Digitising and searching
Australasian colonial legal history

Graham Greenleaf, Philip Chung, Andrew Mowbray, and Brent Salter* (AustLII)**


Abstract

Australasia has a rich and complex legal history since the first European settlement, and our knowledge of legal practice and precedent in the colonies of Australasia is still developing. The Australasian Colonial Legal History Library project is an ARC-funded project being carried out by the Australasian Legal Information Institute (AustLII) <http://www.austlii.edu.au> since January 2012 with input from 18 legal historians from Universities across Australia. Cooperation with other parties who have already built invaluable and pioneering online resources for Australasian colonial law is an essential part of the project.

AustLII is a free access online service which has operated since 1995 as a joint facility provided by UNSW and UTS Law Faculties, and now provides over 500 databases, with usage of over 700,000 page accesses per day. The Colonial Legal History Library project is therefore being built within a large and mature research infrastructure, and this presents challenges as well as advantages. In particular, many of the AustLII databases cover the whole period from the formation of a colony to the present, so the databases for this Library have to be ‘virtual’ databases extracted from this larger corpus.

The paper explains the construction, content and features of the first version of the Library, which as of July 2012 contains 12 databases including one case law database from each of the seven colonies (including New Zealand), some of which are ‘recovered’ cases from newspaper reports, the complete annual legislation to 1900 from three of the colonies, plus legal scholarship concerning the colonial era. These databases provide over 20,000 documents so far, and the Victorian Government Gazette 1851-1900 another 200,000. The Library also includes the LawCite citator, which allows the subsequent citation history of any colonial case to be tracked, including if cited by courts outside Australasia.

The medium term aim of this part of the ARC project (which extends to 1950 in its full scope) is to include all legislation, reported cases, and cases which can be ‘recovered’, from the inception of each colony to 1900. Scholarship (old and new) and key source materials are also being added, as budgets permit. We hope that the Library will be a leader in the creation of legal history resources from the colonial era.

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** Other AustLII staff and Chief Investigators have made and are making considerable contributions to this paper and to the system development that it describes. The project’s Chief Investigators are mentioned later. AustLII staff including Carol Wong, Nina Wu, Jill Matthews and Armanda Scorrano have contributed to particular resources in the Library.
Contents

Complexity and colonial legal histories..........................................................................................3

The AustLII context: Scope but limited historical depth.................................................................3

The Australasian Legal History Library LIEF project....................................................................4
  Components of the broader LIEF project ....................................................................................6
  Technologies to be used................................................................................................................7

Building a searchable Library for colonial legal history..............................................................8

Major building blocks: Colonial Acts ............................................................................................11

Major building blocks: Cases, reported and recovered.................................................................12
  Digitising reported cases.............................................................................................................13
  Recovering case law before case reports (i) Migration of existing collections .......................13
  Recovering case law before case reports (ii) Building collections from Trove .......................14

A virtual database of scholarship..................................................................................................16

Digitisation of historical scholarship and sources.........................................................................17

The LawCite citator as a linking mechanism..................................................................................18

Assisting Internet-wide research..................................................................................................20

Future directions .............................................................................................................................21

Appendix: Details of project Chief Investigators ..........................................................................22

References........................................................................................................................................23
Complexity and colonial legal histories

Australasia has a rich and complex legal history since the first European settlement, and our knowledge of legal practice and precedent in the colonies of Australasia is still developing. Historians cannot understand the transition to federation without understanding its legal context. Since the common law is made largely through the iterative interaction of legislation and precedent cases, the recovery of early case law and legislation is extremely important. An understanding of history is equally important to lawyers. It is anachronistic to apply modern understandings of law to the past. Lawyers sometimes apply present day legal standards to legal history. Their training sometimes emphasises the universality of legal principles, potentially driving a wedge between them and historians who look for the contingency and context of law. To understand legal history it is more valuable to see the past in its own terms, to rely on the ‘is’ or ‘was’ of historians rather than the ‘ought’ of lawyers (Salter, 2010).

Despite a short 200 years of legal history (excluding the last quarter century as ‘the present’), complexities arise from law coming from ten jurisdictions to an extent greater than in unitary states. The Australian colonies (New South Wales, Tasmania, Victoria, Queensland, Western Australia, South Australia) that became part of the Commonwealth of Australia upon federation in 1901 brought with them six separate (but sometimes overlapping) bodies of legislation, and separate histories of courts and cases reported in many and various ways. New Zealand, with its own interconnected Trans-Tasman legal history, adds to this complexity. Historical research involving the law in Australia’s colonial period, particularly if it aims to state general propositions concerning the whole of Australia or Australasia, is therefore a difficult task. There are six (or seven) jurisdictions with separate bodies of texts (at least by the end of the nineteenth century) and they are scattered physically across a continent. While Australia is well-served by libraries and archives, in comparison with many places, access to, and comparison of, source materials remain major challenges for a historian, and sometimes for a lawyer. This paper is about an attempt to systematically address these problems, and to do so across all the Australasian colonial jurisdictions.

The AustLII context: Scope but limited historical depth

The Australasian Legal Information Institute (AustLII) <http://www.austlii.edu.au> is a free access ‘LII’ which has operated since 1995, and the second to be established globally. It has played a leading role in the development of the international Free Access to Law Movement (Greenleaf, 2011). After seventeen years development, AustLII now provides over 500 databases of Australasian legal materials, including case law, legislation, treaties, law reform and legal scholarship from all Australasian jurisdictions. The New Zealand content in AustLII comes from the New Zealand Legal Information Institute (NZLII) <http://www.nzlii.org>, operated jointly by AustLII and Otago Law School. At mid-2012 AustLII holds the full texts of 500,000 case decisions, 1.3 million legislation items, 10,000 treaties, over 50,000 legal scholarship items, and some thousands of law reform reports. The system receives approximately 700,000 page accesses per day, about 20% of all law-related Internet traffic in Australia (HitWise estimate). The Sino search engine used by AustLII, and other software developed for large-scale legal information systems, such as hypertext mark-up software and the LawCite citator software, have been developed by AustLII’s Directors and technical staff in stages since the early 1990s. (For details of all the above, see Greenleaf, Mowbray and Chung, 2011, 20100.

AustLII is a large and mature legal information system. However, most of the content found on AustLII goes back only around 20 years to when AustLII was formed. It has relatively little historical depth as yet. There are some notable exceptions: all High Court decisions and Australian

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1 Ignoring for the moment the subsequently separate jurisdictions of the Commonwealth, Northern Territory and Australian Capital Territory, since this paper is about colonial legal history.
Digitising and searching Australasian colonial legal history

Digitising and searching Australasian legal history back to federation in 1901, all NSW, Victorian and New Zealand annual Acts back to the start of those colonies, all reported Victorian Supreme Court cases since 1876, all Australian treaties since Federation, and the complete collections of most academic laws journals that started in the 50s and 60s back to their first issues. These are some useful foundations for a legal history collection, but obviously only a small portion of what is desirable, for AustLII and its users.\(^2\)

The legal history project that we will now describe is therefore being established within existing large scale research infrastructure, of which it is not the dominant part, even though it is a substantial project in itself. AustLII’s existing structure and technologies will determine, to some extent, the way in which the legal history resources are developed.

