



RULE OF LAW
INSTITUTE OF AUSTRALIA

Annual Review 2015

Finding the
balance between
strong laws and
freedom



The following principles are essential to the rule of law in Australia and guide the Institute's approach to education resources and submissions to government:

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

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

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

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

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

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

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

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.

From our President



It is with much pleasure that I present the 2015 Annual Review of the Rule of Law Institute of Australia.

2015 was the busiest year that the Institute has seen with the Institute taking a lead role in organising the 800th anniversary celebrations of the Magna Carta in Australia. Through our Celebrations, we were able to highlight many of the key principles of the Rule of Law that were enshrined in the Magna Carta and were able to reach a vast audience that stretched from the Prime Minister of Australia to passing-by visitors to the NSW Parliament and Victorian Supreme Court.

At the same time, we continued our focus on educating Australian school children and their teachers about the importance of the Rule of Law. We are proud of the success of the Institute's Law Day Out Experience that we provided to Legal Studies students and of our innovative programs and professional development provided to all Legal Studies teachers in NSW and Queensland.

All of these Celebrations combined with our ongoing commitment to education were achieved with the same staff and the magnificent support of the Magna Carta Committee. In particular, I wish to thank our staff Nick Clark, Jackie Charles and Nick Lindeback, and also Nick Cowdery for lecturing at every event we requested.

We are looking forward to 2016 where we will be focusing on the "presumption of innocence."

Robin Speed
President

“Each generation
must find the
balance between
law and freedom.

For, if law prevails
over freedom,
oppression and
injustice win.

And, if freedom
prevails over law,
anarchy and chaos
win.”

Robin Speed, President of the
Rule of Law Institute of Australia.

Contents



02

Our
Principles

03

From Our
President

06

Our
Vision

07

Achieving
Our Goals

09

Engagement
with Schools

11

Engagement
with
Universities

13

Magna
Carta 800th
Anniversary

19

Engagement
with
Government

20

Engagement
with
Business

23

Our
Governing
Committee

Our Vision

The Rule of Law Institute of Australia's vision is for an Australian society which values the principles which uphold the rule of law.

Vision Statement

The Rule of Law Institute is a politically non-partisan, not-for-profit organisation dedicated to promoting and protecting the rule of law in Australia through its education programs, events and submissions to government.

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

Goal

The Institute's goal is to be Australia's pre-eminent organisation in educating and fostering the relevance of 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

School Students and Teachers

5219 students from **63** schools in NSW and QLD attended the Institute's seminars.

1539 students from **50** schools participated in the Institute's Law Day Out Court Experience.

Universities and Teacher Training

597 High school teachers attended the Institute's lectures.

22 undergraduate interns assisted in producing education resources.

6 lectures delivered to undergraduate law students

Community

6939 downloads from the Institute's website

25 events to celebrate the 800th Anniversary of the Magna Carta

15 media interviews and articles in the mainstream media

“The Rule of Law allows us to function in our day to day lives without fear of persecution or un-just treatment under law.

A world without the rule of law opens the door to anarchy, a state of lawlessness; and tyranny, a ruler or government vested with absolute power.” Nick Clark



Nick Clark, CEO of the Rule of Law Institute of Australia speaking about the Institute’s education programs and Magna Carta Celebrations.

Photograph courtesy of the Centre for Independent Studies.



R: Nick Clark
BA (Hons)
BEd(Hons) (USyd)
C: Jackie Charles
BA(Macq)
MTeach(USyd)
L: Nick Lindeback
BA BEd(UNSW)

Engagement with Schools

The Law Day Out Experience

The Institute's Law Day Out program has brought school students, teachers, barristers and judges together to provide an interactive learning experience for students on their Legal Studies excursion to the law courts.

The day involves students engaging with volunteer speakers: judges, barristers, solicitors and police to learn more about the legal system.

This program has built significant good will and relationships between the legal profession and the Institute with an immersive experience that increases their understanding of the rule of law and the legal system.

