

RULE OF LAW

INSTITUTE OF AUSTRALIA

30 August 2010

For immediate release

media release

RoLIA comments on Departure Prohibition Orders

The Rule of Law Institute of Australia (RoLIA) today made comment on the issuing by the ATO of Departure Prohibition Orders. RoLIA Vice President Malcolm Stewart said that the only authority that should be permitted to make orders restraining a person's liberty in this way is a judge of a Supreme Court of a State or a judge of the Federal Court of Australia. It is a fundamental principle of Rule of Law that a person's liberty is not interfered with in any way except by Court Order.

It was wrong of the Federal Parliament to give the ATO such a substantial power. It raises a serious issue for the administration of justice and raises a serious question about the validity of the power to impose restrictions on an individual's liberty. Debtors' prisons have long gone. It is not a response to this criticism to say the person concerned has the right to approach a court to have the Order reviewed. Once imposed such orders are harder to remove or modify. The presumption should always be that such orders should not be made without substantial justification determined by an independent judicial officer. If the ATO wants such an order it should have to apply to a court to make the order. It should not be up to the recipient to have to apply to remove or review the order.

Just prior to the Election the Coalition announced it would, if in Government, refer regulators' information-gathering powers (including the ATO) to the Australian Law Reform Commission (ALRC). Whichever party forms Government the power of the ATO to issue a Departure Prohibition Order should also be referred to the ALRC.

For further information please contact RoLIA CEO Richard Gilbert on (02) 9251 8000.