

Council of Australian Law Deans Response

ERA/EI Review Consultation Paper 2020

Attached is the submission from CALD (Council of Australian Law Deans). The answers follow Appendix A in the Review Document.

We note three areas of particular concern to the discipline of law:

1. That the **peer review system be maintained**.
2. That the ERA/EI rounds remain at a minimum of 5 years apart. CALD suggests that due to the ongoing impacts of COVID the current round be extended a further year to a 6 year round – **ERA 2024**.
3. We note the negative impact that a 4 digit assessment will have on smaller regional law schools and suggest the 2 digit assessment be used for law or the 4 digit assessment be applied with a more nuanced evaluation of FTE staff to output be introduced.

N/A is indicated when the question is more appropriately addressed by a University submission rather than this disciplinary specific submission.

PART III: EXCELLENCE IN RESEARCH AUSTRALIA (ERA)

ERA POLICY

Value of ERA

Q3.1 To what extent is ERA meeting its objectives to:

- a. Continue to develop and maintain an evaluation framework that gives government, industry, business and the wider community assurance of the excellence of research conducted in Australian higher education institutions.**

In relation to the discipline of law it may be helpful to include ‘NGOs, NPOs and charities’ rather than to imply that these organisations are part of the ‘wider community’. The alternative would be to say “government, industry, civil society organisations and the public”.

- b. Provide a national stocktake of discipline level areas of research strength and areas where there is opportunity for development in Australian higher education institutions.**

N/A.

- c. Identify excellence across the full spectrum of research performance.**

N/A.

- d. Identify emerging research areas and opportunities for further development.**

A moderate amount.

The above answer is based on the experience in the discipline of law as to the use of ERA as a retrospective measurement of research excellence. In the discipline of law ERA is not used as a strategic tool to identify new areas of existing research. Although ERA is useful for identifying where general improvement may be made (according to the 1-5 ranking scale).

The ERA system evaluates past research performance. ERA measures a past research cycle and thus evaluates research which is historical rather than emerging. It does not identify emerging legal research areas and opportunities for further development. ERA is a general rather than a specific guide as it crosses an entire discipline (as measured by the 2 digit code) rather than having the capacity to map trends or future areas of growth.

In the discipline of law the issue of emerging research areas is dealt with in alternative ways. For example the national priorities identify areas of strategic interest to government and thus are reflected in any assessment of research. On a separate point the national priorities also act to restrain and funnel research – constraining innovative research development. This is particularly relevant for the discipline of law which, as a

HASS discipline, is often not a central focus for the more STEM directed national priorities.

e. Allow for comparisons of research in Australia, nationally and internationally, for all discipline areas.

A moderate amount (with respect to the discipline of law).

As noted in the Consultation Paper:

3.1 ERA Overview - ERA is a national evaluation framework that evaluates the quality of Australian university research against international benchmarks.

ERA allows for comparison of research – by providing the same ranking across all disciplines it allows for a form of national and international benchmarking.

There are three limitations in ERA benchmarking with respect to the discipline of law:

- (1) Failure to Adequately Recognise Size and Specialisation of Law Schools:** While ERA facilitates external recognition of excellence such recognition is not nuanced, failing to reflect the size (especially smaller regional law schools) or the specialisation of a law school.
- (2) Prioritises Certain Disciplines of Law:** Subject to 1 above, while ERA may allow for comparisons to be drawn nationally across the discipline of law in Australian universities, this is itself problematic. ERA necessarily favours the traditional legal areas of public law and private law. This is because these areas are concentrated and broad in application across law schools. ERA is unable to drill into areas of legal research which have a narrower or non-traditional focus such as legal geography. This remains the case even if the 4 digit codes are used (and note comments in 3.7 against this usage).
- (3) Poorly Recognises the Inherent Jurisdictionality of Law:** Most noticeably the ERA measurement in the discipline of law is limited in its international comparative application. For many disciplines being nationally and internationally ‘excellent’ means being published in international top journals. However, international journals, by definition, are not typically interested in excellent research on a single nation, such as Australia. The top 5 percent of journals tend to focus on the US only. In law meaningful international comparison will require benchmarking against other selected countries and significantly increased levels of international peer-review (arguably to at least 50% of all reviewers).

Q3.2 The ERA objectives are appropriate for meeting the future needs of its stakeholders.

Agree, with respect to the discipline of law.

ERA helps provide national consistency in the measurement of quality research of the Australian higher education system and the discipline of law within the sector. The ERA objectives are useful as a guide for quality and for use as a comparative tool. Indeed

ERA provides one of the few tools which enable a mapping of research across the discipline of law comparative to other disciplines.

ERA has created powerful institutional incentives, as it was intended to, to strengthen scientific research. Law schools have implemented management approaches intended to help them succeed under the metrics of ERA. These include performance benchmarks that reflect their interpretation of the ERA requirements, and a heightened sense of competitive pressure. However, it should also be noted that these incentives have had unintended consequences, and the application of ERA to legal scholarship has had the following, often undesirable outcome:

- (1) *Transition from Grants as Means to Grants as Goal:*** The winning of grants has changed from being a means to carry out research, into being a measure of research productivity. This is problematic as legal researchers who might not otherwise have needed external financial support are designing research that will require funding. This shifts legal research away from doctrinal research. Whether such a shift is, or is not, in the public interest has not been tested. However, non-doctrinal investigations may be less relevant to research-based teaching of law students, where the teaching focus in core law subjects is generally doctrinal.
- (2) *Significant and Detrimental Increase in Time Spent on Unsuccessful Grant Applications:*** Unsuccessful grant applications ‘tax’ the time of researchers and their institutions, and successful grant applications involve administrative expenditures that would otherwise not be required. The overall result of pursuing funding as an outcome is thus increased transaction costs, as well as redirection of legal research. A secondary effect is increased competition for chronically scarce research funds. Unless the available funds increase proportionately increased applications for funding will make it more difficult for researchers whose work does need funding, and increase the processing load on research funders.

Q3.3 What impacts has ERA had on:

- a. the Australian university research sector as a whole**
- b. individual universities**
- c. researchers**
- d. other?**

ERA has had a fundamental impact on each of the above. ERA has assisted to promote the aspiration towards, and to recognise, world class research. However it has also not favoured HASS disciplines. It artificially inflates perceptions of citation FORs because it has proven to be easier to achieve 4s and 5s in these FORs than in peer review FORs. The HASS disciplines, such as law, have therefore suffered because of ERA and receive less investment and emphasis. The disparity in grading realities means that the ERA results of citation FORs and peer-review FORs should no longer be compared.

ERA is an important source of publicly available data that provides detailed information about research activity in law schools. However the workload put into ERA by individual universities and researchers is not quantifiable in terms of benefits gained. For example it is not known to what extent it influences international or domestic student preference.

Further, performing well in ERA is an important focus of researchers, research disciplines and universities and as such ERA shapes KPIs and research expectations of academic workload. ERA is intended to measure research performance, but it also drives particular research behaviours more than it measures quality. For example it discourages inter-disciplinary research. The opportunity cost of ERA on publishing, supervising or teaching has been considerable in previous rounds.

Importantly ERA is a measure of law school research quality yet it presents less useful information about comparative scale, breadth and quality of the research undertaken.

Q3.4 How do you use ERA outcomes?

Across Australian law schools ERA outcomes are used in this way as follows:

(1) Outward facing

ERA is used for marketing. It is used to identify and explain the quality of research as a law school. It is transparent and comprehensive information and data about the excellence of research across law schools. The usefulness of ERA is its simplicity of rankings. For example, to attain the highest score of a 5 in ERA is clearly understood by stakeholders in the sector as a sign of research excellence.

It is also easily explicable to a wider audience such as industry and the general public. However there is undoubtedly the need for explanation as to what the ERA scores mean.

