Finding and noting up legislation

As you have been studying defamation in Torts we will use LawNow to find the *Defamation Act 2005 (NSW)*. We will also use *FirstPoint*, *CaseBase* and *LawNow* to find cases which judicially consider section 31, ‘Defences of honest opinion,’ of the New South Wales Act. We will finish the session by using *ComLaw* to find the *Acts Interpretation Act 1901* (Cth).

After working through this tutorial you will be able to:

- Find **NSW** legislation using *LawNow*
- Note up legislation using *FirstPoint* and *CaseBase*
- Find **Commonwealth** legislation using *ComLaw*

Before commencing our electronic research we will review some of the main terms used in the legislative process.

**Terms used in the legislative process**

**Bill** - A statute in its draft form, as it is introduced and before it is passed by Parliament. *Commonwealth bills* and *Bills Digests* (documents which provide independent analysis of the background, issues and provisions of a Bill for the purposes of Parliamentary debate) are available via the *Parliament of Australia* website.

**Explanatory memorandum** - An executive document issued by a Minister as an accompaniment to a bill. It explains the aims and operation of the proposed statute.

**Subordinate (also called delegated) legislation** – Subordinate legislation is made by a body to whom the Parliament has delegated the authority (eg. a Minister), and includes regulations, by-laws and statutory rules. Subordinate legislation cannot exist without an enabling statute.

**Commencement of legislation** - Acts do not become law until they receive assent (in some jurisdictions this is called Royal Assent) and come into force. In the Commonwealth, if nothing is stated to the contrary, Acts come into force 28 days after the date of Royal Assent. Acts may also commence on a day to be determined by proclamation. Proclamation dates in most jurisdictions are gazetted in the Government Gazette.

**Parliamentary Debates** (also called Hansard) - A verbatim report of what is said in Parliament (either the House of Representatives or the Senate, in the case of the Commonwealth). *The Commonwealth Hansard* is available via the *Parliament of Australia* website.
Reprints, consolidations or compilations - A reprint, consolidation or compilation means that the original Act is reissued incorporating the text of amendments that have been made to the legislation. These terms are used interchangeably. Reprinted Australian legislation is available on AustLII, ComLaw and the range of state legislation sites. Some Australian jurisdictions still issue updated printed reprints of single Acts and regulations and these are available in the Library.

Citing legislation

From the Law Guide click on the AGLC3 Referencing Style tab and then click the Legislation tab

The citation details which must be included when you cite legislation are:

<table>
<thead>
<tr>
<th>Title of the Act</th>
<th>in italics.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Year</td>
<td>in italics.</td>
</tr>
<tr>
<td>Jurisdiction</td>
<td>Use abbreviation in round brackets.</td>
</tr>
<tr>
<td>Pinpoint</td>
<td>Identify the particular section, paragraph, part, schedule, etc. (See AGLC rule 3.1.4 for the appropriate abbreviations for pinpoint references to legislation.)</td>
</tr>
</tbody>
</table>

Acts Interpretation Act 1901 (Cth).
Civil Law Wrongs Act 2002 (ACT) s 136.
Defamation Act 2005 (NSW) s 31.
Civil Law (Wrongs) Regulation 2003 (ACT) reg 10.
Uniform Civil Procedure Rules 1999 (Qld) r 334.

Updating legislation

Legislation is constantly changing. Each time an amendment to an Act is passed, it can change the law considerably. It is important when working with current legislation that you ensure that you have the most up-to-date version of the legislation. Electronic sources have greatly simplified the process of locating legislation but it is still extremely important that you know how to establish the currency of the information you are relying upon.

Sometimes you may need to refer to an older version of an Act, rather than the most recent version. Fortunately many of the electronic sources of legislation also include historic (or previous) compilations of the legislation.

