



# This is the Annual Report of Australia's Magna Carta Institute and the Rule of Law Institute of Australia.

Australia's Magna Carta Institute was formed with the objective of:

- > Preserving and promoting Australia's Magna Carta as an important historical document in Australia's history and culture.
- > Educating and informing how the Magna Carta and its predecessors have impacted and contributed to the history and culture of Australia.
- > Promoting the celebrations of the granting of the first Magna Carta on 15 June 1215 and its current relevance in Australia's culture.

The Rule of Law Institute was formed with the objective inter alia of:

- > Fostering the rule of law in Australia.
- > Promoting good governance in Australia by the rule of law.
- > Encouraging truth and transparency in Australian Federal and State governments, and government departments and agencies.

# From our President



It gives me great pleasure to present the annual report of Australia's Magna Carta Institute and of the Rule of Law Institute of Australia for 2016.

Australia's Magna Carta Institute focuses on educating high school students on the Magna Carta and its values in Australian history and culture, whilst the Rule of Law Institute focuses on rule of law issues in the public arena.

Presumption of Innocence! Three simple words that help to define our society. Words that protect. Words that guard against corruption and arbitrary power. Over 800 years ago the basic right to this presumption was addressed in the Magna Carta but today we are faced with the real prospect that the presumption is progressively being reversed, so that there is a presumption of guilt. Such is the present philosophy of Federal and State Parliamentarians.

Our front cover concerns Murray Kear, the former head of the State Emergency Service, who was criminally charged by Independent Commission Against Corruption ("ICAC") with an offence which he was presumed guilty. He defended the charge and proved his innocence and was

awarded costs. ICAC then sunk to a new low with the publication of a letter in the Temora Independent newspaper shown on the cover page.

This year, the Rule of Law Institute Australia fought to protect fellow Australians when the principles of the rule of law have been attacked. We have written articles in national newspapers, appeared before Parliamentary inquiries, made submissions to the government and blogged on our website.

Australia's Magna Carta Institute focused on teaching Australian school students about the rule of law and the Magna Carta. Through the Law Day Out and School visits, we have brought to life the Australian legal system and have engaged students and their teachers.

Our hope as we teach the leaders of the future, they will understand and respect our legal system and will fight to protect it for future generations.

## **Robin Speed**

Chairman of Australia's Magna Carta Institute and the President of the Rule of Law Institute Australia.

# The Magna Carta has evolved in Australia to represent the “rule of law,” under which:

The law is applied equally and fairly, so that no one is above the law.

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The law is written down and is capable of being known to everyone, so that everyone can comply.

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All people are presumed to be innocent until proven otherwise and are entitled to remain silent and are not required to incriminate themselves.

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No one can be prosecuted, civilly or criminally, for any offence not known to the law when committed.

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No one is subject adversely to a retrospective change of the law.

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The law is made by representatives of the people in an open and transparent way.

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The law and its administration is subject to open and free criticism by the people, who may assemble without fear.

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The separation of powers between the legislature, the executive and the judiciary.

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The judicial system is independent, impartial, open and transparent and provides a fair and prompt trial.

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No one is subject to any action by any government agency other than in accordance with the law and the model litigant rules, no one is subject to any torture.

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# Contents

02

Our  
Objectives

03

From Our  
President

06

Our  
Vision

07

Achieving  
Our Goals

08

Education  
Programs

12

Law Day  
Out

15

Magna Carta  
Book

16

High Court  
Exhibition

19

Innovative  
Lectures

20

Submissions

26

Our  
Governing  
Committee

# Our Vision

Our vision is for an Australian society which values the principles which uphold the rule of law in the tradition of the Magna Carta.

## Vision Statement

The Institutes are politically non-partisan, not-for-profit organisations dedicated to promoting and protecting the rule of law in Australia through their education programs, events and submissions to government.

They aspire to educate and inform Australians of the contemporary relevance of the Magna Carta and the rule of law and to build a consensus about the importance of laws which adhere to rule of law principles.

## Goal

The Institutes' goal is to be Australia's pre-eminent organisations in educating and fostering the relevance of the Magna Carta and the rule of law, today, and in the future. We seek to deepen engagement with schools, universities, the community and governments by promoting understanding the importance of the rule of law in Australia's system of government.

