

COUNCIL OF AUSTRALIAN LAW DEANS STATEMENT ON LEGAL RESEARCH¹

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What is Legal Research

Legal research is a multi-faceted and frequently multidisciplinary activity that seeks to explore, interpret, explain, systematise, analyse and evaluate aspects of the legal domain - be it the scope and application of legal rules and principles, the formation and implementation of legal policy, the structure and operation of legal institutions, the culture and practice of legal actors, the impact of the law and legal actions, or the fabric and workings of legal systems. From a normative perspective the purpose of legal research is inextricably linked to the rationale of the law. Ideally, legal research aims to advance understanding of how the law works and how it shapes society to enable the domain of law to operate more effectively and more justly.

Legal research may be domestic, international, or comparative in its focus. It may focus on the development, scope, and application of domestic Australian law at state, territory, and Commonwealth level. Such analysis can make important contributions to understandings of Australian law, but research with a domestic focus may not be measured easily in international metrics. When focused internationally, legal research engages with international law and organisations as well as transnational governance networks and may analyse their implications for Australian law. Comparative legal research compares laws in different jurisdictions, within Australia and/or internationally.

Methodologies for Legal Research

Legal research draws on methodologies from many disciplines. It is pluralist, diverse and dynamic.

Doctrinal legal research is one methodology that is distinctive to legal research. It analyses and synthesises disparate primary legal materials, such as statutes and judicial decisions. It produces clear, consistent and useful explanations of the normative standards (rules and principles) expressed in these materials. The resulting contributions to knowledge help understand legal decision-making, predict future legal outcomes and guide the normative behaviour of actors in the legal system. Doctrinal legal research holds significant value for lawyers, judges and policymakers, as well as citizens seeking to understand how the law applies to their circumstances. It also helps identify areas of legal vagueness or incoherence requiring legislative or judicial responses.

¹ In developing this Statement CALD acknowledges and recognises the 2005 Council of Australian Law Deans, *Statement on Legal Research*, and the LADRN Project report on *The Assessment of Legal Research* by Lyria Bennett Moses and Catherine Renshaw (2024). <https://cald.asn.au/resources/>

As was noted in the 2005 Council of Australian Law Deans, *Statement on the Nature of Legal Research*:

To a large extent, it is the doctrinal aspect of law that makes legal research distinctive and provides an often under-recognised parallel to 'discovery' in the physical sciences. Doctrinal research, at its best, involves rigorous analysis and creative synthesis, the making of connections between seemingly disparate doctrinal strands, and the challenge of extracting general principles from an inchoate mass of primary materials. The very notion of 'legal reasoning' is a subtle and sophisticated jurisprudential concept, a unique blend of deduction and induction, that has engaged legal scholars for generations, and is a key to understanding the mystique of the legal system's simultaneous achievement of constancy and change, especially in the growth and development of the common law. Yet this only underlines that doctrinal research can scarcely be quarantined from broader theoretical and institutional questions. If doctrinal research is a distinctive part of legal research, that distinctiveness permeates every other aspect of legal research for which the identification, analysis and evaluation of legal doctrine is a basis, starting point, platform or underpinning.²

How is Quality Research Measured?

There are different formulations of what makes for high quality legal research. One can call on general research criteria such as might be found in many disciplines including (1) the presence of an explicit research question, (2) the relevance, significance and reach of that question, (3) appropriate methodology and methodological rigour, (4) meaningful conclusions justified by analysis, (5) the originality and novelty of the project, and (6) a balanced approach.³ The importance and relevance of each of these will depend on the nature of the research project.

Other criteria that are more specific to legal scholarship, include:⁴

- Normative clarity and transparency about normative assumptions;
- Persuasiveness;
- Thoroughness of analysis (proposed as a more appropriate term than methodological rigour in the context of doctrinal scholarship);
- Applicability (in that a work contains an identifiable original insight that can be used by others); and
- Profundity, depth of analysis and coherence.

Judgment against criteria, whether general or more specific to legal scholarship, is best conducted by those with relevant expertise, ideally a diverse panel.

In many disciplines, quality is measured by proxies such as journal rankings and citation metrics (associated with an individual scholar or with the journals in which a scholar publishes). These require caution when assessing the quality of legal scholarship, for several reasons:

- There is no generally accepted ranked list of legal journals in Australia. However, (1) information about the journal's selection processes can be helpful, and (2) referees or reviewers in the relevant subdiscipline can be asked to comment on the regard in which

² Council of Australian Law Deans, *Statement on the Nature of Legal Research* (2005), p 3.

³ Bennett Moses and Renshaw (n 1) 22.

⁴ Ibid.

journals are held. Even here, as in all disciplines, proxies such as journal quality are imperfectly correlated with article quality.

- Ranked quality journal lists developed by individual institutions are problematic due to lack of consistency between institutions. They can be difficult to keep up to date and reduce researcher progression and mobility where different institutions use different lists.
- Because legal research is often jurisdiction specific, rankings based on international measures are not always appropriate.
- Overreliance on metrics may also have unfavourable outcomes. For example, an expectation to publish in Q1 journals could drive scholars away from exploring legal issues of specific concern to Australia.

As a result of the problems associated with reliance upon metrics, peer review by scholars expert in the relevant field of legal research is the preferred method for assessing legal research quality. Provided it is anonymised and faithfully and consistently applies the quality criteria outlined above, it is generally accepted that peer review provides a better measure of the quality of individual legal research outputs than reliance on the category of research outlet in which they appear.

How is Impact Measured?

Legal research can advance knowledge, improve understanding, and solve problems. Legal research can also broadly impact legislation and government policy, the judiciary and legal profession, academia, industry, society, and individuals.

The assessment of impact is difficult, imprecise, and not easily quantified. Research impact is not linear, takes time, and its character and significance may shift depending on a range of factors. It also looks different throughout the stages of an academic career. Therefore, it is important to acknowledge and recognise the breadth of impact of legal research. To this end, consideration of the impact of legal research needs to take place through narrative, discussion and, where available and appropriate, evidence.⁵

To assist (rather than restrict) discussion and consideration of research impact, the impact of legal research needs to be broadly construed to include:⁶

- Academic and scholarly impact
- Policy development and reform
- Professional engagement and the shaping of professional practice
- Judicial impact
- Improving processes or practices, whether in government, industry or the profession
- Shifting society and cultural perceptions
- Public awareness and debate
- Supporting individuals and communities

Evidence of such impact can include:

⁵ Quantitative metrics such as Altmetric, Policy Commons and Overton are limited and should not be used in isolation.

⁶ There are a number of publicly available frameworks and guides on research impact. For example, [Rethinking Research Assessment: Building Blocks for Impact | DORA \(sfdora.org\)](https://www.sfdora.org/)

- Citation in law reform reports and policy documents, including as evidence towards changes implemented.
- Citation in cases and scholarship
- Policy reports and reviews used in government, industry and the profession leading to changed or improved processes or practices
- Participation in public debates and conversation around key societal and community issues
- Collaboration, consultation or advice requested by government, firms or community organisations
- Leadership roles in disciplinary societies and editorial boards.