

# **Assessing Research Performance in the Discipline of Law**

**The Australian Experience with Research Metrics, 2006-2011**

Professor Kathy Bowrey  
University of New South Wales

## Assessing Research Performance in the Discipline of Law The Australian Experience with Research Metrics, 2006-2011

This report surveys the current state of research assessment in the discipline of law in Australia. Its purpose is to document what is already known in light of the discipline's participation in government-led research performance assessment initiatives from 2006 to 2011 and to draw out the challenges in assessing research quality that Law faces in the future.

Research data informs comparisons of school, faculty and institutional performance and assessments of school, faculty or cluster research strengths. There is a direct correlation between research data reported and funding distributions in the sector. Conclusions based on available research data influence decision-making by researchers, managers and institutions. This impacts upon employment opportunities, workloads, access to study leave, competitive grant success and promotion. However, research reporting and performance assessment has advanced in Australia without much disciplinary discussion of the problems caused by the construction of the data underpinning these exercises.

A better understanding of research data and metrics used to assess legal publications may enhance the quality of strategic planning by individual researchers, mentors, managers and institutions. This report also highlights unresolved or problematic issues for our discipline that arise from the prevailing taxonomies and tools utilized in research assessment. It is hoped that the information provided here will create a firmer foundation for the discipline to engage in ongoing developments and refinements of existing models in the future. Where relevant, sections end with a page of recommendations for consideration.

This report draws upon my particular experience from my first appointment as a legal academic at the then controversial Macquarie Law School in 1989 to today. It also includes experience gained from a short-term helping establish a research agenda in the new position of Associate Dean (Research), Faculty of Law, UTS, Sydney (2006-2007) and as Associate Dean (Research) at the Faculty of Law, UNSW, (2008-2011).

In addition I have served as consultant to CALD from 2006-2011 leading the drafting of responses to Australian Research Council consultations concerning the Research Quality Framework, ERA Trial and ERA 2010. This work included administering significant aspects of the controversial ARC journal ranking exercise. Whilst the ranking list was formally abandoned for Law in 2011, the list remains in circulation and is still referred to by researchers and their institutions.

Professor Kathy Bowrey  
University of New South Wales  
13 March 2012

In responding to the ARC agendas I have had support and assistance from CALD- in particular from Professor Jill McKeough (UTS), Professor Bill Ford (UWA) and Professor Michael Coper (ANU). Law's participation in ARC-led initiatives has also benefitted greatly from thoughtful contributions and long hours volunteered in producing required documentation for the RQF by Mark Israel (UWA, formerly Flinders), and for the ERA by Lesley Hitchens (UTS), with additional assistance from Kit Barker (UQ), Richard Johnstone (Griffith), Brad Sherman (Griffith, formerly UQ) and Hilary Charlesworth (ANU).

I would also like to acknowledge the administrative support provided to me by UNSW Research Support Officer, Leanne Palmer, as well as the support given to Lesley Hitchens by Natalie Kulakovska and the efforts of the Law Journal Ranking Project Manager Brett O'Halloran.

This report draws upon many discussions with all of the above people. I also benefited greatly from insights from numerous legal researchers from other institutions and from my colleagues at UNSW. I would particularly like to thank Mark Aronson, Andrew Byrnes, Ben Golder, Gary Edmond, Simone Degeling, Jill Hunter, Andrew Lynch and Jane McAdam.

What follows is, of course, entirely my own perspective on a difficult and controversial subject.

<i>Page 8</i>	Executive Summary
	<b>Part One: Assessing Law Outputs</b>
<i>Page 13</i>	Introduction
<i>Page 13</i>	Research Policies in the Australian Higher Education Sector
<i>Page 14</i>	Research Reporting Data: HERDC
<i>Page 21</i>	Weighting of Research Outputs
<i>Page 21</i>	Institutional Uses of Research Data
<i>Page 23</i>	Research Claims by Individual Researchers
<i>Page 24</i>	ERA
	<b>Part Two: Research Assessment Codes</b>
<i>Page 38</i>	Introduction
<i>Page 38</i>	Field of Research (FOR) Codes
<i>Page 40</i>	SEO Codes
<i>Page 41</i>	Assigning FOR codes for Legal Research
<i>Page 47</i>	Law Classification Conventions
<i>Page 48</i>	Interdisciplinary Research
<i>Page 50</i>	Problems with Existing Codes
<i>Page 52</i>	Possible New FOR Codes
	<b>Part Three: Specialist Law Journal Ranking</b>
<i>Page 64</i>	Introduction
<i>Page 65</i>	History of the ERA 2010 List
<i>Page 69</i>	ERA 2010 Journal Rankings : Research Specialisations
<i>Page 87</i>	Conclusions
	<b>Part Four: General Law Journal Ranking</b>
<i>Page 92</i>	Introduction
<i>Page 93</i>	Submission and Acceptance Practices
<i>Page 94</i>	Author Institutional Alignment
<i>Page 105</i>	Analysis of General Law Journals by Subject Area
<i>Page 115</i>	Conclusions
<i>Page 120</i>	Conclusion: Improving the Quality of Legal Research

<i>Page 32</i>	1.1 HERDC Specifications 2012
<i>Page 34/121</i>	1.2 COPE Code of Conduct for Journal Editors
<i>Page 35</i>	1.3 Refined Journal Indicator
<i>Page 36</i>	1.4 ERA 2012 Esteem Measures
<i>Page 37</i>	1.5 Australian Academy of the Social Sciences: Law Membership
<i>Page 55</i>	2.1 LAW FOR and SEO CODES
<i>Page 57</i>	2.2 ERA 2010 Law Results by FOR Code
<i>Page 58</i>	2.3 Law SEO Codes
<i>Page 59</i>	2.4 Errors in ERA Journal Classifications
<i>Page 60</i>	2.5 Suggested Group 1801 FOR Classification Conventions
<i>Page 61</i>	2.6 FOR Codes: Economics & Commerce
<i>Page 63</i>	2.7 FOR Codes: Criminology
<i>Page 88</i>	3.1 ERA Journal Ranking Tiers
<i>Page 89</i>	3.2 ARC Template for Australian Ranking of Journals and Publishers
<i>Page 90</i>	3.3 CALD Phase Two Consultations: Specialist Academic and Professional Bodies
<i>Page 91</i>	3.4 CALD Phase Two Consultations: Specialisation Areas for International Review
<i>Page 116</i>	4.1 Editorial Details of A and A* General Law Journals
<i>Page 118</i>	4.2 Special Edition Subject Matter 2006-2010

<i>Page 25</i>	ERA 2010 Law Outcomes Research Outputs Submitted by Type Staffing Profile by Academic Level
<i>Page 29</i> <i>Page 30</i>	ERA 2010 Law Research Income-all Categories (\$) ERA 2010 Esteem Measures ERA 2010 Esteem Measures HCA Panel ERA 2010 Esteem Measures by two-digit FOR Code
<i>Page 42</i> <i>Page 43</i> <i>Page 43</i> <i>Page 44</i>	Percentage of Journals Able to be Classified Specialist Law Journals Falling under Existing FOR Codes Breakdown of General and Specialist Law Journals within FOR 180199 All Law Journals Classified with Reference to Specialization (Excluding General Law journalsS
<i>Page 45</i>	Breakdown of FOR 180199: Law Not Elsewhere Classified
<i>Page 71-86</i>	Rankings Analysed with Reference to FOR Code 180103 Administrative Law 180105 Commercial and Contract Law 180106 Comparative Law 180108 Constitutional Law 180109 Corporations and Associations Law 180110 Criminal Law and Procedure 180111 Environmental and Natural Resources Law 180113 Family Law 180114 Human Rights Law 180115 Intellectual Property Law 180116 International Law 180117 International Trade Law 180118 Labour Law 180119 Law and Society 180120 Legal Institutions 180122 Legal Theory, Jurisprudence and Legal Interpretation 180123 Litigation, Adjudication and Dispute Resolution 180125 Taxation Law Gender & Sexuality Law & Medicine Legal Education Technology Law  Combined Ranking Outcomes

- Page 94*      **Publication by Australian Authors**  
    Australian Academics v Other Authors (Internationals, Judges, Legal Profession, Students)  
    Australian Academics v Other Authors (Internationals, Judges, Profession, Students) By Outlet
- Page 95-104*      **Home Institutional Representation**  
    *Federal Law Review* Author Affiliations  
    *Griffith Law Review* Author Affiliations  
    *Melbourne University Law Review* Author Affiliations  
    *Monash University Law Review* Author Affiliations  
    *Sydney Law Review* Author Affiliations  
    *University of NSW Law Journal* Author Affiliations  
    *University of Queensland Law Journal* Author Affiliations
- Page 104*      **Non-GO8 Representation**  
    Number of Non-GO8 Institutions Represented  
    Proportion of Non-GO8 Publications
- Page 107-114*      **General Law Journal Subject Matter**  
    *Federal Law Review* Subject Areas  
    *Griffith Law Review* Subject Areas  
    *Melbourne University Law Review* Subject Areas  
    *Monash University Law Review* Subject Areas  
    *Sydney Law Review* Subject Areas  
    *University of NSW Law Journal* Subject Areas  
    *University of Queensland Law Journal* Subject Areas
- Combined Subject Matter Areas

There is currently very little analysis of research assessment practices in law. A lack of knowledge and disciplinary discussion of existing criteria arguably contributes to arbitrary and unfair assessments. It also contributes to considerable anxieties within the discipline as there is little information to inform institutions and researchers about how they can perform better.

The report is in four parts, which, combined, provide a clearer empirical foundation for assessing existing research areas and publication opportunities for legal researchers.

## **Part One: Assessing Law Outputs**

Part One: Assessing Law Outputs explains the Higher Education Research Data Collection (HERDC) in relation to law. HERDC reporting currently determines institutional research income and informs individual research active and research quality assessments. This part highlights ongoing problems with classifying certain kinds of legal publications, including discussion of the implications of recent changes brought about to reconcile HERDC and ERA data sets that affects reportable items.

### **Research Policies in the Australian Higher Education Sector**

The lack of involvement in research consultations contributes to perceptions that law is treated 'unfairly' by sector policies. Whilst there may be some basis to complaints and ill-fitting criteria have no doubt made it more difficult for legal researchers to participate in schemes and be assessed fairly, improving this situation requires better mechanisms for consultation with, and education of, legal researchers. Given attention by Deans and more active participation of Associate Deans (Research) in this area is required.

**RECOMMENDATION 1.1:** That CALD, through Associate Deans (Research), engage more proactively in sector consultations about research matters and, where relevant, co-ordinate responses on behalf of the discipline of law; and for that relevant documentation be routinely made publicly available to legal researchers.

**RECOMMENDATION 1.2:** That the Chair Standing Committee: Legal Research convene a discussion list of Associate Deans (Research) or equivalent law positions to allow for more effective participation and education about research matters.

### **Research Reporting Data: HERDC**

There are recurring frustrations and confusions with respect to which law publications can and cannot be reported for HERDC. There have also been recent

changes with these criteria to promote consistency between HERDC and ERA data sets.

This has led to some changes in the journal articles that can be reported as peer reviewed for HERDC, however law reform reports and policy submissions remain ineligible for HERDC reporting but can be included for ERA.

Researchers and personnel with responsibilities for research reporting need to be alert to the current criteria and their nuances.

**RECOMMENDATION 1.3 :** That CALD strongly encourage consistency in interpretation of HERDC criteria to ensure that legal research and institutional performance is assessed with reference to a level playing field.

## **Improving Peer Review**

Allowing inclusion in the ERA journal lists to serve as evidence of peer review is detrimental to research quality in Law. It is important to note that the listing of a journal as peer reviewed does not necessarily mean that every individual item published in the journal is eligible for inclusion. The weakening of the peer review criteria in Law can be addressed to some degree by a more stringent approach to the application of the definition of research. Given the CALD journal ranking brought forward a number of complaints concerning peer review practice, including of A\* general law journals, it would be helpful for CALD to publicise best practice concerning responsible publication including peer review and to encourage adherence to relevant codes.

**RECOMMENDATION 1.4:** That CALD publicise to legal academics and law journal editors their obligations concerning responsible publication including policies concerning peer review, and recommend adherence to the Committee of Publication Ethics (COPE) Code of Conduct for Journal Editors and the Australian Code for the Responsible Conduct of Research.

## **Non-Traditional Items**

Scholarly research contributions in the form of reports and law reform submissions are eligible for submission under the ERA. However, they are not currently included in HERDC. This discrepancy should be redressed.

**RECOMMENDATION 1.5:** That CALD initiate a discussion with DIISR over the treatment of original research such as published reports and submissions to law reform bodies that are accepted for ERA as non-traditional items but excluded from HERDC, with a view to inclusion of such material in future HERDC exercises.

## Research Active Exercises

Law struggles to devise appropriate quality criteria for publications and, as such, metrics-based quality assessments remain highly problematic. Recourse to proxies for quality, including to ERA assessment data, is prone to distort the evaluation of research performance, especially for individual researchers. Peer review is the appropriate methodology to review individual research performance for publications.

**RECOMMENDATION 1.6 :** That CALD issue a general advisory statement about the problems of using proxies for quality in research active and research quality assessment of individual researchers in law and warn of the detrimental effect on research culture in law that would be caused by using existing data collections to assess individual researcher performance.

## Part Two: Research Assessment Codes

ERA assessment is based upon identification of research in accordance with Field of Research (FOR) codes. Law journals should be identified with the code 1801. Part Two: Research Assessment Codes evaluates the fit of FOR codes with current legal research areas, making recommendations for appropriate accommodation of several new research specialisations to provide a clearer picture of the diversity of legal research and assist in assignment of grant assessors.

**RECOMMENDATION 2.1:** That CALD liaise with the ARC at the earliest opportunity to correct FOR 1801 assignment errors affecting the ERA 2012 journal list.

**RECOMMENDATION 2.2:** That CALD engage in discussion with the ARC and appropriate bodies with a view to making a case for significant reclassifications of the law six-digit FOR Codes at the next opportunity for revision of the Australian and New Zealand Standard Research Classification.

**RECOMMENDATION 2.3:** That CALD, Through communication with Associate Deans (Research), encourage legal researchers to establish stronger conventions for use of Division 18 six-digit FOR Codes in classifying research.

**RECOMMENDATION 2.4:** That CALD engage in discussion with the discipline of business (eg. Australian Business Deans Council) over the appropriate use of law codes for different kinds of business law, economics and taxation scholarship.

**RECOMMENDATION 2.5:** That CALD engage in discussion with the discipline of criminology (eg. ANZSOC) over the appropriate use and distribution of law and criminology codes.

RECOMMENDATION 2.6: CALD investigate the feasibility of devising a new four-digit group "Aboriginal and Torres Strait Islander Peoples and the Law".

RECOMMENDATION 2.7: Alternatively, that CALD investigate the revision of the current "180101 Aboriginal and Torres Strait Islander Law" Code to reflect the area more accurately through adoption of the term Aboriginal and Torres Strait Islander Peoples and the Law.

RECOMMENDATION 2.8: That CALD investigate the feasibility of the existing code "180106 Comparative law" being renamed as "International and Comparative Law".

RECOMMENDATION 2.9: That CALD investigate the feasibility of establishing new six-digit fields within the 1801 group including:

- Gender & Sexuality
- Law & Medicine
- Legal Education
- Legal History
- Maritime Law
- Media & Communications Law
- Sports Law
- Technology Law

## Part Three: Specialist Law Journal Ranking

Part Three: Specialist Law Journal Ranking provides a brief explanation of the heritage of the ARC ERA2010 journal ranking list and a discussion of its reliability. It also evaluates current research specialisations with respect to journal rankings in order to provide feedback on areas where little is known about publication venues.

The ARC abandoned the use of journal ranking in 2011. However, the ERA 2010 journal ranking list remains on their website and law academics continue to refer to it. The list may continue to affect submission choices and assessments of researcher track records for some time.

It is possible to provide some indication of perceptions of journal quality in particular specialisations with reference to participation received as part of the CALD consultations on earlier versions of the list. The information in Part Three provides a starting point for more a nuanced discussion with legal researchers about their choice of research outlet.

RECOMMENDATION: 3.1 That CALD publish Part Three: Specialist Law Journal ranking to provide legal researchers with pertinent information about specialist journal outlets ranked as part of the ERA 2010 exercise.

## Part Four: General Law Journal Ranking

Part Four: General Law Journal Ranking analyses ERA 2010 ranked A and A\* Australian General Law Journals by subject area and author alignment, to provide a clearer understanding of the ambit of these prestigious publication venues.

**RECOMMENDATION: 4.1** That CALD publish Part Four: General Law Journal Ranking to provide legal researchers with pertinent information about general law journal outlets.

**RECOMMENDATION 4.2** That CALD, through Law Deans and Associate Deans (Research), alert all general law journal editors to the analysis of author affiliation and potential for the reputational harm to be caused by perceptions of a home institutional bias.

**RECOMMENDATION 4.3** That CALD, through Law Deans and Associate Deans (Research), engage Faculty and legal researchers more generally in discussion as to appropriate policy and practice to assist in fostering fairness in editorial decision-making about submissions to Faculty general law journals.

## Part One: Assessing Law Outputs

### Introduction

This part provides an introduction to criteria that underpin many aspects of research assessment in Australia, with a particular emphasis on the problems created for legal researchers by HERDC specifications. There is a discussion of peer review by law journals and the data foundation of many institutional research active and research quality assessments. This part also includes comments on assessing research claims commonly made by individual researchers.

The section concludes with a data analysis of the ERA 2010 publications, research income, and esteem measures reported in Law submissions, including a compilation of comments made by assessors about the peer review processes conducted in relation to the ERA exercise.

### Research Policies in the Australian Higher Education Sector

Law is assessed according to sector policies, generally convened and maintained by the ARC. Historically there has been scant discussion about policies and criteria such as FOR and Socio-Economic Objective (SEO) codes, HERDC specifications, peer review, esteem factors and national priority principles (NPPs) within the discipline of law. It has largely been left to home institutions with larger research offices to manage all aspects of the sector research agenda. Owing to its relatively small size within institutions and within the broad area of the humanities, a small knowledge base to work from, and the often “special” nature of our concerns, the discipline of law has little presence or weight in research offices or at the ARC.

The lack of involvement in research consultations contributes to perceptions that law is treated “unfairly” by sector policies. It is likely to have made it more difficult for legal researchers to participate in schemes and to be assessed fairly. The absence of any sector-wide co-ordination around education about sector research policies has led to variable interpretations of basic criteria used in assessment and no doubt contributed to some researchers receiving very poor advice about career choices. Whilst there is some reliance on experienced research assessors within some institutions to provide advice about research criteria, not all institutions have access to such personnel. Further, it is experience in policy formation affecting a diversity of legal researchers that is the more relevant expertise that is needed.

There is currently no list of Associate Deans (Research) that would allow for more co-ordination and education on research matters affecting the discipline. The lack of leadership and attention by Deans in this area is also a problem.

RECOMMENDATION 1.1: That CALD, through Associate Deans (Research), engage more proactively in sector consultations about research matters and, further that where relevant, co-ordinate responses on behalf of the discipline of law; and that relevant documentation be routinely made publicly available to legal researchers.

RECOMMENDATION 1.2: That the Chair Standing Committee: Legal Research convene a discussion list of Associate Deans (Research) or equivalent positions to allow for more effective participation and education about research matters.

## Research Reporting Data: HERDC

The main reporting point for Law outputs is the annual HERDC, formerly known as the DEST collection. This data is used as a basis for calculating the distribution of the research block grants, as well as for assessing institutional and individual performance.

The data collection includes information on categories of grant income and publications and there are detailed specifications produced each year. Whether data is submitted by individual researchers or professional and technical staff, there is a process of verification of data. However, data is not audited every year. In many institutions self-reporting of data by researchers is commonplace and used for a range of institutional purposes (HERDC, research active classification, internal funding entitlements, promotion). However, researchers and Heads of School are rarely trained in understanding the nuances of the categories and requirements. Poor reporting of HERDC data can compromise ERA data sets. Further, anecdotally there appears to be some discrepancies in practice amongst institutions in interpretation of particular HERDC specifications as they apply to law. There are recurring frustrations and confusions with respect to which law publications can and cannot be reported.

RECOMMENDATION 1.3: That CALD strongly encourage consistency in interpretation of HERDC specification criteria to ensure that legal research and institutional performance is assessed with reference to a level playing field.

### Is it counted as “research”?

The publication categories include:

- A1 Books
- B1 Book Chapters
- C1 Journal Articles
- E1 Conference Papers

All items must meet a definition of research that is primarily tailored to the sciences, distinguishing between pure and strategic basic research, applied research and experimental development, see Appendix 1.1. The current 2012 specification further provides that research must also be characterised by:

- *substantial scholarly activity, as evidenced by discussion of the relevant literature, an awareness of the history and antecedents of work described, and provided in a format which allows a reader to trace sources of the work, including through citations and footnotes*
- *originality (i.e. not a compilation of existing works. See important notes below regarding the treatment of scholarly editions and scholarly translations)*
- *veracity/validity through a peer review process or by satisfying the commercial publisher processes*
- *increasing the stock of knowledge*
- *being in a form that enables dissemination of knowledge.*

## **Substantial Scholarly Activity**

Works that do not contain significant scholarly references such as forewords, brief introductions, entries in reference works, editorials, comments, brief case notes, updates and explanations of law for lay and professional audiences are commonly excluded on this ground.

Case books and commentaries are often excluded on this ground and because editorial contributions and case selection are not considered as “authorship” of research. It is often assumed that intervening commentary is primarily instructional in content and does not convey new knowledge, or that it is too insubstantial. Individually identifiable commentary chapters in case books (eg. stand alone essay chapters) may meet this definition if they contain significant scholarly referencing, however if the material only synthesizes and explains law the item risks being rejected on the ground that it is “not research” notwithstanding the high level of analytical skill that may be required to produce this kind of legal writing.

Treatises can also have problems meeting the research requirement. Nutshells would also normally be excluded on this ground. It is often necessary to document how the work fits the criteria to convince the relevant research office that such works move beyond being a mere “reference work” (however authoritative) and contain significant original scholarly analysis. In my experience, convincing HERDC verifiers of the merits of quality works can often come down to demonstrating extensive footnoting of additional and original scholarly material in these works.

## Originality

This requirement can pose additional significant problems for legal works such as leading treatises, which run to multiple editions. Generally new editions are considered as unoriginal. To meet the criteria for inclusion it may be necessary to carefully document the nature and extent of the changes made for consideration by the verifying authority. This is often a significant enterprise. Works with relatively minor changes should not meet the originality criteria.

## Peer Review

The presumption is that books produced by a commercial publisher have been through an equivalent to a peer review process (whether or not this is actually true). Thus, this criteria is relevant for journal publications and conference papers only.

The 2012 HERDC definition of peer review is:

*assessment or review of the research publication in its entirety by independent, qualified experts before publication. Independent in this context means independent of the author.*

In addition to permitting evidence in the form of a statement or acknowledgment from the journal editor showing that contributions are peer reviewed, HERDC allows proxies for peer review. This now includes listing of the journal on the ARC's ERA 2012 or 2010 journal lists (which is itself based upon the Ulrich's Knowledgebase classification of outlets as "refereed").

As is well known, the ERA list contains a considerable number of law journals that are not peer-reviewed by qualified persons, although the publication may be refereed or go through a moderation conducted by student editors. The list also contains some professional journals such as law institute and court review journals. Allowing the proxy of inclusion in the ERA journal lists to serve as evidence of peer review is detrimental to research quality in law. However, there is not an extensive amount of publication in US journals by Australian authors, and often articles appear in the more highly regarded outlets. For practical reasons it is unfeasible for administrators and researchers to maintain two different interpretations of what is a reportable publication – one for HERDC and another for the ERA. In this regard the consistency of treatment is welcome.

The recent alteration to HERDC specifications to allow the ERA list to serve as a proxy for peer review is now liable to cause some confusion as it leads to items

being eligible for reporting when they would have been automatically excluded in the past. This change may complicate assessments of research active staff or career publications calculated with reference to inclusions under earlier HERDC exercises. Researchers should also be alert to the current reporting rules when listing publications over the past five years in grant applications.

It is important to note that the listing of a journal as peer reviewed does not necessarily mean that every individual item published in the journal is eligible for inclusion. The item must both be in an appropriate outlet and meet the definition of research, as well as other criteria. Non-refereed parts of journals should still be excluded, however at an administrative level it may be hard to detect these items. An item listed as a Comment, Case Note or Book Review should not be included unless it also meets the definition of research. However, creative titles can make these items hard to differentiate from ordinary scholarly articles in journals.

The weakening of the peer review criteria in law can be addressed to some degree by a more stringent approach to the application of the definition of research. This is to be encouraged to maintain, so far as possible, a consistent approach to research quality and to emphasise the ongoing importance to law of peer review of publications.

## **Improving Peer Review**

The CALD journal ranking exercise brought forth several examples of researcher interference with editorial processes, very “thin” peer review, acceptance of articles before reviewer reports were received, and acceptance of articles contrary to multiple referee recommendations, including by Australian journals that are otherwise very highly regarded. It is very difficult to reliably ascertain the accuracy of accounts received or how widespread problems are with peer review in Australia.

Currently there is no obvious independent mechanism for handling complaints about editorial practices. Policies and mechanisms that foster research ethics in relation to law and especially with regard to legal publication are relatively undeveloped. See Mark Israel and Iain Hay (2010) ‘A Guide to Resources on Research Ethics’ at <http://www.ukcle.ac.uk/resources/ethics/ethics/resources>. Individual researchers are already bound by the relevant institutional and sector codes on research misconduct such as the Australian Code for the Responsible Conduct of Research, however editors of law journals are not necessarily aware of or bound by such codes. It would be helpful for CALD to publicise best practice concerning responsible publication including peer review, and encourage adherence to codes of peak bodies such as the UK Committee on Publications Ethics (COPE) Code of Conduct and Best Practice for Journal Editors (see Appendix 1.2).

**RECOMMENDATION 1.4:** That CALD publicise to legal academics and law journal editors their obligations concerning responsible publication including policies concerning peer review, and recommend adherence to the Committee on Publications Ethics (COPE) Code of Conduct for Journal Editors and the Australian Code for the Responsible Conduct of Research.

## Other considerations

### “Published” and “Commercial Publisher”

It is a peculiarity that books and book chapters only published electronically currently cannot be included under HERDC. This limitation is currently under review.

The 2012 definition of commercial publisher is:

*A commercial publisher is an entity for which the core business is producing books and distributing them for sale.*

*If publishing is not the core business of an organisation but there is a distinct organisational entity devoted to commercial publication and its publications are not completely paid for or subsidised by the parent organisation or a third party, the publisher is acceptable as a commercial publisher.*

*Higher Education Providers (HEP) and other self-supporting HEP presses are also regarded as commercial publishers, provided that they have responsibility for the distribution of the publication, in addition to its printing.*

While university publishers and some other government-funded entities may be accepted as meeting this requirement, many legal publications produced by law reform entities, NGOs and like bodies will not meet the definition of a commercial publisher. This poses a significant problem for some researchers. Presumably the prevailing assumption is that these publications substantially draw upon expertise grounded in existing original research, or lead to later publication in scholarly outlets. Thus, to count these policy contributions as original work would lead to double-dipping. Such items may however be considered as evidence of research standing and impact.

However, concern for double-counting of essentially the same work being distributed through different outlets applies across all HERDC categories and not just to works by non-commercial publishers.

The criterion leads to significant unfairness for researchers who make substantial original scholarly contributions to policy and advocacy work. The approach leads to an under-reporting of this kind of research activity conducted in the discipline of law, and not conducted to the same extent or in the same way by researchers from other disciplines. Arguably the current requirement of a commercial publisher discourages dedicated academic involvement in public service, especially by early career researchers whose productivity and immediate career prospects will be assessed with reference to tallies of HERDC data that does not value this research.

The harshness of this treatment is somewhat ameliorated given that the ERA does permit this work to be included (with additional evidence required) as a “non-traditional item”. However the original HERDC exclusion of this material leads to it being discounted for a range of other institutional assessments. It also creates significant workload and difficulties in accurately accounting for this material at institutional level for ERA purposes, as it is not compulsory to report what the ERA designates as “non-traditional items”.

## **Conference Papers**

Full conference papers can be included as E1 publications, with evidence of peer review. Keynotes and plenaries are not generally accepted, presumably as these are not peer reviewed.

In law there is no established practice for the conduct of conferences or for peer review of conference papers. The ERA 2010 did not permit inclusion of these items for peer review, but ERA 2012 does.

With some events, prior peer review is very minimal and presentations can be rather brief (eg. of barely ten minutes). Some investigation is often required to assess whether a conference paper warrants exclusion. To avoid double dipping, if an E1 publication was claimed, later reporting of essentially the same work in an edited collection (B1) or journal article (C1) should be prevented although in practice this can be difficult to detect in some cases.

Anecdotal reports suggest there may be inconsistent practice in reporting of conference items in law. Some institutions accept a conference website as sufficient publication of the article (not just the abstract), while others are more wary. The specifications do allow publication to be in the form of an organisational website, however arguably the site requires a permanent address rather than being created simply for the convenience of conference attendees at the time of the event.

## Research Reporting Data: ERA Anomalies

### Non-Traditional Items

Throughout the consultations over the development of the ERA law successfully argued for the inclusion of published items such as law reform submissions, reports, research presented to legislative bodies and international fora. These works were originally classified as “creative items”, and are now called “non-traditional items”. The ERA 2012 submission data classifies the non-traditional item as “Original Creative Work-Other”:

*Other original creative works that do not fit the other research output types. For example, scholarly editions, scholarly translations and public policy reports may be submitted under this category, provided they meet the relevant eligibility criteria, including meeting the definition of research.*

It is not compulsory to include these in ERA submissions and it requires additional information to be produced for each work to be included, thus it may only be feasible to include items that may be of sufficient standing that they qualify for the best 30% for peer review. For ERA purposes the merit of these outputs can be assessed on the same terms as for other legal publications.

This development provides one avenue that gives visibility to significant original work that is often produced by legal researchers and is essential to the operation of public law reform consultations. Whilst previously these efforts may have been recognized as significant “service” contributions, much of this activity constitutes original research that is published and publicly available. For it to be relegated to “service” gives inadequate recognition and disincentivises this kind of research, especially given the HERDC-based workload assessment schemes in operation at many institutions.

There can be difficulties with attribution of individual authorship of some non-traditional items, especially where the research is credited to a research team, division or published under a symbolic figurehead for the research. However, co-authored research is ubiquitous in universities and front matter provides one published source of evidence of contribution.

**RECOMMENDATION 1.5:** That CALD initiate a discussion with DIISR over the treatment of original research such as published reports and submissions to law reform bodies that are accepted for ERA as non-traditional items but excluded from HERDC, with a view to inclusion of such material as a reporting item in future HERDC exercises.

## Weighting of Research Outputs

Under the HERDC specification a score is allocated to each eligible item that is weighted based upon the proportion of authors from each institution and the type of publication. A book is weighted as 5, all others as 1.

Given that most books have more than five chapters, this arguably under-rewards the writing of books. The humanities publish books to a greater extent than science, technology, engineering and medicine and the award of points arguably reflects a disciplinary bias that benefits those other disciplines. However, there is a perception that five points is adequate given that the chapters are assumed to share conceptual underpinnings.

Where a book is not wholly sole-authored or wholly joint-authored, individual chapters may be entered in HERDC. This can lead to the peculiar outcome that where the number of chapters exceeds five, including a multi-authored chapter, the author may generate more than five points for the book.

## Institutional Uses of Research Data

### Research Active and Quality Metrics

Most institutions assess overall faculty and school performance with reference to retrospectively-generated HERDC data about individual research productivity. In such determinations care needs to be exercised to ensure that the assessment reflects recent HERDC specifications that allows for a wider range of outputs to be reported than may have historically been permitted.

With the shift to the ERA there has been an attempt to add quality indicators to existing measures, however law struggles to devise appropriate quality criteria for publications and, as such, metrics based quality assessments remain highly problematic. The absence of this performance measure could result in Law Faculties and Schools being treated less favorably than disciplines where journal ranking and citation is accepted.

