

## Francis Burt Law Education Programme

# JUSTICE AT HOME AND OVERSEAS YEAR 10 STUDENT POST-VISIT RESOURCE

## 1. LEGAL VOCABULARY

a. Match the vocabulary below to the descriptions in the table.

executive, separation of powers, legislature, law of torts, The Australian Constitution, The three arms of government, judiciary

VOCABULARY	DEFINITION
	The legal arm of the government. This group operates independently from the two other groups in the three arms of government and is responsible for enforcing the law.
	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.
	This group is made up of the Legislature, the Executive and the Judiciary. The Legislature makes laws, the Executive implements the laws and the Judiciary interprets and applies the laws.
	This group in WA consists of the Governor, the Premier and the other State government ministers. The responsibility for enacting legislation passed by parliament and upholding such legislation falls on this group.
	This model for governing democratic countries identifies separate and independent powers of the three arms of government. This model aims to prevent either of the three arms of government from becoming too powerful.
	An area of civil law which covers such things as defamation and duty of care. This type of law covers actions that injure a person in some way.
	The group of elected members of parliament in both houses responsible for debating and voting on new legislation.



2. HIGH COURT CASE STUDY

Read the case study *Yorke v Lucas 2009* and answer the following questions:

a. What was the case about?

---

---

---

---

---

b. Give a brief summary of the facts of the case

---

---

---

---

---

c. In which court was the case first heard?

---

d. Under which legislation were the litigants taking the matter to court?

---

e. Click on the link *section 52* and write down what it says in the Act?

---

---

---

---

---



f. What was the decision of the original Court hearing?

---

---

---

---

---

---

---

---

g. Which court did the Yorkes then appeal to and why?

---

---

---

---

h. Was the appeal upheld?

---

i. What was the next step taken by the Yorkes and were they successful?

---

j. What was the reason behind the High Court’s judgment?

---

---

---

---

---

---

---

---

k. Can the Yorkes appeal again?

---

---

---

---

---

---

---

---

---

---



### 3. THREATS TO DEMOCRACY: POPULISM

The **Rule of Law** provides that everyone, regardless of who they are, is subject to the same law and has access to the same legal and judicial processes regardless of whether they are rich or poor, whether they are in an ethnic majority or religious minority or if they are a political ally or opponent of the state.<sup>1</sup> The law should always be supreme to the capricious authority of any individual and the rule of law is the supreme check on political power used against people's rights. Constitutional limits on power is a key feature of any democracy and requires adherence to the rule of law.<sup>2</sup>

#### Overseas

In recent times there has been a rise in support for populist parties and/or populist leaders in many contemporary Western societies and this has either disrupted the politics of those countries or has the potential of altering established patterns of party competition. For example:

- [United States of America - Donald Trump](#)
- [The Philippines - Rodrigo Duterte](#)
- [Europe \(Italy – Matteo Renzi; France – Francois Fillon and Marine Le Pen; Germany – Frauke Petry; Netherlands – Geert Wilders\)](#)

Particularly troubling are the numerous examples of populist leaders flouting rule of law principles, especially the *supremacy of law*, i.e. rulers cannot make their own laws but must govern according to the established laws.

1. Museum of Australian Democracy <http://explore.moadoph.gov.au/timelines/rule-of-law#milestone=abolition-of-appeal-to-the-privy-council>

- a. Rate the leaders/countries listed above from the highest threat to the lowest threat (or no threat) to democracy. Justify the reasons for your ratings.

Rating	Leader/Country	Reason

- b. Do you think any of the populist leaders or parties mentioned above are likely to influence any parties or policies in Australia? Explain your views with reasons.

---



---



---



---

- c. Can you identify any Federal or State government policies in Australia that seem to flout rule of law principles?

---



---



---



---



#### 4. INTERNATIONAL AGREEMENTS: AUSTRALIA'S UNIVERSAL PERIODIC REVIEW ON HUMAN RIGHTS

The Universal Periodic Review (UPR) is a process undertaken by the United Nations (UN) Human Rights Council. It involves review of the human rights records of all 192 UN Member States once every four years.

The UPR is an opportunity for Australia to:

- take stock of how well we are protecting the human rights of all people in Australia;
- inform the international community of the human rights situation in Australia; and
- engage with other countries about specified steps Australia will take to improve the enjoyment of human rights in Australia.

Every country which is a member of the UN has their human rights record reviewed under the UPR. Review under the UPR does not depend on a country being a party to a particular human rights treaty<sup>3</sup>.

#### TASKS

- a. Do you support or are you against the UPR on Australia's human rights record by the UN Human Rights Council? Why?  
Support / Against

---

---

---

#### Option 1: Scope of International Obligations

Open the 2015 UPR [Scope of International Obligations](#) Fact Sheet and complete the following tasks.

