



# Prisoner Access To AustLII



<b>Executive Summary</b>	<b>3</b>
<b>International Treaty Obligations</b>	<b>4</b>
<b>Public Reporting of The Law</b>	<b>5</b>
<b>Access to the Law for Detainees</b>	<b>5</b>
Entitlements under NSW Law	6
<b>Prison-Controlled Intranet is Unacceptable</b>	<b>6</b>
Access to Accurate and Updated Law	7
<b>Benefits of AustLII</b>	<b>8</b>
The Benefits of Access to AustLII in the ACT	8
<b>Court Judgments, Reporting and Authorisation</b>	<b>9</b>
Reported and Unreported Judgments	9
Authorised and Unauthorised Reports	10
Case Citations	12
<b>Security Concerns</b>	<b>13</b>
Prisoner Assaults	13
AustLII Website Security	14
<b>Safety Concerns</b>	<b>15</b>
<b>Benefits of Austlii</b>	<b>16</b>
In the ACT	17
<b>Whitelisting</b>	<b>17</b>
<b>Citations</b>	<b>18</b>

# Executive Summary

Everyone has a right to access the law, regardless of their social status.<sup>1</sup> The International Covenant on Civil and Political Rights, to which Australia is a party, states that the accused must understand the nature and cause of the case against them, and be provided with a reasonable opportunity to present a defence.<sup>2</sup> Despite being in frequent contact with the law, prisoners are not provided with the same legal access afforded to the general public. This places prisoners at a significant disadvantage when attempting to understand, defend or appeal their criminal charges.

This paper proposes that by giving prisoners access to the Australasian Legal Information Institute (AustLII) database, prisoners would be provided with a fairer chance to engage in their own legal proceedings by examining relevant case law and preparing arguments. This access to AustLII should be provided through an exterior internet domain, instead of a prison-based intranet database, to allow for privacy from prison authorities.

Judgments, as viewed by the public, have various classifications. Reported cases appear in a published law report series, while unreported cases do not.<sup>3</sup> AustLII acts as a repository, and immediately uploads the judgments provided to them by the court in their unreported form. It follows that the judgments available on AustLII are entirely at the discretion of the deciding court.

By contrast, reported cases undergo a selection and editing process, before appearing within a law report series. Reported cases are released months after unreported judgments due to these requirements. The extensive, reliable and immediate legal access provided by AustLII is crucial for prisoners, who are already interacting with the legal system.

Certain law report series, such as the Commonwealth Law Reports (CLR), are authorised by the courts, with judgments having been reviewed by judges or their associates.<sup>4</sup> These authorised reports are preferred by Higher Courts, but are expensive to purchase, and only accessible digitally through paid databases, including Westlaw and LexisNexis. However, unauthorised judgments

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<sup>1</sup> Law Council of Australia, 'Access to Justice', *Law Council of Australia* (Web Page) <<https://lawcouncil.au/tags/access-to-justice>>.

<sup>2</sup> *International Convention on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 14(3)(a)-(b).

<sup>3</sup> Federal Court of Australia, *General Practice Note: Lists of Authorities and Citations*, 21 September 2022.

<sup>4</sup> *Ibid.*

remain valid records of the case.<sup>5</sup> A number of unauthorised law reports, including the Australian Law Reform Journal (ALRJ), can be accessed through AustLII.

Unfortunately, prisoner access to AustLII is inconsistent across Australian state jurisdictions. Some states, including the ACT, already allow prisoners to access AustLII. NSW has cited security concerns as their primary reasoning for opposing AustLII access. Detainees in NSW have access to the Corrective Services NSW (CSNSW) Legal Info Portal, legal self-help pamphlets and reference books recommended by the NSW State Library Legal Information Access Centre.<sup>6</sup> However, these resources are very limited, hard to access and difficult to present to court. Unlike AustLII, these sources are not updated frequently, diminishing their effectiveness for accurate and reliable legal research.

CSNSW has suggested that prisoners can utilise digital legal databases to find information on fellow prisoners who are charged with heinous crimes, such as sexual offences. As a result, these detainees could be subjected to violence at the hands of other prisoners.

