



Australasian Legal Information Institute

A joint facility of UTS and UNSW Faculties of Law

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Access to Justice Arrangements Inquiry
Productivity Commission
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Dear Commissioners,

Free access to legal information and access to justice

The Australasian Legal Information Institute (AustLII) wishes to make a submission to this Inquiry concerning the relevance of free online access to legal information to the reference, and particularly to its following elements:

- 2b. information asymmetry
- 2c. other issues of market failure
- 2f. court practices and procedures
- 2i. other features of the legal services market which drive costs
- 8f. use of technology

The Australasian Legal Information Institute (AustLII) was founded in 1995 as a joint facility of the Law Faculties of the University of New South Wales and the University of Technology, Sydney. It provides free access to legal information online and is a non-profit organisation. Details of AustLII's operations are in 'Annexure A: Background information on AustLII and its value' and further in its 2013 Annual Report <http://www.austlii.edu.au/austlii/reports/2013/AustLII_YiR_2013.pdf>.

In 1995 AustLII pioneered the free access provision of legal information in Australia (and was among the world pioneers in the field). Australian courts, tribunals, legislation offices, law reform commissions and government agencies have subsequently followed AustLII's example and provided the legal information they produce for free access to the public, including via AustLII (with which they cooperate closely in efficient provision). For many such public bodies, AustLII is the only provider through which they make their information available to the public.

Nearly 20 years after its formation, AustLII now provides over 570 databases of Australasian legal information for free access. It receives approximately 600,000 page accesses per day (plus an unknown amount of cached access), or over 200 million accesses per year. In 2013 about 15 terabytes of data were downloaded from its systems. AustLII is the largest online provider of legal information (free or commercial) with

over 30% market share (figures provided by Hitwise). Identifiable usage comes, in order of largest use, from the commercial sector (particularly the legal profession), government, education and community sectors. AustLII is an indispensable tool to not only the larger law firms (up to 1 million hits per year), but particularly to small law firms and those in regional areas, and to legal assistance centres of every type.

AustLII maintains its databases at an approximate annual cost of A\$1 million, through contributions to AustLII Foundation Ltd (see Annexure 1), and therefore provides 200 million accesses per annum at a cost of approximately 0.5¢ (half a cent) per page accessed. We suggest that this is a highly cost-efficient provision of legal information to the whole community. The other community advantages of AustLII's operations, including providing competitive cost pressures to commercial legal publishers, are set out in Annexure 1.

AustLII is a co-founder and member of the international Free Access to Law Movement and adheres to its Declaration on Free Access to Law which takes the view that access to, and the republication of, public legal information for free access by users is a matter of human rights. A detailed explanation of the history of free access to law principles is in Greenleaf, G, Mowbray, A and Chung, P 'The Meaning of "Free Access to Legal Information": A Twenty Year Evolution', (2013) 1 Journal of Open Access to Law, available at <<http://ssrn.com/abstract=2158868>>.

Submission: *The Enquiry should recognise the contribution that free access to legal information, both via AustLII and via public bodies, makes to access to justice and equality before the law, and particularly to cost-efficient and equitable access to legal information. In particular, the enquiry should recognise that the expenditure of public funds on free access to legal information is a cost-effective public investment.*

Despite the world-leading extent to which Australian public institutions have adopted free access to legal information, there are still a number of anti-competitive practices in the provision of legal information in Australia which AustLII submits should receive close attention from the Productivity Commission's inquiry. We make four submissions.

(i) The system of 'authorised reports' from superior courts needs reform

There are ten courts in Australia that are involved in various systems of 'authorised reports', including the most important superior courts of record in Australia. The corrected versions of their decisions, as published in the authorised report series, are *not* then provided for free access, to update the now-incorrect versions that free access sites like AustLII provide. However, the vast majority of all accesses to those decisions continue to be to the free access, uncorrected, versions even after the 'authorised' versions are published for paid access.

AustLII's position is that the final and accurate text of all decisions should be available for free access, including decisions which receive corrigenda (corrections) during the production of an authorised report. The alternative, that the most-used versions of the most important decisions of superior courts are the least accurate decisions available for free access, is poor public policy. At present, this is the situation with all decisions appearing in authorised reports in Australia. It should not be accepted by courts that have otherwise supported free access to their decisions.

AustLII has always advocated that the final copy of the decision of any court should be

available for free public access. A corollary of this is that each court should maintain a complete archive of the final copies of its own decisions, so that it can provide those copies to parties that wish to republish its decisions (and, if it wishes, to publish them itself).

In the context of the system of authorised reports, these policies lead AustLII to the following conclusions:

- a. When a publisher of authorised reports completes its corrections to a court's decision, as approved by the court, a copy of that final and corrected decision should be provided to the court at the same time as the authorised report is published. This policy refers to the text of the court's decision, and not necessarily to such ancillary matters as headnotes or the publishable form of the decisions with page numbers.
- b. It is then up to the court to distribute this final copy of the decision to those who wish to republish it. Such final copies, as with all other corrected decisions, should be provided to those who have already published earlier versions of the decisions.

(ii) There is no continuing utility in citation monopolies for authorised reports. This is particularly so once (i) above is addressed. Citation monopolies are anti-competitive, and not in the public interest.

(iii) Copyright in the text of case decisions (reported or unreported) should be removed, by making them an exception to Copyright Act protection. The same should apply to legislation.

Australia is one of only a handful of countries that maintains copyright in cases (and legislation), and does not utilise the Berne Convention provision specifically allowing such an exception. The Copyright Review Committee recommended that these protections should be removed.