There is no ranking of book publishers. There are suggestions that there could be broad agreements about commercial publisher reputation. However there is no proposed methodology beyond vague references to "consensus". Presses can vary greatly depending upon the particular law specialization, refereeing standards are not necessarily consistent even within the one multi-national publisher and branch offices, smaller presses are liable to be disadvantaged against more

established outlets with larger distributions, and, finally, the small number of legal publishers (especially for Australian legal material) arguably renders the exercise untenable. Scholarly book reviews, where available, may provide a much more reliable indication of the quality of the item than the outlet alone. However, most institutions prefer to reference a metric.

There is no current journal ranking list. Whether the ERA 2010 journal ranking data or the CALD ERA ranking list should be used is an open question. At any rate, the lists have since been abandoned and will not be maintained. For reasons related to the genesis of both of these, the adoption of this data would also lead to significant disadvantages to those who work in particular areas of specialization, regardless of the quality of their individual work. This problem is discussed further in Part Three in relation to an analysis of specialist outlets and, Part Four in relation to general law journals.

There is a general proxy for research quality that comes from the ERA submission. For the ERA 2012 institutions must nominate 30% of all research outputs for peer review, thus one may assume inclusion of an item in this selection indicates quality, relative to the performance of that institution for that field of research code. However, especially in strong and well-established law schools, this indicator is prone to advantage senior and more well-known researchers whose works may be over-represented in the submission for strategic and historical reasons. It is a backward-looking exercise. Nonetheless, inclusion in the best 30% list is perhaps the best data set we have on hand to indicate individual research quality for legal research (relative to the comparative performance of that institution), and to indicate School and Faculty performance, where the content of the Law ERA submission aligns with those structures.

In addition to reference to external indicators like competitive grant success and HDR completions there may be a need for law to engage in some form of substantive internal peer review to identify research quality. Recourse to proxies for quality, including to ERA assessment data, is prone to distort the evaluation of research performance, especially for individual researchers. However, peer review is time intensive and diverts the energies of experienced researchers away from their research. The same personnel may already be providing significant service to the ARC and the school or faculty. As an internal exercise within a workplace it is also liable to generate concerns about bias and subjective assessment and to exacerbate internal tensions between researchers and management, impairing research culture. Given the problems inherent with the metrics, institutional exercises to identify research quality at the individual level are prone to generate discontent with researchers and as such have a detrimental impact on research and morale in law. It should be noted that ARC bibliometrics experts have consistently

argued that it is inappropriate to assess researchers using metrics that are not accepted in the discipline as fair or valid. This rationale was one of the justifications for departure from journal ranking in some disciplines.

**RECOMMENDATION 1.6:** That CALD issue a general advisory statement about the problems of using proxies for quality in research active and research quality assessment of individual researchers in Law and warn of the detrimental effect on research culture in Law that would be caused by using existing data collections to assess individual researcher performance.

## Research Claims by Individual Researchers

Individual researchers often refer to journal ranking, and citation and download statistics in order to evidence research quality in law, especially in grant and promotion applications. The absence of substantive metrics in our discipline makes it harder for researchers to evidence briefly quality claims and it also makes cross-disciplinary comparisons by others outside of law familiar with metrics much more difficult.

There are problems with ongoing reference to the ERA 2010 journal ranking list, though in the absence of alternative metrics no doubt researchers will refer to it for some time. As it is no longer accepted as an appropriate list by the ARC and will not be maintained, reference to the journal rankings should not affect assessments of legal research. This is discussed further in Part Three.

Citation is also commonly relied upon by researchers to evidence quality and impact. Whilst such references demonstrate that particular research is being utilized, there is no scientifically valid study that would demonstrate what is a good, average or bad citation rate in law. Further, given the diversity of legal research, the nature of legal problems and different kinds of audiences, it is inappropriate to make comparisons across the board. Citation in higher courts may be relevant for some research that resonates with a legal question before the court and prevailing judicial approaches. However the absence of citation by legal authority does not indicate poorer quality research. These problems hampered development of Impact Assessment as part of the RQF.

References to article popularity and downloads (eg. data provided by SSRN, Bepress, AustLII, Google Scholar) are of very limited value in indicating research quality in Law. Whilst there is some research being conducted into these metrics, none of this takes into account the more complex factors affecting the circulation and reception of humanities research and different kinds of legal scholarship. High demand may be entirely unrelated to “quality” as understood in the sector

given the general education value of a well written and reliable but otherwise unremarkable note of a recent legal development or the interest generated by scholarship associated with a current political discussion, high profile case or inquiry. Low demand may indicate the size of the research specialization more than the quality of the scholarly contribution of the field or individual item. Thus a more contextual approach to explaining research contribution, value and impact is required.

The journal ranking exercise showed a high degree of reluctance by legal researchers, including very eminent and experienced persons, to assess research in areas much beyond their particular specialisations. This points to the diversity and complexity of many areas of law which further complicates fair assessment of research track record. Appropriate selection of independent assessors requires considerable knowledge about a large number of legal research fields that, for ARC purposes, are combined under the one four digit research code. For more discussion of research specialisations see Part Two.

## **ERA**

### **The submission**

As noted above, institutional ERA submissions are largely based upon historical data associated with HERDC collections, which track publications over six years, and grant income and esteem measures over three years. Submissions are assessed with reference to two and four-digit FOR codes.

For the ERA it is possible to claim publications by non-salaried staff such as adjuncts, emeritus and honorary visitors, where publications show an institutional affiliation. This criterion works to the advantage of the more established institutions.

HERDC has not traditionally required designation of FOR codes for publications and until institutional databases are upgraded to link with the ARC journal lists, this information needs to be manually added. Grant data will however have existing codes attached that were assigned when the grant application was submitted. In the ERA 2010 submissions, where a Law FOR code was used, data was overwhelming coded as law only, with only 2% assigned FOR code 16 (including Criminology) and 4% reported as Other.

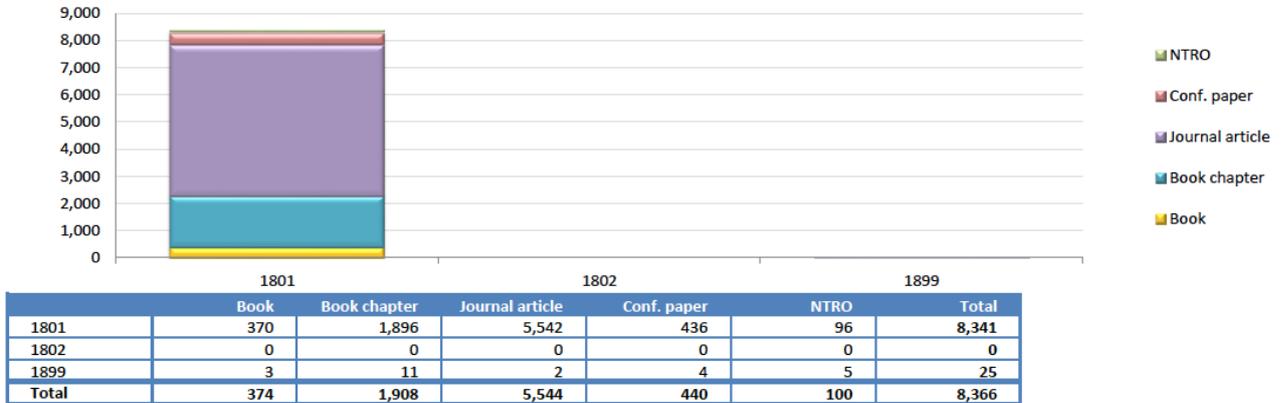
The ARC reported the following additional details associated with ERA 2010 law submissions:

## ERA 2010 Law Outcomes

### Research Outputs Submitted by Type

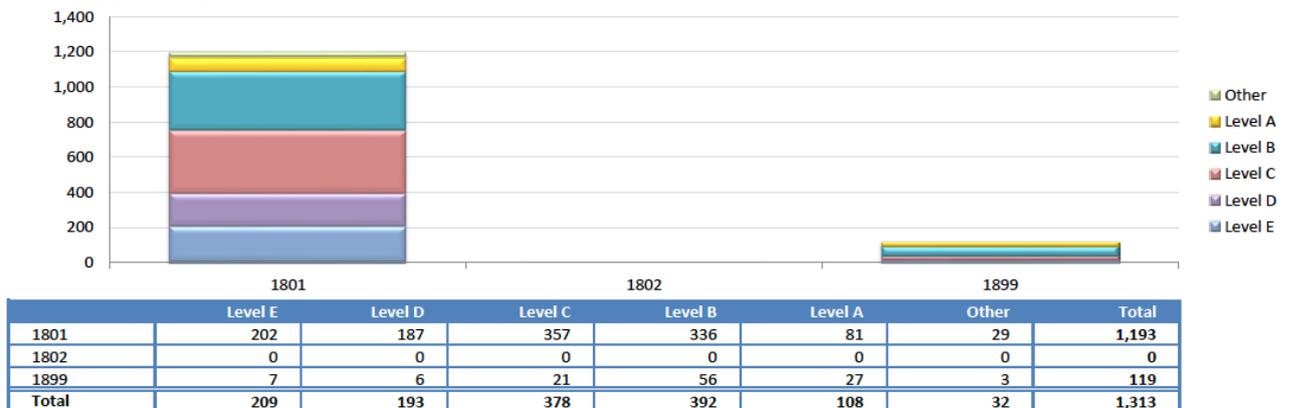
Section 2 - Results by FoR Code

Research outputs submitted by type



### Staffing Profile by Academic Level

Staffing profile by academic level



## Quality Indicators

The ERA utilises a number of different indicators:

- Peer Review
- Research Income
- Esteem Measures

## ERA Peer Review

ERA peer review processes operate under the auspices of Research Evaluation Committees (RECs) or panels which includes law membership. In 2012 30% of items must be submitted for peer review. The selection is supposed to be “representative”. It is unclear what this requirement means or how it could be checked.

In the 2012 assessment, panels will not be referred to journal rankings but to assist determinations they will be provided with some data analysis of publications. The ARC will produce a “Refined Journal Indicator” that lists all the journals associated with the FOR code, ordered by the number of articles appearing in that journal for that institution, including percentage counts and cumulative totals. (see Appendix 1.3).

The ARC ERA FAQ section outlines how this information will be utilized by the Panel:

*Building on their own knowledge, RECs will be able to identify the depth and spread of publishing behaviours within a UoE (unit of evaluation). . . . [T]his table will inform expert judgements (sic) regarding the relevance of the journals to the research being published e.g. ‘Is this an appropriate journal for this research?’, ‘Is it a highly regarded journal?’ This will allow RECs to take into account any regional or applied focus of research in a UoE.*

*REC members will be able to drill down to article level data from the table, so will not be making their judgments solely on the basis of journal titles or article counts. The table will not include information about the quality of journals, per se, but will focus assessments on the publishing behaviours of a UoE and the relevance of the outputs to the research presented and the overall profile of the UoE as presented in the other ERA indicators. The new journal indicator will not use prescriptive A\*/A/B/C ranks.*

This information is only provided at 1801 level. However to the extent that specialization leads to concentrations of publications in particular journals, this may also be apparent.

Because of confidentiality requirements, little objective information is known about the backgrounds or expertise of persons called upon to serve as assessors to support ARC activities. ARC leadership positions have historically been biased toward public and international law, and arguably, to the extent that broad generalisations about kinds of legal research are valid, with policy-oriented research interests represented to a higher degree than doctrinal or theoretical research. This outcome perhaps reflects past grant activity, but it could also be a mutually reinforcing factor in appointments and awards. Humanities assessment panels are also likely to be less familiar and comfortable with more technical and specialised kinds of legal research. For confidentiality reasons, it is unknown how well private law and other specialisations are represented at assessment level. Those who participated in the ERA 2010 peer review processes were subject to confidentiality agreements. Notwithstanding this, some general comments received are paraphrased below:

- Concerns raised about the volume of material involved, especially where this involved assessment of monographs.
- Some felt that the presumption was that reviewers would be familiar with quality titles in their area of specialisation, and whilst this may have been the case for certain works, it was not necessarily the case. Even when works were generally familiar and even previously cited by assessors, assessing a work for ERA was considered as entailing a qualitatively different exercise. Assessing material fairly was problematic given time constraints.
- Assessment fatigue, that comes from engagement in assessment of multiple Discovery, Linkage, and various Fellowship applications as well as ERA, encourages a very light touch review.
- Metrics focus on descriptive zones of research specialisation, however in law there are often distinct preferences for particular kinds of legal research that can be more determinative of capacity to review the research area than specialist subject knowledge.
- The Australian academic community is quite small with historical tensions and enmities. The ARC has no capacity to manage this dimension beyond self-reporting of a conflict of interest.
- There are very small numbers of researchers in some specialisations which required some to assess areas at the very limits of their knowledge as there was no-one else to recommend (probably assessing more favourably than they would in their own area).

- Existing knowledge of author reputation became a proxy for reviewing publications, with greater attention awarded to the lesser known works and authors. Whilst the pull of reputation was considered part of any review process, the assessment was not really of the publication(s) selected but served as historical reference to career output and track record.

Some of these comments would apply to criticisms of peer review processes more generally. Concerns for the time entailed, subjectivity and lack of transparency of peer review led to the push to develop metrics and other proxies for measuring research quality.

The tight time frames involved with the ERA 2010 and increase from 20% to 30% peer review items for 2012 does place high demands on assessors and Panels. Based on the ERA 2010 submission it would require review of over 2,500 items, each to be read by 2-3 assessors. A smaller review proportion arguably favours smaller institutions with more stratified profiles, with the relative lack of research depth obscured by selection of a small, high quality research concentration.

There is a serious question about the capacity of ERA exercises to advance quality outcomes for researchers, as opposed to servicing other managerial objectives and justifying sector research income distributions. It serves institutional needs. However, serial ERA assessment exercises, coupled with other ARC assessment demands, arguably affects both the quantity and quality of outputs by all Australian researchers engaged with these processes. Given that merit plays a part in appointments (as well as availability, participation in research networks and willingness to serve) the system arguably affects those at the top of their game disproportionately.

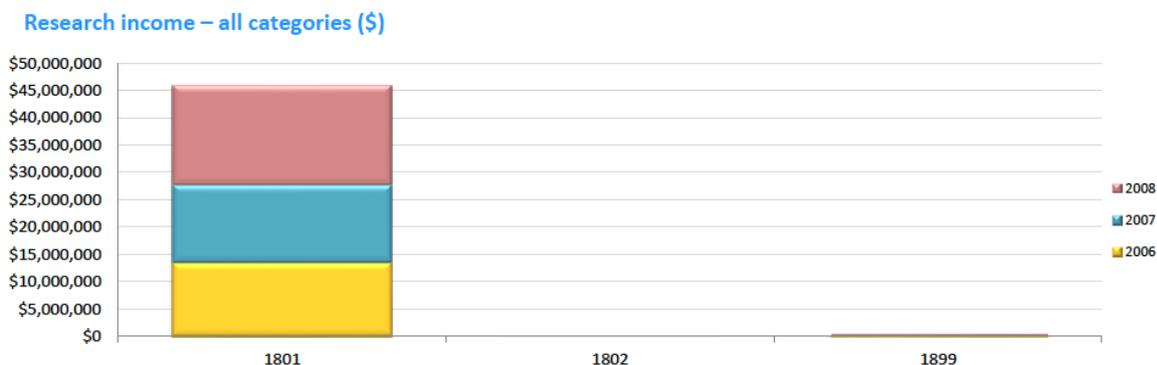
It is in this context that emphasis on proxies and the production of new metrics must be welcome. However, having the top minds subject to time pressures and immersed in assessment “shortcuts” may distort clear thinking about research culture and quality over the longer term. The necessity of confidentiality further means there is little capacity for dialogue or disclosing to the research community any substantive information about what peers involved in assessments believe quality legal research really entails. As such, regardless of the dedication of those involved in these processes, there is little for legal researchers to learn about the values associated with quality publications from the ERA assessment exercises as they are currently conducted.

## Research Income

The ARC reported the following details associated with law submissions:

ERA 2010 Law Research Income-all categories (\$)

Section 2 - Results by FoR Code



	2006	2007	2008	Total
1801	\$13,307,762	\$14,247,179	\$18,184,140	\$45,739,080
1802	\$1,226	\$0	\$43,716	\$44,942
1899	\$140,262	\$50,008	\$188,288	\$378,558
<b>Total</b>	<b>\$13,449,250</b>	<b>\$14,297,186</b>	<b>\$18,416,143</b>	<b>\$46,162,580</b>

This data demonstrates an increase in the discipline’s competitive grant performance over the 2006-2008 period. The reporting of research income to the non-assessible FOR codes 1802 and 1899 is peculiar.

Some in the sector argue that it is anomalous to treat awards of monies that contribute towards future research activity - an input into future research - as an output for quality reporting purposes. Publications enabled by the grant are also already counted as part of the submission for the relevant period. Further, the amount awarded is no indicator of the quality of the research project funded. Rather, the amount awarded indicates the cost and ambition of the project, and potentially to some degree relative merits compared to other successful applications in that round.

The award of an ARC Fellowship is counted in both financial terms as part of the income factor, as well as an esteem factor.

## Esteem Measures

Esteem is measured by reference to an inclusive list of which the first three named apply to Law :

- Editor of a Prestigious Work of Reference
- Fellowship of a Learned Academic and Membership of AIATSIS
- Recipient of a Nationally-Competitive Research Fellowship
- Membership of a Statutory Committee
- Recipient of an Australia Council Grant or Australia Council Fellowship

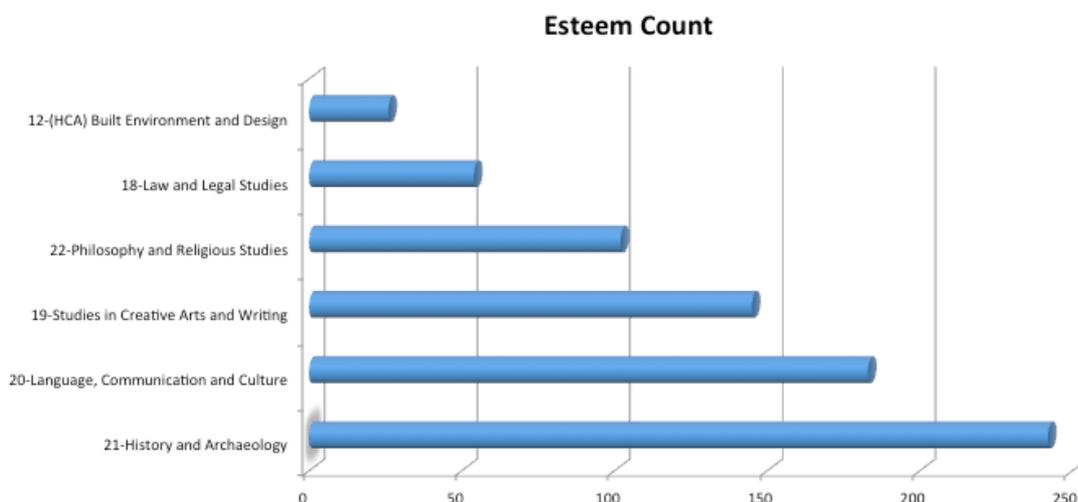
For further details see Appendix 1.4.

The discipline of law comes under the Australian Academy of the Social Sciences (ASSA), rather than the Australian Academy of the Humanities. There are 37 Fellows of the Australian Academy of the Social Sciences (ASSA) from the discipline of law, of whom only 24 are currently engaged in academic positions. Fellows are elected by members “on the basis of having achieved a very high level of scholarly distinction and for having made a distinguished contribution to one or more disciplines of the social sciences.” For current ASSA Law membership, see Appendix 1.5.

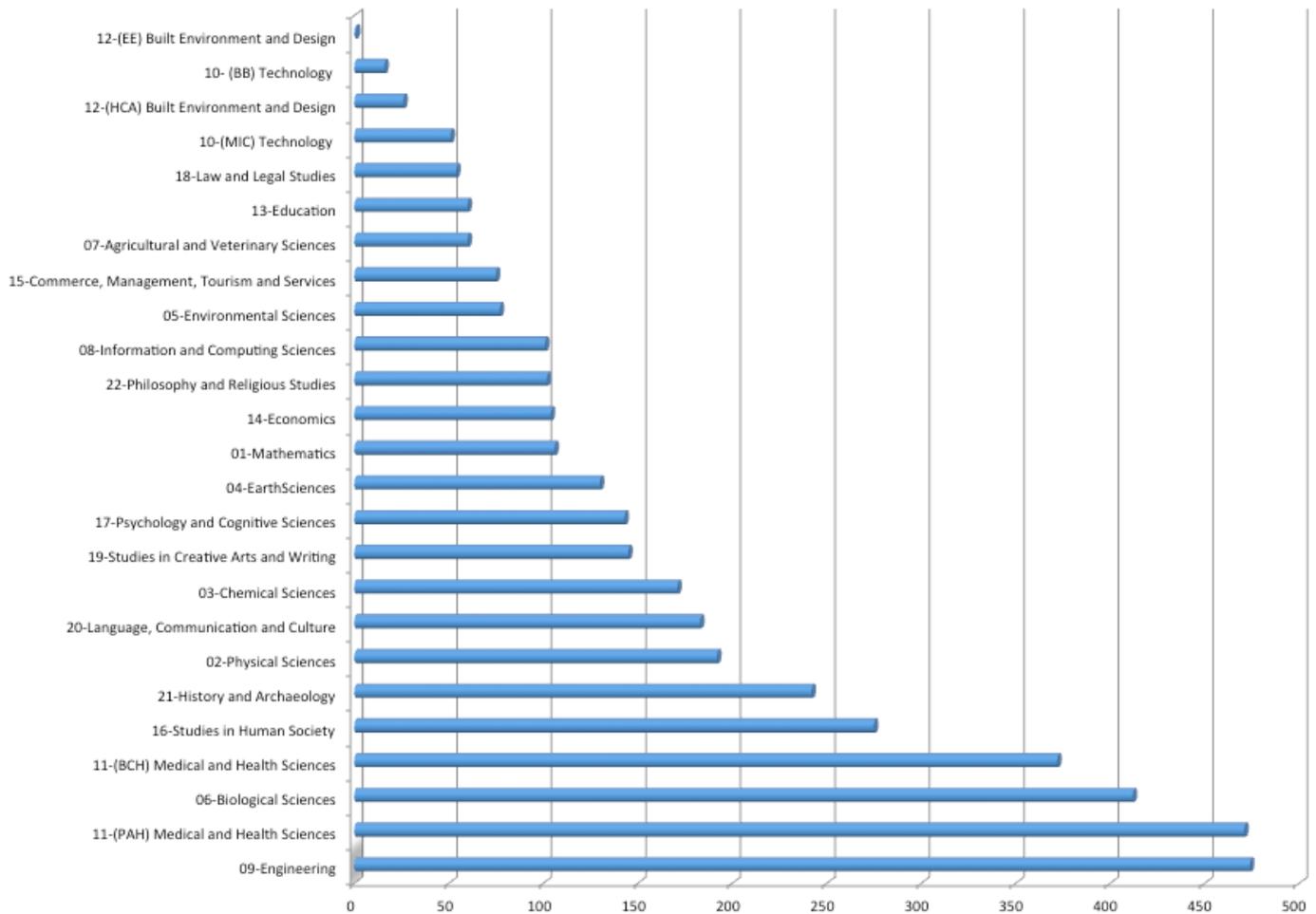
Law’s performance in Esteem Measures in ERA 2010 can be seen from the following graphs:

### ERA 2010 Esteem Measures HCA Panel\*

\* based upon FOR codes for ERA 2012 HCA Panel



## ERA 2010 Esteem Measures by two-digit FOR code



Law performs very poorly as a discipline overall (especially given some disciplines have multiple codes) and in relation to other areas of the humanities. It is difficult to redress law's poor performance in this indicator. There is a similar disciplinary problem in terms of provision of awards and prizes for Australian legal research. This omission may point to a degree of diversity and fragmentation of law as a discipline. These factors contribute to comparative disadvantages for law faculties and legal researchers.

## Appendix 1.1

HERDC Specifications 2012 (extract)

### Definition of Research

#### 1.3.10

Research is defined as the creation of new knowledge and/or the use of existing knowledge in a new and creative way so as to generate new concepts, methodologies and understandings. This could include synthesis and analysis of previous research to the extent that it leads to new and creative outcomes.

This definition of research is consistent with a broad notion of research and experimental development (R&D) as comprising of creative work undertaken on a systematic basis in order to increase the stock of knowledge, including knowledge of humanity, culture and society, and the use of this stock of knowledge to devise new applications. (OECD (2002), Frascati Manual: Proposed Standard Practice for Surveys on Research and Experimental Development, OECD: Paris.)

This definition of research encompasses pure and strategic basic research, applied research and experimental development. Applied research is original investigation undertaken to acquire new knowledge but directed towards a specific, practical aim or objective (including a client-driven purpose).

Activities that support the conduct of research and therefore meet the definition of research include:

- professional, technical, administrative or clerical support staff directly engaged in activities essential to the conduct of research
- management of staff who are either directly engaged in the conduct of research or are providing professional, technical, administrative or clerical support or assistance to those staff
- the activities and training of HDR students enrolled at the HEP
- the development of HDR training and courses
- the supervision of students enrolled at the HEP and undertaking HDR training and courses
- research and experimental development into applications software, new programming languages and new operating systems (such R&D would normally meet the definition of research)

Activities that do not support the conduct of research must be excluded, such as:

- scientific and technical information services
- general purpose or routine data collection
- standardisation and routine testing
- feasibility studies (except into research and experimental development)

projects)

- specialised routine medical care
- commercial, legal and administrative aspects of patenting, copyright or licensing activities
- routine computer programming, systems work or software maintenance

## **Appendix 1.2**

COPE Code of Conduct for Journal Editors

See Page 121

## Appendix 1.3

### Refined Journal indicator



## The refined journal indicator

Example of the draft refined journal indicator for FoR 1801 for University X				
University of X		1801	Law	
Journal title		Papers	Contribution	Cumulative
1	Journal of Law and Medicine	27	6%	6%
2	Public Law Review	27	6%	12%
3	Australian Journal of Administrative Law	24	5%	17%
4	Law in Context	18	4%	21%
5	Australian Journal of Family Law	15	3%	24%
6	Company and Securities Law Journal	12	3%	26%
7	Torts Law Journal	9	2%	28%
8	Contemporary Issues in Law	9	2%	30%
9	Law and Policy	9	2%	32%
10	International Journal of the Legal Profession	9	2%	34%
11	Australian Journal of Corporate Law	9	2%	36%
12	Australian Journal of Labour Law	9	2%	38%
13	Journal of Judicial Administration	9	2%	40%
14	Federal Law Review	9	2%	42%
15	Australian Journal of Legal Philosophy	6	1%	43%
16	Forensic Science International	6	1%	45%
17	Legal Theory	6	1%	46%
18	Revenue Law Journal	6	1%	47%
19	AIAL National Lecture Series on Administrative Law	6	1%	48%
20	Intertax: international tax review	6	1%	50%
	<b>Total</b>	<b>465</b>		

Please note that this is not based on any university's submission to ERA 2010

Page 1 of 3

Web: [arc.gov.au](http://arc.gov.au) | Email: [info@arc.gov.au](mailto:info@arc.gov.au)

## Appendix 1.4

### ERA 2012 ESTEEM measures

#### ERA Esteem Measures

Esteem measures are submitted only once for each reference work or eligible researcher.

Measure	Cluster	List
<b>Editor of a prestigious work of reference</b>	HCA EHS EC MHS	<ul style="list-style-type: none"> <li>• The Australian Dictionary of Biography;</li> <li>• The Oxford Dictionary of National Biography;</li> <li>• The Oxford Companions and Handbooks series;</li> <li>• Cambridge Companions and Handbooks series;</li> <li>• Blackwell Companions;</li> <li>• Oxford and Cambridge Encyclopedias;</li> <li>• Routledge Encyclopedias;</li> <li>• Dictionary of the Middle Ages;</li> <li>• The Routledge Worlds series; and</li> <li>• Encyclopedias of Philosophy (Stanford Online, Routledge and Macmillan).</li> </ul>
<b>Fellowship of a Learned Academic and membership of ATSI</b>	All clusters	<ul style="list-style-type: none"> <li>• the Academy of the Social Sciences in Australia;</li> <li>• the Australian Academy of the Humanities;</li> <li>• the Australian Academy of Science;</li> <li>• the Australian Academy of Technological Sciences and Engineering; and</li> <li>• the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS).</li> </ul>
<b>Recipient of a nationally-competitive research fellowship</b>	All clusters	<ul style="list-style-type: none"> <li>• ARC Discovery – Australian Laureate Fellowships</li> <li>• ARC Discovery – Federation Fellowships</li> <li>• ARC Discovery – Future Fellowships</li> <li>• ARC Discovery – Indigenous Researchers’ Development</li> <li>• ARC Discovery – Projects (including Australian Professorial Fellowships, Queen Elizabeth II Fellowships, and Australian Postdoctoral Fellowships)</li> <li>• ARC Linkage – International</li> <li>• ARC Linkage – Projects (including Australian Postdoctoral (Industry) Fellowships)</li> <li>• NHMRC Practitioner Fellowships</li> <li>• NHMRC Research Fellowships Scheme</li> <li>• NHMRC Australia Fellowships</li> <li>• NHMRC Career Development Fellowships</li> <li>• NHMRC Early Career Fellowships</li> <li>• NHMRC Sir MacFarlane Burnett Fellowships</li> </ul>
<b>Membership of a statutory committee</b>	MHS (only 1104, 1106, 1110, 1111, 1117, 1199)	<ul style="list-style-type: none"> <li>• Commonwealth Government agencies, including the National Health and Medical Research Council; and</li> <li>• The United Nations, including the World Health Organization.</li> </ul>
<b>Recipient of an Australia Council Grant or Australia Council Fellowship</b>	HCA (only two digit code 19)	<ul style="list-style-type: none"> <li>• Fellowships—Aboriginal and Torres Strait Islander Arts, Dance, Literature, Music, Theatre and Visual Arts;</li> <li>• Project Fellowships—Music;</li> <li>• Residencies—Literature, Inter-Arts;</li> <li>• Residency Albers Foundation—Aboriginal and Torres Strait Islander Arts;</li> <li>• Skills and Arts Development Studio Residencies—Visual Arts;</li> <li>• ArtLab—Inter-Arts;</li> <li>• Synapse—Inter-Arts; and</li> <li>• Research Program—Research and Strategic Analysis.</li> </ul>

## Appendix 1.5

### Australian Academy of the Social Sciences: Law Membership

Name	Affiliation	Year appointed
Allars, Margaret (Professor)	USYD	1998
Behrendt, Larissa (Professor)	UTS	2006
Blackshield, Tony (Professor)	Emeritus	2001
Bryce, Quentin (Her Excellency Ms)	Governor-General of the Commonwealth of Australia	2010
Campbell, Tom (Dr)	CSU	1994
Cane, Peter (Professor)	ANU	2007
Charlesworth, Hilary (Professor)	ANU	2003
Daly, Kathleen (Professor)	Griffith	2007
Davies, Margaret (Professor)	Flinders	2006
Deane, William (The Hon Sir)		2001
Dodson, Michael (Professor)	ANU	2009
Drahos, Peter (Professor)	ANU	2007
Finn, Paul (The Hon Justice)	Federal Court of Australia	1990
Ford, Harold	Emeritus Melbourne	1977
Freiberg, Arie (Professor)	Monash	2005
French, Robert (The Hon Justice)	High Court of Australia	2010
Gardam, Judith (Professor)	Emeritus Adelaide	2010
Goldsworthy, Jeff (Professor)	Monash	2008
Grabosky, Peter (Professor)	ANU	2003
Greig, Don (Professor)	ANU	1992
Gunningham, Neil (Professor)	ANU	2006
Kirby, Michael (The Hon)		1996
Krygier, Martin (Professor)	UNSW	2002
Mason, Anthony (The Hon Sir)		1989
McSherry, Bernadette (Professor)	Monash	2010
Naffine, Ngaire (Professor)	Adelaide	2006
Neave, Marcia (The Hon Justice)	Supreme Court of Victoria	1989
Ricketson, Sam (Professor)	Melbourne	2003
Sadurski, Wojciech (Professor)	USYD	1990
Saunders, Cheryl (Professor)	Melbourne	1994
Stapleton, Jane (Professor)	ANU	2007
Stephen, Ninian (Rt Hon Sir)		1987
Thornton, Margaret (Professor)	ANU	1998
Waller, Louis	Emeritus	1977
Weatherburn, Don (Dr)	NSW Bureau of Crime Statistics and Research; Adjunct Professor, UNSW	2006
Williams, Bob (Professor)	Monash	1998
Zines, Leslie	Emeritus ANU	1987

## Part Two: Research Assessment Codes

### Introduction

Formal processes of research assessment require a method of classifying research outputs. Statistics are used for governmental purposes in accounting for Australian research and development, as well as for assessing sector performance and institutional strength. Codes are used by the ARC for the ERA and to classify and identify appropriate assessment for competitive grant applications. Institutions also refer to research results and income with reference to field of research codes to determine the comparative strength and performance of research areas.