(2) Inward facing

ERA assists to set goals as to research excellence and to identify areas of improvement. It thus establishes a framework for the research environment and provides a rationale for staffing. It acts as trigger to improve research as a comparative measure internally across Faculties/researchers within a single University and also across law schools in different universities.

Q3.5 ERA outcomes are beneficial to you/your organisation.

The outcomes are no doubt most beneficial when the ratings for one's own law school are high. However the cost/benefit analysis requires attention as the input of staff time is considerable.

Q3.6 Do you have any suggestions for enhancing ERA's value to you/your organisation?

(1) Time frame of 5 years

ERA's value to the discipline of law may be enhanced by ensuring that its time frame/reference period is a minimum of 5 years.

(2) Time frame extension due to COVID

It is also urged that the current timeframe be extended to 6 years due to the impact of COVID upon law schools.

(3) Maintaining discipline specific evaluation

To enhance the value of ERA it is urged that the nuanced application to matching the evaluation to the discipline be rigorously reviewed. For example in law it would be unhelpful to use citation as the method of ERA evaluation which may be used in other disciplines. Peer evaluation is critical to any evaluation of research in the discipline of law. Inequities in ratings between citation metric FORs and peer-review FORs also requires attention.

ERA METHODOLOGY

ERA methodology at a glance

Q3.7 The current methodology meets the objectives of ERA.

Strongly agree with the continued use of peer review in the discipline of law:

The mixed methods approach of ERA – which matches the appropriate evaluation methodology of peer review to the discipline of law - is strongly supported. The system of peer review must be maintained with respect to the discipline of law. Best practice in law is to use human judgement to assess the quality of legal research. Indeed in the discipline of law there are dangers in relying on metrics. This is the case as metrics do not capture all dimensions of legal research nor do they reflect what it is to be a productive and impactful legal scholar. This is particularly obvious in the production of books and book chapters in the discipline which are not easily captured by metrics which are usually applied to journals (see 3.8).

(1) Concerns over the use of 4 digit codes in law:

The addition of a very large number of new 4 digit codes within 48 (formerly 18) raises issues if the ERA assessment process is again conducted at the 4 digit level. While the new 4 digit codes are likely to be very useful for grants etc, the negative impact of size and resources on the ERA process is potentially going to be profound. Small schools cannot have a concentration of research staff in one area due to the need to service a whole curriculum. For small to medium law schools, it makes it highly likely that some will be beneath the submissions threshold in a number of areas (assuming a threshold of 50 outputs) in which they have very good research. That research will effectively go unrecognised for ERA purposes if this happens. In addition, splitting into multiple small areas will disproportionately impact small-medium law schools that seek to be generalist law schools. It will also be more difficult for small-medium law schools to achieve a critical mass of researchers in each or even many of the 7 (plus other) categories. Given that rankings are based on performance of a unit of assessment as a whole and not an individual researcher, achieving higher rankings (of 4 or 5) with a small core of 3 or 4 researchers may be much more difficult than if there is a group of 8+ researchers.

A suggested solution would be that the minimum volume requirements are calculated not on absolute numbers of pubs but on a threshold calculated per FTE of academic staff member. This might go some way to ensuring equity in the process. Or, that submission for a certain size of FTE should be at 2 digits.

(1) Concerns over size and student load: ERA AS A measure of research investment

A large university, particularly in an urban area, will (sans COVID) have larger international student cohorts and can use that additional revenue to cross subsidise research. This impacts teaching loads, grants, stipends, research assistants and so on. For example, larger institutions generally have regular research scholarships to help researchers take an additional semester off teaching. The issue is that the ERA ends up measuring research investment as much as it measures quality of outputs. It is suggested that the thresholds be re-designed “relative to opportunity” to take into account discipline size in an institution and ideally the internal budget allocated to research. One such measure would be research efficiency - which is a better economic measure. The community benefit from good research done efficiently with great outcomes, and that doesn’t correlate with research cost.

Q3.8 What are the strengths of the overall methodology?

The discipline specific and mixed methodology approach of ERA which allows the application of peer review is well suited to law as a discipline. It is critical that the discipline of law not be subject to the same metrical strictures as STEM. Peer review is thus essential to the discipline of law. If metrics are applied to the discipline of law it will at best, lead to misrepresentations of research performance and at worst result in actual bias when applied as measures of individual performance.

By way of explanation, the methodology of peer review accommodates the complexity of the discipline of law. Law encompasses traditional doctrinal legal research as well as research that uses empirical or other methods. Research in the discipline of law is broad and legal research is research on the subject of law, regardless of the method.

In Australia, academic legal research is influenced by the legislation at the federal, state and territory levels. It is also subdivided into various, more or less widespread, specialist areas such as private, criminal, and public or international law. The consequence of this segmentation is an abundance of different legal research (in the sense of research topics, questions, and areas of application) and a large number of types of varied forms of publication (monographs, articles, textbooks, commentaries, case notes, etc.). Peer review best measures quality of many of these outputs which may have low circulation figures and little competition/review/external standards.

Another advantage of maintaining peer review for the discipline of law is that it encourages competition, innovation and provider diversity. In her 2016 Report,¹ Professor Kathy Bowrey noted that existing Australian studies done on law journal

¹ Kathy Bowrey, *A Report into Methodologies Underpinning Australian Law Journal Rankings. Prepared for the Council of Australian Law Deans (CALD)* (2016) UNSW Law Research Paper No. 2016-30, available: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2734017 (‘the Bowrey Report’)

rankings reveal inherent bias in the application of a journal driven data metric. Referring to a leading study by Russell Smyth,² Bowrey notes:

The “most prolific academics” represented in Smyth’s top legal researchers list were ALL public lawyers: There was weighting for co-authorship but no distinction was made between Fellowship recipients, research only and regular teaching and learning staff. One would hope a Laureate Professor would publish more often than academics with much more diverse workload obligations. Whilst it may be that Australian public lawyers are performing at a higher level by producing many more high quality law journal articles than all other Australian legal researchers and areas combined, the apparent ‘over-representation’ of public law suggests serious problems with the methodology used that one would have thought would have warranted further investigation.

The most recent Australian study, published in 2020, on the ranking of law journals and the use of metrics to ascertain the quality of legal research published in national and international law journals continues to evidence bias with respect to prioritisation of certain legal areas and with respect to gender.³

Further, if peer review is not used the impact may be detrimental to the Australian public. This will mean that metrics will instead ‘force’ publication only in journals. This will drive behaviour of law schools to encourage legal scholars to publish only in journals— particularly international journals. This will limit non-journal outputs in law and reduce coverage of Australian specific legal issues - it will mean that research across legal issues unique to Australia will be at risk.

Q3.9 What are the weaknesses of the overall methodology?

See 3.7 (as to negative impact of law school size and the Unit of Evaluation/four and two-digit Field of Research Codes).

Weakness is inherent in the use/aspiration of ‘quality’. It is important that disciplinary variability in what counts as “international standard” is acknowledged (see 3.1(e) above). Further, ‘quality’ is defined as the degree to which research is considered “good” by various stakeholders. The definition of what is “good” is up to these stakeholders. In the humanities, to which some types of legal research have close similarities, there is still no universally recognized definition of what is ‘good’ research or ‘good’ scientific quality. The use of clear statements of standards and the use of well-crafted guidelines can partially address this concern. However, there remains an necessary aspect of evaluative agency.

This dependence on an act of evaluative agency is not negative *per se* – it is not only unavoidable, but is a generative act that contributes to the discursive development of concepts of ‘quality’. More fundamentally, the indefinability of ‘excellence’ is present for *any* assessment of quality. While this evaluative aspect is more visible for the peer review method, it is still present for the citation method, where it has been drawn into the system design rather than operation phase. The core idea that number of citation is

² Russell Smyth, ‘Who publishes in Australia’s top law journals?’, (2012) 3(1) *UNSWLJ* 201-245

³ See Ian Murray and Natalie Skead, ‘Who Publishes Where?: Who publishes in Australia’s top Law journals and which Australians publish in top Global Law journals?’ (2020) 47 *University of Western Australia Law Journal*, 220-282

a useful proxy for quality is subject to a range of concerns – but more fundamentally it is no more ‘accurate’ or ‘objective’ in assessing quality than peer review.