- b. Key Issue – Ratification of OPCAT. What are the main concerns raised regarding Australia having signed but not ratified OPCAT?

---

---

---

3. Australian Human Rights Commission, <[https://www.humanrights.gov.au/australias-universal-periodic-review-human-rights#key\\_documents](https://www.humanrights.gov.au/australias-universal-periodic-review-human-rights#key_documents)>.

- c. Are you in favour or against Australia ratifying OPCAT? Why?  
In favour / Against

---

---

---

- d. Key Issue – Removal of CEDAW, ICERD and CRC reservations. Identify the reasons for Australia having reservations regarding CEDAW, ICERD and CRC.

---

---

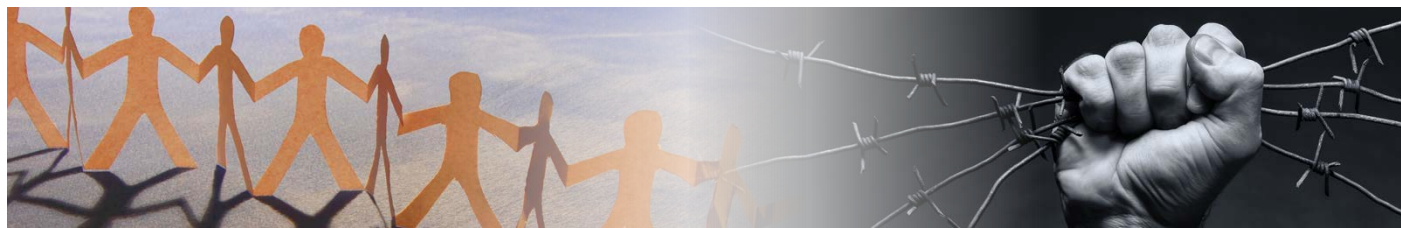
---

- e. Do you support or are you against Australia's reservations regarding these conventions? Why?  
Support / Against

---

---

---



## Option 2: National Framework Final

Open the 2015 UPR [National Framework Final](#) Fact Sheet and complete the following tasks.

- f. How does the UN Human Rights Council describe Australia's protection of human rights and fundamental freedoms?

---

---

---



g. What is identified as the key issue?

---

---

---

---

h. Do you agree or disagree with the recommendation? Why?

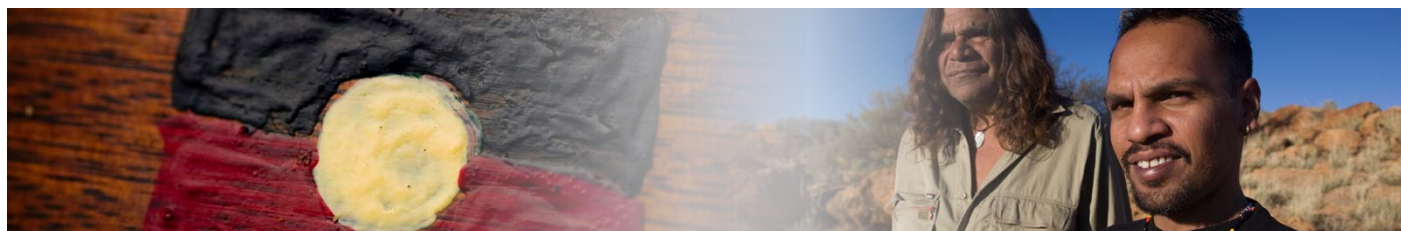
Agree / Disagree

---

---

---

---



### Option 3: Aboriginal and Torres Strait Islander Peoples

Open the 2015 UPR [Aboriginal and Torres Strait Islander Peoples](#) Fact Sheet and complete the following tasks.

i. How does the UN Human Rights Council describe the Australian Government's commitment to improving the human rights of Aboriginal and Torres Strait Islander Peoples since Australia's first cycle review?

---

---

---

---

j. What measure is recommended to ensure that legislation complies with the UN Declaration on the Rights of Indigenous Peoples?

---

---

---

---



k. Do you support or are you against the Key Issue – National Congress of Australia’s First Peoples recommendation? Why? Support / Against

---

---

---

---

l. Do you support or are you against the Key Issue – Constitutional recognition of Aboriginal and Torres Strait Islander Peoples recommendation? Why? Support / Against

---

---

---

---

m. How does the UN Human Rights Council describe Aboriginal and Torres Strait Islander Peoples’ representation in Australia’s criminal justice system?

---

---

---

---

n. The UN Human Rights Council recommends that Australia introduce justice re-investment trials. What is justice re-investment?