# Achieving our Goals



Downloads  
from  
Institute  
Website



**1634** Students who  
attended Law Day Out



Teachers who  
attended Institute  
Lectures



Schools which  
attended Law  
Day Out



**4429** Students who  
attended Institute Seminars



**28** Volunteer  
Interns Producing  
Blogs

# Education Programs

Australia's Magna Carta Institute's educators have travelled to many schools in metropolitan and regional areas of New South Wales and Queensland.

## School Seminars and Resources

During the year, the Institute ran seminars in 58 Schools in NSW and Queensland discussing the rule of law, Magna Carta and current legal issues.

At the seminars, education resources and case studies were given to students. A set of "rule of law education posters" were also provided to each teacher for their classroom.

The education website with case studies, posters and videos continues to be very popular across Australia. This year an interactive study guide, as well as a new Rule of Law Digest were developed, which provided teachers and students with a steady stream of interesting rule of law articles from across the world.

## Illawarra Grammar Medieval Day 2015

The Institute's Education Co-ordinator, Jackie Charles, participated in the Illawarra Grammar School's Medieval Day in October 2015. The day involved the students dressing up as knights, princesses and peasants and hearing about the importance of the Magna Carta in terms of legal history and the legal system we have today.

## Gifted and Talented Program

Over two days, the Institute ran a program for students in the Northern Beaches Gifted and Talented program. Students were introduced to the rule of law, its operation within the Australian legal system and many case studies that illustrated key legal concepts derived from the Magna Carta such as the presumption of innocence, procedural fairness and judicial independence.





Education Coordinator, Jackie Charles, discussing the Magna Carta at the Illawarra Grammar School's Medieval Day

# THE LEGACY OF THE MAGNA CARTA

## MAGNA CARTA 1215

The Magna Carta controlled the power of the King for the first time in English history. It began the tradition of respect for the law, limits on government power, and a social contract where the

government ruled with the consent of the people. The Magna Carta was only valid for three months before it was annulled, but the tradition it began has lived on in English law and society,

eventually spreading around the globe.

Reissues of the Magna Carta reminded people of the rights and freedoms it gave them. Its inclusion in the statute books meant every British lawyer studied it.

## PETITION OF RIGHT 1628

Sir Edward Coke drafted a document which harked back to the Magna Carta and aimed to prevent royal interference with individual rights and freedoms. Though passed by the Parliament,

King Charles I was not persuaded by the Petition and continued to abuse his power. This led to a civil war, and the King ultimately lost power, and his head!

By creating the Petition of Right Parliament worked together to challenge the King. The English Bill of Rights and the Constitution of the United States were influenced by it.

## HABEAS CORPUS ACT 1679

The writ of Habeas Corpus gives a person who is imprisoned the opportunity to go before a court and challenge the lawfulness of their

imprisonment. In 1679 the House of Lords passed the Habeas Corpus Act. It now applies to everyone everywhere in the United Kingdom.

Habeas Corpus is a writ that exists in many countries with common law legal systems.

## ENGLISH BILL OF RIGHTS 1689

This document limited Royal power and contained a list of individual rights that were to be respected under the law. This law drew heavily on the Magna Carta and the Petition of Right. It listed the wrongdoings of the King and also

established the importance of an elected Parliament who would make laws for the people.

Like the Petition of Right it influenced countries around the world and marked a key step in securing the development

of the rule of law, and protecting the rights and freedoms granted by the Magna Carta.

## US DECLARATION OF INDEPENDENCE 1768

The US Declaration of Independence was the result of a belief that the prosecutions of the Magna Carta applied in America. It echoed the ideas of the Magna Carta as it declared that "Governments are instituted among

Men, deriving their just powers from the consent of the governed."

The drafters of the Declaration of Independence drew inspiration from the work of Sir Edward Coke and the Magna Carta.

## CONSTITUTIONS

**The Australian Constitution (1901)** upholds the rule of law principle that the law is made by representatives of the people. The Constitution stipulates in Section 14 that "The House of Representatives shall be composed of members directly chosen by the people of the Commonwealth."