**The Australasian Legal History Library LIEF project**

In 2012 AustLII embarked on a program of comprehensive digitisation of the key sources of Australasian legal history back to the inception of each colony and territory, with two years intial funding. Eighteen leading legal historians\(^3\) from eleven Australian Universities have collaborated with AustLII and NZLII researchers\(^4\) to obtain an Australian Research Council LIEF (Linkage, Infrastructure, Equipment and Facilities) grant to build *The Australasian Legal History Library*. The ARC has provided $330,000, with the partner Universities providing the balance of the total project budget of A$750,000. The Australian Law Librarians Association and three law firms are partners in the digitisation of legislative materials, including Bills and Explanatory Memoranda as well as Acts. The project is also assisted by a Government Advisory Committee of distinguished court librarians and representatives of government legal publishers.\(^5\)

Although the colonial period is the focus of this paper, it must be stressed that the LIEF project has a broader ambit, intending to cover legal materials up to 1950. The quantity of such materials from the first half of the twentieth century is far larger than that from the Colonial period (pre-1901 for Australia, pre-1908 for New Zealand). We have to maintain a balance between these two periods, particularly in resource allocation. Much of AustLII’s user-base is probably more interested in the twentieth century materials.

One initial question posed by this project is ‘can you really create a comprehensive and consistent digital collection of the legal history of ten jurisdictions for about $75,000 per jurisdiction?’ If the answer is yes, it will be because of a combination of technological innovation, successful negotiations with data sources including other publishers,\(^6\) and the expertise of the eighteen legal historians involved in the project. Sustainability also has to be considered. AustLII Foundation Ltd, a non-profit company limited by guarantee owned by UTS and UNSW, with charitable status as an online public library, raises donation funding (approximately A$1M per year for the past five years: see AustLII Annual Review 2011) to sustain resources built on AustLII, such as those built under

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2 AustLII’s 2010 user survey showed high demand for greater historical depth of content, stemming from a variety of factors: higher user expectations due to increasing ease of digitisation; currently inadequate access tools; increasing storage problems, resulting in library disposal of historical collections; and the limitations of commercial and government systems.

3 A/Prof Shaunnagh Dorsett (University of Technology, Sydney); Dr Lisa Ford, Dr Catherine Bond (The University of New South Wales); Prof Amanda Nettelbeck, Prof John Williams, A/Prof Robert Foster, Em/Prof Wilfrid Prest (The University of Adelaide); Prof Andrew Buck (Australian Catholic University), Prof Bruce Kercher (Macquarie University); Prof Ross Grantham, A/Prof Peter McDermott (The University of Queensland); Prof Mark Finnane (Griffith University); Prof Mark Lunney, Ms Judith Jones (The Australian National University); Prof Helen Irving, A/Prof Anne Twomey (The University of Sydney); Prof Margaret Otowski, A/Prof Stefan Petrov (University of Tasmania); and Prof Michael Adams (University of Western Sydney). See the Appendix for details of the research focus of the project’s Chief Investigators.

4 Prof Andrew Mowbray (UTS) and Prof Graham Greenleaf (UNSW). A/Prof Donna Buckingham of Otago University participated via NZLII.

5 The membership of the project’s Courts and Government Advisory Committee is at present being finalised.

6 This project exemplifies a free access legal information institute (LII) treating content it has created as assets which can be leveraged to obtain other assets for free access and illustrates, incidentally, how ‘free access’ is a different goal from ‘open content’.

this project. Although sustainability of historical databases (often ‘one off’ static creations) is less of a problem than for ongoing legal databases, the ongoing maintenance of the whole AustLII infrastructure is necessary to make the databases accessible is an important and contribution by the Foundation to this project.

There are already numerous important and successful digitisation projects in Australasia concerning aspects of legal history, other than those involving AustLII. These include the digitisation of state legislation by the legislation offices of Victoria, NSW, WA and New Zealand (discussed later); the State Library of Victoria’s digitisation of the ‘Victorian Government Gazette;’ the ‘recovery’ into online databases of cases by the Kercher and Kercher/Petrow projects, and by the New Zealand ‘Lost Cases’ project (discussed later); the University-based projects on digitisation of legislation in Queensland and South Australia, and the extensive digitisation project being undertaken by the Supreme Court of Queensland Library. AustLII’s Australasian Legal History Library project is already receiving invaluable cooperation from these existing projects.

The Legal History Library is intended to benefit the research of specialist legal historians (in Australasia and overseas), particularly those engaged in comparative legal history; researchers in all aspects of the humanities because of the extent to which law and legal institutions permeate their work; family and local history researchers; and all practising lawyers because of the long ‘half life’ of legal information and the continuing relevance of old case law and legislation to current legal problems. The principal group of users will however be Australian academic legal researchers, in law and social sciences as well as other users across the sciences and humanities. Law permeates all aspects of history, political science and sociology to some degree. Copyright and patent law, public health regimes, and environmental regulatory systems illustrate how law affects other disciplines, and why this resource will enable Australian researchers to enrich their scholarship. There are numerous specific projects being carried out by the Investigators of this project which will benefit from the Library, and we expect many others will also benefit. We hope this project will also expand international interest in Australian legal history. Overseas scholars of comparative legal history will be very likely to use these materials because of their accessibility, adding to our own understanding of our past. We are not aware of similar projects aiming at such comprehensive


8. The OzCase Project ‘Queensland Historical Legal Collection’ is an initiative led by the Queensland University of Technology Law Library, in conjunction with other Queensland Universities, government agencies and law firms. It hosts numerous primarily legislation-related historical resources for Queensland.

9. Flinders University Academic Commons has digitised and developed a database of ‘Acts of the Parliament of South Australia 1837 – 2002’ with funding assistance from the Law Foundation of South Australia.

10. The Queensland Supreme Court Library’s ‘Historical Document Digitisation Program’ is facilitated by a legislative amendment ‘which allows the Library to receive and preserve historic documents without affecting any legal professional privilege attached to documents. Access to such material is restricted to items required for educational or historical purposes and that are older than 100 years’. The Library ‘is producing high resolution images of documents using an archival-quality digital scanner, which are preserved together, with full text transcripts to facilitate convenient full-text searching and retrieval. Material will be published online in the future, as permissible under the amended Act’. Materials to be digitised include early Queensland cases and legislation.

11. The Rule of Law in History and Memory: Australian and Canadian Settler Frontiers’ (Nettelbeck, Foster, and others); ‘Convicts, Empire and Order, 1783-1857’ (Ford); ‘Understanding forms of violence and their regulation in Australian history’ (Finnane); ‘Balancing Security Priorities with the Rule of Law and Democratic Values’ (Finnane); ‘New Zealand’s Lost Cases’ (Dorsett); ‘Australian Colonial Copyright’ (Bond); ‘Colonial Criminal Law’ (Finnane); ‘A Comparative Constitutional History of Citizenship Law and Gender’ (Irving); ‘The History of Equity in Australasia’ (Dorsett); ‘An Australian Law of Tort? The History of Tort Law in Australia 1900-1945’ (Lunney); ‘Comparative Legal History of Laws and Cases Relating to the Protection of Animals in Australia 1870 to 1914’ (Petrow); ‘Rediscovering South Australia’s Lost Cases’ (Williams) and ‘A Comparative Study of the Prerogative and Reserve Powers in Commonwealth Nations’ (Twomey).
coverage, at least not in multi-jurisdictional federations. We therefore hope the Library will become a leader in the digitisation of national legal histories.