Citation analysis methodology

Q3.10 Does the discipline-specific approach for evaluating research quality (citation analysis or peer review for specific disciplines) continue to enable robust and comparable evaluation across all disciplines?

Yes. Peer review should be used to evaluate research quality in the discipline of law (see 3.7 & 3.8 & 3.16)

3.11 The citation analysis methodology for evaluating the quality of research is appropriate.

CALD disagrees with this proposition in the strongest possible terms.

Citation analysis methodology should not be used for the discipline of law, and is fundamentally incompatible with either the pursuit or measurement of quality legal research. (See Q 3.7 & 3.8 & 3.16)

Q3.12 What are the strengths of the citation analysis methodology?

The unique nature of academic legal research places clear limits on the suitability of the citation analysis methodology. In the discipline of law data mining tools may be a useful aid to peer review, but they should not replace human judgement. Metrics should support, not supplant, expert judgement in law.
(See 3.7 & 3.8.)

Q3.13 What are the weaknesses of the citation analysis methodology?

In relation to the discipline of law (see 3.7 & 3.8 & 3.16) and note:

- (1) subject-specific segmentation, and the low numbers of publications recorded in research databases make it hard to use relevant data sources in law.
- (2) Citation analysis is difficult due to the categorization of publications and the publication outputs in law (ie: monographs, anthologies, or commentaries) whose citation data are not listed in databases.
- (3) The weakness of citation analysis methodology as applied to the discipline of law is that evaluation of academic legal research using citation analysis will result in misleading results.

Further, the validity of statistics generally said to be relevant to law, such as the impact factor of legal journals and the h-index, is neither well understood nor well studied. The connection of these statistics with research quality is sometimes established on the basis of “experience”. The justification for relying on them is that they are “readily available”. The few studies of these statistics that have been done focus narrowly on

showing a correlation with some other measure of quality rather than on determining how one can best derive useful information from citation data.⁴

Q3.14 Can the citation analysis methodology be modified to improve the evaluation process while still adhering to the ERA Indicator Principles?

No – not in the discipline of law (see 3.7-3.13 above).

Peer review methodology

Q3.15 The peer review methodology for evaluating the quality of research is appropriate.

CALD strongly agrees with this proposition. Peer review in the discipline of law is critical both to the creation, propagation and measurement of excellent legal research. (See 3.7-3.14 above).

The peer methodology evaluation must remain to evaluate the quality of research in the discipline of law.

Three central reasons for this are:

(1) Law journals are poorly captured in existing databases

Peer review must remain as it is impossible to accurately use metrics to analyse law outputs. Even with respect to journals there is no comprehensive capture of law journals in any existing metric. For example, the Bowrey Report notes that:

Web of Science includes Social Science and Arts & Humanities Indexes. These indexes capture some law titles. Scopus includes Law as a distinctive field of research. However both databases index miniscule numbers of law journals.

Australian law journals are generally not represented in any of these databases in significant numbers. This makes the use of citation reports based upon the data sets unsuitable as an aid to assess the quality or impact of Australian legal research⁵.

The numbers of journals captured in these databases confirm this gap in legal journals and metrics⁶:

Web of Science (Thomson Reuter) – of the 1766 journals in the Arts & Humanities citation Index 5 are law journals and none are Australian law journals. In the Social Citation Index there are 3244 Journals – of these 135 are law journals and there is only one Australian law journal.

⁴ With respect to this comment see Robert Adler, John Ewing and Peter Taylor *Citation Statistics, A report from the International Mathematical Union (IMU) in cooperation with the International Council of Industrial and Applied Mathematics (ICIAM) and the Institute of Mathematical Statistics (IMS)*, (2008) Joint Committee on the Quantitative Assessment of Research, (February 2009), 24(1) *Statistical Science* pp. 1-14

⁵ Bowrey (n1) p5.

⁶ These figures are drawn from the Bowrey Report

Scopus (Elsevier) – 540 journals in total; includes only 5 Australian law journals

Google Scholar - due to the nature of this system (which is difficult to evaluate as it does not disclose how it retrieves information or what information is covered) it is difficult to evaluate however in the list of Top 20 Law publications (2015) as generated by Google Scholar, all are American journals and, with one exception, they are all general law journals that publish numerous editions per year.

The use of the H Index is also problematic. As the Bowrey Report notes:

The lack of coverage of Australian legal publications in Web of Science, Scopus and (presumably) Google Scholar makes any reference to H-Indexes of Australian legal researchers meaningless.⁷

While the h-index has been found to have ‘considerable face validity’ in the hard sciences, that does not seem to carry through into law. Consider the data gathered by the LSE’s Impact of Social Science Project:⁸

Figure 1: Average h-Scores by Discipline

| Discipline | Average h-Score |
|-------------------|-----------------|
| Geography | 5.04 |
| Economics | 4.83 |
| Political Science | 2.46 |
| Sociology | 2.38 |
| Law | 1.25 |

Figure 2: Average h-scores by Position

| Position | Average h-Score |
|-----------------|-----------------|
| Professor | 4.97 |
| Senior Lecturer | 2.29 |
| Lecturer | 2.21 |

Figure 3: Average h-Scores by Discipline and Position

| Discipline | Lecturer | Senior Lecturer | Professor |
|-------------------|----------|-----------------|-----------|
| Geography | 3.11 | 2.40 | 7.60 |
| Economics | 3.37 | 5.75 | 6.50 |
| Political Science | 1.91 | 2.50 | 3.67 |
| Sociology | 1.20 | 2.07 | 3.43 |
| Law | 0.83 | 0.50 | 2.83 |

Not only do h-index citations in law exist as a clear outlier from other disciplines, the citation patterns (for example the *fall* from Lecturer to Senior Lecturer) indicate the general unreliability of this measure.

(2) Metrics do not capture all dimensions of research or of a productive and impactful legal scholar

In their recent article, Murray and Skead make the following points re metrics and law⁹:

⁷ Bowrey (n1) p20.

⁸ London School of Economics, *The Impact Blog, Key Measures of Academic Influence*, <http://blogs.lse.ac.uk/impactofsocialsciences/the-handbook/chapter-3-key-measures-of-academic-influence/>

⁹ Murray and Skead (n3) p225-5

1. Citation counts vary markedly depending on the scope of coverage of the relevant database.
2. A United States study evidences that almost all law citations involve no substantive reliance or engagement with the ideas, methodology or conclusions of the work cited – the inference being that citation does not measure quality in law;¹⁰
3. Gender and research area in law skews citation-based metrics – with women being cited less and public law (particularly constitutional law) being cited most highly (see 3.8 above).
4. That citation-based journal rankings do not determine the quality of an individual paper or author. In particular, the ‘average’ citation level in a journals ‘impact factor’ is misleading as this average applies to all papers in a journal. This means that only a few highly cited papers contribute to the average (with the majority of papers being below average).

Further, the specific publication behaviour and the customary types of publications, such as the prevalence of monographs for academic legal research matters. ‘Core journals’, typical of the natural sciences, are less prevalent in the discipline of law. It has traditionally been the case that journals are less important than monographs. While this may altered to some extent in the last twenty, legal publishing continues to follow a distinct pattern. For example, in the 2018 ERA round, nearly 30% of all legal outputs were chapters in edited collections.

