's contemporary rule of law society.
- **Judicial discretion in sentencing:** Judges have a broad discretion in sentencing, which, in the interests of justice, can take account of the many different circumstances of individual offences and individual offenders.



What is the relationship between the rule of law and human rights?

It is not enough to have the infrastructure of a legal system without laws that respect human dignity. In this sense, the rule of law and protection of human rights work to strengthen each other, particularly given that both human rights law, and the principles that underpin the rule of law, are directed to protecting the individual against abuses of power, particularly by the state.

Australia is a party to core international human rights treaties, including the *International Covenant on Civil and Political Rights*[25] and the *International Covenant on Economic, Social and Cultural Rights*.[26] While Australia does not have a federal Bill of Rights, a combination of federal and state laws, including anti-discrimination laws, give effect to specific international human rights obligations within our domestic law. Human rights also provide an important normative standard for law making. For example, at the Commonwealth level, government and non-government bills must be accompanied by a statement of compatibility, which considers the rights and freedoms recognised in human rights treaties to which Australia is a party.

Commitment to the implementation of our obligations under international human rights law is one way in which Australia can continue to improve its rule of law culture, including by ensuring that decision-makers keep the dignity of the individual front of mind in developing policies and laws, and in exercising their powers.

Does access to justice play a role in the rule of law?

In a rule of law society, people should be able to access justice. In a practical sense, this means that people, whatever their background or means, should be able to understand and enforce their rights, and access available remedies.

Where required, people should have the opportunity to engage a lawyer to navigate what is often a complex legal system. In Australia, legal assistance services (such as Legal Aid, the Aboriginal Legal Service and Community Legal Centres) offer information, advice and representation to assist people who may otherwise be unable to retain a lawyer or are otherwise disadvantaged. While there are undoubtedly challenges to achieving access to justice, given the complexity of legal need across the community and ongoing resourcing issues, legal assistance services are important ways to address social, financial and cultural barriers faced by persons experiencing a legal problem.

25 *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976).

26 *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976).

Examples and case studies of the principle of dignity

Fictional Example

1. Right to a fair trial:
Trial discharged due to juror misconduct

Ms Nielsen, a high-profile social media influencer, is standing trial in the District Court of NSW for knowingly selling a dangerous "wellness tonic" to one of her online followers, who became gravely ill after ingesting it. The judge hearing the matter has noted Ms Nielsen's extensive social media presence and has instructed the jury that it would be a criminal offence for any juror to make their own inquiries about the accused or any matter relevant to the trial.

During the trial, the Judge becomes aware that a juror, Ms Waite, has not only being scrolling through Ms Nielsen's Instagram account but has also contacted one of Ms Nielsen's friends to find out more about Ms Nielsen's character and the circumstances around the manufacture of the "wellness tonic". Ms Waite has then told the other jurors details of her conversations.

The Judge makes a finding of misconduct against Ms Waite, and discharges (i.e. removes) her from the jury. Because of the conversations between Ms Waite and the other jurors, the Judge decides that it is not appropriate for the trial to continue with the remaining jurors as it may result in a substantial miscarriage of justice. A retrial with a new jury is ordered.

Principle in action:

While the decision to discharge the jury in these circumstances would be expensive, inconvenient and distressing, the right to a fair trial is a fundamental tenet of our legal system. It ensures that the proper processes of the court are upheld in the interests of fairness and promotes confidence in the administration of justice.

Case Study

2. Right to a fair trial/right to a lawyer:

The High Court orders a retrial of a man who did not receive the benefit of a fair trial

Mr Dietrich was accused of importing a large amount of the drug heroin from Thailand to Australia. He did not have the funds to pay a lawyer, and therefore represented himself in a 40-day trial in 1998. He noted during the trial that he was struggling to represent himself. At the end of the trial, he was found guilty of importing a "trafficable quantity" of heroin and sentenced to a seven-year term in prison.

A majority of judges in the High Court of Australia found that there is no general right for every accused person to be provided with legal representation at the State's expense. However, as Mr Dietrich has been charged with a serious legal offence, it was unfair for him to carry on unrepresented in circumstances where he could not properly advocate for himself. Without legal representation, he could be improperly convicted and there could be a miscarriage of justice.

Principle in action:

This judgment highlighted the importance of a fair trial. Justice Gaudron described the principle as follows: "A trial is not necessarily unfair because it is less than perfect, but it is unfair if it involves the risk of the accused being improperly convicted". As a result, Mr Dietrich's appeal was allowed, his criminal conviction was set aside and a retrial was ordered.

27 *Dietrich v The Queen (1992)* 177 CLR 292, 365 (Gaudron J).

