

Part 2

Digitising and searching Australasian colonial legal history

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Part 1 of this paper was published in Volume 20 Part 3 of the ALL Journal. Part 1 outlined the scope, methodology and technologies of the project. Part 2 gives details of each of the components in the Australasian Colonial Legal History Library project and how they are being built.

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

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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.

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.

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.

Jurisdiction	Period	State of processing
NSW	1824-1900	On AustLII
VIC	1851-1900	On AustLII
NZ	1841-1900	On AustLII
QLD	1824-1900	Currently sourcing
SA	1837-1900	Currently sourcing
TAS	1826-1900	AustLII digitising
WA	1832-1900	Held, AustLII processing

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.

Jurisdiction	Report/Source	Period	State of processing
NSW	Kercher Online Report Series [Court of Criminal Judicature, Court of Civil Jurisdiction, Supreme Court of NSW] – including districts of Port Phillip and Moreton Bay	1788-1862	Held, being processed
NSW	A selection of Supreme Court cases in New South Wales from 1825 to 1862 (Legge Reports)	1825-1862 ¹	Being digitised
NSW	Reports of cases argued and determined in the Supreme Court of New South Wales (Supreme Court Reports)	1862-1876 ²	Currently sourcing
NSW	The New South Wales law reports	1880-1900	Currently sourcing
VIC	Victorian Law Reports	1874-1900	On AustLII
QLD	Reports of Cases Argued and Determined in the Supreme Court of Queensland	1860-1881	Currently sourcing
QLD	Beor's Queensland Law Reports, Cases in Equity, Common Law, Admiralty, Insolvency and Criminal Law	1871-1878	Currently sourcing
QLD	Queensland Law Journal Reports	1881-1900	Currently sourcing
TAS	Kercher and Petrow Online Report Series	1824-1843	Held, being processed
TAS	<i>Gap in major reporting series</i>	1844-1896	Building from Trove
TAS	Reports of Cases Determined in the Supreme Court of Tasmania	1897-1900	Being digitised
SA	<i>Gap in major reporting series</i>	1836-1864	Building from Trove

¹ 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).

² 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').

Jurisdiction	Report/Source	Period	State of processing
SA	Pelham's Reports – Reports of Cases in the Supreme Court of South Australia and Vice Admiralty Court	1865-1866	Being digitised
SA	South Australian Law Reports	1867-1900	Currently sourcing
WA	<i>Gap in major reporting series</i>	1833-1898	Building from Trove
WA	Western Australian Law Reports	1899-1900	Currently sourcing
NZ	Lost Cases Project	1841-1869	Held, being processed
NZ	New Zealand Law Reports	1883-1906	Currently sourcing

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).³ 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):

³ National Library of Australia, Australian Newspapers Digitisation Program (Trove newspaper collection): <<http://trove.nla.gov.au/newspaper>>.

- 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,⁴ has been integrated into the Library. This pioneering online colonial law report series, consisting of detailed commentary and records from Australia's first newspapers⁵ and archives,⁶ 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)⁷ refer to the *Gazette* as

⁴ <http://www.law.mq.edu.au/research/colonial_case_law/nsw/site/scnsw_home/>.

⁵ Including the *Sydney Gazette*, *The Sydney Herald* and *The Australian*.

⁶ Most records for the archive collection have been recovered from State Records NSW. They are also published in 2 volumes of Law Reports: Bruce Kercher and Tim Castle, *Douling's Select Cases 1828 to 1844: Decisions of the Supreme Court of New South Wales* (Francis Forbes Society, 2005) and Bruce Kercher and Brent Salter, *The Kercher Reports: decisions of the New South Wales superior courts, 1788 to 1827* (Francis Forbes Society, 2011) is soon to be followed by two more volumes (1828-1862) (Bruce Kercher, Brent Salter and Lisa Ford).

⁷ <http://www.law.mq.edu.au/research/colonial_case_law/tas/site/sctas_home/>.

a primary source.⁸ The Kercher/Petrow online database will also migrate to the Library.

The *New Zealand Lost Cases Project*,⁹ 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”,¹⁰ 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:¹¹ 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.¹²

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.”¹³ 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.¹⁴ These pdf articles are text 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.¹⁵ 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

⁸ A consolidated index was published in 1847 for the period 1833-1843.

⁹ <<http://www.victoria.ac.nz/law/nzlostcases/default.aspx>>.

¹⁰ <<http://www.victoria.ac.nz/law/nzlostcases/methodology.aspx>>.

¹¹ <<http://www.victoria.ac.nz/law/nzlostcases/methodology.aspx>>.

¹² The editors’ comment: “This decision was based on the challenges posed by the existing archival material (discussed in further detail later in the document)”.

¹³ See Lost Cases site: <<http://www.victoria.ac.nz/law/nzlostcases/Sources.aspx>>.

¹⁴ 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).

¹⁵ AustLII is currently in the process of adding these brief catchwords to reported cases from the South Australian and Western Australian Trove collections.

