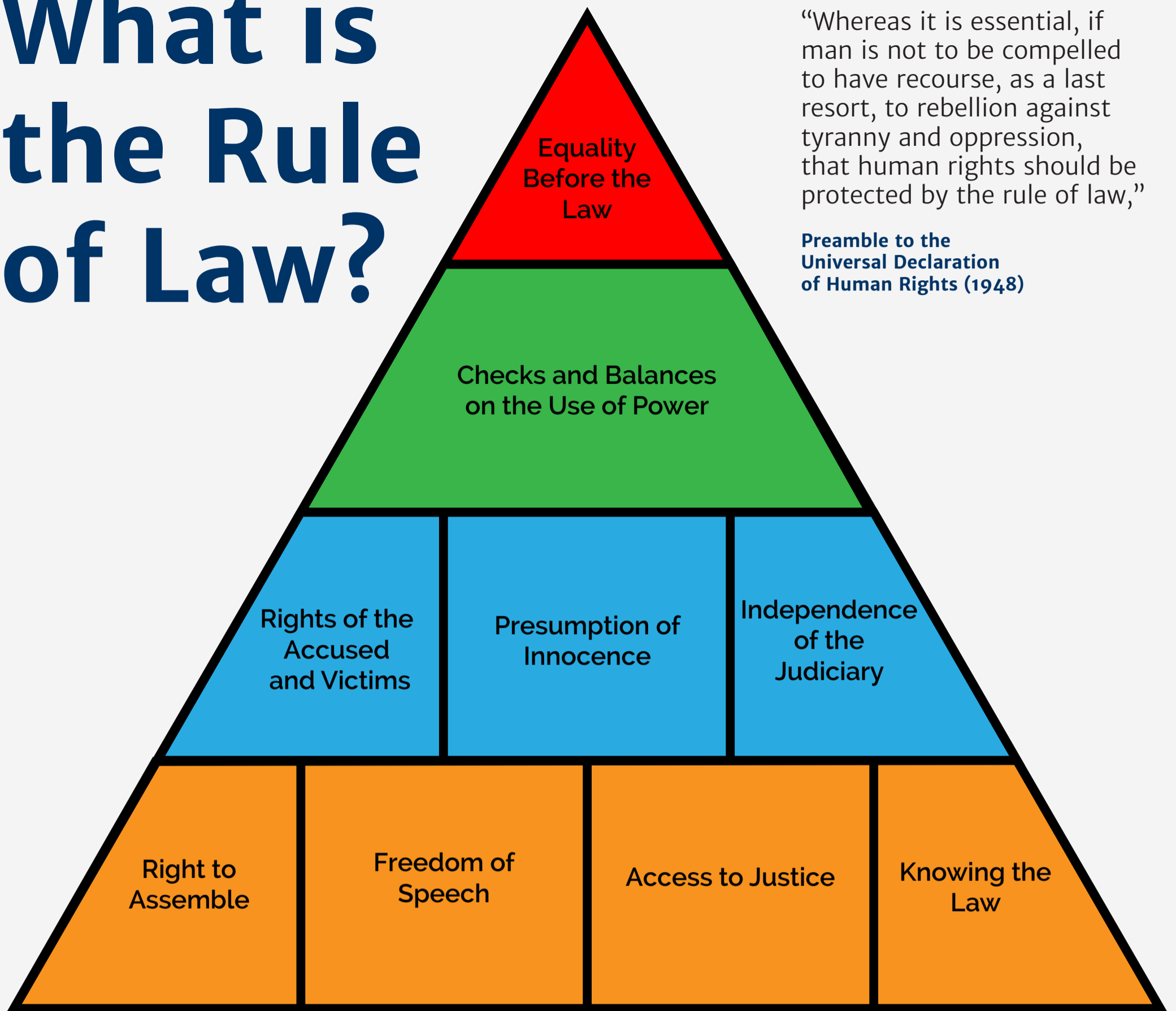


# What is the Rule of Law?



“Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,”

Preamble to the Universal Declaration of Human Rights (1948)

## What does the Rule of Law mean in Australia?

The Rule of Law is a legal tradition in Australian society. At its simplest it requires that **we have laws that are followed and enforced**.

**Equality before the law** means that the law should apply to all people equally regardless of their status in society – rich or poor, young or old, regardless of their race, culture, religion, or any other attribute.

Where law grants powers there must be **checks and balances on the use of power** to ensure that the government and individuals act according to the law.

The **presumption of innocence** ensures individuals are punished only when found guilty. **Independent and impartial judges** ensure that trials are fair and, that **justice is achieved for victims and the accused**.

The Rule of Law also requires that people can **speak freely** about problems with the law – individuals must be able to do this without fear or persecution and be **free to assemble peacefully in public**.

Our legal system must be **accessible to all** or people may think the law is useless and, the **law must be knowable** so people can follow it.

The rule of law in Australia was part of the system of English law which was shaped by the Magna Carta in 1215.

The Magna Carta was a landmark document that required **checks and balances on the use of power of the king** – even the King of England was not above the law according to the Magna Carta.

In Australia today, our legal system provides:

- ways to settle **disputes between parties**
- **just outcomes** when a person is accused of a crime
- protection for **individuals rights**, and
- solutions to legal problems.

The rule of law is fundamental in maintaining a **free, democratic, tolerant and prosperous society**.

The **four clauses from the Magna Carta** opposite are fundamental aspects of the rule of law that are as important today as they were 800 years ago.

While the law and the needs of society change, the rule of law principle remains the same: it promotes **freedom from tyranny by ensuring checks and balances on the use of power**.

### Clause 17 - Access to Courts

*... in omnibus causis... nisi in loco communi... nisi in loco certo... nisi in loco fixo...*

Common pleas shall not follow our court, but shall be held in some **fixed place**.

### Clause 21 - Punishment Fits the Crime

*... in omnibus causis... nisi in loco communi... nisi in loco certo... nisi in loco fixo...*

A **free man** is not to be amerced for a **small offence** except in proportion to the nature of the offence, and for a **great offence** he is to be amerced in accordance with its magnitude...

### Clause 40 - Due Process

*... in omnibus causis... nisi in loco communi... nisi in loco certo... nisi in loco fixo...*

To no one will we sell, to no one will we **refuse** or **delay**, right or justice.

### Clause 45 - A Qualified and Independent Judiciary

*... in omnibus causis... nisi in loco communi... nisi in loco certo... nisi in loco fixo...*

We will appoint as justices, constables, sheriffs, or bailiffs only such as **know the law** of the realm and mean to **observe it well**.