**The Constitution of India (1949)** upholds the independence of the judiciary. Section 50 states that "The

State shall take steps to separate the judiciary from the executive.

**The Constitution of Fiji (2013)** states that the Republic of Fiji is "founded on the values of ... freedom and the rule of law."

**The Constitution of Uganda (1995)** also features the rule of law, stating that the duties of a citizen are "to promote democracy and the rule of law."

## UNIVERSAL DECLARATION OF HUMAN RIGHTS 1948

After the horrors of the Second World War representatives from around the world gathered to draft a treaty that would prevent future wars and preserve peace and freedom. The result was the Universal Declaration of Human Rights (UDHR). The UDHR was the first ever declaration of the fundamental rights and values of the entire human race.

The UDHR was drafted by Eleanor Roosevelt, Chair of the UN Commission on Human Rights. She was an advocate for human rights around the world, and called the UDHR "the international Magna Carta for all men everywhere."

## ICCPR AND ICESCR 1966

After the UDHR other international treaties were drafted to protect freedom around the world. The **International Covenant on Civil and Political Rights (ICCPR)** and the **International Covenant on Economic, Social, and Cultural Rights (ICESCR)** are the two

most well known. These documents provide a more detailed description of the rights described in the UDHR. The covenants echo the freedoms mentioned in the Magna Carta.



### ICCPR



UN

### Declaration of Human Rights



### The Constitution



### Declaration of Independence



### The Bill of Rights



### Habeas Corpus



### Petition of Right



### Magna Carta



"Arbitrary power.

That is the prime enemy and  
target of the rule of law.

It is the enemy because arbitrary  
power threatens the freedom,  
dignity and security of the lives  
of all who are subject to it."

Professor Martin Krygier

# Law Day Out

Australia's Magna Carta Institute's Law Day Out brings High School Students face to face with the real world of the Australian legal system.

During the year, 1634 students attended a Law Day Out. Rather than learning about the law from a textbook or American TV Drama, students sat in the law courts and experienced real people being charged, committed and sentenced.

Students were then introduced to a Judge or barrister and were given the opportunity to ask questions about their cases and what it is like to work in the legal system.

The Law Day Out is provided free of charge to participating schools.

The Institute is honoured to have the support of the judiciary and the Judicial Commission of NSW in building relationships between school students and the courts.

Sponsorship of the program by Speed and Stracey Lawyers has allowed for the employment of Mr Wayne Gleeson, an experienced Legal Studies teacher and member of the NSW Sentencing Council to facilitate court visits and the subsequent expansion of the program.

Michelle Painter  
SC discussing  
the operation of  
the Courts at a  
Law Day Out



“... thank you very much for yesterday. The opportunity you gave my students to speak to judges and barristers was amazing. Your knowledge about the legal system was fantastic, I don't think there was a question you couldn't answer! It was a very well run and worthwhile day out.”

A legal Studies teacher from Newcastle



Michelle Painter SC participating in a Law Day Out





Robin Speed, presenting the Magna Carta book  
to Senator The Hon Stephen Parry, President of the Senate



Robin Speed with  
Hon Tony Abbott MP



Robin Speed with  
Hon Christian Porter MP

# Magna Carta Book

Celebration of the 800th anniversary of the granting of the Magna Carta continued into 2016.

## Book released: Magna Carta in Australia

To ensure the best speeches given in Australia in 2015 regarding the Magna Carta were not forgotten, we put together a book and donated copies to all the major libraries across Australia.

The Hon Chief Justice AC provided a foreword and the book included speeches from Hon Tony Abbott MP, Hon Robert French AC, Hon Virginia Bell AC, Hon Susan Crennan AC QC, Hon James Spigelman AC QC, Hon Steven Rares, Hon Christian Porter MP and Dr Rosemary Laing.

Chairman Robin Speed, presented copies of the book to many of the contributors and was commended by all for the initiative.

## Other Magna Carta Events

In partnership with the Law Society of NSW Young Lawyers, we held an event at NSW Parliament House on the 10th of December 2015 to commemorate the 800th anniversary of the Magna Carta and International Human Rights Day. The evening was hosted by Shadow Attorney-General Mr Paul Lynch MP.