Components of the broader LIEF project

The six key elements in the creation of the Library (both in its Colonial and post-Colonial aspects), as set out in the project’s funding application, are as follows:

(i) Creating a comprehensive collection of free access court decisions: The largest task in the project, now feasible, is to scan all decisions in the main law report series (unless already digitised collections can be obtained), extract searchable text using optical character recognition (OCR), and make them searchable in a consistent fashion using Sino. We intend to do so from inception of each series up to 1950 (where copyright problems commence), for all jurisdictions (estimated 25-30,000 decisions). After 1950, negotiations and data swaps will sometimes be necessary. Other available case law outside the report series will also be included, including unreported decisions from some jurisdictions, and cases extracted from newspaper reports. The reported series comprise the bulk, but these additional sources of cases law provide much of the interest for legal historians.

(ii) Creating a comprehensive historical collection of legislation: Victorian, NSW and New Zealand historic legislation databases are already completed and on AustLII or NZLII. Annual legislation will be scanned for the remaining seven jurisdictions, or by negotiating cooperative arrangements to access existing digital collections. Scanning of Bills and Explanatory Memoranda is being undertaken with ALLA and law firm assistance. This project does not attempt to create ‘point-in-time’ or consolidated legislation databases, only to include all legislation as it was enacted.

(iii) Digitising key historical sources and scholarship: The earliest Australasian law journals and treatises, and key documents now only available from archives and libraries, will be digitised and made far more conveniently available to all researchers. Articles on legal history from over 80 law journals already on AustLII, and scholarship repositories, will be included in the Library through creation of virtual databases (discussed later). Handwritten sources will be digitised, and searchable abstracts created and uploaded by project investigators.

(iv) Tracking cases, legislation, scholarship and treaties: AustLII’s LawCite <http://www.lawcite.org> will track how the newly-added historical cases cite other cases, or are themselves cited by later cases or scholarship. Similarly, legislation cited or discussed can be tracked. LawCite (developed by AustLII from another ARC grant), is the only free access legal citator providing international coverage of cases and scholarship. It will show the extent to which Australasia’s historic legal cases continue to be sources of authority both within Australia and in the rest of the world, to an extent never before possible.

(v) Expanding research Internet-wide: We will add to the Library a catalog of web sites relating to Australasian legal history, and a ‘Law on Google’ search that automatically converts an ‘AustLII syntax’ search of the Library into a properly formatted Google search, and automatically limits it to Australasian legal history. The purpose of these tools is to make it easy for Library users to expand their research to materials not found in the Library itself.

(vi) Specialised interface(s) for legal history researchers: Although all of the materials aggregated for this project will be searchable from the normal AustLII interface, along with all other non-historical materials on AustLII, separate interfaces will also be built to assist historical researchers. An ‘Australasian Colonial Legal History Library’ interface, from which only all pre-1900 materials can be searched, will be the first created. Other history-focused interfaces, including one for Australian Federation materials, and one for New
Zealand legal history, are likely to follow. This first interface and its content is the focus of the rest of this paper.

**Technologies to be used**

AustLII’s existing technical platform provides most of the hardware and software needed to create the Library. AustLII’s main server is an Oracle Sun Fire X4470 server with 32 cores and 128GB of RAM. It is attached to an Oracle 7420 ZFS NAS storage system with a raw capacity of 60TB. This will shortly be upgraded to an Oracle Sun Fire X4800 server with 128 cores and 512GB of RAM.

At present, AustLII has high quality equipment for high throughput destructive scanning, but not for non-destructive scanning of rare items.

*Destructive scanning: (i) Guillotine removes spines of law reports or legislation; (ii) resulting loose pages fed through duplex scanner*

The new equipment required for the project is primarily an Automated Book Scanning Digitisation System to handle large quantities of historical documents that require non-destructive scanning. One potential scanner is shown below.

*Non-destructive scanning: Dalek-like scanner under consideration*
A server/storage system to provide the necessary processing power for scanning and OCR conversion of the large collections of legal materials, subsequent processing, and consequent storage needs (up to 60TB), plus portable digitisation equipment, is also being purchased.

**Building a searchable Library for colonial legal history**

The AustLII context of a Colonial Legal History Library means that many of the databases in which legal materials from the colonial period appear are databases which also cover a longer, post-colonial, time span (for example *Victorian Law Reports 1874-1956* and *New South Wales Acts As Made 1824- to the present*), or are scholarship concerning legal history which appear in law journals, academic repositories or judicial scholarship databases dealing with many other legal issues. In both these circumstances the solution is to construct for the Library ‘virtual’ databases which are automatically constructed sub-sets of the broader ‘real’ databases (see Greenleaf 2009). For the case and legislation databases the building of the virtual databases is relatively straightforward, as they only need to be delimited by the data of an Act or of the publication of a case being prior to 1901. However, for legal scholarship the process is more complex, as described below under ‘A virtual database of scholarship’.

The first version of the interface for the Colonial Legal History Library (now accessible at <http://www.austlii.edu.au/au/special/legalhistory/>) is set out below, and shows both currently existing databases and those in the course of being developed. There are 12 databases so far, including at least one case law database for each colony. The Victorian databases are by far the most comprehensively developed, because of a previously funded project.\(^{12}\) Inclusion of the *Victorian Government Gazettes 1851-1900*, in cooperation with the State Library of Victoria, deserves mention both for its size (over 200,000 searchable items), and because it is not yet duplicated for other colonies.

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Digitising and searching Australasian colonial legal history

The Colonial Law Library prototype as at 9 July 2012

All available databases can be searched together, or one or more can be selected. The AustLII User Guide\(^\text{13}\) is also the user guide for this Library, and should be read before searching the Library, if only to see that the search engine is not the same as Google, and that quite sophisticated searches are possible.

Digitising and searching Australasian colonial legal history

Example of first page of search results for search: debt* near (prison or imprisonment)

The first page of results of an example search for debt* near (prison or imprisonment) are shown above, listing 20 or 1301 found items in likely order of relevance. They show legislation from three colonies (New Zealand, New South Wales, Victoria), cases from three colonies (NSW, Tasmania,
Digitising and searching Australasian colonial legal history

and Victoria) and one journal article. These jurisdictions reflect the limited range of databases yet available, but make the point of how easy it is to do cross-jurisdictional searches. Use of the By Database display option shows that on later pages of results there are results from South Australian and Queensland case law databases, and articles from a variety of other law journals.

The results can also be displayed By Date, which by default shows the most recent first, but the ‘Earliest First’ option can be chosen, which in this case shows that the first case concerning imprisonment for debt in the colonies is in *Palmer v Jones* [1796] NSWSupC 4; [1796] NSWKR 4 (27 August 1796), where imprisonment was avoided by the assignment of labour. Another display option is By Citation Frequency, which shows that *In Re Sandilands, Ex Parte Browne* [1878] VicLawRp 152; (1878) 4 VLR (L) 318 has been cited by five other cases, the most recent being in 2008.

The size of the databases currently in the Library is shown below.