---

---

---

---

o. Several of the UN Human Rights Council recommendations note the importance of working with Aboriginal and Torres Strait Islander Peoples and providing funding for a representative Indigenous voice. Do you support or are you against such recommendations? Why? Support / Against

---

---

---

Ambassador John Quinn concluded Australia's statement to the UN Human Rights Council at the adoption of the Report of the UPR Working Group on 17 March 2016 as follows:

*I reiterate Australia's voluntary commitment to work with the Australian Human Rights Commission to develop a public and accessible process for monitoring Australia's progress against UPR recommendations.*

*As part of this process, Australia commits to make a periodic statement on our progress against recommendations.*

*The UPR is more than a symbolic gesture for Australia.*

*Rather, it is a real record of our commitments to the Australian public and the international community, it is a measure of our longstanding engagement with the United Nations, and it is the standard by which we will measure our progress in protecting and promoting human rights.*

*In line with this commitment, Australia is proud to be seeking a seat on the Human Rights Council for the term 2018-2020<sup>4</sup>.*



## 5. REVIEW: WHAT DO YOU KNOW ABOUT THE LAW?

Read the sentences below and mark them true or false.	True	False
a. The rule of law is a key feature of Australia's system of government.	True	False
b. Australia is bound to implement all conventions approved by the United Nations.	True	False
c. The Federal Court is the highest court in Australia.	True	False
d. The United Nations' Human Rights Council's 2015 Universal Periodic Review of Australia's human rights record did not reveal any human rights issues for Australia to address.	True	False
e. You have the right to trial by jury if you are accused of a crime in WA.	True	False
f. Everyone must swear an oath on the Bible when giving evidence in WA courts.	True	False
g. Everyone is treated equally by the courts and the law in WA.	True	False
h. The government can remove a judge from his/her position at anytime.	True	False
i. The verdict of the jury must always be unanimous in WA.	True	False
j. The Governor General of Australia is exempt from the law in the Australian states and territories.	True	False
k. If you are questioned by the police you must answer any and all of their questions.	True	False

4. Australian Human Rights Commission, <<https://www.ag.gov.au/RightsAndProtections/HumanRights/United-Nations-Human-Rights-Reporting/Documents/UPR-Adoption-Statement.pdf>>.



This work is licensed under a **Creative Commons Attribution-NonCommercial 4.0 International License**

## Appendix 1

# Justice at Home and Overseas: The High Court of Australia Year 10 Research Assessment Task



### TASK

Using at least one case study, DESCRIBE the role of the High Court

Your answer could be in the form of a multimodal presentation or an informative essay

1. Detailed description of the role and jurisdiction of the High Court
2. Ways in which the High Court interprets the constitution
3. Focus on a High Court case study
4. Optional: Include a brief description of a Western Australian appointee to the High Court
  - Sir Ronald Wilson AC QC
  - The Hon John Toohey AC QC
  - The Hon Robert French AC
  - The Hon James Edelman

### CRITERIA FOR ASSESSMENT

1. Detailed description of the role and jurisdiction of the High Court
2. Ways in which the High Court interprets the constitution
3. Appropriateness and relevance of chosen case study
4. Creativity if presented as a multimodal presentation OR, if an informative essay, correct essay format
5. Accuracy of grammar and spelling
6. Referencing of sources used (either with footnotes or endnotes)
7. Optional: Information about a Western Australian appointee to the High Court



This work is licensed under a **Creative Commons Attribution-NonCommercial 4.0 International License**

## Appendix 2

# Justice at Home and Overseas: Threats to Democracy

## Year 10 Research Assessment Task



### TASK

The rule of law provides that everyone, regardless of who they are, is subject to the same law. In recent times there has been a rise in support for populist parties and/or populist leaders in many contemporary Western societies and this has either disrupted the politics of those countries or has the potential of altering established patterns of party competition.

Your answer could be in the form of a multimodal presentation or an informative essay

1. Define the principle of the rule of law and its elements
2. Define what is meant by a populist leader
3. Choose a controversial overseas populist leader from a democratic country
  - a. Describe his/her policies
  - b. Identify any policies that conflict with the rule of law principle
  - c. Identify possible effects of those policies in terms of threats to democracy
4. Do you think the populist leader that you focused on is likely to influence any parties or policies in Australia? Explain your views with reasons.

### CRITERIA FOR ASSESSMENT

- a. Relevance to the topic
- b. Accurate definitions of the rule of law and its elements
- c. Accurate definition of a populist leader
- d. Appropriateness and relevance of chosen overseas populist leader from a democratic country
- e. Sound reasoning that includes logical assumptions and/or assertions
- f. Creativity if presented as a multimodal presentation OR, if an informative essay, correct essay format
- g. Accuracy of grammar and spelling
- h. Referencing of sources used (either with footnotes or endnotes)



This work is licensed under a **Creative Commons Attribution-NonCommercial 4.0 International License**