



## Launch of the Western Australian Law Reports Database

*The Free Access Australasian Legal History Library via AustLII*

by

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## **Introduction**

It is a great pleasure and an honour to have been invited to formally launch the Western Australian Law Reports database to be provided free of charge to the public by the Australasian Legal Information Institute (AustLII).

Before going any further, I would like to acknowledge the traditional owners of the land on which we meet, the Whadjuk people of the Swan coastal plain, who are part of the great Noongar clan of south-western Australia, and pay my respects to their Elders past and present.

As we are honoured by the presence of a number of visitors from other States today, they may be interested to learn that the land on which we meet is of particular significance to the Whadjuk people, as it is immediately adjacent to the river which they know as Derbarl Yerrigan, and which we know as the Swan River, and which is the home of the dreamtime figure, the Wagyl, which plays an important part in the cultural mythology of the Whadjuk.

I would also like to particularly acknowledge the presence of representatives of AustLII including Mr Richard Hunter, Development Manager, Professor Andrew Mowbray, Director and Co-Founder of AustLII and Mr Philip Chung, Co-Director. I would also like to express my appreciation to Francis Burt Chambers, and its Chair, Stephen Davies SC, for hosting this event, and to welcome our various distinguished guests too numerous to mention by name.

## **The Western Australian Law Reports database**

The launch of the Western Australian Law Reports database is to be welcomed not only as a significant advance in the provision of free access to Western Australia's legal history, but also as a further step in improving the accessibility and transparency of our legal system to the broader community.

The database not only covers all of the WA Law Reports published between 1899-1959 but, importantly, provides links to other materials available on AustLII. The utility of the database is magnified by the fact that it is in searchable format and captured through AustLII's LawCite citator, which enables users to track citations of these historical cases right up to the present day. This is an enormously important research tool, not only for lawyers and judges, but also for anyone interested in the development of the legal history

of this State, or in the extent to which decisions of Western Australian courts have influenced the legal history of the nation.

### **The Australasian Legal History Library**

The digitisation of the older WA Law Reports is the latest stage of a significant project which has been undertaken by AustLII with the benefit of a grant from the Australian Research Council and with the assistance of a syndicate of ten universities. The Supreme Court of Western Australia can claim to have played a very small part in this important project by providing a physical copy of the WA Law Reports which have been scanned and digitised in order to form the database.

The Legal History Library has built on AustLII's existing database resources so as to provide the most comprehensive collection of Australian legal history resources. I am advised that the breadth of the project makes it the single most significant expansion of free access to Australasian legal information since the creation of AustLII in 1995.

### **AustLII**

AustLII itself is a quite remarkable resource. It has become the largest Australian online legal research facility, and is larger than any fee for service facility or commercial legal database. It includes Australia's largest collection of databases of current case law, legislation, Law Reform Reports, Law Journals and the largest national treaties collection on the internet – with the addition of this database, a total of 557 databases in all.

AustLII describes its broad public policy agenda as being to improve access to justice through the provision of better access to information. Those many thousands of people who use AustLII regularly, including me, are in no doubt that AustLII has achieved this important objective. This project is an example of AustLII's continuing dedication to improving the amount of legal information available to the public free of charge.

Some idea of the magnitude and significance of the public access which this facility provides to all with an interest in the law of Australia is provided by the fact that AustLII is accessed about 700,000 times each day.

### **Timeliness**

The preface to the first volume of the WA Law Reports, which is now available online through this facility notes:

*The need for authentic Law Reports has of recent years been much felt by the profession. This volume represents the opening of a series of Law Reports which, it is hoped, will supply that want.*

Some indication of the change in public expectations with respect to the timeliness of information relating to legal decisions is provided by the fact that the first reported decision in the WA Law Reports was published more than a year after it was handed down. The preface to the first volume indicated a desire to improve publication times in the future, and foreshadowed that the next volume was to include cases that were no more than nine months old!

By comparison today, our access to legal information is almost instantaneous and comprehensive. Most judgments, and the reasons for those judgments are available within minutes or hours of being delivered - a development which was pioneered in Australia by AustLII.

### **Historical records generally**

Public access to Australian historical records is now unparalleled. Many will be aware of the wealth of material which is available through TROVE, which includes over 115 million newspaper articles from the 1800s to the mid-1950s, from across the nation. A project to provide free online access to all original WA State Acts was completed by the State Law Publisher in July 2009. Recently the Western Australian Parliaments provided digitised access to all State Parliamentary Debates going back to before 1876 when Hansard commenced reporting in WA. The publication of the WA Law Reports through AustLII provides another significant dimension to our ability to access our rich history.

I am one of those who considers history to be very important. As George Santayana famously observed, "*Those who cannot remember the past are condemned to repeat it.*" Of course, Santayana wrote those words almost a century before the internet was created. As a result of the internet, and the rich historical resources now readily available through the internet, including the database we are launching this evening, we are no longer dependent upon our memories provided we have a computer, tablet or even a mobile phone handy.

