

WHERE DID
OUR
FREEDOMS
GO?




ANNUAL REPORT

2020



RULE OF LAW
EDUCATION CENTRE



2020 will be remembered as the year when the rule of law ceased to exist

Under the cry of protecting its citizens from COVID-19, the rule of law in Victoria was destroyed. In the full view of the television cameras, Victorians and the rest of Australia, the **following principles of the rule of law were destroyed**, not by a foreign force nor a domestic coup, but by the democratically elected Victorian government;

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

The Victorian Premier, his cabinet, the police, the trade unions and the favoured few were treated by the Victorian government above the law and were given favourable treatment from the curfew and other restrictions imposed in the name of COVID-19 upon ordinary Victorians.

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

The Victorian government paid lip service to Parliament and all other restrictions imposed on it. Any criticism of the Premier was not tolerated and people were fearful of making any adverse comment. There was no genuine debate by the Representatives of the people in Parliament in an open and transparent way.



In all of this, the Victorian Government pretended to observe all checks and balances and defended any attacks by bare faced denial.

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

A pregnant woman was arrested, handcuffed and charged in her own home, in front of her own family, for having the audacity to call for a public protest against the COVID-19 restrictions. The Premier and the Commissioner of Police wilfully remained silent on this outrageous arrest. This was one of many warnings to all Victorians to shut up and not assemble.

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

The law became whatever the Victorian Health Department declared, subject to no challenge nor criticism, nor genuine and honest debate. One only has to read the Health Department's thousands of pages of public declarations to understand that it was impossible to know what the law was and why the over zealous police, as the daily representatives of the law, had absolute power and were greatly feared.



BOARD AND GOVERNING COMMITTEE

JOHN ROSKAM
MALCOLM STEWART
CHRIS MERRITT
SALLY LAYSON

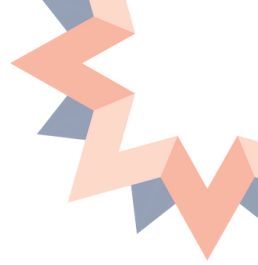
DAVID LOWY AM
ROBIN SPEED OAM
HUGH MORGAN AC
PROF GEOFFREY WALKER

STAFF

The staff at the Rule of Law Education Centre comprises experienced teachers, lawyers and law students all with a passion for the rule of law in Australia.

SALLY LAYSON
LEANNE DAVIS
GENEVIEVE LONGMAN
VIRGINIA VALIOZIS
EMILY LAYSON
JULIA CASIS

The work of the Centre would not be possible without the ongoing support of the Lowy Family Group and Speed and Stracey Lawyers.



Chris Merritt, former legal affairs editor for the Australian Newspaper, joined the Rule of Law team in 2020.

Once you have gone down the road of establishing a parallel system of justice for ICAC with different rules and the ability to erode fundamental rights you are on a very slippery slope.

You are able to destroy people and impose penalties without giving them the benefit of fundamental rule of law protections.

- CHRIS MERRITT

Through his weekly articles in the Australian newspaper, appearances on Sky News and submissions to Parliament, Chris has highlighted the need to protect the rule of law and the presumption of innocence in Australia.



PRESUMPTION

The presumption of innocence is a key element of the rule of law and is recognised in the Universal Declaration of Human Rights.

The presumption of innocence only exists in the Australian legal system as a presumption in our common law. It can be excluded or modified at any time by a Federal or State Act of Parliament, which we have seen happen increasingly over the last 10 years.

The following reasons are why the presumption of innocence is considered good for us and worth fighting to maintain:

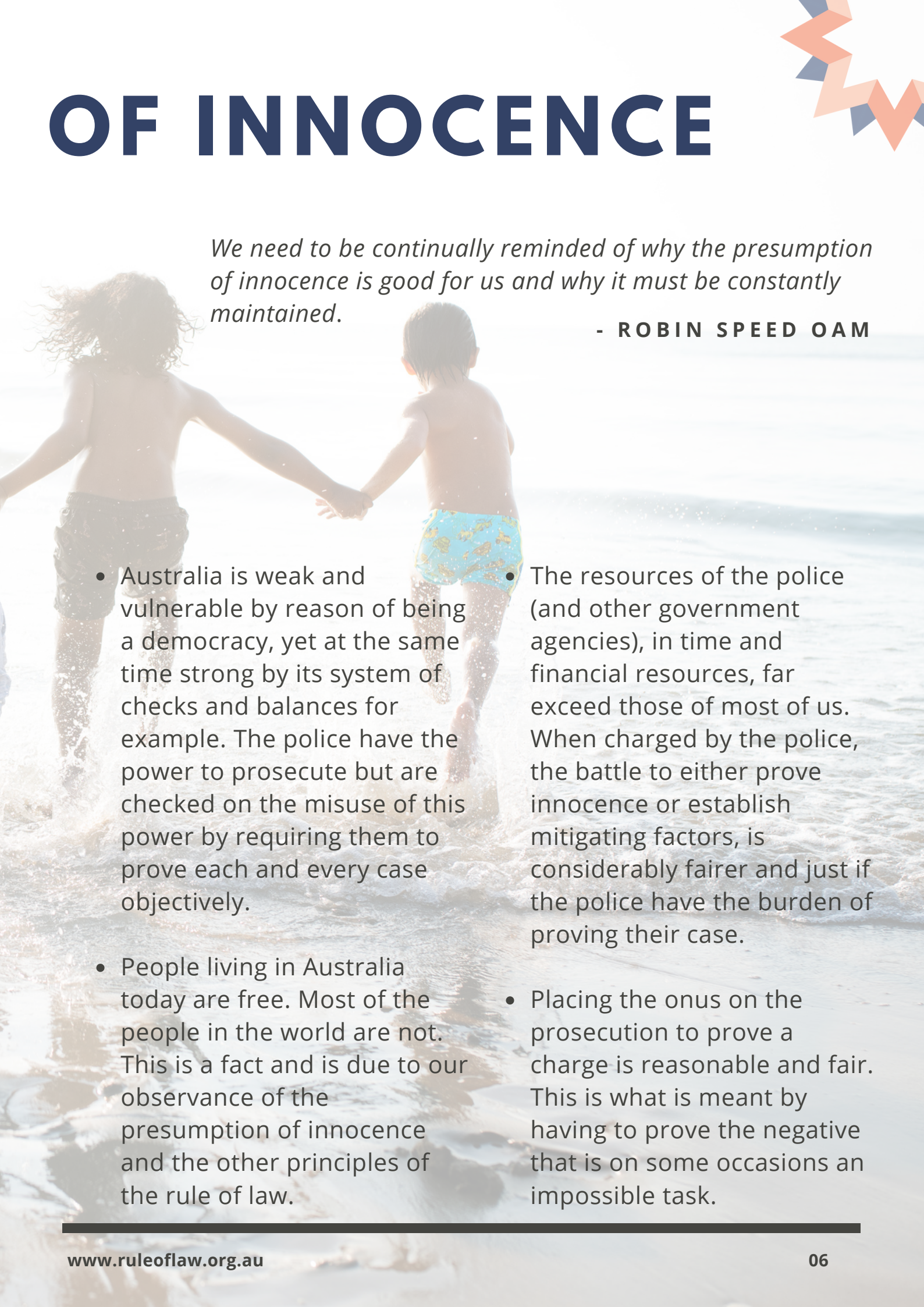
- On the presumption of innocence hang the protections which a person should have no matter the person's status, religion or citizenship. The protections from being coerced to give testimony, to incriminate oneself, to have one's case heard in open court, to have legal counsel, to have one's sentence pronounced publicly, to present evidence in one's defence and to conduct a vigorous, thorough defence.
- People lie, people give false evidence, and people do all things in between. They may do this in the course of attempting to prove guilt or innocence. This is a fact of human nature and why a person charged with an offence is presumed innocent, not a saint.
- The presumption of innocence presumes the best in us and not the worst. It places humans on a high plane and thereby facilitates where appropriate a plea of guilty.

OF INNOCENCE



We need to be continually reminded of why the presumption of innocence is good for us and why it must be constantly maintained.

