

MASTERING LEGAL RESEARCH IN THE AUSTRALIAN JURISDICTION

A COMPREHENSIVE GUIDE FOR LAW STUDENTS

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INTRODUCTION

Legal research forms the bedrock of a successful legal education and career, empowering law students with the tools necessary to navigate the intricate world of Australian legal jurisdiction. It is a skill that transcends the boundaries of law school, as lawyers continually rely on thorough and effective research to build strong cases, provide sound advice, and make informed decisions. Regardless of whether you are just starting your journey in law school or about to embark on your legal career, mastering the art of legal research in the Australian jurisdiction is essential for success and professional growth. Imagine yourself as a legal detective, delving into the depths of legal materials, seeking hidden clues, and unravelling the mysteries of the law. As you embark on your journey through the labyrinth of statutes, regulations, and case law, your ability to skilfully uncover and analyse relevant legal information becomes paramount. Legal research is the compass that guides you through this maze, leading you to valuable precedents, persuasive arguments, and well-founded legal opinions.

This guide serves as your trusted companion, illuminating the path to effective legal research. Whether you are a seasoned law student or just beginning your academic journey, understanding the intricacies of the research process and harnessing the power of online tools will unlock a realm of possibilities. From the initial identification of your research question to the evaluation of legal authority and the synthesis of your findings, this guide will equip you with the necessary skills to become a proficient legal researcher.


UNDERSTANDING THE LEGAL RESEARCH PROCESS

1. Identifying the Research Question or Issue

Before diving into the vast sea of legal research, it is crucial to navigate the initial step of identifying the specific question or issue that requires exploration and analysis. This process involves carefully defining the research problem, which will serve as the direction guiding all subsequent steps of your legal research journey.

To identify the research question or issue, take a step back and critically analyse the subject matter at hand. Consider the broader context, legal framework, and any underlying controversies or uncertainties surrounding the topic. Are you seeking to understand the implications of a recent legislative amendment? Are you exploring the legal obligations and liabilities in a specific industry? Are you examining the constitutional validity of a particular provision? By clearly defining the scope and nature of your research problem, you can lay a solid foundation for the rest of your

research endeavours. Formulating a well-defined research question allows you to effectively narrow down the focus of your research, ensuring that your efforts are directed towards finding specific and meaningful answers. It provides clarity and purpose, allowing you to sift through the vast array of legal materials with a targeted approach. Moreover, a precisely formulated research question will not only guide your research process but also help you evaluate the relevance and applicability of the sources you encounter along the way.



Remember, the process of identifying the research question or issue requires thoughtful deliberation and a thorough understanding of the subject matter. Embrace the challenge of defining the problem, as it is the first step towards embarking on a successful and fruitful legal research endeavour.

2. Analysing and Breaking Down the Research Problem

To effectively tackle a research problem, it is essential to break it down into its constituent parts. This process involves dissecting the issue at hand and identifying the key elements and issues involved. By breaking down the problem, you gain a deeper understanding of its complexity and can approach it with a more targeted and focused approach.

Start by critically analysing the research question or issue. Identify the main components or sub-issues that contribute to the overall problem. Ask yourself: What are the different aspects of the problem? What are the underlying legal principles or doctrines at play? Are there any specific elements that need to be addressed separately?

Once you have identified the key elements, you can delve deeper into each one, conducting individual research on each component. This approach allows for a comprehensive

understanding of the problem and enables you to consider different perspectives, arguments, and relevant legal authorities. Breaking down the research problem also aids in determining the relevant legal sources to consult. By understanding the different facets of the problem, you can identify the primary and secondary sources that are most applicable to each component. This targeted approach ensures that your research is focused, efficient, and directly addresses the specific issues at hand.



Remember, the analysis and breakdown of the research problem are not linear processes. They require critical thinking, attention to detail, and the ability to see the broader picture while zooming in on specific elements. Taking the time to thoroughly analyse and break down the research problem sets a strong foundation for the subsequent steps in your legal research journey.

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Case Name

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1. Statutory Law

Statutory law refers to laws enacted by legislative bodies at the federal, state, and territory levels. These laws are created through the legislative process and are binding on individuals and entities within the jurisdiction. Examples of statutory laws in Australia include acts, statutes, ordinances, and regulations.

Federal statutory law includes laws passed by the Australian Parliament, such as the Corporations Act 2001 (Cth) and the Migration Act 1958 (Cth). State and territory statutory laws are enacted by their respective legislative bodies and govern areas such as criminal law, family law, property law, and consumer protection.

