

Francis Burt Law Education Programme

DEMOCRACY AND LAW IN ACTION YEAR 8 TEACHER PRE-VISIT RESOURCE

1. LEGAL VOCABULARY

a. Match the vocabulary to the correct definition.

state counsel

security of tenure

law

civil law

judge

bail

plaintiff

democracy

accused

defence counsel

criminal law

separation of powers

DEFINITION	TERM
Law which aims to stop anti-social behaviour and danger in our community. People found guilty of this type of law can possibly have their freedom, or liberty, taken away, i.e. imprisonment is an option.	criminal law
Presides over a District or Supreme Court and is impartial. She/He makes sure that the accused gets a fair trial. If the accused is found guilty s/he must decide on an appropriate sentence.	judge
The lawyer representing the State of WA in the District and Supreme Courts. This lawyer must prove beyond reasonable doubt that the accused person is guilty.	State Counsel
A lawyer who represents the accused in a criminal court. This lawyer aims to create reasonable doubt about the guilt of the accused. In a civil court this lawyer is defending the case brought before the court by the plaintiff.	Defence Counsel
Refers to the system of rules which a particular country or community recognises as regulating the actions of its members and which it may enforce by the imposition of penalties and sanctions ¹ .	law
The person charged with committing a criminal offence. This person is presumed innocent until proven guilty.	accused

1. School Curriculum and Standards Authority, *Humanities and Social Sciences Glossary*, (July 2016) > http://k10outline.scsa.wa.edu.au/home/p-10-curriculum/curriculum-browser/humanities-and-social-sciences/humanities-overview/HASS_Glossary.pdf < 10.

DEFINITION	TERM
The party in a civil matter that brought a case against another party before the court. The lawyer for this party must prove their case on the balance of probabilities.	plaintiff
An agreement by the accused to return to the court at a set time and date. It usually involves an undertaking by the accused to surrender an amount of money <i>if</i> the accused does not appear as required. Failure to appear as required is a criminal offence and will result in the accused having to surrender an amount of money <i>if</i> that was a condition.	bail
The division between the executive, legislature (parliament) and judiciary. These three arms of government act as checks and balances on each other to stop concentration of power in one group.	separation of powers
A form of government in which the people, either directly or indirectly, take part in governing. This word comes from Greek and means rule by the people.	democracy
Law which focuses on formal disagreements between two or more people in our community. Imprisonment is not an option in this type of law.	civil law
In Western Australia a judge is appointed until the age of 70, and cannot be removed from office except by the Governor following an address from both houses of parliament - the Legislative Assembly and the Legislative Council. This is an important part of judicial independence so that governments cannot influence the decisions of a judge ² .	security of tenure

You may wish to make the table into cards. The students will be familiar with some of the job titles/ vocabulary whilst others will be totally unfamiliar. Encourage them to work together, to make informed judgments and to eliminate.

Please note that the students will view a Supreme Court or District Court in session in Perth.

The students will take the parts of the District Court and Supreme Court personnel (i.e. these courts have the same personnel) in the trial re-enactment.

- b. Brainstorm other legal vocabulary that you know and make a list.

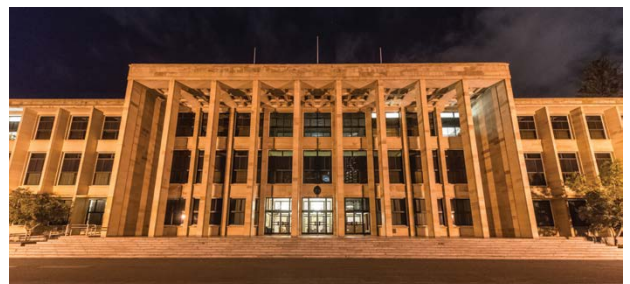
Lists will vary. All efforts should be encouraged.

2. STATUTE AND COMMON LAW

Using the [link](#) read the sections “Common law: law made by courts” and “Statute law: laws made by parliaments”. Answer the following questions.

- a. What is Statute Law?

Statute law is legislation that has been passed through Parliament. The terms ‘statute’ and ‘legislation’ may be used interchangeably.