The main classifications are : Field of Research (FOR) codes (previously RFCD codes) and Socio-Economic Objective (SEO) codes.

Much of what we know about law's performance is informed by metrics reported in relation to these codes, however there is little understanding of the distortions created by the taxonomy. Accordingly, Part Two provides a general overview of the law codes and their application to Australian legal research. I tentatively map the 'fit' of the codes to current legal research activity and specialisations and provide a number of recommendations about necessary revisions to research classification.

### Field of Research (FOR) Codes

The FOR is a hierarchical classification devised by the Australian and New Zealand Standard Research Classification and reviewed every decade. It has three levels, namely Divisions (2 digits), Groups (4 digits) and Fields (6 digits). For law the relevant codes are:

#### DIVISION 18. LAW AND LEGAL STUDIES

The Division is broken into 3 Law Groups:

GROUP 1801 Law (called a four-digit code)  
27 six-digit fields (called a six-digit code)

GROUP 1802 Maori Law  
5 six digit fields

GROUP 1899 Other Law and Legal Studies  
1 field : Law and Legal Studies not elsewhere classified

## **GROUP 1801**

For the list of six-digit law fields in 1801 see Appendix 2.1.

In addition to the Group 1801 Law codes, legal research may also be classified under other Divisions including Education, Criminology, Political Science, Sociology, Philosophy and Religion Studies.

Currently for ERA purposes research assessment reporting occurs at the four-digit level. Institutional comparisons are invariably with reference to the four-digit level. It needs to be remembered that whilst most law schools or departments predominantly report their research under the 1801 code, there is not necessarily a direct correspondence between FOR code, authorship of outputs and institutional structures.

For a more fine grained analysis of strengths within the discipline of law it is necessary for institutions to look beyond the four-digit code. It is possible to classify legal research outputs at six-digit field level, however it would be very problematic to use a six-digit classification to assess law performance if there were significant limitations in the available field codes. The current fit of the codes at six-digit level is considered in further detail, below.

## **GROUP 1802 Maori Law**

It is peculiar that there is a whole Group 1802 with 5 six-digit Fields for “Maori Law”, whilst Aboriginal and Torres Strait Islander Law is amalgamated into only one six-digit Field 180101. This is discussed further, below.

## **GROUP 1899 Other Law and Legal Studies**

There is confusion about the specific role of “Group 1899. Law and Legal Studies Not elsewhere Classified”. Within the Group 1801 there is also the six-digit field “180199 Law not elsewhere classified”. It is not clear when the separate four-digit code should be used, in preference to the six-digit code within Group 1801. In ERA 2010 Group 1899 was not assessed because of the low threshold of reported items, however it was used in a modest way for twenty-five items (see Appendix 2.2).

For ERA 2012 there is a minimum threshold of fifty outputs over the six year period at four-digit level. This means that if there are less than 50 outputs reported by an institution for 1899, no evaluation will be conducted for that FOR code at that institution. Research recorded under 1899 may bear investigation to determine if

it is being used for strategic purposes in a manner that could affect the integrity of research assessments.

Group 1899 could perhaps be utilized by institutions to “dump” poor quality research and/or including legal research executed by researchers from Disciplines other than law, in order to better focus a school or faculty ERA 1801 law submission.

## SEO Codes

Law is classified in DIVISION 94 LAW, POLITICS AND COMMUNITY SERVICES. There are six groups.

For further detail of SEO fields see Appendix 2.3.

Researchers have difficulties with the application of the SEO codes as they are very generalised. However, as they have less bearing on assessment, there is less tension around this problem. The vagueness and generality of these SEO codes does make them of questionable value for indicating the social and economic relevance of legal research.

## Assigning FOR Codes for Legal Research

It is important to recognise that the discipline of law does not “own” the law codes. It is generally up to institutions and individual researchers to identify the correct code and there can be considerable discrepancies in the way legal research is classified. Legal researchers may elect to classify their activity under other divisions where there is an avenue open to them for this. Law codes may also be utilised by researchers from other disciplines using different criteria to those commonly used within the discipline of law.

All disciplines have difficulties with classification issues. However, as noted above, law is unusual in that the bulk of our research is conventionally classified under one four-digit Group 1801. This practice allows the ERA performance of law schools and faculties to be assessed more directly in accordance with results for the 1801 code than with other schools or faculties.

In 2008 the FOR Codes were reviewed and updated, with the older RFCD Codes replaced by corresponding FOR Codes in order to reduce reliance on the use of categories “not elsewhere classified”. Whilst this reorganisation led to an expansion of 40% of codes overall, it had little effect on classification of legal fields.

## **Assigning Codes to Legal Research at Six-Digit Level**

To consider the relevance of the six-digit codes it is necessary to map those codes against a broad and current selection of Australian legal research. This poses the methodological problem of how to identify the relevant legal research.

The ERA 2010 journal list provides a data set that allows, indirectly, for insights to be drawn into current areas of research activity in the discipline of law. It contains 17,752 items of which I identified approx. 1,269 items that appear to relate to legal research. This identification was based upon the ARC's existing assignment of a law FOR code, as well as from a general perusal of titles in order to identify errors and omissions.

The modified ERA 2010 Law Journal Ranking list was then classified with reference to six-digit FOR codes to allow for a more refined consideration of the fit across sub-disciplinary areas. The reason the 2010 ERA journal list was utilised instead of the current ERA 2012 one was to enable a later discussion of the rankings associated with 2010 list with respect to law specialisations. See Part Three: Specialist Law Journal Ranking.

There are limitations in this approach. Journal titles alone provide a very loose indicator of research activity. Subjectivities also affect the application of any system of classification. For reasons related to its political heritage, the ERA 2010 list is also very much dominated by US law journals. This makes it additionally problematic to use as a reference for surveying and identifying current Australian legal research areas. However, it was preferable to use an available and well-known journal list to assess the utility of the conventional research classifications rather than produce an ad-hoc and more eccentric creation of my own. Given these difficulties, the classifications and associated comments in this report should be considered as indicative only of problems with Law FOR Codes, rather than a definitive statement about particular fields of research, their size or quality. Where pertinent, recommendations indicate where further investigation and discussion is required.

It will be of no surprise to most law researchers to find out that a preliminary analysis of the 1,269 law journals reveals that a significant amount of specialist legal research comes under "180199. Law not elsewhere classified". This of itself suggests significant limitations in the coverage of the six-digit codes which has implications for researchers and assessment of competitive grants in particular. Of even greater concern, it is difficult to discuss our problems with legal research assessments if we lack appropriate and recognised fields to describe and explain our activity.

**RECOMMENDATION 2.1:** That CALD liaise with the ARC at the earliest opportunity to correct FOR 1801 assignment errors affecting the ERA 2012 journal list.

For errors affecting ERA 2010 and ERA 2012 journal outlets, see Appendix 2.4.

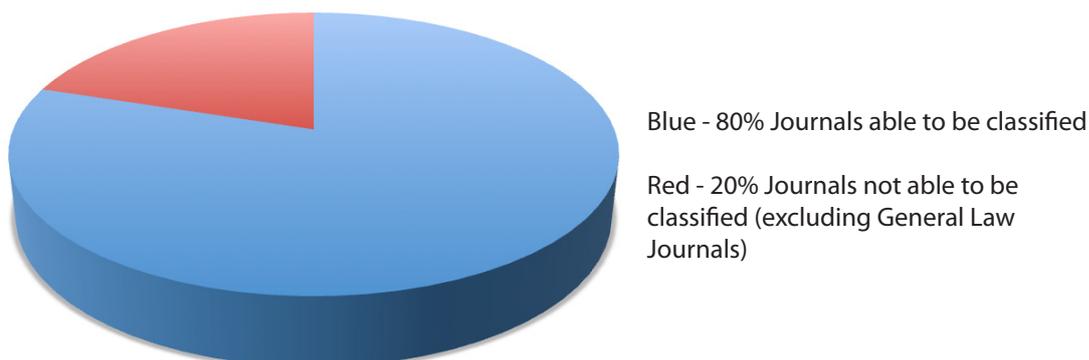
## **180199 Law Not Elsewhere Classified**

The ERA 2010 law journals list is dominated by general law journals, many of which concern jurisdictions other than Australia, with the majority from United States law schools. General law journals present a style of publication rather than a research area of activity. This material needs to be first excluded from the list in order to analyse better law specialisations, notwithstanding that this analysis will still contain a strong US bias. Further, as general law journals are made up of a range of specialist material it is wrong to assume that a low volume of specialist outlets signifies a low quantity of research in that particular field. One would first have to consider the areas commonly published in general law journals. See Part 4: General Law Journals.

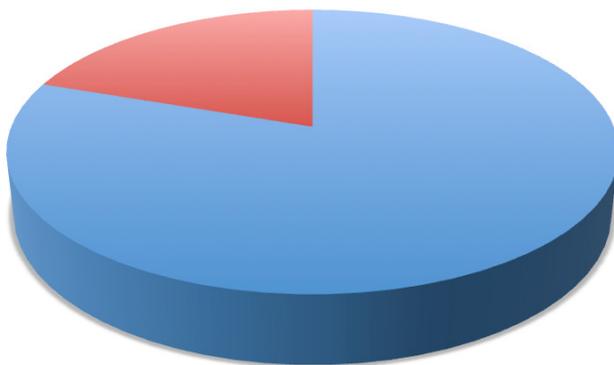
In assigning a six-digit law code to law journals I used a liberal and generous reading of existing specialist fields and allowed for overlaps between categories by allowing for a split between a maximum of 2 codes.

There is some overlap in classifying journals as General Law Journals and the six-digit FOR Code "180119 Law and Society." Arguably a wide range of specialisations may appear in both General Law and Law and Society Journals. For this reason my analysis presents two versions of data. One set excludes general law journals from the data set, but includes Law and Society as a Specialisation. Another view excludes both General Law and Law and Society journals from the data set.

### **Percentage of journals able to be classified under existing codes and percentage not elsewhere classified (excluding General Law Journals)**



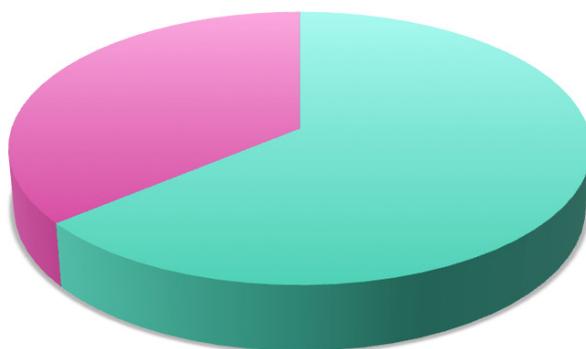
## Specialist Law Journals Falling under Existing FOR Codes (excluding FOR Code "Law and Society" and General Law Journals)



Blue - 78.5% Journals able to be classified excluding Law & Society

Red - 21.5% Journals not able to be classified (excluding General Law Journals)

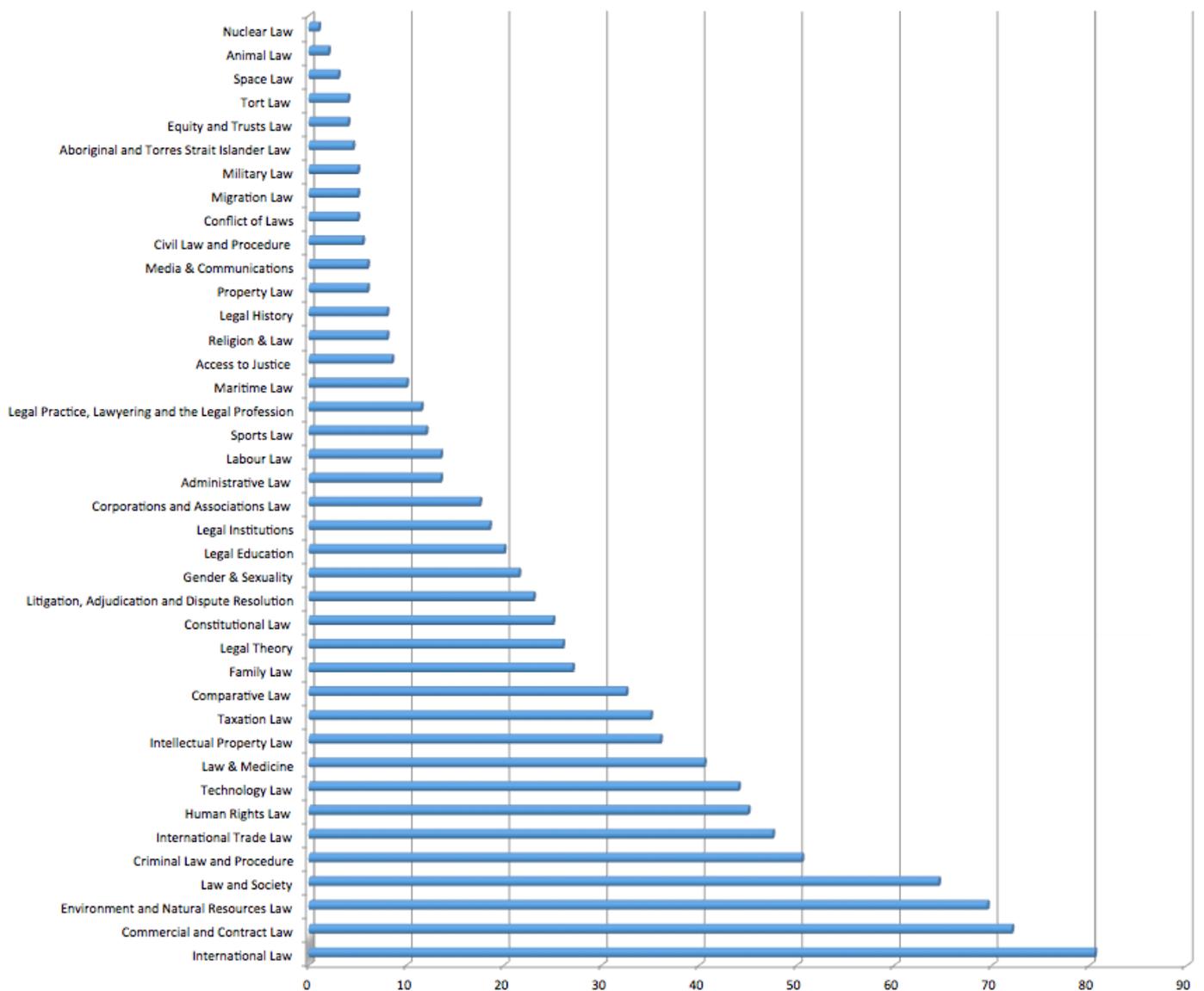
## Breakdown of General and Specialist Law Journals within FOR 180199



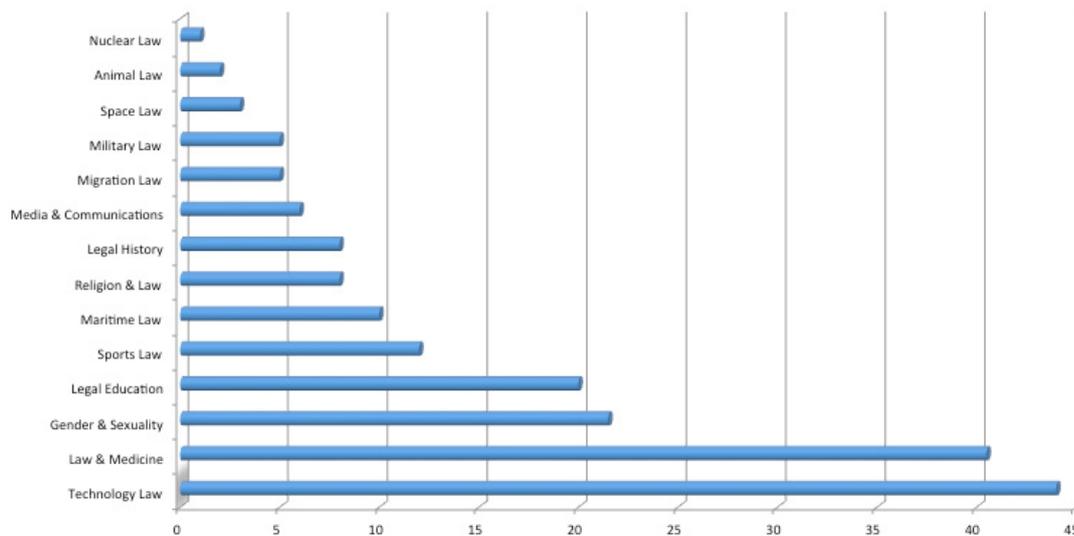
Green - 63.9% Specialist Law Journals

Pink - 36.1% General Law Journals

## All Law Journals classified with reference to specialisation (excluding General Law Journals)



## Breakdown of FOR 180199: Law not elsewhere classified (excluding general law journals)



The exercise suggests that approximately 20% of specialist law journals (including law and society as a specialisation) and 21.5% of specialist law journals (excluding law and society and general law journals) currently fall outside of the six-digit level law fields. Analysis of the make-up of the category FOR Code “180199 Law not elsewhere classified” suggests there are existing critical masses of research that warrant further discussion about their existing classification. This is taken up further, below.

The existence of a large number of journals in an area of specialisation does not necessarily indicate that there are a large number of appropriate venues for publishing Australian legal research. As well as there being jurisdictional biases to take into account, different journals may also favour particular styles or methodologies. Nonetheless, the above exercise gives some indication of the relative availability of outlets in particular areas and fit with existing FOR Codes. There is additional analysis of research specialisations in Part Three and Four.

### Relevant Codes in other Divisions

Some established legal research areas that legal researchers may treat as “Law not elsewhere classified” overlap with existing classifications under other divisions.

For example:

Legal Education	130399	Specialist Studies in Education not elsewhere classified
Religion & the Law	220204	History and Philosophy of Law and Justice
Science & Technology	160511	Research, Science and Technology Policy
Law & Medicine	160508	Health Policy
Environmental Law	160507	Environment Policy

The relevance to law of these alternate classifications is discussed below.

## Disciplinary Confusions

The CALD and ARC journal ranking exercises revealed that researchers from Divisions other than law often have a different standard for legal research, allowing for more descriptive analysis of law than may be considered as acceptable under conventions for legal research within our discipline. Furthermore, a journal primarily pertaining to another division may contain other kinds of detailed analysis or applied modelling that marks it as original research in that discipline, but have a rather superficial reference to law. In these cases law is often suggested as a secondary FOR Code. The publishers and/or librarians who index outputs have also often rightly indicated in databases that a journal has some legal subject matter because it includes material such as case notes or updates. However, this information has then been used for ERA purposes to assign a law 1801 FOR Code even though descriptive notes would not qualify as “research” within the discipline of law. There is little that the Law discipline can do about the use of law codes by researchers from outside the discipline. This problem is exacerbated as the ARC is ill-equipped to manage disputes that entail policing the boundaries of knowledge specialisation. For further discussion of the HERDC definition of research and peer review issues in law, see Part One: Assessing Legal Research.

Divergent understandings as to what is legal research and an ill-fit of legal research to FOR Codes creates significant problems for researchers and data integrity including:

- Significant confusion and frustration by researchers as to the “best” codes to use;
- Researcher concern over the lack of recognition of their field;
- Inconsistencies in practice leading to unreliable data about the strength of research fields; and,

- Increasing opportunities for game playing by institutions and researchers, and lottery effects.

To enhance the integrity of the meaning of legal research and influence research quality, use of codes by legal researchers outside of 1801 needs to be minimised. This would be encouraged by the provision for new FOR Codes within Law 1801.

**RECOMMENDATION 2.2:** That CALD engage in discussion with the ARC and appropriate bodies with a view to making a case for significant reclassifications of the Law six-digit FOR Codes at the next opportunity for revision of the Australian and New Zealand Standard Research Classification.

Ideally, “180199 Law not elsewhere classified” should be retained as a six-digit field for low-volume and newly emerging specialist areas in Australia such as :

- Animal Law
- Religion and the Law. Note. This may also come under 220204 History and Philosophy of Law and Justice
- Military Law
- Migration Law
- Nuclear Law
- Space Law

## Law Classification Conventions

Given that new categories are unlikely to be considered until the next review in approx. 2018, enhancing consistency in classification using the existing fields could help make this activity more meaningful to researchers and administrators in the interim. It may also assist in allocating the most appropriate assessors for competitive grants and research assessment in law and be of some assistance to faculties and schools in identifying and comparing law research strengths.

There are already some common groupings of journal subject matter as indicated by existing titles. The inclusions below were utilised to classify the ERA 2010 law journal outlets in a meaningful way and to maximise use of existing FOR Codes:

- Access to Justice: Poverty Law, Discrimination Law
- Administrative law: includes relevant Regulatory Theory
- Art: Intellectual Property Law; Cultural Heritage/International or Sports Law (Arts Management)
- Banking Law: Commerce and Contracts
- Bankruptcy Law: Commerce and Contracts

- Building Law: Commerce and Contracts
- Comparative Law: includes International and Comparative Law
- Competition Law: 50% Commerce and Contracts; 50% Corporations and Associations Law
- Constitutional Law: includes Public Law
- Corporate Governance : Corporations and Associations Law
- Criminal Law: includes Criminology
- Cultural Property: International Law
- Entertainment Law: Intellectual Property Law
- Equity and Trusts: includes Restitution
- Family Law: includes Social Security Law
- Human Right law: includes Race-Related Research (not Aboriginal & Torres Strait Islander law)
- Insolvency Law: Commerce and Contracts
- Insurance Law: Commerce and Contracts
- International Trade law: includes law and economics
- Law and Society: includes Law and Public Policy
- Legal Theory: includes Law & Literature; Law & Humanities; but excluding Law and Economics
- Succession: Property Law
- Water Law: Environmental Law

**RECOMMENDATION 2.3:** That CALD, through communication with Associate Deans (Research), encourage legal researchers to establish stronger conventions for the use of Division 18 six-digit FOR Codes in classifying research.

For a full list of suggested classification conventions, including new proposed categories see Appendix 2.5.

## Interdisciplinary Research

There are particular challenges for classifying some very established legal interdisciplinary and multidisciplinary research areas including:

- Business Law, Economics and Taxation
- Criminology and Criminal Law
- Indigenous Law
- International Law and Human Rights
- Legal Theory

As each of these attracts significant numbers of researchers and research students there is a need for consideration of both the need for new categories as well as a

more refined and uniform approach to use of some fields.

## **Business Law, Economics and Taxation**

Within the Group 1801 Law, business law may come under “180105 Commercial and Contract Law” and “180109 Corporations and Associations Law”. It may also fall across a group and field within Division 14 Economics & Division 15 Commerce, Management, Tourism and Services. Within law, taxation may come under “180125 Taxation Law” and within Division 15 “1501 Accounting, Auditing and Accountability”. See Appendix 2.6.

There is arguably a perception of a divide between business law conducted within law faculties and the research found in other faculties, some of which may be more applied research. This material is of relevance to law but may entail minimal analysis of law. To the extent that this material targets explaining law to non-lawyers and executives there is often minimal content that qualifies as research or as legal research. The automatic or strategic inclusion of a law code for this material by business faculties should be discouraged.

It needs to be noted that ERA 2010 assessed law with reference to “Cluster Two: Humanities and Creative Arts”, whilst economics and commerce was assessed by “Cluster Four: Social, Behavioural and Economic Sciences”. In ERA 2012 there is a new “Cluster Five: Economics and Commerce”.

**RECOMMENDATION 2.4:** That CALD engage in discussion with the discipline of business (eg. The Australian Business Deans Council) over the appropriate use of law codes for different kinds of business law, economics and taxation scholarship.

## **Criminology and Criminal Law**

The classification scheme establishes one Field “180110 Criminal law and procedure” within the Division Law, Group 1801 Law, and the Group 1602 Criminology comprising seven fields within the Division 16 Studies in Human Society. See Appendix 2.7.

Legal research which is not narrowly doctrinal could arguably fit both 1801 and 1602 Group Codes. At six-digit level it would permit a law code plus at least one of the criminology codes. Not all criminology would warrant a law code, however. The journal ranking process revealed that legal academics and criminologists generally agree on assessment of the quality of journals relevant to them both. There does not appear to be any particular difficulty created by overlaps or dual listings. It needs to be noted that ERA 2010 assessed law with reference to “Cluster Two: Humanities and Creative Arts”, whilst criminology was assessed by “Cluster Four: Social, Behavioural and Economic Sciences”. ERA 2012 assigns law to “Cluster Two:

Humanities and Creative Arts - (HCA)" and Criminology to "Cluster Four: Social, Behavioural and Economic Sciences".

Law schools or faculties with significant numbers of criminologists should consider the applicability of the two group codes. At institutional level the potential and real contribution of legal research to social sciences assessment is often overlooked. This problem can be exacerbated where social science is located in another faculty.

**RECOMMENDATION 2.5:** That CALD engage in discussion with the discipline of criminology (eg. ANZSOC) over the appropriate use and distribution of law and criminology codes.

## Problems with existing codes

### Indigenous Law

There is a discrepancy that there is only one six-digit field "180101 Aboriginal and Torres Strait Islander Law" whilst many fields for Maori Law. Given the size of the specialisation in Australia, one field appears to be adequate for legal researchers, however if a more fine-grained analysis of Aboriginal and Torres Strait Islander (ATSI) research is required by government, ATSI Peoples and the Law should become a separate and distinct four-digit group, with associated six-digit specialisations. Government has a particular interest in identifying legal research related to ATSI peoples and as such a dedicated research code may be desirable. The title currently being used is problematic as invariably it is not ATSI laws that are studied but western laws and their impact on Indigenous Peoples.

The specific reference to ATSI requires research into Indigenous peoples of other jurisdictions to be classified elsewhere. There are only a small number of dedicated outlets and as such "180114 Human Rights Law" may be appropriate for this research.

**RECOMMENDATION 2.6:** CALD investigate the feasibility of devising a new four digit group "Aboriginal and Torres Strait Islander Peoples and the Law".

**RECOMMENDATION 2.7:** Alternatively, that CALD investigate revision of the current "180101 Aboriginal and Torres Strait Islander Law" to reflect the area more accurately through adoption of the term "Aboriginal and Torres Strait Islander Peoples and the Law".

### International Law & Human Rights

There are many fields pertaining to international law. Within 1801 in addition to

“180117 International Law” there is “108106 Comparative Law”, “180107 Conflict of Laws (Private International Law)”, “180117 International Trade Law” and “180114 Human Rights.”

There is some overlap between “180117 International Law”, “180114 Human rights” and potentially some with the Division 22 Philosophy and Religion Studies “220104 Human Rights and Justice Issues”. Whilst not all international law concerns human rights, most human rights law concerns international law on some level. This proliferation of codes has potential for confusion and uncertainty. However anecdotally, it does not appear to cause concern for legal researchers, many of whom use both codes. Given the comparative size of the two law categories both should be retained.

The code 220104 is clearly designed for a particular kind of theoretical research and it would be inappropriate to force non-lawyers to use the law codes for human rights research. Thus 220104 should also be retained. However, as discussed above, as a general principle legal researchers should be encouraged to use the law categories.

International and Comparative Law is a specialization that crosses “180107 Conflict of Laws”, “108116 International Law” and “180117 International Trade Law”. However given there are a large number of journals that commonly identify it as a distinct kind of international law scholarship for classification purposes it is best classified under “108106 Comparative Law”. This category could perhaps be renamed to clarify the inclusion.

Whilst Conflict of Law is a very small research area, historically this is identifiable as a distinct private law specialisation. If it is necessary to relinquish a code in order to permit the creation of new ones, Conflict of Law could perhaps be included under (a renamed) “International and Comparative Law” and “International Trade Law”.

**RECOMMENDATION 2.8:** That CALD investigate the feasibility of the existing code “180106 Comparative law” being renamed as “International and Comparative Law”.

## **Legal Theory**

“180122 Legal Theory, Jurisprudence and Legal Interpretation” includes Law and Literature and Law and Humanities scholarship. It could also include feminist legal theory. However, given the way the field has developed and the comparative number of dedicated outlets, feminist scholarship warrants consideration as a distinct legal field, Gender and Sexuality, discussed below.

Law and Economics scholarship could also be classified under “180122 Legal Theory, Jurisprudence and Legal Interpretation” or under the division Economics, “140199 Economic Theory not elsewhere classified”. However, it is quite a distinct branch of theory with a different legal heritage. As a methodology it differs to most legal philosophy. For assessment purposes it would be worth considering classifying this research with respect to its core doctrinal areas or as “180117 International Trade Law”.

## Possible New FOR Codes

There are a number of well established research areas with significant numbers of dedicated outlets. The lack of a relevant FOR Codes creates uncertainties and confusions. These include:

- Feminist scholarship
- Law and Medicine
- Legal Education
- Legal History
- Maritime Law
- Media and Communications Law
- Sports Law
- Technology Law

### Feminist Scholarship

This area is currently potentially fragmented amongst a number of existing codes: “180102 Access to Justice”; “180113 Family law”; “180114 Human Rights”; “180119 Law and Society”; and, “180122 Legal Theory”. There are a number of dedicated outlets and that Australian researchers are active in the area is also evidenced by the inclusion of the subject matter in Australian general law journals, including as special editions. The suggested term, Gender and Sexuality, is a more inclusive term for this kind of scholarship and as such better identifies the research specialization. This area warrants its own code that could be used in conjunction with existing codes where necessary.

### Law and Medicine

The area includes medicine, nursing law, psychology and psychiatry. Some of this research can be located under “180126 Tort Law”. However, outlets tend to include broader issues of litigation, ethics, and organisation particular to medical contexts. That Australian researchers are active in the area is also evidenced by the inclusion of the subject matter in Australian general law journals, including as special editions. It is not exclusively the domain of legal researchers, however there

is no appropriate six-digit field in other divisions. Whilst “160508 Health Policy” can currently be used by some researchers, not all legal content is of this nature. A new six-digit field appears warranted.

## **Legal Education**

There has been a concerted effort to enhance research into teaching and learning in law over the past decade. There are dedicated researchers and journals in this area, including Australian journals. This subject matter has featured as specialist editions of general law journals. Whilst there is an existing field Division 13 Education, law is only provided for under “130399 Specialist Studies in Education not elsewhere classified”. Legal Education should be recognised as a six-digit specialisation in the divisions of Law or Education.

## **Legal History**

Though currently a small research area in Australia, it is a law specialisation with dedicated researchers and journals, including Australian journals. Whilst there is Division 21 History and Archaeology, Legal History falls under “210399 Historical Studies not elsewhere classified”. Legal History should be recognised as a six-digit specialisation in the divisions of Law or History and Archaeology.

## **Maritime Law**

Maritime Law currently falls within the broad field “180105 Commercial and Contract Law”. It is a very distinct branch of this field and, though small, it has dedicated researchers and well established specialist outlets. There is a case that it warrants a distinct six-digit FOR Code.

## **Media and Communications Law**

This specialisation covers defamation, contempt, media ownership, telecommunications and privacy. Whilst journals are often combined with intellectual property, technology and entertainment, the primary legal concerns and administrative regimes are very different. There are a number of dedicated outlets. That Australian researchers are active in the area is also evidenced by the inclusion of the subject matter in Australian general law journals, including as special editions. There is a case that it warrants a six-digit FOR Code.

