

# FORGET THE RULE OF LAW

**FORGET YOUR FREEDOMS**

**AUSTRALIA'S MAGNA CARTA INSTITUTE**

**ANNUAL REPORT 2017**





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## From our Chairman

Australia is one of the freest countries in the world because we have the rule of law. We will only keep it that way if we maintain a constant fight in support of it.

If Australian's forget the rule of law - our freedoms will be lost.

This year, the focus of Australia's Magna Carta Institute has been educating the minds of young Australians about our legal system and to know their freedoms under the rule of law.

Through our education programs and resources, we have brought to life the rule of law and the protections that it provides. At our "Law Day Outs," we have given thousands of students a positive and life changing experience of the courts and opened their eyes to the judicial and the legal systems in Australia.

We have also gone into schools and have equipped young Australians with the principles established in the Magna Carta and developed them into a framework. Our framework has provided a deep understanding of the rule of law and has enabled students to critically evaluate government agencies and legislation that might limit its operation.

In our case studies and handouts, we have encouraged students to wrestle with the rule of law and evaluate whether their freedoms have been threatened.

Our sister organisation, the Rule of Law Institute Australia has continued to promote good governance by the rule of law and encouraged truth and transparency in Australian government and regulatory agencies.

Following the Independent Commission Against Corruption's ("ICAC") Murray Kear case, we have been actively lobbying to hold those in power accountable for their procedural failures. We have fought for the presumption of innocence and have stood against public hearings into allegations of corrupt conduct by public officials.

My hope is that as we provide positive and personal experiences of the legal system we will engage the young minds of Australian school students, with an understanding of their freedom under the rule of law. Together we will stand up for the rule of law and fight for the protections embodied in the Magna Carta over 800 years ago.

Robin Speed,  
Chairman

# Our Story

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

## Our Objectives

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. Through education programs and school excursions, Australia's Magna Carta Institute educates and informs students how the Magna Carta has impacted and contributed to rule of law and the history and culture of Australia.

The Rule of Law Institute Australia is a sister organisation which fosters the rule of law in Australia and promotes good governance in Australia. Through submissions and press releases, the Rule of Law Institute Australia encourages truth and transparency in Australian Federal and State governments and agencies.

# Our Team

## Board:

Chairman:	Robin Speed
Vice Chairman:	Malcolm Stewart
Treasurer:	Sally Layson

## Governing Committee

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

## Staff

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



Robin Speed, Chairman (centre),  
Malcolm Stewart, Vice Chairman (right)  
and Sally Layson, Treasurer (left)



# Law Day Out

The Law Day Out provides a positive and personal experience of the Australian legal system.



Negative experiences and understanding of the courts alienates young people.

Without trust in the legal system, young people find it difficult to manage their legal problems and find their legal problems escalating and recurring. At worst, they seek redress for their legal problems outside the legal system, or do not speak out about crimes against them.

By welcoming students into the Courts and the lives of legal professionals, students develop trust in the legal system. The basic rule of law principles, legal rights and operations of the court are explained and then seen in action.

After a Law Day Out, 81% of students have greater confidence that the courts can be trusted to deliver just outcomes.

“Children and young people commonly view the legal system as intimidating, overwhelming, stressful and expensive”

- Law Council of Australia, The Justice Project (August 2017)  
Children and Young People Consultation Paper.

## A sample of some of the feedback:

*“Seeing everything in action made it all very real”* – Student following Law Day Out

*“Jackie’s [the facilitator] guidance through the courts was invaluable. The talk that we had from the Barrister was excellent- very honest, practical and relatable for the students”* – Teacher following Law Day Out

*“Accessing a Judge to speak to our students would not have been possible if not organised through a Law Day Out”* – Teacher following Law Day Out

*“...I thought the “what happens when a Judge stuffs up” question was hilarious! Take it as read that I’m happy to speak with any group you bring in at any time”* – Supreme Court Judge following Law Day Out

*“I really enjoyed meeting you and the opportunity to speak to the students... I hope you all enjoyed the rest of the day. Please don’t hesitate to ask me any follow up questions from anything that came up during the day. I would be more than happy too help ( if I can!).”* – Local Court Magistrate following Law Day Out.



