

# Legal Research Skills: An Australian Law Guide: 2023 JCU Edition

# LEGAL RESEARCH SKILLS: AN AUSTRALIAN LAW GUIDE: 2023 JCU EDITION

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# ABOUT THIS GUIDE

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This guide is designed to support JCU students undertaking legal studies and contribute to developing legal research skills.

*Legal Research Skills: An Australian Law Guide* is organised into four parts:

- **Part 1: Research Skills** introduces the concept of legal research, identifies the key sources of legal information, and the importance of researching strategically.
- **Part 2: Case Law** provides an introduction on how to locate cases by citation or topic, and judge a case's reliability.
- **Part 3: Legislation** helps students learn about the parliamentary process, how to find legislation and the materials used for statutory interpretation.
- **Part 4: Secondary Sources** focuses on the role of secondary sources in legal research.

The 2023 edition of this guide primarily includes examples from the Queensland, Victorian and Commonwealth jurisdictions but it is envisioned that this resource will be updated regularly and expanded to include examples from all other Australian jurisdictions in the future.

## Attribution

This guide is an adaptation of *Legal Research Skills: An Australian Law Guide (2023 Edition)* which is available under a Creative Commons Attribution Noncommercial 4.0 International Licence.

## Acknowledgements

This previous version of this guide is acknowledged as the result of a generous-spirited open collaborative effort between current and former law librarians from:

- The University of Queensland
- James Cook University
- The University of Southern Queensland
- Charles Darwin University
- Southern Cross University
- Queensland University of Technology
- Deakin University.





# ACKNOWLEDGEMENT OF COUNTRY

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At James Cook University we acknowledge with respect the Aboriginal and Torres Strait Islander peoples as the first peoples, educators and innovators of this country. We acknowledge that Country was never ceded, and value the accumulation of knowledge and traditions that reflect the wisdom of ancestral lines going back some 60,000 years, and recognise the significance of this in the ways that Aboriginal and Torres Strait Islander peoples are custodians of Country. As a University, we will continue to learn ways to care for and be responsible for Country, and we will collectively seek to build a future that is based on truth-telling, mutual understanding, hope, empowerment, and self-determination.



Kassandra Savage (JCU Alumni), 'Coming Together and Respecting Difference', acrylic on canvas, 2014, 90cm x 90cm. © Kassandra Savage, reproduced with permission of the artist.



# ABOUT THE CONTRIBUTORS

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*A note of special thanks is also extended to Rachael Harrison (University of Queensland) and Thomas Mullins (Queensland University of Technology) for your support of this project.*

# ACCESSIBILITY STATEMENT

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The web version of this resource has been designed with accessibility in mind and incorporates the following features:

- Designed to consider the needs of people who use screen reading technology.
  - All content can be navigated using a keyboard.
  - Links, headings, and tables are formatted to work with screen readers.
  - Images have alt tags.
- Information is not conveyed by colour alone.

## Other File Formats Available

In addition to the web version, this book is available in several file formats, including PDF, EPUB (for ereaders), and various editable files. Choose from the selection of available file types from the ‘Download this book’ drop-down menu. This option appears below the book cover image on the eBook’s landing page.

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# VERSION HISTORY

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This page provides a record of changes made to this guide after publication. Each set of edits is acknowledged with a 0.1 increase in the version number. The downloadable export files available for this guide reflect the most recent version.

Version	Date	Details
1.0	9 June 2023	This guide is first published on the JCU Open eBooks platform
1.1		
1.2		

# INTRODUCTION

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Studying law is a rewarding but often overwhelming experience. It is common to hear students talk about the law as if they are learning another language – there are rules and cultural procedures you need to follow to understand why things are the way they are. This resource is intended to provide foundational guidance to students starting legal research for the first time.

*Legal Research Skills: An Australian Law Guide* is divided into four parts reflecting the different techniques and sources you are likely to encounter in your studies:

- **Part 1: Research Skills** introduces the concept of legal research, identifies the key sources of legal information, and the importance of researching strategically.
- **Part 2: Case Law** provides an introduction on how to locate cases by citation or topic, and judge a case's reliability.
- **Part 3: Legislation** helps students learn about the parliamentary process, how to find legislation and the materials used for statutory interpretation.
- **Part 4: Secondary Sources** focuses on the role of secondary sources in legal research.

The 2023 edition of this guide primarily includes examples from the Queensland, Victorian and Commonwealth jurisdictions but it is envisioned that this resource will be updated regularly and expanded to include examples from all other Australian jurisdictions in the future.

# PART I

# RESEARCH SKILLS



1.

# WHAT IS LEGAL RESEARCH?

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Legal research can be summarised as the ability to find, evaluate, and use sources of legal information to:

- solve a legal problem.
- suggest reform of the law.
- compare the laws of different jurisdictions.
- understand the role of law in society.

## Understanding legal research skills is important

Understanding these skills will not only improve your effectiveness in university assessment but will also prove valuable in your future career. Those who study law will continue to use legal research skills once they graduate and are in practice or other workplaces.

## 2.

# SOURCES OF LEGAL INFORMATION

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One of the challenging aspects of legal research is the variety of sources of legal information.

In Australia, there are two types of laws:

- **Case law:** made through the courts and otherwise known as judge-made law, common law, or case law
- **Legislation:** made through the parliament and otherwise known as acts or statutes.

Case law and legislation are considered primary sources of law because they *are* the law.

Encyclopaedias, journal articles, books, commentaries etc., are considered secondary sources because they talk *about* the law.

In legal research, it is often recommended that students approach a topic by looking at secondary sources of law to understand the key issues in that area of law. Secondary sources provide analysis and explanation of the law and state the leading cases or legislation on a topic. Understanding the background of a topic before reading the primary sources (i.e., cases and legislation) can help contextualise your research.

## Primary and secondary sources

**Primary sources** of law are the authoritative sources (sometimes called “authorities”) of law as made by law-making bodies. They include:

- Case law: also known as common law or judge-made law
- Legislation: which includes Acts of Parliament (or Statutes) and subordinate legislation (or delegated legislation).

**Secondary sources** provide commentary and background information on the primary sources of law and can assist in identifying the relevant primary sources. They may provide you with a quick overview or an in-depth analysis of a topic, with references to leading cases or relevant legislation. They include:

- Legal dictionaries
- Legal encyclopaedias
- Books
- Journal articles
- Looseleaf services
- Law reform resources.

## 3.

## LEGAL RESEARCH STRATEGY

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How you approach your research task may vary depending on your research question. However, the approach below works well with legal problem-solving methodologies such as IRAC.

### What is IRAC?

IRAC is a legal problem-solving methodology commonly used in Australian law schools. Researchers using the IRAC method should identify the:

- Issue — state legal issues that are relevant
- Rule — state the legal rule found in legislation or case law
- Application — apply the rules to the facts
- Conclusion.



Figure 1: Diagram of the legal research strategy by UQ Library in UQ Legal Research Essentials used under CC-BY-NC 4.0

### Analyse and plan

Analysing your research question involves identifying the appropriate area of law and any relevant legal issues at play. If you are researching a problem-based scenario, you should pay especially careful attention to:

- jurisdiction
- dates and timeline of events

- persons involved.

These facts will affect how you formulate your research question, as well as which websites, databases, and sources of legal information you will need to consult.

## Research the law

At this stage, you should focus on identifying the legal rules found in legislation and case law because this is what you will need to restate in your writing.

### Secondary to primary

When you are new to legal research or unfamiliar with an area of law, proceeding from general information (secondary sources) to more specific, authoritative information (primary sources) is a good approach. Secondary sources are written by subject-matter experts who can efficiently lead you to the key authorities you will need to use.

Alternatively, if you feel like you have a good grasp of the area of law and legal principles at play, you may wish to move straight to primary sources to answer your legal question.

### Keeping up to date with the law

Once you have found your authorities, you need to make sure that they are up-to-date. Has the case you are relying on been reversed on appeal? Has the Act and provision you wish to cite been amended recently?

## Apply the law

Apply the law to the facts. Use plain English to express your thoughts and to indicate the best course of action to take as well as the likely outcome of taking that course. It is important to:

- deal separately with each specific issue raised by the facts
- refer to the points of law extracted from the various cases, legislation, or texts
- have clarity of reasoning
- list authorities for and against the argument
- always conclude.

Statements setting out principles of law should be supported by authoritative resources, preferably primary sources.

4.

# SEARCHING STRATEGIES AND TIPS

## Search strategy

Before you start searching for information, take some time to think about the legal situation or scenario and plan your search strategy. There is a vast amount of primary and secondary material available across multiple databases, catalogues, and print publications. It is important to develop a systematic approach to your research.