## **Sports Law**

This specialisation covers contracts, torts, labour, management and aspects of broadcasting rights. Whilst journals are often combined with intellectual property or entertainment, the legal concerns are very different. There are a small number of journals in the area. There is a case that it warrants a six-digit FOR Code.

## **Technology Law**

There are a very large number of outlets dealing with technology, biotechnology and Computers and the Law. There are a small number of Australian journals in the area. There is some overlap with Intellectual Property, Law and Medicine, and Gender and Sexuality. However, supplementation by the use of a technology code would be helpful in better indicating the nature of the research interest. This material has featured as special editions of general law journals. Whilst there is a related field “160511 Research, Science and Technology Policy” it is now an established specialisation within Law that warrants a six-digit FOR Code.

**RECOMMENDATION 2.9:** That CALD investigate the feasibility of establishing new six-digit fields within the 1801 group including:

- Gender and Sexuality
- Law and Medicine
- Legal Education
- Legal History
- Maritime Law
- Media and Communications Law
- Sports Law
- Technology Law

## Appendix 2.1

### LAW FOR and SEO CODES

Division 18 Law And Legal Studies

Group 1801 Law

This group covers law.

It includes:

- Legal Institutions;
- Legal Theory and Practice; and
- Litigation, Adjudication and Dispute Resolution.

This group has twenty-seven fields:

- 180101 Aboriginal and Torres Strait Islander Law
- 180102 Access to Justice
- 180103 Administrative Law
- 180104 Civil Law and Procedure
- 180105 Commercial and Contract Law
- 180106 Comparative Law
- 180107 Conflict of Laws (Private International Law)
- 180108 Constitutional Law
- 180109 Corporations and Associations Law
- 180110 Criminal Law and Procedure
- 180111 Environmental and Natural Resources Law
- 180112 Equity and Trusts Law
- 180113 Family Law
- 180114 Human Rights Law
- 180115 Intellectual Property Law
- 180116 International Law (excl. International Trade Law)
- 180117 International Trade Law
- 180118 Labour Law
- 180119 Law and Society
- 180120 Legal Institutions (incl. Courts and Justice Systems)
- 180121 Legal Practice, Lawyering and the Legal Profession
- 180122 Legal Theory, Jurisprudence and Legal Interpretation
- 180123 Litigation, Adjudication and Dispute Resolution
- 180124 Property Law (excl. Intellectual Property Law)
- 180125 Taxation Law
- 180126 Tort Law
- 180199 Law not elsewhere classified

Exclusions:

- a) Criminology, including Policing and Correctional Theory, is included in Group 1602 Criminology.

b) Legal Ethics and Human Rights and Justice Issues are included in Group 2201 Applied Ethics.

c) History and Philosophy of Law and Justice is included in Group 2202 History and Philosophy of Specific Fields.

On addition to the above exclusions, researchers also utilize:

1303 Specialist Studies in Education

1402 Applied Economics

1501 Accounting, Auditing and Accountability

1502 Banking, Finance and Investment

1605 Policy & Administration

1606 Political Science

1608 Sociology

# Research Assessment Codes

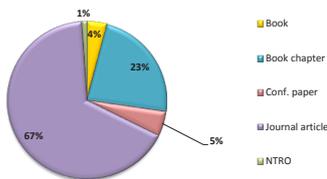
## Appendix 2.2

### ERA 2010 Law Results by FOR Code

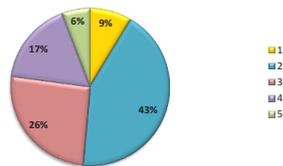
Section 2 - Results by FoR Code

1801 Law							
% assessed UoEs rated at or above world standard <b>49%</b>	FTEs	1,193	Esteem count(s)			54	Average National Rating <b>2.7</b>
	Research outputs	8,341	Patent(s)			-	
	Research income \$	45,739,080	Res. comm. income (\$)			-	
	UoEs assessed	35					
Rating:		1	2	3	4	5	Total
Distribution:		3	15	9	6	2	35

Research outputs by type



FoR rating distribution



1802 Maori Law							
% assessed UoEs rated at or above world standard <b>n/a</b>	FTEs	0	Esteem count(s)			0	Average National Rating <b>n/a</b>
	Research outputs	0	Patent(s)			-	
	Research income \$	44,942	Res. comm. income (\$)			-	
	UoEs assessed	0					
Rating:		1	2	3	4	5	Total
Distribution:		0	0	0	0	0	0

Research outputs by type

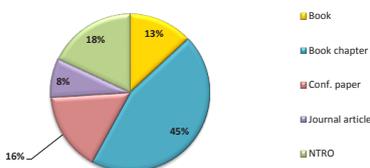
Insufficient data

FoR rating distribution

Insufficient data

1899 Other Law and Legal Studies							
% assessed UoEs rated at or above world standard <b>n/a</b>	FTEs	119	Esteem count(s)			0	Average National Rating <b>n/a</b>
	Research outputs	25	Patent(s)			-	
	Research income \$	378,558	Res. comm. income (\$)			-	
	UoEs assessed	0					
Rating:		1	2	3	4	5	Total
Distribution:		0	0	0	0	0	0

Research outputs by type



FoR rating distribution

Insufficient data

## Appendix 2.3

### Law SEO Codes

#### Division 94 Law, Politics And Community Services

This division covers R&D directed towards law, politics and community services. It includes:

- Work and Employment;
- Provision of Community and Social Services, including Welfare, to Individuals or Community Groups;
- Social Justice and General Equity; and
- Government, Politics and International Relations.

This division has six groups:

- 9401 Community Service (excl. Work)
- 9402 Government and Politics
- 9403 International Relations
- 9404 Justice and the Law
- 9405 Work and Institutional Development
- 9499 Other Law, Politics and Community Services

Exclusions:

- a) Defence and national security operations are included in Division 81 Defence.
- b) International trade is included in Group 9103 International Trade.
- c) Management and productivity, including industrial relations, are included in Group 9104 Management and Productivity.
- d) Development and provision of community health services and their associated support services is included in the appropriate groups in Division 92 Health.
- e) Ethics, including social, workplace and occupational ethics is included in Group 9504 Religion and Ethics.
- f) Understanding past societies is included in Group 9505 Understanding Past Societies.
- g) International environmental protection issues are included in Group 9607 Environmental Policy, Legislation and Standards.

## Appendix 2.4

### Errors in ERA Journal Classifications

#### ERA 2010

There were some minor errors in classification in the ERA 2010 list with ten law journals not assigned a law code and a questionable assignment of a law code to three outlets.

#### ERA 2012

The following journals appear to remain incorrectly classified on the ERA 2012 List through omission of a law code:

- ERA ID 9219 *First Monday* ISSN 1396-0466. Classified only as Library and Information Studies;
- ERA ID 36482 *The Journal of the Copyright Society of the U.S.A.* ISSN: 0886-3520. Classified only as 'Other Commerce, Management, Tourism And Services';
- ERA ID 32103 *International Journal of Technology Policy and Law* ISSN: 1742-4259. Classified only as 'Other Information And Computing Sciences';
- ERA ID 34225 *Journal of Law and Social Work* ISSN 1203-8032 – Classified only as Social Work;
- ERA ID 14213 *Journal of Nursing Law* ISSN 1073-7472; 1938-2995. Classified only as Nursing;
- ERA ID 6509 *Legal and Criminological Psychology* ISSN 1355-3259; 2044-8333. Classified only as Psychology;
- ERA ID 35192 *Legal Medicine* ISSN 0362-9805; 1939-9162. Classified only as Clinical Sciences;
- ERA ID 18906 *Legislative Studies Quarterly* ISSN 0362-9805; 1939-9162. Classified only as Political Science;
- ERA ID 44943 *Planning and Environmental Law* ISSN 1548-0755. Classified only as Urban and Regional Planning;
- ERA ID 40231 *The Journal of Legislative Studies* ISSN 1357-2334; 1743-9337. Classified only as Political Science.

This law journal is not on the ERA 2012 List (nor the ERA 2010 List):

- *The Australian Journal of Legal History* ISSN: 1323-1391

These journals are incorrectly classified on the ERA 2012 through assignment of a law code:

- ERA ID 36823 *International Labmate* ISSN 0143-5140;
- ERA ID 33467 *Journal of Asian Culture* ISSN 0162-6795.

## Appendix 2.5

### Suggested Group 1801 FOR Classification Conventions

- Access to Justice: includes Poverty Law, aspects of Social Security Law and Discrimination Law
- Administrative law: includes relevant Regulatory Theory
- Art: Intellectual Property Law; Cultural Property/International Law; Sports Law (Arts Management)
- Banking Law: Commerce and Contracts
- Bankruptcy Law: Commerce and Contracts
- Building Law: Commerce and Contracts
- Comparative Law: includes International and Comparative Law
- Competition Law: 50% Commerce and Contracts; 50% Corporations and Associations Law
- Constitutional Law: includes Public Law;
- Corporate Governance : included in Corporations and Associations Law;
- Criminal Law: includes Criminology
- Cultural Property: International Law
- Entertainment law: Intellectual Property Law
- Equity and Trusts: includes Restitution
- Family Law: includes relevant Social Security law
- Gender and Sexuality: New FOR Code
- Human Right law: includes Race-Related Research (not Aboriginal & Torres Strait Islander Law)
- Insolvency Law: Commerce and Contracts
- Insurance Law: Commerce and Contracts
- International & Comparative Law: New FOR code (Including Conflicts of Laws)
- International Trade law: includes law and economics
- Legal Education: New FOR code, includes legal information
- Legal Theory: includes Law & Literature; Law & Humanities; but excluding Law and Economics and Feminist Legal Theory
- Maritime Law: New FOR Code
- Media and Communications Law: New FOR Code
- Medicine and the Law: New FOR Code. Includes Health, Nursing, Psychiatry, Psychology.
- Race and Law: (Not ATSI Law) Human Rights Law
- Succession: Property Law
- Sports Law: New FOR Code
- Technology Law: New FOR Code
- Water Law: Environmental Law

## Appendix 2.6

FOR Codes : Economics & Commerce

### Division 14. Economics

This division covers economics.

This division has four groups:

- 1401 Economic Theory
- 1402 Applied Economics
- 1403 Econometrics
- 1499 Other Economics

Exclusions:

- a) Taxation accounting is included in Group 1501 Accounting, Auditing and Accountability.
- b) Financial econometrics is included in Group 1502 Banking, Finance and Investment.
- c) Economic geography is included in Group 1604 Human Geography.
- d) Economic development policy is included in Group 1605 Policy and Administration.
- e) Taxation law is included in Group 1801 Law.
- f) History and philosophy of economics is included in Group 2202 History and Philosophy of Specific Fields.

### Division 15 Commerce, management, tourism and services

This division covers commerce, management, tourism and services.

This division has eight groups:

- 1501 Accounting, Auditing and Accountability
- 1502 Banking, Finance and Investment
- 1503 Business and Management
- 1504 Commercial Services
- 1505 Marketing
- 1506 Tourism
- 1507 Transportation and Freight Services
- 1599 Other Commerce, Management, Tourism and Services

Exclusions:

- a) Financial mathematics is included in Group 0102 Applied Mathematics.
- b) Farm management, rural management and agribusiness are included in Group 0701 Agriculture, Land and Farm Management.
- c) Non-business information systems are included in Group 0806 Information Systems.
- d) Transport engineering is included in Group 0905 Civil Engineering.

- e) Transport planning is included in Group 1205 Urban and Regional Planning.
- f) The economics of taxation are included in Group 1402 Applied Economics.
- g) Econometrics other than financial econometrics is included in Group 1403 Econometrics.
- h) Private policing and security services are included in Group 1602 Criminology.
- i) Demography is included in Group 1603 Demography.
- j) Taxation law is included in Group 1801 Law.
- k) Social impacts of marketing are included in Group 2001 Communication and Media Studies.
- l) Cultural impacts of marketing are included in Group 2002 Cultural Studies.
- m) Business ethics is included in Group 2201 Applied Ethics.
- n) Business and labour history is included in Group 2202 History and Philosophy of Specific Fields.

## Appendix 2.7

FOR Codes : Criminology

### Division 16 Studies In Human Society

GROUP 1602 CRIMINOLOGY

This group covers criminology.

This group has seven fields:

- 160201 Causes and Prevention of Crime
- 160202 Correctional Theory, Offender Treatment and Rehabilitation
- 160203 Courts and Sentencing
- 160204 Criminological Theories
- 160205 Police Administration, Procedures and Practice
- 160206 Private Policing and Security Services
- 160299 Criminology not elsewhere classified

Exclusions:

- a) Forensic statistics is included in Group 0104 Statistics.
- b) Forensic chemistry is included in Group 0399 Other Chemical Sciences.
- c) Forensic biology is included in Group 0699 Other Biological Sciences.
- d) Crime policy is included in Group 1605 Policy and Administration.
- e) Forensic psychology is included in Group 1701 Psychology.
- f) Criminal law is included in Group 1801 Law.

## Part Three: Specialist Law Journal Ranking

### Introduction

Part Three provides a brief overview of the genesis of the ERA 2010 journal ranking list and identifies issues that arose in the ranking consultations. There is a breakdown of journal rankings across particular law specialisations, where the number of journals in the area warrants this analysis. Focus is especially directed toward discussion of those titles which, as indicated by feedback received as part of the CALD journal ranking exercise, are of particular interest to contemporary Australian legal researchers.

The ARC abandoned the use of journal ranking in 2011. However, the ERA 2010 journal ranking list remains on their website. Law academics continue to refer to it, especially in the absence of access to other published information about journal quality. Journal editors have reported that the publication of the ARC list changed submission patterns, with journals with higher ratings receiving a much greater number of submissions, mostly of poor quality. Others who received lower than expected ratings have indicated concern that the good quality submissions that had been regularly received dried up. There are also concerns that poor ratings in some areas has prejudiced attitudes to entire specialisations, particularly for some new research areas.

The ERA 2010 list is derived from various iterations of previous lists, including contributions from a CALD ranking process. There are known anomalies in the ERA 2010 list, however there is no way in which errors or problems can now be redressed through ARC processes.

While it is not possible to provide a definitive statement on problems with journal ranking or the ERA 2010 list, it is possible to provide some indication of the extent and reliability of data based upon participation received as part of the CALD consultations on earlier versions of the list. This information may be of use to researchers in interpreting the ERA 2010 list, in making submission choices, and in assessing researcher track records. It is also hoped that in documenting the challenges that occurred with the ARC journal ranking exercise, this information will also be of assistance should there be other attempts to rank law journals in the future.

**RECOMMENDATION: 3.1** That CALD publish Part Three: Specialist Law Journal Ranking to provide legal researchers with pertinent information about specialist journal outlets ranked as part of the ERA 2010 exercise.

## History of the ERA 2010 List

The desire to rank law publications first arose in 2006 as part of the Research Quality Framework (RQF). Legal researchers were highly skeptical of this plan for a range of reasons. The strong preference was for all law publications to be assessed by peer review and that proxies for quality not be utilized in law. Nonetheless consultations continued throughout 2006-7, with pressure from DEST and the ARC for law to participate in producing a ranking of journals and legal publishers.

Whilst efforts to rank book publishers were not continued, ranking journals was less controversial in many disciplines. Those efforts proceeded whilst law prevaricated. In terms of law journals, major logistical challenges included there being no starting list of peer reviewed law journals, no methodologies, and no benchmarks for quality that were tested or were considered appropriate to law. CALD sought to co-operate with institutional and sector expectations, as individuals at some law schools considered working privately with DEST to rank for the discipline. However, no broad consensus emerged over how to proceed to rank journals in a fair, accountable or just way.

## The Phase One Consultation: Ranking Journal List Development and Initial Review

### The Washington and Lee University Ranking List

When the ERA was announced in late 2007 the ARC produced and published a list of draft rankings of law journals based on the Washington and Lee University School of Law Journal Rankings. Whilst the ARC process advertised that the Stage One consultation involved feedback from peak bodies such as CALD, this was not really the case in law.

The Washington and Lee University Ranking List is a listing of law journals published in the US, with a small number of non-US based law journals also included. Many of the US journals in the list are student run and not peer reviewed. Rankings are produced based upon adjusted citation data. Reliance on citation of research as a proxy for quality is not generally accepted in humanities as reliable. (See for example, British Academy, Peer Review: The Challenges for the Humanities and Social Sciences: A British Academy Report, British Academy, 2007; Paul Genoni and Gaby Haddow, 'ERA and the Ranking of Australian Humanities Journals' (2009) Australian Humanities Review Vol 46 pp7-26.) Regardless, the Phase One law list essentially used citation in US law journals as a benchmark to assess the quality of Australian legal research. Research outlets were classified into four tiers, with the

suggested distributions : Tier A\* (top 5%), Tier A (next 15%), Tier B (next 30%) and Tier C (bottom 50%). For criteria for each tier see Appendix 3.1.

The first Phase One list had approximately 1,400 outlets but very few journals Australians would seek to publish in within the top tiers. The list did not include a considerable number of important Australian and Commonwealth law journals. The publication of the draft Phase One list was somewhat inflammatory and the exercise was widely condemned. There was considerable protest to the continuation of the ranking exercise by academics, professional and academic bodies, including CALD and judges, to the ARC and the Attorney-General.

## **The Phase Two Consultation: Review and Feedback from Researchers in the Sector**

### **The CALD List**

CALD convened a meeting of Associate Deans (Research) to discuss participation in the ARC Stage Two consultation which sought specific feedback about the appropriateness of the Phase One rankings and the FOR Code(s) assigned to outlets. A CALD Journal Ranking Steering Committee was established from those attending. It comprised Chair Kathy Bowrey (UNSW), Lesley Hitchens (UTS), Kit Barker (UQ) and Richard Johnstone (Griffith).

It was an ARC requirement that the Phase One list be used as the basis of any law ranking list.

The CALD ranking methodology triangulated information from a number of sources to substantially revise this list and produce a first-cut CALD revised draft. This process took into account:

- Feedback from 22 Australian law schools on all journals on the list including identification of missing journals to be added;
- Information provided by 82 journal editors in line with template produced by the ARC (see Appendix 3.2); and, 34 General Submissions received from law schools and interested individuals.

Whilst there was a rough consensus over rankings of approximately 85% of the Australian journals and information received about many of the more prestigious US journals, there was scant information received about a very large number of US general law journals that dominated the Phase One list. Based upon advice from the ARC, it was not open to remove US journals from the list if these outlets appeared as peer reviewed on the Ulrich's Periodical Directory. Former RQF Panel

11 Chair Professor Hilary Charlesworth (ANU) assisted with revision of the ranking of these US general law journals. In the absence of any feedback, reference was made to the US News Ranking of Law Schools.

In many cases feedback was most enthusiastic and well organized by persons who had a vested interest in particular journal rankings. It was not possible to manage real or potential conflicts of interest arising from the consultations conducted in Australia (except those concerning members of the CALD Steering Committee). It was hoped that any striking or unusual rankings would be apparent and queried during the second cut of the list based upon feedback provided by specialist bodies and independent international reviewers.

Twenty-five specialist and professional bodies were approached and asked to participate in reviewing the second cut list (see Appendix 3.3). This group included the UK Committee of Heads of University Law Schools. Professor Brad Sherman (UQ) was co-opted to assist with compiling this data. In addition, Richard Johnstone met with the President of the Australian and New Zealand Society of Criminology (ANZSOC), Professor Kathleen Daly, to seek to reach consensus on assignments of FOR Codes, which led to a redistribution of some journals to criminology and others to law and an assignment of both codes for journals that were considered interdisciplinary.

A list of 100 potential eminent international reviewers for particular specialisations was devised and circulated to 22 senior Australian academics for comment as to appropriateness and for additional suggestions. All those approached were highly regarded by Australian peers. They were also invariably people who had research assessment experience and a reasonable knowledge of Australian or Commonwealth legal research culture and journals. The 61 people ultimately approached (2-3 for each area of specialisations) included representatives from the UK, Ireland, Singapore, Canada, New Zealand and the United States. For breakdown of specialisations utilised, see Appendix 3.4. This international review process satisfied the ARC that the CALD second cut list appropriately reflected international standards.

## **International Opposition to Journal Ranking**

It needs to be noted that to the extent that the HCA list reflected international standards, the overwhelming view of international assessors was that ranking was an unsound enterprise and lacked credibility. While sympathetic to the situation in which CALD found itself, a number of eminent legal academics, particularly those with RAE experience, declined to participate in journal ranking on the basis that journal ranking is a flawed measure of quality and the exercise was misguided.

RAE exercises had demonstrated that excellent research was published in little known journals, and that publication in a prestigious outlet was not necessarily an indicator of the quality of particular articles. Where permitted, these comments were passed on to the ARC. Several other international reviewers assisted out of collegiality but wanted their discomfort and serious reservations about the validity of the exercise to be noted.

## **The HCA List**

Based upon advice from professional bodies and international reviewers and revisiting original data where necessary, the CALD second cut list was finalized and forwarded to the ARC. Whilst reservations about ranking remained, it was possible to defend any particular ranking of any journal on the CALD second cut list with reference to feedback received as part of the consultations conducted.

The production of this list concluded the work of the CALD Steering Committee. The CALD list was widely circulated to legal researchers through Law Deans.

A revised ARC list (the HCA list) which was primarily based upon feedback provided by CALD was published in June 2009. The HCA list was utilized for the ERA Trial that was conducted in the second half of 2009.

## **Phase Three Consultation: Release of the Journal Title List for Public Review**

In September 2009 the ARC conducted another round of feedback on journal ranking. It appears a number of organisations were invited to comment. Journals unhappy with their own ranking or that of a rival journal in the HCA list were also given an opportunity to participate in providing additional feedback. This information was incorporated into a new revision by the ARC.

There was no involvement of CALD or former members of the Steering Committee in this process.

## **Phase Four Consultation: Final Review by Researchers in the Sector**

A final stage consultation was undertaken in late 2009. A revised list was confidentially circulated to a number of invited individuals for comment and final review.

The final ERA 2010 list was published in February 2010 and utilised for ERA 2010. It contains significant differences to the earlier HCA list.

In the final version, a significant number of Australian law journals were removed from the list, possibly because of doubts about their peer review status. However, comparative US journals remained unaffected. A large number of US general law journals and the *Griffith Law Review* were upgraded. Some specialist law journals of interest to Australian legal researchers and with strong support for their existing ranking were down-graded. These unanticipated changes caused some consternation.

Protest to the ARC over the methodology utilized in Phase Three and Four consultations by legal researchers echoed concerns from other Disciplines. The lack of publication of any methodology or justification for final rankings contributed to sector concerns over ranking. These led to the abandonment of the ERA 2010 list and the adoption of the provision of information about the most frequently published in journals (the Refined Journal Indicator, see Part One).

The proportion of publications reported in A and A\* journals was influential in institutional ratings for ERA 2010 and in institutional assessments of their research strengths.

## **ERA 2010 Journal Rankings: Research Specialisations**

It is only possible to discuss meaningfully ranking areas and specialisations in areas where there are sufficient numbers of journals relevant to Australian researchers. There is no apparent logic behind the relative numbers of journals in particular research areas. To the extent that there is a loose correspondence between number of outlets and research activity in particular fields, the Americanisation of the ERA journal list renders any conclusions about Australian research fields unreliable.

The analysis below utilises Australian and international feedback received that related to the CALD list to provide information that might assist in interpreting the final ERA 2010 rankings, where possible. As with the previous Parts, specialisations are identified with reference to FOR Code, supplemented by additional new research areas.

The analysis provided here is only of rankings with regard to broad areas of specialization with some commentary on a small number of journals where warranted. There is no list of all the journal titles and associated ranks in any particular specialisation, as this information could be used to produce a more refined league table of specialist law journals.

Distortion of research culture is a well-recognized problem of research metrics. With journal ranking, where an article is published can come to be considered more important than its actual content. Over time such tables can distract researchers from effective decision-making about the best vehicle for dissemination of their research to relevant audiences. (Colin Steel, Linda Butler, Danny Kingsley, 'The Publishing Imperative: the Pervasive Influence of Publication Metrics,' *Learned Publishing*, Vol. 19, No. 4. (October 2006), pp. 277-290.)

Due to the small size of the Australian legal research community the ranking of specialist journals may be especially affected by a number of competing demands on publication outlets including:

- International/Australian/Regional/other jurisdictional focus;
- Diversity of types of scholarship catered for within the specialist field;
- Professional readerships;
- Multi-disciplinary readerships;
- Coverage of the area by general law journals. (For analysis of specialisation areas catered for in general law journals see Part Four);
- Commercial imperatives, especially the requirement of regular output; and,
- Irregular output also affected rankings.

In the CALD consultations it became apparent that multi-disciplinary readerships tended to support higher rankings, professional readerships tended to lower regard for the outlet overall. Where prestigious general law journals were known to publish in an area, specialist journals often performed worse. Overall it appears that relatively new research journals and specialisation areas also take a while to impact and achieve better rankings.

These factors appear to affect some law specialisations more than others and invariably affected ranking outcomes for some journals, regardless of the quality of individual articles.

## **Rankings Analysed with Reference to FOR Code**

The information below is intended to assist researchers in determining where to submit research, and to provide research assessors with very general information about the standing of journals with which they may not be familiar. It also gives some general indication as to whether or not there are any clearly well regarded outlets in particular areas of specialisation.

There are limits to the use of this kind of ranking information and there is no agreed methodology for determining a "right" or "wrong" ranking. Any identification

of deviations in the ERA 2010 list from CALD feedback relates to the receipt of commentary as part of the consultations that does not fit with the final ERA ranking awarded, rather than a reviewer's mere acquiescence with a suggested CALD ranked. The provision of this information alerts readers to the existence of some degree of uncertainty as to the appropriate standing of the outlet mentioned that could be taken into account by researchers potentially interested in the outlet.

### **180101 Aboriginal and Torres Strait Islander Law**

There are less than ten outlets in this area. However general law journals also publish in this area.

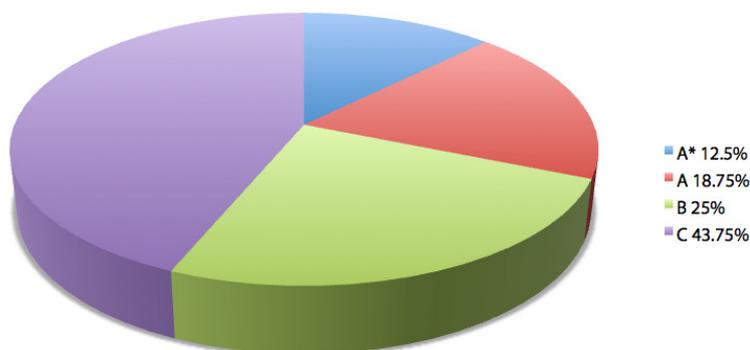
All of the specialist Australian outlets ended up with a C rank in ERA 2010, with the *Indigenous Law Journal* given an A rank but on balance, given a B rank in Australian and international feedback to CALD. There were no B ranked journals on the ERA 2010 list, however both Australian and international feedback to CALD supported a B ranking for the *Australian Indigenous Law Review*.

### **180102 Access to Justice**

There are less than ten journals in the area of Social Justice, Aspects of Social Security Law, Poverty Law and Discrimination Law. There is some overlap with Human Rights, Gender and Sexuality, Law and Society.

There was clear support for the ERA 2010 rankings in this area.

### **180103 Administrative Law**



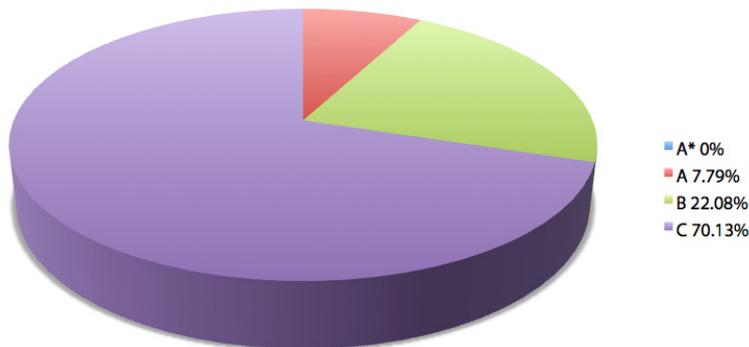
Whilst there are less than twenty journals in this research area it is also catered for by general law journals.

There was clear support for the ERA 2010 rankings.

## 180104 Civil Law and Procedure

There are less than ten outlets in this area. CALD international feedback was generally consistent with the ERA list, however, on balance it did not support an A\* ranking for the *Civil Justice Quarterly*, recommending instead an A.

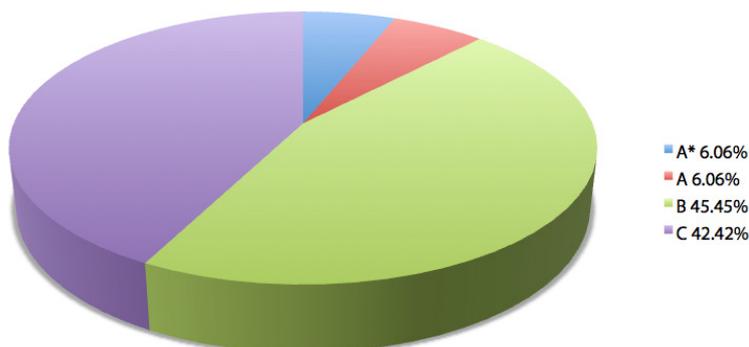
## 180105 Commercial and Contract Law



There are approximately seventy law journals in the area of Banking, Business, Consumer, Contract, Competition, Finance, Insolvency, and Insurance. The area is also catered for by general law journals, with some overlaps with Corporate Law. CALD received feedback about a number of Australian and international journals.

The CALD list was generally consistent with the ERA listings, however CALD international feedback suggests the *Journal of Consumer Policy* warrants an A ranking and not the B ranking awarded in the ERA 2010 list.

## 180106 Comparative Law



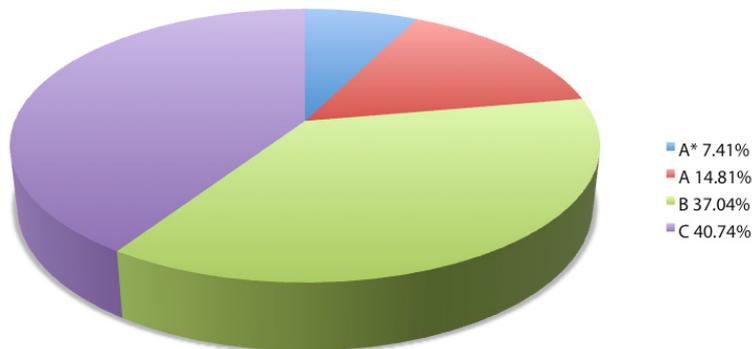
There are over thirty journals in this area published overseas. There is some overlap with International Law and Human Rights.

CALD received feedback from international scholars, as well as the British Institute of International and Comparative Law. This combined data suggests that three rankings were higher than expected. The *Asian Journal of Comparative Law* warranted a B ranking and not the A ranking awarded in the ERA 2010 list; the *Boston College International and Comparative Law Review* warranted a C ranking and not the B ranking awarded in the ERA 2010 list; and, the *Temple International and Comparative Law Journal*, only warranted a C and not the B awarded in the ERA list.

## 180107 Conflict of Laws (Private International Law)

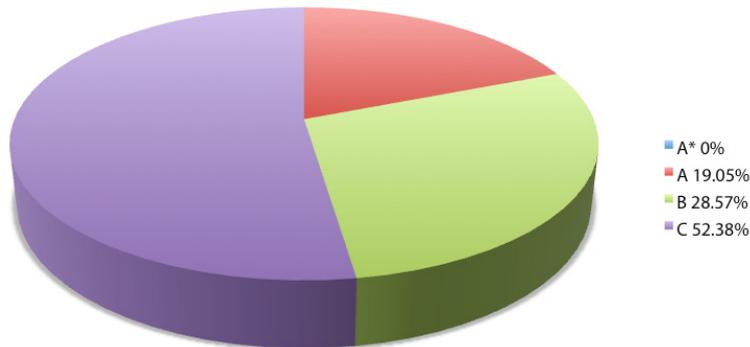
There are less than ten journals in this area. CALD feedback suggested the ERA “not ranked” *International Journal of Private Law* warranted a B ranking.