School Seminars and Resources

The Institute employs three educators full-time to conduct school visits to metropolitan and regional schools to directly engage students in the concept of the rule of law and current legal issues. The Institute's print and electronic resources are highly regarded and are used in classrooms across the country.

We provide a unique contribution to legal education, being the only independent, non-partisan organisation that supports students and teachers in learning about contemporary rule of law issues, and promoting understanding and respect for legal processes and institutions in Australia.

The Institute provides Australian School students with:

An interactive digital platform and up-to date legal resources for Legal Studies students around Australia. The website is currently ranked number one in Google search results in Australia when you search "rule of law".

Lectures and seminars in metropolitan and regional schools on current legal topics such as: Mandatory Sentencing, Bail Laws, The Criminal Trial Process, Freedom of Speech and Association, Metadata.

Printed posters, booklets and case summaries written in plain-English to assist students in understanding the rule of law in Australia.

“Magna Carta, as it has come to be understood and called upon over 800 years, operates as a shield against tyranny, abuse of power and oppression of the governed. It has become the talisman of a society in which the spirits of tolerance and democracy reside. In the English common law system, it is the touchstone of the rule of law and a continuing inspiration to all.”

Nicholas Cowdery AM QC



Chairman of the Magna Carta Committee, Nicholas Cowdery AM QC spoke about the Magna Carta at the NSW Legal Studies Association Annual Conference in March 2015

Engagement with Universities and Teacher Training

The Institute is a leader in providing innovative programs for legal educators by using the rule of law as a critical tool for understanding the law.

This is achieved by ongoing relationships with key schools and teachers in the private, public and Catholic schools in NSW, Queensland and developing relationships in SA, VIC, WA and NT.

Our partnerships with all teacher professional bodies in NSW, QLD, SA and NT are reflected in our provision of resources and speakers for their annual conferences and professional development days.

In 2015 we spoke at all the major teacher professional development events for legal educators in NSW and Queensland.

The Institute holds events and has ongoing relationships with all the major universities in NSW, University of Queensland, James Cook University and the University of Adelaide.

We take on undergraduate law students as interns to assist us in developing education resources in schools.



Bret Walker SC on ABC's
QandA on Magna Carta

“Think of it [Magna Carta] as a rough pebble that has become worn smooth and now the notion of individuals being free under law is something that we can sensibly trace to Magna Carta...”



Professor Martin Krygier in
The Monthly, 20/08/2015:

“‘The rule of law’ is a small phrase that points to large values centrally focused on the ways power is exercised. It emphasises the need to temper power, moderate its exercise, so that it cannot be exercised at the will and caprice of power-wielders, and so they are required to take into account the views, interests, defences and explanations of those their power might harm. The extent to which such tempering, moderation, channelling, constraint occurs is, in the last instance, the test of the strength of the rule of law.”

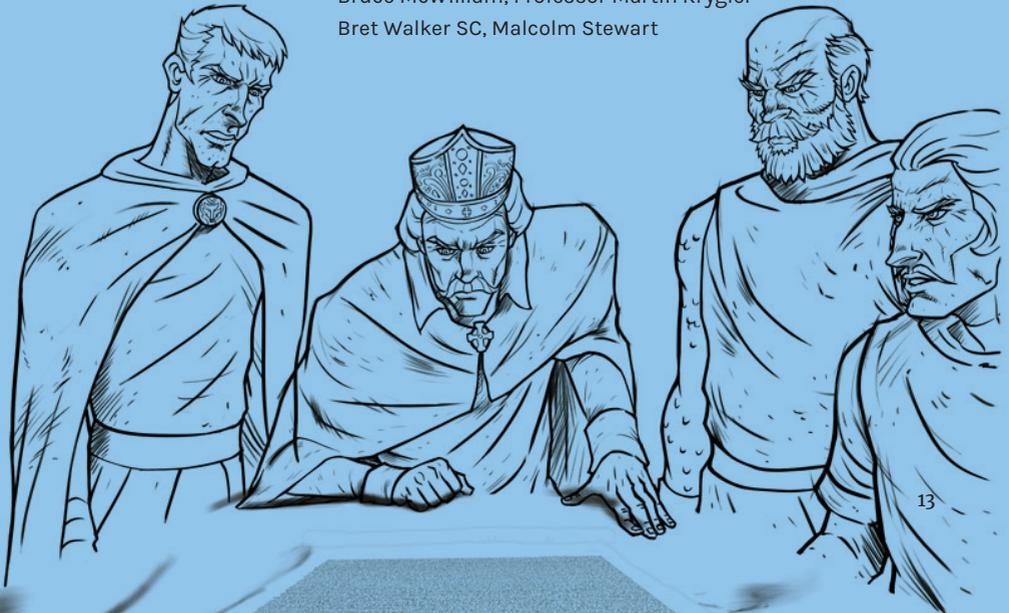
Magna Carta 800th Anniversary Celebrations

