

## Francis Burt Law Education Programme

# OUR DEMOCRATIC RIGHTS YEAR 9 TEACHER POST-VISIT RESOURCE

## 1. POINTS TO THINK ABOUT AFTER YOUR VISIT

Review your answers to the points below after your Francis Burt Law Education Programme 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 9 Kahoot! Quiz](#)**

### Instructions:

Read the sentences below and mark them true or false.

a. Generally speaking there are two types of law in WA; civil and criminal law.	<b>True</b>	False
b. If you are accused of a crime in WA you must prove to the court that you are not guilty.  <b>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.</b>  <b>Another important legal principle is the presumption of innocence, i.e. the accused is always presumed to be innocent until proven guilty.</b>	True	<b>False</b>
c. The Federal Court is the highest court in Australia.  <b>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.</b>  <b>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.</b>  <b>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.</b>	True	<b>False</b>
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.  <b>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.</b>	<b>True</b>	False

**Instructions:**

Read the sentences below and mark them true or false.

e.	<p>You have the right to trial by jury if you are accused of a crime in WA.</p> <p><b>You have the right to trial by jury if you are accused of a <i>serious</i> crime in WA. Therefore, juries are used in District Court and Supreme Court trials. In the Magistrates Court juries are not used in trials. Instead of a jury a Magistrate hears the matter and s/he must reach a verdict based on the evidence presented.</b></p> <p><b>The standard of proof required to find an accused person guilty of a crime is the same for a jury and a magistrate, i.e. beyond reasonable doubt.</b></p>	True	<b>False</b>
f.	<p>Everyone must swear an oath on the Bible when giving evidence in WA courts.</p> <p><b>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 recognised religions, e.g. The Koran/Muslim oath, No holy book/Buddhist oath, The Pentateuch/Jewish oath etc.</b></p>	True	<b>False</b>
g.	<p>Everyone in Australia is treated equally by the courts and the law except for the Prime Minister and the Queen who have special privileges.</p> <p><b>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 and Australia must not discriminate.</b></p> <p><b>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.</b></p>	True	<b>False</b>
h.	<p>The government can remove a judge from his/her position at anytime.</p> <p><b>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.</b></p> <p><b>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.</b></p>	True	<b>False</b>
i.	<p>An accused person must give evidence if s/he pleads not guilty and the matter goes to trial.</p> <p><b>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, i.e. the burden of proof is on the prosecution.</b></p> <p><b>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 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.</b></p>	True	<b>False</b>
j.	<p>The verdict of a jury must always be unanimous in WA.</p> <p><b>The verdict of the jury must always be unanimous for murder trials in WA and also for Commonwealth criminal matters. For all other charges a majority verdict (10 of the twelve jurors agreeing) will be accepted by the judge once the jury has deliberated for a minimum of 3 hours.</b></p>	True	<b>False</b>



## 2. COURT HIERARCHY REVIEW

In your own words describe the differences between the Supreme Court, the District Court and the Magistrates Court of Western Australia.

**The Supreme Court deals with homicide and serious breaches of Commonwealth drug enforcement laws. As the highest Western Australian court, any matters that are particularly serious or complex can be indicted up to the Supreme Court. The crimes include murder, manslaughter, and the importation of commercial quantities of prohibited drugs. This court deals with all civil disputes over \$750,000 in value. It is the highest court in WA and it is the last court of appeal in the WA legal system.**

**The District Court deals with crimes with a possible sentence of over 3 years imprisonment, except for those dealt with by the Supreme Court. This includes possession of drugs with intent to sell and supply, serious assaults and all sexual offences. This court deals with civil disputes between \$75,000 and \$750,000.**

**The Magistrates Court deals with offences that carry a maximum term of imprisonment of 3 years. This includes simple theft (anything under \$50,000 in value), simple drug possession, common assault, drink driving, disorderly conduct, and most traffic offences etc. The Magistrates Court deals with civil disputes under \$75,000.**

**The Magistrates Court in WA deals with the overwhelming majority of criminal matters in WA, the District Court deals with the second most criminal matters and the Supreme Court deals with under 1% of all criminal matters.**



### The Family Court of Western Australia

Research the jurisdiction of the Family Court of Western Australia and complete the following task:

#### Family Court of Western Australia.

- a. Note down the jurisdiction of the Family Court of Western Australia.

