



AUSTRALIAN BAR ASSOCIATION

MEDIA RELEASE

16 January 2015

Institutions that protect the Rule of Law - and us - must be respected by all says ABA

The ABA today expressed concern that governments risked undermining public confidence in the independent courts, tribunals and commissions which protect and uphold the rule of law in Australia – pointing to the latest example in which the Human Rights Commission President, Ms Gillian Triggs, was described by the Prime Minister as having ‘[questionable judgement](#).’

“It is one thing for a government to debate the decision of any court, tribunal or commission, but quite another to attack the institution itself,” said President of the ABA, Mark Livesey QC. “The risk is that the community hears the message from the government of the day that they cannot have confidence in the very institutions that are there to protect the public and provide checks and balances on government decisions.”

Mr Livesey pointed out that governments were free to challenge or appeal decisions in the proper forum, in this case the decision by the Human Rights Commission.

“It is not the role of the Commission – or a court – to decide how odious – or worthy – a person is and then to apply the law on that basis. The proper role of any court, tribunal or commission is to apply the law objectively and impartially. In this latest case, it was the Commission’s role to decide, as it does with many cases each year, whether decisions made about that individual were in accordance with the law, and whether Australia’s human rights obligations had been met,” he said.

“We live in a democracy; debate about decisions is fair and healthy. But real care must be taken to maintain respect for the institutions charged with the responsibility of applying the law and deciding cases,” said Mr Livesey, who noted that this worrying trend was not recent. “The previous government’s [criticism](#) of the High Court over its immigration decision a few years ago is another example. This must stop. Politicians must guard against criticising decision-making simply because they don’t like the decision, and personal attacks on judges or commissioners is never appropriate.”

Mr Livesey said human rights decisions were no different to decisions made by courts, tribunals and commissions every day – some of which may be unpopular.

“Whether politicians agree with the decision is not to the point if it is made in accordance with the law. That is the protection we are afforded in our nation where we are governed by and respect the rule of law,” he concluded.

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