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Superior Courts of New South Wales</td>
<td>2294</td>
</tr>
<tr>
<td>Superior Courts of New South Wales – Moreton Bay</td>
<td>258</td>
</tr>
<tr>
<td>Superior Courts of South Australia</td>
<td>1917</td>
</tr>
<tr>
<td>Superior Courts of Tasmania</td>
<td>563</td>
</tr>
<tr>
<td>Tasmanian Law Reports</td>
<td>62</td>
</tr>
<tr>
<td>Victorian Law Reports</td>
<td>4265</td>
</tr>
<tr>
<td>Superior Courts of Western Australia</td>
<td>332</td>
</tr>
<tr>
<td>NSW Acts As Made</td>
<td>2505</td>
</tr>
<tr>
<td>Victorian Historical Acts</td>
<td>1828</td>
</tr>
<tr>
<td>Victorian Gazettes</td>
<td>206615</td>
</tr>
<tr>
<td>NZ Acts As Enacted</td>
<td>4380</td>
</tr>
<tr>
<td>Journals and Scholarship</td>
<td>182</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>225201</strong></td>
</tr>
</tbody>
</table>

*Searchable items in the Library (as at 9 July 2012)*

The Library therefore has almost 20,000 hits of legislation, case law and scholarship, plus over 200,000 Victorian Gazette items. Aside from the gazettes, the 20,000 can be expected to at least triple over the next 18 months.

**Major building blocks: Colonial Acts**

This is likely to be the first major component of the Library to be completed. The current state of progress is shown in the following table. All colonial Acts from five of the seven jurisdictions will soon be available.

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Period</th>
<th>State of processing</th>
</tr>
</thead>
<tbody>
<tr>
<td>NSW</td>
<td>1824-1900</td>
<td>On AustLII</td>
</tr>
<tr>
<td>VIC</td>
<td>1851-1900</td>
<td>On AustLII</td>
</tr>
<tr>
<td>NZ</td>
<td>1841-1900</td>
<td>On AustLII</td>
</tr>
<tr>
<td>QLD</td>
<td>1824-1900</td>
<td>Currently sourcing</td>
</tr>
<tr>
<td>SA</td>
<td>1837-1900</td>
<td>Currently sourcing</td>
</tr>
<tr>
<td>TAS</td>
<td>1826-1900</td>
<td>AustLII digitising</td>
</tr>
<tr>
<td>WA</td>
<td>1832-1900</td>
<td>Held, AustLII processing</td>
</tr>
</tbody>
</table>

*Table of Colonial Annual Acts*

Digitisation of the statutes of NSW, Victoria and New Zealand which are on AustLII have been done by their respective legislation offices, followed by OCR processing and formatting by AustLII. The digitised WA statutes, provided by the WA State Law Publisher, are currently being processed in
the same way. AustLII is currently scanning Tasmanian statutes. Negotiations to obtain previously
digitised South Australian and Queensland statutes are in train.

The advantages of having these virtual legislation databases in one searchable location include:

- they allow cross-jurisdictional comparative searches over all colonial jurisdictions, with
databases presented in a consistent format;

- the availability of all legislation from a jurisdiction, and the capacity to search every word of
every Act, makes it possible to make assertions based on comprehensive legislation
research; and

- use of the ‘Note up’ button located at the head of each web page for an Act enables cases
and scholarship referring to the Act to be retrieved without the need to learn any search
skills.

**Major building blocks: Cases, reported and recovered**

This is the most complex part of the project, involving the digitisation of nineteenth century series
of law reports, where they exist, and the ‘recovery’ from newspaper reports of cases in the periods
before law report series existed in various colonies. In three jurisdictions, pioneering work on
recovery of cases has already been done, and these collections are being incorporated into the
Library. The following table gives a snapshot of the elements of the whole project for each colony.

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Report/Source</th>
<th>Period</th>
<th>State of processing</th>
</tr>
</thead>
<tbody>
<tr>
<td>NSW</td>
<td>Kercher Online Report Series [Court of Criminal Judicature, Court of Civil Jurisdiction, Supreme Court of NSW]– including districts of Port Phillip and Moreton Bay</td>
<td>1788-1862</td>
<td>Held, being processed</td>
</tr>
<tr>
<td>NSW</td>
<td>A selection of Supreme Court cases in New South Wales from 1825 to 1862 (Legge Reports)</td>
<td>1825-1862</td>
<td>Being digitised</td>
</tr>
<tr>
<td>NSW</td>
<td>Reports of cases argued and determined in the Supreme Court of New South Wales (Supreme Court Reports)</td>
<td>1862-1876</td>
<td>Currently sourcing</td>
</tr>
<tr>
<td>NSW</td>
<td>The New South Wales law reports</td>
<td>1880-1900</td>
<td>Currently sourcing</td>
</tr>
<tr>
<td>VIC</td>
<td>Victorian Law Reports</td>
<td>1874-1900</td>
<td>On AustLII</td>
</tr>
<tr>
<td>QLD</td>
<td>Reports of Cases Argued and Determined in the Supreme Court of Queensland</td>
<td>1860-1881</td>
<td>Currently sourcing</td>
</tr>
<tr>
<td>QLD</td>
<td>Beor’s Queensland Law Reports, Cases in Equity, Common Law, Admiralty, Insolvency and Criminal Law</td>
<td>1871-1878</td>
<td>Currently sourcing</td>
</tr>
<tr>
<td>QLD</td>
<td>Queensland Law Journal Reports</td>
<td>1881-1900</td>
<td>Currently sourcing</td>
</tr>
<tr>
<td>TAS</td>
<td>Kercher and Petrow Online Report Series</td>
<td>1824-1843</td>
<td>Held, being processed</td>
</tr>
<tr>
<td>TAS</td>
<td>Gap in major reporting series</td>
<td>1844-1896</td>
<td>Building from Trove</td>
</tr>
<tr>
<td>TAS</td>
<td>Reports of Cases Determined in the Supreme Court of Tasmania</td>
<td>1897-1900</td>
<td>Being digitised</td>
</tr>
<tr>
<td>SA</td>
<td>Gap in major reporting series</td>
<td>1836-1864</td>
<td>Building from Trove</td>
</tr>
<tr>
<td>SA</td>
<td>Pelham’s Reports - Reports of Cases in the Supreme Court of South Australia and Vice Admiralty Court</td>
<td>1865-1866</td>
<td>Being digitised</td>
</tr>
<tr>
<td>SA</td>
<td>South Australian Law Reports</td>
<td>1867-1900</td>
<td>Currently sourcing</td>
</tr>
<tr>
<td>WA</td>
<td>Gap in major reporting series</td>
<td>1833-1898</td>
<td>Building from Trove</td>
</tr>
<tr>
<td>WA</td>
<td>Western Australian Law Reports</td>
<td>1899-1900</td>
<td>Currently sourcing</td>
</tr>
<tr>
<td>NZ</td>
<td>Lost Cases Project</td>
<td>1841-1869</td>
<td>Held, being processed</td>
</tr>
<tr>
<td>NZ</td>
<td>New Zealand Law Reports</td>
<td>1883-1906</td>
<td>Currently sourcing</td>
</tr>
</tbody>
</table>

14 AustLII is also interested in publishing the 8 volumes of reports from Port Phillip and NSW commonly referred to as the a’Beckett series: a’Beckett’s Reserved Judgments (1847-1853, 6 vols); Reserved and Equity Judgments of the Supreme Court of New South Wales (1845, 1 vol); Williams’ Report of Practice Cases (1846, 1 vol).