3. Gathering Relevant Legal Materials

In the Australian legal system, there are several sources of law, namely primary and secondary sources, that contribute to the development, interpretation, and application of legal principles. Understanding these sources is crucial for effective legal research and navigating the Australian legal jurisdiction.

A. Primary sources

Primary sources include statutory law (including regulations and constitutions and at times, international treaties) and case law, which constitute the foundation of legal research.



Federal Register of Legislation

Acts In Force	Legislative instruments In Force
Notifiable instruments In Force	Bills As Introduced
Gazettes	Information

Accessible at: <https://www.legislation.gov.au/>

1.1 Administrative Regulations

Administrative regulations are rules and regulations created by government agencies or administrative bodies. These regulations are authorised by specific statutes and provide detailed guidance on the implementation, enforcement, and administration of laws.

Government agencies, such as the Australian Securities and Investments Commission (ASIC) or the Australian Taxation Office (ATO), issue regulations within their respective areas of authority. Administrative regulations play a crucial role in shaping and operationalising statutory laws.

1.2 Constitutional Law

Constitutional law refers to the body of laws and principles embodied in the Australian Constitution. The Constitution establishes the structure and powers of the Australian government, defines the relationship between the federal government and the states, and protects fundamental rights and freedoms.

The Australian Constitution is the supreme law of the land and provides a framework for the exercise of legislative, executive, and judicial powers. Constitutional law plays a critical role in shaping the legal landscape and determining the validity and interpretation of other laws.

The Australian Constitution	▲
Commonwealth of Australia Constitution Act	
Chapter I. The Parliament.	
Chapter II. The Executive Government.	
Chapter III. The Judicature.	
Chapter IV. Finance And Trade.	
Chapter V. The States.	
Chapter VI. New States.	
Chapter VII. Miscellaneous.	
Chapter VIII. Alteration Of The Constitution.	
Schedule.	
Notes	

1.3 International Treaties and Conventions

Australia is a party to numerous international treaties and conventions. International law obligations assumed by Australia through these treaties can influence the development and interpretation of domestic laws. Treaties ratified by the Australian government become part of the domestic legal framework and may require legislative implementation.

International treaties cover various areas, including human rights, environmental protection, trade, and diplomatic relations. When interpreting domestic laws, courts may consider international obligations and principles derived from these treaties.

2. Case Law

Case law, also known as common law or judicial precedent, refers to the body of legal principles established through court decisions. According to the 'doctrine of precedent', when courts interpret and apply the law to specific cases, they create legal precedents that serve as binding or persuasive authority in subsequent cases with similar facts and legal issues.

The High Court of Australia is the highest court in the country and its decisions have precedential value across Australia. State and territory supreme courts and appellate courts also contribute to the development of case law. Notable cases, referred to as landmark or leading cases, have a significant impact on the interpretation and application of the law when future cases come through to the courts.

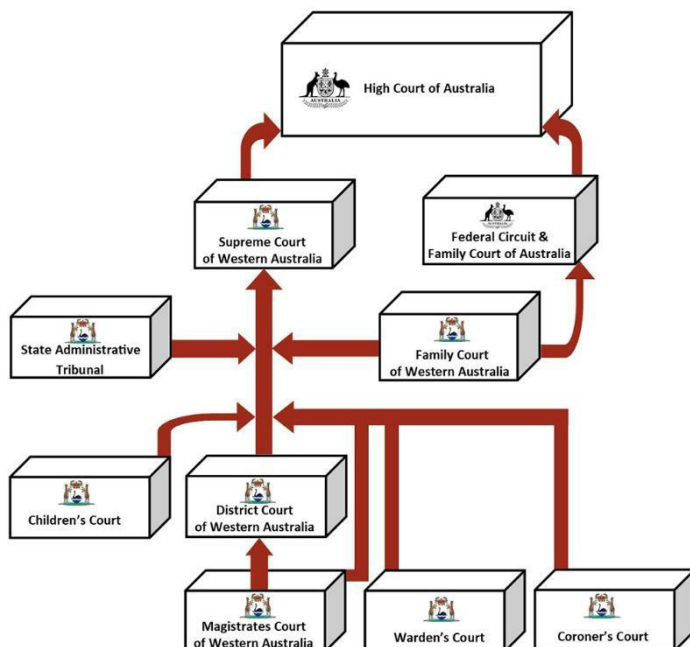


Figure 1: Diagram outlining the court hierarchy in Western Australia

Source: https://www.supremecourt.wa.gov.au/C/court_system_in_western_australia.aspx

Retrieving Primary Sources

AustLII (Australasian Legal Information Institute), Westlaw, and LexisNexis are popular legal research databases that provide access to primary sources of law in Australia. These platforms offer a wide range of legal materials, including statutes, regulations, and case law from various jurisdictions. Here are some details on how to use each database to retrieve primary sources:

- a. Visit the website and navigate to the search bar on the homepage (some might require your educational institution's subscription)
- b. Enter relevant keywords or search terms related to the primary source you are looking for (e.g., a specific statute, regulation, or case).
- c. Use the advanced search options, if available, to refine your search by jurisdiction, date range, or document type.

