



**FEDERAL COURT
OF AUSTRALIA**



USE OF FOREIGN LAW BY COURTS

Chair: Jennifer Davies (Australia)

Panel: Dennis Davis (South Africa)
Anthony Gafoor (Trinidad Tobago)
Vineet Kothari (India)
Thomas Stadelmann (Switzerland)
Ange Beukers-van Dooran (Netherlands)

“To cite comparative jurisprudence is to demonstrate an educated, cosmopolitan sensibility, as opposed to a narrow, inward-looking, and illiterate parochialism.”

Sujit Choudray “Migration as a New Metaphor in Comparative Constitutional Law” in the Migration of Constitutional ideas (Camb UP, 2006)



Limits on use

- domestic law prevails
- diversity in tax systems
- not always helpful because differences may be significant/not exact equivalences
- status of the Court and quality of reasoning
- insufficient knowledge of foreign legal systems and case law
- language: issues of translation
- differences in styles of writing judgments



Limits on use (continued)

- common law/civil law
- difficulties of finding relevant foreign case law
- reliability of data bases/search tools



Usefulness

- can be a source of ideas
- consistency/harmonisation of interpretation
- can be adopted or rejected according to whether the foreign case supports or does not support the view reached by the Court
- desirability of common principles for interpretation of DTA



Databases

See handout