- ROBIN SPEED OAM

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- Australia is weak and vulnerable by reason of being a democracy, yet at the same time strong by its system of checks and balances for example. The police have the power to prosecute but are checked on the misuse of this power by requiring them to prove each and every case objectively.
 - The resources of the police (and other government agencies), in time and financial resources, far exceed those of most of us. When charged by the police, the battle to either prove innocence or establish mitigating factors, is considerably fairer and just if the police have the burden of proving their case.
 - People living in Australia today are free. Most of the people in the world are not. This is a fact and is due to our observance of the presumption of innocence and the other principles of the rule of law.
 - Placing the onus on the prosecution to prove a charge is reasonable and fair. This is what is meant by having to prove the negative that is on some occasions an impossible task.



**Australian students
lack basic levels of
civic education**



**Australians distrust
the government as
they believe it serves
the interests of a few**



**Australians believe, in
some circumstances, a
non-democratic
government is
preferable**

Trust in the Australian system of government, democracy and the rule of law is declining rapidly.

**We provide tools for Australian educators
to empower students to be informed and
active citizens.**

Rule of Law Education Centre is the only organisation in Australia that teaches and promotes the rule of law.

Even though the rule of law is a key Australian belief, we receive no funding from the Federal or State Government.

We have found that many of the Australian educators in both schools and universities who are teaching the next generation of Australians do not even know what the rule of law is, let alone why it is a core Australian value. School children are shocked when we explain that 'all Australians are equal under the law' and that this includes those in government, religious leaders and the police. They do not understand basic human rights such as the presumption of innocence and why it is a critical element of our safe and free society.

Our goal is to educate the next generation of Australians to know and value the rule of law.



PRIMARY RESOURCES

In October 2019 we launched our primary school education program to provide resources to primary school teachers to help them understand and teach key principles of democracy, the rule of law and human rights.

Our resources, such as the below posters, are emailed to over 3,800 schools throughout Australia and our new plain English posters are displayed in over 500 classrooms.





COURT EXCURSIONS

The Law Day Out Program continues to be hugely successful with over 1,000 students attending the program per term. At a Law Day Out, our facilitators guide teachers and students around the Courts and provide the opportunity for the students to meet with a judge or judicial officer.

Due to COVID-19, court excursions have been suspended until 2021 but have been supplemented by our Virtual Law Day Out videos. Virtual Law Day Out takes students on a virtual tour of the Sydney Courts and provides the opportunity to hear from the Hon Justice Bellew of the Supreme Court of NSW and the Hon Judge Culver of the District Court of NSW.

What is a Law Day Out?



Watching the law in action helps students value and trust the legal system and appreciate how the rule of law is upheld in Australia.

What is the rule of law?



The rule of law is a concept that comes from the Magna Carta: that all people, including the government should be ruled by the law, be willing to live by its expectations, and obey it.

SECONDARY RESOURCES

The Rule of Law Education website contains an extensive collection of Case Notes, Videos, Posters and Explainers. Our most popular resources receive over 35,000 unique views each year and explain the principles of the rule of law, access to justice, separation of powers, mandatory sentencing and case notes on recent high profile cases.

PRESUMPTION OF INNOCENCE

The presumption of innocence is the legal principle that the prosecution must prove guilt. The accused does not have to prove innocence and is considered to be innocent until proven guilty.

KEY PRINCIPLES

All people are considered **innocent**. This means all people, no matter their race, gender, religion or association are considered good, honest and free from blame.

It is a **presumption** and imposes on the accuser the burden of proving an assertion as correct.

Excluding or modifying the presumption should **never be easy**. Where one's freedom and livelihood are at stake, society should be very careful to protect a person's presumption of innocence.

Whilst it is included in the Universal Declaration of Human Rights it is not an enforceable legal right. It can (and often is) excluded or modified at any time by an Act of Parliament.

IMPLICATIONS

- It is better for a crime to go **unpunished** than an innocent person be condemned—even if the crime is heinous.
- The **onus of proof** is on the accuser to prove guilt.