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: *Reports of cases determined in the Supreme Court of Tasmania* (covering the period 1897-1904).¹⁶ There is a fifty year gap in reporting between the Kercher/Petrow project and the publication of the *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 *Digest of Cases Decided in Tasmania 1856-1896* (1897);¹⁷ a guide

to reports of decisions in Tasmanian newspapers, with a focus on the *Hobarton Mercury*,¹⁸ from the second half of the nineteenth century.¹⁹ The *Mercury's* reports were supplemented by reports in other newspapers including²⁰ Hobart Town Courier (1827-1859), Cornwall Chronicle (1835-1880), Launceston Examiner (1842-), Tribune (1872-1879) (Hobart) and Daily Telegraph (1881-1928).

The *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 *South Australia Gazette and Colonial Register* (1836-1839) was the primary source of legal information. The *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

¹⁶ Herbert Nicholls and W.J.T. Stops (eds), *Reports of cases determined in the Supreme Court of Tasmania* (Charles F. Maxwell, 1906-1940, vol 1-2, 1897-1904). The *Australian Law Times* reported some decisions of the Tasmanian Supreme Court from 1879 to the early 1890s.

¹⁷ L.F.S. Hore, *Digest of cases decided in Tasmania, 1856-1896* (Facsimile. Originally published: Hobart: Southern Law Society of Tasmania, 1897).

¹⁸ This was also the most authoritative source of parliamentary debates of the nineteenth century.

¹⁹ The digest was prepared from original clippings held in the Tasmania Supreme Court Library: see Alex Castles, *Annotated Bibliography*, 169.

²⁰ Alex Castles, *Annotated Bibliography*, 169.

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 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.²¹ 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*²² of over 50,000 items of legal scholarship from more

²¹ See Supreme Court of Western Australia, 'History', <<http://www.supremecourt.wa.gov.au/content/about/History.aspx>>.

²² *Australasian Legal Scholarship Library* <<http://www.austlii.edu.au/au/journals/>> developed under an ARC LIEF grant.

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.
- 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*.
- Early major legal treatises including Burton's *The Insolvent Law of New South Wales*; WE Hearn's *The Theory of Legal Duties and Rights: An introduction to Analytical Jurisprudence*; and Plunkett's *Australian Magistrate* and F V Smith *A full report of the great libel case, Reiby v. Blomfield, 1870, Tas*.
- 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,²³ but there is a limit to how much can be achieved with the project resources.

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 inter-

face 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 1788-1900.²⁴ 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.

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), is 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

²³ 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 ULas.

²⁴ 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.

LawCite ALPHA

Help Show all results

Matching Cases: 6758

Case Name	Citation(s)	Court	Jurisdiction	Date	Full Text	Citation Index
Re Hicks' Trade Mark	[1897] VtLawRp 118; (1897) 22 VLR 636; 3 ALR 75, 18 ALT 229	Privy Council	Australia - Victoria	16 Mar 1897	AustLIi	291
R v Symonds	[1847] NZPCC 387	Supreme Court of New South Wales	New Zealand	orca 1847		60
Attorney-General v Brown	(1847) 1 Legge 312	Supreme Court of New South Wales	Australia - New South Wales	orca 1847		42
White v Johnston	(1886) 8 ALT 53		Australia	orca 1886		40
Re Aldridge	(1893) 15 NZLR 361		New Zealand	orca 1893	LessHesit	34
In the Will of Wilson	(1897) 23 VLR 197		Australia - Victoria	orca 1897		30
R v Murrell	(1836) 1 Legge 72	Supreme Court of New South Wales	Australia - New South Wales	orca 1836		24
Morr, Re	[1897] VtLawRp 117; (1897) 22 VLR 629; 22 FLR 460, 3 ALR 47, 18 ALT 204		Australia - Victoria	17 Mar 1897	AustLIi	23
Re McCrory, Ex parte Rivett	[1895] VtLawRp 2; (1895) 21 VLR 3		Australia - Victoria	13 Mar 1895	AustLIi	22
R v Abrahams	[1895] VtLawRp 73; (1895) 21 VLR 343; 1 ALR 67		Australia - Victoria	2 Sep 1895	AustLIi	21

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

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*.