15 The interim gap between 1876-1880 might be filled by: Cases Argued and Determined in the Supreme Court of New South Wales in its Common Law Jurisdiction in the year 1877 ("Knox Reports").
There are several colonies where there are considerable gaps in colonial law reporting. One of the project’s main aims is to build case collections from colonial periods where no formal report series have been published. There are two primary sources: (i) existing ‘recovered cases’ collections; and (ii) new law report collections to be built for this project from unreported periods, using newspapers digitised as part of the National Library’s *Australian Newspapers Digitisation Program* (Trove newspaper collection). Before discussing these aspects, we will first look at digitising reported case series.

**Digitising reported cases**

AustLII has already digitised the Victorian Law Reports from 1874 to 1900 and they are in the Library. A large amount of material is awaiting processing by AustLII staff, including the Legge Reports, a selection of Supreme Court cases in NSW from 1825 to 1862; the Supreme Court of Tasmania cases for 1897 to 1900; and Pelham’s Reports - Reports of Cases in the Supreme Court of South Australia and Vice Admiralty Court, from 1865 to 1866. This work involves destructive scanning, OCR processing, extraction of metadata, and then database creation. Such digitisation from scratch is very time consuming, and a single law report series may take one person months.

Several Supreme Court libraries, and various other members of the Australian Law Librarians Association (ALLA), have been exceedingly helpful in assisting AustLII’s acquisition of law report series for destructive digitisation. We are currently awaiting finalisation of an agreement to supply AustLII with a set of the Western Australian Law Reports from 1899 to 1900, for such digitisation.

AustLII wishes to source sets of the following reports for digitisation (destructive if possible):

- The New South Wales Law Reports 1880-1900;
- The Reports of Cases Argued and Determined in the Supreme Court of Queensland 1860-1881;
- Beor’s Queensland Law Reports, Cases in Equity, Common Law, Admiralty, Insolvency and Criminal Law 1871-1878;
- The Queensland Law Journal Reports, 1881-1900;
- The South Australian Law Reports for 1867-1900, and
- The New Zealand Law Reports from 1883-1900.

All contributions to the project are welcome.

**Recovering case law before case reports (i) Migration of existing collections**

Projects concerning four Australasian colonies have pioneered the recovery of law reports from newspaper and archival material, and have agreed to have their collections integrated into the Colonial Law Library.

Bruce Kercher’s online report series from *New South Wales*, The Macquarie Case Law project, has been integrated into the Library. This pioneering online colonial law report series, consisting of detailed commentary and records from Australia’s first newspapers and archives, was one of the first of its kind in the world to bridge gaps in law reporting through online publication. The online
project now has cases reported from 1788 to 1899. The project, supported at an earlier period by an ARC Large Grant, has been at the heart of Kercher’s research activities for more than a decade. The overall aim is to recover the forgotten case law of the Australian colonies, and place it in the context of its social and economic period and as part of the British legal empire after the American revolution. The online cases are both a database of primary source material and a research publication. They have contributed to numerous books and articles published by other researchers. Through them, we have come to understand the reception of law in a British colony of the late eighteenth and early nineteenth centuries in a level of detail unavailable anywhere else in the world.

In relation to *Queensland*, the editors of the online Kercher Reports have also published a small collection of cases from Moreton Bay before separation from New South Wales. The *Moreton Bay Courier* was a key source of law reporting before and after separation. These have also been incorporated into the Library.

The *Hobart Town Gazette*, first published in 1816, was an important source for law reporting in *Tasmania*. Many of the cases published online by Bruce Kercher and Stefan Petrow, *Decisions of the Nineteenth Century Tasmanian Superior Courts* (currently 1824-1843)\(^{20}\) refer to the *Gazette* as a primary source.\(^{21}\) The Kercher/Petrow online database will also migrate to the Library.

The *New Zealand Lost Cases Project*,\(^{22}\) under the general directorship of investigator Shaunnagh Dorsett, will also be included in the Library. This project aims to “list all cases heard in the Supreme Court or Court of Appeal between 1841-1883”,\(^{23}\) although it goes much further than listing cases. The project team has, to date, completed the period 1841-1869. The project editors identify the following types of cases listed in the database: \(^{24}\) Supreme Court Criminal, Civil and Public Cases, 1842-1869 (plus some cases from the 1870s and 1880s); Supreme Court Divorce and Lunacy Cases; Court of Appeal cases, 1863-1869; Appeals from the Resident Magistrate’s Court, District Court and Warden’s Court, 1858-1869; and Vice Admiralty Court cases, 1842-1869.” Bankruptcy, chambers applications and probate cases have been excluded from the database.\(^{25}\)

One of the most valuable aspects of the *Lost Cases Project* is the source database consisting of over 1700 records “ranging from judge's notebooks, court documents, official correspondence to personal manuscripts. Many notebooks and minute books contain detailed case indexing and some correspondence has been transcribed.”\(^{26}\) The project team has digitised copies of judge's notebooks from the 1840s to the 1880s.

**Recovering case law before case reports (ii) Building collections from Trove**

The National Library’s Trove system organises each newspaper edition into ‘articles’ and each article can be downloaded into a pdf format. A sub-group of the project’s investigators is involved in identifying and downloading legally or historically significant cases.\(^{27}\) These pdf articles are text

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\(^{21}\) A consolidated index was published in 1847 for the period 1833-1843.


\(^{25}\) The editors’ comment: “This decision was based on the challenges posed by the existing archival material (discussed in further detail later in the document)”.

\(^{26}\) See Lost Cases site: <http://www.victoria.ac.nz/law/nzlostcases/Sources.aspx>.

\(^{27}\) Prof Bruce Kercher (Macquarie University); A/Prof Shaunnagh Dorsett (University of Technology, Sydney); Dr Lisa Ford, Dr Catherine Bond (The University of New South Wales); Prof Amanda Nettelbeck, Prof John Williams, A/Prof Robert Foster, Em/Prof Wilfrid Prest (The University of Adelaide); A/Prof Peter McDermott (The University of Queensland); Prof Mark Finnane (Griffith University); Prof Mark Lunney, Ms Judith Jones (The Australian National University); A/Prof Stefan Petrow (University of Tasmania).
searchable where the quality of the newspaper image is clear enough to be recognised. In order to give some guidance on the content of the case a brief phrase or catchword has been included with each indexed case record.\textsuperscript{28} Where the text in the newspaper article is high quality, text within documents will be searchable. To start with, we have taken a ‘breadth first’ approach, aiming to include as many cases as possible, with the minimum functionality of browsing and (usually) searching. We intend that later versions of the database will add detailed catchwords as cross-references are made to the archival record of the case. The text in the earliest papers is, in many instances, difficult to read in the early version of the databases built so far. We have included all records where we have at least been able to determine the names of the parties and the issue in the case. By the mid 1840s the newspaper images are consistently clearer. Case records are often reported over multiple days and multiple instances. We have assigned a unique AustLII citation to each instance of a case record. Extraction from Trove is commencing with work from three colonies.

