

# The Rule of Law 1788

European settlement in Australia began in 1788 as a penal colony and by 1860 had become a self-governing colony where all men finally had the right to vote.



*How did a penal colony change peacefully into a democracy over such a short period of time?*

Think about this.....

Did the British government really make the decision to dump the unwanted citizens of English society on a remote island (even though it's a very large one) and leave them there? It would be the perfect prison location as the water around the island was vast and would be an excellent deterrent if any of them decided to escape. The convicts could manage and support themselves, and if any of them died, it wouldn't matter.

**Or, did the British government have a plan that was different from other similar ventures they had considered at the time?**



It was a definite possibility that the new colony would experience total anarchy and violence, placing everyone at risk of injury or even death. History had shown that these types of outcomes are the result of citizens feeling they have no rights or freedoms, and it was well known that the new inhabitants of Australia would be facing harsh and difficult conditions in order to survive.

**So, how could the government avert such outcomes and enable the colony to become a successful society long into the future?**

To answer these questions, we need to go back to England in 1782. A government minister called Thomas Townshend had just become *Home Secretary* in the British cabinet. His responsibilities in this role included immigration and citizenship. He was also given the task of organising the relocation of convicts to other parts of the world, particularly after the option of sending them to the Americas had been stopped due to the *War of Independence* around that time. Tommy was awarded *peerage* for his work and became *Lord Sydney* in 1783.

Lord Sydney was also a man of compassion who felt a great responsibility in maintaining the rights of individuals, regardless of their circumstances or position in society. So, he set out to write a *Charter of Justice* which was to be implemented by the commanding officer in charge of the colony, from the early days of settlement in New Holland.

Lord Sydney also chose *Captain Arthur Phillip* to fill that role as the first governor of New South Wales, as he believed this was a man of great integrity and fairness who would be sympathetic to the plight of the poor souls being transported.



In the initial days of arrival, the colony was still essentially a prison facility and Captain Phillip looked to the Charter of Justice written by Townshend for guidance and direction. His officers were going to be dealing with convicts who had endured everything to survive and were afraid of nothing.

**The challenge;** to transform the New South Wales penal colony into a free society by establishing law and order, and eventually be governed by the very people who originally arrived as convicts.

The Great Charter outlined how the new governing body for the colony had to be structured. Specific language and terminology were created and documented leaving some traditions of the old system, such as how the law would be implemented, including appropriate penalties for offences committed.

However, new ideas about democratic rule were emerging throughout the 18<sup>th</sup> century, and some traditions needed to be changed in order to cater for the diverse society being established. It was not going to be like the British class system of entitlement, such as first class, second class and the peasants.

The colony began under *military law*; however, it soon became evident that convicts were able to accept responsibility in some way for their actions and behaviours. Working conditions could be negotiated to include time off at the end of each day, or be given a small payment called a *wage*, in exchange for a committed effort during the hours they did work. Governor Phillip quickly saw the benefit in establishing and maintaining basic principles of *rule of law* and how they needed to become the base of the new system. After all, it had toppled monarchs when the people sensed inequality. Soon, convicts were given a broader collection of rights which enabled them to become more engaged in their destiny. Some of these included:

- ⬆ being able to provide evidence in court
- ⬆ to have opportunity to explain their side of the story if under accusation. The new system even kept the free settlers accountable as a convict who worked in their household could give evidence in a case
- ⬆ having the freedom for convicts to bring actions in court themselves
- ⬆ access to property ownership
- ⬆ considered innocent until proven guilty
- ⬆ to not receive punishment except by order of a court

Through the new system, convicts had more legal rights in the new colony than they ever had back home in England.

Governor Phillip officially established the first Charter of Justice on January 26, 1788. As time passed and the colony grew to include free settlers, reform was needed to continue fairness and equality for all citizens. Therefore, a second Charter of Justice was written, and this document included *civil law*.

A third Charter of Justice was created on 17 May, 1824 and established a Supreme Court of New South Wales. It included:

- ✚ a Chief Justice (and extra judges if necessary)
- ✚ court officers
- ✚ solicitors and barristers
- ✚ provision for trial by jury

The 17 May, 1999 was marked as the 175 year Anniversary of the Supreme Court of New South Wales. The Court has continued to exercise jurisdiction in criminal and civil matters based on that Charter to this day.