Providing AustLII access is unlikely to increase prisoner assaults for a number of reasons:

1. Prisoners may not be identified through their cases. Courts often anonymise the identities of prisoners and victims involved in sex offences or offences involving children. Alternatively, judgments may not contain adequate background information about the prisoner to identify them personally or may not have been provided to AustLII if heard in a lower court.
2. Prisoners or lawyers can apply to the courts to have their name anonymised under a non-publication or suppression order. Since AustLII contains only cases permitted by the court, they will also remove a case where the court makes an order to do so.
3. Prisoner information can be found through other means. For example, prisoners can ask their visitors to provide them details about other prisoners which are publicly available.

The benefits for detainees in relation to legal education, self empowerment and reduced rates of recidivism outweigh the potential security risks. Moreover, where whitelisting is implemented, the AustLII website does not have a messaging option.

## International Treaty Obligations

The right to access information in a person's legal defence is enshrined by various international conventions as a fundamental human right for any individual. Notably, Article 14(3)(b) of the International Covenant on Civil and Political Rights ('*ICCPR*'), provides that in the determination

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<sup>5</sup> Ibid.

<sup>6</sup> NSW Department of Communities and Justice, 'Custodial Operations Policy and Procedures: 20.8 detainees access to legal resources' (16 December 2017).

of any charge brought against a person, they are to be afforded appropriate time and facilities in which to prepare their case, prior to the adjudication of the court.<sup>7</sup>

Australia is obliged to comply with the standards of the *ICCPR*, having been a party to the Covenant since 1980.<sup>8</sup> However, the right to information is often not granted to detainees within Australian prisons. Providing adequate access to legal information is an inalienable right that institutions have no justifiable reason to take away. Providing access to AustLII for detainees is therefore a positive step towards satisfying Australia's obligations under ratified international law.

## Public Reporting of The Law

It is a basic principle of Australia's system of justice that the public can access the law. To facilitate this, legislation can be accessed by anyone online for free. Likewise, courts and tribunals conduct open court proceedings and publicly report their reasons for their judgments<sup>9</sup> so that the common law is publicly available.

Maintaining public court proceedings provides two major benefits to society:

1. Safeguarding against the potential abuse of power from the court system; and
2. Creating consistency in decision making (including the doctrine of precedent).<sup>10</sup>

Stemming from these principles, AustLII aims to '*improve access to justice through better quality access to information*'.<sup>11</sup> AustLII is intended to be a public database, enabling anyone to read the law. Since prisoners are members of the public particularly affected by the law, it follows that they must also be granted access to the legal databases.

## Access to the Law for Detainees

The access of legal information by people detained under the criminal justice system is heavily restricted in practice. This is problematic, as it is essential that defendants can access legal databases, such as AustLII, to search for legal basis for their position and develop legal knowledge to inform their arguments in court. However, it is a recurring issue that prisoners are not being given the sufficient facilities or time to prepare for their trial. This impacts the quality of the accused person

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<sup>7</sup> *International Convention on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 14 (3(b)).

<sup>8</sup> Australian Government Department of Foreign Affairs and Trade, 'International Covenant on Civil and Political Rights', *Australian Government Department of Foreign Affairs and Trade*, (Webpage, 30 August 2010) <https://www.info.dfat.gov.au/info/Treaties/Treaties.nsf/AllDocIDs/8B8C6AF11AFB4971CA256B6E0075FE1E>

<sup>9</sup> 'Frequently Asked Questions', *AustLII* (Web Page) [1.10] <<https://www.austlii.edu.au/faq.html>>.

<sup>10</sup> *Ibid*.

<sup>11</sup> 'About AustLII', *AustLII* (Web Page) <<https://www.austlii.edu.au/about.html>>.

or appellant's case.<sup>12</sup> The repercussions of this are dire, as seen in the case of *Commissioner of Corrective Services v Liristis*,<sup>13</sup> where the absence of computer access for Tony Liristis resulted in his court date being vacated twice, lengthening his time in prison.<sup>14</sup> On appeal, a groundbreaking decision was handed down that granted Liristis access to a laptop and printer to prepare his case while in custody.

