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Background

Two Australian legal encyclopaedias are currently being published: *Halsbury's Laws of Australia* (Butterworths) and *The Laws of Australia* (Law Book Co). For many years lawyers and law students have suffered from the lack of such a research tool. A useful partial substitute has been the *Australian Encyclopaedia of Forms and Precedents* which has introductory notes, with reference to the main primary sources, at the beginning of each title. The limitations of these notes are clearly expressed in the introduction:

The emphasis throughout the Encyclopaedia is on practice; matters of substantive law are covered in the detail required to provide the legal context for the forms and precedents. Where there is little or no coverage of the subject matter of the title in other publications, a fuller note may be given. In the main, however, the Introductory Notes aim to provide an outline of the relevant law, and will direct you to such works as Halsbury's Laws, Australian Law Reports or specialist publications for a more exhaustive treatment of the subject

*How to Use the Australian Encyclopaedia of Forms and
Precedents 3rd ed, p 6.*

The only relevant encyclopaedia available is *Halsbury's Laws of England*. This is a highly authoritative work and an excellent encyclopaedia but it is English law not Australian. The Australian Commentary to the fourth edition overcomes this to some extent, but it is incomplete and, at its best, it is a compromise between what is possible and what is needed. Starting with English law may not be the best way to explain Australian law as English and Australian jurisprudence have developed differently over the last ten years.

Aims of the Encyclopaedias

Halsbury's Laws of Australia comprises a narrative statement of the law of Australia, covering every subject area and all nine jurisdictions. It is intended particularly as a work of first reference and has been specifically constructed to aid research at this level. It is assumed that the user is familiar with the handling of legal

1 This article is based on a paper given at the Introductory Legal Research Methods Workshops held by the University of New South Wales, Faculty of Law, Continuing Legal Education Program on 30 September 1993.

source materials (statutes and cases), but not with the particular subject matter. Throughout the work the law is stated in sufficient detail to enable legal practitioners or researchers to tackle problems arising in areas falling outside their usual areas of expertise.

The text is generally confined to statements of principle without discussion of those principles, unless this is required by differences between the States. This brevity allows the work to be comprehensive without being too large.

User's guide p 23

The Laws of Australia is designed to provide the legal profession with a clear and concise statement of each principle of Australian law. These principles are illustrated with examples, usually including the relevant leading case, thereby placing the law in its context. As such, you will find it an excellent first point of reference for your legal research.

How to Use Guide

Notice that both are intended for the legal profession, that is for users who may not be specialists but who nevertheless have a serious research interest and are familiar with legal materials. These are not introductory guides for law students, nor are they intended for the general public.

Authorship

Both encyclopaedias are produced by an editorial team. The actual writing is done by authors from all branches of the legal profession, both practising and academic. *The Laws of Australia* has over four hundred authors; each title has its own editors who manage an author team comprising specialists and authorities in specific areas (Publisher's Note, p v). The title editor is named on the title page of each title, the chapter authors on the title page or title page verso of each subtitle. *Halsbury's Laws of Australia* names the authors of each title on its title page. *Halsbury's* appears to be much less of a team approach probably because *Halsbury's* titles are specific subjects within the expertise of one or two people. In contrast, *The Laws of Australia* titles are broad areas of law.

A detailed comparison of the authorship of the two encyclopaedias would be a very useful guide for prospective purchasers. Unfortunately, while both have published a number of volumes, the only titles they have in common to date are Aboriginal and Torres Strait Islanders and Administrative law. This is hardly sufficient for a detailed comparison, especially as the titles are incomplete in *The Laws of Australia*. However, they are substantially complete, and, in the hope that it may be of some help, I have included a list of the authors for the completed parts of the two titles.

