

Legal research in the electronic age

By Danny Moujalli¹

The electronic age has transformed the way in which legal research is carried out. A decade or so ago, any serious legal research required at least one visit to the library to consult hard-copy materials. It often called for multiple visits. In the present day, a vast array of legal research materials, both national and international, can be accessed electronically without the need for a lawyer to leave his or her desk. While this has undoubtedly brought benefits, it has also been suggested that the proliferation of freely available material over the internet has produced hidden costs in the provision of legal services as more and more information has to be searched and reviewed.² This underscores the need for freely available legal research websites to be utilised as effectively and efficiently as possible. This article seeks to provide some suggestions for how this can be done.

Bar Library links

A great deal of time can be saved by making use of the Bar Library links page on the website of the New South Wales Bar Association. The library links page can be accessed under 'Library' on the website of the Bar Association. It assembles conveniently in one place links to websites, across all Australian jurisdictions and internationally, which provide online free-access resources for legal research. It is likely that AustLII's website is the first port of call for many lawyers undertaking legal research. As valuable as that website is, it is only one of many that facilities legal research. By making the library links page your first port of call, you will be provided with a gateway to numerous free-access websites which will allow you to assess which one is likely to be the most effective starting point for the particular research task that needs to be carried out.

The Bar Library suggests that barristers use the library links as their home page. That certainly is an option. The writer has contented himself with placing it under his Favourite sites for easy access. As the websites referred to in this article can be accessed directly through the library links page, the specific website addresses are not set out.

The links of primary interest from the point of view of legal research on the library links page are those assembled under 'Legislation' and 'Case Law'. The

next part of this article will address some features and useful tips for legislation focused research. The remainder of the article will do the same in relation to case law research.

Government websites for legislation

If the focus of the research is legislation focused, utilise the government websites.

For NSW legislation, the official New South Wales Government website for online publication of legislation is provided and maintained by the Parliamentary Counsel's Office.

For Commonwealth legislation, the ComLaw website is provided and maintained by the Commonwealth Office of Parliamentary Counsel.

The principal advantage of the government websites is that they provide online access to authorised legislation (although not all legislation on the government websites is authorised - see further below). They also have greater coverage than AustLII for historical versions of legislation for the purpose of researching legislation in force as at a particular point in time.

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Authorised legislation online

With legislation focused research, be mindful of the need to check whether legislation accessible online is an authorised version and therefore suitable for court use.

Section 45C(5) of the *Interpretation Act 1987* (NSW) enables the Parliamentary Counsel to certify the form of legislation that is correct. On the 'About' page of the website for the NSW Parliamentary Counsel's Office, an explanation is given as to which of the legislative content on the site has been so certified and is therefore considered to be authorised. This comprises the legislative content on the In Force database (in HTML format) and the legislative content on the As Made database (in PDF) dated 2000 or later. While it may seem counter-

intuitive, this means that PDF versions of titles in the In Force database are not authorised whereas the HTML versions are. This underscores the need to be vigilant in checking which of the legislative content on the website is authorised. As historical versions of legislation are accessed through the In Force database (see further below), those versions of the legislation are authorised provided they are in HTML format.

In relation to Commonwealth legislation, the *Acts Publication Act 1905* (Cth) provides that the Parliamentary Counsel may maintain an electronic database of Commonwealth legislation. ComLaw includes the only database of Commonwealth legislation that is authoritative for the purposes of legal proceedings. Unlike the NSW Parliamentary Counsel website, authoritative text on ComLaw is always in PDF format. It is also stamped with the document's unique ComLaw ID on every page. When searching in the database, authorised records are always identified with a distinctive 'tick' logo and you will see two variations of it as follows:



If the authoritative logo is not available for a document, or if the text in which the document is accessed is a format other than PDF, then the material is not authoritative and it may not have been subject to the same quality checks as authoritative material.

