

Are AustLII and Google Enough for Legal Research?

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ABSTRACT For the past ten years law students, academics and legal practitioners have relied on AustLII and various internet search engines to conduct legal research. The purpose of this article is to examine what these can offer and to note the importance of other websites when conducting legal research. This article is based on an address given to the Australian Law Librarians Group, Western Australian Division, on 25 October 2004.

As many law librarians use the Australasian Legal Information Institute (hereafter AustLII) and/or Google on a daily basis, it is a useful exercise to examine what AustLII and Google do and do not do. This exercise is useful because experience teaching legal research at both the University of New South Wales and formerly at the University of Sydney indicates that some students regularly think AustLII is useful as a journal index and is capable of answering all of their legal research needs. Many students also think Google is the answer to most legal research questions. These students graduate and will often be found in places where law librarians are employed. Law librarians may grumble and ask: ‘Why weren’t they taught legal research properly in the first place?’ Some law firm librarians have complained about new law graduates and their lack of legal research abilities beyond their use of AustLII.

One senior law student at the University of New South Wales recently asked why its law school is the only Australian one which compels students to do two legal research subjects. The answer was that many students forget what they learnt in first year and that legal research is important when commencing and sustaining a legal career.

Key questions to ask in conducting legal research are, what type of information are you seeking? Is it primary materials or secondary materials or a mixture of both? Answering these questions will assist in knowing where to look. AustLII has a wealth of both primary and secondary materials, although the author tends to use it for its primary materials. Google has a wealth of secondary materials, so it tends to be used for secondary materials.

What Information does AustLII Provide?

AustLII commenced in 1995. Little did we know at the time that this would be a catalyst in the revolution in Australian legal research. Since 1995 AustLII has built itself up from modest beginnings to one of the powerhouses of Australian legal research. Notably, CCH Australia Ltd is one of the major stakeholders of

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AustLII. A generation of law and non-law students has learnt to use it comfortably. In addition to law students, legal practitioners and law librarians have come to grips with the usefulness of AustLII.

One can see the strengths and limitations of the databases offered by looking at the AustLII menu. Since October 2003 all High Court of Australia decisions going back to 1903 are available electronically. This was a real coup in obtaining this data, courtesy of Thomson Corporation, owners of Lawbook Company.

Commonwealth or federal materials in AustLII include the following:

Commonwealth Case Law

- High Court of Australia Decisions 1903-
- Family Court of Australia Decisions 1988-
- Federal Court of Australia Decisions 1977-
- Federal Court of Australia – Full Court Decisions 2002-
- Federal Magistrates Court of Australia Decisions 2000-
- Federal Magistrates Court of Australia – Family Law Decisions 2000-
- Industrial Relations Court of Australia Decisions 1994-
- Administrative Appeals Tribunal Decisions 1976-
- Australian Industrial Relations Commission Decisions 1988-
- Australian Competition Tribunal Decisions 1997-
- Australian Designs Offices Decisions 1983-
- Australian Patent Offices Decisions 1981-
- Australian Trade Marks Offices Decisions 1991-
- Copyright Tribunal Decisions 1997-
- Defence Force Discipline Appeal Tribunal Decisions 1999-
- Federal Privacy Commissioner of Australia Cases 2002-
- Human Rights and Equal Opportunity Commission Decisions 1985-
- Immigration Review Tribunal Decisions 1990-
- Migration Review Tribunal Decisions 1999-
- National Native Title Tribunal Decisions 1994-
- Refugee Review Tribunal Decisions 1993-

Commonwealth Legislation

- Commonwealth Consolidated Acts
- Commonwealth Numbered Acts
- Commonwealth Consolidated Regulations
- Commonwealth Numbered Regulations

Commonwealth Miscellaneous

- High Court of Australia Transcripts 1996-
- High Court of Australia Bulletins 1995-

Many states and territories are covered by AustLII but here only two states are considered as examples, namely New South Wales and Western Australia. For these states AustLII contains the following materials:

NSW Case Law

- Supreme Court of New South Wales Decisions 1995-

- Supreme Court of New South Wales – Court of Appeal Decisions 1999-
- Supreme Court of New South Wales – Court of Criminal Appeal Decisions 1999-
- Compensation Court of New South Wales Decisions 1985-2003
- District Court of New South Wales (Pharmacist Appeals) Decisions 1992-
- Drug Court of New South Wales Decisions 1999-
- Land and Environment Court of New South Wales Decisions 1988-
- Administrative Decisions Tribunal of New South Wales 1999-
- Administrative Decisions Tribunal Appeal Panel of New South Wales 1999-
- Chief Industrial Magistrate’s Court of New South Wales 1998-
- Community Services Appeals Tribunal of New South Wales Decisions 1998-
- Consumer, Trader and Tenancy Tribunal of New South Wales Decisions 2002-
- Dust Diseases Tribunal of New South Wales Decisions 1989-
- Fair Trading Tribunal of New South Wales Decisions 1999-2002
- Industrial Relations Commission of New South Wales Decisions 1985-
- Pharmacy Board of New South Wales Decisions 1990-
- Residential Tenancies Tribunal of New South Wales Decisions 1986-2002
- Strata Schemes Board of New South Wales Decisions 1997-2001
- Workers’ Compensation Commission of New South Wales – Presidential Decisions 2002-

NSW Legislation

- New South Wales Consolidated Acts
- New South Wales Acts (Point-in-Time)
- New South Wales Repealed Acts
- New South Wales Consolidated Regulations
- New South Wales Repealed Regulations

NSW Miscellaneous

- Superior Courts of New South Wales (pre-1900) Case Notes
- New South Wales Office of State Revenue Rulings 1985-

WA Case Law

- Supreme Court of Western Australia Decisions 1999-
- Supreme Court of Western Australia – Court of Appeal Decisions 1999-
- Criminal Injuries Compensation Assessor of Western Australia Decisions 2004-
- Guardianship and Administration Board of Western Australia Decisions 2004-
- State Administrative Tribunal of Western Australia Decisions 2005-
- Strata Titles Referee of Western Australia Decisions 2004-
- Town Planning Appeal Tribunal of Western Australia Decisions 2003-2004
- Western Australian Industrial Relations Commission Decisions 1991-
- Western Australian Information Commissioner Decisions 1994-

WA Legislation

- Western Australian Consolidated Acts

– Western Australian Consolidated Regulations

This coverage on the AustLII databases looks very impressive. The dates are clearly marked. However, as AustLII relies on information provided by others, there are some serious limitations.

Take, for example, the *Human Rights and Equal Opportunity Commission Decisions 1985-*. When you go into this database you discover the latest decisions on AustLII as of 16 October 2004 are dated 3 August 1999. Surely, there must be more recent decisions of HREOC! Visiting the HREOC website at http://www.hreoc.gov.au/legal/hreoc_decisions.html provides the following note:

On 23 September 1999, the Federal Government passed the Human Rights Legislation Amendment Act No. 1 1999 (Cth). This law transferred the public hearing and determination process from the Commission to the Federal Court of Australia and the Federal Magistrates Service. This law came into effect on 13 April 2000.

As a result of this law the Commission no longer conducts public hearings into complaints of unlawful discrimination under the *Disability Discrimination Act 1992* (Cth), *Racial Discrimination Act 1975* (Cth) and the *Sex Discrimination Act 1984* (Cth). These hearings are now conducted by the Federal Court and the Federal Magistrates Service. The AustLII site would be more helpful if it included the note on the HREOC website or provided a closed entry of 1985-1999 for the HREOC decisions. Likewise, the entry for *Industrial Relations Court of Australia Decisions 1994-* should have a closed entry 1994-2000, as the court no longer exists.

In mid October 2004 the latest of the NSW Supreme Court cases on AustLII was dated 12 October 2004, whereas the latest NSW Supreme Court case on LawLink was dated 15 October 2004. For the Land and Environment Court cases the latest case on AustLII was dated 20 September 2004, whereas the latest Land and Environment Court case on LawLink was dated 15 October 2004. Legislation on AustLII can sometimes be less up to date than it is on the websites of the original provider, such as ComLaw (<http://www.comlaw.gov.au>, formerly SCALEplus (<http://scaleplus.law.gov.au>)), the NSW Legislation website (<http://www.legislation.nsw.gov.au>) or the State Law Publisher Western Australian (<http://www.slp.wa.gov.au/statutes/swans.nsf>).

One area which needs emphasis is the numerous links from AustLII to other websites. If something is not on AustLII then it can still be found via AustLII or WorldLII. Take, for example, Australian Bills of Parliament, for which AustLII provides links to BillsNet (<http://www.aph.gov.au/bills/index.htm#billsnet>) and ComLaw (<http://www.comlaw.gov.au>).