The richness of the material now available online can be illustrated by picking just one of the many cases now available on the digitised database of WA Law

Reports - the case of *Clarke v The Crown* (1927) 29 WAR 102. Students of Contract Law will, of course, remember the famous case of *Carlill v Carbolic Smokeball Co* (1893) 1 QB 256, which we were all taught as the leading case in the area described as unilateral contract - an oxymoron if there ever was one - and which would be more correctly described as the area of contracts accepted by performance.

The case arose from the murder and dismemberment of two police officers in Kalgoorlie - Inspector J J Walsh, and Sergeant A H Pitman. After their bodies were discovered, a reward of £1,000 was offered for information leading to the arrest and conviction of the murderers.

Clarke was charged with their murder. Following his arrest, he gave information to police which resulted in the arrest and successful prosecution of two others, Coulter and Treffene, and the release of Clarke. At the time he provided the information, he was aware of the reward, but at trial gave evidence before Chief Justice McMillan to the effect that at the time he provided information to police, he had no intention of claiming the reward, and that his sole motivation was to exculpate himself from the charges of murder which had been brought against him.

McMillan CJ dismissed his claim for the reward, on the basis that although Clarke had done that which was required in order to entitle him to the reward, as he had not done so with the intention of claiming the reward, he had not then intended to contract with the State, as offeror of the reward, with the result that there was no contract.

Clarke's appeal to the Full Court was successful - the majority comprising Justices Burnside and Draper, with Northmore J dissenting, and the report of that decision is now available on line through the database we are launching this evening. In the view of the majority, intention or motive was irrelevant, and the fact that Mr Clarke had done that which was required to entitle him to the reward was sufficient to give rise to a contract.

The State's appeal to the High Court (*R v Clarke* (1927) 40 CLR 227 - also available on AustLII) was allowed unanimously. All members of the High Court were of the view that McMillan CJ was correct in concluding that as Clarke had no intention of creating legal relations at the time he provided the information to police, no contract was formed. I digress to observe that this is not the last

occasion upon which a minority view of a Chief Justice of Western Australia has been vindicated in the High Court.

Those who wish to view this interesting series of decisions in the broader historical context can now do so very easily, without leaving their desks, provided they have computer access. So, after reading the case law, one can easily find information relating to the confirmation of the sentence of death by the Executive Council, newspaper reports of public protests and union resolutions condemning the death penalty, and of the execution of the two convicted murderers and even the final statements made by the two condemned men.<sup>1</sup> Interested students of history can also link those events to the Parliamentary Debates relating to the abolition of the death penalty in Western Australia some 60 years later.

### **Too much information**

I have, of course, been extolling the virtue of the magnitude and breadth of the information that is now freely available to all through facilities of the kind that we are launching tonight. However, it is appropriate to provide a little balance by pointing to some of the dangers which attend access to voluminous information. They are perhaps best exemplified by an observation made by an estimable predecessor as Chief Justice of Western Australia, Sir Francis Burt. Sir Francis was critical of the growing flood of reports from all jurisdictions which he said "spoke a lot but said little".<sup>2</sup>

The judgments of Sir Francis provide exemplars of precision, succinctness and coherence which should provide inspiration to contemporary judges and lawyers. He eschewed almost all forms of technology, preferring to write his judgments by hand in a notebook which was then provided to his secretary in order that she might provide a typed version. This discipline encouraged brevity and accuracy of expression. By contrast, contemporary technology tends to encourage prolixity and imprecision of expression.

In my view, it is important for all contemporary legal writers, whether judges or lawyers, to ensure that we "say something" and not just "speak a lot". In this objective we might be guided by history, and by the examples now available on the digitised database of the Western Australian Reports - the first reported case in this series being just under two pages long.

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<sup>1</sup> 'Another Protest Meeting' *The West Australian* 23 October 1926, p 9; 'Kalgoorlie Murder. Seaman's Resolution' *The West Australian* 20 October 1926, p 9; 'AWU Resolution' *The West Australian* 22 October 1926, p 12.

<sup>2</sup> Marion Dixon, 'Sir Francis Burt: 11<sup>th</sup> Chief Justice of Western Australia', reprinted *Brief*, December 2004, p 9.

Sir Francis was also one of the first Chief Justices of this State to take on the responsibility of communicating the law and the work of the courts to the community at large. His successors, including me, have endeavoured to follow in those footsteps. Our task in this area is significantly assisted by the technology which now enables the general public to obtain free access to a vast array of information relating to the law and the courts using a medium of communication with which they are now familiar. In this respect, the on line facilities of the kind which we commemorate today provide an extremely valuable weapon in the armoury which is available to combat the various barriers to improving access to justice for all.

For these reasons, I am very pleased to this evening launch the Western Australian Law Reports database. Of course, this step could not have been achieved without the generous provision of resources by the Australian Research Council and by AustLII itself. AustLII depends to a significant extent upon donations for its important work, and I would like to take this opportunity to encourage all who donate to consider donating more, and to encourage those who do not presently include AustLII in their list of benefactions, to consider doing so.