The only formal law reporting from nineteenth century Tasmania, apart from the Kercher/Petrow online project (1824-1843) is the two volume series edited by Nichols and Stops published in 1906-1907: \emph{Reports of cases determined in the Supreme Court of Tasmania} (covering the period 1897-1904).\textsuperscript{29} There is a fifty year gap in reporting between the Kercher/Petrow project and the publication of the \emph{Nichols and Stops Reports}, 1897. The Colonial Legal History Library aims to fill this gap with the development of an online collection of Tasmanian Supreme Court records. These records will be recovered from the newspapers published on Trove and a collection of newspaper extracts housed at the Supreme Court of Tasmania. Newspapers were the most important source of case law in nineteenth century Tasmania. Leslie Hore edited a \emph{Digest of Cases Decided in Tasmania 1856-1896} (1897);\textsuperscript{30} a guide to reports of decisions in Tasmanian newspapers, with a focus on the \emph{Hobarton Mercury},\textsuperscript{31} from the second half of the nineteenth century.\textsuperscript{32} The \emph{Mercury}'s reports were supplemented by reports in other newspapers including\textsuperscript{33} Hobart Town Courier (1827-1859), Cornwall Chronicle (1835-1880), Launceston Examiner (1842-), Tribune (1872-1879) (Hobart) and Daily Telegraph (1881-1928).

The \textit{South Australia} unreported collection will also be recovered from the Trove collection. This is the first stage in what will hopefully be the development of a comprehensive database of colonial South Australian case law - including archival records, annotations, more comprehensive headnotes and transcriptions of original documents - from the period before the commencement of formal law reporting (1836-1865). In the earliest period of colonisation in South Australia, the \textit{South Australian Gazette and Colonial Register} (1836-1839) was the primary source of legal information. The \textit{South Australian Register}, published from 1839 to 1931, was considered an accepted source for law reporting in South Australia up until the commencement of formal law reporting in 1865. The first stage of the development of this database focuses on case records from these two newspapers. So far we have published approximately 2000 records from 1837-1851. As this is the preliminary stage of the database it is important to make several concessions. Our primary goal has been to capture and index as much information as possible on the first 30 years of the South Australian Supreme

\begin{itemize}
  \item \textsuperscript{28} AustLII is currently in the process of adding these brief catchwords to reported cases from the South Australian and Western Australian Trove collections.
  \item \textsuperscript{29} Herbert Nicholls and W.J.T. Stops (eds), \emph{Reports of cases determined in the Supreme Court of Tasmania} (Charles F. Maxwell, 1906-1940, vol 1-2, 1897-1904). The \emph{Australian Law Times} reported some decisions of the Tasmanian Supreme Court from 1879 to the early 1890s.
  \item \textsuperscript{30} L.F.S. Hore, \emph{Digest of cases decided in Tasmania, 1856-1896} (Facsimile. Originally published: Hobart: Southern Law Society of Tasmania, 1897).
  \item \textsuperscript{31} This was also the most authoritative source of parliamentary debates of the nineteenth century.
  \item \textsuperscript{32} The digest was prepared from original clippings held in the Tasmania Supreme Court Library: see Alex Castles, \textit{Annotated Bibliography}, 169.
  \item \textsuperscript{33} Alex Castles, \textit{Annotated Bibliography}, 169.
\end{itemize}
Court as well as include a pdf image of the newspaper record accessed from the Trove online collection. The database includes proceedings from civil courts, including the equity side, and criminal courts, insolvency and ecclesiastical jurisdictions, records from Banco and the Court of Appeal. The civil, criminal and appeal records have been the first priority. We have also occasionally reported records of interest from the lower courts as well as grand jury addresses given by the presiding judge at the opening of criminal sessions.

**Western Australia**, with South Australia, has probably been the most neglected colony in terms of online reporting of colonial case law material. The *Western Australian Law Report* series commences in 1899 (to 1959). There is a 66 year period in the nineteenth century between the first published newspapers and the commencement of separate law reporting (1833-1899). Once again, newspapers are the primary source to consult and will be the basis for the Western Australian collection. The *Inquirer* (1840-1891), *Perth Gazette and Western Australian Journal* (1833-1847, later the *Western Australian*) are considered the most accepted sources of case reporting before the commencement of separate law reporting at the end of the nineteenth century. To date we have published a sample collection of over 300 records from 1840-1849 with the longer term view of publishing the entire ‘gap’ period of 1833-1898. The database includes proceedings from civil courts, including the equity side, and criminal courts, insolvency and ecclesiastical jurisdictions. A magistracy was appointed in Western Australia at the end of 1829. Before the establishment of the Supreme Court in 1861 the courts from which we report include the Magistrates’ Court, a handful of records from the Petty Sessions (minor criminal offences) and the Courts of Quarter Sessions (more serious criminal offences). A Civil Court was also established from the first years of settlement. In 1861 the Court of Quarter Sessions and the Civil Court amalgamated to form the Supreme Court.34 The Full Court of the Supreme Court was established in 1886 to hear appeals.

**A virtual database of scholarship**

There are two methods by which we can add scholarship, both current and ancient, to the Library. As discussed in the next section, key historical works of Australian legal scholarship (or source materials other than legislation and cases) will be digitised unless an already digitised source can be located.

A virtual database of scholarship about the colonial period has been created from legal scholarship already on AustLII, ‘Law Journals and Legal Scholarship Concerning the Colonial Period’. The method by which this has been done is as follows (see Greenleaf 2009):

- A broad search is made over AustLII’s *Australasian Legal Scholarship Library*35 of over 50,000 items of legal scholarship from more than 80 law journals and other databases, to find scholarship potentially relevant to the colonial period. The search used at present is: *van diemens land or colonial or colony or legal history or usury or assumpsit or attaint or capias or ticket of leave or repugnancy or fieri facias or Bligh or Macquarie or empire or imperial*. This gives 3709 results.

- Inspection of these results shows that after about the 185th result, items of sufficient relevance for inclusion in the Library (a matter of expert judgment by project investigators) are sporadic, whereas before that point almost all items in the result list were of sufficient relevance.

- These 185 items constitute 5% of the results found by the search. A virtual database comprised of these 185 items is therefore added to the database.

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35 *Australasian Legal Scholarship Library* <http://www.austlii.edu.au/au/journals/> developed under an ARC LIEF grant.
The search, and the retention of the first 5% of the results as a virtual database, is repeated periodically (monthly at present), so that new scholarship is added to the Library shortly after it is added to AustLII’s more general databases on legal scholarship.

Improvements to the comprehensiveness of the search, or its ability to rank relevant items more highly, or addition of new journals or other scholarship resources (eg judicial scholarship) to AustLII, will increase the size of the virtual database.

**Digitisation of historical scholarship and sources**

Many key documents in Australasian legal history are available from State archives, libraries and other sources, but have not been digitised and are not conveniently available to scholars. They need to be widely available to facilitate the transmission of Australian law to its practitioners and historians. Members of the project’s Advisory Committee are recommending key historical documents desirable and available for inclusion, including the following categories and documents:

- **Foundation rules of court procedure across the colonies** including Ellis Bent and John Wylde’s *Rules and Orders 1814-1824*; Forbes' Rules; and Jeffcott's *Rules 18 November 1837* (South Australia); W Martin and HS Chapman *Reports of the Commissioners* appointed by His Excellency the Governor-in-Chief to Inquire and Report into a *System of Practice and Procedure* suited to the Supreme Court of New Zealand, 1854, NZ.


- **Committee reports** including Bannister’s *Humane Policy; or Justice to the Aborigines of New Settlements*; Moleworth’s *Report from the Select Committee (of the House of Commons) on Transportation*.