1. AustLII

AustLII is a free online resource that provides access to an extensive collection of Australian legal materials. AustLII typically provides full-text access to the selected document. AustLII also offers



various browsing options to explore primary sources by jurisdiction, court, or legislation. Additionally, you can use AustLII's citator service, called LawCite, to trace the history and treatment of cases and statutes.

2. Westlaw



Westlaw is a comprehensive legal research platform that provides access to a wide range of legal materials, including primary sources, secondary sources, and legal analysis tools. Westlaw also offers

additional features such as case analysis tools, legislative history, and cross-referencing capabilities to enhance your primary source research.

3. LexisNexis

Lexis Advance®



LexisNexis is another prominent legal research platform that provides access to primary sources,

secondary sources, and legal analysis tools. LexisNexis also offers additional features such as case citators, legal commentary, and cross-referencing capabilities to support your primary source research.



It's important to note that the specific functionalities and search options may vary slightly between AustLII, Westlaw, and LexisNexis.

Experiment and familiarise yourself with the specific features and capabilities of each platform.



Additionally, keep in mind that some primary sources may be subject to subscription access or may only be available in selected jurisdictions. Make sure to consult your educational institution's subscription or contact the respective database providers for comprehensive access to primary sources.

Secondary Sources

Secondary sources are an integral component of legal research and provide valuable analysis, commentary, and interpretation of legal concepts and principles. While primary sources, such as statutes and case law, establish the law itself, secondary sources offer insights, context, and guidance on understanding and applying the law. Here are the main types of secondary sources commonly used in legal research:



1. Legal Encyclopaedias

Legal encyclopaedias, such as Halsbury's Laws of Australia, provide comprehensive and systematic summaries of various areas of law. They offer an organised and structured overview of legal topics, principles, and concepts. Legal encyclopaedias can serve as starting points for research, providing a broad understanding of a particular area of law and leading researchers to relevant primary sources.

2. Law Review Articles

Law review articles are scholarly publications written by legal experts, academics, and practitioners. These articles analyse and discuss legal issues, developments, and trends. Law review articles provide in-depth research, critical analysis, and insights into legal theory and practice. They often explore specific legal topics, propose novel arguments, and present different perspectives. Law students and researchers often consult law review articles to gain a deeper understanding of complex legal issues and to identify potential arguments and sources for further research.



3. Legal Journals

Legal journals publish articles, essays, and case notes written by legal scholars, practitioners, and experts. These publications cover a wide range of legal topics and provide up-to-date analysis and commentary on recent legal developments. Legal journals serve as platforms for legal research, discussion, and debate. They often include opinions and viewpoints from various legal professionals and offer critical insights into the practical application of the law.

Active filters

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Books X

Articles X

Law Reviews X

Law X

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4. Treatises and Legal Textbooks

Treatises and legal textbooks are comprehensive and authoritative books that delve into specific areas of law. They provide detailed explanations, analysis, and interpretations of legal principles, doctrines, and concepts. Treatises are often written by renowned legal scholars or experts in a particular field and offer extensive coverage of a specific area of law. Legal textbooks are commonly used in law schools and provide a structured overview of legal topics, making them valuable resources for law students and researchers.

5. Practice Guides

Practice guides offer practical guidance and advice for legal professionals in specific areas of law. These guides provide step-by-step instructions, best practices, and procedural information for handling various legal matters.

They often include templates, checklists, and sample forms. Practice guides assist legal professionals in understanding the practical aspects of applying the law, navigating legal procedures, and complying with regulatory requirements.



When utilising secondary sources, it is important to consider the credibility and authority of the author, the publication, and the relevance of the information to your specific research question. Cross-referencing multiple secondary sources can provide a more comprehensive understanding of the legal issues and assist in developing well-rounded legal arguments.

Secondary sources are particularly helpful for gaining insights into the current state of the law, exploring different viewpoints, understanding legal controversies, and identifying key authorities and precedents. They complement primary sources and contribute to a more nuanced and informed legal analysis.