Point-in-time legislation

An important feature of legislation based research is to identify the legislation applicable as at the relevant time. This can be a laborious and time-consuming exercise to carry out with hard-copy materials. Electronically, the process is faster and more simplified. However, as matters presently stand, no website offers comprehensive coverage for historical versions of legislation.

Historical versions of current legislation on the website of the New South Wales Parliamentary Counsel's Office can be accessed through the In Force database. You need to click on the relevant

act or regulation and then go to 'Historical versions'. You can then select the relevant period during which the applicable date falls. As indicated above, historical versions of the legislation are authorised in HTML format.

All titles in the In Force database have complete sets of historical versions from a base date of 1 January 2002. Selected titles in the In Force database have more extensive collections of historical versions, for example the *Crimes Act 1900*, and the *Environmental Planning and Assessment Act 1979*, and additional historical versions of key titles are in the process of being captured.

In ComLaw, historical versions of legislation can be obtained through 'View series' for acts and legislative instruments. You can then select the document for the relevant point in time. The tick logo will indicate whether a particular historical compilation for legislation is authorised.

In AustLII, the 'point-in-time' facility allows some current NSW legislation to be searched for historical versions of the legislation but this is not available for Commonwealth legislation. To search for historical versions of NSW legislation, click on the relevant legislation and then click on 'History' at the top of the page. You can then enter the date for the relevant point-in-time.

AustLII provides 'near complete' coverage for historical versions of NSW legislation from a base date of July 2002. But a word of warning is appropriate. The AustLII website contains a disclaimer which states that its point-in-time databases are to be considered experimental. While AustLII's point-in-time system provides a convenient way to view legislative changes over time, it should be cross-checked against other sources.

Extrinsic materials

Extrinsic material is now often referred to ascertain the meaning of legislative provisions: see section 34 of the *Interpretation Act 1987* (NSW); section 15AB of the *Acts Interpretation Act 1901* (Cth).

For NSW legislation, the explanatory notes and second reading speeches for bills assented to since 1997 can be located easily in the one place on the website for the New South Wales Parliament. For

NSW bills assented to before 1997, online access to the extrinsic materials is not as straight-forward. AustLII contains copies of NSW explanatory notes for bills from 1978 onwards. The second reading speeches may be available from Hansard, which is published online on the website for the New South Wales Parliament. There are two principal difficulties here. First, there is not, as yet, a complete historical record of Hansard for NSW online. Second, unless you know the specific date of the second reading speech for the relevant bill, it can be a time-consuming process to locate it through Hansard online.

In searching for extrinsic materials for Commonwealth legislation, it may be necessary to visit a number of websites to obtain the relevant explanatory memoranda and second reading speeches. The ComLaw website contains explanatory memoranda for certain bills. These can be accessed by clicking on 'Bills' at the top of the page, selecting the relevant bill and then clicking on 'Download'. AustLII contains copies of Commonwealth explanatory memoranda for bills from 1980. The second reading speeches can be obtained from Hansard, which is published online on the website for the Parliament of Australia. This contains a complete online record for Hansard from 1901.

Noteup in AustLII

A useful (and often overlooked) facility in AustLII for locating cases which have considered a specific statutory provision is Noteup. If you click on a section of an Act, the section will appear on the screen. One of the links at the top of the page is 'Noteup'. If you click on that link, it will bring up cases which have considered the statutory provision. As with all research tools and techniques, this facility does have limitations. It may, for example, bring up cases which have only referred to the relevant statutory provision in passing. On the other hand, in the writer's experience, there have been occasions when this facility has allowed easy and speedy identification of cases which have comprehensively or authoritatively considered a particular statutory provision.

Cases considering legislative provisions

Another useful technique for locating cases which have considered a particular statutory provision is to use a phrase from the relevant statutory provision

as the search query. For example, section 61 of the *Probate and Administration Act 1998* (NSW) provides that until probate or administration is granted, a deceased person's estate shall be deemed to be vested in the NSW Trustee 'in the same manner and to the same extent as aforesaid the personal estate and effects vested in the Ordinary in England'. If the phrase 'Ordinary in England' is used as the search query in AustLII, it will bring up cases which have considered section 61. It will reveal, for example, that the section was recently considered in *Gel Custodians Pty Ltd v The Estate of Wells* [2013] NSWSC 973.