- **Case and statute digests** including J G Eagleson *A digest of Australasian mining cases: as decided in the Supreme Courts of Victoria, New South Wales, Queensland, South Australia, and New Zealand, and on appeal therefrom to the Privy Council*, 1897; TP Webb *A compendium of the imperial law and statutes in force in the colony of Victoria: together with a table of the sections of imperial statutes transcribed into the Victorian statute book*, 1874, Vic.; SW Griffith *A Digest of the Statutory Criminal Law in Force in Queensland on the First Day of January, 1896*, QLD.; R S Hales *Textbook of statutes of the parliament of Tasmania regulating the celebration of marriage by the clergy in Tasmania of the respective churches of England, Scotland and Rome*, 1891, Tas.

- **Constitutional debates** including New South Wales Parliament, Legislative Assembly, *The new constitution for Western Australia: debate in the Legislative Assembly of New South Wales*, Wednesday, 7th August, 1889, NSW/WA.

We will commence digitising some of these works (non-destructively) once we can source copies which can be borrowed for the purpose. Numerous other source documents could also be valuable to include, but there is a limit to how much can be achieved with the project resources.

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36 Possible examples include: early digests of Australian cases (eg *South Australian Digest* 1884-1926 (1927)); Law Almanacs; early Australian textbooks; selected Parliamentary Papers particularly Royal commissions; parliamentary committees and minutes of evidence; British Parliamentary Papers relating to Australia (including the 'blue books' from each of the Australian colonies, already digitised in a UK database, but not available via AustLII; Opinions of the Commonwealth Attorneys-General (two volumes to 1923), described by one CI as 'a goldmine of historical material'; and law-related items in the Andrew Inglis Clark collection at UTas.
The LawCite citator as a linking mechanism

LawCite (<http://www.lawcite.org>) is an automated law citator of international scope, available for use by free access legal information institutes, developed by AustLII (Mowbray, Chung and Greenleaf, 2009). It is now integrated fully into AustLII, in the sense that in any list of AustLII search results (including from the Colonial Legal Scholarship Library), at the end of any reference to a case, treaty or scholarship or law reform item found by the search, there is a link to its citation record in LawCite. LawCite’s interface also allows for references to legislation in cases or journal articles to be found. There are currently 4,157,324 indexed cases, treaties, law reform documents and journal articles included in LawCite (as at 2 July 2012).

The following LawCite screen shows that the LawCite citator currently holds citation information about 6758 Australian cases from 1788-1900. The ten cases most frequently cited by subsequent court decisions are shown, of which two are from New Zealand. The most frequently cited case Re Hicks’ Trade Mark from 1897, has since been cited 291 times. The next two cases, both from 1847, have since been cited 50 and 42 times respectively.

<table>
<thead>
<tr>
<th>Case Name</th>
<th>Citation(s)</th>
<th>Court</th>
<th>Jurisdiction</th>
<th>Date</th>
<th>Full Text</th>
<th>Citation Index</th>
</tr>
</thead>
<tbody>
<tr>
<td>Re Hicks’ Trade Mark</td>
<td>[1897] VicLawRp 118;</td>
<td>Supreme Court of New South Wales</td>
<td>Australia - Victoria</td>
<td>16 Mar 1897</td>
<td>AustLII</td>
<td>291†</td>
</tr>
<tr>
<td></td>
<td>(1897) 22 VLR 636; 3 ALR 75; 18 ALT 229</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>R v Symonds</td>
<td>[1847] NZPCC 387</td>
<td>Privy Council</td>
<td>New Zealand</td>
<td>circa 1847</td>
<td></td>
<td>50</td>
</tr>
<tr>
<td>Attorney-General v Brown</td>
<td>[1847] 1 Legge 312</td>
<td>Supreme Court of New South Wales</td>
<td>Australia - New South Wales</td>
<td>circa 1847</td>
<td></td>
<td>42</td>
</tr>
<tr>
<td>White v Johnston</td>
<td>(1866) 8 ALT 53</td>
<td></td>
<td>Australia</td>
<td>circa 1866</td>
<td></td>
<td>40</td>
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<tr>
<td>R v Aldridge</td>
<td>(1893) 15 NZLR 361</td>
<td></td>
<td>New Zealand</td>
<td>circa 1893</td>
<td></td>
<td>34</td>
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<tr>
<td>In the Will of Wilson</td>
<td>(1997) 23 VLR 197</td>
<td></td>
<td>Australia - Victoria</td>
<td>circa 1897</td>
<td></td>
<td>30</td>
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<tr>
<td>R v Murrell</td>
<td>(1836) 1 Legge 72</td>
<td>Supreme Court of New South Wales</td>
<td>Australia - New South Wales</td>
<td>circa 1836</td>
<td></td>
<td>24</td>
</tr>
<tr>
<td>Morris, Re</td>
<td>[1897] VicLawRp 117;</td>
<td></td>
<td>Australia - Victoria</td>
<td>17 Mar 1897</td>
<td>AustLII</td>
<td>23</td>
</tr>
<tr>
<td></td>
<td>(1897) 22 VLR 629; 22 FLR 460; 3 ALR 47; 18 ALT 204</td>
<td></td>
<td></td>
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<td></td>
<td></td>
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<tr>
<td>Re McCrory, Expatriate Rivett</td>
<td>[1895] VicLawRp 2;</td>
<td></td>
<td>Australia - Victoria</td>
<td>13 Mar 1895</td>
<td>AustLII</td>
<td>22</td>
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<tr>
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<td>(1895) 21 VLR 3</td>
<td></td>
<td></td>
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<tr>
<td>R v Abrahams</td>
<td>[1895] VicLawRp 73;</td>
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<td>Australia - Victoria</td>
<td>2 Sep 1895</td>
<td>AustLII</td>
<td>21</td>
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<tr>
<td></td>
<td>(1895) 21 VLR 343; 1 ALR 67</td>
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</tbody>
</table>

‘Top ten’ colonial cases, measured by subsequent citation, as at 4 July 2012

37 This current figure can be obtained from the LawCite search page, by entering ‘Australian or New Zealand’ in the jurisdiction field, and then entering 1788-1900 as the desired date range.
If we go to the LawCite record for the third case, *Attorney-General v Brown* (1847) 1 Legge 312 (by selecting its name from the left column above), then we see from the ‘Cases Referring to This Case’ entry (as shown below), that the most recent of the 47 cases or journal articles citing it is a High Court of Australia decision from 2010, followed by a NSW Court of Appeal decision from 2009 and then (rather remarkably) the decision of *Attorney General v The Barbuda Council* [2002] ECarSC 35 from the Eastern Caribbean Supreme Court. This is because LawCite is a genuinely international citator, drawing its citation data globally from all other free access LIIs with which AustLII collaborates. From the LawCite record shown below, it is possible to go directly to any of these three cases (or to any of the 14 cases citing A-G v Brown), and by using the ‘Context’ button at the head of the case, go to the exact location in the case where the Court discusses *A-G v Brown*.

<table>
<thead>
<tr>
<th>Case Name</th>
<th>Citation(s)</th>
<th>Court</th>
<th>Jurisdiction</th>
<th>Date</th>
<th>Full Text</th>
<th>Citation Index</th>
</tr>
</thead>
<tbody>
<tr>
<td>New South Wales v Cadia Holdings Pty Ltd</td>
<td>[2009] NSWCA 174; (2009) 257 ALR 628</td>
<td>Supreme Court of New South Wales - Court of Appeal</td>
<td>Australia - New South Wales</td>
<td>1 Jul 2009</td>
<td>AustLII</td>
<td>1</td>
</tr>
</tbody>
</table>

Extract from the LawCite record for *A-G v Brown* 1847) 1 Legge 312

The LawCite record for *A-G v Brown* also includes citators of and links to 28 pieces of legal scholarship that have cited the case, the first eight of which are shown below.
The most recent is a journal article by Lisa Ford, but the last two are items from AustLII’s Federal Judicial Scholarship database, one being a conference paper given in South Africa by Justice Robert French (now Chief Justice of Australia). All of these articles or conference papers are located on AustLII. It would not be easy to find all of this discussion of this important case, other than by use of AustLII’s Colonial Law Library and the LawCite citator.

