

## *Documenting a Democracy: Australia's Story (Review)*

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*Documenting a democracy: Australia's story* is a project that was launched in June 2000 in Canberra by the Minister for the Arts, the Hon. Peter McGauran MP. It is a collaborative effort by the National Archives of Australia (NAA), most State and Territory governments and other institutions to document key legal and constitutional documents in history (about 100 in total) and to publish copies of the originals whenever possible.

Publishing historical documents is not new. In 1914 the Commonwealth Parliamentary Library commenced the publication of *Historical Records of Australia* which attempted to transcribe some of the more significant documents of the nation's history, some of which were easier to locate in the United Kingdom than in Australia. Series IV covered legal documents, although this section of the multi-volume work was not very comprehensive in its coverage. New South Wales<sup>1</sup> and Victoria<sup>2</sup> have both published their own official series of historical documents but other jurisdictions have been slow to document their past to the same extent. In 1994 David Eastman self-published the documents of Federation which he had copied from originals held in various Canberra archives and other repositories.<sup>3</sup>

Publishing historical documents in non-print formats is also not new. Under the Australian Joint Copying Project<sup>4</sup> the National Library of Australia and the State Library of New South Wales for many years published on microfilm thousands of

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<sup>1</sup> *Historical records of New South Wales 1892-1901*, Government Printer, Sydney

<sup>2</sup> *Historical records of Victoria 1981-1998*, Victorian Government Printing Office, Melbourne

<sup>3</sup> *The founding documents of the Commonwealth of Australia* c1994, [D. Eastman], Canberra.

<sup>4</sup> *Australian joint copying project microfilm of material in the Public Record Office, London, and manuscript material in other repositories, relating to Australia, New Zealand and the Pacific*. <10,095> microfilm reels : positive ; 35 mm. ISSN 1034-151X

original documents that are held in various locations in the United Kingdom. However, you are more likely to find the draft of a legal document rather than the final published version in this project.

Even publishing historical documents on the Internet is not new. The Senate of the Commonwealth Parliament has published the transcripts of the 19<sup>th</sup> century Constitutional Conventions which drafted the federal Constitution<sup>5</sup> and, if you know where to look, it is even possible to locate an Internet copy of the *Colonial Laws Validity Act 1865* (Imp). More about that Act later.

Having become familiar with all of the publications mentioned above I took great interest in another attempt to publish these important documents.

*Documenting a democracy: Australia's story* has been placed on a web site with the address <http://www.foundingdocs.gov.au/>. This could be confusing to users who are becoming used to web site titles and their addresses having at least some key words in common. If the project had been called *Founding documents of Australia*, which I consider would have been a more appropriate name, then at least people might remember the address. There are links from the NAA web site under 'Federation' and 'Links' but there is no reference on the site map to the project's title. If you do not know that the NAA is involved in the project, you might not find it. I suspect even the NAA staff were confused by the title as it does not appear anywhere in the Minister's press release, which is headed 'Federation fanfare'!<sup>6</sup>

Despite this minor glitch at the beginning, there is a treasure trove of information for the legal researcher. The opening screen is clearly laid out with a map of Australia and various links to material which explain the background and purpose of the project. Documents are arranged by jurisdiction. The Commonwealth, all six States and the Northern Territory are represented. At first sight, the Australian

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<sup>5</sup> *Records of the Australasian Federal Conventions of the 1890s*  
<http://www.aph.gov.au/senate/pubs/records.htm>

<sup>6</sup> Minister for the Arts and Centenary of Federation. *Media release*. 19 June 2000.  
<http://www.dcita.gov.au/cgi-graphics/>

Capital Territory (ACT) and all external territories appear to be excluded. To view documents one browses by clicking on a jurisdiction within the map or uses keywords to search titles and text. By browsing a particular jurisdiction a range of documents, mainly from the 18<sup>th</sup>, 19<sup>th</sup> and 20<sup>th</sup> centuries, are listed including Acts of parliament, letters patent, proclamations, court decisions and some political material. The earliest document is the United Kingdom Admiralty secret instructions to Lieutenant (later Captain) Cook made in 1768 while the most recent item is the *Aboriginal Land Act 1995* (Tas)

The arrangement of documents within each jurisdiction is problematic. They are not strictly chronological, although this would be useful and easily fixed in an upgrade. Under the title of each document there is a one line explanation of what each document is about. A few subtitles would make the editor of a tabloid newspaper proud – 'Getting it together, constitutionally' and 'Stuart's sixth journey starts a successful land grab' could, in my opinion, have been expressed a little better.

Alongside the title of each document there are two icons. The first leads to an explanation of the document, a feature which is extremely useful given that most legal documents are unintelligible, especially after centuries have elapsed. There is also a copy of the original version of the document if it has been located but not all have been and, hopefully, this project will lead to their recovery. The second icon leads to a transcript of the document which is a necessary facility given that the varied formats and age of the originals make them difficult to read.

The site is easy to navigate and to move from one jurisdiction to another. There is a timeline which provides a chronology of history with links to the documents on the site. Documents are also arranged by the themes 'Foundation', 'Building', 'Freedoms' and 'Land'. Documents loaded quickly on my computer, were displayed in hypertext markup language (html) and printed out without any problems. It was easy to enlarge any documents which had small print on the screen.