Before you begin searching, consider the following questions:

- What do you wish to find (journal articles, commentary, law reform material)?
- Which resources will you need to search (databases, Library Search, Library Guides)?
- Are there applicable search parameters (time period or jurisdiction)?
- What search terms will you need to use (keywords, phrases, and synonyms)?

## Keywords and phrases

As part of planning your search strategy, you will need to think of keywords and phrases to help you find relevant information. Remember, you are researching the legal issues, not the facts of the scenario, so select keywords and phrases that are relevant to the legal issues of the case. Brainstorm related words, subject terms, synonyms, and phrases. The more care and thought you put into your search strategies, the more relevant your results will be.

Imagine you are searching for journal articles on the topic of refugees. A keyword search for **refugee** returns 919 hits. After expanding your search and utilising other possible keywords and phrases however, a search for refugee OR “asylum seeker” OR “displaced persons” returns 956 hits.

Table 1: Keywords and synonyms

Keyword	Synonym	Related term
Refugee	Asylum seeker	Displaced persons

## Boolean operators

Boolean operators are connective words you place between your keywords to improve your search results.

**Table 2: Using Boolean operators to connect keywords**

Boolean operator	Example	Results
<b>AND</b>	negligent AND conduct	This search will find both words
<b>OR</b>	teenager OR youth	This search will find either word
<b>NOT</b>	remedy NOT damages	This search will find the first word but not the second

## Truncation and wildcards

Truncation symbols are used to find alternative word endings. For instance:

placing a truncation symbol (such as \* or !) after *law\** retrieves *law*, *laws*, *lawyer*, *lawless*, *lawlessness*

Wildcard symbols are used to replace a single character within the word. For instance:

*organi?ation* retrieves *organisation* or *organization*.

These truncations and wildcards vary between databases. Use the help section in each database to find the specific symbol.

## Proximity operators

Proximity operators enable you to define how closely your search terms will be found in relation to one another. Proximity searching is commonly used in legal research to improve the relevancy of results, as most legal databases perform searches across lengthy documents (such as entire journal articles or full text judgments). For instance:

*contributory w/s negligence* will retrieve documents with both words appearing within the

same sentence

## Power of phrase searching

Searching for a phrase will dramatically focus your search results. Rather than finding results for 3 ungrouped words, the search engine will return results for the phrase.

This example search in Google Scholar demonstrates the power of phrase searching:

- Illegal wildlife trade = 190,000 results
- “Illegal wildlife trade” = 10,200 results

## Combining operators

Sometimes you may need to use more than one operator in the same search. An example is if you wanted to find material on the sentencing of young people. By adding more operators, the following search string will capture the most relevant records in one search:

sentenc! AND (teenager OR youth OR adolescent)

By using operators and brackets to nest and connect synonyms, you can ensure that you receive the most relevant results.

**The resource below is provided as a space for you to practice creating a search strategy**





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*<https://jcu.pressbooks.pub/legalresearchskillsanaustralianlawguide/?p=31#h5p-1>*

## 5.

# AUSTRALIAN GUIDE TO LEGAL CITATION (AGLC) 4TH EDITION

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Referencing acknowledges the sources of ideas and information used in written work. Correct referencing is an important skill as it:

- prevents allegations of plagiarism
- provides evidence of relevant research, wide reading, and authorities for legal arguments
- enables readers to locate and verify information sources
- forms part of ethical practice by acknowledging the work of others.

The referencing style used in the Australian law discipline is currently the 4th edition of *Australian Guide to Legal Citation* ('AGLC'),<sup>1</sup> which is available for free download from the Melbourne University Law Review. The *AGLC* is a footnote referencing style and prescribes rules and elements to construct footnote references for a wide variety of source types. It is divided into the following sections:

- Part I — General Rules
- Part II — Domestic Sources
- Part III — Secondary Sources
- Part IV — International Materials
- Part V — Foreign Domestic Sources.

## AGLC 4 – General Rules

Newcomers to the *AGLC* should begin by reviewing Part I for an overview of rules that apply generally across the style. Key general rules include:

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1. Melbourne University Law Review Association and Melbourne Journal of International Law, *Australian Guide to Legal Citation* (4<sup>th</sup> ed, 2018) ('AGLC').

**Table 3: Overview of *Australian Guide to Legal Citation* key general rules**

<b>1.1.2</b>	Insert footnote numbers after any punctuation, eg ....is outlined in the relevant Act. <sup>1</sup>
<b>1.1.3</b>	Use a semicolon ; to separate multiple citations within a single footnote.
<b>1.1.4</b>	End all footnote citations with a full stop.
<b>1.1.6</b>	Do not use prefixes before pinpoint page numbers, eg use 35 — not p 35, p. 35, pg 35, at 35, per 35 etc. Pinpoint paragraph numbers are generally enclosed in square brackets, eg [15]. Separate multiple pinpoint references with a comma.
<b>1.1.7</b>	Use an en-dash to separate spans of pinpoint references, eg 21–2 or [35]–[37].
<b>1.2</b>	Where appropriate, use introductory signals before a citation, eg see, see also, see especially, see generally, cf.
<b>1.3</b>	Rules for citing a source that is quoted in, cited or discussed in another source.
<b>1.4</b>	Rules for subsequent references are discussed in detail in the section on Subsequent References in AGLC.
<b>1.6.1</b>	Do not use full stops in abbreviations or after initials.
<b>1.6.3</b>	Rules for em-dashes, en-dashes, hyphens and slashes.
<b>1.7</b>	Capitalise the first letter of the first word in a title or subtitle and of main words within source titles, eg <i>Effective Legal Writing: A Practical Guide</i> .
<b>1.8.1</b>	Italicise all source titles, wherever they appear, as required by AGLC rules.
<b>1.11.1</b>	Dates are written as Day Month Year, eg 10 November 2022.
<b>1.13</b>	Formatting a bibliography in AGLC style is discussed in detail in the section on Bibliographies in AGLC style.

## Direct Quotations

A direct quote must appear in the format outlined in AGLC 1.5. This includes extracts copied word for word from legislation and case judgments.

**Short quotations (3 lines or less) — type the quotation into the main text and add single quotation marks around the quote.**

Short quotation example

Legal research is a vital skill because ‘what you learn in law school, or in your years as a lawyer, can easily change and become outdated or superseded’.<sup>2</sup>

Alternative short quotation example (from open text)

Australia has traditionally made a ‘clear distinction between the various areas of law making up the law of obligations’.<sup>3</sup>

**Long quotations (more than 3 lines) — indent as a separate paragraph using smaller font size and no quotation marks.**

Long quotation example

Custom or trade usage may give rise to implied contractual terms:

Over time, particular contractual clauses have become typical for certain types of trade. Some of these have reached such widespread acceptance that virtually anybody in that line of trade would assume all contracts done within that line of trade to contain those particular terms. The law recognises this fact and, thus, terms may be implied based on custom or trade usage.<sup>4</sup>

2. Jay Sanderson, Drossos Stamboulakis and Kim Kelly, *A Practical Guide to Legal Research* (Lawbook, 5<sup>th</sup> ed, 2021) 1.

3. Dan Jerker B Svantesson, *Svantesson on the Law of Obligations* (Bond University, 4<sup>th</sup> rev ed, 2022) pt 1.1.

4. Ibid pt 2.3.

AGLC 1.5 also outlines rules for omissions, introducing and editing quotes.

## 6.

## AGLC FOOTNOTES

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The *AGLC* is a footnoting style where footnotes are inserted next to the relevant portion of text and the footnote entry appears at the bottom of each page.

To insert a footnote within Microsoft Word:

1. Use the **References** tab
2. Click **Insert Footnote**.

The General Rules section provides more information about the general format of footnotes.

The *AGLC* covers many different types of sources. Begin by identifying the type of source you would like to reference, then locate the associated rule in the *AGLC* contents or index.

This section provides example footnote citations for a selection of key sources; consult the *AGLC* itself for comprehensive rules for referencing other types of sources.

Click on the *i* symbols for an explanation of each element in the citation.

### Cases — AGLC rule 2

Reported case footnote citation example (AGLC 2.2)



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### Legislative Materials — AGLC rule 3

Statute footnote citation example



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### Journal Articles — AGLC rule 5

Journal article footnote citation example





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## **Books — AGLC rule 6**

### Book footnote citation example



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## **Reports and Similar Documents — AGLC rule 7.1**



### Law Reform Commission publication footnote citation example (AGLC 7.1.4)



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<https://jcu.pressbooks.pub/legalresearchskillsanaustralianlawguide/?p=35#h5p-11>

### Looseleaf Services — AGLC rule 7.8

#### Online looseleaf commentary service footnote citation example



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<https://jcu.pressbooks.pub/legalresearchskillsanaustralianlawguide/?p=35#h5p-12>

Refer to AGLC 7.8 to format a print/hardcopy looseleaf service citation.