2. Supreme Court of Western Australia, *Separation of Powers*, (July 2016) > http://www.supremecourt.wa.gov.au/S/separation_of_powers.aspx?uid=1910-3759-9835-2395 <



b. List the steps to creating a statute law

1. **Either the House of Representatives or the Senate drafts a Bill**
2. **First Reading of the Bill**
3. **Second Reading of the Bill**
4. **Third Reading of the Bill**
5. **Bill is passed**
6. **Bill is sent to the other House and the process is repeated. (Bills can commence in either the House of Representatives or the Senate. Both Houses can make amendments to the Bill which then has to be passed by the other House)**
7. **The passed Bill is sent to the Governor General for signing. Once signed, it becomes law.**

c. What is Common Law?

When an issue goes to court and there is no statute that covers it, a judge will hear the case and issue a verdict. The record of this verdict becomes a precedent so that when similar cases arise, other judges may take into account the penalty previously issued. Previous judgements therefore form the basis for common law.

d. How may a common law precedent arise?

When an issue goes to court and there is no statute that covers it, a judge will hear the case and issue a verdict. The record of this verdict becomes a precedent so that when similar cases arise, other judges may take into account the penalty previously issued. Previous judgements therefore form the basis for common law.

3. RULE OF LAW

Watch the [Rule of Law Institute's video](#) on the rule of law and complete the [worksheet](#).





4. MANDATORY SENTENCING

Using the Rule of Law Institute website read the information about [Mandatory Sentencing](#).

- a. What is mandatory sentencing?

A mandatory sentence means that statute provides a mandatory or minimum sentence that a person must receive when convicted of a crime.

- b. What is the main issue about mandatory sentencing?

Mandatory sentencing limits a judge's discretion, in particular the influence of mitigating and aggravating circumstances, in sentencing.

- c. Scroll down to the section on Western Australia and click on the link "Does Mandatory Sentencing work?" What are some of the arguments for or against mandatory sentencing?

- **mandatory sentencing excludes the judicial process and is a vote of no confidence in judges.**
- **because of a slow erosion of the severity of penalties for offences like attacking a police officer, such crimes have become more common. Mandatory sentencing brings more consistency to sentencing and serves as a deterrent to crime.**

- d. Optional Activity – Research further arguments for and against mandatory sentencing and conduct a class debate on the topic.

5. FREEDOMS THAT ENABLE ACTIVE PARTICIPATION IN AUSTRALIA'S DEMOCRACY WITHIN THE BOUNDS OF THE LAW – FREEDOM OF SPEECH AND FREEDOM OF RELIGION

Australia is a democratic society. In 1901 the people of the colonies united and a federal Australian system of government was formed. A constitution was written to provide rules about the government and law. The Constitution provides for elections to be held for Parliament. By electing representatives to Parliament the people have a say in the making of our laws. However, the Australian Constitution does not explicitly protect some of our freedoms. Freedom of speech receives limited protection through the operation of the common law and under the Constitution.



In March 2016 the Australian Law Reform Commission tabled a report on 'Traditional Rights and Freedoms – Encroachments by Commonwealth Laws'.³ See the following extracts from that report and then answer the questions below:

3. <https://www.alrc.gov.au/publication/traditional-rights-and-freedoms-encroachments-by-commonwealth-laws-alrc-report-129/>

Freedom of speech

- 1.24 *Freedom of speech has been described as ‘the freedom par excellence; for without it, no other freedom could survive’ and is closely linked to other fundamental freedoms, such as freedom of religion, thought, and conscience.*
- 1.25 *In Australia, legislation prohibits, or renders unlawful, speech or expression in many different contexts - including in relation to various terrorism offences and terrorism-related secrecy offences, other secrecy laws and the Racial Discrimination Act 1975 (Cth) (RDA). At the same time, many limitations on speech have long been recognised by the common law itself, such as incitement to crime, obscenity and sedition.*
- 1.26 *The ALRC has not established whether s 18C of the RDA has, in practice, caused unjustifiable interferences with freedom of speech. Part IIA of the RDA, of which s 18C forms a part, would benefit from more thorough review in relation to freedom of speech. However, any such review should take place in conjunction with consideration of anti-vilification laws more generally.*
- 1.27 *There is also reason to review the range of legislative provisions that protect the processes of tribunals, commissions of inquiry and regulators; and whether Commonwealth secrecy laws provide for proportionate limitations on freedom of speech.*

- a. In your own words describe what freedom of speech means:

Answers will vary. For example, in Australia every person has the right, within the bounds of the law, to speak, write, text, tweet or blog about what they think about any topic.