What Information does AustLII not Provide?

Questions posted to the Australian and New Zealand Law Librarians Discussion List often ask questions for which the answer is not available on AustLII or other free websites. AustLII is an electronic resource and we need to remind ourselves that many legal research sources are not available electronically. For example, one law librarian enquired about a book published early in the twentieth century and had checked Kinetica (Libraries Australia from 8 December 2004) for holdings. However, for some libraries, although their current holdings may be on Kinetica, some of their earlier holdings acquired before 1970 may only be available on that library's manual card catalogues.

Special leave applications to the High Court of Australia are available via the monthly *High Court Bulletin* (<http://www.austlii.edu.au/au/other/hca/bulletin>). Sometimes, however, there is a need to know about a special leave application as soon as it is handed down. These are available on the High Court of Australia website under Registry Special Leave Applications Results (<http://www.hcourt.gov.au/registry/dailylists/SLindex.htm>). There is a link from AustLII to the High Court of Australia website.

AustLII together with NZLII (the New Zealand Legal Information Institute) holds the following law journals in full text:

- *Aboriginal Law Bulletin (AboriginalLB)* 1981-1997 (AustLII)
- *Australian Indigenous Law Reporter (AILR)* 1996- (AustLII)
- *Australian Journal of Human Rights (AJHR)* 1994- (AustLII)
- *Australian Journal of Legal History (AJLH)* 2003- (AustLII)
- *Alternative Law Journal (AltLJ)* 2000- (AustLII)
- *Deakin Law Review (DeakinLRev)* 2001- (AustLII)
- *eJournal of Tax Research (eJTR)* 2003- (AustLII)
- *Federal Law Review (FedLRev)* 2001- (AustLII)
- *Human Rights Defender (HRD)* 1994- (AustLII)
- *Indigenous Law Bulletin (ILB)* 1997- (AustLII)
- *Journal of Australian Taxation (JATax)* 2005- (AustLII)
- *Journal of Law and Financial Management (JLFM)* 2002- (AustLII)
- *Macquarie Business Law Journal (MqBLJ)* 2004- (AustLII)
- *Macquarie Journal of International and Comparative Environmental Law (MqJICEL)* 2004- (AustLII)
- *Macquarie Law Journal (MqLJ)* 2001- (AustLII)
- *Melbourne University Law Review* 1999- (AustLII)
- *Privacy Law and Policy Reporter* 1994- (AustLII)
- *Queensland University of Technology Law and Justice Journal (QUTLJJ)* 2001- (AustLII)
- *Sydney Law Review (SydLRev)* 2003- (AustLII)
- *University of New England Law Journal (UNELJ)* 2004- (AustLII)
- *University of NSW Law Journal (UNSWLJ)* 1997- (AustLII)
- *University of Technology, Sydney Law Review (UTSLR)* 1999- (AustLII)
- *Auckland University Law Review (AucklandULRev)* 2003- (NZLII)
- *Otago Law Review (OtagoLRev)* 2003- (NZLII)

- *Victoria University of Wellington Law Review (VUWLRev) 1998- (NZLII)*

When students encounter this list, many automatically assume that AustLII holds many law journals and therefore that it is a journal index and do not see its limitations, based on the small number of journals in the above list. Although the above list includes the *University of NSW Law Journal* from 1997, not every issue is present, notably a forum ‘Legal Perspectives on the State of the Australian Tax System’ published in 2000.

The list of Commonwealth case law provided earlier in this article indicates that AustLII includes *Family Court of Australia Decisions 1988-*, so where are earlier decisions to be found? They are available in print in either *Australian Family Law Cases* (CCH) or *Family Law Reports* (LexisNexis Australia) or electronically from CCH or Lexis via its LexisNexis AU or on Lexis.com.

In the list of Federal Court of Australia decisions AustLII mentions only the Federal Court of Australia Decisions 1977- and the Federal Court of Australia – Full Court Decisions 2002-. So where are the Full Court decisions prior to 2002? These are found under Federal Court of Australia Decisions 1977-. A note to this effect would be useful for users.

Hypertext links on AustLII are worth noting. Although hypertext links are a wonderful boon, allowing us to click on a reference then return to the original document, in law we need to be cautious about them. When we look at a judgement, there are probably references to a piece of legislation. If we click on the hypertext link to the legislation, it will most likely be to the legislation as it stands on the day of the search, not to the date when the events occurred, the subject of the litigation. The researcher may be misled as to the correct version of the legislation referred to in the judgement. Several years ago a major publisher was offering a product with hypertext links to legislation. However, this too was a link to current legislation, not the legislation referred to as mentioned in the judgement.