*An interactive H5P element has been excluded from this version of the text. You can view it*



online here:

<https://jcu.pressbooks.pub/legalresearchskillsanaustralianlawguide/?p=35#h5p-13>

## Sources not covered by the AGLC

To reference a source that does not fit neatly within an *AGLC* rule, adapt an existing rule for a similar source to maintain ‘clarity and consistency’.<sup>1</sup> It may also be helpful to search for post-2018 citations of the source in articles published in the following journals on the AustLII website, as they adhere strictly to the *AGLC* style:

- Melbourne University Law Review
- Melbourne Journal of International Law.

Contact the AGLC editors on Twitter via @AGLCTweets to ask complex referencing questions.

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1. Melbourne University Law Review Association and Melbourne Journal of International Law, *Australian Guide to Legal Citation* (4<sup>th</sup> ed, 2018) xi (*AGLC*)

7.

## AGLC SUBSEQUENT REFERENCES

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### Subsequent References

*AGLC* 1.4 outlines general rules for subsequent citations to sources. All sources must be referenced in full the first time that they are cited. Subsequent citations should use an abbreviated form of the original citation.

Note, there are two different ways to indicate a subsequent reference, depending on whether or not it immediately follows the earlier citation.

### Ibid

Use the abbreviation “ibid” if a source is identical to a source cited in the immediately preceding footnote. This applies regardless of whether the preceding footnote is a full citation or an abbreviated version. Ibid cannot be used if the immediately preceding footnote contains multiple sources. Add a new pinpoint reference where relevant.

### Subsequent referencing where ibid does not apply

To reference a source cited earlier in the document, but not in the immediately preceding footnote, use an abbreviated version of the source and a cross-reference to the initial citation. For authored secondary sources, this includes the author/s last name, a cross-reference to the original footnote and any new pinpoint references.

*Author/s Surname* (n Footnote Number) Pinpoint.

Where a source is not authored, or the author is an organisation or institution, assign a short title after the initial full citation of the source. The short title should appear inside parentheses after any pinpoint references, but before the closing punctuation, and be enclosed by single quotation marks. Aside from these requirements, the format of short titles should adhere to the general title rules for that particular source type.

For subsequent references to the source, use the short title, a cross-reference to the initial footnote number and any new pinpoint references.

*Short Title* (n Footnote Number) Pinpoint.

The *AGLC* provides additional explanations and examples of subsequent referencing for the following types of sources:

- Cases — refer to 2.1.14
- Legislation — refer to 3.5
- Secondary sources — refer to 4.3

#### Example list of subsequent references in *AGLC* style

<sup>1</sup> *Commonwealth v Tasmania* (1983) 158 CLR 1 ('*Tasmanian Dam Case*').

<sup>2</sup> *Carlill v Carbolic Smoke Ball Co* [1893] 1 QB 256, 265 ('*Carlill*').

<sup>3</sup> *Ibid* 268.

<sup>4</sup> *Tasmanian Dam Case* (n 1).

<sup>5</sup> *Carlill* (n 2) 270.

<sup>6</sup> *R v Demicoli* [1971] Qd R 358 ('*Demicoli*').

<sup>7</sup> *Administrative Decisions (Judicial Review) Act 1977* (Cth) s 5 ('*ADJR Act*').

<sup>8</sup> *Ibid* s 9.

<sup>9</sup> *Ibid*.

<sup>10</sup> Ian Barker, 'Judicial Activism in Australia: A Perspective' (2005) 79(12) *Australian Law Journal* 783, 785; Robin Creyke et al, *Laying Down the Law* (LexisNexis, 11<sup>th</sup> ed, 2021) 224.

<sup>11</sup> Creyke et al (n 10) 226.

<sup>12</sup> *Ibid* 225.

<sup>13</sup> 'The Right to Vote is Not Enjoyed Equally by All Australians', *Australian Human Rights Commission* (Web Page, February 2010) <<https://humanrights.gov.au/our-work/rights-and-freedoms/publications/right-vote-not-enjoyed-equally-all-australians>> ('The Right to Vote').

<sup>14</sup> *ADJR Act* (n 7) s 13(1).

<sup>15</sup> *The Right to Vote* (n 13).

## 8.

# AGLC BIBLIOGRAPHIES

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An *AGLC* bibliography appears at the end of a document and should include all consulted sources. Refer to AGLC 1.13 for information on how to adapt footnote rules to suit bibliography format. This generally involves the following adjustments, as relevant:

- inverting the first listed author's names, and separating these with a comma
- omitting pinpoint references
- removing full stops at the end of citations.

Organise sources alphabetically beneath the following headings, although these categories may be adjusted as appropriate:

- *A Articles/Books/Reports*
- *B Cases*
- *C Legislation*
- *D Treaties*
- *E Other.*

## Sample AGLC bibliography

### BIBLIOGRAPHY

#### *A Articles/Books/Reports*

Australian Law Reform Commission, *Without Fear or Favour: Judicial Impartiality and the Law on Bias* (Final Report No 138, December 2021)

Barker, Ian, 'Judicial Activism in Australia: A Perspective' (2005) 79(12) *Australian Law Journal* 783

Creyke, Robin et al, *Laying Down the Law* (LexisNexis, 11<sup>th</sup> ed, 2021)

Mackay, Anita and Lola Akin Ojelabi, 'A Beginner's Guide to Academic Integrity and Legal Referencing Using the AGLC' (2022) 47(1) *Alternative Law Journal* 74

## B Cases

*Legione v Hateley* (1983) 152 CLR 406

*Mabo v Queensland [No 2]* (1992) 175 CLR 1

## C Legislation

*Airspace Regulations 2007* (Cth)

*Australian Constitution*

*Copyright Act 1968* (Cth)

## D Treaties

*Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, opened for signature 10 December 1984, 1465 UNTS 85 (entered into force 26 June 1987)

## E Other

CCH Australia, *Australian Torts Commentary* (online at 20 November 2022)

*Review of the Law of Negligence* (Final Report, September 2002)

Shepherd, Stafford, 'What is Inadvertent Disclosure?', *Queensland Law Society* (Web Page, 2 April 2015) <<https://www.qls.com.au/Pages/Resources/Inadvertent-disclosure/What-is-inadvertent-disclosure>>

9.

## REVIEW QUIZ - RESEARCH SKILLS AND AGLC

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### Check your research skills knowledge

Take the below review quiz to test your understanding of the content covered in this section.



*An interactive H5P element has been excluded from this version of the text. You can view it online here:*

*<https://jcu.pressbooks.pub/legalresearchskillsanaustralianlawguide/?p=41#h5p-14>*

### Check your AGLC knowledge



*An interactive H5P element has been excluded from this version of the text. You can view it online here:*

*<https://jcu.pressbooks.pub/legalresearchskillsanaustralianlawguide/?p=41#h5p-15>*



## PART II

# CASE LAW

## 10.

# WHAT IS CASE LAW?

A case, often referred to as a decision or judgment, is a written record of a judge or judges reasoning or decision-making applied to a particular dispute. When deciding cases, judges interpret legislation and apply the doctrine of precedent (*stare decisis*), which means the court must follow the decisions reached by a higher court in the same jurisdiction. For this reason, case law has precedential value and is sometimes known as common law or judge-made law.

Case law is a primary source of law in Australia.

## Anatomy of a case

Understanding the different parts of a case is helpful for case law research. The figure below shows some of the key parts of a case.