As these concerns indicate, bibliometric tools have received relatively minimal attention and been afforded little significance within the legal academy, largely because they are seen as unreliable and inaccurate for the discipline. The drawing of inferences from citation data may be problematic for a number of (widely acknowledged) reasons. These include:

- the fact that, in Law especially, citation may be indicative of disapproval or contestation as often as it signifies endorsement;
- relatively unoriginal scholarly contributions such as review articles may be highly cited out of an authorial concern to document a paper trail, rather than as an indicator of their significance in shaping the field in question;
- citations in non-English publications are under-represented for reasons other than to do with quality; and
- citations in certain sub-fields, on certain topics, or to highly prescient or forward-thinking work may build slowly over time such that the time-scale of commonly used citation metrics may be inappropriate to gauge their impact.

For these reasons, performance in any such metrics should always be interpreted contextually, with reference to field-specific peer guidance and comparative data

¹⁰ For the US study see Gregory Sisk, Valerie Aggerbeck, Nick Farris, Megan McNevin and Maria Pitner, ‘Scholarly Impact of Law School Faculties in 2015: Updating the Leiter Score Ranking for the Top Third’ (2015) 12(1) *University of St Thomas Law Journal* 100, 109-110

(where available), and with regard to other qualitative information and modes of evaluation.

(3) English as a dominant language and specialist journals

Metrics may be influenced by choice of language and the degree of specialisation of the academic research. One question is whether and how language relates to metrics and the evaluation of the quality of a legal publication. It can be debated whether articles that are written for a broad audience, published in English-language journals with a high frequency of appearance, are necessarily better in terms of quality of scholarship than articles written in non-English journals or German for a specialized journal that has comparatively fewer readers and appears less often and may not have the digital presence and public face of other more mainstream journals.

Q3.16 What are the strengths of the peer review methodology? Please describe.

In the view of CALD, peer review is the only viable option for assessing research quality in law (see 3.7-3.15 above).

Much law research has a jurisdictional focus. It can be very local in focus (eg state-based). Citation analysis tends to favour publications about large jurisdictions, especially those of the United States. Many law journals – particularly ‘high-ranked’ US journals are not peer reviewed but rather run by law students: there is no guarantee that an article published in a highly ranked journal has previously been peer reviewed. It is therefore imperative that any quality assessment include a peer review component. Done well, peer review allows for detailed assessment of strengths and weaknesses across a discipline. Note, though that any automatic exclusion of non-peer-review publication from ERA automatically excludes publication in the majority of high-ranked US journals.

In law the strengths of the peer review methodology is its recognition of the weaknesses in the use of citation metrics across the discipline. The use of a journal ranking and citation system in law is under-utilised and will not provide an assessment of quality. Research assessments based on journal ranking alone may discount a major proportion of the output of some Australian legal researchers (journals constituted only 64% of the research output reported in ERA 2015 submissions for field of research code 1801 Law). Books, book chapters, conference papers and non-traditional items remain unaccounted for in most metrics. This poses a significant problem that may disadvantage researchers with particular publication profiles.

Q3.17 What are the weaknesses of the peer review methodology?

The weaknesses of the methodology are:

- (1)** The method currently used in ERA does not appear to permit peer reviewers to provide a detailed account of the strengths and weaknesses of a particular sample (eg by reference to individual works). Diverse works are difficult to assess holistically. The selection of only 30% of outputs for peer review means that it is not comprehensive. Opportunities exist for results to be influenced by the selection of works by the institution (ie whether it is a fair

and representative sample or whether it is the best 30% in the estimation of the institution). This possibility of bias in peer review has been identified as problematic internationally.¹¹ There is also the problem that the reviewer chooses which works to review which means that each review might by chance review the same mix of works whilst others might be neglected. To this extent it can operate in a very haphazard manner.

- (2) The peer review process does not benchmark internationally. There are almost no international Peer Reviewers partake in ERA. The process should involve at least 50% international reviewers to ensure outputs meet the “international standard”.
- (3) The system can be gamed by hiring adjuncts, through honorariums or by hiring people on fractional appointments. It is the position of CALD that only the research performance of salaried staff substantial loadings (an absolute minimum of 20% FTE contract) should be included.
- (4) ERA aims to rank excellence rather than size, but size is important. A small internationally excellent submission in a peer-review FOR rarely attains a 5, whereas large submissions of mixed quality have been awarded 5.

Further, in peer review quality assessments are also partly based on the assessors' subjective and unexpressed notions of quality. The system of peer review reinforces existing views/structures. The quality and the calibre of the Peer Review is fundamentally important. There is a problematic perception that it tends to be young scholars who volunteer, and older scholars don't because it is a lot of work. As a result, on this view, there is a real risk that there is only inexperienced Peer Reviewers and the peer review is of limited value to the ranking panel. Whether this view reflects practice or not, this perception can undermine the legitimacy of the process.

A further weakness is the experience of the peer reviewers themselves: Reviewers have reported a lack of overall guidance in the process. The guidance document has been stated to be short and generic and from that perspective not helpful. It is suggested that the instruction documents should provide more information as to what to look for in an assessment and how to rate material. The workload for peer reviewers has also been reported to be large and time consuming. It has been suggested that this may be helped by reviewers not only receiving the raw publications but also receiving narrative statements drawn up by law schools.

Q3.18 Can the peer review methodology be modified to improve the evaluation process while still adhering to the ERA Indicator Principles?

Yes

- a. If you answered 'Yes', please describe how the peer review methodology could be improved.

(1) The Selection of Items to be Reviewed

¹¹ see Rob van Gestel and Andreas Lienhard *Evaluating Academic Legal Research in Europe* (Edward Elgar, 2019) 1, 5-6

It could be comprehensive (all outputs reviewed) or items to be reviewed could be randomly selected within particular categories (eg type of output, identity of author). Reviewers should see a random 30%, not a selected 30% of all outputs

(2) The Indicators for Review

Provide a definition and indicators for peer-reviewers of how to assess what constitutes “international standard”. The ARC could provide international benchmarks on what constitutes “international standard” in the discipline of law for key research output metrics

(3) The Reviewers

Common standards could be developed between the ARC and the Universities to ensure adequate time release to peer reviewers from their other duties to allow review to be properly conducted. Without agreed standards, there is a risk that academics at some institutions will be obliged to conduct this work essentially on top of other academic duties meaning either that insufficient time is allocated to it or that the work is being done on a voluntary basis.

There could also be more international reviewers and better quality (more experienced) reviewers. One way of achieving this may be to make it a requirement for all level E academic staff in all Australian universities to participate if they wish to be eligible for ARC/NHMRC funding;

Contextual indicators

Q3.19 The volume and activity indicators are still relevant to ERA.

Strongly agree.

Q3.20 The publishing profile indicator is still relevant to ERA.

Strongly agree

Q3.21 The research income indicators are still relevant to ERA.

Agree.

The applicability of research income indicators is useful but **not in any way determinative** of the quality or breadth of research in the discipline of law. This information must be contextualised:

- (1) Research income may be an important component of research however with respect to legal research its importance is not the same as in STEM disciplines. Legal research – especially doctrinal research – can often be undertaken without funding.

- (2) Further, and significantly, the context of funding (or absence of funding) should be provided to assessors. For example small regional law schools may not be able to attract and sustain funding in the same way as larger metropolitan law schools.

Q3.22 The applied measures are still relevant to ERA:

N/A.

ERA rating scale

Q3.23 The five-band ERA rating scale is suitable for assessing research excellence.

Agree

The five band scale is easily understood and communicated as a rating system. However while all of the ratings refer to the ‘world standard’ it is not clear what this means. It is not thought to be well understood except as a potentially useful marketing description. Is the comparator English-language scholarship, Western and developed world scholarship, or whole world scholarship? A scholarly standard for the world does not at present exist.

Q3.24 Noting that 90% of units of evaluation assessed in ERA 2018 are now at or above world standard, does the rating scale need to be modified to identify excellence?