Freedom of religion

- 1.28 *Religious freedom encompasses freedom of conscience and belief, the right to observe or exercise religious beliefs, and freedom from coercion or discrimination on the grounds of religious (or non-religious) belief.*
- 1.29 *There are very few, if any, provisions in Commonwealth laws that interfere with freedom of religion. The main areas of tension arise where religious freedom intersects with anti-discrimination laws, which have the potential to limit the exercise of freedom of conscience outside liturgical and worship settings.*
- 1.30 *There is no obvious evidence that Commonwealth anti-discrimination laws significantly encroach on freedom of religion in Australia, especially given the existing exemptions for religious organisations. Nevertheless, concerns about freedom of religion should be considered in future initiatives directed towards the consolidation of Commonwealth anti-discrimination laws, or harmonisation of Commonwealth, state and territory anti-discrimination laws.*

- b. In your own words describe what freedom of religion means:

Answers will vary. For example, in Australia every person has the right to choose whether or not they wish to practise any religion without constraint or interference from others. It should be noted that religious practices must conform to the law. We are also free to choose to not follow any religion.

- c. Describe what freedoms referred to above you are able to use in your everyday life?

Answers will vary. Examples could be:

- **Freedom of Speech** – texting, tweeting, blogging or posting on other social media.
- **Freedom of Religion** – being able to decide which religion they want to follow or whether they don't wish to follow any religion, choosing a place to worship.

- d. Why is it important that you are able to continue to have those freedoms in your everyday life?

Answers will vary. For example, it is a basic right and fundamental freedom that all human beings are entitled to – see the Universal Declaration of Human Rights (UDHR). The UDHR was adopted by the General Assembly of the United Nations in 1948 following the atrocities of the preceding World Wars. Australia was a founding member of the United Nations and was one of 8 nations involved in drafting the UDHR. Australia continued to be a supporter of human rights throughout international treaty negotiations. Australia has ratified almost all of the major international human rights instruments.

- e. Can you think of reasons where it could be justified that a person's speech is lawfully restricted?

A person's speech is lawfully restricted when what they say is said in a public place such as in the workplace, shopping centres, public transport, sportsground etc.

Section 18C of the *Racial Discrimination Act 1975* (Cth) makes it unlawful to offend, insult, humiliate or intimidate a person because of their colour, race or nationality. Section 18D of the *Racial Discrimination Act 1975* (Cth) provides an exemption where the person's speech has been done reasonably and in good faith and that fair comment or reporting on a matter of interest has been done 'in the course of any statement, publication, discussion or debate made or held for any genuine academic, artistic or scientific purpose'.

Note: During the 2015-16 financial year, the Human Rights and Equal Opportunity Commission received 77 complaints under section 18C of the *Racial Discrimination Act 1975* (Cth). Of those complaints, 52% were racial vilification complaints and were resolved at conciliation. During the same period of time 12% of complaints made were withdrawn and only 1 complaint proceeded to court.

While there have been some successful cases, less than 5% of claims made under the *Racial Discrimination Act 1975* (Cth) make it to the courts and of those the majority of them are dismissed.⁴

Some of the successful cases include:

- ***Jacobs v Fardig* [1999] HREOCA 9 (27 April 1999)** – In this Western Australian case Swan Shire Councillor, David Fardig, remarked about shooting a group of Aboriginal people. A complaint was brought by an Aboriginal man in 1999. The complaint was upheld and the Human Rights and Equal Opportunity Commission ordered Councillor Fardig to pay \$1,000 in damages. The Commission stated that the offence was made worse "by coming from the holder of an important public office."⁵

4. <http://www.sbs.com.au/nitv/article/2016/08/16/history-section-18c-and-racial-discrimination-act>
5. <http://www.sbs.com.au/nitv/article/2016/08/16/history-section-18c-and-racial-discrimination-act>

- ***Wanjurri v Southern Cross Broadcasting (Aus) Ltd [2001] HREOCA 2 (7 May 2001).*** In this Western Australian case a group of elders made a complaint about comments made by Howard Sattler, a radio announcer, and guests on air. They were discussing protests by Aboriginal people at the Swan Brewery site. It was alleged that during the conversation one of the guests said that the Aboriginal protesters had been “urinating, they were defecating and they were fornicating” on the sacred site. It was also alleged that another guest said “shame the first time he popped up the first workman didn’t clean him up with a shovel”. The Commission ordered that the radio station pay each of the five complainants \$10,000 in damages.