**It is vested with State and Federal jurisdiction in matters of family law and deals with divorce, property of a marriage or defacto relationship, matters relating to children, maintenance, adoptions and surrogacy.**

**The Department of the Attorney General (WA) provides administrative and logistical support for the operation of this court, which is federally funded<sup>1</sup>.**

1. Family Court of Western Australia, Department of the Attorney General, About the Family Court, <[http://www.familycourt.wa.gov.au/A/about\\_the\\_family\\_court.aspx?uid=0585-2574-5706-9153](http://www.familycourt.wa.gov.au/A/about_the_family_court.aspx?uid=0585-2574-5706-9153)>.



## The Children's Court of Western Australia

Research the jurisdiction of the Children's Court of Western Australia and complete the following task:

### Children's Court of Western Australia.

- b. Note down the jurisdiction of the Children's Court of Western Australia

**The Children's Court of Western Australia deals with offences alleged to have been committed by young people aged 10 to 17 years.**

**The Court also deals with protection and care applications for children under the age of 18 years<sup>2</sup>.**

## 3. THE GOLDEN PRINCIPLES REVIEW

1. The Presumption of Innocence;
2. The Burden of Proof; and
3. The Standard of Proof.



- a. After your visit to the Francis Burt Law Education Programme, note down anything that you saw or experienced that demonstrated any of the golden principles.

The Presumption of Innocence

**Hopefully, the students will see or experience something that reinforces this principle. The most common example is likely to be the fact that the accused does not have to give evidence as s/he does not have to prove anything because s/he is thought to be innocent.**

The Burden of Proof

**The fact that the accused does not have to give evidence is also relevant to this principle as it is the prosecution that has the responsibility, or burden, to prove that the accused is guilty.**

The Standard of Proof

**The reality of the standard of proof is likely to have been brought out by the Francis Burt Law Education Programme tour. Proving anything beyond reasonable doubt is an extremely high standard to work towards and that is why the prosecution takes up the majority of the trial time.**

2. Children's Court of Western Australia, Department of the Attorney General, Children's Court, <<http://www.childrencourt.wa.gov.au/default.aspx>>.



## 4. THE STANDARD OF PROOF REVIEW

Rewrite the following text in italics in your own words.

- a. The Standard of Proof for Criminal Matters in WA: *to find someone guilty of a crime you must be satisfied beyond reasonable doubt.*

**You must find someone guilty of a crime if, after listening to all the evidence, you have no sensible or logical doubt in your mind that the person is guilty.**

**You must find a person not guilty if, after listening to all evidence, you have any doubt in your mind that the person is guilty and that doubt is sensible and logical in its assumptions.**

The standard of proof for criminal matters in WA and Australia, as shown above, is often described as the highest standard known to the law.

- b. Why do you think the standard of proof is so high for criminal matters in WA?

**The standard of proof is so high because imprisonment, taking away a person's liberty, is a possible sentence if a person is found guilty of a crime in WA. In addition, if you are found guilty of a crime in WA that conviction will remain on your criminal record for at least 10 years.**

## 5. LEGAL VOCABULARY

Match the vocabulary below to the descriptions in the table.

Criminal Law, Common Law, The Australian Constitution, Statute Law, Civil Law



VOCABULARY	DEFINITION
<b>Common Law</b>	Law which is created by judge's decisions. Those decisions set precedents which all the lower courts must follow. This type of law is created when there is a gap in the existing legislation.
<b>Civil Law</b>	Law which focuses on formal disagreements between two or more people in our community.
<b>The Australian Constitution</b>	The document which identifies the fundamental principles of how Australia is governed. It includes details on what laws and courts the Federal Government is responsible for and what laws and courts the State Governments are responsible for.
<b>Criminal Law</b>	Law which aims to stop anti-social behaviour, harm and danger in our community.
<b>Statute Law</b>	Law which is created by Parliament through legislation.