Access to legal information promotes education and self-empowerment. An international example of this access is the Justice Defenders Project in Africa, which focuses on empowering prisoners through legal education and training.<sup>15</sup> This initiative underscores the transformative impact of legal knowledge on individuals within the prison system, suggesting that similar benefits could be realised in Australian contexts with access to AustLII. The National Institute of Corrections emphasises the importance of providing detainees with reasonable access to legal materials and courts. This suggests that access to a law library, or a technological database like AustLII, is crucial for allowing detainees to meaningfully exercise their right of access to the court.<sup>16</sup>

International literature demonstrates that the provision of detention-grade personal devices to prisoners is certain to enhance rehabilitation outcomes to address recidivism and the integration of prisoners back into society.<sup>17</sup>

## Entitlements under NSW Law

Detainees in NSW have limited access to legal resources, as outlined in the NSW Justice Corrective Services Custodial Operations Policy and Procedures. Within [20.8 Inmate access to legal resources](#), rule 1.1 states that detainees must have access to networked computers and laptops and non-network computers and laptops. Rule 1.2 further provides that detainees must have access to legal information and resources via the Legal Information Portal which is provided by the CSNSW, legal self-help pamphlets, and reference books recommended by the NSW State Library Legal Information Access Centre. This should be reviewed in prisons to whitelist legal databases such as AustLII, as they provide the largest database of cases and legislation.

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<sup>12</sup> Justice Action, 'Prisoners' right to access legal resources' (Information Paper Draft, Justice Action, 2 February 2017) <<https://justiceaction.org.au/wp-content/uploads/2023/04/PrisonersLegalAccessRt02022017.pdf>>; see *Miles v R* [2012] NSWCCA 88 (RS Hulme J), *Shalala v R* [2012] NSWSC 351 (RS Hulme J).

<sup>13</sup> [2018] NSWCA 143

<sup>14</sup> *Commissioner of Corrective Services v Liristis* [2018] NSWCA 143.

<sup>15</sup> 'Do I need to have a law library in my jail?', *National Institute of Corrections* (Web Page, 27 March 2024) <<https://nicic.gov/resources/nic-library/hot-topics/do-i-need-have-law-library-my-jail>>.

<sup>16</sup> Justice Defenders, 'Increasing Access to Justice and Providing Legal Education Through Online Learning Platforms and Virtual Courts', *World Justice Project* (Web Page, 27 March 2024) <<https://worldjusticeproject.org/world-justice-challenge-2021/increasing-access-justice-and-providing-legal-education-through-online>>.

<sup>17</sup> NSW Government: Research and Evaluation Strategy for the Transformation of Prisoner Rehabilitation through Digital Technology; (Jewkes & Reisdorf 2016; Reisdorf & Rikard 2018).

# Prison-Controlled Intranet is Unacceptable

Prison authorities should not be able to monitor prisoners' legal research. A major concern is the potential for detention facilities to identify prisoners, view and monitor their access to legal resources. Detainees often wish to challenge their custodial authorities, in which case, prisons have the incentive to monitor prisoners' intranet activity. Even if a prison authority does not monitor this activity, prisoners are unlikely to trust this claim where there are no guarantees. Without the guarantee of privacy within a prison-controlled intranet, valuable legal tools could alternatively manifest an atmosphere of distrust and ultimately lessen the value of prison based resources.

Further, a prison-based intranet could impede on a prisoner's innate right to legal privilege. Legal privilege, as noted by Deane J in *Baker v Campbell*,<sup>18</sup> derives from the right to privacy and protection from the State when 'regulatory or investigatory powers are used against them'.<sup>19</sup> While privilege is usually restricted to communications and advice given between a client and their lawyer, prisoners may still be researching legal information on the advice of their solicitor or as regards to confidential documents that are protected within the scope of privilege.<sup>20</sup> The High Court in *Baker v Campbell*, addressed that 'communications which establish and arise out of the relationship [between a client and his or her legal advisor] are of their very nature of legal significance, something which would be coincidental in the case of other confidential relationships'.<sup>21</sup> This extends to a prisoner's potential statutory legal defences.

Sections 118 and 119 of the *Evidence Act 1995* (NSW) establish that communications or documentation under client legal privilege are protected if the confidential communication or document is for the dominant purpose of the lawyer providing legal advice to the client, or the client being provided with professional legal services relating to court proceedings.<sup>22</sup> A detainees' use of online legal databases to research the law and construct their defence for proceedings or on the basis of legal advice should fall within the protections afforded by client legal privilege. Whitelisting AustLII, such that it operates outside the prison-controlled intranet, can better protect the rights of detainees to privilege.