Another example is a case where two Nigerian workers who had been subjected to racist remarks in the workplace by their supervisor made complaints to the Human Rights and Equal Opportunity Commission. Although this case did not proceed to a final hearing the company agreed to pay each of the workers \$17,550 and to establish an anti-discrimination policy and training to staff.⁶

It is important to note that the *Racial Discrimination Act 1975* (Cth) does not apply to an act said or done in private. It is only when an act is carried out in a public place or in the sight or hearing of people who are in a public place that the Act applies.⁷

6. SEPARATION OF POWERS

In our democratic society there are three arms of government – the executive, the legislative (parliament) and the judiciary. Read the information on the Supreme Court website on [separation of powers](#) and answer the following questions:



- a. Why is it important for the judiciary to be independent?

The independence of the judiciary is one of the most crucial safeguards of democracy. The judiciary must be independent and adhere to the rule of law. The respective functions and powers of the three arms of government are mutually exclusive. There must not be any interference from the legislature or the executive. A judge must be seen as independent and free to make their decision based on the evidence before them. Judicial independence is of such public importance because a free society exists only so long as it is governed by the rule of law - the rule which binds the governors and the governed, administered impartially and treating equally all those who seek its remedies or against whom its remedies are sought.

- b. What does security of tenure mean?

A judge cannot be removed from his/her position except in exceptional circumstances. A judge must retire when he/she reaches the age of 70 years. The only other situation in which a judge can be removed from his/her position is after addresses calling for the judge’s removal in both Houses of Parliament. (Note: this has never happened)

- c. What could happen if we did not have security of tenure for judges?

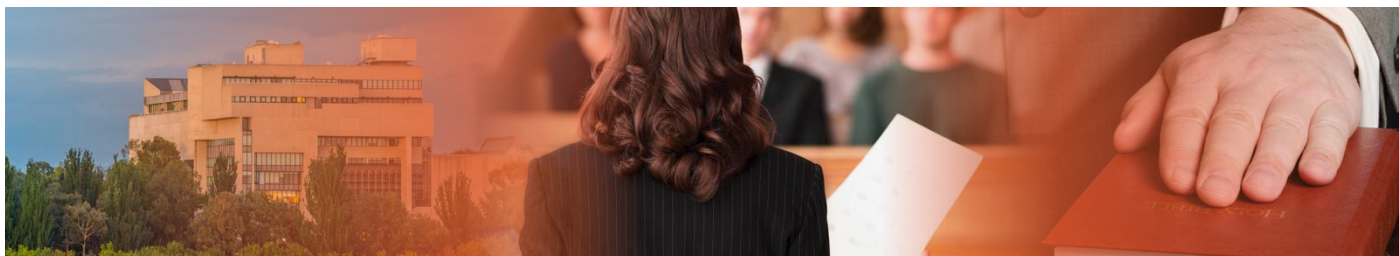
Security of tenure is important because it helps to ensure that the judiciary cannot be influenced by the government and its policies. For example, if the government could remove a judge from his/her position at any time the Government could pressure the judiciary and this may influence a judge’s decision. This would be unjust as a judge’s decision must be based only on the law and the evidence before him/her in court.

6. http://www.humanrights.gov.au/sites/default/files/document/publication/RDA40_report_2015_AHRC.pdf at page 31.
7. http://www.humanrights.gov.au/sites/default/files/document/publication/RDA40_report_2015_AHRC.pdf

7. LEGAL CROSSWORD



This activity will be very challenging if your students haven't been exposed to some of these terms.