2,514  
Students

103 Law  
Day Outs

34 new  
volunteers

# Rule of Law Website

The Rule of Law website is the hub of the education program. From the website, any student or teacher can download a resource or case study and can book a Law Day Out.

The website reaches across Australia and is used extensively by Year 11 and 12 Legal studies students as well as university students studying law.

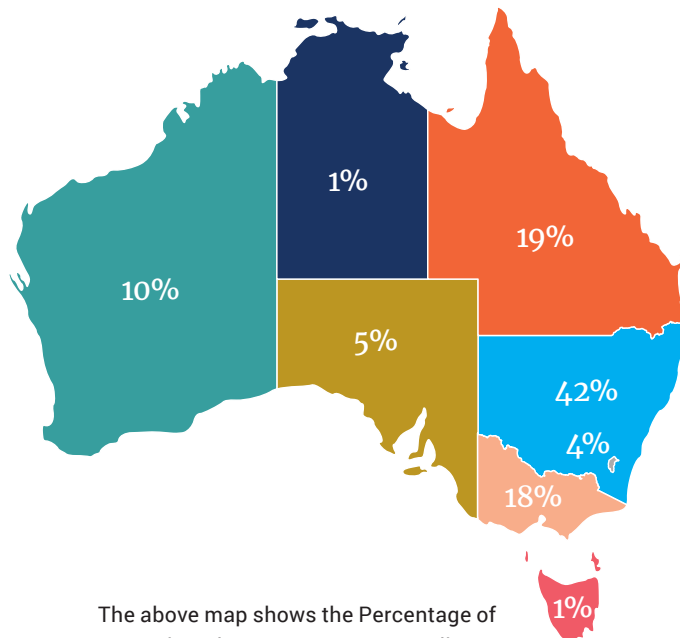
**Our most popular pages in 2017 on the Rule of Law website were:**

- #1 Principles Essential to the Rule of Law
- #2 Access to Justice: Dietrich v The Queen
- #3 Separation of Power: The Boilermakers Case
- #4 Mash Up of the One Punch Laws in Australia; and
- #5 Independence of the Jury: Kables Case.

273,211  
Page Views

129,414  
visitors

27.7%  
returning  
visitors



The above map shows the Percentage of Page Views by State across Australia.

## #1 Principles Essential to the Rule of Law

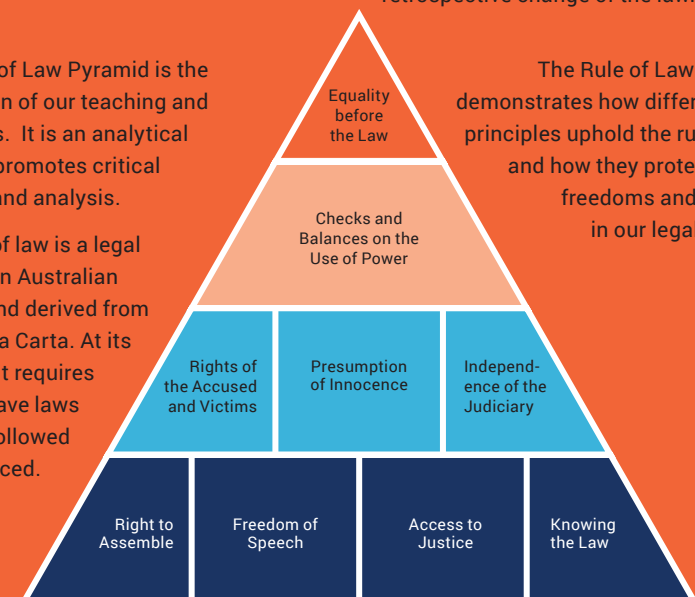
The relevance of the Rule of Law is demonstrated by application of the following principles in practice.