<i>Halsbury's Laws of Australia</i> Aboriginal and Torres Strait Islanders	<i>The Laws of Australia</i> Aborigines and Torres Strait Islanders
Title authors: Graham Neate, Chairperson of Land Tribunals established under the (QLD) Aboriginal Land Act 1991 and the (QLD) Torres Strait Islanders Land Act 1991, Member of the Land Court of Queensland and Desmond Sweeney	Title editor: Garth Nettheim, Barrister, Supreme Court of NSW, Professor of Law, University of New South Wales Chapter authors: R. Bartlett, Richard Bradshaw, Frank Brennan, A.J. Brown, M. Flynn, Ian L. Gray, Garth Nettheim, Sarah Pritchard

<i>Halsbury's Laws of Australia</i> Administrative Law	<i>The Laws of Australia</i> Administrative Law
Title author: Dr Margaret Allars, Senior Lecturer in Law, University of Sydney	Title editor: Denis Galligan, Barrister at law Qld, Professor of Socio-Legal Studies, Oxford, Director of the Centre for Socio-Legal Studies, Oxford Chapter authors: Geoff Airo-Farulla, Merris Amos, Stephen Argument, John Doyle, Nicola Franklin, Denis Galligan, John McMillan, Bronwen Morgan, Denis O'Brien, Hannes Schoombee

Using the Encyclopaedias

1. PRESENTATION

The Laws of Australia is physically easier to read than its competitor. The paper is white and thick enough to handle easily; the black type on the white paper is very clear. *Halsbury's Laws of Australia* uses black type on light cream paper so thin that there is shadowing through the paper. The recent updates use whiter paper on which the print is clearer than on the original issues. Both are well labelled on the spines and have plenty of clear guide tabs making it easy to go directly to the relevant title.

2. CONTENT

Before looking at each in detail there are four common noteworthy features:

- 1 Both encyclopaedias have excellent user's guides. It is well worth the time spent in reading these carefully.
- 2 Both are incomplete and it will be some years before they are complete.
- 3 Both are looseleaf and will update the main text regularly.
- 4 Both use existing current awareness services to update: *Halsbury's Laws of Australia* uses *Australian Current Law* and *The Laws of Australia* uses the *Australian Legal Monthly Digest*.

Halsbury's Laws of Australia

Halsbury's is in the traditional encyclopaedic format: specific subjects arranged in alphabetical order. Each legal proposition is expounded in full once only. Cross references are used to avoid duplication. When complete, the encyclopaedia will be in 30 volumes: 89 subject titles in 28 volumes, volume 29 consolidated tables of cases and statutes and volume 30 consolidated index. Each volume also has its own tables of contents, cases, statutes and words and phrases. Each title has its own table of contents and index; large titles also have a table of contents following each subsidiary guide card. The encyclopaedia is kept up to date by using the *Halsbury's Updater* in *Australian Current Law Reporter*. This table is fully cumulated, 1991-1994, in every fortnightly issue.

The Laws of Australia

The Law Book Company has opted for a different arrangement. When complete, the encyclopaedia will consist of 35 titles, far fewer than *Halsbury's*, in approximately 32 binders. Each title covers a very broad subject area - some examples are administrative law, civil procedure and equity. The list of titles reads like a list of subjects taught in law school. So far, each title has had its own volume except Business Organisations which is in two volumes. Students could use them like textbooks. Each title has its own index, table of cases and table of statutes. Each title is divided into a number of subtitles that are complete in themselves; each subtitle has its own detailed table of contents, comparative table to the *Australian Digest* and statement of currency. Supplements to each subtitle will be issued annually, or as required. They will be printed on blue paper and will be incorporated periodically into the main text. Between supplements, the subtitle can be updated by using the Cumulative Noter Up to the *Australian Digest* in the *Australian Legal Monthly Digest*.

The accompanying charts show how to use these encyclopaedias in order to find and update information.