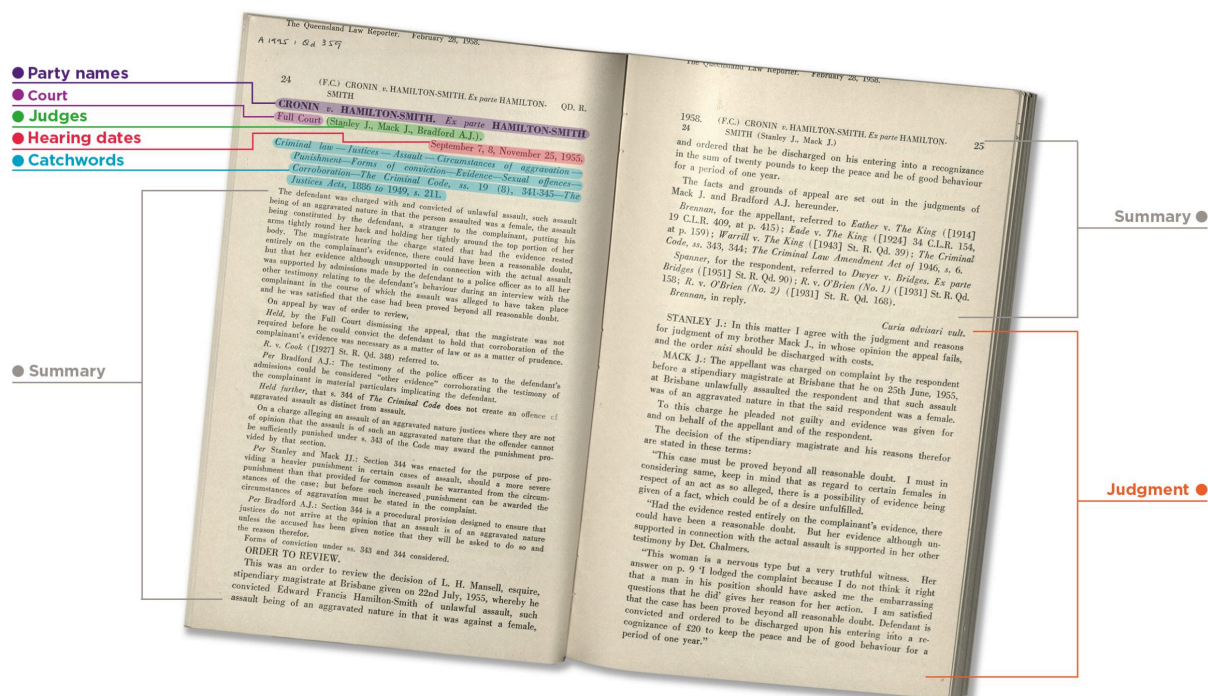


Figure 2: Anatomy of a case by UQ Library in UQ Legal Research Essentials is used under CC-BY-NC 4.0

At the very top of the decision, you will find information about the case, including the:

- party names
- court
- judge/s
- hearing date/s.

## Headnote

The headnote of the decision contains catchwords and a summary of the case. Catchwords are keywords and phrases separated by dashes, summarising the legal principles and legislation discussed in the case. The summary provides a short description of the matter and outlines the key holdings of the case.

The headnote is not officially part of the judgment.

## Judgment

The start of the judgment proper is usually indicated by the Judge's surname (e.g. Stanley J: ...). Each judgment will generally include:

- the procedural history of the case
- statement of facts
- relevant legal issues and legal principles
- conclusion
- order.

Learning how to undertake a case analysis and distinguish the *ratio decidendi* is a core skill in legal studies.

Do not be tempted to read and quote only from the headnote rather than the full decision. It is important to note that the headnote is written by a law reporter and not by a judge. Therefore, it is not considered to be part of the judgment.

## 11.

# HOW CASES ARE PUBLISHED

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It is helpful to know how judgments are published in Australia when undertaking research in case law.

## Which courts produce written decisions?

Not all courts produce written decisions. Generally speaking, most federal courts will produce and publish written decisions. In state court hierarchies, superior courts (Supreme Courts and Courts of Appeal) and intermediate courts (District Courts or County Courts) will also produce and publish written decisions. However, matters heard in the Magistrates or Local Courts will rarely lead to a written decision.

Jury trials do not necessarily result in a written decision. However, following the accused pleading guilty, or the jury finding the accused guilty at trial, there will be a sentencing hearing. Many courts make these sentencing remarks available to the public.

## Unreported and reported judgments

Almost all decisions, except those that are suppressed on the grounds of privacy or public interest, are initially published online on court websites or on AustLII as unreported judgments. From 1992 onwards, Australian courts adopted a standardised system of citation known as ‘medium neutral citation’ for unreported judgments.

Of those, judgments deemed to be significant are reported and published in law reports series. These are called reported judgments or reported decisions. To be reported, a judgment should do one or more of the following:

- raise significant points of law
- introduce a new principle of law
- significantly modify an existing principle of law
- settle a question of law
- apply an established principle in a new area
- define or interpret legislation or legal terms or be particularly instructive.

## Authorised reports

All Australian jurisdictions have a set of official or ‘authorised’ law reports. These are listed in Table 5

below. Judgments published in authorised reports are checked by a Judge (or Judge's associate) prior to publication.

## Which version of the judgment should be used?

It is possible that a decision has been published multiple times. First, in unreported format, then sometimes in an unauthorised law report series, and finally in an authorised law report series. *Commonwealth v Tasmania*, an important case about the balance of powers between the Commonwealth and the states, exists in unreported format and was reported (published) in the *Commonwealth Law Reports*, *Australian Law Reports*, and *Australian Law Journal Reports*. Reports found in the unauthorised report series are referred to as parallel citations.

**Table 4: Parallel citations for a case**

<i>Commonwealth v Tasmania</i>	[1983] HCA 21	Unreported (medium neutral citation)
	(1983) 158 CLR 1	Authorised law report series
	(1983) 46 ALR 625	Unauthorised law report series
	(1983) 57 ALJR 450	Unauthorised law report series

The general rule is, whether citing a case in your assignment or using it in court, it is important to always use the authorised version of the case where possible. The fourth edition of the Australian Guide to Legal Citation recommends this in Rule 2.2.2.

## Australia – Current list of Authorised Reports

**Table 5: Current list of Authorised reports in Australia**

Court	Law report abbreviation	Full title
High Court of Australia	CLR	<i>Commonwealth Law Reports</i>
Federal Court of Australia	FCR	<i>Federal Court Reports</i>
Supreme Court of the Australian Capital Territory	ACTLR	<i>Australian Capital Territory Law Reports</i> (2007-onwards)
Supreme Court of New South Wales	NSWLR	<i>New South Wales Law Reports</i> (1971-onwards)
Supreme Court of the Northern Territory	NTRLR	<i>Northern Territory Law Reports</i> (1991-onwards)
Supreme Court of Queensland	QR (formerly Qd R)	<i>Queensland Reports</i> (1959-onwards)
Supreme Court of South Australia	SASR	<i>South Australian State Reports</i> (1921-onwards)
Supreme Court of Tasmania	Tas R	<i>Tasmanian Reports</i> (1979-onwards)
Supreme Court of Victoria	VR	<i>Victorian Reports</i> (1957-onwards)
Supreme Court of Western Australia	WAR	<i>Western Australian Reports</i> (1960-onwards)

## United Kingdom – Authorised Reports

**Table 6: Authorised reports in the United Kingdom**

Court	Law report abbreviation	Full title
Supreme Court House of Lords Privy Council	AC	<i>Law Reports, Appeal Cases</i>
High Court (Chancery Division)	Ch	<i>Law Reports, Chancery Division</i>
High Court (Family Division)	Fam	<i>Law Reports, Family Division</i>
High Court (Probate, Divorce and Admiralty Division)	P	<i>Law Reports, Probate</i>
High Court (Queen's Bench Division)	QB	<i>Law Reports, Queen's Bench</i>

12.

## CITING A CASE

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### Case citations

Case citations abbreviate the key information relating to a case and its publication details. Understanding the parts of a case citation will help to find the case online or in a printed library collection.

### Reported citations

Below are the parts of a citation for the reported judgment, *Jaensch v Coffey* (1984) 155 CLR 549.

**Table 7: Reported citations**

Party names	Year published	Volume number	Law report series	Starting page number
<i>Jaensch v Coffey</i>	(1984)	155	CLR	549

### Unreported citations

Unreported judgments use a medium neutral citation style. Below is the same judgment cited in an unreported format.

**Table 8: Unreported citations**

Party names	Year heard	Court Abbreviation	Judgment number
<i>Jaensch v Coffey</i>	[1984]	HCA	52

Both citation styles abbreviate either the law report series or the court title. Abbreviations are used extensively in law and used for law reports, law courts, law journals and commonly used legal terms. There are specialist resources for looking up abbreviations:

- *Cardiff Index to Legal Abbreviations* (UK and Intl)

### How to talk about a case

When citing cases verbally, some elements of a case citation need to be pronounced differently than they

would appear in written form. For instance, in Australia the V between the party names is not pronounced; use *Against* for criminal matters or *And* for civil cases. For example:

- *The Queen Against Stubbs*
- *Haug And Jupiters*

Instead of pronouncing the R in criminal matters, use *The King* or *The Crown*.

Use 'In the matter of' instead of *Re*.

## Make sure to provide the full citation

In advocacy or moot situations, use the full citation the first time the authority is referred to. With subsequent citations, simply indicate the party names and pinpoint reference as needed.