In June 2014 the Institute formed the Magna Carta Committee to celebrate and promote the 800th Anniversary of the Magna Carta in Australia.

Together with the Magna Carta Institute, the Committee has been the principal coordinator of events and initiatives to celebrate the 800th Anniversary in Australia.

The Magna Carta Committee is comprised of the following:

PATRON	Hon Robert French AC Chief Justice of the High Court of Australia
PARLIAMENTARY PATRON	Senator the Hon Stephen Parry President of the Australian Senate
COMMITTEE MEMBERS	
Chair:	Nicholas Cowdery AM QC
Vice-chair:	Robin Speed
Committee Members:	David Lowy AM, Hugh Morgan AC, Richard McHugh SC Bruce McWilliam, Professor Martin Krygier Bret Walker SC, Malcolm Stewart



Rule of Law Institute of Australia



The Institute's Patron, the Hon James Spigelman AC QC, speaking about executive power and the Magna Carta at the Magna Carta Symposium at Australian Parliament House, Canberra.

Photographer: Penny Bradfield, courtesy of Auspic.



Senator the Hon Concetta Fierravanti-Wells addresses the Magna Carta Symposium at Australian Parliament House, Canberra.

Photographer: Penny Bradfield, courtesy of Auspic.



Richard McHugh SC, Institute Governing Committee Member speaks about the Institute's achievements.

Photograph courtesy of Gilbert + Tobin Centre for Public Law



Magna Carta event at the Federal Court, the Rt. Hon. Lord Igor Judge.

Photograph courtesy of Gilbert + Tobin Centre for Public Law

The Hon Justice Susan Kiefel AC at the opening of the Institute's Magna Carta Exhibition at the High Court of Australia



From right, Institute Vice President, Malcolm Stewart, Reverend Andrew Sempell, and Magna Carta Committee Chair, Nicholas Cowdery AM QC at the Magna Carta Church Service at St James' Church



Justices of the ACT Supreme Court and Professor Gillian Triggs cut a Magna Carta Cake, design provided by the Institute.

Magna Carta Exhibition at the High Court of Australia





Above: Sir Bob the Magna Carta Baron decorated by Meriden Anglican School for Girls.

Below: The Institute's replica of the 1215 Magna Carta written by calligrapher Margaret Layson.