(iv) Privacy of court decisions should continue to be protected, within the limits of a system of open justice.

AustLII supports and implements the policy adopted by all Australian courts and tribunals that identified cases should not be able to be found through searches of general Internet search engines, but only be able to be found through searching court websites or specialised legally-oriented services (commercial or non-commercial). This policy is a reasonable balance between a system of open justice and the protection of the privacy of parties and other persons identified in decisions. These privacy interests should continue to be protected, whether or not there is copyright in decisions.

AustLII will on request of the Productivity Commission provide further details to support any of these submissions, if they are matters of interest to the Commission, either in writing or by discussion.

Yours sincerely,

Dr Philip Chung, Executive Director, AustLII
For Professor Andrew Mowbray and Professor Graham Greenleaf, Co-Directors

Annexure A: Background information on AustLII and its value

The Australasian Legal Information Institute (AustLII) was founded in 1995. It is the largest free-access provider of online Australian legal materials, a founding member of the Free Access to Law Movement, and one of the largest providers of world-wide free-access legal content. AustLII collaborates with other free access LIIs around the world to operate three international multi-LII systems for legal information: Asian Legal Information Institute (AsianLII); Commonwealth Legal Information Institute (CommonLII); World Legal Information Institute (WorldLII); as well as developing the LawCite international citator with the same group of collaborators. In addition, AustLII jointly operates the New Zealand Legal Information Institute (NZLII) and the LII of India, in cooperation with local partners in those countries.

AustLII comprises the AustLII Research Centre and the AustLII Foundation Limited, a not-for-profit company limited by guarantee operating as a charity. The Foundation raises donations to operate and maintain AustLII's Australian infrastructure and services. The AustLII Research Centre conducts research and is responsible for AustLII's international collaborations including AsianLII, CommonLII and WorldLII.

What AustLII provides

AustLII offers unrivaled breadth to its coverage of current Australasian legal information, and increasingly comprehensive historical depth as well. Its content and services include the following:

- Over 570 legal databases, with at least 25 new databases added each year, one every two weeks. In 2013 the AustLII website received over 214 million hits (588,633 per day) and 14.92 terabytes of data were downloaded. AustLII maintained its number one market position in the online legal category throughout 2013 and increased its market share from about 25% to over 30% (figures provided by Hitwise). Identifiable 2013 usage came, in order of largest use, from the commercial sector, government educational and community sectors.
- All Acts and Regulations enacted in every jurisdiction in Australia, enriched by an expanding coverage of Bills, Explanatory Memoranda, Gazettes etc.
- The decisions and case law of all significant courts, tribunals and regulatory authorities in Australia, plus the historical decisions of superseded bodies. New sets of decisions are added on request.
- A Treaties Library of all international treaties that Australia has entered into since Federation, and related documents, the largest national collection on the Internet.
- Legal History Libraries which provide near-comprehensive annual Acts since 1788, plus extensive historical series of law reports from most Australian jurisdictions.
- A Legal Scholarship Library of over 80,000 academic and judicial papers, theses and monographs.
- The Sino search engine, which combines simplicity of use with sophisticated features when needed, and (most of all) very fast search results.
- Interconnection of more than 2 million documents by over 50 million hypertext links.

- The LawCite citator, which automatically integrates citation data from cases and articles both on AustLII and on cooperating Legal Information Institutes from around the world. It also links or refers to other external databases. LawCite currently indexes over 4.5 million cases and articles.

How AustLII is funded

AustLII does not and cannot seek user access subscriptions or advertising because they are inconsistent with its free access policies and its charitable status. Instead, AustLII asks all its users, those who publish via its services, and those who otherwise benefit from its operations, to make an annual contribution that reflects the value of AustLII to them and to the Australian community.

AustLII aims to achieve a broad and balanced diversity of contributions and other sources of funding. It avoids tying its funding to any one provider or type of provider - such as a grant body, government fund, or levy on the legal profession. The diversity of AustLII's contributors needs to reflect the diversity of its stakeholders, so as to maintain AustLII's independence and ability to serve all its stakeholders, and to provide a robust long-term funding model.

The benefits AustLII delivers to its users

1. AustLII delivers high quality and cost-efficient services

The legal profession and many commercial and government sectors have a strong vested interest in funding AustLII so as to secure free access to the legal information that they, or those they represent, need to conduct their business. From an operational perspective, contributing to AustLII is a sound investment. It is also a cost-effective investment, because AustLII delivers access at a cost of less than 1¢ per page accessed.

2. AustLII stimulates a competitive market

AustLII provides a free-access product into the same legal information marketplace within which commercial and government legal information providers compete. Its quality has made it the most-used online provider in Australia.* The 'AustLII alternative' impacts on the price settings of commercial providers, stimulating them to keep their prices reasonable, and to increase the value-adding of their products. AustLII also cooperates with some commercial publishers to assist them to improve the coverage of their products.

3. AustLII provides benefits to the whole community – essential legal information

AustLII provides free access to public legal information to everyone, irrespective of their means. This supports the effective functioning of the rule of law, and provides essential legal information that benefits both community support organisations and individuals. All contributions to AustLII therefore have this community service or charitable benefit (recognised with DGR status), a reason in itself to support AustLII.

4. AustLII supports good public policies on legal information

AustLII supports free-access policies and opposes monopolistic practices in relation to legal information. Free access to legal information is necessary for the rule of law and democracy to function effectively. These interests need an advocate, because public and commercial bodies do not always support, or even recognise, free access and other public interests in legal information. AustLII works to expand the scope and quality of legal information available for free access, and defends it against poor public policies.