For example, when verbally citing *R v Stubbs* (2009) 228 FLR 221:

- First instance: "*The Queen against Stubbs, reported in 2009 at volume two hundred and twenty-eight of the Federal Law Reports at page 221.*"
- Second instance: "*The Queen against Stubbs...*"



13.

## FINDING A CASE

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### Finding a known case

The known case approach relies on having some details about the case – either the case citation, the judge’s name, the date of hearing, or some other combination of details.

If there is a known case citation, locating the decision will be straightforward.

1. locate the law report abbreviation
2. select the correct law report series
3. use a database or use the print copy in your library

### Secondary Sources

Secondary sources such as legal encyclopaedias, books, articles, and looseleaf/commentary are often the best place to start when looking for case law. Important cases and the key points of law will be discussed and referred to by experts.

### Keyword searching

Searching for cases by subject or topic can be difficult. It is almost always more efficient to identify relevant cases via secondary sources. The options below are a few different ways to search using keywords.

### Catchwords and summary search

One of the most effective keyword searches you can try is the catchwords and summary search (if this is available in the database you are using). By searching this field only, you will receive a smaller number of more relevant results.

The catchwords are a series of keywords and phrases, separated by dashes, added to the headnote of the case by the law reporter. The purpose is to quickly describe the subject matter of the case, including relevant legislation and provisions. See these example catchwords from *Cronin v Hamilton* [1958] Qd R 24:

Criminal law — Justices — Assault — Circumstances of aggravation — Punishment — Forms of conviction — Evidence — Sexual offences — Corroboration — The Criminal Code, ss. 19(8), 341-345 — The Justices Act, 1886 to 1949, s. 211.

The digest or summary briefly summarises the matter and outlines the key holdings of the case. Most legal databases will allow the user to refine their search to just the catchwords and summary field.

## Full-text searching

A full-text search looks for keywords across the entire text of the case. This is the broadest type of search and will not only receive the largest number of results of all the searches, but the highest number of irrelevant results. Each database has a specific help section that gives tips to the user on how to search effectively. Consider using Boolean operators, proximity searching, and placing limitations to get the best results.

## Legislation and provision

Many legal databases allow you to search for cases that consider a particular Act/Regulation and section. Generally, you can achieve this using the Advanced Search function in a database.

Consider re-ranking any results you have so that decisions from higher courts are at the top of your results.

## Words and phrases judicially considered

Searching the words and phrases judicially considered field will find decisions where judges have discussed or defined particular words and phrases.

14.

## USING CASE CITATORS

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The main role of a case citator is to provide extra information about cases. In Australian legal databases, any judgment of a superior court will have a citator record that includes information about the:

- status of the case
- publication and citation details
- litigation history — whether the case has gone on appeal and been subsequently affirmed or reversed
- subsequent judicial treatment — how later judges have treated the decision
- consideration of earlier cases
- secondary sources that cite the case
- legislation considered by the case.

Always check case citators to understand the case.

The main case citators used in Australian legal research are:

- Casebase (Lexis Advance)
- KeyCite (Westlaw Australia)
- LawCite (AustLII)

15.

## USING CITATORS TO SEE JUDICIAL CONSIDERATION

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Always determine whether a case is considered good law. A citator, with its system of flags, symbols, and annotations, will provide extra information about the litigation history of the case, as well as how the case has been treated by subsequent cases.

### Check the flag or signal

In the citator record for a case, look for the **symbol** or **flag** appearing next to the party names. The symbol will give an indication of the status of the case.

---

#### Red



A **red flag or symbol** indicates the decision has been reversed on appeal, or subsequently disapproved or overruled on at least one point of law.

#### Yellow



A **yellow flag or symbol** indicates the decision has subsequently been distinguished, explained, not followed. It may have some negative history but has not been reversed or overruled.

#### Green



A **green symbol** indicates the decision has been applied, approved, followed, affirmed or upheld.

**Neutral** The **neutral symbol** indicates the decision has been considered or cited.

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The flag or signal will give limited information about the status of the case, so always look at the case annotations as well. Annotations are single word descriptors that indicate the litigation history of the case, as well as how the case has been treated in subsequent judgments.

### Check the litigation history

The **litigation history** section of the citator outlines the path of the legal dispute through the appellate hierarchy. This may directly affect the reliability of the case.

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**Reversed (Red)**

Used where the decision has been overturned on appeal.

**Varied (Yellow)**

Used where a case on appeal is only partially affirmed or reversed.

**Affirmed (Green)**

Used where the decision has been upheld on appeal.

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## Subsequent judicial consideration

The doctrine of precedent means that judges are not only bound by decisions of higher courts in the same court hierarchy but very often consider decisions of those lower in the same hierarchy, or decisions produced outside of the hierarchy altogether.

A citator record will provide you with an overview of the subsequent judicial consideration of your case:

- CaseBase — Cases referring to this case
- KeyCite — Citing references

The most common annotations used to describe the subsequent judicial treatment of a judgment are described below:

Annotation	Definition
<b>Disapproved</b> <b>(Red)</b> 	Used when both courts are of coordinate jurisdiction, and the latter court has no power to overrule the earlier decision. A court may disapprove or criticise a previous decision and yet be compelled to follow it.
<b>Overruled</b> <b>(Red)</b> 	Used when a court refuses to follow the decision of a court that is equally positioned or lower in the court hierarchy.
<b>Distinguished</b> <b>(Yellow)</b> 	Used when a court decides that it need not follow a previous case by which it would otherwise be bound because there is some salient difference in facts.
<b>Explained</b> <b>(Yellow)</b> 	Used when a court interprets a previous decision and states what it means.
<b>Not Followed</b> <b>(Yellow)</b> 	Used in circumstances where both courts are of coordinate jurisdiction, and the latter court has no power to overrule but is also not bound to follow.
<b>Questioned</b> <b>(Yellow)</b> 	Used when a later decision questions decision but does not disapprove or overrule it.
<b>Applied</b> <b>(Green)</b> 	Used when the court is applying the principle of a previous decision to the present case, the facts of which are materially different from those of the earlier case.
<b>Approved</b> <b>(Green)</b> 	Used when a superior court approves an earlier decision by a lower court or court of equivalent jurisdiction.
<b>Followed</b> <b>(Green)</b> 	Used when a court is bound by the previous decision of a court of superior jurisdiction in a case where the facts were the same or substantially the same.

<b>Cited</b>	Used when the primary case is merely mentioned by the court in the subsequent case, without comment.
<b>Considered</b>	Used when the court discusses a previous decision but does not actually apply, disapproved, follow etc.
<b>Referred</b>	Used when a case is merely referred to but not discussed in any detail.

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16.

## REVIEW QUIZ - CASE LAW

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### Check your case law research knowledge

Take the below review quiz to test your understanding of the content covered in this section.



*An interactive H5P element has been excluded from this version of the text. You can view it online here:*

<https://jcu.pressbooks.pub/legalresearchskillsanaustralianlawguide/?p=60#h5p-16>



## PART III

# LEGISLATION

17.

# INTRODUCTION TO LEGISLATIVE RESEARCH

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In Australia, the law is made in our courts by Judges (case law) and by legislation made under the authority of Parliament.

This module will focus on legislation and:

- developing an understanding of the legislative process
- identifying parliamentary documents useful for interpreting legislation
- finding sources of legislative law.

18.

## LEGISLATIVE PROCESS

It is important to understand how legislation is made. This knowledge will assist you in research tasks such as:

- tracking proposed legislation prior to enactment
- locating parliamentary documents needed in statutory interpretation.

### Queensland legislative process

The passage of a Bill through parliament is similar in most common law jurisdictions. One noteworthy difference is that the Queensland Parliament has abolished its Legislative Council and now use a unicameral (or one chamber) system. The diagram below reflects the typical passage of a Bill through the Queensland Parliament rather than the legislative process of a parliament with two houses.



Figure 3: The Queensland Legislative Process by UQ Library, UQ Legal Research Essentials, used under CC-BY-NC 4.0

The passage of a Bill through Parliament is similar in most common law jurisdictions. In Queensland, the process is as follows:

- introduced to Parliament by the Minister responsible

- read for the first time — explanatory speech
- proceeds to Committee stage (optional) — consideration and report from the relevant committee
- read for a second time
- moves to consideration in detail — Bill considered clause by clause (amendments can be made at this time)
- read for the third time — agreed to
- considered by another house (**in bicameral parliaments**)
- receives Royal Assent — and is enacted.

Read more about Queensland's parliamentary process in the Queensland Legislation Handbook or Queensland Parliament's Factsheet 3.6 (PDF, 269KB).