## 120108 Constitutional Law



There are nearly thirty journals dedicated to Public Law and Constitutional Law. The area is also catered for by general law journals which may be the more relevant ones for most Australian researchers.

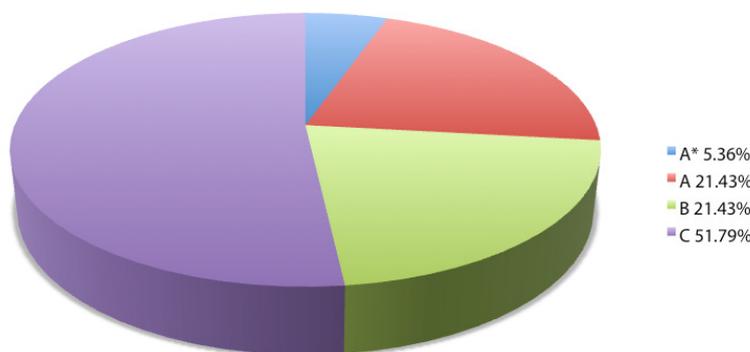
## 180109 Corporations and Associations Law



There are less than twenty journals in this area, including some that consider Regulatory Theory and Competition Law. There are overlaps with Commercial and Business Law and International Trade Law journals.

*ECLR: European Competition Law Review* was awarded a B on the CALD list, not an A whilst the *European Competition Journal* was awarded a B, not C. The *International Journal of Corporate Governance* was “not ranked” on the ERA list but was awarded a B on the CALD list.

## 180110 Criminal Law and Procedure



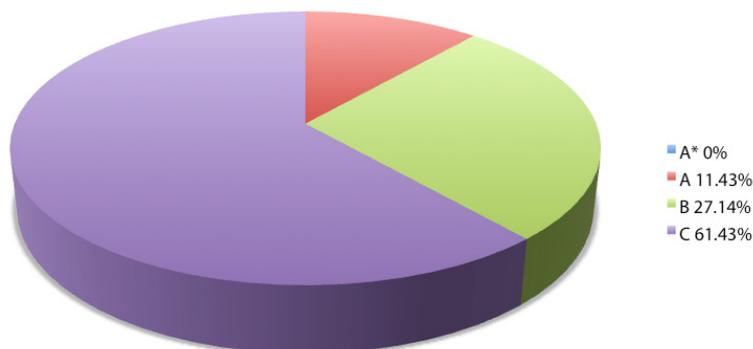
There are approximately fifty journals in this area. The area is also catered for by general law journals. There are overlaps with Criminology journals.

There are some discrepancies in the ranking of a number of journals. Journals ranked lower on the CALD list were *American Criminal Law Review* which

was awarded a B, not an A; *American Journal of Criminal Law*, which was awarded a C, and not a B; *Criminal Justice Ethics* which was also awarded a C, not a B; and lastly, *Criminal Law Journal* (Thompson-Reuters Australia) was awarded a B, not an A.

Journals ranked higher on the CALD list were the *Criminal Law Forum*, awarded an A, not a B; *International Journal of Law, Crime and Justice*, which was awarded an A, and not a B; and lastly, *Journal of International Criminal Justice* which was awarded a A\*, not an A.

## 180111 Environmental and Natural Resources Law



There are close to seventy journals in this area, including several Australian titles. There is also a modest degree of coverage of environmental law by general law journals.

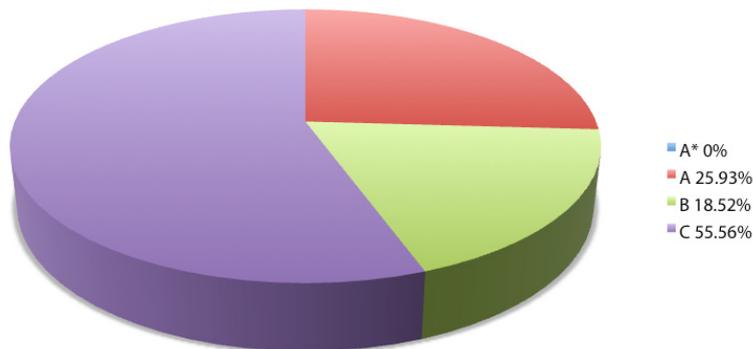
There was contrary feedback concerning the *Environmental Law Reporter, News and Analysis*. CALD Australian feedback ranked it as a B, whilst CALD international feedback ranked it as a C. The ERA 2010 ranking was an A. The *Journal of International Wildlife Law and Policy* and the *Pace Environmental Law Review* were both awarded a C by CALD Australian researchers, a B by internationals, and a C in the ERA 2010 ranking.

## 180112 Equity and Trusts Law

There are a very small number of journals in this area, which includes the relatively newly published *Journal of Equity*. It was rare for a new journal to achieve an A ranking however in this case it was supported by Australian and international commentary.

CALD Australian feedback ranked *Tolley's Trust Law International* an A, and international feedback awarded it a B. The ERA 2010 ranking was a C.

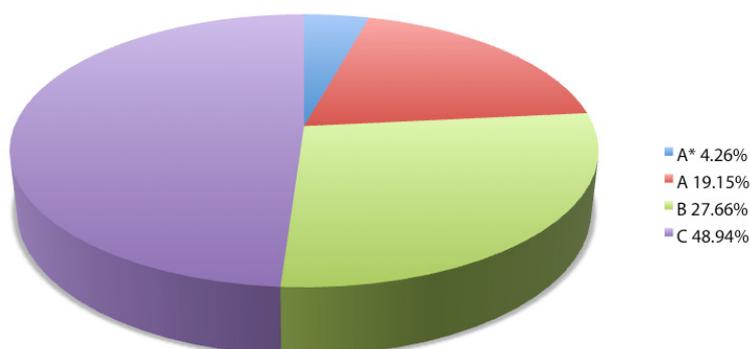
## 180113 Family Law



There are almost thirty journals in this area. Whilst there are Australian outlets, there is also some coverage by general law journals. Special editions of general law journals have been dedicated to the area of reproductive rights.

*Family Law Quarterly* was ranked A by CALD Australian and international researchers, but was given an B in the ERA ranking.

## 180114 Human Rights Law



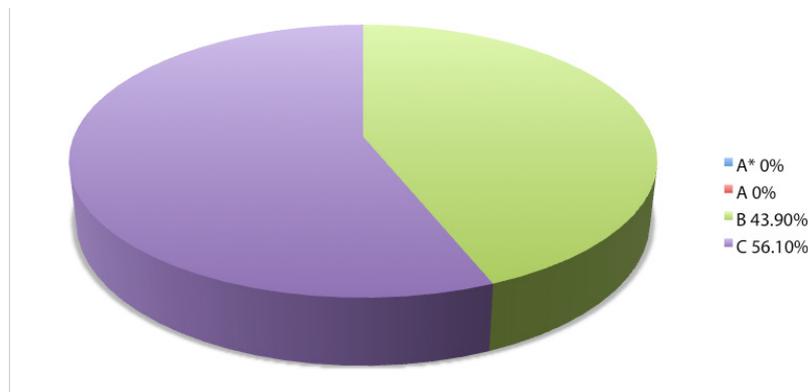
There are well over forty journals in this area, including Australian outlets. There is also some coverage by general law journals. There is some overlap with International Law and Access to Justice.

In addition to international feedback, data was received by CALD from the British Institute of International and Comparative Law.

Three journals received lower rankings than anticipated.

*Health and Human Rights: An International Journal* was ranked B by CALD Australian and international feedback but received a C in the ERA rankings. *Human Rights Quarterly* was ranked A\* by CALD Australian and international feedback but an A in the ERA ranking. *Yale Human Rights and Development Law Journal* was ranked A by CALD Australian and international feedback but a B in the ERA list.

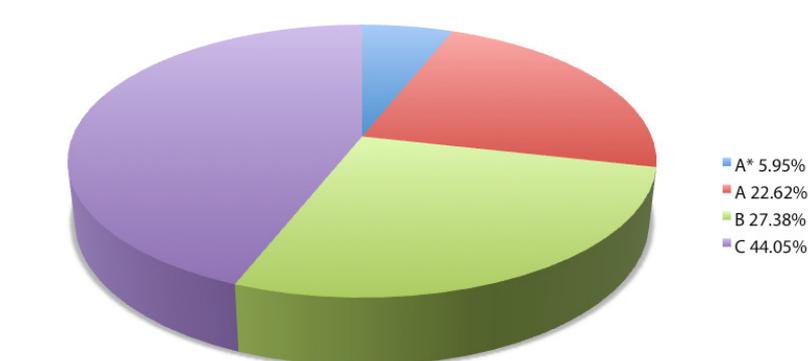
## 180115 Intellectual Property Law



There are well over thirty journals in this area, many of which are US based with a few UK titles. There is also some coverage by general law journals. There is some overlap with Sports Law and Media and Communications Law journals.

There are no A ranked journals in this area. CALD Australian and international feedback corresponded with the ERA 2010 list.

## 180116 International Law (excl. International Trade Law)



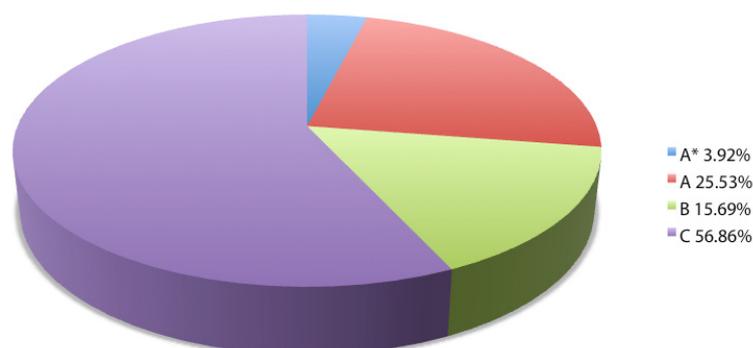
There are over eighty outlets in this area. There is some overlap with Comparative Law and Human Rights Law. In addition to Australian and international

feedback, comments were received from the British Institute of International and Comparative Law.

Three journals ended up with a higher than anticipated rank. *American University International Law Review* was ranked B by CALD international reviewers, but received an A in the ERA rankings. *Penn State International Law Review* was ranked C by CALD Australian and international reviewers, but received a B. *Texas International Law Journal* was ranked B by CALD international reviewers, but received an A.

Four journals ended up with a lower than anticipated rank. The *Australian Yearbook of International Law* was ranked A by CALD Australian and international researchers with some support for an A\* ranking, but received a C ranking. The *Canadian Yearbook of International Law* was ranked A by CALD Australian and international researchers, but received a B ranking. The *Indian Journal of International Law* and *Finnish Yearbook of International Law* were ranked B by CALD Australian and international researchers but received a C ranking in the ERA 2010 list.

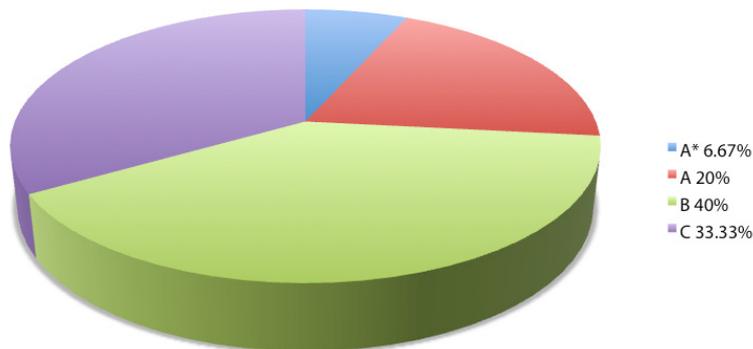
## 180117 International Trade Law



There are almost fifty journals in this area. General law journals also produced GFC-inspired editions.

There were comparatively few unexpected rankings, however the CALD list awarded an A\* to the *Journal of Common Market Studies*, which the ERA 2010 list ranked as A. *Legal Issues of Economic Integration* and *World Competition: Law and Economics Review* were both ranked B by CALD international review, but awarded an A by the ERA 2010 list.

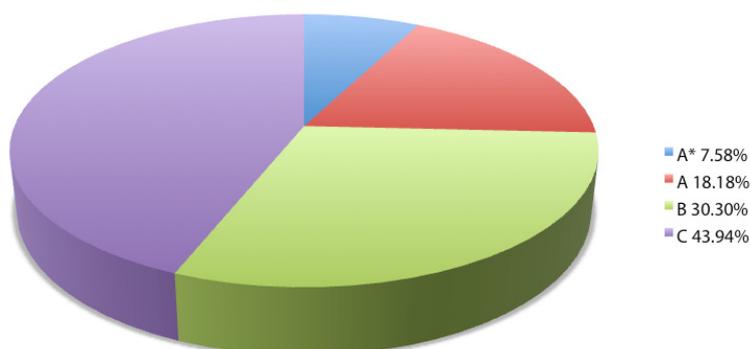
## 180118 Labour Law



There are approximately fifteen journals in this area. There is also some coverage by general law journals. Feedback was received from the Australian Labour Law Association.

CALD feedback rated the *International Journal of Comparative Labour Law and Industrial Relations* as C, whilst the ERA 2010 list ranked it as B.

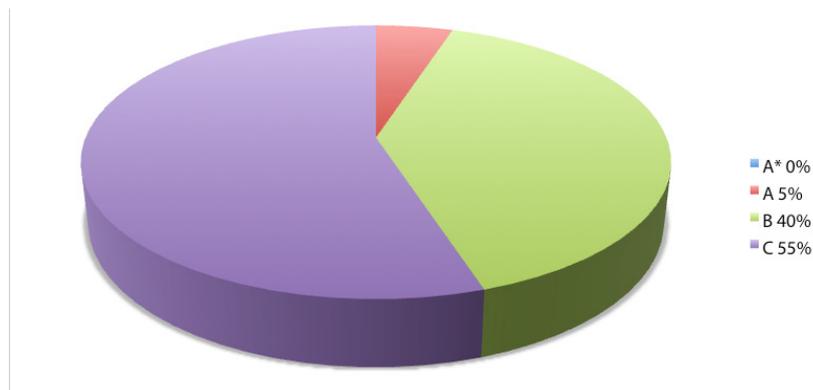
## 180119 Law and Society



There are well over sixty journals in the area of Law and Society, Law and Policy, Law and Politics. There are also overlaps with general law journals. Feedback was also received from the Law and Society Association of Australia and New Zealand.

Generally CALD comments corresponded with final ERA 2010 list with the exceptions of the *Texas Hispanic Journal of Law and Policy*, rated as B by CALD international feedback but a C in the ERA 2010 ratings.

## 180120 Legal Institutions (incl. Courts and Justice Systems)

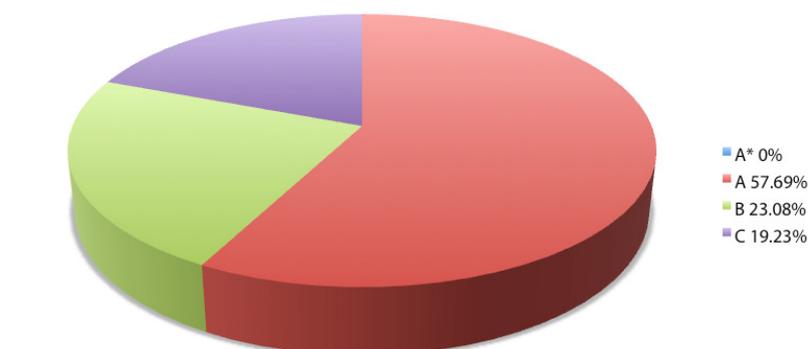


There are approximately twenty journals in this area. There was comparatively little feedback received on these journals and no significant differences in rankings to report.

## 180121 Legal Practice, Lawyering and the Legal Profession

There are approximately ten journals in this area, mainly dealing with legal ethics. There are no significant differences in rankings to report.

## 180122 Legal Theory, Jurisprudence and Legal Interpretation

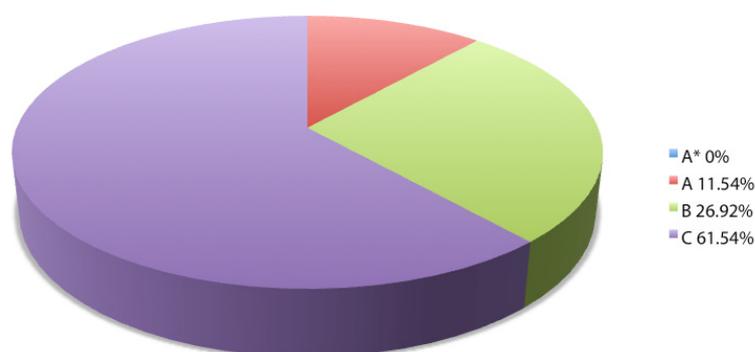


There are less than thirty legal theory journals including titles concerning Law and Humanities, Law and Literature, Traditional Jurisprudence and Legal Philosophy. There appears to be a large number of A ranked journals in this area, but no A\* outlets. The *Griffith Law Review* also regularly covers legal theory articles.

Three journal ranked lower than anticipated. *Acta Juridica* was awarded a B by CALD international review, and a C by the ERA 2010 list. *Legal Theory* was awarded an

A\* by CALD international review, and an A by the ERA 2010 list. There was some international support for an A\* for *Ratio Juris: An International Journal of Jurisprudence and Philosophy of Law*, which was awarded an A by the ERA 2010 list. *Statute Law Review* was awarded a C by CALD international review and an A in the ERA 2020 list.

## 180123 Litigation, Adjudication and Dispute Resolution



There are approximately twenty-five journals in this area, with Evidence and Dispute Resolution focused titles roughly equally represented.

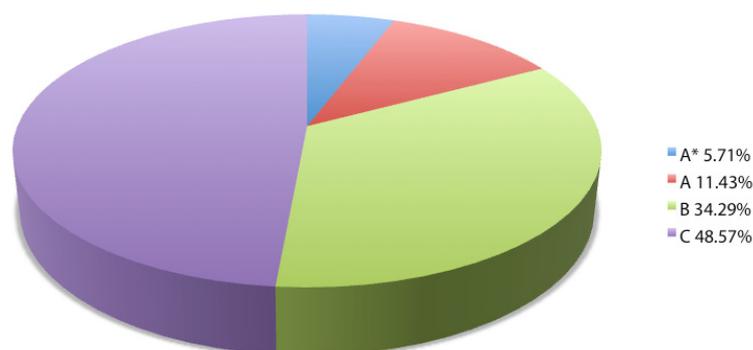
There was comparatively little feedback received on these journals and no significant differences in rankings to report.

## 180124 Property Law

There are only a paltry number of journals on Property Law. Mostly the Water Law journals concern Environmental Law. This area is also published by general law journals.

The CALD international feedback ranked the *Real Property, Probate and Trust Journal* a C. It received a B in the ERA 2010 list.

## 180125 Taxation Law



There are approximately 35 Tax Law journals covering a number of jurisdictions. There were some differences between feedback received from Business Law and Taxation Schools and Law Faculties. Feedback was also received from the Australian Tax Teachers Association.

The CALD Australian and international feedback rated the Australian Tax Review an A. It received a B in the ERA 2010 list.

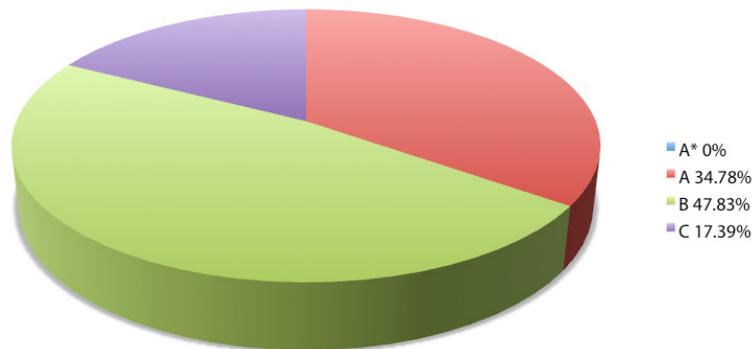
CALD international feedback rated the *Intertax: International Tax Review* a B, whilst it received a C in the ERA 2010 list.

## 180126 Tort Law

There are only a very small number of journals on Tort Law. This area is published by general law journals. Whilst some aspects of Media law and Law and Medicine relate to torts, journals covering these issues are typically distinct in character.

The CALD Australian and international feedback rated the *Torts Law Journal* an A. It received a B in the ERA 2010 list.

## Gender and Sexuality



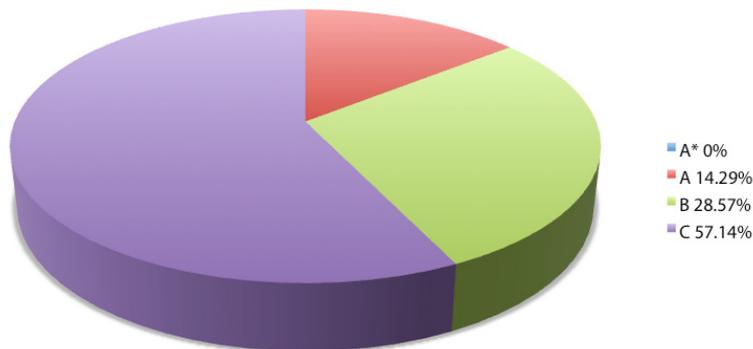
There are over twenty journals dedicated to Gender, Feminist and related scholarship. There is some overlap with Legal Theory, in particular concerning the A-ranked *Australian Feminist Law Journal*. Feedback on some titles was also received from the Law and Society Association of Australia and New Zealand.

There was strong feedback to CALD on almost all journals listed.

*Columbia Journal of Gender and Law* was ranked an A by CALD but one international reviewer suggested it warranted a B, as awarded in the ERA 2010 list, due to concerns over refereeing.

*University of Maryland Law Journal of Race, Religion, Gender and Class* was awarded a B by CALD international review, but received a C in the ERA 2010 list. On balance, *Yale Journal of Law and Feminism* was ranked as B by CALD international reviewers. It received an A ranking in the ERA 2010 list.

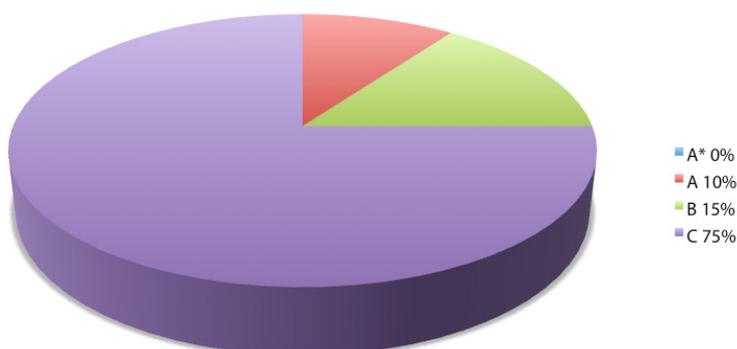
## Law and Medicine



There are over forty journals covering subject matter from Nursing, Psychiatry, Torts and Health Policy. Special editions of general law journals have been dedicated to the area of reproductive rights.

There was comparatively little feedback received on these journals and only one difference in rankings to report. The *Journal of Law and Medicine* was awarded a B by CALD international review. It received an A in the ERA 2010 list.

## Legal Education



There are approximately twenty journals in this area. A special edition of a general law journal has been dedicated to clinical legal education. *Clinical Law Review* was awarded a B by CALD international review. It received an A on the ERA 2010 list.

## Legal History

There are less than ten journals on legal history. For reasons unknown, the *Australian Journal of Legal History* was not included on the ERA 2010 or the ERA 2012

list. It was a C ranked journal in the CALD list.

## Media & Communications

There are less than ten journals in this area. There is some overlap with Intellectual Property Law journals. Whilst some media issues could be classified as Tort Law, journal coverage of media issues tends to be specialist in nature and combines a broad range of regulatory issues pertaining to Media and Telecommunications. There are no significant differences in rankings to report.

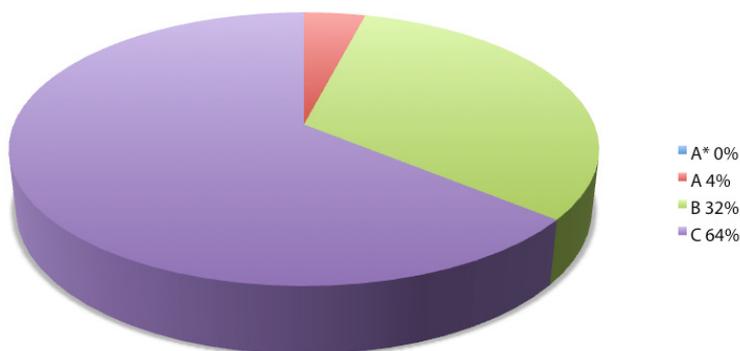
## Religion & Law

There are less than ten international publications in this area. There are no significant differences in rankings to report.

## Sports Law

There are just over ten journals in this area, with some overlap with Intellectual Property and Entertainment Law titles. Whilst there is a relatively new Australian outlet, the *Australian and New Zealand Sports Law Journal*, journals are predominantly associated with US law schools. They all received a C ranking on the CALD and ERA 2010 lists. There are no significant differences in rankings to report.

## Technology Law



This area primarily cover information technology and computers. There are some journals on Genomics and Biotechnology that could also be classified as Medicine and the Law. There are approximately 45 journals in the area, including some Australian outlets.

The *Richmond Journal of Law and Technology* was awarded a C by CALD international review. It received a B ranking in the ERA 2010 list.

## Combined Ranking Outcomes

% Ranks	A*	A	B	C
ARC recommendation	5.00	15.00	30.00	50.00
Administrative Law	12.50	18.75	25.00	43.75
Commercial and Contract Law	-	7.79	22.08	70.13
Comparative Law	6.06	6.06	45.45	42.42
Constitutional Law	7.41	14.81	37.04	40.74
Corporations Law	-	19.05	28.57	52.38
Criminal Law and Procedure	5.36	21.43	21.43	51.79
Environmental Law	-	11.43	27.14	61.43
Family Law	-	25.93	18.52	55.56
Gender & Sexuality	-	34.78	47.83	17.39
Human Rights	4.26	19.15	27.66	48.94
Intellectual Property	-	-	43.90	56.10
International Law	5.95	22.62	27.38	44.05
International Trade	3.92	25.53	15.69	56.86
Labour Law	6.67	20.00	40.00	33.33
Law & Medicine	-	14.29	28.57	57.14
Law & Society	7.58	18.18	30.30	43.94
Legal Education	-	10.00	15.00	75.00
Legal Institutions	-	5.00	40.00	55.00
Legal Theory	-	57.69	23.08	19.23
Litigation, Adjudication & Dispute Resolution	-	11.54	26.92	61.54
Taxation Law	5.71	11.43	34.29	48.57
Technology Law	-	4.00	32.00	64.00

## Conclusion

An analysis of law journal rankings with reference to specialisations shows that there is no standard distribution of ratings across research areas. A plethora of A and A\* journals, or the relative absence of these, does not necessarily indicate anything about the strength or quality of any particular research areas in Australia.

A relatively poor showing may point to too many outlets, too few well-established outlets, or mixed professional and academic outlets in that specialisation. A high number of A\* and A journals may also point to the strength and unity of national and international research networks in some areas and the ability to mobilise in relation to journal ranking exercises.

This data does show that researchers in some areas may have access to a much wider choice of well regarded publication venues than others, even taking the US bias of the journal list into account. This may work to the advantage of these researchers when it comes to more superficial assessments of track record and research strengths.

It needs to be remembered that book chapters also provide an alternate avenue for publication and where these are related to grant activity they may be expected to be of high quality. Where there may be few journals and few high ranking journals in some research areas, the situation may be ameliorated for some researchers once publication areas of general law journals are taken into account.

## Appendix 3.1

### ERA Journal Ranking Tiers

A\* (top 5%) – contain the highest quality papers from the world’s leading researchers; the editorial board is also composed of world leaders; rejection rates are normally very high; very robust peer review process (double blind?); junior academics would shout a round of drinks the first time they got a paper accepted in one of these journals.

A (next 15%) – also publish very high quality papers with a significant proportion coming from the world’s leading researchers; could be the leading journal in a sub-discipline; the editorial board contains many leading researchers; senior academics would routinely publish in these journals, and junior academics would strive to get their best work accepted here; normally high rejection rate.

B (next 30%) – most articles are methodologically sound and there is a robust peer review process; PhD students would usually aim for these journals and PostDocs would expect to publish in them; solid editorial board with perhaps a modest representation of top researchers.

C (next 50%) – the rest (but must be peer reviewed).

## Appendix 3.2

### ARC Template for Australian Ranking of Journals and Publishers

Journal Acronym: \_\_\_\_\_  
Full name: \_\_\_\_\_  
Website: \_\_\_\_\_  
Proposed rank A\*  A  B  C   
Area of research \_\_\_\_\_

#### Peer review process

Number of referees for each paper: \_\_\_\_  
Review process: blind  double blind  open   
Are authors invited to write a rejoinder? yes  no   
Acceptance rate (if known): \_\_\_\_

If need be, please provide further comment on the review process and acceptance rates.

#### Editorial Board

Comment on the composition of the board (e.g. the proportion that they are leading researchers in the field, indicate their institutional affiliations; are Board members regularly involved in selection of referees and/or reviewing?)

If need be, please provide further comment on the role of the Editorial Board

#### Quality of work

Comment on the quality of the work (e.g. whether the work shapes the field; whether the quality is uniform or 'patchy', etc) and provide evidence to support claims

#### Evidence of engagement with the global research community

For example, origins of authors, origins of special issue editors, topics covered etc

#### Comparative assessment

Name some other journals/publishers in the field that are:  
of similar quality? \_\_\_\_\_  
of higher quality? \_\_\_\_\_  
of lower quality? \_\_\_\_\_

#### Participants Are the top researchers in the field regular contributors?

all  most  some  none

Please provide an analysis (with evidence) of contributors to the journal over the past five years

Additional contextual information Please provide any additional information that will assist in a comparative assessment of the journals/publishers.

Argument for change of status – must address the criteria

Your name and institution, and your position in relation to the journal

## Appendix 3.3

### CALD Phase Two consultations: Specialist Academic and Professional Bodies

American Society of International Law - <http://www.asil.org/>  
Association of American Law Schools - <http://aals.org/>.  
Australian Institute of Administrative Law (AIAL)  
Australian and New Zealand Society of International Lawyers (ANZSIL)  
Australasian Tax Teachers Association (ATTA)  
British Institute of International and Comparative Law - <http://www.biicl.org/>  
Canadian Law and Society Association - <http://www.acds-clsa.org/en/index.php>  
Committee of Heads of University Law Schools (UK)- <http://www.ukcle.ac.uk/resources/temp/chuls.html>  
Commonwealth Lawyers Association - <http://www.commonwealthlawyers.com/default1.asp>  
Corporate Law Teachers Association - <http://users.austlii.edu.au/clta/>  
Commercial Law Association of Australia - <http://www.cla.org.au/>  
Council of Canadian Law Deans - <http://www.cclld-cdfdc.ca/home.html>  
International Association for the Advancement of Teaching and Research in Intellectual property (ATRIP)  
International Law Association (UK based) <http://www.ila-hq.org/>  
Law Commission of Canada - <http://www.lcc.gc.ca>  
Law Commission (England & Wales) - <http://www.lawcom.gov.uk/>  
Law and Society Association (US) - <http://www.lawandsociety.org/>  
Law and Society Association of Australia and NZ - <http://www.lsaanz.org/>  
Society of Legal Scholars (UK) – <http://www.legalscholars.ac.uk/text/index.cfm>  
Socio-Legal Studies Association (UK) - <http://www.slsa.ac.uk/>  
Tax Research Network - <http://www2.warwick.ac.uk/fac/soc/wbs/research/trn>

## Appendix 3.4

CALD Phase Two consultations: Specialisation areas for international review

- Criminal; Criminal Justice
- Comparative law
- Commercial law
- Corporate law
- Dispute resolution
- Environmental law
- Evidence
- Family; Social Welfare
- Human Rights
- Indigenous People and the Law
- Intellectual Property
- International (Public/Private)
- International Trade
- Labour
- Law and Economics
- Legal Theory
- Media/IT
- Medical Law
- Private Law
- Property
- Public Law
- Tax

## Part Four: General Law Journal Ranking

### Introduction

This section provides data analysis of publications in ERA 2010 A and A\* Australian general law journals. This includes the:

- *Federal Law Review (FLR)*
- *Griffith Law Review (GLR)*
- *Melbourne University Law Review (MULR)*
- *Monash University Law Review (Monash)*
- *Sydney Law Review (SLR)*
- *University of New South Wales Law Journal (UNSWLJ)*
- *University of Queensland Law Journal (UQLJ)*

These outlets are analysed with reference both the institutional alignment of authors and the respective subject areas covered.