This protects the accused and ensures they are:

 - informed of the charge and any relevant evidence
 - provided the right to defence in an open court
 - protected from coercion (or torture) where their testimony might incriminate them (right to silence)
 - not disadvantaged where the accuser has greater financial resources and power; and
 - tried for a specific crime that is against the law and not for their religion, association or crime of another person.

This also provides checks and balances on the accuser to stop them misusing their power.
- A person cannot be convicted unless there is **satisfactory legal** stories or evidence.

The rapid development of telecommunications technology is a law reform issue because there is a need to ensure that law enforcement and intelligence agencies have sufficient powers to investigate and prevent crime.

The **rule of law** requires that agencies have powers to enforce the law. These powers need to be controlled, monitored and transparent in their use. This is to make sure that the power to access telecommunications is not abused by government agencies, and that a balance is maintained between having appropriate investigative powers, and the rights of the individual.

What is Metadata?

Metadata is part of a communication that describes the **who, what, when, where and how** of a communication. It does not include the content of a communication itself.

To investigate crime and protect national security, government agencies have powers to access **telecommunications data** (the legal term in the TIA Act), known as **metadata** (the term everyone uses).

Metadata is usually created whenever a person sends or receives a communication over a phone or internet service. Consider the difference between content and metadata for these communications:

Communication	Content	Metadata
Phone call	What is being said	<ul style="list-style-type: none"> The name and phone number of the person who made/sent the call/message and received the call/message The duration of the call Time the call was started and finished
SMS Message	The text of the message	<ul style="list-style-type: none"> Time the message was sent. The location of the device making the call.
Email	The text of the email and the document attached to it.	<ul style="list-style-type: none"> The email address the device is sent from and to The data volume used for the email The time the message was sent.

Did you know?

As early as 1857, there was a law in NSW to protect the privacy of communications over the telegraph system, and an international agreement signed in 1865 called the **International Telegraph Convention**. Australia ratified this agreement in 1878. The International Telecommunication Union which is part of the United Nations, is the oldest intergovernmental organisation in the world.

Metadata and the Rule of Law

This resource presents information about law reform to access telecommunications data (known as metadata) under the **Telecommunications (Interception and Access) Act 1979 (Cth)** - what it is, how it is used and who is authorised to use it.

Important Terminology:

The TIA Act — Telecommunications (Interception and Access) Act 1979 (Cth) is the Australian law which controls access to telecommunications, and makes it an offence to access them unlawfully.

Telecommunications data — metadata.


Telco — a company offering telecommunications services.

Law enforcement agency — a government body which exists to investigate/prevent criminal activity.

Intelligence agency — a government body which exists to protect national security and collect intelligence.

Interception warrants — a court order from a judge or AAT member that allows law enforcement agencies to access live communications.

Stored communications warrants — allows law enforcement to access stored communications.



Why is Metadata important?


Telecommunications data is often the first source of information for investigators. It is useful in helping to rule out potential suspects and prevent the need for more privacy intrusive investigative tools such as search warrants and interception warrants.

"Telecommunications data becomes of significant value to assist in corroboration of the evidence on hand. That is, the movement of the offender before, during, after the offence, and their network etc." - the NSW Police submission to the Parliamentary review of data retention laws.

The Murder of Jill Meagher — Metadata from Meagher's mobile phone was used to identify her killer. In the sentencing judgement Justice Nettle stated "Fortunately, your effort to evade detection provide inadequate. Using CCTV and virtual telephone data obtained from a number of sources, plus a host of witness statements, police were ultimately able to determine that you were the killer." - *Queen v Bayley* (2013) VSC 113 (19 June 2013)

PRINCIPLES OF THE RULE OF LAW

- No one is above the law
- The law is capable of being known
- The law is made in an open and transparent way
- The law and its administration is subject to open and free criticism by the people
- Presumption of innocence and right to silence
- Fair and prompt trials
- Model litigant rules
- Separation of powers between legislature, executive and judiciary



**Rule of Law Education
Centre is a deductible gift
recipient
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endorsed by the
Australian Taxation Office.**

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info@ruleoflaw.org.au if
you would like to support
our work.**