Find the title of the relevant Act

You can search for legislation by subject and jurisdiction in databases such as LawNow and AustLII for all jurisdictions. Some jurisdictions, such as the Commonwealth, have published a specific subject index for legislation, Wicks Subject Index to Commonwealth Legislation (shelved adjacent to the
Commonwealth legislation binders in the Reading Room) or you could use one of the legal encyclopaedias or a textbook to identify the title of the relevant statute by subject.

Once you have identified the title of the Act you want, the next step is to locate the most up-to-date version, or reprint, of the legislation. A reprint or compilation means that the original, principal Act, is reissued incorporating the text of amendments that have been made to the legislation.

There are a range of databases for locating Australian legislation such as LawNow, AustLII and ComLaw and the databases provided by state jurisdictions around Australia.

Sources of Australian legislation

All Australian jurisdictions have specific web sites for their legislation. We will use our Law subject guide as the starting point to access the main legislation databases that we will use during today’s class.

To access the Subject guides page from the ANU Library Homepage
click on Subject & 'how to' guides / Law
click on Law to access the Law Guide
click on Legislation to access the legislation databases

Commonwealth legislation

ComLaw, provides electronic access to Commonwealth legislation and ancillary documents and information (including bills and explanatory memoranda). ComLaw is the most up-to-date source for Commonwealth legislation on the Internet. ComLaw allows you to search and browse for current compilations of Commonwealth Acts and check amending legislation.

AustLII has Commonwealth legislation, but you should always check the currency of the legislation before using it.

State and Territory legislation databases.

Australian Capital Territory legislation
New South Wales legislation
Northern Territory legislation
Queensland legislation
South Australia legislation
Tasmania legislation
Victoria legislation
Western Australia legislation

AustLII also has State and Territory legislation databases.
**LawNow**

LawNow is an inter-linked legal research service on the LexisNexis AU platform. It covers all Australian jurisdictions, and includes historical legislation. The search feature connects legislation with subscribed cases and commentary, including links to and from CaseBase. Direct links from each Act or regulation allows cross-checking with government websites.

**Bills**

Parliament of Australia website gives access to Commonwealth bills, explanatory memorandums, second reading speeches and Hansards.

The Bills page of the Parliament of Australia website enables you to find current bills and also brings together all relevant information about a bill in one place. By clicking through to the bill you will find the second reading speech, explanatory memorandum and the bills digest prepared by the Parliamentary Library.

LawNow also provides links to government websites to access Bills for other jurisdictions.

**Print materials**

The Library holds copies of selected parliamentary material:
- Older bills and explanatory memoranda (bound together) - on Level 2
- Acts and subordinate legislation - on Level 2
- Government gazettes - compactus, Level 1
- Hansard (in bound volumes) in the Law Library and Chifley Library

**Cases considering legislation**

We will use CaseBase, FirstPoint and LawNow to find cases which judicially consider section 31 of the Defamation Act 2005 (NSW). This process is also known as noting up and was discussed in some detail in our case law research skills tutorial. When selecting the jurisdiction it is best to choose both New South Wales and Federal so as to find any cases that have been heard by the Federal Court under the legislation or gone on appeal to the High Court. Selecting the jurisdiction is not normally an issue with legislation as very few Acts have the same name and year across different jurisdictions, but in this case they do.

Click Casebase to access the CaseBase template
[For help using this field click on Find cases considering legislation (in the left hand frame)]
In the Act/Regulation field type Defamation Act 2005
In the Provision field type 31
In the Jurisdiction box check Commonwealth and New South Wales
Select Sources: Casebase Cases
There are 13 cases which consider section 31 of the *Defamation Act 2005* (NSW). Click on *Sporting Shooters Association of Australia (NSW) Inc v McGuire [2014] NSWSC 1370*. This judgment considers s 31(5)(a) which is a subsection of section 31.

We will now use FirstPoint to look for additional cases which interpret or judicially consider s 31 of the *Defamation Act 2005* (NSW).

