

MEDIA RELEASE

STATEMENT FROM THE PRESIDENT OF THE NEW SOUTH WALES BAR ASSOCIATION REGARDING THE RULE OF LAW



NEW SOUTH WALES
BAR ASSOCIATION

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There has been much commentary in recent weeks about the meaning and operation of the rule of law. Clarity about these matters is critical to the public's understanding of, and confidence in, our legal and political institutions.

The New South Wales Bar Association offers the following comments to assist in public discussion of this important issue.

The essence of the rule of law is that all authority is subject to law, both civil and criminal, and everyone is equal before the law. The rule of law requires a separation of powers between the legislature, executive and judiciary, which allows for checks and balances between those heads of power.

The criminal justice system is one aspect of the way in which the rule of law operates. In a criminal trial, the prosecution bears an onus to prove, beyond reasonable doubt, that a person is guilty of a charged offence. An accused is never required to prove her or his innocence or to disprove that certain events occurred.

Civil proceedings may occur separately to the criminal process, and usually when the criminal process is exhausted (where there has been conviction or acquittal) or not engaged (where no charges have been laid). They may be in public or private and they too, do not require any person to prove their innocence. The rules of procedural fairness apply in such proceedings and the subject has an opportunity to be heard. In disciplinary processes, it is for the body asserting a lack of propriety or fitness to make its case, on a lesser onus than the criminal standard of proof, but with regard to the seriousness of any allegations raised. Executive inquiries may also be ordered with specific terms of reference setting out the scope of the inquiry.

Each of these criminal and civil processes involves the ordinary and lawful use of state authority, and comprises an aspect of the rule of law.

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