What Information does Google Provide?

Google provides access to a lot of Australian and international legal materials. The majority appears to be secondary materials and the number of results is impressive but, on closer inspection, many are irrelevant. Using the Advanced Search facility and limiting the search to ‘pages from Australia’ if appropriate can be useful.

What Information does Google not Provide?

Most search engines do not search every page on every website. Some search the first few pages and that is it. There are many pages on AustLII that Google cannot locate. Some web providers put blocks on their pages, preventing search engines from going in. Take *Commissioner of Taxation v Hart* [2004] HCA 26,

which was handed down on 27 May 2004. On 21 October 2004 I used Google's Advanced Search to search for 'Commissioner of Taxation v Hart' (with all of the words), 'High Court of Australia' (with the exact phrase) and '2004' (with at least one of the words). The first hit was the High Court of Australia transcript of the case, then in the following 51 results there was no reference to the full text of the High Court of Australia decision on AustLII.

Healthy Competition

It is desirable to have competition in legal research sources. If a law library user goes to the shelf and the volume required is missing, there are alternative sources for many primary and secondary materials. For example, the High Court of Australia decisions in print may be found in CLR, ALJR, ALR and numerous subject-specialised law reports. Federal Court of Australia decisions may be found in FCR, ALR and again in numerous subject-specialised law reports. Administrative Appeals Tribunal decisions may be published in the Administrative Law Decisions or the Administrative Appeals Reports and also in numerous subject-specialised law reports. English decisions may be found in the Law Reports series or All ER or the WLRs or subject-specialised law reports.

For electronic sources, if one database is not available, it is often useful to go to another website to find the same or similar information. Before 2002 SCALEPlus and AustLII held many of the same statutory and case law databases. This all changed with the rationalisation of SCALEplus in 2002. Previously, when AustLII was down, it was good to know that alternative sources were available by going elsewhere, such as ComLaw (formerly SCALEplus) or to commercial providers such as TimeBase or LawNow, or Anstat for federal legislation. If ComLaw was down it was good to know that AustLII or commercial providers such as TimeBase or LawNow or Anstat for federal legislation, were available.

Lexis charges for Australian primary materials, which are available free from AustLII, ComLaw, LawLink, State Law Publisher Western Australian Legislation and other websites. Lexis is, however, very useful for its secondary law databases of full-text US law reviews and other journals. Lexis and WestLaw often compete for customers as they sometimes have the same or similar information sources. Some law libraries have both and many law libraries choose either. Where legal publishers publish in the same subject area there will always be a healthy rivalry as to who will get their product out in the marketplace first (note the Federal Budget night summaries which land on one's desk the day after the Budget is given). An example of the value of such rivalry is the survival for 15 years of two Australian legal encyclopaedias in print and electronically. When they were established the UK, with a bigger legal market than Australia, only had one legal encyclopaedia, and the US -

with a much, much bigger market - only two. This created some scepticism that both would survive in the small Australian market.

In the legal journal area there are numerous subjects covered by two or more publishers, such as building and construction, constitutional law, corporations, dispute resolution, employment, family law, health, indigenous affairs, insurance, intellectual property, media, tax, torts, and trade practices. In the textbook area most legal topics are covered by two or more publishers. In addition to the big three Australian legal publishers we also have Federation Press, Cavendish Publishing, Redfern Legal Centre Publishing, the College of Law and others. In addition to the legal publishers we have publishers with a small percentage of legal titles, such as Oxford University Press or Cambridge University Press. In the tax area, apart from ATP and CCH, we also have LexisNexis Australia, Taxability, Taxation Institute of Australia and other smaller publishers.

Other Useful Directories

There are in existence in Australia various excellent directory style websites such as Weblaw (<http://www.weblaw.edu.au/weblaw/index.phtml>). Weblaw provides lawyers, students, researchers and lay professionals with annotated links to up-to-date, quality-assessed internet resources on the topics listed in Table 1.