- All people are presumed to be innocent until proven otherwise and are entitled to remain silent and are not required to incriminate themselves.
- The law and its administration is subject to open and free criticism by the people, who may assemble without fear.
- The law is applied equally and fairly, so that no one is above the law.
- The separation of powers between the legislature, the executive and the judiciary.
- The law is made by representatives of the people in an open and transparent way.
- The law is capable of being known to everyone, so that everyone can comply.
- 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.
- The judicial system is independent, impartial, open and transparent and provides a fair and prompt trial.
- No one can be prosecuted, civilly or criminally, for any offence not known to the law when committed.
- No one is subject adversely to a retrospective change of the law.

The Rule of Law Pyramid is the foundation of our teaching and strategies. It is an analytical tool that promotes critical thinking and analysis.

The rule of law is a legal tradition in Australian society and derived from the Magna Carta. At its simplest it requires that we have laws that are followed and enforced.

The Rule of Law Pyramid demonstrates how different legal principles uphold the rule of law, and how they protect rights, freedoms and stability in our legal system.



## #2 Access to Justice: Dietrich v The Queen

*"The Dietrich case established the principle that a person charged with a serious criminal offence should have their trial stayed until they can obtain legal representation. This principle contributes to fair trials and equality of treatment before the law."*

- Dietrich v The Queen. (2017)

## #3 Separation of Powers: The Boilermakers Case

*"The Boilermakers' case represented an important step in the development of Australia's understanding of the separation of powers. Its strict rule has been criticised as unnecessarily rigid, but it has remained the guiding light for future courts considering judicial independence and integrity at the federal level."*

- The Boilermakers' case. (2016)



*'The rule of law is an overarching principle which ensures that Australians are governed by laws which their elected representatives make and which reflect the rule of law. It requires that the laws are administered justly and fairly.'*

– Robin Speed, Chairman

## #4 Mash Up of One Punch Laws

*"The societal and legal issue of alcohol fueled violence and 'one punch' assaults has led to legislative change in a number of jurisdictions."*

*Recent 'one punch' alcohol fueled assaults and community concern about an escalation in violence in the CBD/Kings Cross area of Sydney in 2013/14 led to the NSW Government introducing a new offence of assault causing death."*

- Mash up- 'One Punch' Laws. (2014)

## #5 Independence of the July: Kables Case

*"This Kable principle has been an important protection of individual liberty and the separation of powers in Australia over the last twenty years. In cases like Fardon, Totani, Wainohu, and Pompano, the Kable principle has been used to police the boundaries of state legislative powers, and protect individual liberty against unlawful deprivation. Although the exact boundary between community safety and personal liberty will always be contested, the High Court in Kable took an important step towards clarifying how the rule of law in Australia will deal with that complicated question."*

- 'Kable' and the rule of law. (2016).

# Magna Carta Short Story



Education Director, Nicholas Clark created the Magna Carta Story Book. The book has been designed for upper primary students and recounts the events leading up to the sealing of the Magna Carta.

In the book, students are introduced to key rule of law principles and freedoms originating from the Magna Carta.



# School Visits & Resources

Visits are made to schools and conferences across Australia.

## Educators from Australia's Magna Carta Institute travelled to;

- Brisbane
- Townsville
- Mackay
- Coffs Harbour
- Hervey Bay
- Wagga Wagga; and
- Wollongong

Resources are provided to students during the school visits and focus on the tensions with the rule of law and government and regulatory intervention. Case studies are presented to students and they are encouraged to critically apply the principles of the rule of law. The three most popular case studies have considered Freedom of Speech, Access to Justice and Technology - Meta Data.



Nick Clark speaking to teachers at the LSA Conference

The following materials are provided to students during school visits;

## Freedom of Speech

"The rule of law requires that power is used according to the law, and that those who have power are accountable for how they use it.