## Commonwealth legislative process

The Parliament of Australia's Infosheet 7 Making Laws describes how bills are proposed, considered and passed at a federal level.

Making a law in the Australian Parliament is a fact sheet explaining the law-making process in the Australian Parliament.

19.

## PARLIAMENTARY DOCUMENTS

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Several important documents are produced during the law-making process including the Bill, the explanatory note or memorandum, and the explanatory or second reading speech.

### Bills

Some of the most significant documents produced by Parliament are Bills. A Bill is a proposed Act and the principal means by which government policy becomes law. Nowadays, the majority of Bills are drafted by the Office of the Parliamentary Counsel and then debated and considered in detail in Parliament before they are passed and become law.

Bills have **clauses** instead of sections or provisions.

Bills are usually introduced by the government of the day, however, non-government Bills may be introduced in the form of **Private Members' Bills**. More information about Private Members' Bills is available in *House of Representatives Practice*.

### Extrinsic material

Interpretive materials such as explanatory memoranda or notes and parliamentary speeches are useful when researching the intent of the legislation and fleshing out the purpose and finer details of statutes. These materials are referred to as **extrinsic material** because although they are aids in statutory interpretation, they are not part of the Act.

### Explanatory note or memorandum

The **explanatory note** or **memorandum** describes the purpose of the Bill and provides explanation of each clause in plain English. These memoranda or notes can be useful in interpreting legislation. They may also be considered by courts when considering legislation. The Queensland Parliament refer to these documents as explanatory notes, however, most common law jurisdictions use the term explanatory memoranda.

### Historical explanatory memoranda

Not all Bills will have an associated explanatory statement (particularly older Bills). For more information

refer to Was there an EM?: Explanatory Memoranda and Explanatory Statements in the Commonwealth Parliament for historical Commonwealth explanatory memoranda in Australian states and territories.

## Parliamentary speeches

A Bill will generally be the subject of several parliamentary speeches, the most significant of which is the **explanatory speech** given by the Minister in charge of the Bill. In Queensland, the explanatory speech takes place at the first reading of the Bill. In most other jurisdictions this speech is referred to as a second reading speech because it occurs on the second reading of the Bill.

In this speech, the Minister outlines the policy behind the Bill and what it seeks to achieve. These speeches can therefore help you understand why a Bill has been introduced.

## Accessing parliamentary documents

Most common law jurisdictions have a parliamentary website that you can use to access a full range of parliamentary documents. The Queensland Parliament website conveniently allows you to access the Bill, explanatory speech and explanatory note in the same place. It also indicates the process of the Bill through Parliament.

20.

# ACTS

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Acts are laws formally passed by Parliament and that have received royal assent by the Crown. Royal Assent is granted on behalf of the Crown by the Governor or Governor-General. Sometimes Acts are referred to as Statutes.

## Anatomy of an Act

The structure of most Acts is consistent across jurisdictions, starting with a preliminary section, and separated into parts, divisions, and sections. As an example, the image below shows the preliminary part of the printed copy of the *Jobs Queensland Act 2015* (Qld).



An interactive H5P element has been excluded from this version of the text. You can view it online here:

<https://jcu.pressbooks.pub/legalresearchskillsanaustralianlawguide/?p=70#h5p-17>

The preliminary section of an Act generally follows the format set out in the example and provides useful information about the Act. It will often have a **definitions** or **interpretations** section.

**Jurisdiction** — this will be readily apparent on the front page of the Act.

**Act number** — most Parliaments have a numbering system based on the calendar year. This Act is the 23rd Act of 2015.

**Long title** — although you would not generally cite a modern Act by its long title, long titles can be helpful for the purposes of statutory interpretation as they explain the Act's purpose.

**Short title** — this is the name of the Act together with the year it was passed

**Commencement date** — Usually found in section 2 and provides information about when the Act commences. This is discussed in greater detail below.

**Date of Royal Assent** — this is generally published on the title page of the Act when it is passed.

## Commencement

Acts will not come into force until the commencement date or ‘date of operation’. Sometimes different sections of an Act commence at different times. Knowing how to check whether an Act has commenced is an important legislative research skill.

Commencement information is often found in the Act itself, under s 2. However, this could be a general statement rather than a specific date, stating that the Act will commence:

- upon receiving Royal Assent from the Governor or Governor-General
- on a specified date
- date to be proclaimed (in the future)
- in relation to another piece of legislation
- the default date of 28 days after receiving Royal Assent.

One of the easiest ways to locate the commencement date is to look at the **Endnotes** or **Notes** section of the latest version of the Act.

For Queensland legislation, refer to “Legislative History” on the OQPC website to view the commencement and other important information.

## Currency

During the currency of an Act, it may be changed by amending Acts passed by Parliament. When a version of an Act is produced that incorporates these changes it is referred to in various ways:

- version
- reprint
- consolidation
- compilation

It is important to know how up-to-date an Act is when you are using it. Check for a date on the front page of the Act that claims:

- ‘*This compilation was prepared on...*’
- ‘*Current as at...*’

If some time has passed since the compilation was prepared, amendments might have been made to the Act that have not yet been incorporated into the version to which you are referring.



**Acts as passed** or **Numbered Acts** are Acts in their original form. That is, as they were passed in the Parliament.

**Amending Act** is a statute that alters the operation of an earlier Act through substitution, insertion, omission or repealing.

**Reprint** or **Compilation** incorporates all amendments to the Numbered Act.

**Consolidating Act** is a statute that combines all the Acts in force relating to a particular subject area.

**Repealed** or **Ceased** Acts are no longer enforced as law.

21.

## SUBORDINATE LEGISLATION

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Subordinate legislation is sometimes referred to as delegated legislation because, even though it is authorised by an Act of Parliament, it is made by a body outside of Parliament.

Confusingly, this type of legislation is referred to in different ways on legislative websites, including:

- subsidiary legislation
- legislative instruments
- statutory instruments
- regulations
- subordinate legislation
- delegated legislation.

22.

## FINDING QUEENSLAND LEGISLATION

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Queensland legislation by the Office of Queensland Parliamentary Counsel provides access to official Acts and subordinate legislation. The website can be searched or browsed to find legislation.

If unsure about the title of the legislation you are after, secondary resources can help you to identify key legislation:

- textbooks
- looseleaf services (commentary)
- legal encyclopaedias
- journal articles.

### Finding current Acts

To find the most current version of an Act, look for In force legislation on the Queensland legislation website. Browse alphabetically if you know the title of the Act or choose the year it came into force.

### Finding point-in-time Acts

The ability to find Acts as they looked at a particular point in time is an important skill to possess. Using the Queensland legislation Acts as passed website, you can generally access reprints or historical versions from 1991 onwards.

For historical point-in-time research prior to 1991, access Queensland Statute Reprints, or look for printed consolidations in a Library collection.

### Finding historical Acts

There are a number of historical legislation databases, the chief one being Queensland Law, which contains:

- The Public Acts of Queensland 1828-1936
- Queensland Commencement Legislation
- Letters Patent Establishing Boundaries for Queensland

- Queensland Criminal Code 1879-1899.

The Queensland Historical Acts in AustLII is also a valuable database.

23.

## FINDING VICTORIAN LEGISLATION

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The primary source of all Victorian legislation is the Victorian Government's Victorian Legislation website. Electronic versions of Victorian legislation on this website are classified as authorised versions, (including for evidentiary purposes) under the *Interpretation of Legislation Act 1984* (Vic), Part V.

This Chapter will explain how to find Victorian legislation and resources using authorised free government websites.

### Finding Bills & Extrinsic Materials

To locate a Victorian Bill and its accompanying Explanatory Memorandum, search for the Bill title in the Bills section of the Victorian Legislation website. Bills which are currently before Parliament are located in the Bills in Parliament section. To search for all other Bills (including those which have been passed, withdrawn, defeated or lapsed) search for the Bill title in the All Bills section of the website.

Once you locate the Bill core document page, you will find links to the text version of the Bill, the Explanatory Memorandum, as well as links to proposed amendments, and related parliamentary debates. From 2006, a link to the Statement of Compatibility made in accordance with the *Charter of Human Rights and Responsibilities Act 2006* (Vic) will also be located on the Bill core document page.

### Finding Aids for Bills on the Parliament of Victoria's website

The Bills and Legislation section of the Parliament of Victoria contains some useful finding aids, such as:

- Understanding a Bill
- Bills Status List
- New Bills introduced this week

### Finding historical Bills and parliamentary debates

If a Bill is not available on the Victorian Legislation website, the AustLII website has a historical collection of Victorian Bills (1967-) and Victorian Explanatory Memoranda (1911-). Some libraries will also hold print copies of historical collections of Victorian Bills.