Retrieving Secondary Sources

To access secondary sources, consult law libraries, academic databases, or online platforms. Explore resources available through your educational institution's library or legal research databases. Pay attention to the reputation of the author or publisher, the recency of the information, and the level of peer review or editorial oversight when evaluating the credibility and authority of secondary sources.

Finally, remember to use a combination of primary and secondary sources to ensure a comprehensive and balanced approach to your research. Primary sources provide the binding legal authority, while secondary sources offer valuable insights, interpretations, and contextual understanding.

4. Evaluating the Credibility and Authority of Sources:

After retrieving the sources which may relate to your research task, it is essential to critically evaluate the credibility and authority of the sources you consult. Several factors contribute to the credibility and authority of a legal source:

A. Reputation of the Author

Start by considering the reputation of the author or publisher. Determine if the author is a respected legal expert, renowned scholar, or recognised authority in the field. Assess the publisher's reputation for producing high-quality legal materials.



Subjects: [Law and ethics](#); [Law](#)

Published in: 1983, Items in the Library Catalogue

By: [Kirby, M. D.](#)

B. Recency of Information

Next, evaluate the recency of the information. Legal research is an evolving field, and new laws, regulations, and court decisions can significantly impact the current state of the law. Ensure that the sources you consult are up to date and reflect the most recent legal developments.

▲ Daniels (formerly practising as Deloitte Haskins & Sells) v Anderson (AWA Case)

CaseBase | [\(1995\) 37 NSWLR 438](#) | [\(1995\) 118 FLR 248](#)

| [\(1995\) 16 ACSR 607](#) | [\(1995\) 13 ACLC 614](#) | [BC9504558](#)

🔍 Cardiff Savings Bank, In re; Marquis of Butes Case (Marquis of Bute's Case)

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C. Level of Editorial Oversight

✔ Peer reviewed

Consider the level of peer review or editorial oversight involved in the creation of the source. Sources that undergo rigorous peer review or editorial scrutiny tend to be more reliable and accurate. Look for indicators such as citations, footnotes, or references to other authoritative sources, which demonstrate that the information presented is well-researched and supported.

D. Assess for Risk of Bias

While secondary sources are valuable resources for legal research, it is important to be aware of potential biases that may exist within them. Here are some examples of biases that can be found in secondary sources:



As such, it is crucial to critically evaluate secondary sources, considering the potential biases that may exist. Cross-referencing multiple sources, seeking diverse perspectives, and critically analysing the arguments presented can help mitigate the impact of biases and promote a more comprehensive and balanced understanding of the law.

1. Authorial Bias:

Authors of secondary sources may have personal or professional biases that can influence their analysis and interpretation of legal issues. These biases can stem from their legal philosophy, political beliefs, or personal experiences. For example, an author who strongly supports individual liberties may present legal principles in a manner that emphasises personal freedoms over governmental regulations.

2. Jurisdictional Bias:

Secondary sources may exhibit bias towards a specific jurisdiction or legal system. Authors may focus primarily on the legal principles and developments of their own jurisdiction, leading to a limited perspective on broader legal issues. This bias can result in an incomplete or skewed analysis when attempting to apply the principles to a different jurisdiction.

3. Academic Bias

Academic journals and law review articles, while providing valuable insights, may exhibit a bias towards theoretical or controversial perspectives. Authors may prioritise exploring novel legal theories or engaging in academic debates rather than offering a balanced analysis of practical legal issues. This bias can lead to a lack of focus on practical implications and application of the law.

4. Commercial Bias

Secondary sources provided by commercial publishers may be influenced by commercial considerations. Publishers may cater to specific audiences or legal practice areas, potentially leading to a bias in the selection and presentation of legal materials. For example, a practice guide produced by a specific law firm or legal service provider may favour their own services or interpretations of the law.

5. Cultural or Social Bias

Secondary sources may reflect cultural or social biases prevalent within the legal community or society. These biases can arise from societal norms, historical perspectives, or prevailing attitudes towards certain legal issues. For example, secondary sources discussing gender-related legal issues may exhibit biases reflecting prevailing gender stereotypes or societal biases.

5. Organising and Managing Research Materials:

As you collate your findings from your legal research, it is crucial to establish an effective system for organising and managing your research materials. A well-organised approach ensures that you can easily locate, review, and cite sources, saving you valuable time and effort throughout the research process.