LawCite ALPHA

Help

Attorney-General v Brown 42
(1847) 1 Legge 312
Legge's Supreme Court Cases
Supreme Court of New South Wales
Australia - New South Wales

Cases Referring to this Case

Case Name	Citation(s)	Court	Jurisdiction	Date	Full Text	Citation Index
Cadia Holdings Pty Ltd v New South Wales	[2010] HCA 27; (2010) 269 ALR 204; (2010) 84 ALJR 588	High Court of Australia	Australia - Commonwealth	25 Aug 2010	AustLIi	1
New South Wales v Cadia Holdings Pty Ltd	[2009] NSWCA 174; (2009) 257 ALR 528	Supreme Court of New South Wales - Court of Appeal	Australia - New South Wales	1 Jul 2009	AustLIi	1
Attorney General v The Barbuda Council	[2002] ECR-SC 35	Eastern Caribbean Supreme Court	International	27 May 2002	CommonLI	1

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 (i) 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:

Law Journal Articles Referring to this Case

Journal Article Title	Citation(s)	Author	Jurisdiction	Date	Full Text	Citation Index
"Indigenous Policy and its Historical Occasions: The North American and Global Contexts of Australian Settlement"	[2008] 12 Australian Indigenous Law Review 69	Ford, Lisa	Australia	circa 2008	AustLII	 
"Implications of R's Radical Title for Statutory Regimes Regulating the Alienation of Land: Crown Land v Property of R Post-Mabo"	[2008] 34 Monash University Law Review 9	Secher, Ulla	Australia	circa 2008	AustLII	 
"The High Court and Recognition of Native Title: Distinguishing Between the Doctrines of Terra Nullius and 'Desert and Uninhabited'"	[2007] UWS Law Rev 1	Secher, Ulla	Australia	circa 2007	AustLII	 
"Constitutional Framework for Indigenous Governance. A"	[2006] 28 Sydney Law Review 403	Reilly, Alexander	Australia	circa 2006	AustLII	  2
"Disinterested Truth: Legitimation of the Doctrine of Tenure Post-Mabo"	[2005] 29 Melbourne University Law Review 30	Hepburn, Samantha	Australia	circa 2005	AustLII	  5
"The impact of the conquered / settled distinction regarding the acquisition of sovereignty in Australia"	[2004] 8 Southern Cross University Law Review 1	Cassidy, Julie	Australia	circa 2004	AustLII	 
"Mabo - Native Title in Australia" (FCA)	[2004] FedJSchol 4	French, Justice	Australia	circa 2004	AustLII	 
"Third Annual AusIn Assche Orator/November 2004" (FamCA)	[2004] FedJSchol 23	Bryant, Hon Chief Justice Duna	Australia	circa 2004	AustLII	 

[Castles, Alex C --- "The Reception and Status of English Law in ...](#)
www.austlii.edu.au/au/other/auflir/nw/1962/1.html who, text
THE RECEPTION AND STATUS OF ENGLISH LAW IN AUSTRALIA Constitutional
principles, which began to evolve in the earliest years of Britain's colonial ...

[Law of Australia - Wikipedia, the free encyclopedia](#)
en.wikipedia.org/wiki/Law_of_Australia
Jump to [Bibliography of English law](#). See also: [Reception statute](#). The legal institutions
and traditions of Australian law are monocultural in character ...

[Alex Castles on the Reception of English Law - Macquarie University](#)
mq.academia.edu/Alex_Castles/on_the_Reception_of_Englis...
Australian Journal of Legal History (2003) Vol 7 37 ALEX CASTLES ON THE
RECEPTION OF ENGLISH LAW BRUCE KERCHER' in 1963 when he was ...

[Australian Courts Act 1828 \(UK\) - Documenting Democracy](#)
huntingdon.ca.gov.uk/item/d-0-30.html
The document enacted legislation of the British Parliament which ensured that the laws
of England would be applied in the two existing Australian colonies. ... 24 of the Act set
the date of this invisible transfer as 25 July 1828, 'Reception Day'.

[The reception of land law into the Australian colonies Post-Mabo ...](#)
eprints.jcu.edu.au/911/
by U Secher - 2004 - Related articles
14 Feb 2011 - Secher, Ulla (2004) The reception of land law into the Australian
colonies Post-Mabo: the continuity and recognition doctrines revisited and the ...

[Bledisloe Reception | The Governor-General of New Zealand To ...](#)
97.govt.nz/content/bledisloe-reception-0
5 Feb 2012 - The Bledisloe gift of the Treaty House and the 506 hectares of land ... of
the most significant philanthropic gestures in New Zealand's history.

[The settlement of NSW and the reception of English law - Uni Study ...](#)
uni.studyguides.com/index.php/1828-The_of_reception_law
25 Feb 2012 - As the colony grows, those principles of English law which were ... *Prin
ciples, Law and Justice in Australia: Foundations of the Legal System, ...*

[The Francis Forbes Society for Australian Legal History](#)
www.forbessociety.org.au
The sst questions respectively address: (1) The Reception of English Law in Australia;
(2) Patterns in the Legal Histories of Australia and other British Colonies, ...

[PDF | Unfinished business. Bruce Kercher, An unruly child: a history of](#)
[law ...](#)
10.unimelb.edu.au/ig/1/ie/abstract/ep7/abstract/1204&content=ric
File Format: PDF/Adobe Acrobat
by A.Frazier - 1997
Until quite recently legal history, as practised and taught in Australian law schools has
... legislatures, or on the reception of English legal doctrines in Australia.

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 particular interest in the public domain aspects. A/Prof Shaunnagh **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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