The utility of this search technique depends on there being a phrase within the relevant legislative provision which is of an unusual or distinctive nature. Phrases which are of a more standard or recurring nature are likely to bring up cases dealing with legislation which is not on point.

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Restricted decisions

In NSW, some decisions are either temporarily unavailable due to further proceedings or permanently restricted from publication on NSW CaseLaw. On CaseLaw, unavailable and restricted decisions delivered after 1 January 2011 will display in the Medium Neutral Citation and Case Number pages as 'decision restricted'. Unavailable and restricted decisions delivered between 1999 and 2010 are not published, however, they are listed on CaseLaw on the Access Policy page.

Practitioners may have a legitimate reason to consider an unavailable or restricted decision for the purpose of a case in which they are involved. It may be, for example, that the restricted decision considers the operation of a particular legislative provision which is relevant to a case in which a barrister is briefed. To accommodate this, the Judicial Commission of NSW has made certain unavailable and restricted decisions available to practitioners who need to refer to such

decisions for the purpose of a particular court case. These decisions are available online, obviously on a restricted basis, and only through the Bar Library.

LawCite

The most impressive freely available case citator is LawCite which is accessible through the WorldLII and AustLII websites. LawCite is a collaborative project of the Free Access to Law Movement, the members of which include WorldLII, AustLII, BAILII, CanLII, NZLII and others. It allows searches for cases which have considered a particular term, legal principle or other cases. The search is conducted over a vast database covering decisions of Australian and overseas jurisdictions.

The most impressive freely available case citator is LawCite which is accessible through the WorldLII and AustLII websites.

A key advantage of LawCite is that once the search is conducted, there is a hyperlink to the cases brought up by the search result. This can pose a considerable advantage over case citators provided by subscription-based commercial publishers. A search in CaseBase, accessible through Lexis Nexis, may bring up English cases in the search results. However, if the user's subscription to Lexis Nexis does not extend to overseas decisions, there will be no hyperlink to these decisions in the search results. This is not the case with LawCite. To take a random example, a search for cases which have considered *Conquer v Boot* [1928] 2 KB 336, a decision dealing with the principle of *res judicata* in respect of causes of action under a building contract, will give results showing the consideration of that case by the courts of England, Australia, New Zealand, Malaysia, Fiji and Hong Kong. There is hyperlink to the text of all of these decisions.

Incorporated Council of Law Reporting

One advantage of subscribing to commercial legal publishers is that it allows easy preparation of pdf copies of authorities from the authorised law reports. This can result in a huge saving of time when copies of authorities from the authorised law reports are required for court. Gone are the days of having to arrange for the case to be photocopied. For the benefit of this service however, there is the cost of the subscription. However, the free-to-air website of the Incorporated Council of Law Reporting (ICLR) allows pdf copies of cases to be obtained on an as needed basis without the requirement for a subscription. ICLR publishes the official law reports for the superior and appellant courts in England and Wales. Its website allows pdf versions of the authorised reports of individual cases to be obtained without the need to have a subscription. Cases can be bought over the internet for £12 each as and when they are required for court use.

Conclusion

This article provides only a sampling of the many resources for legal research which are now freely available over the internet. No single website can cater for all legal research requirements. An essential aspect of conducting efficient and effective legal research is to identify which particular website and research technique will be best suited for the particular research task at hand.

Endnotes

1. The writer is grateful for the valuable assistance and guidance provided by Lisa Allen of the Bar Library. Any errors remain those of the writer.
2. See the Hon Justice Lindsay, *The future of authorised law reporting in Australia*, *Judicial Officer's Bulletin*, Oct 2013, Vol 25 No 9, p76.