## Access to Accurate and Updated Law

The law is constantly changing to best reflect socio-legal attitudes of society and improve the efficiency and operation of the law. The NSW Parliament previously recorded that 217 new laws were reviewed by the Legislative Review Committee and 91 new bills presented to chambers in

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<sup>18</sup> (1983) 153 CLR 52.

<sup>19</sup> *Baker v Campbell* (1983) 153 CLR 52; Law Council of Australia, 'Client Legal Privilege' (Web Page) <<https://lawcouncil.au/policy-agenda/regulation-of-the-profession-and-ethics/client-legal-privilege>>.

<sup>20</sup> 'Client Legal Privilege', *Gilbert + Tobin* (Web Page) <<https://www.gtlaw.com.au/smartcounsel/client-legal-privilege>>.

<sup>21</sup> *Baker v Campbell* (1983) 153 CLR 52, 128 [878].

<sup>22</sup> *Evidence Act 1995* (NSW) s 118, 119.

2019.<sup>23</sup> Further, common law precedent is affirmed, amended and rejected with each new case that enters the court system. With constant recommendations for reform and inquiries into the effectiveness of the current statutes in operation, access to these updates are crucial for those needing to access up to date authority and statute for their case.

AustLII provides a central database for these amendments that is unmatched to a library or restricted resource under current prison provisions. As opposed to prison-based intranet legal resources, AustLII encompasses all case law identified as significant to the ‘development, interpretation and/or application’ of the law to accumulate the most relevant and persuasive precedents in Australian law.<sup>24</sup> With AustLII as the leading resource accessible in detention facilities, prisoners’ can research and understand their case alongside the most accurate publications of the law.

## Benefits of AustLII

AustLII is operated by the University of Technology Sydney and the University of New South Wales to improve the accessibility of the law for Australians. AustLII recognises that access to Australian case law and legal information is a ‘*basic feature of our system of justice...*’ and should be available to all.<sup>25</sup>

AustLII is the largest free-access online provider of legal research and materials. The database publishes the judgments of 120 Australian Courts and Tribunals and contains a variety of resources including cases, legislation, journals and Law Reform Commission reports.<sup>26</sup> AustLII includes statutes, cases and articles from NSW, Commonwealth and other jurisdictions.

Prisoners can use AustLII to prepare their case, and to improve their understanding of the legal system. AustLII access will also enable corrections agencies to comply with the ICCPR and better uphold the public nature of court proceedings. Since AustLII is entirely free, this access can be provided to prisoners at no additional expense.

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<sup>23</sup> ‘How Laws are Made and Changed’, *Parliament of New South Wales* (Web Page)

<<https://education.parliament.nsw.gov.au/teacher-lesson/how-laws-are-made-and-changed>>.

<sup>24</sup> The Council of Law Reporting for NSW, ‘About Reports’, *NSW Law Reports* (Web Page, 6 May 2024)

<<https://nswlr.com.au/about-reports>>.

<sup>25</sup> ‘Frequently Asked Questions’ (n 9) [1.10].

<sup>26</sup> Phillip Chung, Graham Greenleaf and Andrew Mowbray, ‘*Authority and integrity of primary legal resources*’ (Australasian Legal Information Institute, 2015) <<http://www.austlii.edu.au/austlii/announce/2015/2.pdf>>.



## The Benefits of Access to AustLII in the ACT

Prisoners in the ACT get access to Austlii without any restrictions on accessible cases. The Community Justice Coalition (CJC) visited the Alexander Maconochie Centre (AMC) in the ACT on July 31 2017,<sup>27</sup> and found that at this prison, computers had been in cells with limited internet access for nine years.<sup>28</sup>

In the ACT, s 52 of the *Corrections Management Act 2007* (ACT) ('CMA') provides that 'the director-general must ensure that detainees have reasonable access to (a) ...mass media including the internet for news and information and (b) a library or library service'.<sup>29</sup> Detainees may be granted limited supervised access to specific websites on the Internet, which must be for reintegration needs or education needs.<sup>30</sup> The Corrections Management (Detainee Access to Education, Library and Information Communication Technology) Policy 2019, authorised under s 14 of the CMA,<sup>31</sup> adds to this and allows detainees to access up-to-date, notified ACTCS policy and procedure documents, legislation and legal resources. Detainees who require access to a website in order to meet their legal needs must submit a *Detainee Request Form* to Education including the reasons for the requirement.<sup>32</sup>

The ACT Inspector of Correctional Services stated in their 2020 report that in the AMC, detainees can access the ACT Legislation Register and parts of AustLII on their in-cell computer.<sup>33</sup> The ACT Law Handbook AustLII is also available to all detainees on the bookmarks page of the PrisonPC system.<sup>34</sup> From communications between the CJC and the AMC on the 2nd of February 2024, it is confirmed that detainees have access to AustLII in the prison.