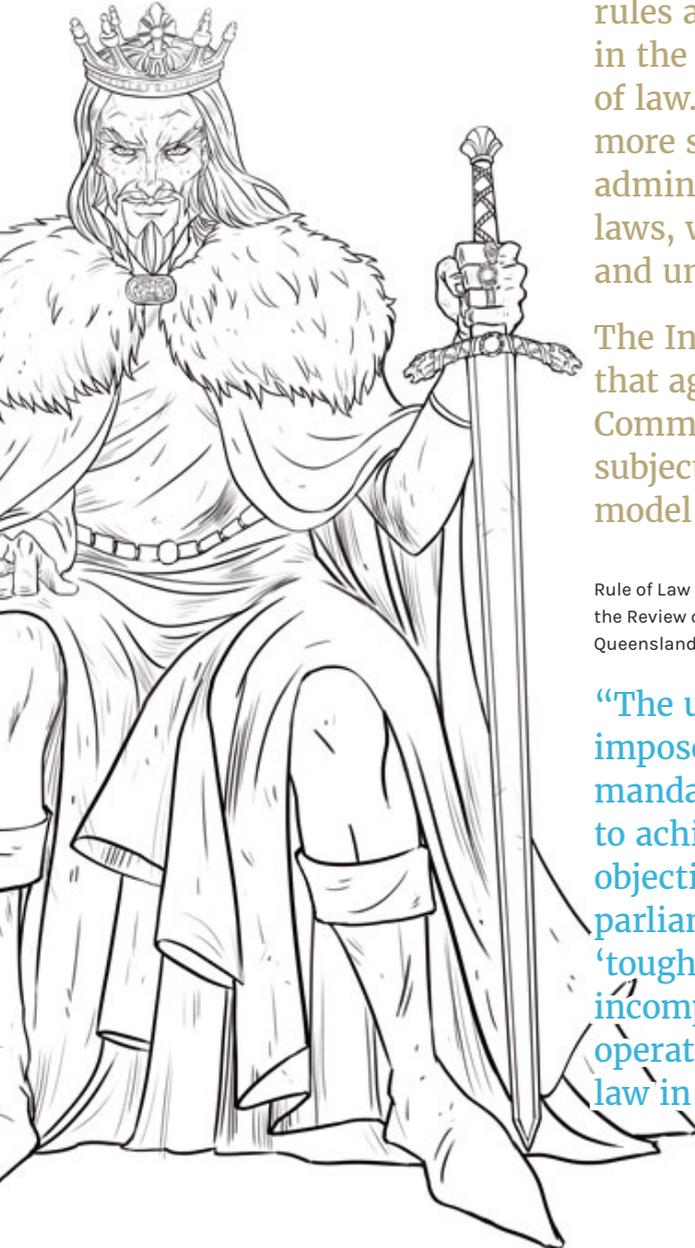


Magna Carta Celebrations

In 2015, the Institute led the celebrations of the 800th Anniversary of the Magna Carta throughout Australia.

The Institute jointly organised and participated in many events including the following:

- The Magna Carta Symposium at the Australian Senate which Nicholas Cowdery AM QC chaired and Professor Martin Krygier and the Hon James Spiegelman AC QC spoke.
- The Judicial Independence Conference at the University of Queensland at which former Chief Justice of the High Court, Sir Anthony Mason AC KBE QC, delivered an address.
- The Magna Carta Place Commemoration at which the Prime Minister spoke.
- The Centre for Independent Studies at which Hon James Spiegelman AC QC and Nick Clark spoke.
- The Church Service at St James' Church at which Nicholas Cowdery AM QC delivered the main address.
- The Magna Carta Symposium at the State Library of NSW which included Nicholas Cowdery AM QC and the Clerk of the Australian Senate, Dr Rosemary Laing.
- A panel discussion on the Magna Carta and Terrorism at Sydney University at which Bret Walker SC spoke.
- The Magna Carta Edition of the ABC's Q&A at which Bret Walker was on the panel.
- The Magna Carta Exhibition at the High Court, Tenterfield, NSW Parliament and Victorian Supreme Court Library
- The address in the Federal Court by former Lord Chief Justice of England and Wales, Lord Igor Judge PC QC. Richard McHugh SC spoke at this event.
- The Institute also gave numerous media comments and wrote articles on the Magna Carta.
- 4500 posters of the Magna Carta were printed and distributed to teachers and classrooms in NSW, QLD and Victoria.



“The model litigant rules are very important in the administration of law. No where is this more so than in the administration of tax laws, which are complex and uncertain.

The Institute suggests that agencies of the Commonwealth be subject to enforceable model litigant rules...”

“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”

Engagement with Government

Annual Review
2015

The Institute makes submissions to Government on proposed laws which breach the rule of law. Since 2009, we have been an advocate for compliance with the Model Litigant Rules by Commonwealth Government Departments.