A Magna Carta exhibition was co-hosted with the Supreme Court Library of Victoria in October and November 2015. The exhibition was warmly received by the members of the Court, staff and library and the general public.

Together with the Department of the Australian Senate, we held a symposium celebrating the 800th Anniversary of the granting of the Magna Carta on 30 October 2015. The Symposium was held in the Main Committee room at Australian Parliament House in Canberra.



# High Court Exhibition

The Magna Carta continues to be celebrated at the High Court of Australia through our “To None will we Deny Justice” Exhibition.

*Hullus lib ho capiat ut imphoner aut disseisat aut utlagetur aut exulet aut aliq in  
destruat nec sup cu ibum nec sup cu mittem: n p legale iudiciu pariu suoz & p lege tre*

*Nullus liber homo capiatur, vel imprisonetur, aut disseisatur aut utlagetur  
aut exuletur aut aliquo modo destruat, nec super eum ibimus nec super  
eum mittemus nisi per legale iudicium parium suorum vel per legem terre.*

No free man shall be seized or imprisoned, or stripped of his rights or possessions,  
or outlawed or exiled, or deprived of his standing in any way, nor will we proceed  
with force against him or send others to do so except by the lawful judgment  
of his equals or by the law of the Land. 1215 Magna Carta - clause 39





The Magna Carta Replica is on proud display at the High Court of Australia

The focal point of the exhibition is the hand written replica of the original Magna Carta which we commissioned. The replica is on permanent display and continues to be viewed by the many students and visitors to the High Court of Australia.

The replica is flanked by two banners that outline the relevance of the Magna Carta. The banners highlight two of the most famous sections of the original text, including clause 39 (and its English translation) as seen on the left.

One of the Banners that stands next to the Magna Carta replica

A graphic illustration of a banner titled "Magna Carta A MOST IMPORTANT DOCUMENT". The banner is yellow with black text. Below the title, it says "This year we celebrate the 800<sup>th</sup> anniversary of the Magna Carta." and "The Magna Carta is the most important document you may never have heard of." and "You may never have read it, but it affects you every day." and "By the Magna Carta, liberty and freedom were respected." and "It taught us that we can achieve change without war." and "Magna Carta has lived in the hearts and minds of our people. It is an incantation of the **spirit of liberty**." and "Whatever its text or meaning, it has become the talisman of a society in which **tolerance and democracy** reside, a society in which each man and woman has and is accorded his or her unique dignity, a society in which **power and privilege do not produce tyranny and oppression.**" and "THE HON SIR GERARD BRENNAN. FORMER CHIEF JUSTICE OF AUSTRALIA". The banner is flanked by two red banners with white text. The left banner says "TO NO ONE SHALL WE SELL, TO NO ONE SHALL WE DENY OR DELAY RIGHT OR JUSTICE." and "CLAUSE 40, MAGNA CARTA 1215". The right banner says "TO NO ONE SHALL WE SELL, TO NO ONE SHALL WE DENY OR DELAY RIGHT OR JUSTICE." and "CLAUSE 40, MAGNA CARTA 1215". The background of the banner is a textured, parchment-like surface.



Institute of Company Directors Panel Discussion  
with Tim Lester, Chris Merritt, Robin Speed, David  
Gonski AC and Peter Achterstraat AM



Honourable Dikgang Moseneke, former  
Deputy Chief Justice of South Africa

# Innovative Lectures

The Rule of Law Institute Australia is a leader in providing lectures regarding the rule of law within business and for the High School Curriculum

## Panel Discussion to Company Directors

The Institute, together with the Australian Institute of Company Directors ran a panel discussion titled “Australia is not immune: Facing up to the importance of the Rule of Law in Australia.”

The panel included David Gonski AC, Chris Merritt and Malcolm Stewart Vice-President of the Rule of Law Institute Australia and considered a report from The Economist Intelligence Unit stating that foreign companies have experienced more problems with the rule of law in Australia than anywhere in the world, except China. The speakers debated whether this was an accurate analysis of the rule of law in Australia.

The event was a success, drawing attention to the importance of rule of law in a business context and raising awareness of ways in which business leaders can contribute to furthering the rule of law.