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<sup>27</sup> Community Justice Coalition, 'ACT Computers in Cells' (Report, 18 October 2017) <<https://justiceaction.org.au/wp-content/uploads/2023/07/ACTComputersCellsRpt.pdf>>.

<sup>28</sup> 'Computers in Cells', *Justice Action* (Web Page) <<https://justiceaction.org.au/computers-in-cells/>>.

<sup>29</sup> *Corrections Management Act 2007* (ACT) ss 52(1)(a)-(b).

<sup>30</sup> Isobel Harris, 'Life in Prison', *AustLII Communities* (Web Page, February 2022) <<https://austlii.community/foswiki/ACTLawHbk/LifeInPrison#Internet>>.

<sup>31</sup> *Corrections Management Act 2007* (ACT) s 14.

<sup>32</sup> *Corrections Management (Detainee Access to Education, Library and Information Communication Technology) Policy 2019* (ACT).

<sup>33</sup> ACT Inspector of Correctional Services, *The care and management of remandees at the Alexander Maconochie Centre 2018* (Report, February 2019) <[https://www.parliament.act.gov.au/data/assets/pdf\\_file/0008/1328318/ACT-Inspector-of-Correctional-Services-Report-of-a-review-of-a-correctional-service-the-care-and-management-of-remandees-at-the-Alexander-Maconochie-Centre-2018.PDF](https://www.parliament.act.gov.au/data/assets/pdf_file/0008/1328318/ACT-Inspector-of-Correctional-Services-Report-of-a-review-of-a-correctional-service-the-care-and-management-of-remandees-at-the-Alexander-Maconochie-Centre-2018.PDF)>.

<sup>34</sup> Legislative Assembly for the ACT: Tenth Assembly Alexander Maconochie Centre—PrisonPC (Question No 815), 15 August 2022 <https://www.hansard.act.gov.au/hansard/10th-assembly/2022/PDF/20220815.pdf>.

# Court Judgments, Reporting and Authorisation

AustLII includes cases from up to 120 Courts and Tribunals in Australia.<sup>35</sup> AustLII receives judgments from the courts through an automated email feed, and uploads them to their database. AustLII has no control or discretion over the cases that are uploaded, which adds to their reputability as a source of the law. Instead, courts and judges retain complete discretion as to whether their cases are available on AustLII. AustLII acts more as a repository of reliable legal information directly from Australian courts as opposed to an independent provider.

## Reported and Unreported Judgments

Reported cases are judgments that have been published in a law report series. Reported cases appear in law report series such as the Commonwealth Law Reports (CLR), New South Wales Law Reports (NSWLR), ALRC Reform Journal, Sydney Law Review (SLR) and University of New South Wales Law Journal (UNSWLJ).<sup>36</sup> Reporting bodies may be commercial or statutory. For example, the CLR is published by Westlaw,<sup>37</sup> while the NSWLR is published by the Council of Law Reporting for NSW, which is a government body.<sup>38</sup> One feature of reported cases is a headnote, written by the reporting body, which contains keywords and identifies the key findings of the case relating to the law.<sup>39</sup>

Very few cases heard in the superior courts (such as the Supreme Court of NSW) are reported. AustLII noted in 2015 that less than 10% of the judgments on their database were published in law reports,<sup>40</sup> with as little as 2% of NSW cases published in the NSWLR.<sup>41</sup> Editors dictate which judgments are included in their reports. For example, the NSWLR Editor selects judgments that will be significant in the development, interpretation and/or application of the law in NSW.<sup>42</sup> A case may not be reported if it was heard by a jury, was a minor offence, or heard in a lower court.

AustLII provides access to some law report series, such as the ALRC Reform Journal, SLR and UNSWLJ.

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<sup>35</sup> Phillip Chung (n 28).

<sup>36</sup> See 'Journals', *Australasian Legal Scholarship Library* (Web Page) <<https://www.AustLii.edu.au/au/special/journals/>>.