Case Study

3. Access to justice and support in navigating the legal system:

A lawyer helps to ensure that a client's voice is heard

During a prolonged inpatient hospital stay, Dean (not his real name) became subject to guardianship and financial management orders made without his meaningful involvement. The orders significantly restricted access to his own funds, and ultimately undermined his trust in services and made it harder for him to advocate for himself.

A solicitor first met with Dean to explain the orders, ensuring he understood both his rights and the restrictions placed upon him. The solicitor then began advocating for Dean by engaging with the hospital, the appointed guardian and NSW Trustee and Guardian to ensure his wishes were heard and that decisions reflected his preferences. A caseworker also worked alongside the solicitor to support Dean and communicate his wishes during hospital case-conferencing and discharge-planning processes.

Together, the solicitor and caseworker developed a coordinated strategy that supported both Dean's wellbeing and his legal position. They arranged practical supports, including in-person hospital visits, community appointments and transport assistance, enabling Dean to participate fully despite his diminished trust in services.

Both orders ultimately lapsed. Through this coordinated legal and casework support, Dean was able to participate in decisions affecting his life, regain control over his affairs and re-establish his autonomy.

Principle in action:

Access to justice is not only about legal representation. It is also about ensuring that people can understand their rights, participate in decisions that affect them and have their voice heard, particularly when they face barriers to doing so.

Case Study

4. Access to justice and human rights:

A legal assistance provider offers trauma-informed, disability-aware legal support

Karina (not her real name) sought legal assistance after experiencing harassment from a customer while at work. Living with multiple mental health and sensory disabilities, she faced significant barriers in navigating the legal system. She approached a legal assistance provider for advice, determined to make her workplace safer and prevent other employees from experiencing similar harm.

A solicitor lodged a complaint on Karina's behalf with the Australian Human Rights Commission. At Karina's request, the solicitor later assisted her to amend the complaint and guided her through the conciliation process. Throughout the matter, the solicitor adapted their approach to Karina's individual needs and provided consistent, trauma-informed support.

The solicitor implemented a range of disability-specific adjustments, including longer and additional appointments, in-person meetings attended by Karina's therapy dog and support worker, and clear, paced communication to support lip-reading. After each appointment, the solicitor provided plain-English written summaries to reinforce understanding and recall.

The matter took an emotional toll on Karina and she disengaged at times. However, the solicitor's flexible and consistent support enabled her to re-engage with the process and continue pursuing the matter while remaining in control of key decisions. These adjustments reduced stress, supported informed decision-making and ensured Karina could participate meaningfully in her legal matter.

The matter ultimately resolved with a strong outcome. The employer agreed to review its workplace policies, and Karina received a financial outcome that included both an agreed settlement and the early payout of her long service leave.

Principle in action:

Access to justice requires more than the availability of legal processes. It also requires reasonable adjustments that enable people to understand their options, participate effectively and exercise their legal rights.

Part 4: FAQs on the rule of law

How is the rule of law relevant to me?

The rule of law is relevant to everyone in our society. Even though you may not notice it as you go about your day to day lives, the rule of law and the institutions that help to ensure it functions, are central to a society marked by fairness, peace and stability.

In a rule of law society, we benefit from and are answerable to the same laws. This means that individuals, businesses and the broader society can be certain about the rules that apply to different aspects of their lives and the consequences that may follow if they disobey the rules.

Why should I follow laws that I don't agree with?

One of the central principles of a rule of law society is that the law applies equally to everyone. This means that even if you don't agree with a particular law, you are still required to comply with it. Society would not function in an orderly manner if everyone decided on their own rules.

You may, of course, wish to campaign to the Parliament around changes to laws which you think are unfair or disadvantageous. Australian legal history has many examples of where such campaigns have led to positive changes to laws that have become outdated and unnecessary. Examples include the women's suffrage movement, and the campaigns of the Gurindji people ahead of the enactment of what was then known as the *Aboriginal Land Rights (Northern Territory) 1976 Act*.

If the rule of law is such a force for good, why hasn't it prevented all injustices?

No legal system in the world is perfect, and it is possible to find examples where each of the principles set out in this handbook has not been realised in practice. As set out in Part 2, there are numerous reasons for this, ranging from historical injustices, challenges around access to justice, and instances of wrongdoing, corruption or other failures of ethical leadership.

However, viewed holistically, the rule of law improves the stability and prosperity of Australia and our quality of life beyond measure. We must always be mindful of injustice and possible "blind spots" of the legal system, and work for its continual improvement in line with the principles set out in this handbook.

Why is the rule of law interpreted so differently in various contexts?