## UNSW Public Lecture

The Institute sponsored a lecture by the Honourable Dikgang Moseneke, former Deputy Chief Justice of South Africa at the Federal Court with the University of New South Wales Law School and Gilbert + Tobin Centre for Public Law. The lecture focused on the balance between a Robust Constitutionalism and the Democratic Process.

## Legal Education

Seminars were delivered at the NSW Legal Studies Association Conference in 2016, the Economics and Business Educators Legal Update Conference and Business Educators Queensland Annual conference in 2015.

The Institute also continued their work with the Macquarie University Law Faculty's PACE Program.

The International Law Committee of the New South Wales Young Lawyers worked with the Institute in recruiting blog interns who have been writing interesting and informative blogs about rule of law matters and international law.

# Submissions

The Rule of Law Institute Australia made submissions to the Government promoting good governance in Australia by the rule of law, and encouraging transparency and accountability in State and Federal government.

## NSW ICAC

From the Institute's submission to the NSW Parliamentary Committee regarding the Independent Commission Against Corruption:

"ICAC is an essential organisation.. It demands the highest standards from others, and to maintain public confidence and trust, must expect no less of itself.

ICAC and all of its staff must, presume innocence until the contrary is shown by all the evidence and must exercise and be seen to exercise their powers fairly and justly.

This submission concentrates on one case study: Murray Kear. This case study reveals failures by ICAC to presume innocence and to maintain those high standards and calls for a public inquiry to determine what improvements should be made to the organization to maintain effectiveness, fairness and justice. In the meantime, Mr Kear should be reinstated."

## Public Interest Disclosure

From the Institute's submission to Philip Moss and the Department of Prime Minister and Cabinet regarding the Public Interest Disclosure Act 2013 (Cth):

The Institute recommended an amendment to the legislation to restrict the circumstances in which a person may be prosecuted for taking prohibited reprisals against a whistleblower and stated the legislation "is too broad, and encompasses a range of possible fact scenarios beyond those that legitimately ought to be deterred."

## Vicious Lawless Association Disestablishment Act

From the Institute's submission to the Taskforce on Organised Crime Legislation in Queensland:

"The Act removes the independence of the judiciary, and makes a mockery of the well established principle of proportionality in sentencing. The use of law to impose excessive mandatory sentences to achieve the political objectives of the Parliament to be "tough on crime" is incompatible with the operation of the rule of law in Australia."

## National Integrity Commission

From the Institute's submission to the Senate Select Committee on the Establishment of a National Integrity Commission:

"The Institute favours strong anti-corruption institutions, mechanisms and laws, but there is no demonstrated need for an overarching federal anti-corruption body, and there are many drawbacks to such a body."

## Taxpayers Charter

From the Institute's submission to the Review into the Taxpayers' Charter and Taxpayer Protections, conducted by the Commonwealth Inspector-General of Taxation:

"Taxpayers need to be confident that the tax laws will be administered fairly. The model litigant rules seek to impose the basic duty of fairness on all Commonwealth agencies, including the ATO.

These rules should be enforceable and complaints dealt with transparently."

## High Risk Offenders

From the Institute's submission to the NSW Department of Justice, which was conducting a review of the Crimes (High Risk Offenders) Act 2006 (NSW):

"The very concept of allowing significant intrusions into an individual's privacy or autonomy, let alone the deprivation of an individual's liberty, without that individual having been found to have committed an offence, and without the extensive safeguards available in criminal proceedings, remains problematic.

Nevertheless, the Institute accepts the government's legitimate interest and role in protecting the community, notes the ongoing bipartisan support for such a regime in New South Wales."

## Remedial Power

From the Institute's submission to Treasury regarding the Exposure Draft of the Commissioner of Taxation's planned Remedial Power:

"The Institute is encouraged by the safeguards built into the planned Remedial Power, both as contained in the Exposure Draft, and as drawn from extant legislation. However, the Institute considers that the Commissioner's power to limit the application of a determination undermines the principle that laws are to be applied equally and fairly."

## Deferred Prosecution Agreements

From the Institute's submission to the Federal Attorney-General's Department, recommending against the introduction of Deferred Prosecution Agreements (DPAs) in Australia:

"Proper enforcement of laws is an important part of maintaining and supporting the rule of law. However, from a rule of law perspective, the most important way of tackling corporate crime is to have laws that are accessible and understood, and respected. It is not clear how a DPA scheme would improve the clarity of, or respect for, laws governing corporate crime.