No. On one view, this may merely reflect Australia is generally above world standard – within a particular conception of English-language, Western and developed world scholarship. (See 3.23.)

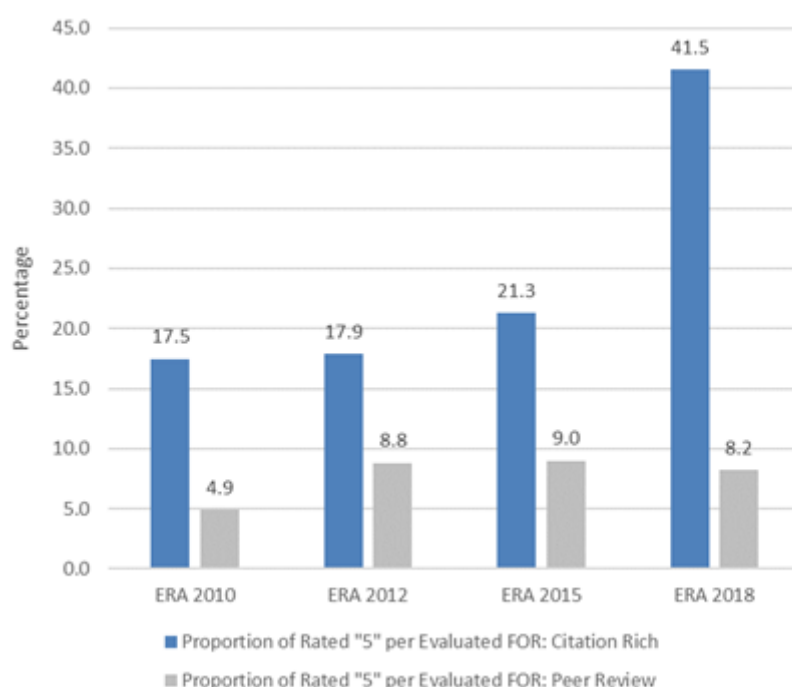
However, to the extent that there is a sense of ‘inflation’ of ERA evaluations, it should be noted the ‘two-track’ nature of the ERA process is arguably central to this trend. As Marnie Hughes-Warrington has noted, properly regarded, the ‘ERA is not one thing, it is two. ERA is divided into citation analysis fields of research, and peer review fields of research’,¹² with any inflation almost entirely confined to the former. Hughes-Warrington observes:

Over 8 years, the proportion of 5s in the citation fields grew from 17.5% to 41.5%. The proportion of 5s in peer review fields grew between 2010 and 2012 but hovered stubbornly at or under 9% after that.

These observations are instantly apparent in the figure below:

¹² Marnie Hughes-Warrington, ‘98 Questions’ (16 September 2020) on the ‘Odyssey Higher Education’ blog: <https://odysseyhe.tumblr.com/post/629407253284421632/98-questions>

Figure 4: Portion of Research Rated ERA 5 Citation Rich v Peer Review¹³



From the perspective of a Peer Review discipline such as Law there is no significant inflation, and therefore no need to alter the relevant scale. On one construction, the figures do suggest that there may be the need to moderate the scale and use of metrics in the citation rich disciplines, and that the relevant models may have become less reliable as an accurate indicator of quality. On this construction, the correct response would be to recalibrate those processes, and not to alter the scale.

ERA low-volume threshold

Q3.25 The ERA low-volume threshold is appropriate.

Disagree.

The low volume threshold potentially allows disciplines to hide lower quality publications in non-evaluated codes. It tends to negate any claim that the ERA is a comprehensive review of research as numbers of outputs will not be included in the evaluation.

Q3.26 Are there ways in which the low-volume threshold could be modified to improve the evaluation process? *Please describe.*

The low-volume threshold should be modified to account for different publishing volumes in different disciplines. The new FOR Codes for law will permit much better differentiation between different areas of law and is therefore generally to be welcomed.

¹³ Ibid

However, it could make it difficult for smaller/medium law disciplines to be evaluated in more than one or two four digit codes. For this reason the use of four digit codes in law does not have general support across the discipline of law (see 3.7). Further, using the new 4 digit codes will mean that any new ratings will not be comparable to previous ERA ratings.

ERA staff census date

Q3.27 What is the more appropriate method for universities to claim research outputs—staff census date or by-line?

A by-line approach is more suitable (rather than place of employment at time of reporting), as it ensures that an academic's publication is attributed to the institution they worked for at the time of publication. This means that the by-line ensures research is credited to the institution where it was produced and prevents inflating research performance with new staff. ERA results are already outdated by the time they are released, so the point-in-time snapshot has little justification. A by-line approach gives a more accurate picture over time of the research associated with a particular unit.

A census approach is useful in that it gives a snapshot of work at that period of time (ERA re 5/6 years) in a particular institution. A census approach can also encourage investment and enable greater movement between institutions.

Q3.28 What are the limitations of a census date approach?

See 3.27

Q3.29 Would a by-line approach address these limitations?

Yes (See 3.27)

Q3.30 What are the limitations of a by-line approach?

Human and journal error in incorrect attribution.

Further, some journals/books only allow a by-line from one institution when some staff have multiple institutional affiliations and some books and NTROs do not carry a by-line.

ERA interdisciplinary research and new topics

Q3.31 ERA adequately captures and evaluates interdisciplinary research.

Disagree.

Law is generally taught within its own school or faculty. Indeed the administrative structure of universities into schools or faculties generally follows disciplinary lines. Schools and faculties are urged to maximise the ERA scores for the disciplines that they cover, and internal incentives reflect this preoccupation. Even though rhetorically the ERA embraces multi-disciplinarity, management arrangements and benchmarks often creates a management impetus to maximise publications and grants within specific

ERA categories. Emerging scholars particularly will be influenced by management to this effect, even when a broader approach might otherwise be followed. This is entirely dependent on the FOR codes and whether particular forms of interdisciplinary research have been included. Almost all new forms of interdisciplinary approach are missed. This is hard to address except by regular updating of the FOR codes.

ERA and Indigenous research

Q3.32 My institution would meet ERA low-volume threshold in Indigenous studies at:

a. Two-digit?

N/A

b. Four-digit?

N/A

Q3.33 In ERA, the best approach for evaluating Indigenous Studies is (*choose one*):

a. Using established ERA methodology i.e. the low-volume threshold would apply to the Indigenous Studies discipline and all its specific disciplines

b. For Aboriginal and Torres Strait Islander studies by combining low-volume disciplines into single units of evaluation

c. For Aboriginal and Torres Strait Islander studies by combining low-volume disciplines into two units of evaluation (one unit comprising Humanities, Arts, and Social Sciences disciplines and one unit comprising Science, Technology, Engineering and Mathematics disciplines)

d. Other. Please describe.

N/A

Q3.34 What would be the advantages and/or disadvantages of your preferred approach for evaluating Indigenous studies in ERA? *Please describe.*

N/A

ERA PROCESS

Collection of ERA data

Q3.35 ERA should move to an annual collection of data from universities.

Strongly disagree.

Annual collection will neither streamline nor simplify the process (as per the Guiding Principles in the Consultation Paper at 2.4). It will instead act only to amplify an already large administrative burden upon the university, faculties and individual researchers. It will also take time away from research due to the need for more academic assessors more frequently.

Q3.36 What would be the advantages and/or disadvantages of an annual data collection?

Advantage: Possible appearance of currency and reliability (perhaps more for external stakeholders)

Disadvantage: the long term cycle of research means that the actual currency and reliability will be is questionable due to the onerous administrative burden of comparatively little advantage to stakeholders.

Publication of ERA data

Q3.37 In future ERA rounds, should the volume of outputs submitted for each unit of evaluation be published?

Yes, for transparency.