<sup>37</sup> 'Commonwealth Law Reports Bound Volume Only - Buckram', *Thomson Reuters* (Web Page) <<https://store.thomsonreuters.com.au/commonwealth-law-reports-bound-volume-only-buckram/productdetail/24141>>.

<sup>38</sup> The Council of Law Reporting for NSW, 'About History', *NSW Law Reports* (Web Page, 6 May 2024) <<https://nswlr.com.au/about-history>>.

<sup>39</sup> 'About Reports' (n 24).

<sup>40</sup> Phillip Chung (n 28).

<sup>41</sup> 'About Reports' (n 24).

<sup>42</sup> Ibid.

Unreported judgments are those which cannot be found in any law report.<sup>43</sup> Since they have not undergone an editing and formatting process, unreported judgments are available before reported cases are published.<sup>44</sup> AustLII contains a comprehensive database of unreported judgments, which make up 95% of case law on AustLII.<sup>45</sup> These are provided by various courts and tribunals including the High Court, NSW Supreme Court and NSW District Court. AustLII also includes cases heard in [other](#) Australian jurisdictions.

## Authorised and Unauthorised Reports

Authorised reports are a subset of law reports in which judgments have been reviewed by judges or their associates prior to publication.<sup>46</sup> Where this process has not occurred, the law report is unauthorised. The court considers authorised reports to be more accurate records of their judgments.<sup>47</sup> Examples of authorised law reports include the Commonwealth Law Reports (CLR), which is authorised to publish High Court judgments, and the NSWLR, which publishes NSW Supreme Court judgments.<sup>48</sup>

Generally, courts prefer that authorised reports are cited.<sup>49</sup> In some cases, only an unauthorised report of the case may exist. In such circumstances, an unauthorised case can be cited.<sup>50</sup> It should be noted that unauthorised cases are still valid records of court judgments.<sup>51</sup>

AustLII does not publish authorised reports. Most law report publications licence their reports to publishers. For example, the NSWLR is licensed to LexisNexis and Thomson Reuters Westlaw.<sup>52</sup> Law reports are subject to copyright protections, so cannot be accessed by AustLII for free.

The expensive and restrictive nature of reported cases undermines the principle of free access to the law. AustLII aims to transcend the original 'reported' and 'unreported' classification of legal materials by creating a format for judgments to be as consistent and reliable as possible.

In 2015, AustLII released a research project addressing the modern challenges of free-access to authoritative, reliable and - for procedural purposes - admissible case law.<sup>53</sup> This project introduced

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<sup>43</sup> *General Practice Note: Lists of Authorities and Citations* (n 3).

<sup>44</sup> 'Understanding legal sources' *University of Sydney Library* (Web Page)  
<<https://www.library.sydney.edu.au/support/searching/understanding-legal-sources>>

<sup>45</sup> Phillip Chung (n 28).

<sup>46</sup> *General Practice Note: Lists of Authorities and Citations* (n 3).

<sup>47</sup> Ibid.

<sup>48</sup> Ibid.

<sup>49</sup> See, eg, Ibid.

<sup>50</sup> Ibid.

<sup>51</sup> *General Practice Note: Lists of Authorities and Citations* (n 3).

<sup>52</sup> See, eg, Ibid.

<sup>53</sup> Phillip Chung (n 28).

the ‘Signed by AustLII’ format, which aims to guarantee the authenticity of judgments available on AustLII, providing an alternative to authorised judgments.<sup>54</sup> The Institute recognised that ‘[a]ll users of the legal system need to be able to obtain copies of primary legal materials that are ‘reliable,’ in the sense that the copy is authoritative and has authenticity and integrity.<sup>55</sup> However, the mainstream legal system requirements of the authorised case law does not adequately reflect how case law and legal information is gathered by the general public today.

Notwithstanding the efforts by AustLII to provide an accessible alternative to authorised reports, the unauthorised judgments available on AustLII remain legitimate.<sup>56</sup> Prisoners can continue to utilise unauthorised versions to understand the law and to prepare their cases. In court, the authorised versions of these cases can be cited if available.

## Case Citations

Cases can be cited based on the law report series they appear in or in the form of a medium-neutral citation. AustLII publishes cases with medium-neutral citations.<sup>57</sup> This is for both copyright and authority purposes. The medium neutral citation format has been used since the 1990’s to make case law from legal internet databases more accessible in legal proceedings. It does this by allowing ‘a resource such as a decision of a court to be cited irrespective of its publication medium’.<sup>58</sup> Medium-neutral citations often come from the courts themselves.