8. POINTS TO THINK ABOUT BEFORE YOUR VISIT TO THE FRANCIS BURT LAW EDUCATION PROGRAMME

Think about the correct answers to the points below before you visit the Francis Burt Law Education Programme. You will review your answers after your visit.

This activity was developed to compare the student's legal knowledge/awareness pre and post-visit. Teachers may decide to discuss the correct answers prior to the Francis Burt Law Education Programme tour, however be aware that the same questions are in the post-visit package.

Note: We have created a [Year 8 Kahoot! Quiz](#)

Think about the correct answers to the points below before you visit the Francis Burt Law Education Programme. You will review your answers after your visit.

a. Generally speaking there are two types of law in WA; civil and criminal law	True	False
b. If you are accused of a crime in WA you must prove to the court that you are not guilty. A very important legal principle is the burden of proof. That is, the onus/ responsibility is on the State to prove that the accused is guilty. The State must prove the accused person's guilt beyond reasonable doubt. That is the standard of proof. Another important legal principle is the presumption of innocence, i.e. the accused is always presumed to be innocent until proven guilty.	True	False
c. The Federal Court is the highest court in Australia. The highest court in Australia is the High Court. The jurisdiction of the High Court is cases of special federal significance including interpretation of the Constitution, challenges relating to the validity of laws and the hearing of appeals where there has been an alleged injustice, from Federal, State and Territory courts. The jurisdiction of the Federal Court of Australia covers approximately 150 statutes of the Australian Parliament and includes copyright, fair trading, patents and the recently introduced Fair Work Australia the national workplace relations tribunal. It is interesting to note that Federal criminal matters are heard by the State and Territory courts, i.e. The Commonwealth Director of Public Prosecutions prosecutes Federal matters in the State and Territory courts.	True	False
d. Jury duty is a civic responsibility of everyone who has their name on the electoral roll in WA except in special situations and except for people in special types of jobs. Significant amendments were made to the Juries Act WA in 2011. Those amendments included deferring jury duty for six months on request, increasing the minimum fine to \$800 for failing to respond to a jury duty summons and reducing the number of occupations which make a person ineligible for jury duty.	True	False

Think about the correct answers to the points below before you visit the Francis Burt Law Education Programme. You will review your answers after your visit.

e. Everyone must swear an oath on the Bible when giving evidence in WA courts. If you are not religious you can make an affirmation; a solemn promise without any religious connection. In addition the courts have the holy book and oath for most recognized religions, e.g. The Koran/Muslim oath, No holy book/Buddhist oath, The Pentateuch/Jewish oath etc.	True	False
f. Everyone is treated equally by the courts and the law in WA. An essential element of our legal system is that everyone must be treated equally and that everyone is answerable before the law, i.e. the courts and the law in WA must not discriminate. However, it is important to remember that the same laws and systems can affect different people differently, this is the difference between equality (treating everyone the same) and equity (providing people with everything they need to be successful/achieve the same outcome). A clear example of this is that all hearings are provided in English, however not all Australians speak English as a first language and there are insufficient interpreters available for Aboriginal and Torres Strait Islander languages.	True	False
g. The government can remove a judge from his/her position at any time. A judge can only be removed from his/her position if s/he breaks the law and a possible sentence is imprisonment. When a judge reaches the age of 70 s/he must step down. This system is referred to as security of tenure for judges. Security of tenure for judges is important as it helps to ensure that they can act without fear or favour in their role.	True	False
h. An accused person must give evidence if he/she pleads not guilty and the matter goes to trial. An accused person does not have to give evidence if s/he pleads not guilty and the matter goes to trial. It is important to remember that an accused person does not have to prove that s/he is not guilty. On the contrary, it is the State that must prove beyond reasonable doubt that the accused is guilty. In Western Australia, the so called 'right to silence' (note: there is no legislation which enshrines this as a right) actually results from the rules of the Supreme Court which aim to avoid self-incrimination. As the State of WA has a lot of resources at its disposal it is assumed that justice can still be done in circumstances when an accused person remains silent. After completing the pre-visit activities it would be good to discuss the standard of behaviour expected when the group visits the Francis Burt Law Education Programme.	True	False
i. Each Australian State and Territory has its own laws and courts	True	False
j. Under the rule of law every Australian has the same legal rights and legal responsibilities	True	False



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