Expectations

After so much poverty, now we have abundance - not one, but two, Australian legal encyclopaedias. What can we expect from them? And how well do they meet these expectations? A good legal encyclopaedia is an invaluable aid to research. It is rather like having a set of textbooks which covers all topics but the encyclopaedia is better because it is more comprehensive, is updated more regularly and its editors ensure that every statement made about law is thoroughly supported by authority. For any legal topic, the encyclopaedia should provide:

1. Commentary on the topic which gives the principles of law involved, an explanation of the law, and which highlights any ambiguities or uncertainties in that area of law;

2. A statement of the relevant primary materials. This will include which statute, if any, governs the area and what regulations have been made under it. It will cite the names of the acts of each state on the topic. It will cite and summarise the leading cases.
3. Definitions of terms used in the area.
4. Current awareness information. It will give details of recent legislative developments and notes on current cases.
5. References to articles, monographs and other sources that will assist further research.

Assessment

Both encyclopaedias meet these expectations with, at least, reasonable adequacy.

Both lead the user to relevant case and statute law; neither, however, is fully comprehensive. For the Workshop I prepared some brief exercises in order to give the participants some hands on experience of the two encyclopaedias. At that time (September 1993) the only topics covered by both encyclopaedias were aborigines and administrative law so that the specific subjects we used were the special issues that arise in the sentencing of aborigines for criminal offences and the duty of disclosure as a ground for judicial review of administrative action. It was found that both encyclopaedias mentioned a number of cases relevant to the topic but that they were not the same cases. For instance, the Northern Territory case, *R v Minor* (1992) 79 NIR 1 (CCA) on the sentencing of aborigines is mentioned several times in *The Laws* but is not mentioned at all in *Halsbury's Laws of Australia*. Similarly, the *Australian Legal Monthly Digest* lists *Tuite v Administrative Appeals Tribunal* (1993) 17 AAR 165 as a recent case on duty of disclosure. This case is too recent for *Halsbury's* but it is not listed in *Halsbury's Updater* table either. On the other hand, the *Halsbury's Updater* table in *Australian Current Law Reporter* lists six recent cases on duty of disclosure. Only one of these is listed under this subject in *The Laws*. The others, if they were in the *Australian Legal Monthly Digest* at all, were not at the title and square bracket number suggested for this subject by *The Laws*. It is, of course, a standard problem with manual indexing that the user is dependent upon the indexer's interpretation of the cases. Therefore, if one is looking for all recent cases on a subject, one will need to use both.

The Laws of Australia includes references to unreported cases but *ALMD* digests only reported cases. This means that the updating of *The Laws* is delayed until cases are reported. *ALMD Advance* may overcome this problem but if it is to do so it requires proper indexing. At present, only the electronic version gives easy access to all issues. *Australian Current Law Reporter*, on the other hand, is well known as a very up-to-date source of information on case law which makes it a more effective updating tool.

Using *ALMD* to update *The Laws* creates some peculiar problems. Cross-references are provided from the titles and square bracket numbers used in *The Laws of Australia* to those in the *Australian Digest*. The titles may coincide but the square bracket numbers definitely do not.

	<i>The Laws of Australia</i>	<i>Australian Digest</i>
Sentencing of aborigines for criminal offences	1.5: [37]-[45] (Title 1, subtitle 5, paragraphs 37-45)	3rd ed. Topic 1 Aboriginals [8]
Duty of disclosure as a ground for judicial review of administrative action	2.5: [29]-[34]	3rd ed. Topic 2 Administrative Law [34, 52]

It is confusing and I am not looking forward to teaching this to hundreds of law students. My first impression is that the numbers used in the *Digest* appear to have a much broader content, with the result that when one follows a cross-reference from *The Laws of Australia* one finds a lot of irrelevant cases as well as the relevant ones. In the examples above, Aboriginals [8] fits closely to the subject matter in *The Laws* reference. In the administrative law example, however, *Digest* [34] has the heading 'Material Evidence of Matter not Disclosed' under the broad subject Natural Justice; *Digest* [52] has heading 'Breach of Rules of Natural Justice' under the broader headings Judicial Review Legislation, Grounds for Review of Decision. The *Digest* square bracket numbers obviously cover a much broader area of law.

