

# EDITORIAL

It is well accepted that over the past two decades Australia has developed its own distinctive jurisprudence. Australia was once firmly part of the English legal system, drawing heavily on English precedent and rarely looking to other foreign jurisdictions, but now at the end of the millennium Australian judges and lawyers frequently refer to the laws of foreign jurisdictions and the principles of international law.

There are a variety of reasons for this change of perspective and Australia is not alone in these developments. The trend has been for the legal systems of most common law countries to become more diverse. The irony is, that while the legal systems of common law countries are become increasingly different so that commentators are questioning whether the common law exists anymore<sup>1</sup>, the world is getting smaller and there has been a globalisation of the law and legal practice

Until 1986 the Privy Council in England was the court at the top of our hierarchy of courts, thus tying Australian law into the English legal system. However, with the passage of the *Australia Act 1986* (Cth) the High Court became the final court of appeal in Australia. At the same time English law was developing in different directions as a result of Great Britain joining the European Community. This meant England was bound by decisions of the European Court and English law was increasingly influenced by civil legal systems.

The development of a distinctly Australian jurisprudence, or a common law to suit Australian conditions, has been led by the High Court. The Court has evolved from a formal legalist court to a more progressive, active court, increasingly prepared to look at developments in a range of overseas jurisdictions. Professor Paul von Nessen who contributed an article on researching United States law to the June issue of

the *Australian Law Librarian*<sup>2</sup> conducted a study of the use of American precedents by the High Court of Australia between 1901 and 1987.<sup>3</sup> The study found a dramatic increase in the number of American cases cited by the High Court in the 1980s compared to other decades.

The increased accessibility of the law of a range of foreign jurisdictions has also contributed to these developments. Ten years ago it was very difficult to obtain timely access to the law of foreign countries, now with the Internet the text of the law is at your fingertips

These changes present major challenges for Australian law librarians. Not only must we be conversant with our own jurisdictions, federal, state and territory, but we also need some basic knowledge of foreign jurisdictions and their legal resources. It is particularly important to understand the way the foreign legal systems differ from our own in order to confidently access their legal materials.

With this in mind we have included a number of articles on foreign jurisdictions in this issue of the *Australian Law Librarian*. **Linda Stevenson** and **Sarah Chase** of the European Information Association have written about the European Union and the information sources of the EU, many of which are available on the Internet. European Union law is frequently used by Australian courts in the context of commercial law, particularly areas such as trade practices, customs tariffs, insurance contracts and intellectual property.<sup>4</sup> **Roy Mersky**, the U.S. legal research guru who recently spent time in Australia, has teamed up with colleague **Jonathan Pratter** to write about the differences between doing legal research in Australia and the United States.

<sup>1</sup> Lord Oliver of Aylmerton. "Requiem of the common law?" (1993) 67 *Australian Law Journal* 675.

<sup>2</sup> Nessen, Paul E. von, "An Introduction to the legal system and legal materials of the United States" (1999) 7 *Australian Law Librarian*, 97.

<sup>3</sup> Nessen, Paul E. von, "The use of American precedents by the High Court of Australia, 1901-1987" (1992) 14 *Adelaide Law Review* 181

<sup>4</sup> Vranken, Martin, "The relevance of European Community law in Australian courts" (1993) 19 *Melbourne University Law Review* 431.

We also have a number of extremely valuable local contributions. **Dennis Warren** provides a very practical analysis of Australian primary legal materials on the Internet. Dennis compares the AustLII, SCALEPlus, Butterworths Online and LBC Online sites and asks whether the commercial sites offer value for money. South Australian law librarian **Barbara Coat** provides inside information to help you research South Australian legislation – did you know South Australia does not produce Explanatory Memoranda and that South Australian courts will not allow reference to extrinsic material such as parliamentary debates when interpreting legislation? Finally, **Adrian Cunningham** of the Australian Archives provides an update on the Australian Government Locator Service and the development of an Australian Government Thesaurus for use on government web sites.

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