You may consider implementing the following strategies:



Create a systematic filing system: Whether in physical or digital form, establish a consistent method for organising your research materials. Use folders, subfolders, and clear file naming conventions to categorise and store documents related to specific research topics or issues.

Tag and annotate sources: Implement a system of tags or labels to help you quickly identify and retrieve relevant sources. Additionally, make annotations or take concise notes on key points, arguments, or relevant sections within the source. This practice will facilitate later review and synthesis of the information.

Maintain a research log or journal: Keep a record of your research activities, including search queries, databases used, sources consulted, and any insights or findings. This log will help you retrace your steps, reevaluate sources, and ensure reproducibility in case of future reference or research.

Regularly back up your research materials: Ensure that your research materials are securely backed up to prevent loss of data. Consider using cloud storage solutions or external hard drives to create backups regularly.



By implementing effective organisation and management techniques, you can streamline your research process, maintain a clear overview of your sources, and ensure the integrity of your research. A well-organised research system enhances efficiency, minimises the risk of overlooking valuable sources, and facilitates the citation process when referencing your research findings.

HOW AND WHEN DO I USE THESE RESOURCES IN LEGAL RESEARCH?

Understanding the various reservoirs of legal knowledge is crucial, but what truly sets a law student apart is the ability to discern when to leverage each of these resources. This aptitude not only paves the way for success during your academic journey in law school but also serves as a compass as you embark on your professional legal career.

The allure of diving straight into primary legal sources, like statutes and cases, often beckons at the outset of legal research. Yet, frequently, the complexity of the legal terrain in which you are conducting your research can leave you feeling adrift. In such instances, the most prudent approach is to commence your research with secondary sources.

1. Textbooks serve as concise compilations of pertinent cases and legislative principles, affording you a heightened comprehension of your research subject. This is an invaluable resource when delving into uncharted legal territory as it grants you a foundational grasp of the law before delving further into your exploration. An excellent resource to refer to is Halsbury, which is accessible through LexisNexis and encompasses a wide array of legal domains. Although it is not essential to consult this source every single time you commence legal research, it is one that can spare you considerable frustration and time expenditure.

Tip #1!

When textbooks reference a principle or statement of law, look at the case cited in the footnote and use that as a lead to search for more cases affirming (or rebutting) that statement of law.

2. Legal Journals and articles are excellent peer-reviewed secondary sources that delve into the subject matter that you are researching. While textbooks offer a foundational overview of a particular area of law, legal journals and articles question and refine these ideas in various contexts. Frequently, they engage in comprehensive discussions and analyses of recent or noteworthy cases, which is

essential knowledge for anyone operating within that legal domain. Furthermore, they may extend their purview to encompass policy inquiries, scrutinising their consequences, advocating for legislative reform, or critiquing the drafting of legislation.

3. Primary sources assume a position of utmost significance when tackling university assignments, formulating submissions for moot court competitions, and navigating the practical realm of law. Once you have delved into secondary sources to establish a foundational understanding of a specific legal domain, it becomes imperative to discern the intricate interplay between legislative provisions and case law precedents that underpin their application. This includes grasping the core principles encapsulated in the ratio decidendi, as well as considering supplementary insights provided by obiter dicta and dissenting opinions. It is vital to remain cognisant of the currency of your information and ensure that the identified case law and legislation remain applicable and pertinent in today's legal landscape.

Tip #2!

Conduct case annotations by tracking whether a case has been affirmed, followed, or overturned. This practice enables you to delve into the rationale behind court decisions to uphold or reject a case and gain insight into the judiciary's perspective on it.

Be sure to devise a writing plan to prevent any potential confusion while citing sources and maintaining clarity about their locations within your work.

Conclusion

Mastering legal research is essential for law students to develop a strong foundation in the Australian legal jurisdiction. By following the steps outlined in this comprehensive guide, law students can enhance their research skills, efficiently locate relevant legal sources, analyse findings, and cite sources accurately. With persistence, practice, and a thorough understanding of the legal research process, law students can excel in their academic pursuits and lay a solid groundwork for their future legal careers. However, the most important thing to keep in mind is that effective legal research is not only a skill but also a lifelong learning process that requires continuous improvement and adaptation to changes in the legal landscape.

For general tips on navigating law school, check out the AUSLSS' comprehensive guide, 'The Law Student's Guide to the Law School.' This resource provides valuable insights and advice to help you succeed in your legal studies. Whether you are just starting law school or about to embark on a legal career, this guide offers practical tips and guidance to enhance your academic journey. Access the guide at <https://www.theauslss.com/the-law-students-guide>.