The freedom to speak out publicly about the use of power, or the law, and the freedom of the media are essential principles that support the rule of law in Australia."

- Freedom of Expression and the Rule of Law Case Study.

## Access to Justice

"An essential principle of the rule of law is that everybody has access to justice. This means that people who have a legal issue are able to access a solution to the issue. Elements of Access to Justice are;

1. People require access to courts and legal processes
2. People who make legal decisions must be free from bias and make decisions based on the law
3. Legal Aid is important in a complex and adversarial legal system
4. Pro-bono work from lawyers where Legal Aid is not available
5. The legal system must make reasonable allowances for self-represented litigants"

- Access to Justice and the Rule of Law Case Study.

## Technology- Metadata

"Data retention creates tension within the concept of the rule of law. The fact that an enormous amount of data is kept for two years about any Australian who uses a telecommunications services, and that access to that power is self-authorized by government agencies raises the concern that government might have access to all people's data, not just those who are suspected of involvement in a crime."

- Metadata and the Rule of Law Case Study.

1,764  
Students

50 Schools

168  
Teachers

# The Rule of Law Institute Australia



In 2016, the Rule of Law Institute Australia made a submission to the NSW Parliamentary Committee regarding the NSW Independent Commission Against Corruption ("ICAC"). The submission concentrated on one case study, Murray Kear, and highlighted the failures of ICAC and its culture of infallibility.

Following the Inspector's review, The Rule of Law Institute Australia continued to lobby and issue press releases to ensure those in power within ICAC were held accountable.

***"It appears that ICAC not only is incapable of apologizing when it gets it wrong but continues to smear an innocent person. [Former NSW Independent ICAC Commissioner] Ipp presumably typifies the thinking of ICAC and illustrates the culture and why it is in desperate need of reform."***

– Speed, R. (2016, August 5). ICAC's ongoing smear shows need for reform. The Australian.

***"No explanation or apology has been given by ICAC and no correction has been made. Kear deserves to have a judicial inquiry into what went so wrong and the parliamentary committee should recommend this takes place."***

– Speed, R. (2016, September 30). Marooned Kear deserved fair, open and honest judicial inquiry. The Australian.

***"ICAC has never apologized to Kear nor sought to justice any of its actions. Rather it has smeared and hounded him. The stench from the Kear affair was overwhelming and Latham's resignation as head of the organisation was inevitable."***

– Speed, R. (2016, December 2). Megan Latham had to go after 'despicable' Kear slur. The Australian.

Following the procedural failings of ICAC, the Rule of Law Institute Australia President, Robin Speed lobbied against a federal investigating agency that holds public hearings of corrupt conduct by public officials based upon the rule of law principle of presumption of innocence.

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

Rule of Law Principles. (2017). Retrieved from [www.ruleoflaw.org.au/principles](http://www.ruleoflaw.org.au/principles)

In considering a submission made by Transparency International that held that "existing judicial remedies are said to provide "adequate safeguards" against an abuse of the power to hold and conduct a public hearing," Robin Speed stated:

***"This argument can hardly be advanced with a straight face. The prospects of a successful judicial review into the holding or conduct of a public hearing are practically non-existent."***

***Only in the most extreme cases can the courts provide relief, and then the damage to reputation will often have been done...***

***The real issue is why should any Australian be subject to a public hearing by a government investigating agency which they are obliged to attend, be examined, forced to answer questions and have no privilege against self-incrimination?***

***Have we become immune to the conferral of power on government investigating agencies to compel witnesses to give evidence in public, to compel them to answer and deny the privilege against self-incrimination?***

***If so, we have lost an important freedom and as a result injustice will prevail and the rule of law will be in jeopardy."***

– Speed, R. (2017, April 28). Insistence on ICAC-style public hearings will ensure injustice prevails. The Australian.