Q3.38 In future ERA rounds, research outputs should be published with their assignment to specific disciplines following completion of the round.

Strongly agree

a. What would be the advantages?

Transparency.

b. What would be the disadvantages?

The data may be used as a workload metric for academics as to quantity required (rather than quality) based upon a, perhaps false, estimate of what is required to be ranked highly in ERA.

Q3.39 What other data do you think the ARC should publish following an ERA round?

Panel feedback on each FOR be provided.

PART IV: ENGAGEMENT AND IMPACT ASSESSMENT (EI)

EI OVERVIEW

Q4.1 Considering that EI is a new assessment, to what extent is it meeting its objectives to:

a. encourage greater collaboration between universities and research end-users, such as industry, by assessing engagement and impact?

With respect to the discipline of law, it is the failure to count ‘non-traditional’ publications at all in most institutional staff performance and workload measures that creates disincentives for researchers to engage in this kind of research activity in some law schools. Over time these policies may lead to less and more superficial engagement by legal researchers with broader public constituencies, especially where grant income does not support the activity. In this context the introduction of an impact measure in Australian law schools could actually help restore the academic freedom to engage with public policy and in Parliamentary scrutiny in some law schools.

b. provide clarity to the Government and the Australian public about how their investments in university research translate into tangible benefits beyond academia? *A very large amount; A large amount; A moderate amount; A small amount; Not at all. Please explain your answer.*

N/A

c. identify institutional processes and infrastructure that enable research engagement? *A very large amount; A large amount; A moderate amount; A small amount; Not at all. Please explain your answer.*

N/A

d. promote greater support for the translation of research impact within institutions for the benefit of Australia beyond academia?

N/A

e. identify the ways in which institutions currently translate research into impact? *A very large amount; A large amount; A moderate amount; A small amount; Not at all. Please explain your answer.*

N/A

Q4.2 The EI objectives are appropriate for the future needs of its stakeholders.

In terms of the discipline of law the EI objective to:

• promote greater support for the translation of research impact within institutions for the benefit of Australia beyond academia

is of great benefit for the future needs of the public and the benefit that legal research may bring.

Q4.3 What impact has EI had on: a. the Australian university sector as a whole?

Please describe.

b. Individual universities. *Please describe.*

c. researchers. *Please describe.*

d. other sectors outside of academia? *Please describe.*

EI has had an impact upon Australian law schools. Driven by university objectives of the EI assessment more emphasis is being placed upon EI and legal research. However this is, as yet, without comprehensive or adequate recognition in workloads and performance measurement.

Q4.4 How do you, or your organisation, use EI outcomes? *Please describe.*

Law schools use EI for the purpose of marketing, attracting industry and civil society funding/research partners and for underscoring the importance of law as an interdisciplinary research strength.

Q4.5 The EI outcomes are valuable to you or your organisation. Strongly agree; Agree; Neither agree nor disagree; Disagree; Strongly disagree. Please explain your answer.

See 3.4 & 3.5.

Q4.6 How else could EI outcomes be used? *Please describe*

See 3.4 & 3.5.

EI DEFINITIONS

Q4.7 The current Engagement definition is appropriate.

There is a rationale for changing the definition of end user so that in certain contexts these can be within higher education. There is scope for the end user to be universities, so this should be allowed to encompass research on higher education which leads to impact within the sector (so defined so that it isn't just an impact on scholarship).

Q4.8 The current Impact definition is appropriate.

As long as contribution is not exhaustively defined as meaning a material trigger for a positive/significant change – eg in policy or practice – outside the academic context. Such an exhaustive definition should be avoided, as it can be impossible to demonstrate and also law research, a significant contribution might be to prevent a change (eg a bad reform) rather than promote it.

Q4.9 The current end-user definition is appropriate. Strongly agree; Agree; Neither agree or disagree; Disagree; Strongly disagree.

a. If you don't agree, what are your suggested amendments to the end-user definition? *Please describe.*

See 4.7.

- b. Are there any end-user categories excluded in the current definition of research end-user that you think should be included? Please explain your answer.**

See 4.7.

- Q4.10 Are there other key terms that need to be formally defined? Yes/No. If you answered 'Yes', please explain your answer.**

EI METHODOLOGY

Unit of assessment

- Q4.11 Are the two-digit Field of Research codes the most appropriate method to define units of assessment for Engagement and Impact?**

Yes. (See 3.7 & 3.26.)

Law as a discipline is offered by small and large law schools. Many regional universities have a small law school with comparatively fewer researchers than a large metropolitan university. If the two digit FOR code is replaced with the use of the seven available 4 digit codes for Law this has the probably result of excluding smaller law schools from any assessment for Engagement and Impact. The ARC combines outputs from the entire four-digit FoR within a two-digit FoR to the two digit level for evaluation. This means that an institution could meet the threshold for a two digit FoR when it doesn't meet the threshold for any four-digit FoR. This is an undesirable outcome as the EI assessment exercise is generally one where the smaller and innovative regional law schools will perform well.

- Q4.12 Are there other ways to classify units of assessment in EI, for example, SEO codes?**

No.

Engagement and impact provide an opportunity for non-metric / peer-review disciplines like the discipline of Law to excel. ERA tends to be biased toward citation analysis disciplines (ie most of the disciplines in Australia with 5s and 4s are not HASS).

The challenge of assessing EI should not be a matter of using existing codes, not designed for the purpose, to apply to Engagement and Impact.

Selectiveness of EI

- Q4.13 Should there be more or fewer units of assessment per university? More units of assessment; The same number as in EI 2018; Fewer units of assessment. a. How many and why? Please explain your answer.**

N/A (see 3.7 & 3.26)

EI low-volume threshold

Q4.14 The EI low-volume threshold should continue to be based on the number of research outputs submitted for ERA. Strongly agree; Agree; Neither agree or disagree; Disagree; Strongly disagree. a. If you disagree, how should eligibility for assessment in EI be determined? Please explain your answer.

See 3.7 & 3.25 & 3.26

Q4.15 The low volume threshold is set at the appropriate level. Strongly agree; Agree; Neither agree or disagree; Disagree; Strongly disagree. Please explain your answer.

See 3.7 & 3.25 & 3.26

Engagement indicators

Q4.16 Overall, the engagement indicator suite for the assessment of research engagement is suitable.

Strongly disagree.

The engagement indicators are unhelpful for law. For example *pro bono* work is a professional responsibility that legal academics also often take on, and disciplines should not be disadvantaged only because no payment/cash has been exchanged hands.

Instead law schools should be able to select from a range of indicators – a ‘menu’ - to support and contextualise their narrative statements. For law schools it is suggested that the indicators not be mandatory and should not be considered as a check-list, allowing submitting law schools institutions to select what is appropriate evidence in their own context. Indicators should not be prescriptive, or exhaustive.

Q4.17 The cash support from research end-users indicator using HERDC data is appropriate for the assessment of research engagement?

Disagree (see 4.16). Less emphasis should be placed upon financial indicators and more recognition be given that there may be in-kind contributions would more accurately reflect the reality of legal research. In the discipline of law the cash support from end-users may be of little use in assessing research engagement. It is urged that this remain just one indicator to be used from a menu of many.

It will be more helpful if the engagement metrics include the value of in-kind support. In-kind support is incredibly important for Law and would lead to much higher recognition of the value that Law Schools bring in from industry and government.

Q4.18 The research commercialisation income is appropriate for the assessment of research engagement. Strongly agree; agree; neither agree nor disagree; disagree; strongly disagree. Please explain your answer

See 4.16 & 4.17

Q4.19 Are there additional metrics that would be appropriate across many or all disciplines? Yes/No. If you answered 'Yes', please outline the metrics. If you answered 'No', please explain your answer.

In-kind support should be included (see 4.17). The use of the term 'metrics' should be replaced with the concept of an indicator, this is a more appropriate way to describe quantitative measures which can be used to support claims of excellence (or indicate excellence).