Medium neutral citations include a Unique Court Identifier (UCI), instead of a law report identifier.<sup>59</sup> Reported cases typically feature round brackets around the date, though this depends on the manner in which the report series is published.<sup>60</sup> AustLII lists, within its standards, the courts and tribunals that use an admissible, designated UCI for medium neutral citations.<sup>61</sup>

<b>Example Case: <i>Mabo v Queensland (No 2)</i></b>	
Reported citation:	<i>Mabo v Queensland (No 2)</i> (1992) 175 CLR* 1.
Medium-neutral citation:	<i>Mabo v Queensland (No 2)</i> [1992] HCA** 23.

<sup>54</sup> Ibid.

<sup>55</sup> Ibid.

<sup>56</sup> *General Practice Note: Lists of Authorities and Citations* (n 3).

<sup>57</sup> ‘Vendor and Medium Neutral Citations’, *AustLII* (Web Page) <<https://www.austlii.edu.au/techlib/standards/mnc.html>>.

<sup>58</sup> Ibid.

<sup>59</sup> Melbourne University Law Review, *Australian Guide to Legal Citation* (4<sup>th</sup> ed, 2020) <[https://law.unimelb.edu.au/\\_data/assets/pdf\\_file/0005/3181325/AGLC4-with-Bookmarks-1.pdf](https://law.unimelb.edu.au/_data/assets/pdf_file/0005/3181325/AGLC4-with-Bookmarks-1.pdf)>.

<sup>60</sup> Ibid.

<sup>61</sup> ‘Designators for Courts and Tribunals’, *AustLII* (Web Page) <<https://www.austlii.edu.au/techlib/standards/designators.html>>.

Other Unique Court Identifiers frequently used in reference to superior courts include The Supreme Court of NSW (UCI as NSWSC) and the New South Wales Court of Criminal Appeal (UCI as NSWCCA). Since cases can appear in various law reports, they can have multiple citations, referred to as parallel citations. AustLII includes the LawCite database, which records citations and other cases referring to the case. Where the LawCite entry for a case on AustLII only contains a medium neutral citation, the case may be unreported. However, unreported judgments are published earlier than reported judgments, so the absence of a reported citation does not indicate that the case will never be reported.<sup>62</sup>

## Security Concerns

### Prisoner Assaults

Prisoners' privacy is of concern when accessing public legal databases, especially for those who have committed sexual crimes. Research demonstrates child sex offenders and murderers are among the most hated population within Australian detention centres, making them vulnerable to attack if detainees discover their offence.<sup>63</sup> Although protective custody is available to safeguard detainees from serious bodily harm or death in prison,<sup>64</sup> those in protective custody are often assumed to be sex offenders and targeted.<sup>65</sup> Consequently, prisoners charged with crimes against a child often refuse protective custody to avoid attention.<sup>66</sup> CSNSW has claimed that granting unlimited access to AustLII for prisoners would endanger fellow detainees, as those who have committed murder or sex crimes may be identified and could attract more attention.

In theory, prisoners could be identified on AustLII, which may lead to being assaulted. Still, in practice, AustLII is unlikely to increase the risk of prisoner assaults.

Where sexual offences are concerned, courts often censor defendants' names and personal information. Through our [analysis](#) of 32 cases published in AustLII in 2023, the database obscures personal information in more than 50% of cases concerning child sex offenders. Often, the judge of a censored case will comment on the confidentiality of an offender and victims identity, noting that pseudonyms and initials are used when 'the offender and[/or] the complainants [were] children'.<sup>67</sup> This statistic directly correlates with sexual assault cases and other crimes concerning the involvement of child victims and witnesses. Consequently, many prisoners convicted in cases with

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<sup>62</sup> <https://www.library.sydney.edu.au/support/searching/understanding-legal-sources;>  
[https://unimelb.libguides.com/caselaw/finding\\_cases](https://unimelb.libguides.com/caselaw/finding_cases)

<sup>63</sup> <https://www.judcom.nsw.gov.au/sentencing-trends-21/>

<sup>64</sup> *R v Meskers (1991) NSWCCA* (13/6/91 unreported).