## OTHER SUBMISSIONS MADE BY THE RULE OF LAW INSTITUTE AUSTRALIA INCLUDE:

- Independent National Security Legislation Monitor (INSLM) Inquiry Submission
- Voluntary Disclosures Submission to NSW Parliament Joint committee of the ICAC
- Crimes Act 2006 (NSW) Submission
- Senate Committee Hearing on a National Integrity Commission



## Australia's Magna Carta Institute Incorporated For the year ended 30 June 2017

<b>Income</b>	
<b>Donations</b>	
Donations	\$521,000
<b>Total Donations</b>	<b>\$521,000</b>
Other Income	\$2,100
<b>Total Income</b>	<b>\$523,100</b>
<b>Expenses</b>	
<b>General and Administrative Expenses</b>	
Bank Charges	\$48
Accounting Fees	\$2,000
Office and Computer	\$3,478
Subscriptions	\$1,731
Insurance	\$2,528
<b>Total General and Administrative Expenses</b>	<b>\$9,785</b>
<b>Educational Programs</b>	
Resources	\$8,397
Travel & Accommodation	\$7,546
<b>Total Educational Programs</b>	<b>\$15,943</b>
<b>Employment and Consultants</b>	
Wages & Salaries	\$304,505
Superannuation	\$28,362
Workers' Compensation	\$3,758
<b>Consultants</b>	
Corporate Services- Management Consultant	\$9,000
Corporate Services- Operations Manager	\$29,345
Corporate Services- Development & Marketing	\$2,400
<b>Total Consultants</b>	<b>\$40,745</b>
<b>Total Employment and Consultants</b>	<b>\$377,000</b>
<b>Total Expenses</b>	<b>\$403,098</b>
<b>Net Profit</b>	<b>\$120,002</b>

## Australia's Magna Carta Institute Incorporated As at 30 June 2017

<b>Assets</b>	
<b>Bank</b>	
Cheque Account	265,739
<b>Total Bank</b>	<b>265,739</b>
<b>Current Assets</b>	
Trade Debtors	60
<b>Total Current Assets</b>	<b>60</b>
<b>Total Assets</b>	<b>265,799</b>
<b>Liabilities</b>	
<b>Current Liabilities</b>	
GST	(837)
VISA	102
<b>Total Current Liabilities</b>	<b>(735)</b>
<b>Non-Current Liabilities</b>	
PAYG Withholding Payable	9,824
Superannuation Payable	8,640
<b>Total Non-Current Liabilities</b>	<b>18,464</b>
<b>Total Liabilities</b>	<b>17,729</b>
<b>Net Assets</b>	<b>248,070</b>
<b>Equity</b>	
Current Year Earnings	120,002
Retained Earnings	128,068
<b>Total Equity</b>	<b>248,070</b>

# Our Supporters

On behalf of our Committee, our team, our volunteers and schools, thank you for so generously supporting Australia's Magna Carta Institute.

## Key Supporters

The Lowy Foundation  
Speed and Stracey Lawyers  
Ashur Securities  
Malcolm Stewart

## Other Supporters

Anthony Maurici  
TOGA



## Our Partners and Collaborators

Australia's Magna Carta Institute would also like to thank our partners who have enabled us to foster the rule of law in Australia.

Judicial Commission of NSW  
Legal Studies Association of NSW  
Law Society of NSW Young Lawyers  
Economic and Business Educators of NSW  
University of Southern Queensland  
Business Educators Association of Queensland  
James Cook University  
Riverina Social Science Teachers Association

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

Donations can be made direct to Australia's Magna Carta Institute

BSB: 082-057  
Account: 74-259-5170

or via cheque to:  
Level 4, 131 Macquarie Street, Sydney



**Australia's Magna Carta Institute  
Rule of Law Institute of Australia**

Level 4, 131 Macquarie Street,  
Sydney 2000 NSW

[info@ruleoflaw.org.au](mailto:info@ruleoflaw.org.au)  
[ruleoflaw.org.au](http://ruleoflaw.org.au)  
[magnacarta.org.au](http://magnacarta.org.au)