Hello. Welcome to the first of two sessions dealing with legal research on legislation. In this session will be looking at how to find New South Wales legislation, the legislation in the jurisdiction in which UNE is based and in the second session will be looking at Commonwealth legislation.

Now any legal research usually begins in the library, including online. If we go to the Library home page at UNE, we will see there is a link in the top right corner specifically for the law library. When you click on it, it will take you to the law library homepage, which has a series of tabs across the top to take you to various helpful links to undertake your legal research.

There is a link for Welcome, a link for Cases, Reported judgments of law courts, and a link for Legislation, which we'll be looking at today. Secondary materials such as textbooks, journals, encyclopedias and so on, various legal databases we can search for articles, cases and so on.

A link to the Australian Guide to Legal Citation which tells you the various ins and outs of citing cases, legislation, secondary materials and so on. As well as a legal research guide on particular topics and assignment help. But let's focus on legislation.

You'll see the site here is divided into three columns with the middle column giving you a brief guide to what I am about to explain. And in the right hand column a very important series of links to Key Sources for Authorised Australian legislation.

Some of you may have heard of AustLII, which will talk about a bit later; The Australian Legal Information Institute which is a very helpful resource in terms of both cases and statutes. However AustLII is unauthorized. If you want an official version you have to go to one of these web sites.

Today we'll be looking at New South Wales legislation. When we click on that link we're taken to this site [NSW Legislation] and we'll see it has a series of helpful links across the top. The first one is the Search link which enables you to search just as you would in Google. That is, you type in a particular search term and it will search Acts for that particular term.

We also have a Browse link which is where you can browse the various acts by the letter with which the Act starts. We also have a link to the gazette, which is an important government publication that provides notifications about all sorts of things to do with government, including when an Act comes into force. We also have a link to As Made. This will take you to a statute as it was at a particular point in time.

This is important as the law you want is the law that was in force at the time at which the particular incident you're are dealing with happened. Whether it's the particular crime, the particular accident, the particular commercial transaction.

Law is updated all the time. However it doesn't always update retrospectively. That means it doesn't reach into the past and change people's rights and duties as they existed at the time the transaction you're are concerned about occurred.
So it is important to have a law as it was, rather than necessarily at the point in time that you look at the internet to look at the case. There is also a link to Bills. Before an Act exists, when it is introduced into Parliament, it is introduced as a Bill. A bill is what the parliamentarians voted on and it is only when it's passed through Parliament that it becomes an Act.

There is also a link to various Tables and helpful Links that we'll come to later. But now let's go about finding a particular act. In this case let's look for the Government Advertising Act of 2011. So if we take the browse function for example, will see we have the Acts that are In Force, Acts that are the Law at the moment, and we have repealed Acts, Acts that once the law but have since been repealed by parliament. They no longer have any force.

There is a link to acts and regulations. Regulations are subordinate forms of rules made under Acts by people empowered by the Act. For example, an Act might say that you require a license to fish, however the particular rules governing that license may be set out in regulations passed by a minister or senior public servant of the governor. Now regulations are not voted on by parliament but they can be disallowed by parliament.

Let's focus on Acts for the moment, looking at G for the Government Advertising Act and there it is, a click on the link and we have brought up this particular display. The column on the left gives is the contents of the act. A series of hyperlinks that we can use to jump to important information.

The larger column on the right contains the full text of the act itself. Here we are just told status information about the Act, the currency of this particular version provisions that are in force, the minister responsible for this Act, and so on.

Scrolling down the contents we have a list of numbers with a heading next to them. These are the sections of the act, if you like, the engine of an act. These are what contains the substantive rules that the Act lays down.

We'll see the act is also divided into parts. Part 1 Preliminary, Part 2 Government advertising campaigns and so on. Parts break an act up into helpful chunks, if you like, that make it easier to work out what's going on where. They have a function that various definitions, various terms, might have a particular meaning in a particular part of an Act, but a different meaning in another part of an Act.

In particularly long Acts these parts will be broken down further into divisions and subdivisions. This Act, with only 16 sections doesn't need that amount of subdivision. If we take a look at a section, Section 5 here, you will see that has lays out guidelines or empowers the preparation of guidelines for government advertising campaigns.

Section five is broken down into various components. These various components, 1, 2, 3 and four are what we call subsections. Section five, subsection one; the minister is to prepare guidelines for Government advertising campaigns. And we'll see section three is broken down even more, into (a) and (b). These are called paragraphs and they are usually enumerated by lowercase letters.