There is a large body of scholarship on the rule of law and significant variation as to how the concept of the rule of law is conceived across the world. In this handbook, we focus on the principles of the rule of law relevant to Australia in relation to our political context as a liberal democracy and our legal tradition.

Even though you may not notice it as you go about your day to day lives, the rule of law and the institutions that help to ensure it functions, are central to a society marked by fairness, peace and stability.

How can I contribute to strengthening the rule of law?

We encourage all members of the community to strengthen the rule of law. There are many ways to engage in this project, for example by:

- Discussing civics and citizenship with the children and young people in your lives.
- Learning more about the justice system, for example through reading a judgment/judgment summary or visiting court proceedings.
- Fulfilling your civic responsibilities, such as jury duty.
- Engaging in law-making processes, for example, writing to your local MP on rule of law issues, or making submissions in inquiries on legal issues relevant to your life.
- Supporting and advocating for access to justice.
- Assisting people less familiar with Australia's justice system on where to obtain help on a particular legal problem.

Is the law just designed to make lawyers rich?

No. Lawyers play an important role in upholding the rule of law. While lawyers have a duty to act in the best interests of their client, their paramount duty is to the proper administration of justice. They are obliged to act ethically and not mislead the court. This contributes to a legal system that functions effectively, efficiently and fairly.

Doesn't the law only protect the powerful?

The principle of equality before the law means that personal characteristics such as your wealth or position should play no part in how the law is enforced or administered.

It is true, however, that people with greater means may be at an advantage because they can pay for professional legal services to assist them in understanding and enforcing their legal rights. This is why access to justice, including a properly funded legal assistance sector, is an important part of a rule of law society.

Can Australian governments make laws in secret?

No. In the Australian system, bills (that may eventually become laws) are introduced into Parliament and debated. The Commonwealth Parliament and the NSW Parliament are both examples of "bicameral parliaments". Bills in those parliaments must be passed by majority in both houses in the same form and receive assent by the Governor General (or Governor, in the case of NSW) to become law.

Under the principle of transparency, people are supposed to understand the laws. But these days there are so many laws and many of them are very complex. Is it realistic to think people can understand them all?

It is true that there are a large number of laws, and recent decades have seen a significant growth of written laws and regulations.

While it would be impossible for everyone in society (even lawyers) to have a grasp on every single law, the principle of transparency means that, if you would like to find out more about a particular law that is relevant to an aspect of your life, this law should be accessible. For example, if you run a food stall at a farmers' market, you could access information about the laws and standards that apply to your business, in terms of safe food handling and preparation.

Where there are significant changes in the law, particularly the criminal law, these should be brought to the attention of the public at large. An example of this would be the changes to sexual consent laws in NSW in 2022, which were accompanied by a video campaign and changes to the respectful relationships curriculum within Australian schools.

A person cannot claim ignorance of the law as an excuse for conduct that breaks the law. This means that it is important for people to be aware of the laws that will affect them directly.

Can a person be punished for breaking a law that they did not know existed?

Yes. A person cannot claim ignorance of the law as an excuse for conduct that breaks the law. This means that it is important for people to be aware of the laws that will affect them directly.

For example, if you were to set up a business that sold goods to the public, there would be numerous laws that you would be expected to know and follow. These could range from tax law, consumer protection and safety laws, employment laws and any relevant codes of conduct for your industry. It is advisable to consult a lawyer on these matters so that you ensure you are conducting your business lawfully. Ignorance of these matters would be no excuse if you were found to break them.

How can I find out more about how laws are considered in practice?

Most court and tribunal hearings are conducted in open court. This means that anyone can enter a courtroom and observe proceedings. The public sitting area is usually at the back of the courtroom.

Many courts in Australia now produce judgment summaries to make their reasons accessible to the broader public. If you read about a particular matter in a newspaper or online, it may be helpful to read such summaries to understand the judicial process further.

Why should people have confidence in the judiciary, considering that judges are unelected?

The judiciary in Australia continues to be well-respected around the world for the independence, impartiality and professionalism of its judges. The fact that judges are unelected means that they can make decisions applying the law independently of pressures from particular interest groups with a view to re-election.

What happens if I read about a decision made by a judge with which I don't agree?

Not everyone in society will agree with every decision made by a judge. However, it is important to acknowledge that there is a process for dealing with judgments that are incorrect at law, namely by appealing to a higher court. While it is appropriate to consider the process of judicial reasoning, it is inappropriate to attack a judge personally, as it undermines confidence in the judiciary and may politicise its work.

Why should people accused of serious crimes benefit from legal advice?

Every person is presumed innocent until found guilty and, along with every other citizen, is entitled to the full protection of the law and proper legal process. This protects against miscarriages of justice, where people are wrongly found guilty and punished for crimes they did not commit.

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