The period, 2006-2010, was selected for analysis because this time span is long enough for a snapshot of recent history to emerge. This timeframe also aligns with the ERA 2010 period of assessment.

The purpose of this section is to provide some general information about available opportunities for Australian researchers to publish in Australian general law journals. In terms of subject areas published, given the size of the sector and number of publications available one would not expect every area of research to be catered for in any general law journal. Furthermore one would hope to find different areas of scholarship catered for by different general law journals. Legal research would not be well served if our general law journals uniformly covered the same areas. The relative absence of a research specialisation within general law journal coverage is also not necessarily a problem if that area is well catered for by specialist journals that publish Australian authors.

The A and A\* general law journals are considered highly prestigious outlets, however there are historical trends reflected in publication outcomes. An analysis of publications in these outlets in the period 2006-2010, with reference to institutional affiliation of authors and areas of specialization, provides useful information to researchers about current journal practices.

**RECOMMENDATION: 4.1** That CALD publish Part Four: General Law Journal Ranking to provide legal researchers with pertinent information about general law journal outlets.

## Submission and Acceptance Practices

The process by which researchers choose to submit research to particular outlets is very mysterious. Word of mouth, mentoring and the suggestions of colleagues with experience of particular journals are clearly key factors. Submission choice may also reflect presumed strengths of the associated faculty, with researchers wanting to engage these academics in reviewing their work. Particular concentrations may also be explained in some cases by student interest which may or may not align with that of faculty staff, as well as presumptions that if a particular journal has accepted like work previously, it may welcome similarly themed articles in the future.

Editors of A and A\* general law journals reported acceptance rates of articles sent to review in a range between 18% - 50%, with an average acceptance rate of 30%. For additional details about editorial practice see Appendix 4.1. Most journals involve students working with academics to some degree, with the *MULR* and *UNSWLJ* most emphatically reporting themselves as entirely student run and independent of faculty. For outlets with student editors it cannot be assumed that there was or is a close connection between students and faculty staff in editorial decision making. The degree to which students seek and take faculty advice on what to send to review, the selection of reviewers and, ultimately, publication appears to be variable.

During the ERA journal ranking consultations there were complaints about the peer review processes concerning three of the seven A and A\* journals. These complaints suggested practices were not as they should be. Additionally, some researchers reported frustration at experiences with a wide range of general law journals and especially at wrongful attributions by disgruntled authors that they were involved in editorial decisions not to send submissions for review, or were reviewers of articles rejected, commented on, or published, in their area by their home faculty general law journal. Given the number of scholars working in particular areas and close contacts between Australian researchers, some researchers also noted that the idea of “blind” peer review can also be quite problematic, notwithstanding attempts by editors to adhere to good practice. How these factors affect submission choices and publication outcomes is unclear, however all these factors affect the reliability of quality assessments of general law journals made with reference to perceived connections to, and research strengths of, associated faculties.

As we do not really have much reliable information about individual submission choices or editorial decision making, it is inappropriate to read the following analysis as necessarily reflecting particular instances of institutional or editorial

bias. No adjustments have been made to take into account the relative number of issues or articles appearing in journals. As such, extra caution needs to be exercised in relation to any comparisons made between journals.

## Author Institutional Alignment

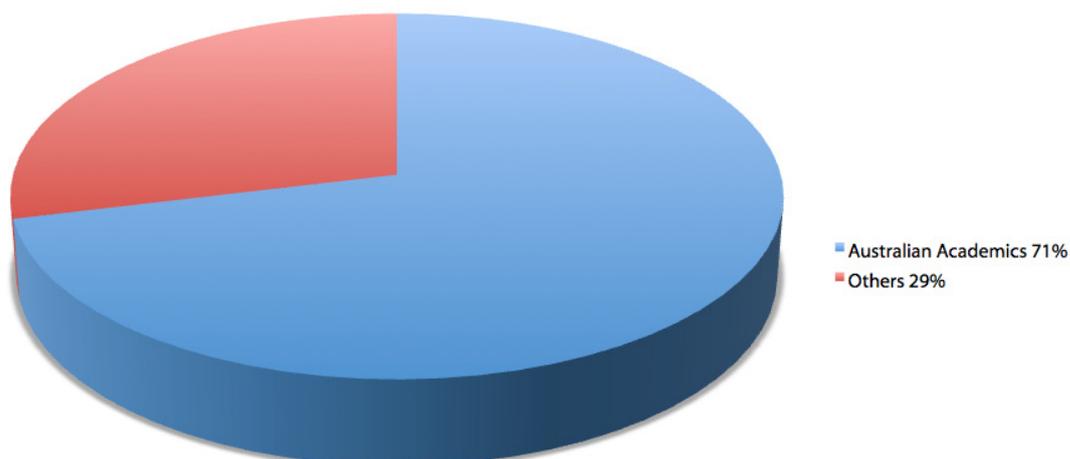
An analysis of highly ranked general law journals with respect to the institutional alignment of authors gives some indication of local opportunities for Australian researchers to publish in these outlets. The category of “Other” included members of the judiciary, profession, academics based at overseas institutions and student authors.

There is a case for always excluding publications from members of the judiciary from any research metrics, given it is hard for editors to reject these contributions and sometimes their relevance is because of their authorship.

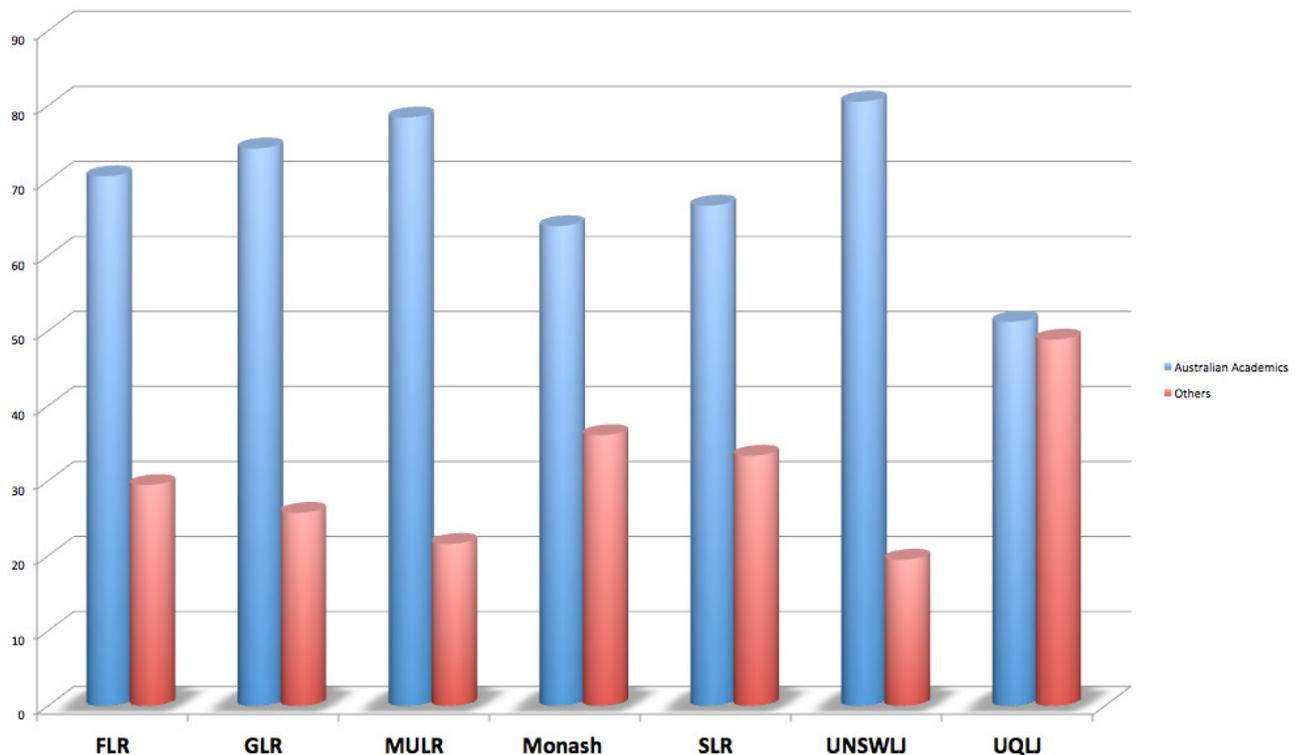
To some extent the “Other” category is suggestive of the internationalization of an outlet, however where an academic had an ongoing affiliation with an Australian institution, the Australian affiliation was considered the relevant one for the purpose of this analysis. Casual visitors, including those on sabbaticals, were treated as “Other”. The author affiliation classification refers to institutions, rather than faculties or schools, and as such does not necessarily denote a law faculty publication.

## Publication by Australian Authors

### Australian Academics v Other Authors (Internationals, Judges, Legal Profession, Students) Total



## Australian Academics v Other Authors (Internationals, Judges, Profession, Students) By Outlet

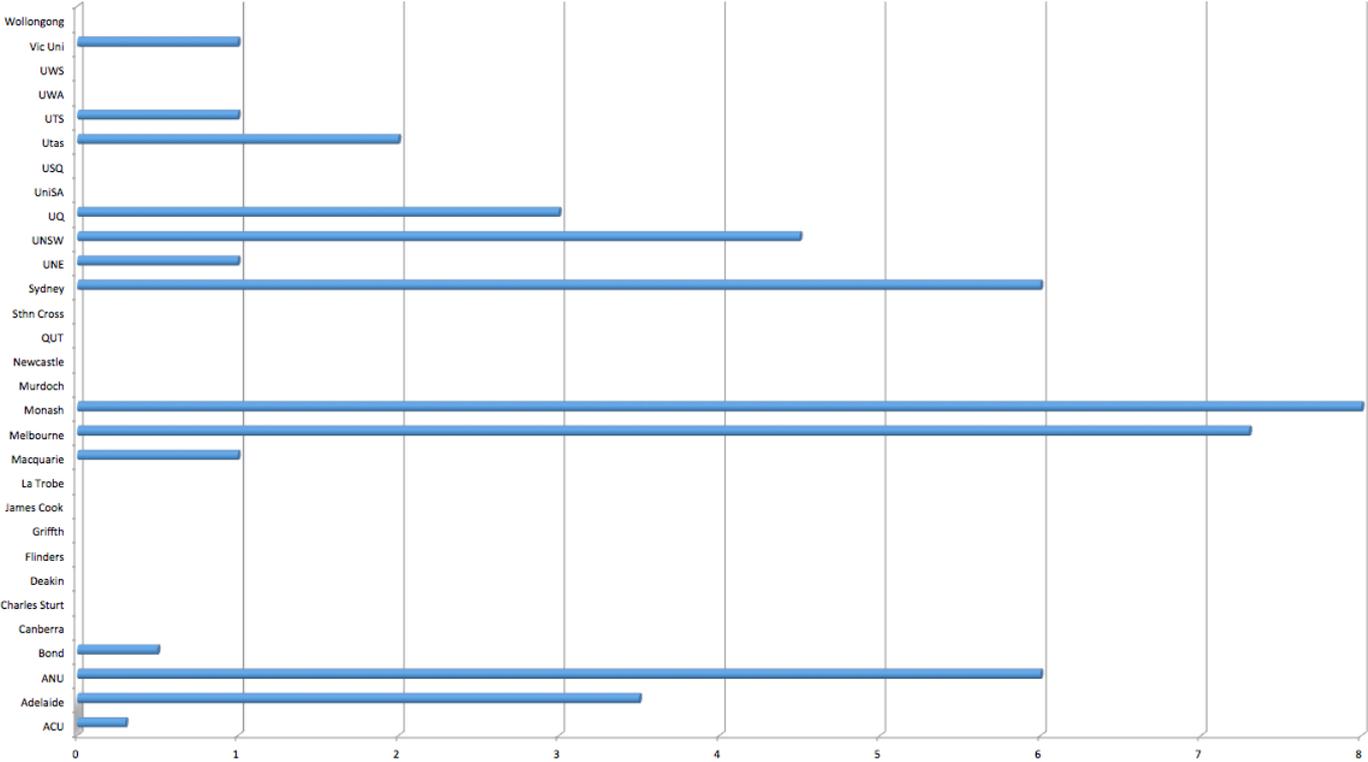


There is quite a significant discrepancy between journals concerning the extent to which they have published authors other than local academics. In the period surveyed the *UQLJ* has the highest proportion of publication by internationals, judges, members of the legal profession and students (49%) and *UNSWLJ* the lowest (19%), with the average being 29%. The *SLR* had a higher number of student authors in the “Other” category than other outlets, invariably drawn from the home institution.

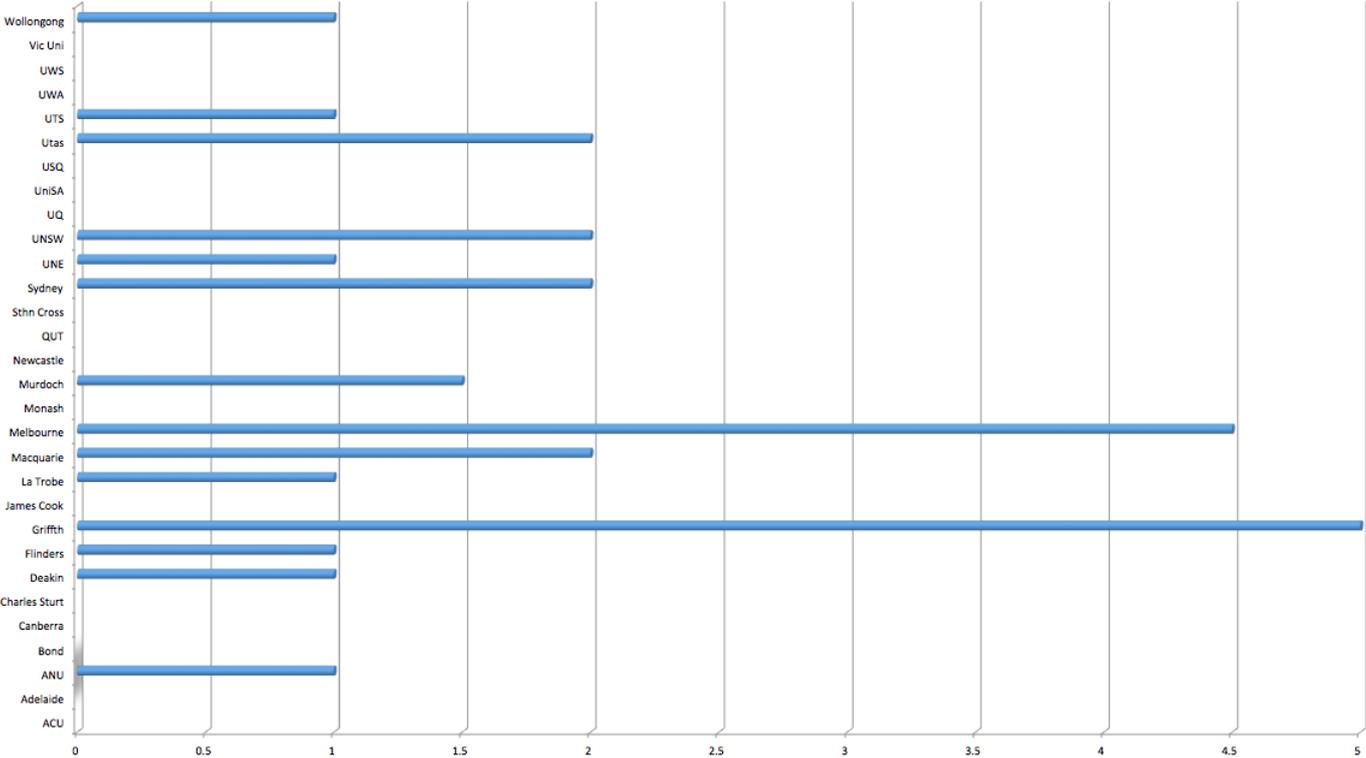
### Home Institutional Representation

Care needs to be taken in concluding that a high degree of author institutional alignment with publication in the home faculty is suggestive of bias. One would need to know more of the distribution of alignments of submissions received and rejected to begin such an inquiry, as well as most obviously something of the quality of these submissions and the review process. This information was not available for analysis. Timeliness of publication may have also affected publications in *Monash* whose 2010 volumes remained unavailable in February 2012.

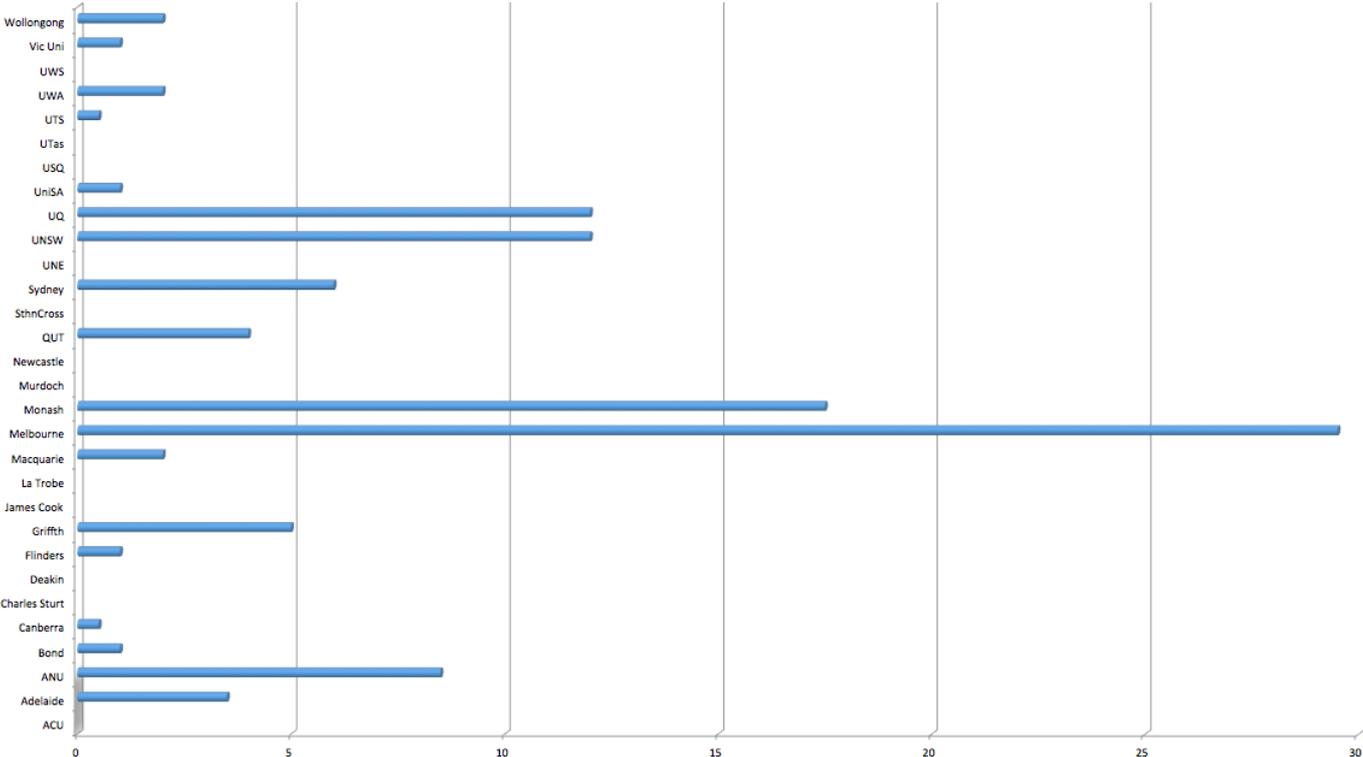
## Federal Law Review Author Affiliations



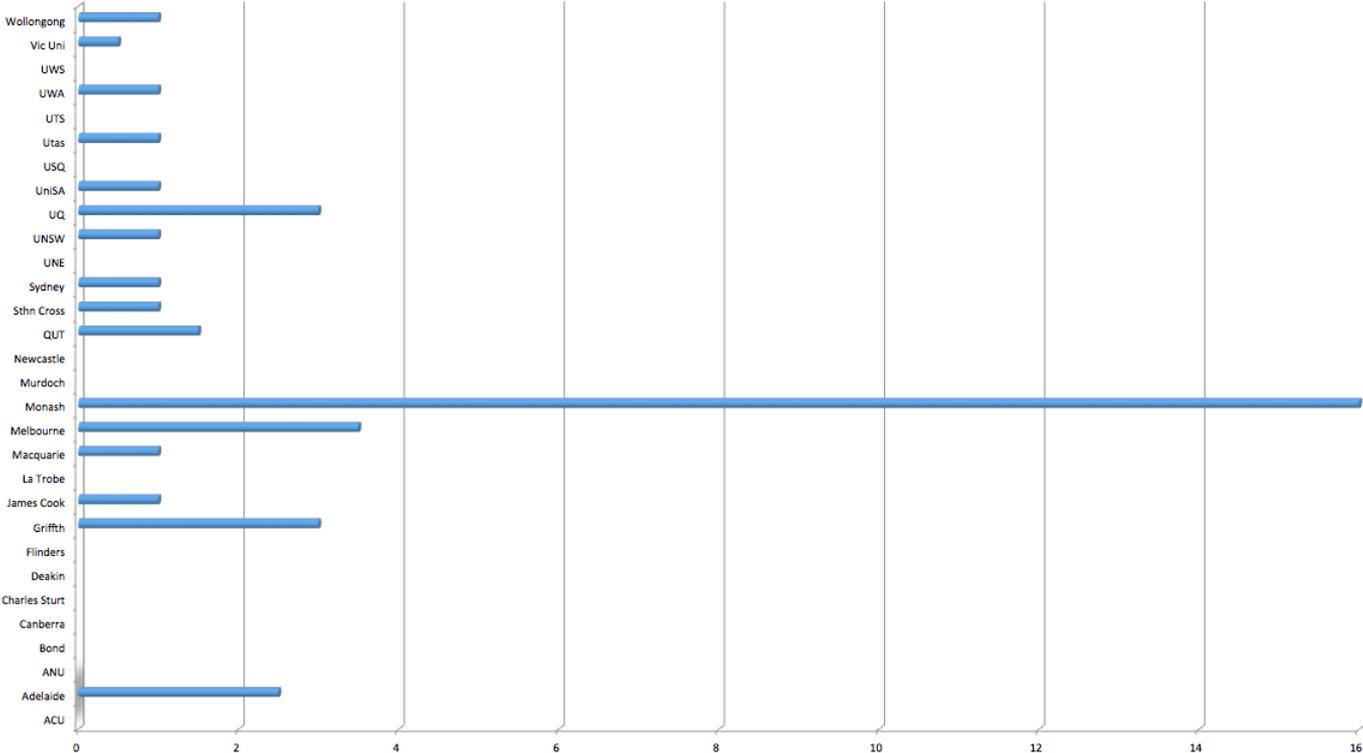
## Griffith Law Review Author Affiliations



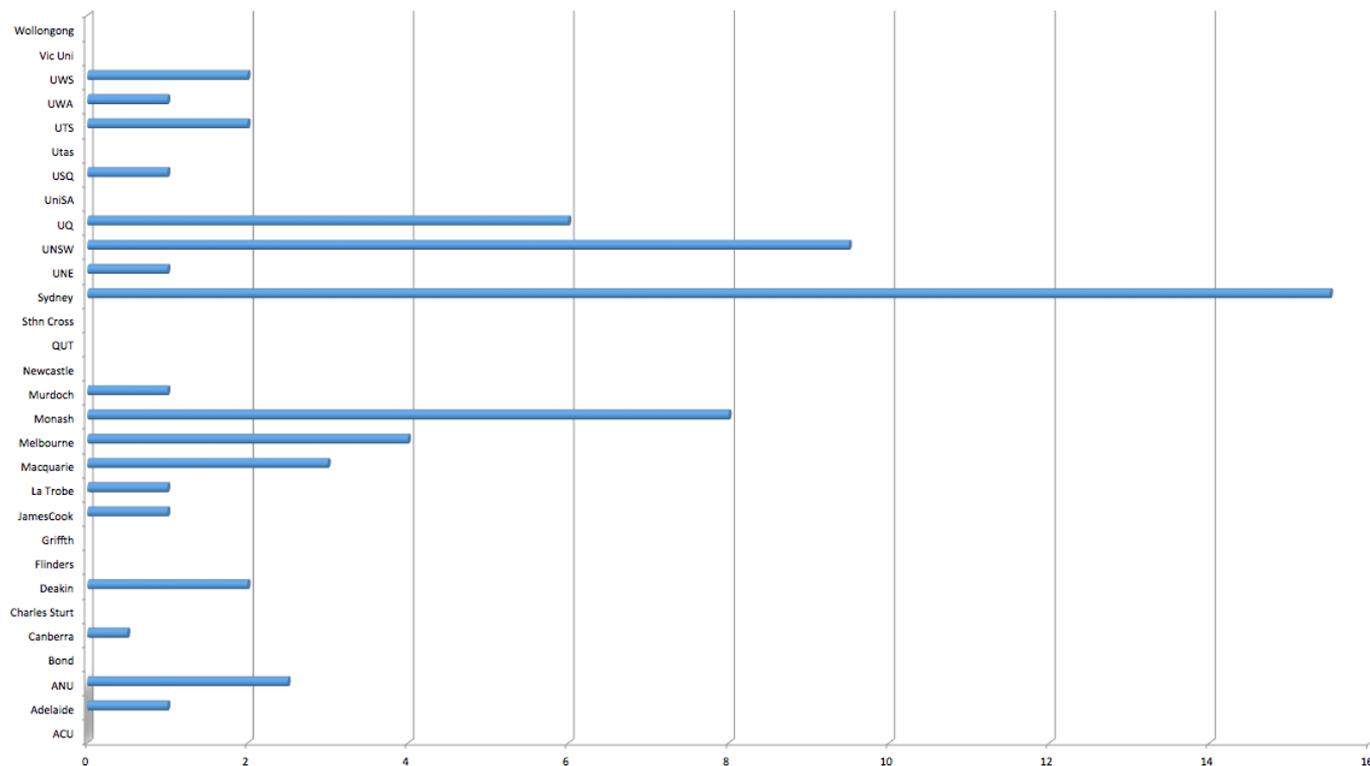
## Melbourne University Law Review Author Affiliations



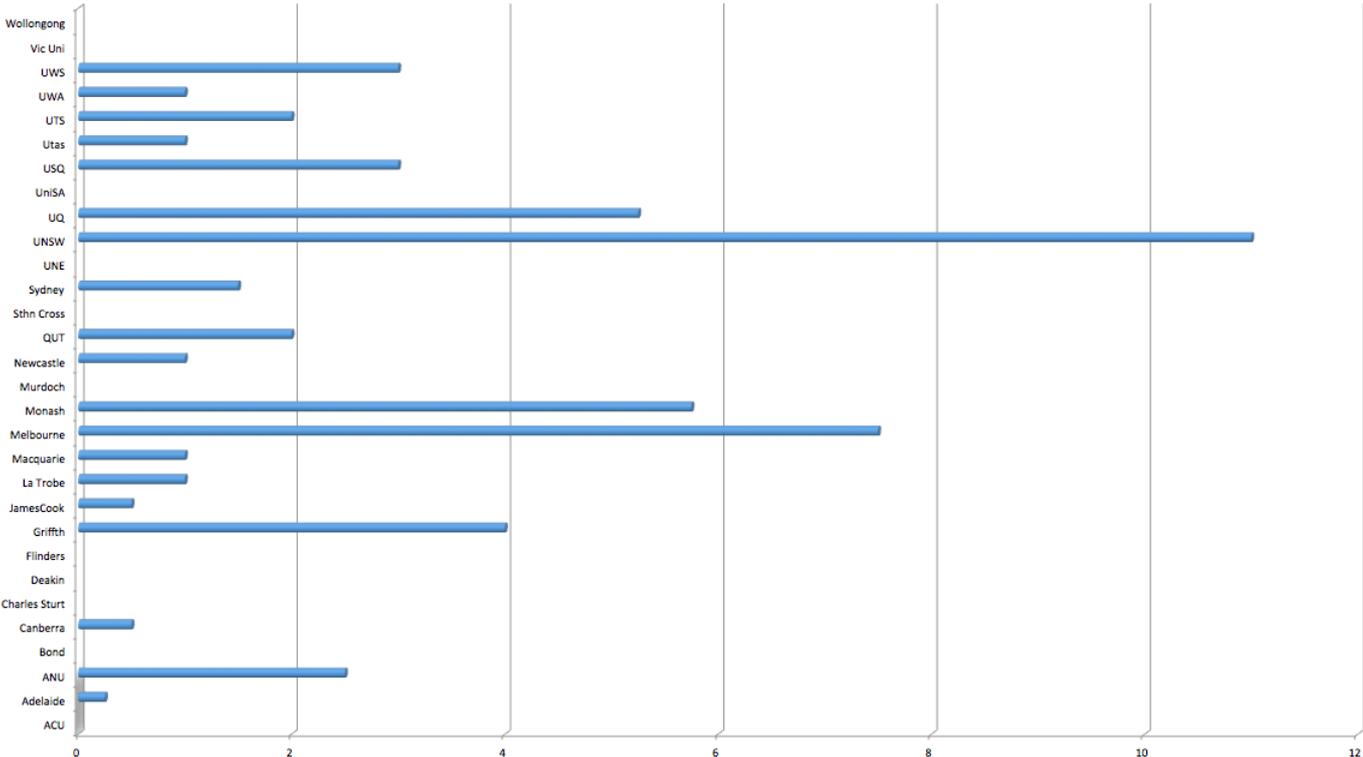
## Monash University Law Review Author Affiliations



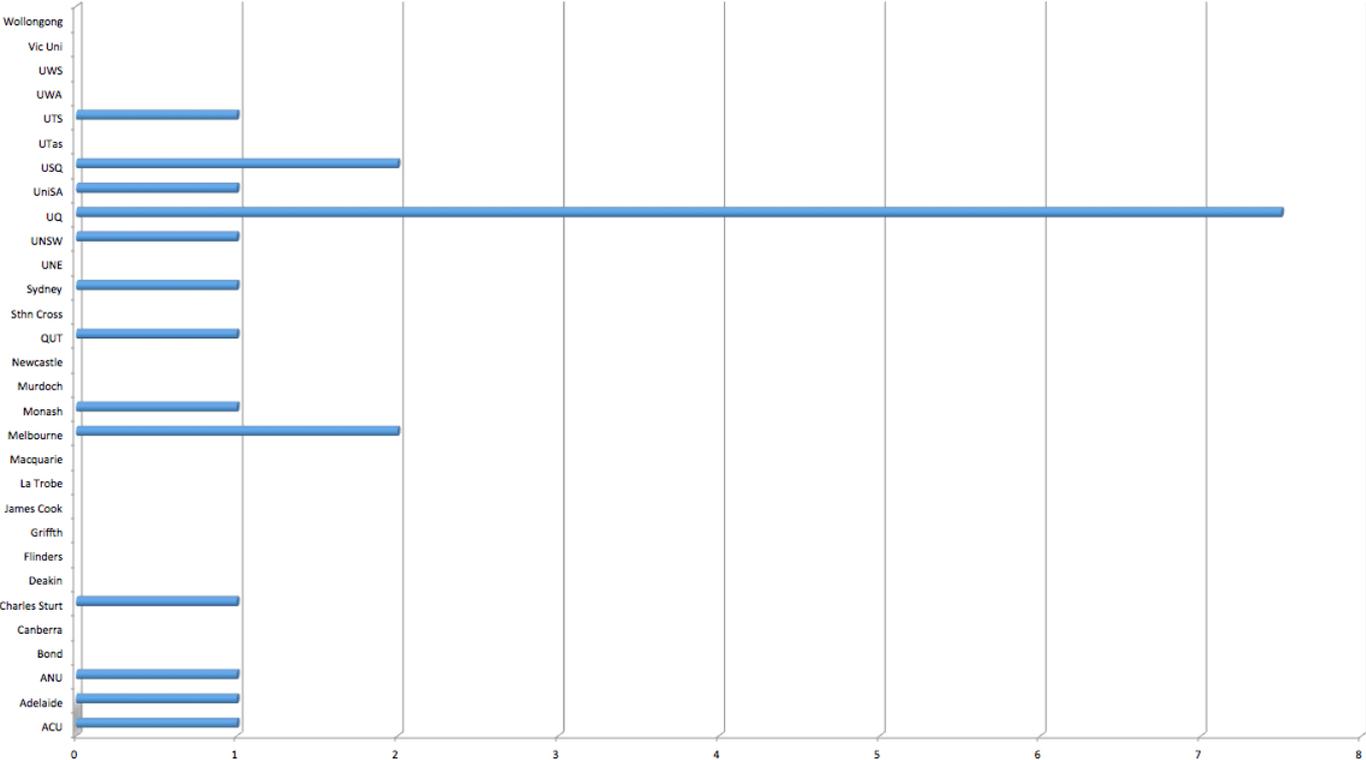
## Sydney Law Review Author Affiliations



## University of NSW Law Journal Author Affiliations



## University of Queensland Law Journal Author Affiliations



To the extent to which any conclusions can be drawn from these tables, it is striking that the *FLR* is the only general law publication that does not show a higher representation of home institutional authors over authors from other Australian institutions. Perhaps the federal law focus of the outlet is a contributing factor here, although the profile of specialist areas covered in this journal does not strike as markedly different to the profile of many of the other general law journals (see below). *Monash* and the *UQLJ* show the highest proportion of publications by Faculty authors.