These can be broken down even further into sub-paragraphs usually enumerated with roman numerals. But his section is not so complex. Now some important sections found in many acts are firstly the Long title, this tells you the purpose of the act and we'll see in a few minutes why purpose is important.
The long title is not always as helpful as you might wish to be, for example to simply tells us that this Act is an Act to regulate government advertising, which we probably could have worked out from the title. But some Long titles give us more information than that about the purpose.

Another important section is the definition section. This gives us the meaning of various important terms in the act itself. Now terms used in an act can have a whole variety of meanings. So, governing party, what does that mean? Here we are given a very specific definition of it. It means a political party whose parliamentary representatives are ministers in the government to New South Wales.

That is, this Act only applies to ministers in the government of New South Wales, or rather this particular definition of governing party. Another important section is subsection one which gives as the name of the Act, which we know already, the Government Advertising Act. This is also referred to as the short title and when you cite an Act in your research papers or whatever work you are doing, this is what you cite it by.

You will notice that the short title doesn't have the number that appears up here, number 35. The number is the number it was in the year it was passed. So this was the 35th Act in 2011. However we don’t use the number when we cite the act. Another part of an act are the Schedules that generally appear at the end of an act. Schedules are used for variety of purposes usually to include things that are either ancillary to an act, so here we have Savings, transitional and other provisions. These are provisions governing how the act is introduced. So there will be a body of law already, what happens when you introduce the new law? You need transitional provisions to smooth the introduction of new law.

They can also contain, for example, lists of things. So if you have an act dealing with prohibited substances the Schedule would list the various prohibited substances rather than cluttering the body of the Act with a big long list of things.

Now we’ll see there are other helpful links atop the page here. You have the whole title, this will bring us to the particular title we’re looking at. Regulations, again regulations under the act. Historical versions, now this takes us to versions of the act as it existed in the past should you need to identify what the law is at a particular point in time.

And lastly, in addition to searching within this particular title, we have historical notes this tells us how the act has changed, events that happen in the acts life. We’ll see the first thing here tells us about when the act came into force. It was assented to on the 13th of September 2011 but did not commence until the 5th of October 2012 When an Act passes through parliament is not necessarily the date which it becomes law. So this act passed parliament in 2011, however it did not commence, it didn't become law, until October 2012, over a year later.

In addition we see that the act was amended by section 30 C of the interpretation act of 1987. You might be wondering, how an act passed 20 or so years before the act we are looking at have amended an act in 2011. The answer is that this section 30 C of interpretation act must be an amendment of the interpretation act itself. The year that appears in an Act's title doesn't update when the act is amended. This particular act, the interpretation act 1987 is an important one when it comes to research and interpreting legislation.
Every jurisdiction in Australia has a version of an interpretation act. This is an act that tells you how you go about interpreting statutes in that particular jurisdiction so this act only applies to New South Wales acts. And often what it contains is a variety of definitions of words and expressions common to many acts to do with the government. So section 14 defines who a governor is. Reference to a governor is reference to the Governor with advice of the executive council and so on. A minister, you will see there is quite a complex definition of who a minister is at a particular point in time. So rather than repeating these definitions in every act they're contained one interpretation act.

It also contains provisions on commencement of acts, how amending and repealing acts applies and an important section how we construct acts and instruments that means how we interpret them and to important provisions here in the New South Wales act are section 33 and section 34 and there are equivalent provisions in most other jurisdictions.

Section 33 instructs courts how they go about interpreting an act. It instructs the court that in the interpretation of a provision of an act an interpretation that promotes the purpose or object underlying the act is to be preferred to one that does not promote such a purpose or object.

This is the so called purposive approach to interpretation that you'll learn about in LAW100.

In addition section 34 talks about the use of what we call extrinsic materials. What are extrinsic materials? Well the answer is they are anything outside the acts that can help shed light on the meaning of an act. There are all sorts of things that could be useful here. If, for example, an acts implements an international treaty that international treaty could be extrinsic material helping you interpret the act. Two important types that we'll talk about specifically today are explanatory memoranda which we'll see here is paragraph E (subsection two, paragraph E). So we have subsection to up here and paragraph e down here and the speeches made in the house of parliament by a minister on the occasion of them moving that the bill be read a second time, that is a second reading speech.