The Parliament of Victoria website has searchable parliamentary debates (from 1991 onwards) in the Hansard database. Daily Hansard is also available from 1999 onwards, and digitised PDF versions of Hansard volumes for the period 1865-1999 are also available.

## Understanding the usefulness of Extrinsic Materials

When undertaking legislative legal research, it can be useful to research for the parliamentary intention as to why the legislation was created or amended. This process is known as statutory interpretation. Under section 35 of the *Interpretation of Legislation Act 1984* (Vic), extrinsic materials may be used to aid in the interpretation of provisions of legislation. Some examples of extrinsic materials are:

- Explanatory Memoranda
- parliamentary documents
- reports of Royal Commissions, Parliamentary Committees, Law Reform Commissioners and Commissions, Boards of Inquiry, Formal Reviews or other similar bodies.
- Statements of Compatibility made in accordance with the *Charter of Human Rights and Responsibilities Act 2006* (Vic)
- parliamentary proceedings published in Victorian Hansard (such as second reading speeches & debates on clauses of Bills)

**NOTE:** Second reading speeches will normally start with the phrase “That this bill be now read a second time” and will end with the phrase “I commend the Bill to the house”.

## Finding Victorian Acts – As Passed

Once a Victorian Bill has been passed and receives Royal Assent, it will be allocated an Act number. To find versions of Acts, as they are passed, search for the Act title or year and number of the Act, in the Legislation as Made – Acts as enacted section of the Victorian Legislation website.

## Finding Victorian Acts – In Force

Once a Principal Act has been amended, a consolidated version of the Act will be placed in the Legislation in Force – Acts in Force section of the Victorian Legislation website. Using a title search, navigate to the core document page of the Act. A PDF version of the current Act will be available. There will also be a table of previous versions of the Act for “point in time” research purposes.

## Researching Amendments to Victorian Acts

Victorian Acts contain margin notes next to sections. These margin notes will indicate if the section of the Principal Act has been amended/inserted or repealed. The notation will contain the Act number and year and relevant section of the Amending Act. The EndNotes, at the end of the in force version, will contain a list of all Amending Acts since the publication of the last version.

## A note about online versions and former consolidations

Online versions of Victorian Acts on the Victorian Legislation website generally commenced in 1997. To find historical consolidations of Victorian Acts you may need to refer to hardcopy reprints of Acts. Many

Victorian law libraries maintain a historical print collection of Victorian reprinted Acts. Prior to reprinted Acts, major Victorian Acts were produced in consolidated volumes for the years 1864/65, 1890, 1915, 1928/29, and 1958. For example, the *Wrongs Act 1958* (Vic) was a consolidated Act, meaning that the 1958 version included all amendments to the *Wrongs Act* up to 1958. The first page of a consolidated Act will have a sub-title description in a format like: ‘An Act to consolidate the Law relating to Wrongs’.

Consolidated Acts between the years 1864-1958 do not generally have an explanatory memorandum or second reading speeches. The exception is the *Companies Act 1958* (Vic) which does have an explanatory memorandum and a second reading speech, which are bound with the Act in the 1958 consolidation volume.

## Finding historical Victorian Acts on AustLII

Acts enacted by the Victorian Parliament from 1851 to 1995 are available on the AustLII website, under the Victorian Historical Acts database.

## Victorian Subordinate legislation

Under section 3(1) of the *Subordinate Legislation Act 1984* (Vic), the term “statutory rule” can also mean regulation. Subordinate legislation is also known as delegated legislation. In Victoria, when a section in an Act states that subordinate legislation can be made under the Act, this can take the form of Rules or Regulations. For example, section 194 of the *Aboriginal Heritage Act 2006* (Vic) is the authorising provision for rules or regulations to be made by the Governor in Council under that Act. The *Aboriginal Heritage Regulations 2018* (Vic) are an example of subordinate legislation made under section 194 of the *Aboriginal Heritage Act 2006* (Vic).

Locating subordinate legislation on the Victorian Legislation website is similar to locating Acts.

## Finding Victorian subordinate legislation – As passed

To find versions of Rules or Regulations as they are passed, search for the Rule or Regulation title or year and number, in the Legislation as Made – Statutory Rules as made section of the Victorian Legislation website.

## Finding Victorian subordinate legislation – In force

Victorian subordinate legislation can also be consolidated. To locate a consolidated Rule or Regulation, search for the title or year and number in the Legislation in Force – Statutory Rules in force section of the Victorian Legislation website. Using a title search, navigate to the core document page of the Rule or Regulation. A PDF version of the current rule or regulation will be available. There will also be a table of previous versions for “point in time” research purposes.

The Victorian Government produces Regulatory Impact Statements to accompany any new and sunseting subordinate legislation. From 2011 onwards, these can be found on the Victorian Regulatory Impact Statements section of the Better Regulation Victoria website.

### **A note about sunset clauses for Victorian subordinate legislation**

Under section 5(1) of the *Subordinate Legislation Act 1984* (Vic), subordinate legislation automatically expires on the day which is the tenth anniversary of the making of the statutory rule. This is commonly known as a “sunset provision” meaning that the rule will expire at the end of the day.

## **Finding historical Victorian subordinate legislation on AustLII**

Some historical versions of Victorian subordinate legislation are available on the AustLII website.

- Victorian Numbered Regulations 2004-
- Victorian Reprinted Regulations 1997-
- Victorian Repealed Regulations

Historical Victorian subordinated legislation is also available in hard copy print format in some libraries, and some are published in Victorian Government Gazettes.

## **Finding repealed or revoked Victorian legislation**

Once a Victorian Act or subordinated legislation has been repealed or revoked it is moved out of the In Force database and into the Repealed or Revoked database on the Victorian Legislation website.

## **Other Victorian legislative information**

On the Victorian Legislation website there is other useful information linked under the Legislative Information menu, including:

- Legislative information reports: This section contains tables and information about commencement or repeal of Victorian Legislation. This includes tables of subordinate legislation made under authorising Acts and subordinate legislation which is set to expire.
- Penalty units: Instead of listing a monetary fine in an Act, there may be a section setting a specific fine amount in the form of a penalty unit (eg: 50 penalty units). On the Penalty and Fee unit website, the amount of a penalty unit increases on 1 July every year.
- General Orders: To locate which government department is responsible for administering specific Acts, check the General Orders website.
- Victorian Government Gazettes: Some Acts will come into force by dates set in section 2 of the Act, and other sections of the Act may come into force on a day to be proclaimed. Notices will be placed in Victorian Government Gazettes for those commencement proclamations.



24.

## FINDING COMMONWEALTH LEGISLATION

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The Federal Register of Legislation provides access to authorised Commonwealth Acts and subordinate legislation.

### Finding current Acts

To find current Acts on the Federal Register of Legislation when browsing, ensure you select Acts In Force.

### Finding point-in-time Acts

The Federal Register of Legislation provides access to historical versions of the Acts by Selecting **View series** from an Act homepage. The Series table will include version start and end dates you can use to find the correct version.

### Finding historical Acts

Access Acts as made from federation (1901) onwards from the Federal Register of Legislation.

25.

# TRACKING CHANGES IN LEGISLATION

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## Abbreviations

It can be valuable to understand how an Act has changed over time. Most Acts indicate these changes using a system of abbreviations.

**Table 9: Abbreviations and their meanings**

Abbreviation	Meaning
<b>ad</b>	added
<b>amd (or am)</b>	amended
<b>ins</b>	inserted
<b>om</b>	omitted
<b>renum</b>	renumbered
<b>rep</b>	repealed

## How to track changes

Traditionally, these abbreviations have been used to indicate changes to an Act in the **Endnotes** or **Notes** section found at the back of the Act. For Commonwealth Acts, for instance, turn to the **Endnotes 4 — Amendment history**.

The Amendment history for Section 69P of the Family Law Act 1975 (Cth) is:

s69P.....ad. No. 167, 1995; am. No 98, 2005.

This information tells you that:

- Section 69P was added in 1995 and amended in 2005
- The Act number and year of assent of the amending legislation.

For a fuller picture of the amendments, find the amending Act (Family Law Amendment Act 2005 No. 98, 2005) using the information provided.

Some websites incorporate the amendment information in a more accessible way. For instance, the Queensland legislation website allows users to use an option to **Turn history notes on** to see the amendment history while viewing the Act.

26.

## REVIEW QUIZ - LEGISLATION

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### Check your legislation research knowledge

Take the below review quiz to test your understanding of the content covered in this section.