<sup>65</sup> [Penalties for sexual assault offences](#)

<sup>66</sup> [Penalties for sexual assault offences](#)

<sup>67</sup> *R v Norton* (a pseudonym) [2023] NSWDC 301.

sensitive material will not be identifiable in their court reports, and therefore cannot be identified through Austlii.

AustLII's privacy policy outlines their procedure when disclosing the names of parties. AustLII "complies with applicable legal restrictions on publication," where the court or reporting body censors information by using pseudonyms for all parties or redacting identifying information. However, where the public bodies do not censor information, AustLII does not make any further censorships.

Even if a prisoner's name is displayed in their case, it is difficult to identify them personally. By nature, judgments do not facilitate personal identification. Facts are often obfuscated in legal proceedings under hundreds of paragraphs of legal jargon and analysis of common law. It is unfeasible for prisoners to read through dense documents solely to uncover information about a prisoner. Isolated cases may occur, but they can be managed as they are currently by the prison authority.

Additionally, it is difficult for any database to guarantee that every case heard is included.<sup>68</sup> Proceedings for minor sexual offences are often held in the lower courts. AustLII does not publish cases in the local court, and may not include every case heard in the District Court, especially since these cases are less likely to set precedent. Prisoner's cases may simply not be available on AustLII.

If there are substantial concerns of a prisoner's safety at the publication and access of their case then a non-publication or suppression order can be made. AustLII can only remove a case where requested by the relevant court. For example, prisoners in NSW may request an order of non-publication or a suppression order, pursuant to the *Court Suppression and Non-publication Orders Act 2010* (NSW). A "non-publication order" prohibits or restricts the publication of information (but does not otherwise prohibit or restrict the disclosure of information), and a "suppression order" prohibits or restricts the disclosure of information (by publication or otherwise).<sup>69</sup> While a "high level of strictness" is required when granting a non-publication or suppression order, the Act specifies that an order may be granted on the basis of its acceptance is 'necessary'.<sup>70</sup> To alleviate potential safety concerns, prison authorities can facilitate prisoner applications for non-publication orders.

Irrespective of whether prisoners can be identified through AustLII, detainees can obtain information about other detainees through alternative means. For example, prisoners can ask their visitors to inform them about the court proceedings of other detainees – information which remains accessible to the public. Since prisoners can already access this information, providing access to AustLII is unlikely to substantially increase an offender's risk of harm.

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<sup>68</sup> Frequently Asked Questions', *AustLII* (Web Page) [1.9] <<https://www.austlii.edu.au/faq.html>>.

<sup>69</sup> [https://www.judcom.nsw.gov.au/publications/benchbks/civil/public\\_proceedings.html](https://www.judcom.nsw.gov.au/publications/benchbks/civil/public_proceedings.html)

<sup>70</sup> [https://www.judcom.nsw.gov.au/publications/benchbks/civil/public\\_proceedings.html](https://www.judcom.nsw.gov.au/publications/benchbks/civil/public_proceedings.html); *Court Suppression and Non-publication Orders Act 2010* (NSW) s 8.

Despite the safety concerns raised by CSNSW, it is unjust to restrict legal access to prisoners to prevent violence as assault is a criminal matter which should be treated as such. Corrective Services have an inherent responsibility to protect individuals within detention facilities from violence. However, this duty should not come at the expense of prisoner rights.

## AustLII Website Security

Austlii does not have the capacity to facilitate messaging through the website within prisons. The AustLII website has numerous internal shortcuts directing individuals to different areas of the website, and to various documents. The Austlii homepage also includes a search bar, which only returns results within the site. No concerns arise here as each document is a publication containing only internal links, and the website itself contains no messaging function.

The Austlii website does contain multiple external links, including one to the AustLII twitter account. The AustLII page also links to other law information platforms, and allows users to communicate with admins through an external link. However, these external links can be blocked using whitelisting. Whitelisting is a method by which clients connecting through a server can only access a pre-approved list of email and IP addresses or domain applications. Where external domains, including twitter are omitted from the whitelist, the external links on the AustLII webpage will not create safety issues.

Prison authorities can also whitelist sections of the AustLII site, permitting prisoners to view only cases and legislation. For example, whitelisting only <https://www.austlii.edu.au/cgi-bin/viewdb/au/legis/nsw/> and <http://portsea.austlii.edu.au/pit/xml/nsw/act/> would enable access to NSW legislation, while preventing access to the rest of the AustLII database.