Those who are wondering as to the value of such documents, apart from the obvious use to legal historians, need only look at various court decisions in areas as varied as constitutional law<sup>7</sup>, native title<sup>8</sup> and even bankruptcy<sup>9</sup> to realise the value such historical materials have in moulding and interpreting the law today. The intended audience for this project does not seem to be stated on the web site. However, the documents which have been included on this site will be of great interest to lawyers, professional historians, librarians and archivists, in fact anyone who is interested in the foundations of law and government. These documents resulted in the European settlement of Australia, state and territory boundaries, the establishment of colonial legislatures and courts, the creation of a federal government and judicial system, and legal recognition of the rights of our indigenous peoples to hold land which was once theirs in its entirety.

A surprising omission from the documents is the above mentioned *Colonial Laws Validity Act*. This was passed by the Imperial (British) Parliament in 1865 and gave all British colonial legislatures the right to amend received British statutes and common law to suit local conditions. This Act is highlighted in practically all first year law texts as a critical early document and its omission is surprising. As I mentioned above, its text is available on the Internet<sup>10</sup> (albeit on an unofficial site) but its inclusion in this project would add to its comprehensiveness. The *Colonial Boundaries Act 1895* (Imp.) might also have been included given that there is an essay on colonial boundaries on the site.

Of the mainland jurisdictions, the partial omission of the Australian Capital Territory is unfortunate. This is due, apparently, to the lack of an official government archive for the territory. I say partial omission because, hidden away under other jurisdictions, there are two Acts of crucial importance to the ACT. In

<sup>7</sup> *New South Wales, etc, v. the Commonwealth* [Territorial waters case] (1975) 135 CLR 337. <http://scaletext.law.gov.au/html/highcourt/0/75/0/HC000620.htm>

<sup>8</sup> *The Wik Peoples v The State of Queensland & Ors; The Thayorre People v The State of Queensland & Ors* [Native title and pastoral leases case] (1996) 187 CLR 1 [http://www.austlii.edu.au/au/cases/cth/high\\_ct/unrep299.html](http://www.austlii.edu.au/au/cases/cth/high_ct/unrep299.html)

<sup>9</sup> *Re John Cecil Clunies-Ross ex parte Geoffrey Frank Totterdell* [A bankruptcy case relying heavily on primary founding documents to ascertain the laws applicable to Cocos (Keeling) Islands] (1990-91) 98 ALR 245.

<http://scaletext.law.gov.au/html/feddec/0/88/0/FD002410.htm>

<sup>10</sup> <http://www.echr.net/const/history/1865.htm>

the New South Wales section of the site may be found the *Seat of Government Surrender Act 1909* (NSW) and in the Commonwealth section may be found the *Seat of Government Acceptance Act 1909* (Cth). Placing these two pieces of legislation under the jurisdictions which enacted them may, at first glance, be good archival practice. However, as any library cataloguer would know, some categories of legislation passed by one jurisdiction relating to another may be entered under the latter and not the former.<sup>11</sup> In addition, the compilers of this site have not been consistent, for they have placed documents created by the United Kingdom government under Australian jurisdictions and not under the United Kingdom. In the next upgrade, these two documents should be placed under the ACT as this is where they will be of most use to researchers.

As for other constitutional documents for the ACT and the external territories (Norfolk Island, Cocos (Keeling) Islands, etc), researchers will for the time being need to rely on existing versions scattered throughout the Internet. Many have already been gathered together on the Constitutional Law Internet resource page maintained by the Commonwealth Parliamentary Library<sup>12</sup>

A minor anomaly is to be found in one of the essays, called 'Pathways' which aims to provide a theme around which the various documents are situated.<sup>13</sup> There is a reference to the *Magna Carta* of 1215. However the hypertext link takes us not to a transcript of this famous document as you might expect but to an essay published on the Parliament House web site by the Clerk of the Senate Harry Evans entitled *Bad King John and the Australian Constitution*.<sup>14</sup> Since the purpose of this project is to provide links to original documents, I was surprised that there appears to be no link to one of several versions of the *Magna Carta* on the Internet.<sup>15</sup>

<sup>11</sup> *Anglo-American cataloguing rules*, 1998, 2<sup>nd</sup> rev edn, Canadian Library Association, Ottawa, Rule 21.33A

<sup>12</sup> <http://www.aph.gov.au/library/intguide/law/constitutionallaw.htm>

<sup>13</sup> <http://www.foundingdocs.gov.au/pathways/index.htm>

<sup>14</sup> <http://www.aph.gov.au/senate/pubs/17october.htm>

<sup>15</sup> e.g.: <http://www.nara.gov/exhall/charters/magnacarta/magtrans.html> and <http://www.fordham.edu/halsall/source/mcarta.html>

We still have along way to go before a substantial amount of official documents is published freely on the Internet. Early High Court decisions, numbered Acts, government gazettes and parliamentary papers for most of this century, let alone for earlier periods, are inaccessible for many people. In reformatting and publishing them electronically, our collecting and other institutions have a large task ahead of them. However, in *Documenting a democracy: Australia's story* the national and state archives have made a splendid start.

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