*An interactive H5P element has been excluded from this version of the text. You can view it online here:*

*<https://jcu.pressbooks.pub/legalresearchskillsanaustralianlawguide/?p=82#h5p-18>*

PART IV

# SECONDARY SOURCES

27.

## INTRODUCTION TO SECONDARY SOURCES

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Secondary sources are a useful starting point when researching an unfamiliar area of law or legal concept. They provide background information, context, topic and concept overviews, expert analysis, and references to key primary sources. While secondary sources are not authoritative versions of the law, they are beneficial for developing your understanding of legal concepts. Examples of secondary sources include:

- legal dictionaries and encyclopedias
- books
- looseleaf services (commentaries)
- journal articles
- newspaper articles, reports and some material found on websites, blogs etc.

### Evaluating Secondary Sources

You are expected to use high quality, reputable and scholarly information sources throughout your university law study. Consequently, it is important to critically evaluate secondary sources, especially web-based sources, to determine whether the information is credible and suitable for academic use. Currency, authority and jurisdiction are of particular relevance for law resources. Refer to your university library's resources for more help and specific criteria for evaluating information.

28.

# DICTIONARIES AND ENCYCLOPAEDIAS

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## Legal dictionaries

Legal dictionaries assist with clarifying the meaning of legal jargon and other terms/phrases. They may provide references to legislative provisions defining the term and/or cases that have considered the term. Legal dictionaries can help you to:

- identify terms relevant to a particular area of law
- understand specific legal meanings for everyday words
- locate words and phrases defined in legislation or judicially interpreted.

Your university may prescribe an official dictionary to use as part of your law studies. Use your university library search to find other law dictionaries available in print or online. In the Lexis Advance law database, use the **Quick Find – Defined Terms** search to quickly locate the definition of a term or phrase.

## Legal encyclopaedias

Legal encyclopaedias contain more extensive information than dictionaries and provide:

- a concise introduction to the topic
- key case and legislation references
- coverage across all Australian jurisdictions.

They are a useful starting point when researching an unfamiliar area of law or legal topic. The table of contents is organised by *title* (field of law/subject) and then structured into chapters > subheadings > [paragraphs]. Encyclopaedias provide basic overview information for legal concepts, including references to key legislative provisions and case law in the notes area beneath each paragraph. To find information in legal encyclopaedias, browse through the table of contents topics using the + symbols, search across an entire encyclopaedia by keyword/s or limit a search to within headings/titles only.

Two online Australian legal encyclopaedias are available:

1. *The Laws of Australia* in the Westlaw Australia database – view the publisher’s training video [2:12].
2. *Halsbury’s Laws of Australia* in the Lexis Advance database – view the publisher’s training video [2:33].

29.

## BOOKS

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Books are an invaluable source of information for legal research. Books can provide you with:

- an in-depth understanding of a particular practice area, topic, or concept
- leading case references
- key legislation references
- related journal article references.

Use your university library search to find books by title, author, or topic. Use filters, such as publication date, to refine a large results list, or use the advanced search options. Consider currency and jurisdiction when selecting books to use.

Some titles will be available electronically as eBooks. However, publishers may set restrictions on the number of simultaneous users and the permitted print/download amount.



30.

## LOOSELEAF SERVICES (COMMENTARIES)

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Looseleaf services are publications used by legal practitioners who specialise in a particular area of law. They are also known as commentaries or reporters and typically include:

- legislative extracts
- annotations to legislation
- recent case law
- commentary (an analysis of the law written in a similar style to a textbook).

The term 'looseleaf' refers to the traditional print versions of these sources, which are comprised of loose leaves (pages) of paper in a folder or ring binder. This format enables regular updating throughout the year by removing, replacing and/or adding individual 'leaves' to reflect changes in the law. Consequently, they are organised and referenced by paragraph numbers rather than page numbers.

The benefits of looseleaf services include:

- currency — regularly updated to reflect new developments
- insight — contains expert analysis of legal concepts and legislative provisions
- comprehensive coverage
  - assemble important information relevant to a field of law within the one product
  - include relevant legislation and key case law in full-text or extract format (or link to these primary sources).

### Using looseleaf services

Check your university library for access to looseleaf services; many will be available online in key law databases. Online looseleaf services continue to be regularly updated so they are a good source to check for any changes to the law in a particular practice area. They are particularly useful for problem questions involving factual scenarios. For example, for explanations of the elements of criminal offences, an outline of

the effects of specific contractual terms or discussion of the courts' interpretation/application of complex sections of legislation.

To use online looseleaf services, browse the table of contents or index as a starting point, or search across these products using keywords. Watch the Westlaw Australia video on Find and annotate commentary publications [2:24] for an example of using these resources.

31.

## JOURNAL ARTICLES

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Journal articles provide a topical discussion of legal issues, cases, and legislative developments. While journal articles can provide in-depth coverage of a legal issue, it is important to keep in mind that they may not always reflect current law. Scholarly law journal articles are written by legal experts (academics, researchers, members of the judiciary or legal profession) for an academic audience and are supported by research, theory, and references.

### Peer review

You may be required to use information from academic journal articles that are **peer reviewed**. Peer review (also known as refereeing) is a process where other scholars in the same field (peers) evaluate the quality of an article and make suggestions for revision prior to publication. The aim is to ensure that the work is rigorous, coherent and based on sound research.

### Interpreting journal article citations

The example below will help you identify the parts of a journal article citation.

Anita Mackay and Lola Akin Ojelabi, 'A Beginner's Guide to Academic Integrity and Legal Referencing using the AGLC' (2022) 47(1) *Alternative Law Journal* 74.

- **Author/s:** Anita Mackay and Lola Akin Ojelabi
- **Article title:** A Beginner's Guide to Academic Integrity and Legal Referencing using the AGLC
- **Year of publication:** 2022
- **Volume and issue number:** 47(1)
- **Journal title:** *Alternative Law Journal*
- **Commencing page number:** 74

### Searching for law journal articles

Journals are published in regular instalments with each issue containing several individual articles. There are hundreds of law journals varying by jurisdiction and subject focus. To find law journal articles on a legal topic, start with your university library search. Law databases and other sources, such as Google Scholar, will also help you locate relevant journal articles.

32.

## OTHER SOURCES

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### Law reform materials

Each jurisdiction in Australia has a Law Reform Commission. The function of the Commission in each state is to review and reform the law. For example, in Queensland, the *Law Reform Commission Act 1968* (Qld) s 10 states that:

The function of the Commission shall be to take and keep under review all the law applicable to the State with a view to its systematic development and reform, including in particular—

- (a) the codification of such law
- (b) the elimination of anomalies
- (c) the repeal of obsolete and unnecessary enactments
- (d) the reduction of the number of separate enactments
- (e) generally the simplification and modernisation of the law.

Law reform committees undertake reviews, research and consultation. Each Commission has a website that provides the most recent law reform reports and papers. The AustLII website also contains an Australasian Law Reform Library. In certain circumstances, law reform materials along with the relevant parliamentary documents may be used to help interpret legislation.

### Example of law reform in action

The recommendations found in Report No. 76 by the Queensland Law Reform Commission — *Review of Termination of Pregnancy Laws* — were tabled in Parliament in June 2018, and used to formulate the *Termination of Pregnancy Act 2018* (Qld).

### Non-legal materials

Depending on your assignment topic, your research may be enhanced by using non-legal sources. You may find supporting data or information in other fields, for example in the fields of criminology, statistics or health science.

### News

News articles and media report on and discuss the latest legal developments. Access news articles via your university library, news websites and archives such as Google news and TROVE digitised newspapers.

## Company and Industry Information

Use company reports and industry profiles to locate information on the legal industry, law firms and legal practice. This type of business and financial information also provides background information on clients and competitors and is generally available on company websites and via your university library's databases.

## Statistics

Statistical data can help you learn more about geographic regions and the current economic and social climate. There are a number of Australian and international government and non-profit organisations that collect economic, industry, and population data and make it freely available online. For example, the Australian Bureau of Statistics, Organisation for Economic Co-operation and Development and the World Bank.

## Policy documents

Public policy documents such as reports, discussion papers and working papers may reference key legislation and statistical data and provide valuable background on matters relating to justice, social issues, international relations, government regulation and more. Find policy documents on government and non-profit organisation websites, or browse the Analysis & Policy Observatory subject listings.

33.

## REVIEW QUIZ - SECONDARY SOURCES

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### Check your secondary sources research knowledge

Take the below review quiz to test your understanding of the content covered in this section.



*An interactive H5P element has been excluded from this version of the text. You can view it online here:*

*<https://jcu.pressbooks.pub/legalresearchskillsanaustralianlawguide/?p=97#h5p-19>*