The Australian Parliament House website not only has important information about the progress of legislation, the text of Bills and extrinsic materials but also has a directory of legal information (<http://www.aph.gov.au/library/INTGUIDE/law/index.htm>). Note also the National Library of Australia's *Australian Law: Selected Websites* (<http://www.nla.gov.au/oz/law.html>). This only lists free websites. A list of some free and subscription legal websites are also listed by the National Library of Australia (<http://www.nla.gov.au/pathways/jnls/newsite/browse/socsci.html#Law>). Most Australian academic law libraries have excellent directories linking both free and subscription legal websites, the latter for staff and students. However some of them list legal abbreviations for members of the public, for example:

- La Trobe University Law Library *Law Abbreviations*
<http://www.lib.latrobe.edu.au/help/subject-res/law/journal-abbreviations.php>
- Monash University Law Library *Abbreviations of Legal Publications*
<http://www.lib.monash.edu.au/legal-abbreviations>
- University of New South Wales Law Library *Law Reports and Abbreviations Database*
<http://www.library.unsw.edu.au/%7Elaw/reprsch.html>
- University of Sydney Law Library *Law reports (Australian and English)*
<http://www.library.usyd.edu.au/libraries/law/LawReportsLevel8.htm>

Overseas sources for legal abbreviations includes the *Cardiff Index to Legal Abbreviations* (<http://www.legalabbrevs.cardiff.ac.uk>). Also useful is the *Comparative & Foreign Law Guides* (http://www.llrx.com/comparative_and_foreign_law.html). Many of these guides are regularly updated.

Table 1

Administrative Law
Biotechnology Law
Children and the Law
Citizenship and Migration
Constitutional Law
Corporations Law
Criminology
Cyberspace Law
Dispute Resolution
e-Commerce Law
Environmental Law
European Union Law
Evidence
Family Law
Government
Health Law
Human Rights
Industrial Law
Intellectual Property
International Law
Law of the Sea
Legal Research
Media and Telecommunications
Native Title
Occupational Health and Safety Law
Policing
Privacy
Property Law
Sports Law
Taxation Law
Torts
Transnational Crime
Women and the Law

Conclusion

There is no one single source for legal research purposes. Neither AustLII nor Google are enough, nor are the commercial legal publishers. A combination of many sources is necessary, depending on what is being sought. If it is a High Court of Australia judgement handed down today, AustLII is the best starting point. Sometimes, with luck, the journal article being sought is on AustLII but it is usually not.

AustLII should be used with caution. There may or may not be a later judgement elsewhere or the legislation may be more current on another website. Google can often provide the answer you require; however, for the primary sources of law, it is wanting in terms of its currency. *Caveat emptor* is used in the sale of goods, and perhaps this could also be applied to the use of all databases used for legal research.

Postscript

Following the address on which this article is based there was a question and answer session. One question may interest readers: 'Why is it I know the case is on AustLII, but I cannot find it?' This occurs because some cases on AustLII are listed under the parties' first names. Over the years this has improved with the supply of cases from the courts but it still occurs with recent cases, for example *Barry Graham Farlie v Magistrate Ross Sterland & anor* [2004] NSWSC 1001, decided on 29 October, 2004 (http://www.austlii.edu.au/au/cases/nsw/supreme_ct/2004/1001.html). Other cases are listed under 'State of...', others under 'Re' or the definite article 'The'. This point was confirmed in an email on the Australian and New Zealand Law Librarians List on 8 June 2004, when Margaret Greville wrote:

We are chasing a case for our mooters. It is: *R v King* [2003] NSWCCA 399, BC200308056 (21pp). For some strange reason ... it does not appear on AUSTLII. Can anyone out there help, either by pointing us in the right direction, or by supplying a copy?

The response was:

It actually is on AustLII at

<http://www.austlii.edu.au/au/cases/nsw/NWCCA/2003/399.html>

Name is spelt out ie Regina v King so maybe you missed it in your search.

Further Reading

C Fong 'Assessing Free Legal Web Sites: The Good, the Bad and the Do-Able' *Online Currents* vol 19 no 3 2004 pp22-31

C Fong & T Hutchinson 'Evaluating Australian Legal Research Guides on the Internet' *UTS Law Review* no 2 2001 pp47-87

M Kirby 'Free the Law: Beyond the "Dark Chaos"' *UTS Law Review* no 2 2001 pp7-15

C Peters 'Australian Case Law on the Internet' *Australian Law Librarian* no 9 2001 pp153-56

D Warren 'Medium and Vendor Neutral: A Comparison of Unreported Decisions from AustLII, Butterworths Online, LBC Online and SCALEplus' *Australian Law Librarian* no 7 1999 pp182-93