From the Law subject guide / Cases
Select FirstPoint under Australian Case Citators
In Legislation Cited (Title) Type: *Defamation Act 2005*
Click on Legislation Cited (Provision) Type: 31

Note: As it is useful to be able to locate any judgments that may have, for example, gone to the High Court on appeal, we will not limit our results to the New South Wales jurisdiction. FirstPoint, unlike Casebase, does not allow you to select more than one jurisdiction.
From eleven results there are eight cases which consider section 31 of the *Defamation Act 2005* (NSW). Click on the first result for the New South Wales Supreme Court, *Lloyd Jones v Allen* [2012] NSWSC 230 and check *Legislation judicially considered*. It refers to section 31 and 31(1).

Only seven of these judgments are common to the CaseBase search results. The indexing policy varies between the two citators. Always check the results carefully.

**Defamation Act 2005 (NSW)**

We will use LawNow to locate the *Defamation Act 2005 (NSW)*.

Select **LawNow** under Australian Legislation
Click on **NSW Legislation / All Acts by Title / Defamation Act 2005 No 77**

Note links to the PDF at top left of page and Government Website at top right of page.

![Defamation Act 2005 No 77](image)

**Note Historical Versions**
Click on **Express Search** icon for s 31, *Defences of honest opinion*, to find related cases and commentary.
To find information on when this Act came into force and how it has been changed since 2005 we will look at the commencement provision in the Act and use the historical notes. Section 2 of the Act notes the commencement information. This Act commenced on 1 January 2006.

Some Acts have complicated commencement provisions. As we have already noted for the Commonwealth, if nothing is stated to the contrary, Acts come into force 28 days after the date of Royal Assent. Acts may also commence on a day to be determined by proclamation. Proclamation dates in most jurisdictions are gazetted in the Government Gazette.

Scroll to the end of the page. To locate information on how this Act has changed we will look at the Table of amending instruments and the Table of amendments. The Table of amending instruments lists all the legislation that has amended this Act, with commencement provisions.

Table of amending instruments

<table>
<thead>
<tr>
<th>Year</th>
<th>No</th>
<th>Name of Act</th>
<th>Date of commencement</th>
<th>Section(s)</th>
</tr>
</thead>
</table>
The Table of amendments shows section by section how the Act has changed. This table is read in conjunction with the Table of amending instruments to find out when a change took effect.

<table>
<thead>
<tr>
<th>Table of amendments</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Sec 24</strong></td>
</tr>
<tr>
<td><strong>Sec 32</strong></td>
</tr>
<tr>
<td><strong>Sec 48</strong></td>
</tr>
<tr>
<td><strong>Sch 1</strong></td>
</tr>
<tr>
<td><strong>Sch 2</strong></td>
</tr>
<tr>
<td><strong>Sch 3</strong></td>
</tr>
<tr>
<td><strong>Schs 5, 6</strong></td>
</tr>
</tbody>
</table>

To look at the Act at that point of time you should look at the appropriate historical version.

**ComLaw**

**ComLaw** has the most complete and up-to-date collection of Commonwealth legislation available and as well as Acts and it incorporates the Federal Register of Legislative Instruments (FRLI). The Federal Register of Legislative Instruments is an authorised source for all Commonwealth regulations, proclamations, rules, by-laws and ordinances.

Note: All e-versions of legislative instruments are authorised on ComLaw. The e-versions of Commonwealth Acts as made and reprinted are being authorised progressively.

Click [ComLaw](https://www.comlaw.gov.au) from Law Guide’s Legislation page
Acts Interpretation Act 1901 (Cth)

If you know the name of the piece of legislation you are looking for, you can find it easily via the alphabetical compilations of current Acts.

From ComLaw home click on the Acts tab and select Current. Find the Acts Interpretation Act under A.

You can click on the name of the Act to access the text of the current Act, or Download a version of the Act as a PDF, Word or Zip document or View Series for the Act.

We will first click the Download button to see the different versions of the Act.

Note: to access the authoritative version click on the PDF copy.

click the back button to return to the alphabetical list. Click on Acts Interpretation Act 1901.
A page will be displayed listing legislation details, including the number of the Act, a brief description of the Act, the date the latest compilation was published, the latest incorporating amendments, and the Act’s administering government department.