At present, *Halsbury's* offers more ways into the information. However, this will change when *The Laws of Australia* infrastructure is published. It appears from the advertisements that there will be a Key and Research Guide and a Consolidated Index. Presumably there will also be consolidated tables of cases and statutes. It is less clear what will happen about words and phrases. *Halsbury's* has a table of words and phrases in each binder. There is no such table in *The Laws*. However, in the *Australian Digest* the table of Words, Phrases and Maxims is in the Key and Research Guide and *ALMD*. I do not know if there will be such a table in the Key to *The Laws* or whether Law Book will regard the one in the *Australian Digest* as sufficient.

Which One to Buy?

The strengths of *Halsbury's* are:

- the traditional encyclopaedic format is a good one for providing quick answers to specific questions;
- complete infrastructure;

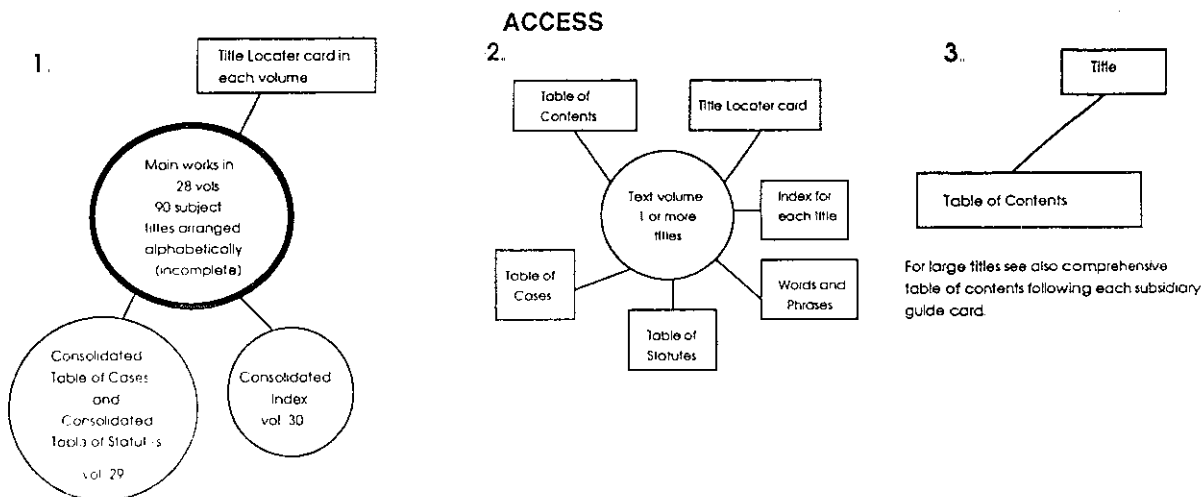
- the many cross references, especially those to the *Australian Encyclopaedia of Forms and Precedents* and to the various Butterworths looseleaf publications containing court forms, precedents and pleadings; and,
- it is updated by *Australian Current Law* which is still the best source of information on very recent and unreported cases from the superior courts.

The strengths of *The Laws of Australia* are:

- broad subject titles bring together most of the material a specialist or student in a particular course might need. A good example is the volume on torts which begins with the subtitle, *Tort and Contract Compared*, and includes subtitles for *Product liability* and *Negligence* both of which are separate titles in *Halsbury's*;
- cross references to the *Australian Digest* lead to a particularly comprehensive search of case law;
- part of the Law Book reference collection which also includes the *Australian Digest*, the *Australian Legal Monthly Digest*, the *Australian Case Citator* and statutes annotations for the Commonwealth, New South Wales and Victoria; together they form an extensive reference service on Australian law;
- updated by the *Australian Legal Monthly Digest*, a good source for finding cases from tribunals and commissions as well as the superior courts but you do need the electronic version for an easy combined search of *ALMD* and *ALMD Advance*.