Both these documents shed light on the purpose of the act and how the government passing the act envisioned that the act would work. You might think that courts would accord this very high priority considering the main purpose of courts when they interpret an act is to give effect to the intention of parliament.

However, the way courts see their actions is that they give effect to the intention of parliament as expressed in the act itself and hence such things as explanatory notes and second reading speeches are of secondary importance to a court. Nevertheless under the conditions under the section 34 the court can consult such material.

Now those rules are a little complex and you'll see this is quite a long section so we won't go through them here. They're covered in LAW100.

But now let's see how we would go about finding these explanatory memoranda and second reading speeches. Well they can be found, the explanatory memoranda can be found in association with a bill. You remember when it act does is first introduced into parliament it is called a bill. So let's have a look at bills. Click on the link at the top of the page and we're taken here and we'll see the link for bills passed from 1990 to 1998 we have the explanatory notes helpfully linked here [Now included in Bills Browse].
The other ones are found with the bill itself so again we have the option to search individual bills or we can browse them by the title. Here we have Browse bills for current parliament 2011 onwards. [Altered: you would now need to go to Browse Bills 1990-2014 to find this Bill] This sounds promising for our government advertising act 2011 so we click on G and there we have the government advising bill 2011.

We click on that we are given some information about how the act passed through parliament and here we have a link to the bill and its explanatory note.

Click on that and here we have the explanatory note that we see gives an overview of the bill, what the object of this bill is, remember about the purposive interpretation, this is clearly very relevant to the question of what the purpose of the act is and then we'll see an explanation of every clause.

Now a clause is what a section is called in a bill. So what we call a section of an act when it's just a bill it's called a clause. We'll see Clause 5 requires the Minister to prepare government advertising guidelines, which we'll remember is what section five of the act did.

If we scroll down further, beyond the explanatory memorandum we see that we have the text of the bill itself and its various clauses, so this is what the parliamentarians vote on. So the helpful document there is the explanatory memorandum.

How do we get to the other item we're talking about, the second reading speech? In New South Wales we can do this through the links page [Also available on Law website under Other legislative material] Click on links and we'll see there is a subcategory: Parliaments. Go to the New South Wales parliament, we'll see there's a link here for bills. We click on that go to bills overview [Adjusted: You can go directly to All Bills 1997+ directly from this menu] and we'll see that we can look for bills in a variety of ways. So we go to All bills from 1997 and again we can browse them by title. G for Government advertising bill. If we scroll down alphabetically we can find the Government advertising bill 2011. Click on that and we'll see we have a link to the explanatory note and a link here to the second reading speech, in addition to further information about how it passed through parliament, and the bill as passed. Remember that link to acts As Made; the original version of the act before it was amended. Now we click on the government advertising bill and we're taken to the speech in Hansard. That is the record of parliamentary speeches, see there is the date, the page number and the person speaking, the then Premier, Mr Barry O'Farrell. And here he lists first of all why the bill is necessary and then he says... Now I turn to the features of the bill. They are set out in part one. So you see he goes through in detail about the content of the act including specific references to clauses. So here's a reference to clause seven. So like the explanatory memorandum that explains the content of the act, and clearly the purpose of the act which is relevant to that provision of the interpretation act telling us what the purpose of an act is.

So that was the helpful information you can find out about New South Wales legislation from the New South Wales legislation web site and from Hansard. There is one further site that is very useful when it comes to legislation not only for New South Wales but for other jurisdictions as well. This is that site I already mentioned, AustLII. The unauthorised site. But still very helpful. If we click on this link here from the library web page, so we are just back at the library site we'll come to the Australasian legal information institute which has a variety of links, the most important one is this cases and legislation link list just here.

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And we'll see we can go to New South Wales and we have cases, so Supreme Court of New South Wales, compensation court, a variety of administrative tribunals and also legislation. Again we have acts as made, acts point in time that is historically, consolidated acts that is an act containing all the amendments up to the present, and repealed acts. And the same for regulations.

Now we look up the government advertising bill. And we'll see we have links to the various sections here. In addition there some links at the top. You can search within the act, there are notes about the act, you can download it and there is also this link, Note Up. Note up takes you to various other things that mention the act. When you look at the contents page you will get a series of links to the act itself but you'll also see here it has taken us to the regulations that talk about the act.

So there ends session one of the research guide to looking at legislation focusing on New South Wales legislation. In session two we will turn our attention to Commonwealth legislation.