This is a current HTML version of the *Acts Interpretation Act 1901*, and the only version available with a table of contents displayed in the left hand column. This makes it easy to navigate online as clicking on a heading in the table of contents will enable you to move quickly through the text of the Act. If there are unincorporated amendments these will be noted in the red Unincorporated Amendments field above the Act.

If we expand the table of contents we can see all the sections. Looking at Part 5, the general interpretation rules, we can see that there is no longer a s 14 in this version of the Act. We will use the endnotes to track what has happed to this provision.
Amendments to Acts can be tracked in the Endnotes, which are found at the end of each Act. In other jurisdictions these may be called historical notes or just notes. These notes show the history of the Act from when it was first passed to the latest amendments incorporated in the latest compilation.

In this Act the amending laws are detailed in Endnote 3, legislation history and Endnote 4, amendment history. The legislation history provides information about each law that has amended the compiled law. The information includes commencement information for amending laws. The amendment history provides information about amendments at the provision level.

Scroll to the end of the table of contents
Click on Endnotes / Endnote 4 – Amendment History
Scroll down to s 14 and ss 14A-B to see that 14A and 14B were added by No 141, 1987 and all three sections were repealed by No 46, 2011.
If we look at **Endnote 3 — Legislation history** we can see that Schedule 1 of Act No 46 of 2011 (which enacted this amendment) commenced on 27 December 2011. We need to look at the amending Act to find the actual section or schedule that affected s 14.

To locate a historical version of the *Acts Interpretation Act* which contains s 14 scroll to the top of the page and click on **View Series**.

All legislative items on ComLaw have their own **Series** page, which contains compilations of the legislation, amendments to the legislation and any legislative instruments enabled by an Act. Compilations are displayed listing
the current compilation first. If available, superseded compilations follow in chronological order.

Click on Acts Interpretation Act - Superseded with an end date of 26 December 2011

Click on s 14

(2) Every schedule to an Act shall be deemed to form part thereof.

(3) No marginal note, footnote or endnote to an Act, and no heading to a section of an Act, shall be taken to be part of the Act.

14A Acts may be altered etc. in same session

An Act may be altered amended or repealed in the same session of Parliament in which it was passed.

14A Definitions inserted by amending Act

Where an amending Act inserts a definition in a provision of the Act being amended, but does not specify the position in that provision where it is to be inserted, it shall be deemed to be inserted in the appropriate alphabetical position, determined on a letter-by-letter basis.

14B Commencement of paragraphs etc. in amending Act

Where:

(a) an Act makes an amendment of another Act; and

(b) the amendment is in the form of:

(i) a paragraph of a provision of the amending Act;

(ii) an item (whether or not so described) in a Schedule to the amending Act; or

(iii) a paragraph of such an item;

a separate commencement date may be given to the amendment, paragraph or item as if the paragraph or item were a self-contained provision of the amending Act.
Amending legislation

Click on Principle + Amendments.

Under the Act Amendments we can find a list of amending legislation for this Act. The most recent amending legislation is listed first, followed by previous amendments in reverse chronological order.

Note that one amendment has not been incorporated in the current compilation – the Acts and Instruments (Framework Reform) Act 2015. To find the commencement provision you need to go to the amending Act to see when it will commence. This Act will commence when proclaimed or 12 months after the date of Royal Assent.

Enabling legislation

Click the Enables tab to access the list of legislative instruments
In this session we looked at LawNow to find the Defamation Act 2005 (NSW). We also used FirstPoint, CaseBase and LawNow to search for the case law which interpreted section 31 of the Defamation Act 2005 (NSW).

We finished the session by finding the Acts Interpretation Act 1901 (Cth) in the Commonwealth legislation database, ComLaw. Before commencing our electronic research we discussed the main terms used in the legislative process, and the main resources used to find these materials.