## 5. FACTORS UNDERMINING THE PRINCIPLES OF JUSTICE: ACCESS TO JUSTICE

Research the proposed cuts to the funding of legal aid and community law centres in Australia on the Law Council of Australia [Legal Aid Matters website](#) and complete the following tasks.

### Task 1

#### Fact Sheet 1: What is Legal Aid?

- a. Summarise what legal aid provides and the types of legal aid services that receive funding.

##### **Legal Aid Provides**

**This resulted in the establishment of the Australian Legal Aid Office in 1973, followed by the establishment of the State based Legal Aid Commissions. These offices provide the majority of free or low-cost legal assistance to those in need.**

##### **Types of Legal Aid Services**

**Eventually, other forms of legal services were established with modest government funding, including:**

- **Aboriginal and Torres Strait Islander legal services, in recognition of the specific and essential need for culturally appropriate representation for the First Australians**
  - **Community legal centres, which provide essential legal advice and referral services, relying heavily on voluntary and pro bono work from private lawyers**
  - **Family Violence Prevention Legal Services, which provide essential joined-up legal services to Indigenous victims of family violence<sup>3</sup>.**
- b. Who do Legal Aid, Aboriginal and Torres Strait Islander legal services, Community legal centres and Family Violence Prevention Legal Services provide services to?
- Services are provided to people in the community who have a low income and/or a high degree of disadvantage.**
- c. Do you think the majority of people that use legal aid services choose to use legal aid or the majority have no other options available to them?
- Majority choose to use legal aid services / Majority have no other options available to them.**

3. Law Council of Australia, Legal Aid Matters, *Fact Sheet 1: What is Legal Aid* (Nov 2016), <<http://www.legalaidmatters.org.au/images/Factsheets/Legal-Aid-Matters---Fact-Sheets-1.pdf>>.



## Task 2

### Fact Sheet 2: Why Should I Care About Legal Aid?

- d. Summarise how cuts to legal aid funding have the potential to affect many people in the community.

**Responses may differ from student to student, however the statistics in the fact sheet demonstrate that 50% of the Australian population have a legal problem every year and 25% of those people require legal assistance. Further, reductions to legal aid funding have already reduced the number of matters that legal aid agencies can provide representation.**

**The statistics demonstrate that further cuts to legal aid funding will have significant social and economic effects and will, in the long run, result in significant additional costs above and beyond any monies that would be saved by cutting funding.**

**Another consequence is that inadequate legal assistance can have a knock-on effect in that it can contribute to homelessness and other financial crisis costs. Early intervention of lawyers in civil matters (for example in the Magistrates Court) reduces overall court costs by resolving matters without the need for an expensive trial.**

## Task 3

### Fact Sheet 3: Massive Federal Cuts to Legal Aid

### Fact Sheet 4: More Federal Funding Cuts Are On The Way

- e. Document the changes to legal aid funding using the table below.

YEAR	EVENT
1996	The Federal Government introduced massive cuts to legal aid. Previously, the Federal government provided 55% of funding to legal aid, while contributions from the States and Territories accounted for most of the remainder. In 1996, the Federal Government slashed its share of legal aid funding to 30% <sup>4</sup> .
2014	Federal Government announced more major cuts, including: <ul style="list-style-type: none"> <li>• A 30% cut to community legal centres; and</li> <li>• A further \$4 million to Aboriginal and Torres Strait Islander legal services<sup>5</sup>.</li> </ul>
2016-2017	Additional Federal funding of \$126.3 million is required, just to bring the Commonwealth's share of spending back to 50% <sup>6</sup> .

4. Law Council of Australia, Legal Aid Matters, Fact Sheet 3: Massive federal Cuts to Legal Aid (Nov 2016), <<http://www.legalaidmatters.org.au/images/Factsheets/Legal-Aid-Matters---Fact-Sheets-3.pdf>>.

