

The Legal Principle of Equality

A key principle of the Australian legal system is **Equality before the Law**, where every person is entitled to the equal protection that the law provides.

The Origins of Australia's legal system and the basis for equality before the Law

In 1788 when the English established the penal colony of New South Wales, it was governed in accordance with **English Law**. As written in the Commentaries on the Laws of England by Sir William Blackstone; 'those who were sent to settled colonies carried English law with them as a birthright...'

The laws of England were considered a birthright and inheritance as they provided a protection of rights and freedoms for citizens.



Legal principles and protections had developed over many centuries, starting with the Magna Carta in 1215, The Habeas Corpus Act in 1679 and the Bill of Rights in 1689.

Further information: *The legacy of the Magna Carta and human rights* www.ruleoflaw.org.au/magna-carda-and-human-rights/

The Magna Carta

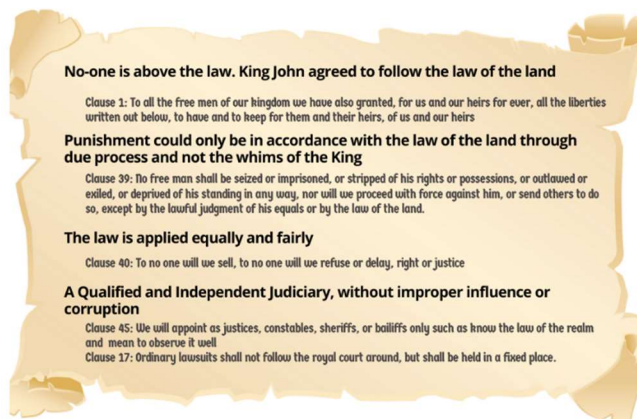
The **Magna Carta** was an important medieval document sealed in 1215 between King John of England and the Barons. King John was an evil King who heavily taxed his people, arbitrarily took their possessions, and threw them into prison for the smallest reason. The sealing of the Magna Carta was a key moment in the development of the legal principle of **Equality before the law** in England.

By sealing the Magna Carta, King John was agreeing to follow the laws of the land. It gave the people a mechanism to limit the power of the King and assert their rights.

The Magna Carta established the concept of **the rule of law** where all citizens, including the King, must follow the law. Under the rule of law, the law should apply to all people equally no matter if they are the King or a servant, if they are rich or poor. As all people are equally subject to the law, all people must equally answer for their actions under the law. To ensure all people are bound by laws, there also must

be equal access to the protections provided by the law through a fair trial and an independent and impartial judiciary.

The Magna Carta included provisions that ensured equality before the law such as



Equality before the Law and the principles from the Magna Carta that no-one is above the law and that laws must be applied equally and fairly, became key legal principles of the English justice system.

Australian Constitution

On 1 January 1901, the Commonwealth of **Australia Constitution Act** (1901) came into effect.

The Australian Constitution builds upon the common law and English legal principles but does not expressly require equality before the law. Instead, the rule of law forms an underlying assumption in the Constitution.

The Constitution supports the rule of law by ensuring all peoples, including those in power, are governed and bound by the laws of Australia.

Secondly, the Constitution provides for the separation of powers with an independent Judiciary to ensure the law is applied equally and fairly, including by those who make the laws (Parliament) and those who administer the laws (Executive).

International Human Rights

The UN Declaration of Human Rights, together with the International Covenant on Civil and Political Rights, expressly provide for all persons to be equal before the law.

International Covenant on Civil and Political Rights (ICCPR) Article 26 states: 'All persons are equal before the law and are entitled without any discrimination to the equal protection of the law.'

Although Australia has signed and ratified the ICCPR, only some articles have been enshrined in statutes such as the Racial Discrimination Act 1992 (Cth) and Anti-Discrimination Act 1977 (NSW).

Historic Examples of Equality before the Law

The Magna Carta



Further information: Video 'The Magna Carta and the Rule of Law'

Watch the above video to learn how equality before the law and the rule of law ensure equal access to the protections provided by law.

Consider what happened before the Magna Carta when King John believed that laws did not apply to him. What are some of the things he did?

What mechanisms were included in the Magna Carta to ensure that the law was applied equally and fairly?

Susannah and Henry Kable and the First Civil Case in the New South Wales colony

Read the Case Summary of *Cable v Sinclair* [1788] NSW KR 7, the first civil case in the colony of New South Wales.

Fill in the below details of the case:

- The Plaintiff was
- The Defendant was
- The Remedy was

In the Kable's case, although _____ were poor and illiterate convicts, they were able to sue _____ a powerful ship's captain.

The couple sought justice for their _____.

The Court was made up of _____ independent persons and after hearing _____ evidence, the case was decided in favour of the _____.

_____ was ordered to pay damages of £15 for the lost parcel.

The case of Susannah and Henry Kable is an example of equality before the law because _____