Publication in a home institution's journal is considered as "bad form" by some researchers in that it could be suggestive of favourable treatment or lacking courage, however where submissions are blind peer reviewed outside of the home institution there is an available check against perceptions of bias. The question of over-representation of home institution author affiliation does perhaps warrant some further discussion with journal editors to alert them to the potential of the appearance of bias in a manner that could affect journal reputation over the longer term. It would be helpful for greater transparency in relation to journal practice or policy (if there is any) in relation to the treatment of submissions by home institutional authors. As noted at the outset however, there may be sound reasons for the data presented.

#### RECOMMENDATION 4.2

That CALD, through Law Deans and Associate Deans (Research), alert all General Law Journal editors to the analysis of author affiliation and potential for the reputational harm to be caused by perceptions of a home institutional bias.

#### RECOMMENDATION 4.3

That CALD, through Law Deans and Associate Deans (Research), engage faculty and legal researchers more generally in discussion as to appropriate policy and practice to assist in fostering fairness in editorial decision-making about submissions to Faculty general law journals.

## State Representation

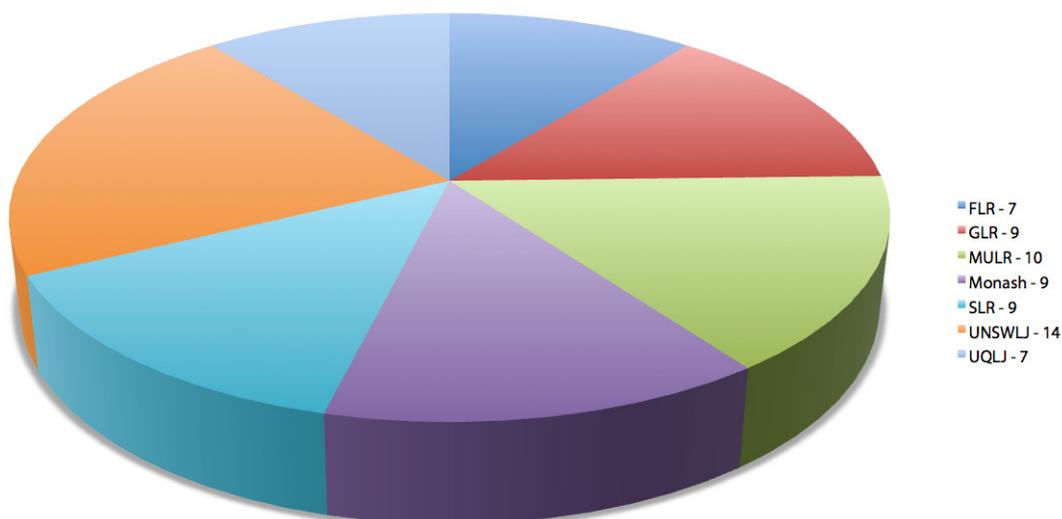
Home state representation does appear to affect submission and publication outcomes and, taking into account the subject matter of the articles, this is not adequately explained by jurisdictional issues alone. It is likely that patterns in terms of State representation speak to existing networks between Australian researchers. The publications data was not mapped against the respective size of the research community in the State. As such the analysis only provides a very rough indication of patterns.

- The *FLR* published roughly equally from NSW or Victoria.
- The *GLR* published twice as many NSW authors than Queensland authors, and slightly more Victorian authors than Queensland authors.
- The *MULR* drew more than half of publications from Victoria and equal amounts from NSW or Queensland.
- *Monash* drew more than half of publications from Victorian institutions and unusually, published more than twice as many Queensland authors than from NSW.
- The *SLR* drew more than half of publications from the home state, and a quarter of publications from Victoria.
- Unusually the *UNSWLJ* published roughly equally from Queensland, Victoria or NSW.
- *UQLJ* published approximately three times as many articles from Queensland affiliated institutions (though none from Griffith), with equal proportions from NSW and Victoria.

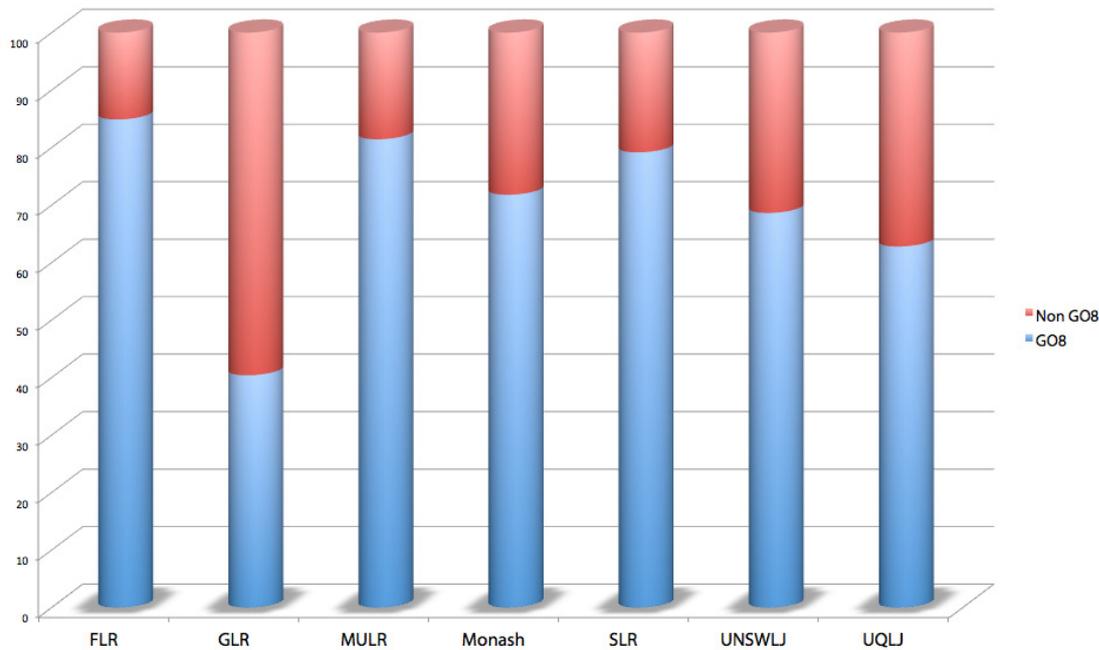
## Non-GO8 Representation

Research quality is not the exclusive domain of the GO8, however with the exception of the *GLR*, the A and A\* general law journals are GO8 publications. It is welcome to see that all journals published material from a diverse range of non-GO8 institutions, including from institutions with relatively new law schools.

## Number of Non-GO8 Institutions Represented



## Proportion of Non-GO8 Publications



Given significant differences in faculty sizes, with GO8 institutions generally being larger, the proportion of non-GO8 to GO8 authors is not particularly meaningful. However the figures do become meaningful through comparison between outlets. The *FLR* and *MULR* publish the least non-GO8 authors, and unsurprisingly, given its publication rate for Queensland authors, the *UQLJ* publishes the highest proportion of non-GO8 authors of the GO8. The *GLR* publishes more from the non-GO8 institutions which may also reflect submission practices by non-GO8 authors.

## Analysis Of General Law Journals By Subject Area

In advising researchers where to submit, it is helpful to consider patterns that arise from past publication outcomes. A and A\* general law journals are elite publications, however it would be unlikely that journals would publish research on every area of law. Journal editors may be more familiar with some kinds of legal research and this could affect submission outcomes. It cannot be assumed that any publication in a general law area is superior to a publication in a specialist Australian outlet, however it is often treated as such, especially where one is assessing beyond their own area of specialist expertise.

## Other Kinds of Subject Matter

To analyse C1 journal article areas it is necessary to exclude material that does not satisfy HERDC criteria. In the analysis below comments and review essays were treated as regular peer reviewed articles where they superficially appeared to meet the HERDC definition of research. Many journals peer review these submissions, but they are not routinely identified as such. Book reviews and case notes were not included in the analysis as they do not meet the HERDC criteria for a reportable research publication.

## Special Editions

Some general law journals combine an open submission policy with special themed, forum editions and conference papers reflecting faculty events and the interests of student editors. Though these editions include peer reviewed research, articles in these editions were not included in the broader analysis of general law journal subject matter below, so as not to distort results concerning open submissions. For an overview of the subject matter of Special Editions 2006-2010 see Appendix 4. 2.

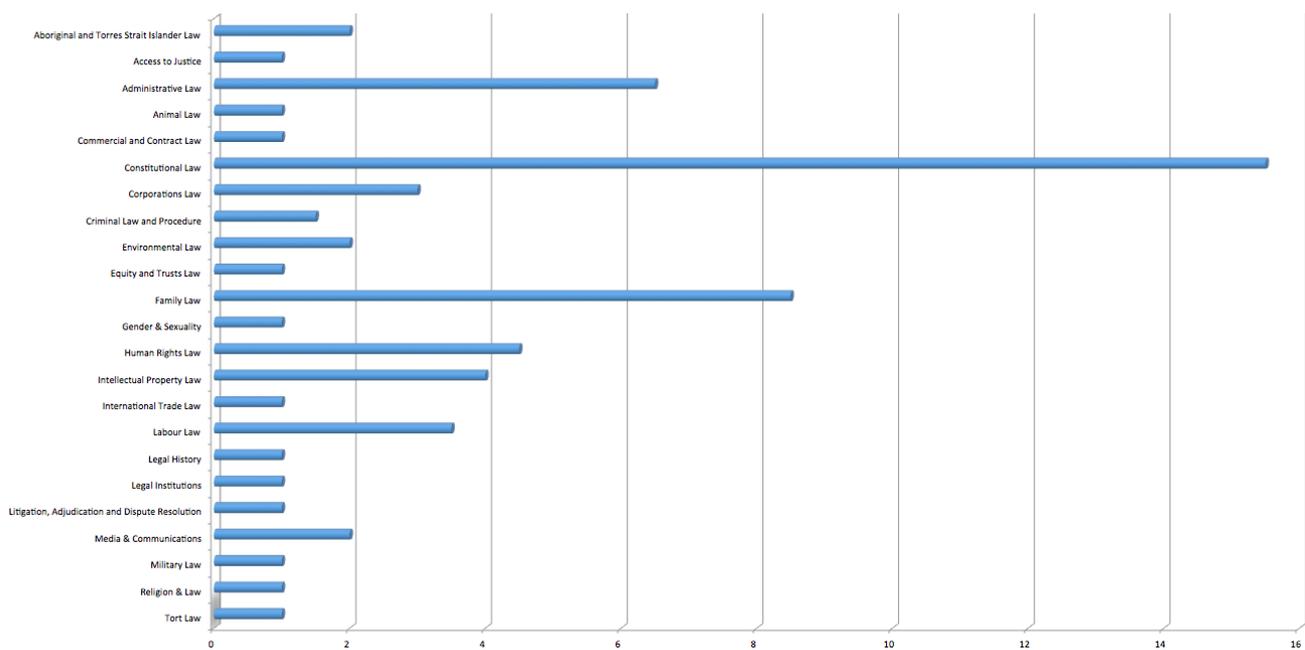
## General Law Journal Open Submission Subject Matter

It needs to be noted that as well as distinguishing legal research by specialisation, there are different kinds of scholarship, approaches to the subject matter, and methodologies used by researchers. See CALD, Statement on the Nature of Legal Research 2005. The *GLR* explicitly states an interest in interdisciplinary, social and critical legal research. None of the other law journals state a preference for any particular kind of legal scholarship. It was not possible to analyse the general law publications with reference to this aspect, however this factor may affect submission choices and editorial decision making.

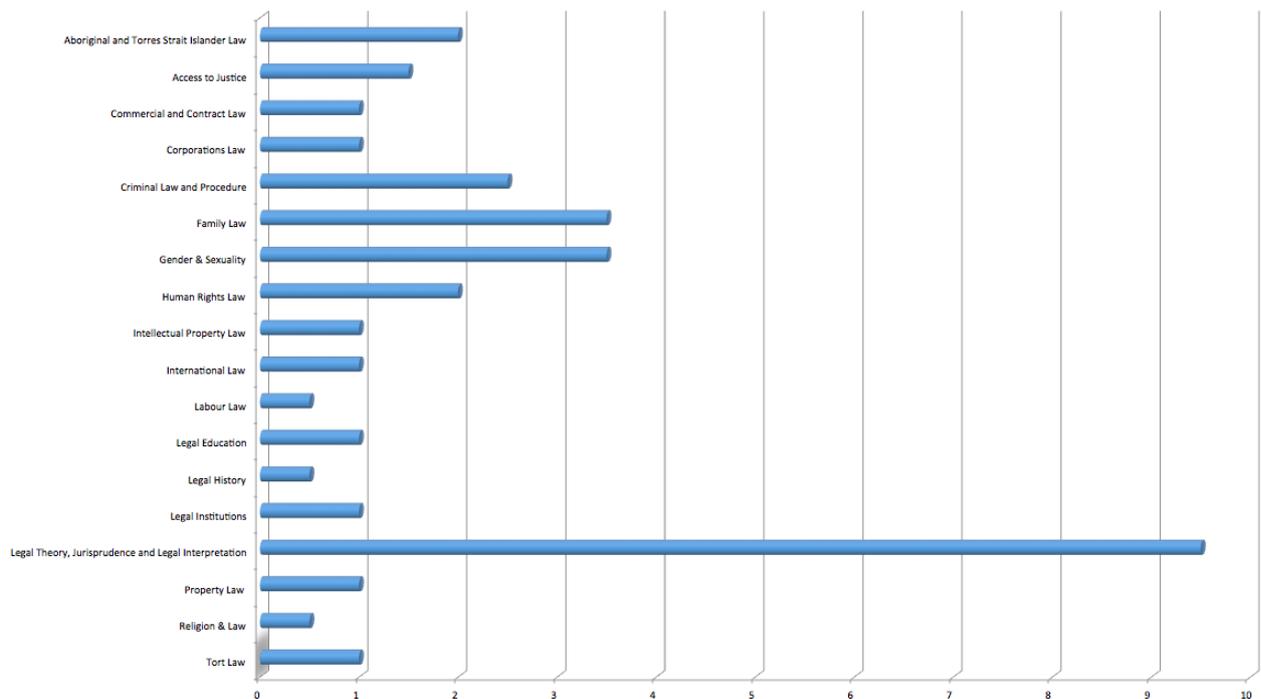
Most obviously, it also needs to be noted that the *FLR* has the limitation that research needs to relate to the broad area of federal law.

## General Law Journal Subject Matter

### *Federal Law Review* subject areas



## Griffith Law Review subject areas



Note: Special editions also in these areas:

180117 International Trade Law: The Future of Financial Regulation: Lessons From The Global Financial Crisis

180122: Legal Theory, Jurisprudence and Legal Interpretation: Changing Citizenships

Legal Education: Professionalism in Clinical Legal Education

180122 Legal Theory, Jurisprudence and Legal Interpretation: The Lex of Somatechnics

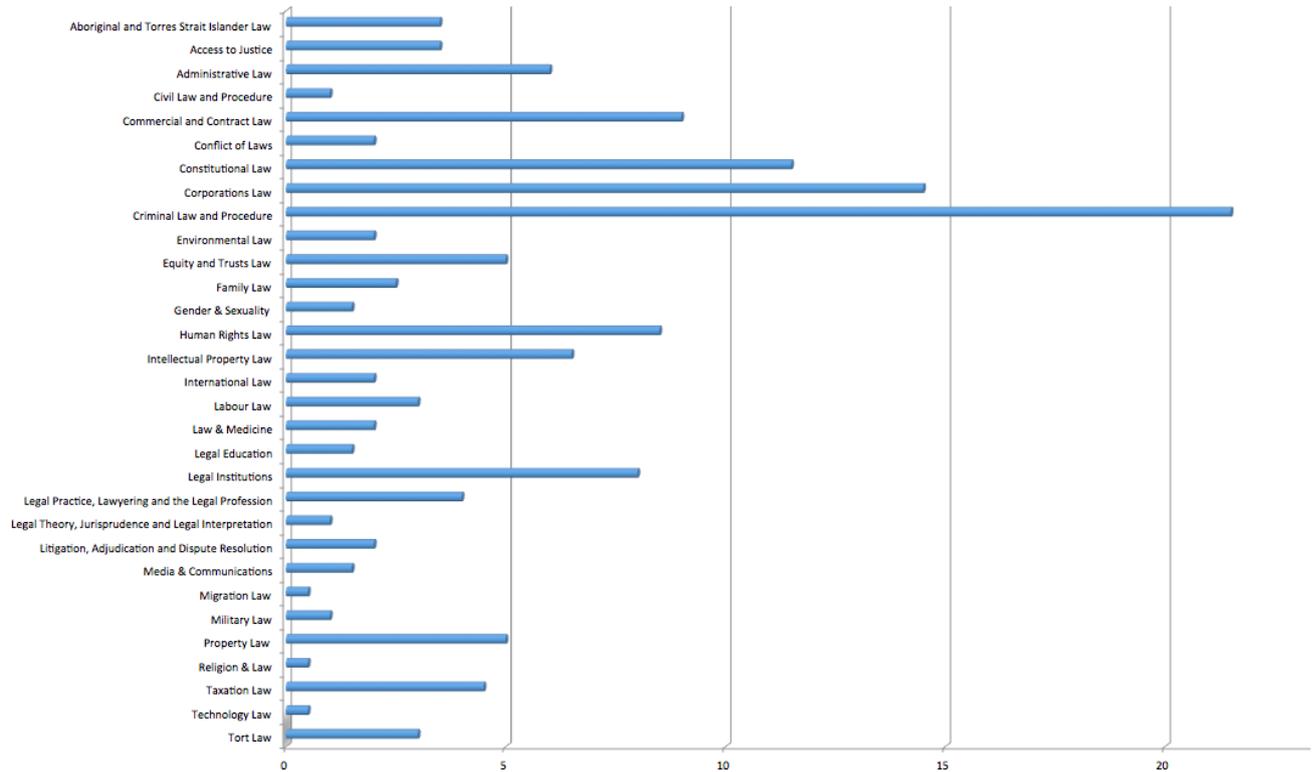
Gender & Sexuality: In Dissent: Queering the Voice of Law

180122: Legal Theory, Jurisprudence and Legal Interpretation: Invisible Laws, Visible Cities

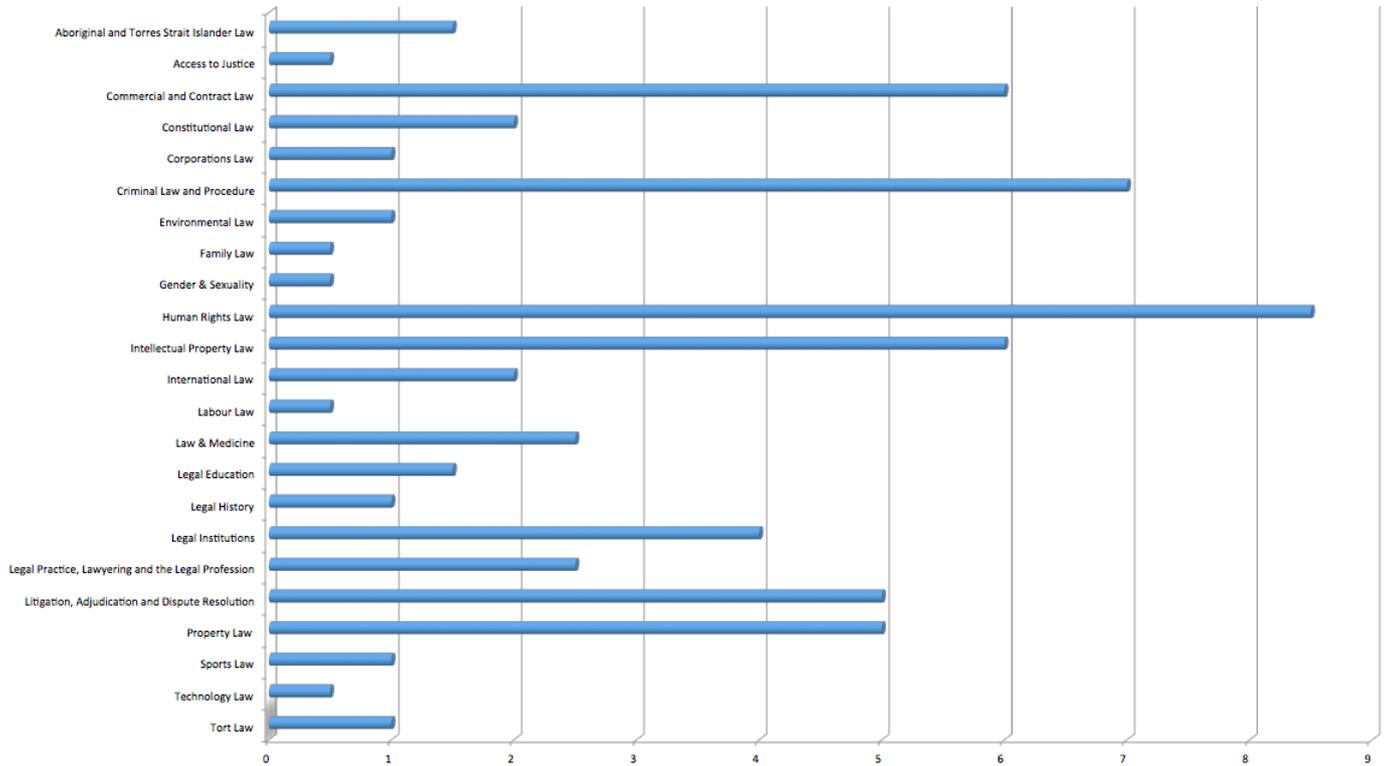
180101 Aboriginal and Torres Strait Islander Law & 180114 Human Rights Law : Of the South

180105 Commercial and Contract Law: Credit and Consumer Law

## Melbourne University Law Review subject areas

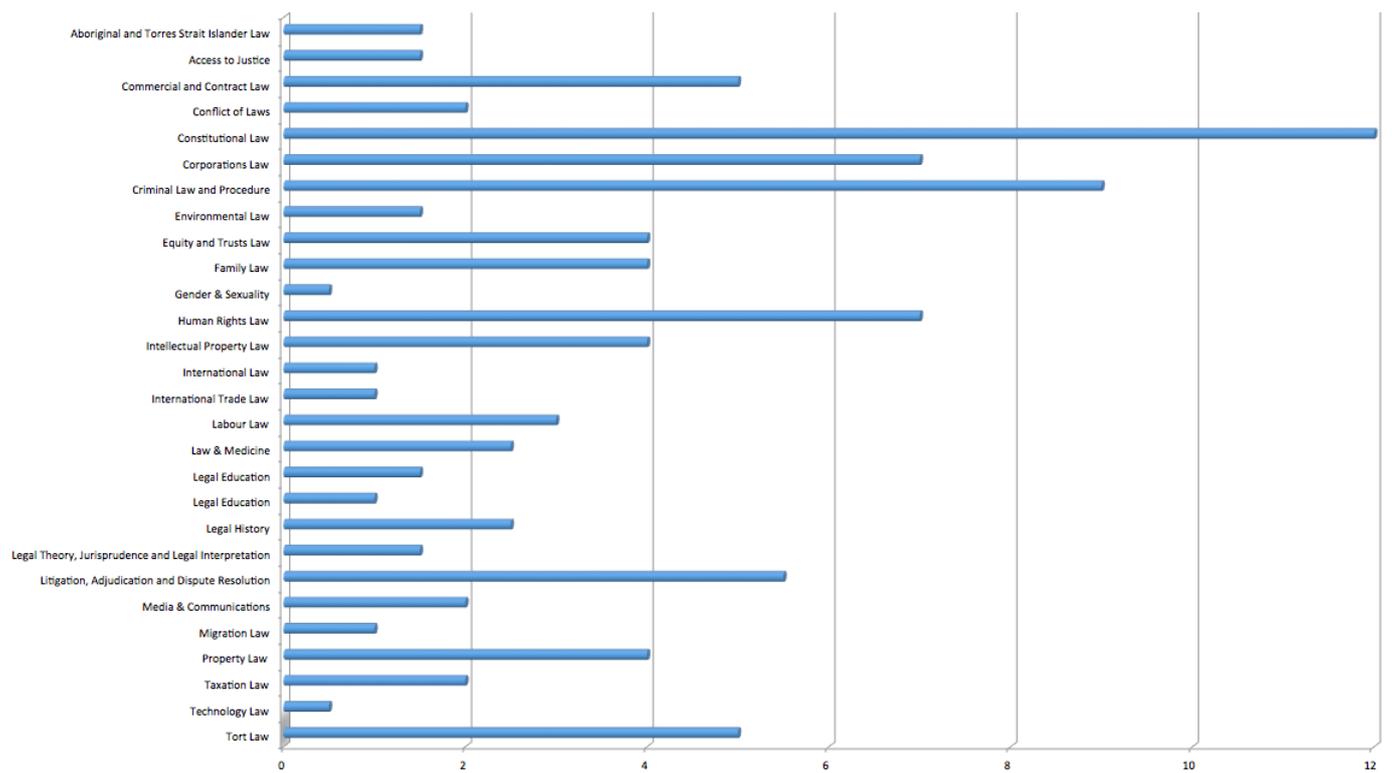


## Monash University Law Review subject areas



Note: Due to unavailability, 2010 editions could not be included in this analysis.

## Sydney Law Review subject areas



Note: Special editions also in these areas:

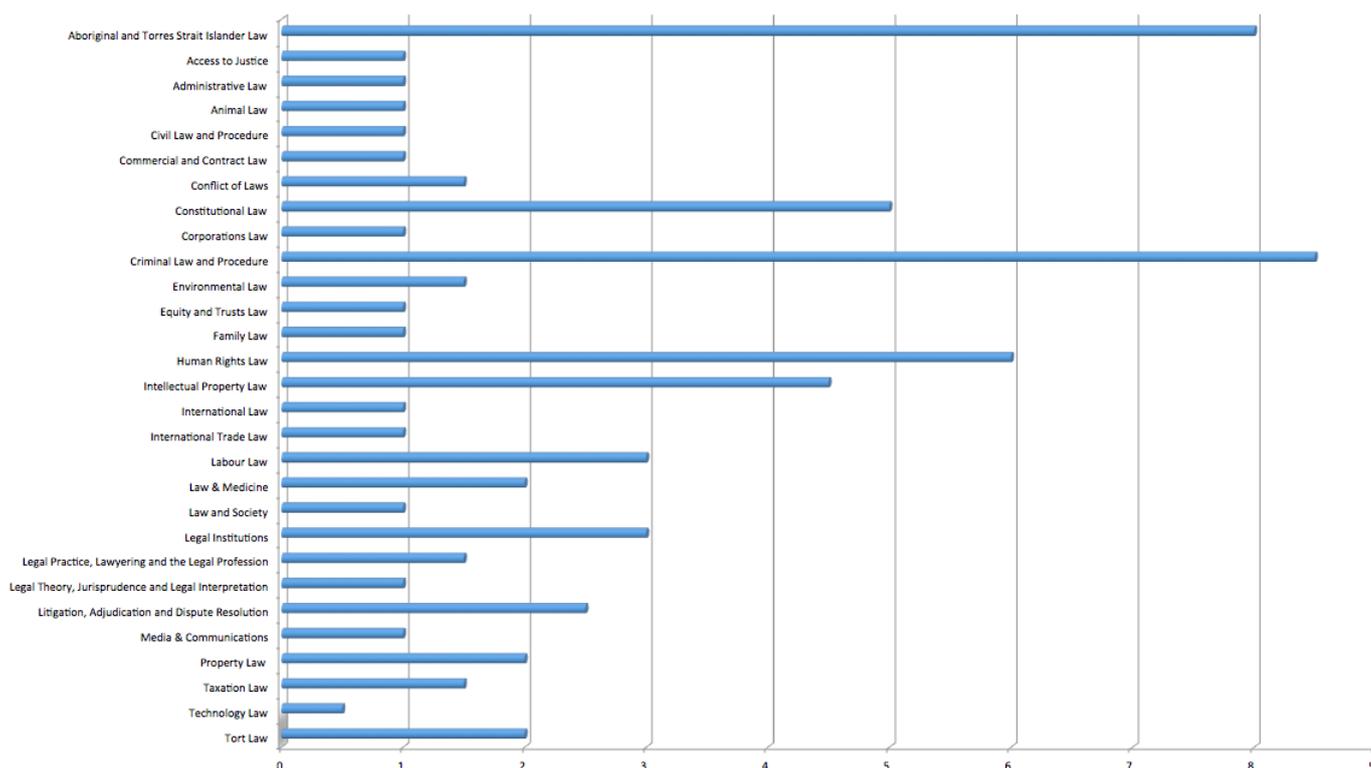
180105 Commercial and Contract Law: Special Issue on Consumer Law in honour of the Late Emeritus Professor David Harland

Gender and Sexuality; Technology Law: Gender, Sexuality and Reproduction

180108 Constitutional Law : Constitutional Law

In addition there was a Special Joint Issue of the *Singapore Journal of Legal Studies* and the *SLR*, however it contained a wide range of subject matter and thus was classified as if it were a general issue.