In 2014, the Productivity Commission recommended that the Model Litigant Rules should be observed by all Government Departments and this obligation should be enforceable by law.

In late 2015, the Inspector-General of Taxation conducted a review as to whether the ATO should be subject to this enforceable obligation.

The Institute made a submission to the Inspector-General that:

"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."

We made the following recommendations to the Review:

the ATO should be subject to enforceable model litigant obligations in the courts

the Inspector-General of Taxation should deal with complaints of breaches of the Model Litigant Rules to see if the complaints could be solved without taking court action

the Inspector-General of Taxation should monitor the breaches of the ATO and publicly report on them annually.

The Institute has spoken out against laws which are contrary to the Rule of Law in Queensland.

The Institute's submission into the Review of Organised Crime Laws in Queensland was especially critical of the Vicious Lawless Association Disestablishment Act 2013 (the VLAD Act) for:

its emotive title;

broad definitions;

arbitrarily punitive mandatory sentencing regime; and,

implications that judges should serve the policy aims of the executive government.

We have contributed greatly to the discussion of these laws in Queensland explaining their adverse effect on the rule of law, while promoting discussion of the need for strong laws to deal with organised crime which adhere to the rule of law.

Engagement with Business

Australian business may dismiss any discussion of the Rule of Law in the belief that our system is second to none or that the topic is best left to others. There is, however, a growing amount of evidence to suggest that these beliefs are ill-founded.

First, there was the report last year commissioned on behalf of Hogan Lovells, the Bingham Centre for the Rule of Law and the British Institute of International Corporate Law of a survey conducted by The Economist Intelligence Unit of 301 senior executives of multinational corporations with global annual revenue of at least \$1 billion.

The survey looked at the host countries from the perspective of the Rule of Law—that is whether they were governed by laws which applied equally and fairly to all, rather than by the caprice of individual officials.

The survey found that the Rule of Law was among the top 3 conditions which multinationals took into account when making foreign investment decisions. The individual countries that posed the biggest Rule of Law challenges were China, Australia and Bangladesh.

Christ Merritt from the Australian newspaper reported on this, and instead of there being outrage with Australia being ranked behind such countries as Russia and Pakistan, the report met with total silence.

The report was followed by a survey conducted by Infrastructure Partnerships Australia and Perpetual of domestic and foreign fund managers with over \$150 billion of assets under management. It found that 'political risk' was the greatest challenge to investing in Australia. The survey noted that this reflected recent events like the cancellation of Victoria's East West Link, the cancellation of Queensland asset recycling program and the ongoing debate about ACT light rail project. To this could have been added the cancellation of coal licences in NSW without compensation.

Political risk is one element of the Rule of Law; businesses need laws that are clear, certain and predictable.

And most recently, the Transparency Corruption Index issued in January 2016 showed Australia continuing a 4 year slide down the International Corruption ladder. The incoming chairman of the Australian branch of Transparency International is reported to have said that the lack of action to curb foreign bribery was the reason for this slide.

Each report may be dismissed for one reason or another, but together they suggest that Australia has fallen behind the rest of the world and it is in the interests of Australian business to have the Rule of Law placed on centre stage.

Collaborators

The Institute was pleased to work with the following organisations on events and initiatives throughout the year:

Australian Department of Senate	History Council NSW
The High Court of Australia	Legal Studies Association NSW
The Parliament of New South Wales	Australian New Zealand Legal Education Association
The Legislative Assembly for the Australian Capital Territory	Economics Business Educators NSW
The Supreme Court of Victoria/ Law Library of Victoria	Riverina Social Science Teachers Association
The National Archives of Australia	Business Educators Association of Queensland
University of Sydney	Business Liaison Association
TC Beirne School of Law at the University of Queensland	Centre for Independent Studies
Macquarie University	Magna Carta 800th Committee UK
Gilbert + Tobin Centre for Public Law at UNSW	Tenterfield Shire Council
James Cook University Cairns	St James' Church, Sydney



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