As can be seen, to some extent they complement each other, therefore university law libraries and other large libraries will no doubt buy both. Of course, we have always known that completely thorough research requires one to use **both** *ALMD* and *Australian Current Law*. The problems of manual indexing being what they are, it comes as no surprise that the same search produces different results with each encyclopaedia and, therefore, once again, one may need to use both. However, this is a very expensive option and may be beyond the means of many libraries. One way to choose would be to consider which approach, the traditional encyclopaedic or the broad title, best suits the needs of the library's clientele. How important is it to your clientele to have references to the *Australian Digest* or to forms and precedents? Another way would be to ask a specialist which has the better coverage of the specialist's area. The deciding factor might be whether the library holds *ALMD*, *Australian Current Law* or both. Neither encyclopaedia is complete without its corresponding current awareness service. *Halsbury's* has the name and Butterworths would like you to think that it is as authoritative as its English counterpart. Certainly one of these encyclopaedias should be in any Australian law library.

Halsbury's Laws of Australia

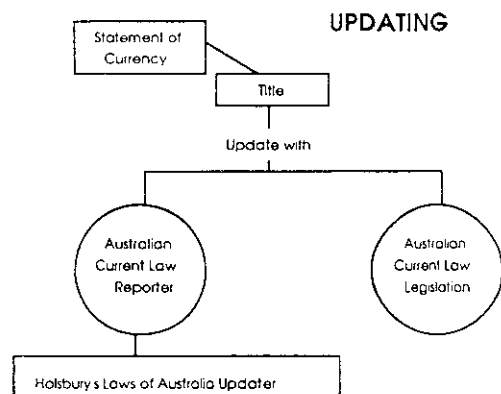


Numbering [10-1890] = Title 10 paragraph number 1890

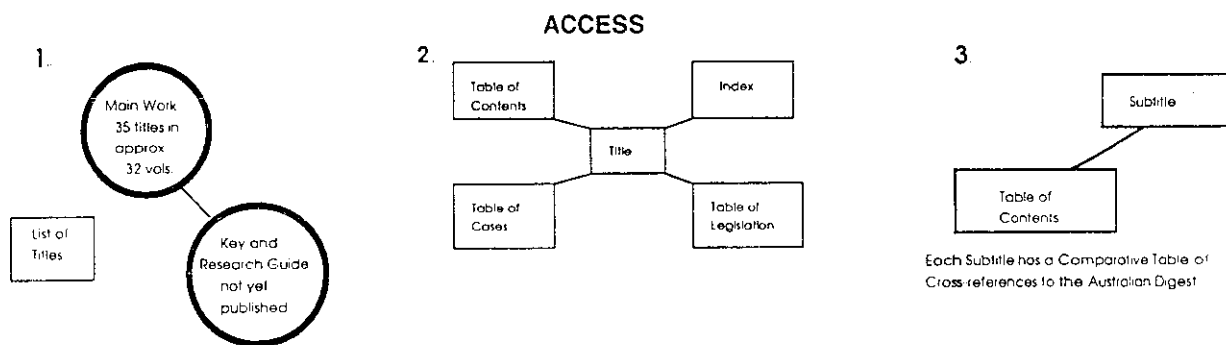
Standard order for Australian jurisdictions: CTH ACT NT NSW QLD SA TAS VIC WA

Statement of currency follows the Title Table of Contents

Special features: cross references, where appropriate, to Australian Encyclopaedia of Forms and Precedents 3rd ed and the Court Forms, Precedents and Pleadings loose-leaf services



The Laws of Australia



Numbering 15 1: 41 = Title 15 subtitle 1 paragraph number 41

Arrangement for Tables of Legislation: Constitution, Commonwealth, States and Territories in alphabetical order
Imperial legislation other jurisdictions in alphabetical order

Currency date on the reverse of each subtitle title page