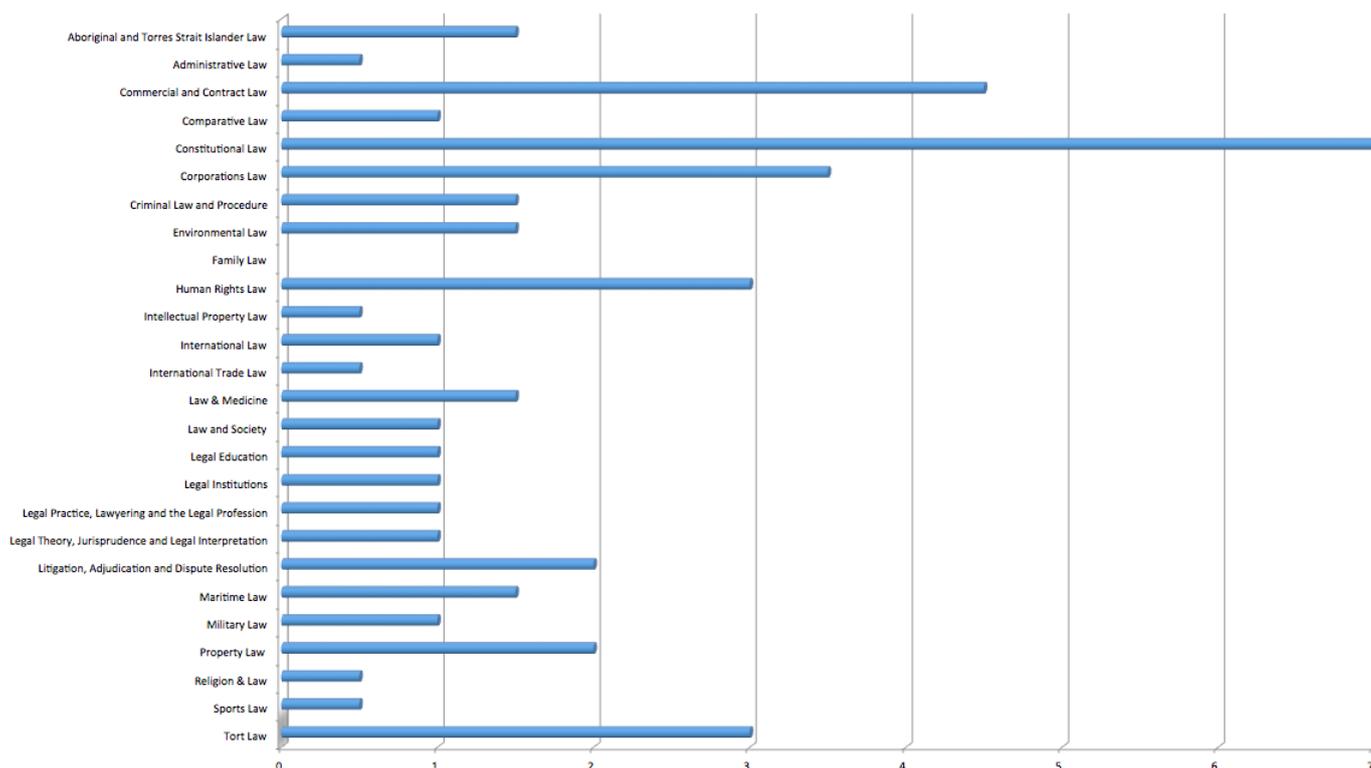
## UNSW Law Journal subject areas



Note: Special editions also in these areas:

- 180114 Human Rights Law: The Future of Human Rights in Australia
- Technology Law: Cyberlaw
- 180113 Family Law: Family Violence
- 180117 International Trade Law: Saving the System? Law and Regulation after the Credit Crunch
- 180105 Commercial and Contract Law; 180109 Corporations and Associations Law: Reforms in Competition Law
- 180104 Civil Law and Procedure; 180123 Litigation, Adjudication and Dispute Resolution: Class Actions
- 180108 Constitutional Law : Australian Federalism
- 180117 International Trade Law; 180123 Litigation, Adjudication and Dispute Resolution: International Commercial Arbitration
- 180111 Environment and Natural Resources Law; 180114 Human Rights Law: Climate Change Law in Australia
- 180117 International Trade Law: International Trade Law
- Media & Communications: Media and Broadcasting Laws
- 180118 Labour Law: Industrial Relations Law
- Gender & Sexuality; Technology Law: Reproductive Rights and the Law
- 180105 Commercial and Contract Law; 180117 International Trade Law: China and the Law
- 180109 Corporations and Associations Law; 180103 Administrative Law: Public Private Partnerships

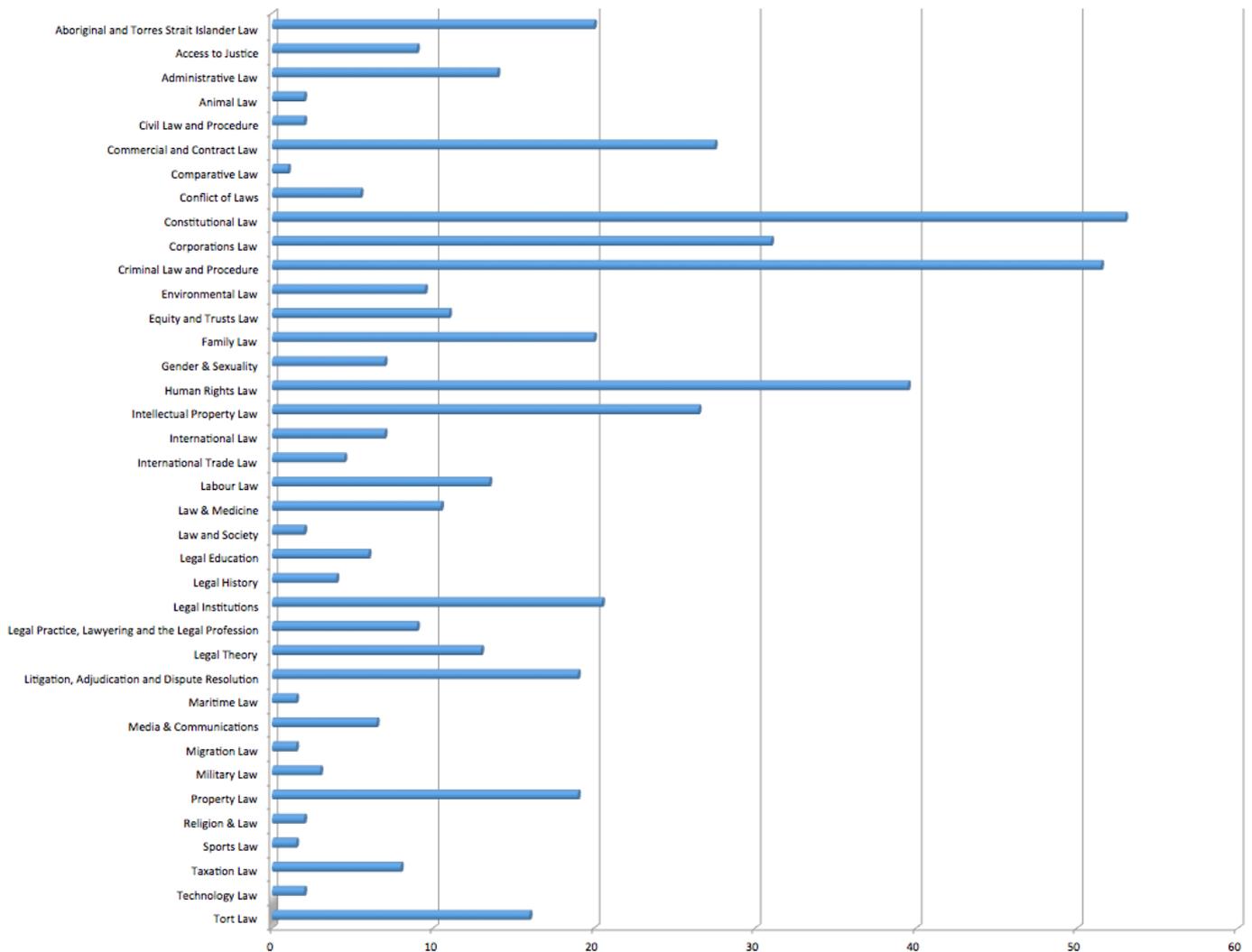
## University of Queensland Law Journal subject areas



Note: Special editions also in these areas:

- 180105 Commercial and Contract Law; 180123 Litigation, Adjudication and Dispute Resolution: The Role of Policy in Private Law Adjudication
- 180122 Legal Theory, Jurisprudence and Legal Interpretation; 180123 Litigation, Adjudication and Dispute Resolution: The Role of Policy in Public Law Adjudication
- 180122 Legal Theory, Jurisprudence and Legal Interpretation; 180120 Legal Institutions (incl. Courts and Justice Systems): Essays in Honour of Ian Callinan
- 180121 Legal Practice, Lawyering and the Legal Profession: Australian and New Zealand Lawyers: Ethics and Regulation
- 180120 Legal Institutions (incl. Courts and Justice Systems): The Relationship between Judges and Legal Academics

## General Law Journals combined subject areas



## Conclusions

As might be expected, available evidence from the highly regarded A and A\* Australian general law journals from the period, 2006-2010, suggests that the G08 outlets tend to publish more research in core teaching and learning areas such as Commercial Law, Criminal Law and Constitutional Law, as well as in areas where there are a relatively small number of Australian specialist journals such as Property, Equity and Trusts, Litigation, Torts. Beyond the core curriculum, articles on Indigenous law, Family Law, Labour Law and Intellectual Property are also relatively frequently published in general law journals, with a small number of articles on Environmental Law. *Griffith Law Review* publishes more in newly emerging areas, in particular taking into account its themed volumes. The *GLR* publishes significantly more legal theory than the G08 outlets.

Sensibly, subject matter well catered for by specialist journals, in particular International law, International and Comparative Law and International Trade law appear less well represented in open editions of general law journals. However, Human Rights Law is regularly published in both general and specialist law journals. New specialisations such as Technology Law, Medicine and the Law, Gender, Sexuality and Reproductive Rights and International Trade law commonly featured as special editions of general law journals.

It is not clear the extent to which the profiles of open editions of general law journals relate to historical practice, submissions received or editorial preference. It is reasonable to assume all three play some part in determining publication opportunities for legal researchers and publication outcomes.

## Appendix 4.1

### Editorial details of A and A\* General Law Journals

These details are based upon self-reporting to the CALD journal ranking process using an ARC Journal Information Template, with the exception of the *Monash University Law Review* which did not participate in that exercise. Additional information was gleaned from Faculty websites.

Journal	Review Process	Number of Reviewers	Editorial Board	Issues	Submission Policy
Federal Law Review	Double blind	2	Academic staff	3 general issues per year; comments, book reviews	Within the general category of Federal Law
Griffith Law Review	Double blind	3	Academic staff	3 issues per year (1 x General; Symposia; Special)	Interdisciplinary, social and critical legal research.
Melbourne University Law Review	Double blind	2	Entirely student run	3 issues per year; case notes, book reviews and review essays, comments, occasionally symposia	All areas of law
Monash University Law Review	Refereed	2 comprising 1 independent, 1 staff member	Student and academic editors	2 issues per year; Also case notes, book reviews and review essays, comments	All areas of law
Sydney Law Review	Double blind	2	Academic staff plus students	4 issues per year; Also case notes, comments and book reviews. Special issue every 18 months	All areas of law

Journal	Review Process	Number of Reviewers	Editorial Board	Issues	Submission Policy
University of New South Wales Law Journal	Double blind	2, 3 if conflicts	Entirely student run.	3 Issues annually (2 x General Issues, Thematic Issue). It also produces two shorter editions of Forum each year	All areas of law
University of Queensland Law Journal	Blind	1, 2 on occasion	Legal Academics and profession	2 issues per year (General and Thematic); Also case notes, book reviews and legal comments.	All areas of law

## Appendix 4.2

Special Edition Subject Matter 2006-2010

In the survey period, 2006-2010, the subject areas covered as special editions, symposia or forums included:

### *Griffith Law Review*

- The Future of Financial Regulation: Lessons From The Global Financial Crisis
- Changing Citizenships
- Professionalism in Clinical Legal Education
- The Lex of Somatechnics
- In Dissent: Queering the Voice of Law
- Invisible Laws, Visible Cities
- Of the South
- Credit and Consumer Law

### *Sydney Law Review*

- Special Issue on Consumer Law in honour of the Late Emeritus Professor David Harland
- Gender, Sexuality and Reproduction
- Constitutional Law
- Special Joint Issue of the Singapore Journal of Legal Studies and the Sydney Law Review

### *University of New South Wales Law Journal*

- The Future of Human Rights in Australia
- Cyberlaw
- Family Violence
- Saving the System? Law and Regulation after the Credit Crunch
- Reforms in Competition Law
- Class Actions
- Australian Federalism
- International Commercial Arbitration
- Climate Change Law in Australia
- International Trade Law
- Media and Broadcasting Laws
- China and the Law
- Industrial Relations Law
- Reproductive Rights and the Law
- Public Private Partnerships
- Media and Broadcasting Laws
- China and the Law

## *University of Queensland Law Journal*

- The Role of Policy in Private Law Adjudication
- The Role of Policy in Public Law Adjudication
- Essays in Honour of Ian Callinan
- Australian and New Zealand Lawyers: Ethics and Regulation
- The Relationship between Judges and Legal Academics

## Improving the Quality of Legal Research

Law, as a scholarly pursuit in Australia, has never had a strong or united culture nor a well-defined academic identity. Legal research is conducted across a vast array of sites with many different, and, in some cases, contesting approaches to constructing the legal object or nature of the research inquiry. Law has a number of conventional dividing lines that researchers relate to – public/private; core/non-core areas; doctrinal/policy/theory – as well as a large number of specialisations. Some areas of research, and particularly new specialisations, have little formal law of which to speak. Many law specialisations are also interdisciplinary in character and aspiration. In pursuing an interdisciplinary identity, these areas often move to stand apart from any close and traditional law connection.

Grant culture, institutional research assessment and diminishing connections between successful researchers and teaching (and especially teaching outside of one's specialisation), arguably strengthen researcher identities. However, strategies for research "success" as currently defined by sector terms, encourage a narrowing of experience of working in a law faculty. We limit our time, willingness and capacity to engage with each other as researchers, especially outside of our own areas of immediate interest or need, as well as often contributing less (where possible) to other aspects of the intellectual life of the workplace. These pressures on legal academics are likely to worsen in the future, especially once funding implications of institutional research assessments come more directly into play and institutions drill down data to revise funding allocations with implications for faculty, schools and individuals.

It is perverse that the current research assessment climate contributes to the fragmentation and fracturing of the discipline of law as a whole, rendering our capacity to grow, to judge and assess all legal research fairly a less and less attainable goal.

In view of this, it is hoped that the data provided and contextualized in this document can be used to throw some light on what is currently known about research assessment and its limitations, and provide researchers and managers with helpful information that can be used to better inform career decisions and evaluations. This is only a starting point for the development of more accountable and transparent research assessment processes. Hopefully it provides food for thought for much larger discussions to be had about what values and practices need to be supported in pursuit of quality legal research in the future.

\*\*\*

## CODE OF CONDUCT AND BEST PRACTICE GUIDELINES FOR JOURNAL EDITORS

**Note:** This document combines the original COPE Guidelines from 1999, the Code of Conduct developed in 2003, and the Best Practice Guidelines developed in 2007. This revision was developed after wide consultation with COPE members and approved by the COPE Council on 7th March 2011.

### Background/structure

The COPE Code of Conduct for Journal Editors is designed to provide a set of minimum standards to which all COPE members are expected to adhere. The Best Practice Guidelines are more aspirational and were developed in response to requests from editors for guidance about a wide range of increasingly complex ethical issues. While COPE expects all members to adhere to the Code of Conduct for Journal Editors (and will consider complaints against members who have not followed it), we realise that editors may not be able to implement all the Best Practice recommendations (which are therefore voluntary), but we hope that our suggestions will identify aspects of journal policy and practice that should be reviewed and discussed.

In this combined version of the documents, the mandatory Code of Conduct for Journal Editors standards are shown in regular script and with numbered clauses, and the more aspirational Best Practice recommendations are shown in *italics*.

### 1. General duties and responsibilities of editors

- 1.1. Editors should be accountable for everything published in their journals.

This means the editors should

- 1.2. strive to meet the needs of readers and authors;
- 1.3. strive to constantly improve their journal;
- 1.4. have processes in place to assure the quality of the material they publish;
- 1.5. champion freedom of expression;
- 1.6. maintain the integrity of the academic record;
- 1.7. preclude business needs from compromising intellectual and ethical standards;
- 1.8. always be willing to publish corrections, clarifications, retractions and apologies when needed.

## CODE OF CONDUCT AND BEST PRACTICE GUIDELINES FOR JOURNAL EDITORS

### *Best practice for editors would include*

- *actively seeking the views of authors, readers, reviewers and editorial board members about ways of improving their journal's processes*
- *encouraging and being aware of research into peer review and publishing and reassessing their journal's processes in the light of new findings*
- *working to persuade their publisher to provide appropriate resources, guidance from experts (e.g. designers, lawyers)*
- *supporting initiatives designed to reduce research and publication misconduct*
- *supporting initiatives to educate researchers about publication ethics*
- *assessing the effects of their journal policies on author and reviewer behaviour and revising policies, as required, to encourage responsible behaviour and discourage misconduct*
- *ensuring that any press releases issued by their journal reflect the message of the reported article and put it into context*

### 2. Relations with readers

- 2.1. Readers should be informed about who has funded research or other scholarly work and whether the funders had any role in the research and its publication and, if so, what this was.

### *Best practice for editors would include:*

- *ensuring that all published reports and reviews of research have been reviewed by suitably qualified reviewers (including statistical review where appropriate)*
- *ensuring that non-peer-reviewed sections of their journal are clearly identified*
- *adopting processes that encourage accuracy, completeness and clarity of research reporting including technical editing and the use of appropriate guidelines and checklists (e.g. MIAME,<sup>1</sup> CONSORT<sup>2</sup>)*
- *considering developing a transparency policy to encourage maximum disclosure about the provenance of non-research articles<sup>3</sup>*
- *adopting authorship or contributorship systems that promote good practice (i.e. so that listings accurately reflect who did the work)<sup>4</sup> and discourage misconduct (e.g. ghost and guest authors)*
- *informing readers about steps taken to ensure that submissions from members of the journal's staff or editorial board receive an objective and unbiased evaluation*

## CODE OF CONDUCT AND BEST PRACTICE GUIDELINES FOR JOURNAL EDITORS

### 3. Relations with authors

- 3.1. Editors' decisions to accept or reject a paper for publication should be based on the paper's importance, originality and clarity, and the study's validity and its relevance to the remit of the journal.
- 3.2. Editors should not reverse decisions to accept submissions unless serious problems are identified with the submission.
- 3.3. New editors should not overturn decisions to publish submissions made by the previous editor unless serious problems are identified.
- 3.4. A description of peer review processes should be published, and editors should be ready to justify any important deviation from the described processes.
- 3.5. Journals should have a declared mechanism for authors to appeal against editorial decisions.
- 3.6. Editors should publish guidance to authors on everything that is expected of them. This guidance should be regularly updated and should refer or link to this code.
- 3.7. Editors should provide guidance about criteria for authorship and/or who should be listed as a contributor following the standards within the relevant field.

#### *Best practice for editors would include:*

- *reviewing author instructions regularly and providing links to relevant guidelines (e.g. ICMJE<sup>5</sup>, Responsible research publication: international standards for authors<sup>6</sup>)*
- *publishing relevant competing interests for all contributors and publishing corrections if competing interests are revealed after publication*
- *ensuring that appropriate reviewers are selected for submissions (i.e. individuals who are able to judge the work and are free from disqualifying competing interests)*
- *respecting requests from authors that an individual should not review their submission, if these are well-reasoned and practicable*
- *being guided by the COPE flowcharts (<http://publicationethics.org/flowcharts>) in cases of suspected misconduct or disputed authorship*
- *publishing details of how they handle cases of suspected misconduct (e.g. with links to the COPE flowcharts)*
- *publishing submission and acceptance dates for articles*

## CODE OF CONDUCT AND BEST PRACTICE GUIDELINES FOR JOURNAL EDITORS

### 4. Relations with reviewers

- 4.1. Editors should provide guidance to reviewers on everything that is expected of them including the need to handle submitted material in confidence. This guidance should be regularly updated and should refer or link to this code.
- 4.2. Editors should require reviewers to disclose any potential competing interests before agreeing to review a submission.
- 4.3. Editors should have systems to ensure that peer reviewers' identities are protected unless they use an open review system that is declared to authors and reviewers.

#### *Best practice for editors would include:*

- *encouraging reviewers to comment on ethical questions and possible research and publication misconduct raised by submissions (e.g. unethical research design, insufficient detail on patient consent or protection of research subjects (including animals), inappropriate data manipulation and presentation)*
- *encouraging reviewers to comment on the originality of submissions and to be alert to redundant publication and plagiarism*
- *considering providing reviewers with tools to detect related publications (e.g. links to cited references and bibliographic searches)*
- *sending reviewers' comments to authors in their entirety unless they contain offensive or libellous remarks*
- *seeking to acknowledge the contribution of reviewers to the journal*
- *encouraging academic institutions to recognise peer review activities as part of the scholarly process*
- *monitoring the performance of peer reviewers and taking steps to ensure this is of high standard*
- *developing and maintaining a database of suitable reviewers and updating this on the basis of reviewer performance*
- *ceasing to use reviewers who consistently produce discourteous, poor quality or late reviews*
- *ensuring that the reviewer database reflects the community for their journal and adding new reviewers as needed*
- *using a wide range of sources (not just personal contacts) to identify potential new reviewers (e.g. author suggestions, bibliographic databases)*
- *following the COPE flowchart in cases of suspected reviewer misconduct*

### 5. Relations with editorial board members

- 5.1. Editors should provide new editorial board members with guidelines on everything that is expected of them and should keep existing members updated on new policies and developments.

## CODE OF CONDUCT AND BEST PRACTICE GUIDELINES FOR JOURNAL EDITORS

*Best practice for editors would include:*

- *having policies in place for handling submissions from editorial board members to ensure unbiased review*
- *identifying suitably qualified editorial board members who can actively contribute to the development and good management of the journal*
- *regularly reviewing the composition of the editorial board*
- *providing clear guidance to editorial board members about their expected functions and duties, which might include:*
  - *acting as ambassadors for the journal*
  - *supporting and promoting the journal*
  - *seeking out the best authors and best work (e.g. from meeting abstracts) and actively encouraging submissions*
  - *reviewing submissions to the journal*
  - *accepting commissions to write editorials, reviews and commentaries on papers in their specialist area*
  - *attending and contributing to editorial board meetings*
- *consulting editorial board members periodically (e.g. once a year) to gauge their opinions about the running of the journal, informing them of any changes to journal policies and identifying future challenges.*

### 6. Relations with journal owners and publishers

- 6.1. The relationship of editors to publishers and owners is often complex but should be based firmly on the principle of editorial independence.
- 6.2. Editors should make decisions on which articles to publish based on quality and suitability for the journal and without interference from the journal owner/publisher.
- 6.3. Editors should have a written contract(s) setting out their relationship with the journal's owner and/or publisher.
- 6.4. The terms of this contract should be in line with the COPE Code of Conduct for Journal Editors.

## CODE OF CONDUCT AND BEST PRACTICE GUIDELINES FOR JOURNAL EDITORS

*Best practice for editors would include:*

- *establishing mechanisms to handle disagreements between themselves and the journal owner/publisher with due process<sup>7</sup>*
- *communicating regularly with their journal's owner and publisher*

### 7. Editorial and peer review processes

- 7.1. Editors should strive to ensure that peer review at their journal is fair, unbiased and timely.
- 7.2. Editors should have systems to ensure that material submitted to their journal remains confidential while under review.

*Best practice for editors would include:*

- *ensuring that people involved with the editorial process (including themselves) receive adequate training and keep abreast of the latest guidelines, recommendations and evidence about peer review and journal management*
- *keeping informed about research into peer review and technological advances*
- *adopting peer review methods best suited for their journal and the research community it serves*
- *reviewing peer review practices periodically to see if improvement is possible*
- *referring troubling cases to COPE, especially when questions arise that are not addressed by the COPE flowcharts, or new types of publication misconduct are suspected*
- *considering the appointment of an ombudsperson to adjudicate in complaints that cannot be resolved internally*

### 8. Editorial and peer review processes

- 8.1. Editors should take all reasonable steps to ensure the quality of the material they publish, recognising that journals and sections within journals will have different aims and standards.

*Best practice for editors would include:*

- *having systems in place to detect falsified data (e.g. inappropriately manipulated photographic images or plagiarised text) either for routine use or when suspicions are raised*
- *basing decisions about journal house style on relevant evidence of factors that raise the quality of reporting (e.g. adopting structured abstracts, applying guidance such as CONSORT<sup>2</sup>) rather than simply on aesthetic grounds or personal preference*

## CODE OF CONDUCT AND BEST PRACTICE GUIDELINES FOR JOURNAL EDITORS

### 9. Protecting individual data

- 9.1. Editors must obey laws on confidentiality in their own jurisdiction. Regardless of local statutes, however, they should always protect the confidentiality of individual information obtained in the course of research or professional interactions (e.g. between doctors and patients). It is therefore almost always necessary to obtain written informed consent for publication from people who might recognise themselves or be identified by others (e.g. from case reports or photographs). It may be possible to publish individual information without explicit consent if public interest considerations outweigh possible harms, it is impossible to obtain consent and a reasonable individual would be unlikely to object to publication.

*Best practice for editors would include:*

- *publishing their policy on publishing individual data (e.g. identifiable personal details or images) and explaining this clearly to authors*

*Note that consent to take part in research or undergo treatment is not the same as consent to publish personal details, images or quotations.*

### 10. Encouraging ethical research (e.g. research involving humans or animals)

- 10.1. Editors should endeavour to ensure that research they publish was carried out according to the relevant internationally accepted guidelines (e.g. the Declaration of Helsinki<sup>8</sup> for clinical research, the AERA and BERA guidelines for educational research<sup>9-11</sup>).
- 10.2. Editors should seek assurances that all research has been approved by an appropriate body (e.g. research ethics committee, institutional review board) where one exists. However, editors should recognise that such approval does not guarantee that the research is ethical.

*Best practice for editors would include:*

- *being prepared to request evidence of ethical research approval and to question authors about ethical aspects (such as how research participant consent was obtained or what methods were employed to minimize animal suffering) if concerns are raised or clarifications are needed*
- *ensuring that reports of clinical trials cite compliance with the Declaration of Helsinki<sup>8</sup>, Good Clinical Practice<sup>12</sup> and other relevant guidelines to safeguard participants*
- *ensuring that reports of experiments on, or studies of, animals cite compliance with the US Department of Health and Human Services Guide for the Care and Use of Laboratory Animals<sup>13</sup> or other relevant guidelines*
- *appointing a journal ethics advisor or panel to advise on specific cases and review journal policies periodically*

## CODE OF CONDUCT AND BEST PRACTICE GUIDELINES FOR JOURNAL EDITORS

### 11. Dealing with possible misconduct

- 11.1. Editors have a duty to act if they suspect misconduct or if an allegation of misconduct is brought to them. This duty extends to both published and unpublished papers.
- 11.2. Editors should not simply reject papers that raise concerns about possible misconduct. They are ethically obliged to pursue alleged cases.
- 11.3. Editors should follow the COPE flowcharts<sup>14</sup> where applicable.
- 11.4. Editors should first seek a response from those suspected of misconduct. If they are not satisfied with the response, they should ask the relevant employers, or institution, or some appropriate body (perhaps a regulatory body or national research integrity organization) to investigate.
- 11.5. Editors should make all reasonable efforts to ensure that a proper investigation into alleged misconduct is conducted; if this does not happen, editors should make all reasonable attempts to persist in obtaining a resolution to the problem. This is an onerous but important duty.

### 12. Ensuring the integrity of the academic record

- 12.1. Errors, inaccurate or misleading statements must be corrected promptly and with due prominence.
- 12.2. Editors should follow the COPE guidelines on retractions<sup>15</sup>.

#### *Best practice for editors would include:*

- *taking steps to reduce covert redundant publication (e.g. by requiring all clinical trials to be registered)<sup>16</sup>*
- *ensuring that published material is securely archived (e.g. via online permanent repositories, such as PubMed Central)<sup>17</sup>*
- *having systems in place to give authors the opportunity to make original research articles freely available*

### 13. Intellectual property

Editors should be alert to intellectual property issues and work with their publisher to handle potential breaches of intellectual property laws and conventions.

## CODE OF CONDUCT AND BEST PRACTICE GUIDELINES FOR JOURNAL EDITORS

### *Best practice for editors would include:*

- *adopting systems for detecting plagiarism (e.g. software, searching for similar titles) in submitted items (either routinely or when suspicions are raised)*
- *supporting authors whose copyright has been breached or who have been the victims of plagiarism*
- *being prepared to work with their publisher to defend authors' rights and pursue offenders (e.g. by requesting retractions or removal of material from websites) irrespective of whether their journal holds the copyright*

### 14. Encouraging debate

- 14.1. Editors should encourage and be willing to consider cogent criticisms of work published in their journal.
- 14.2. Authors of criticised material should be given the opportunity to respond.
- 14.3. Studies reporting negative results should not be excluded.

### *Best practice for editors would include:*

- *being open to research that challenges previous work published in the journal*

### 15. Complaints

- 15.1. Editors should respond promptly to complaints and should ensure there is a way for dissatisfied complainants to take complaints further. This mechanism should be made clear in the journal and should include information on how to refer unresolved matters to COPE.
- 15.2. Editors should follow the procedure set out in the COPE flowchart on complaints.

### 16. Commercial considerations

- 16.1. Journals should have policies and systems in place to ensure that commercial considerations do not affect editorial decisions (e.g. advertising departments should operate independently from editorial departments).
- 16.2. Editors should have declared policies on advertising in relation to the content of the journal and on processes for publishing sponsored supplements.
- 16.3. Reprints should be published as they appear in the journal unless a correction needs to be included in which case it should be clearly identified.

## CODE OF CONDUCT AND BEST PRACTICE GUIDELINES FOR JOURNAL EDITORS

### *Best practice for editors would include:*

- *publishing a general description of their journal's income sources (e.g. the proportions received from display advertising, reprint sales, sponsored supplements, page charges, etc.)*
- *ensuring that the peer review process for sponsored supplements is the same as that used for the main journal*
- *ensuring that items in sponsored supplements are accepted solely on the basis of academic merit and interest to readers and decisions about such supplements are not influenced by commercial considerations*

### 17. Conflicts of interest

- 17.1. Editors should have systems for managing their own conflicts of interest as well as those of their staff, authors, reviewers and editorial board members.
- 17.2. Journals should have a declared process for handling submissions from the editors, employees or members of the editorial board to ensure unbiased review.

### *Best practice for editors would include:*

- *publishing lists of relevant interests (financial, academic and other kinds) of all editorial staff and members of editorial boards (which should be updated at least annually)*

### References/further reading

1. MIAME (Minimum information about a microarray experiment): <http://www.mged.org/Workgroups/MIAME/miame.html>
2. CONSORT statement (and other reporting guidelines) can be found at: [www.equator-network.org](http://www.equator-network.org)
3. BMJ transparency policy: <http://resources.bmj.com/bmj/authors/editorial-policies/transparency-policy>
4. Marusic A, et al. How the structure of contribution disclosure statements affects validity of authorship: a randomized study in a general medical journal. *Curr Med Res Opin* 2006;22:1035-44
5. ICMJE (International Committee of Medical Journal Editors) uniform requirements for manuscripts submitted to biomedical journals: [http://www.icmje.org/urm\\_main.html](http://www.icmje.org/urm_main.html)
6. Responsible research publication: international standards for authors (Position statement developed at the 2nd World Conference on Research Integrity, Singapore, July 2010) In press, 2011)

## CODE OF CONDUCT AND BEST PRACTICE GUIDELINES FOR JOURNAL EDITORS

7. **World Association of Medical Editors statement on the relationship between journal editors-in-chief and owners:**  
<http://www.wame.org/resources/policies>
8. **World Medical Association Declaration of Helsinki:** <http://www.wma.net/e/ethicsunit/helsinki.htm>
9. **American Educational Research Association ethical standards:** [http://www.aera.net/AboutAERA/Default.aspx?menu\\_id=90&id=222](http://www.aera.net/AboutAERA/Default.aspx?menu_id=90&id=222)
10. **British Educational Research Association ethical guidelines** <http://www.bera.ac.uk/publications/guidelines/>
11. **American Psychological Association ethical principles:** <http://www.apa.org/ethics/code/index.aspx>
12. **Good Clinical Practice:** <http://www.emea.europa.eu/pdfs/human/ich/013595en.pdf>
13. **US Department of Health and Human Services Guide for the Care and Use of Laboratory Animals:**  
<http://www.nap.edu/readingroom/books/labrats/>
14. **COPE flowcharts:** <http://publicationethics.org/flowcharts>
15. **COPE retraction guidelines:**  
[http://publicationethics.org/files/u661/Retractions\\_COPE\\_gline\\_final\\_3\\_Sept\\_09\\_\\_2\\_.pdf](http://publicationethics.org/files/u661/Retractions_COPE_gline_final_3_Sept_09__2_.pdf)
16. **De Angelis C, et al. Clinical trial registration: a statement from the International Committee of Medical Journal Editors. Lancet 2004;364:911-2**
17. **PubMed Central:** <http://www.pubmedcentral.nih.gov/>