Q4.20 Are there alternative metrics that would be appropriate across many or all disciplines? Yes/No. Please specify the metrics.

N/A

Q4.21 Should any of the current Engagement metrics be redesigned? Yes/No. If you answered 'Yes', which ones and how?

See 4.16-4.19

Q4.22 The co-supervision of HDR students should be made an engagement indicator in future rounds of EI. Strongly agree; Agree; Neither agree or disagree; Disagree; Strongly disagree. Please explain your answer.

N/A

Q4.23 In your opinion, are any of the ERA applied measures appropriate indicators of research engagement in EI?

- a. Patents.
- b. Research commercialisation income.
- c. Registered designs.
- d. Plant breeder's rights.
- e. NHMRC endorsed guidelines.

N/A. All the above may be indicators of research engagement – depending upon how the engagement is described/undertaken. For these to be included they must be research inspired/research framed.

Engagement narrative

Q4.24 The narrative approach is suitable for describing and assessing research engagement with end-users.

Strongly agree.

The narrative approach is suitable for describing and assessing research engagement. It is a clearly documented – and transparent assessment of engagement. It has the benefit of being able to be published for public consumption.

While there is an argument to be made that narrative involves assessment EI panels in assessing the quality of writing there is the expectation that the narrative itself will include some evidence of assertions. Overall it is better to have a narrative style as it allows the nuanced judgements that the narrative elements better enabled panellists to make.

Q4.25 One engagement submission per broad discipline is sufficient for capturing the research engagement within that discipline.

It may be worth providing more context as to the law school the submission heralds from. Engagement may be much easier to achieve in certain localities. For example rural universities are spatially and socially distant from commercial and industrial centres, from centres of public service, and from the headquarters many non-government organisations. Most professions, including the law, are also urban-centred. Researchers based in cities thus have many more opportunities to develop the pivotal relationships that underpin engagement and impact than do their non-urban counterparts.

Q4.26 The engagement narrative needs to be longer.

Strongly disagree.

The work this will take both for the law school and in turn for the panel/reviewers is more detrimental than the benefit it will bring. The narrative needs to communicate the quality of engagement. This can be done in a pithy manner. A longer narrative would not improve the quality of the engagement.

Instead of this it is suggested that the rankings of the entire EI be moved from 3 categories (high/medium/low) to numbered scaling (such as 1-5 used in ERA) this will make the evaluation of the narrative approach more meaningful.

Q4.27 Additional evidence is needed within the narrative.

The importance of engagement is not simply about providing evidence. It is about ensuring that the research folds in the end-user and that the relationship of researcher and end-user inform goals, strategy, policy design and implementation by adding value to what is already being done. On the other hand evidence is helpful to evaluate engagement – the narrative by itself is not verifiable by assessors. Without evidence there are challenges as to corroboration and the level of information available in the narrative. Looking at the specific responses, there was a sense that the statements had to be taken at ‘face value’ and panel members typically did not have access to evidence around the claims made which was a challenge in assessing the case studies.

If there is more evidence which needs to be included then more contextualised data could be provided to assist with the narrative such as the size of the law school or the numbers of researchers/FTE.

Impact narrative

Q4.28 The narrative approach is suitable for describing and assessing impact.

Strongly agree.

The use of the narrative is an effective method of communications. The impact case studies allow for flexibility in understanding and presenting a wide range of impacts. Future analyses are, and should continue to, explore this diversity and celebrate it. narrative style of presentation allows for this flexibility. Standardising impact (through

the use of metrics etc) will inevitably lead to a narrowing of the productive contributions research can make to society. Just as a one size approach will not fit all disciplines, a diverse array of methods and indicators is needed to measure and assess impact.

The restrictions around its use – such as word count – renders it fair and uniform across disciplines.

Q4.29 One impact study per broad discipline is sufficient for capturing the research impact within that discipline.

Strongly agree.

Using a single impact is an efficiency in terms of process and is also good for smaller law schools. However as an evaluative exercise whether there is something to report might be a matter of chance, and it may be that at larger institutions there would be an abundance of potential cases and it would be a lot of work trying to sort out which is the best.

The use of one case study reflects the aim of evaluating the quality of impact. The measure is not one of quantity. In particular:

- The use of one case study is a fair outcome for smaller law schools – allowing a smaller regional university law school to be ranked more fairly – as it is a measure of quality of impact not of quantity and quality.
- The use of one case study reduces the administrative burden placed upon academic units

It may be worth considering whether it is preferable to allow more cases but then rate them in relation to the size of the unit. (ie as a function of size, like the ERA) (see 4.27).

Q4.30 The impact narrative needs to be longer.

See 4.26.

The important feature is the impact and not the narrative. A longer narrative may allow for more smoke and mirrors around the impact. The narrative does not need to be longer to demonstrate the meaningful transformation of academic research into producing impact/end-user outcomes.

Q4.31 There is a need for additional evidence to be provided within the narrative.

No. There are limitations with quantitative metrics, which tend to be output rather than outcome focused and thus miss a holistic picture of research performance (see Part 3).

Q4.32 In your opinion, are there quantitative indicators that could be used to measure the impact of research outside of academia?

Only if the indicators are used as context and not as metrics. For example, context as to law school size/opportunity/staffing.

The reason for rejection of using indicators to measure impact is that one size does not fit all. Quantitative indicators which measure research impact are designed for different purposes and may be useful (for example for measuring monetised impacts). Yet the impact of academic scholarship in law may not be measurable quantitatively. Law research may cause law reform and legislative change or **even to prevent legal change** which cannot be calculated. Therefore narrative accounts – not quantitative measures - are needed.

Further, quantitative indicators do not reflect that law reform, legal discourse and changed methods are typically influenced not by a single researcher or a specific piece of work, but rather by the accumulation of more knowledge. This is different from those disciplines where technical discoveries can be directly linked to industrial application. The context indicators and the impact and engagement measures that are used within ERA substantially reflect the belief that monetisation of science is the most significant mechanism for impact. With the law, however, changes to various types of rules and rule administration are the demonstration of the impact of research. As noted above, it is not unusual that these changes result from the accumulation of knowledge rather than from an individual piece of research. Our experience indicates that misunderstanding of impact from legal research has resulted in an undervaluing of research which has influenced public policy, or which has been implemented by other legal researchers in Australia and overseas.

Approach to impact Narrative

Q4.33 The narrative approach is suitable for describing and assessing approach to impact.

Agree – again contextual data would be of assistance to ensure relatives (such as the size of the institution, its location etc) are fairly evaluated.

Q4.34 One approach to impact narrative per broad discipline is sufficient for capturing the activities within that discipline.

Agree – there is no need to have more than one approach to impact. If any change was to occur it should be in the rankings (ie: removing the High/Medium/Low) and replacing it with the ERA 5 category ranking to provide more nuance and meaning.

Q4.35 The approach to impact narrative needs to be longer.

Disagree. See 4.26 & 4.30.

Q4.36 There is a need for additional evidence to be provided.

Strongly disagree. See Part 3 & 4.31.

Q4.37 Would there be benefit in combining engagement and approach to impact?

No. Approach to impact assess institutional support. It is a transparent tool to evaluate what an institution is doing to support impact.

Separating engagement and approach to impact achieves two different objectives: one is to measure end-user involvement in the research process and the other to assess the assistance institutions offer to researchers. This should remain.

Currently, the approach to impact part of the EI assessment is ‘tacked on’. To underscore its importance the approach to impact section could:

- (i) give more specifics/context of institutional support for the discipline/area assessed – separate generic support (such as sabbaticals) from the targeted assistance the researchers in the case study have been given;
- (ii) be expressly targeted – that the information provided cannot be generic – that it must related specifically to the impact case study provided – and if there is no support that must be stated.