An interesting aspect of this example is that LawCite has all of this information about the citation history of *A-G v Brown*, but AustLII does not yet hold the decision in the case – it is part of the Legge series which is yet to be digitised.

**Assisting Internet-wide research**

To assist users of the Colonial Law Library to find relevant resources not in the Library, we have included two extra tools. The first is straightforward, a Catalog of web sites relevant to Australian legal history of the colonial period. It is found at the bottom of the Library home page.

The second is the ‘Law on Google’ search, which can be used by selecting the radio button of that name on the Library home page, and then entering a search. ‘Built in’ to searches from the Library is an attempt to limit searches over Google to results which are relevant to (ii) Australasia, (ii) matters relating to law, and (iii) the colonial period. This must be achieved in 16 search terms or less.

To illustrate, a ‘Law via Google’ search for ‘reception’ automatically expands to the following search:

reception australia OR site:au OR "new zealand" OR site:nz colonial OR colony OR history OR historical (law OR legal OR legislation OR regulation OR judgment OR treaty)

The first screen of results received are as follows:

<table>
<thead>
<tr>
<th>Journal Article Title</th>
<th>Citation(s)</th>
<th>Author</th>
<th>Jurisdiction</th>
<th>Date</th>
<th>Full Text</th>
<th>Citation Index</th>
</tr>
</thead>
</table>
Extract from 'Law on Google' search results for 'reception'

This is far from perfect, but for most users it likely to be easier to use this as a starting point than to concoct their own search. The search can be modified to improve its performance.

Future directions

The Australasian Legal History Library is still in its very early stages of development, the project only having started in January 2012. We think it is already producing valuable results not previously available.

The main focus of the project for the next year will be the completion for all jurisdictions (including ACT and NT) of the databases for annual Acts, and for reported cases, up to 1950 (or later), whether achieved by digitisation from paper, or from acquisition and reprocessing of data already in digital form. We regard these sources as the foundations of the Library, which other resources complement, or to which they add value. Next in importance is the ‘recovery’ of case law from newspaper or other sources, for those periods in various colonies before formal case reporting started. Beyond that, by the end of 2013 and the current LIEF funding, we hope to have at least developed valuable examples or prototypes of other valuable legal history resources that could be added to the Library and may become the focus of future projects once the back-capture of the key legislative and case law sources is complete.
Appendix: Details of project Chief Investigators

The eighteen Chief Investigators (other than the AustLII Co-Directors) are highly respected Australasian researchers in many aspects of the legal history of Australia, New Zealand and many other countries. They carry out ground-breaking research on almost all aspects of Australasian legal history. Em/Prof Bruce Kercher is principal author of The Kercher Reports: Decisions of the New South Wales Superior Courts, 1788-1827 (Kercher and Salter, 2010) and associated books (Kercher, 2006) and articles, has pioneered the recreation and analysis of historical case law from contemporaneous records, and is intensely involved in the online publication of colonial case law. Dr Lisa Ford is author of the award-winning Settler Sovereignty (Ford, 2010), and researches the comparative roles of law in colonial settlement in the British Empire and North America. A/Prof Anne Twomey researches the constitutional aspects of Australian legal history, has published books on the Crown in Australia (Twomey, 2006) and on the Australia Acts (Twomey, 2010). Prof Mark Finnane researches the histories of crime, legal regulation, policing and criminology in Australia and Ireland, contributing to his current research on policing, security, and responses to violence for the ARC Centre of Excellence in Policing and Security. Prof Amanda Nettelbeck and A/Prof Robert Foster research the role of law in Australian and comparative colonial settlement history. They are co-authors of two books on the history of policing of colonial frontiers in South and central Australia (Foster and Nettelbeck 2011, Nettelbeck and Foster 2007), a third book on the history and historical memory of the South Australian frontier (2001), and are engaged on an international collaborative project on the legal subjugation of indigenous peoples in Australia and Canada. A/Prof Stefan Petrow is author of numerous articles on diverse aspects of Tasmania’s colonial legal history, and principal editor of the database of Tasmanian colonial case notes developed with Prof Kercher. He co-edited the pioneering Lawless Harvests, or God Save the Judges: Van Diemen's Land 1803-55, a legal history by Alex Castles, posthumously published in 2007 by Australian Scholarly Publishing. Dr Catherine Bond researches colonial copyright law, with a particularly interest in the public domain aspects. A/Prof Shaunagh Dorsett’s research is interdisciplinary across legal history, native title and legal theory, resulting in publications on equity, comparative native title, foreshore and seabed, the jurisprudence of jurisdiction and colonial legal history of New Zealand and Australia. She is a grant-holder and director of the New Zealand ‘Lost Case’ project. A/Prof Peter McDermott has contributed chapters on the history of equity in Queensland, and on the contributions of various judges and Ministers, in the legal history programme of the Supreme Court of Queensland Library. He is currently assisting the Supreme Court of Queensland Library in a project on the history of the Court. Em/Prof Wilfrid Prest has a current grant to edit Blackstone’s Commentaries, a seminal work for all common law jurisdictions, has published on Blackstone’s influence in Australia, and edited The Wakefield Companion to South Australian History (Prest et al, 2001). Prof Mark Lunney has published a number of articles in leading journals in both Australia and England on the history of tort law and is currently working on the history of tort law in Australia in the post-Federation period. Prof Michael Adams leads a team examining how the history of corporate law influences the regulator through the history of case law (Adams, 2010) and contributed to an ARC Linkage project on how changes to misleading conduct provisions over recent history affected regulation of small business (in Armstrong et al, 2011). Prof Helen Irving has a long involvement in legal-historical research, including as the editor of the Centenary Companion to Australian Federation (Cambridge UP 1999), and as NSW Historical Consultant for the National Archives of Australia website 'Documenting a Democracy' <http://www.foundingdocs.gov.au/>, and current member of the Advisory Council of the National Archives of Australia. Prof John Williams has been the recipient of an ARC Discovery and Linkage grants dealing with the history of the High Court of Australia and is a former editor of Legal History, the leading Australian Journal in the field. Prof Andrew Buck researches and publishes widely across the field of legal history, on topics as diverse as legal culture in British settler societies, the histories of Australian property laws, citizenship tests, dower, and rhetoric in Australian politics, and state socialism in the early twentieth century. Ms Judith Jones researches the development of regulation to manage natural resources in the Australian colonies. Professors Adams, Grantham, Williams and Otlowski, as Law School Deans, bring to the project very considerable experience in management of complex projects in the legal academic environment, including for Adams and Grantham previous LIEF projects. The past and current Presidents of ALLA (Naish Peterson and Marisa Bendeich) and the law librarians of the law firms collaborating through ALLA, are all highly experienced in the management of complex legal research infrastructure, particularly the sourcing and management of resources for digitisation. All Investigators will constitute the project’s Advisory Committee, which will have two face-to-face meetings during the project, and advise through an email list between meetings.
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