Such a scheme could seriously undermine the fairness and integrity of the criminal justice system, creating different incentives and different calculations for those accused of different crimes, and dividing criminal justice between those accused of white collar offences – already cynically known as the 'good kind of crime' – and those accused of other offences.

"In the making of the  
amendments Parliament is  
proclaiming its omniscience,  
its absolute power.

It has become the modern day  
equivalent of King John, the  
subject of the Magna Carta.

But Parliament is not omniscient  
and does not have absolute power.  
It is the child of the Constitution  
and not its master."

Robin Speed

# Financial Statements

**Australia's Magna Carta Institute**  
**Statement of Profit or Loss and other Comprehensive Income**  
**for year ended 30 June 2016**

Donations and membership fees	\$357,050
Event expenses recovered	\$1,283
<b>Total revenue</b>	<b>\$358,333</b>
<b>Less: expenses</b>	
Employee and consultant benefits expense	(\$191,678)
Event expense	(\$475)
Sponsorship and donations expense	(\$6,057)
Educational program expenses	(\$31,444)
General and administration expense	(\$4,839)
<b>Profit before income tax expense</b>	<b>\$123,840</b>
Other Comprehensive income	\$0
<b>Total comprehensive income</b>	<b>\$123,840</b>



**Australia's Magna Carta Institute**  
**Statement of Financial Position as at 30 June 2016**

Current assets

Cash and cash equivalents	\$141,969
Receivables	\$10
<b>Total current assets</b>	<b>\$141,979</b>

Non-current assets

Property, plant and equipment	\$0
<b>Total non-current assets</b>	<b>\$0</b>

Current Liabilities

Payables	(\$13,910)
Total current liabilities	(\$13,910)
Total liabilities	(\$13,910)
<b>Net assets</b>	<b>\$128,069</b>

Members funds

Accumulated surplus	\$128,069
<b>Total member funds</b>	<b>\$128,069</b>

# Our Governing Committee

## Office Bearers:

Chairman:	Robin Speed
Vice Chairman:	Malcolm Stewart
Treasurer:	Ben Giles



## Governing Committee

David Lowy AM  
Richard McHugh SC  
Professor Martin Kyrquier  
Hugh Morgan AC  
Emeritus Professor Geoffrey Walker  
Nicholas Cowdery AM QC

## Staff

Financial Controller:	Sally Layson
Education Director:	Nicholas Clark
Education Coordinator:	Jackie Charles

## Our Supporters

The Institute is grateful for the generosity and foresight of the following principal supporters that have made this Institute possible and have the vision for Australia that promotes the Magna Carta and respect for the rule of law through education.

The Lowy Foundation	Anthony Maurici
Speed and Stracey Lawyers	Howard and Stella Chia
Ashur Securities	Robert Whyte
Malcolm Stewart	

# You Can Help

Donations to Australia's Magna Carta Fund are tax deductible and the following information is provided about the Institute.

## How your donations can help:

**\$500** gives a School the opportunity to Participate in the Law Day Out and to receive an interactive and informative experience of the NSW Legal System and how the Magna Carta has formed the Australian Legal System

**\$5,000** gives Schools in a remote area a week long seminar on the Rule of Law, Magna Carta and current legal scenarios relevant to the curriculum

**\$10,000** enables the Magna Carta Exhibition to tour to a remote area or new location

**\$30,000** provides a Legal Researcher 2 days a week for a year to research current Rule of Law issues, prepare media releases and provide up to date resources for Schools to use via the website.

## Direct Deposit into our Public Fund:

Australia's Magna Carta Institute  
BSB: 082-057  
Account: 74-259-5170

Mail cheque to:  
Australia's Magna Carta Institute  
Level 4, 131 Macquarie Street  
SYDNEY 2000

The Australia's Magna Carta Public Fund has been endorsed by the Australian Taxation Office as a deductible gift recipient. Donations of \$2 or more to The Australia's Magna Carta Public Fund are tax deductible for Australian taxpayers. ABN 77 838 378 807.



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Rule of Law Institute of Australia

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