EI rating scales

Q4.38 The engagement rating scale is suitable for assessing research engagement.

Strongly disagree.

The rating scale should be reflective of the rating scale used for ERA – at this point in time that is 1-5. The rating scale for ERA reflects world standard and the rating scale for EI should have a similar standard.

If this is not possible then the rating scale for EI needs to have more categories. The current use of three categories is too generic and is not able to accurately reflect the differences within each category. The 5 category approach of ERA can be applied to ensure better evaluation and more meaningful external communication of results.

Q4.39 The descriptors for the engagement rating scale are suitable.

Strongly disagree.

EI 2018 uses a three-point rating scale for the engagement, impact and approach to impact ratings of High, Medium and Low: this is inadequate. It does not allow for any distinction between a very high medium and a very low high. The 5 rating scale of ERA is to be preferred as it is a known quantity and it gives more nuanced evaluation.

Q4.40 The impact rating scale is suitable for assessing impact.

See 4.39

Q4.41 The descriptors for the impact rating scale are suitable.

See 4.39, the descriptors should be adjusted to reflect a more nuanced rating.

Q4.42 The approach to impact rating scale is suitable for assessing approach to impact.

See 4.39

Q4.43 The descriptions for the approach to impact rating scale are suitable.

See 4.37

EI interdisciplinary research

Q4.44 Should EI continue to include an interdisciplinary impact study in addition to the two-digit Fields of Research impact studies?

Yes, the discipline of law which has application across society. The discipline underpins the overarching principle of research the blending of discipline strengths is to be encouraged. However the current ERA system does not assist this form of research. See 3.31

EI and Aboriginal and Torres Strait Islander research

Q4.45 Should the EI low-volume threshold be applied to the unit of assessment for Aboriginal and Torres Strait Islander research in EI 2024 with the option to opt in if threshold is not met? *Yes/No. Please explain your answer.*

N/A

Q4.46 Should the unit of assessment for Aboriginal and Torres Strait Islander research include engagement in EI 2024? *Yes/No. Please explain your answer.*

N/A

PART V: OVERARCHING ISSUES COMMON TO BOTH ERA AND EI

FREQUENCY OF ERA AND EI

Q5.1 How often should ERA occur?

Generally, the ERA process should occur every **five** years.

However, this round, due to the impact of COVID, it should occur with a 6 year gap.

ERA assesses academic work that can be the culmination of many years of research. 5 years is an appropriate time frame to allow researchers to build up their track record and produce quality research which generally coincides with more time. It also reflects the reality that in some discipline areas a publication cycle of 3 years for some international journals in law is not unusual. That is it may take 3 years (minimum) from submission to publication in leading journals. It also does not reflect the grant periods which have been extended under ARC changes to lengthen rather than shorten grant times.

This longer period also recognises the significant administrative burden placed on academic staff in preparing submissions, and (for many) in reviewing submissions. A five year process would optimise the benefits of the scheme as against the administrative and bureaucratic burden of it. It would be often enough as to retain currency, but also long enough between rounds so as to not distract from the core business of teaching and conducting research. On the current three year cycle, a significant portion of the academic community are involved in dedicating substantial time to the operation of this system – the shorter the cycle the higher that proportion. In this way a short cycle may actively undermine the creation of quality research in Australia.

Q5.2 What impact would a longer assessment cycle (i.e. greater than three years) have on the value of ERA results, particularly in the intervening years?

It would not diminish those results in any way. It would allow for reflection and rebuilding. A three year cycle may minimise the length of a bad result but it also does not provide sufficient time to rebuild and ensure a better outcome in the next ERA round – the 3 year cycle is too short.

Q5.3 How often should the EI assessment occur?

Every five years. EI is a review of performance that is dependent upon longer time frames. For effective measurement of engagement and impact a 5 year period (at least) is required to demonstrate an effective and longer term performance. A focus on short-term, proximal impacts (however accurately measured) could create an incentive which works against more complex and/or politically sensitive research. It may also mean that research is not undertaken which has impacts that are likely to be indirect and hard to measure.

Q5.4 What impact would a longer assessment cycle (i.e. greater than three years) have on the value of EI results, particularly in the intervening years?

One of the flaws in the first round was the retrofitting of EI onto existing research. A longer assessment cycle will improve ERA results as it will allow institutions and researchers to build proactive strategies towards EI.

STREAMLINING AND SIMPLIFYING ERA AND EI

Q5.5 ERA and EI should be combined into the one assessment.

This is difficult to answer as it depends upon the framing of the combined assessment by the ARC. If the existing method is retained then this is too onerous to process in a single year as it will have significant workload impact on institutions and heighten time demands on academic staff. While there is an efficiency in doing this and provides recognition of the equal importance of both processes it will place a burden on processes as a one off task. The process of both ERA and EI would have to be altered (ie workload lightened for institutions) for this to work.

Q5.6 Are there other ways to streamline the processes to reduce the cost to universities of participating in ERA and EI?

Yes. Extend the time periods between reviews.

Q5.7 In your view, what data sources could ERA utilise?

ORCID/Google Scholar BUT only with the addition of peer review. One data source alone will not allow effective evaluation of law.

Q5.8 In your view, what are the most time-consuming elements of an ERA submission?

Peer and panel review.

Q5.9 In your view what are the most time-consuming elements of an EI submission?

Collecting the information/evidence and writing the narrative/case study.

Efficiencies:

- Maintain the word limits and the restrictions on evidence which may be provided.
- Provide discipline specific case studies / exemplars

UTILISING TECHNOLOGICAL ADVANCES AND PRE-EXISTING DATA SOURCES

Q5.10 ORCID iDs should be mandatory for ERA.

Disagree.

While there are definite efficiencies for the use of ORCID, there is a real concern that many law schools may not have a culture of use of ORCID. This is particularly the

case for international collaborations in law. It is also noted that this is an administrative request that is not helpful to researchers.

The use of mandatory ORCID iDs will be detrimental to the promotion of interdisciplinary research. It will continue to encourage further disciplinary silos.

a. What are the advantages and/or disadvantages?

Advantages: administrative efficiency and cost;

Disadvantages: researcher error/time/administrative load.

Q5.11 The automatic harvesting of output data using ORCID iDs would streamline a university's submission process.

Agreed however the difficult is with the usage of ORCID across disciplines. The use is 'ad hoc' in law across Australian law schools.

a. What are the advantages and/or disadvantages?

Advantages: administrative efficiency and cost;

Disadvantages: incomplete take up and inequality of institutional support.

Q5.12 DOIs should be mandatory for ERA.

Strongly disagree.

Under 2.2 Terms of Reference the guiding principles of the ERA and EI are described as:

- robust and reliable methodologies
- applicability of the methodologies across disciplines

DOIs should not, based on these guiding principles, be made mandatory for the discipline of Law. The outcome for the discipline would be that a large number of outputs in the sector would be ineligible simply because they do not have a DOI.

The coverage of DOIs and law journals is incomplete. More research needs to be done before this can be applied to law as a discipline as DOI.org does not have statistics on DOIs and law journals. Crossref does has some searchable information such as <https://search.crossref.org/?q=law> but there is no proper analysis of the number of Law journals using DOIs compared to the number who don't, and how that compares with other fields.

a. What are the advantages or disadvantages? Please explain your answer.

The disadvantage to the discipline of law is clear – if DOIs become mandatory for ERA there will be many (exactly how many is unknown and perhaps unknowable) quality outputs for law that will not be included. This will result in negative impacts across the entire sector. For example it will mean that researchers may choose to publish in

journals that are of poorer quality rate as the counting of their work will not otherwise be included for ERA. This corrodes the improvement of research quality.

Q5.13 Are there new ways to collect data to reduce the cost and burden to universities of participating in ERA and EI whilst maintaining the robustness of the ERA and EI process?

N/A