5. Law Council of Australia, Legal Aid Matters, Fact Sheet 4: More Federal Funding Cuts Are On The Way (Nov 2016), <<http://www.legalaidmatters.org.au/images/Factsheets/Legal-Aid-Matters---Fact-Sheets-4.pdf>>.

6. Law Council of Australia, Legal Aid Matters, Fact Sheet 3: Massive federal Cuts to Legal Aid (Nov 2016), <<http://www.legalaidmatters.org.au/images/Factsheets/Legal-Aid-Matters---Fact-Sheets-3.pdf>>.





- f. What are the arguments for the Federal Government to appropriately fund legal aid services?

**The Federal Government shirks its funding responsibilities, claiming State and Territory laws create demand for legal aid. This is unsustainable:**

- **State and Territory criminal law and regulations are essential for maintaining law and order across Australia.**
- **Enforcement of law and order is a national priority – legal aid is therefore a national obligation**
- **We have a national legal system made up of Commonwealth and State laws.**
- **We need a properly funded legal aid system to make equality before those laws a reality<sup>7</sup>.**

## Discussion Point

- g. How do the funding cuts to legal aid funding undermine the application of the principles of justice in Australia?

**There are likely to be many varied responses to this question. Some of the ways that cuts to legal aid funding undermines the principles of justice in Australia are:**

- It results in more people self-representing which creates delays in the justice system;
- It results in a justice system where only the well-off can access legal representation;
- It potentially results in an increase of the risk of unjust and/or unfair outcomes; and
- It undermines public confidence in the rule of law in Australia due to inequalities in access to justice.

7. Law Council of Australia, Legal Aid Matters, Fact Sheet 3: Massive federal Cuts to Legal Aid (Nov 2016), <<http://www.legalaidmatters.org.au/images/Factsheets/Legal-Aid-Matters---Fact-Sheets-3.pdf>>.



## Appendix 1

# Our Democratic Rights

## Year 9 Multimodal Presentation



### TASK

Complete one of the following tasks and create a multimodal presentation

### TASK A

- a. Identify the key features of Australia's court system from 1901

Include:

1. A brief history of the establishment of the Australian court system

**Australian Government, Attorney General's Department:** [The Courts](#)

**State Library of NSW:** [Hot Topics, Legal Issue in Plain Language](#)

2. Which courts the Federal government has responsibility for and which courts the Western Australian government has responsibility for and from where that authority originates ([Australian Constitution: Chapter 3 and 5](#)).
3. The key features of Australia's court system with the focus on the separation of powers, security of tenure, legal principles, open courts and the jury system

**Legal Commission of South Australia:** [General Principles in Criminal Law](#)

**Judicial Council of NSW:** [The Principle of Open Justice](#)

**The Rule of Law Institute of Australia:** [Suppression Orders – Open Courts: Who Guards the Guardians?](#)

**Parliament of Australia:** [Trial by Jury](#)

**Department of the Attorney General, Western Australia:** [Jury Duty](#)

**Law Reform Commission of Western Australia:** [Jury trials in Western Australia](#)

The following programmes could be used to assist the students in this task [www.freewebs.com](http://www.freewebs.com) or [Audacity](#).

## TASK B

- a. Identify the role of a particular Western Australian court; Supreme Court of WA, District Court of WA, Magistrates Court of WA, Children's Court of WA or Family Court of WA

Include:

1. A brief history of that court
2. The jurisdiction of that court
3. Details on one of the past or present judicial officers of that court
4. Details on a topical case or topical cases heard by that court within the last 3 years

[Supreme Court of Western Australia](#)

[District Court of Western Australia](#)

[Magistrates Court of Western Australia](#)

[Children's Court of Western Australia](#)

[Family Court of Western Australia](#)

The following programmes could be used to assist the students in this task [www.freewebs.com](http://www.freewebs.com) or [Audacity](#).

Criteria for Assessment

- a. Relevance to topic.
- b. Present your multimodal report to the class in digital format.
- c. Accuracy of grammar and spelling.
- d. Creativity of presentation: graphics, pictures, formatting.
- e. Referencing of sources used either with footnotes or endnotes.



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