

**TRUISMS ABOUT THE AUSTRALIAN
PUBLISHING CLIMATE FOR LAW
JOURNAL ARTICLES, AND SOME
STRATEGIES TO COPE; OR ‘A FEMINIST
PERSPECTIVE ON THE HUMAN RIGHTS
OF VEGETARIAN CHILD-SOLDIERS IN
OUTER SPACE’**

DAN JERKER B. SVANTESSON*

ABSTRACT

The Australian Research Council’s now abolished ranking of journals provided a tool to decide where an author should publish her/his journal articles. This article aims to provide some further, more balanced, guidance on journal article publishing for Australian authors.

The articles can be divided into two parts. First, I highlight some truisms on matters to be considered in the context of legal writing and publishing of journal articles. I then present some findings from my research into the consequences of the ARC’s ranking system and related matters. The controversial ranking system has now been abolished. However, some important lessons can be

* Associate Professor, Faculty of Law Bond University, Gold Coast Queensland 4229 Australia, Ph: +61 7 5595 1418, E-mail: Dan_Svantesson@bond.edu.au, (www.svantesson.org). The author wishes to thank Paul White and Michael Coccetti for their research assistance. The author also thanks Ross Buckley, Jim Corkery, John Farrar, Rosa Riedl and William Van Caenegem for their valuable feedback on this article. Finally, the author thanks the helpful editors at the *Canberra Law Review* as well as the two anonymous reviewers.

learned from it so as to avoid the same mistakes being made again in the future.

I INTRODUCTION

Legal research and writing is typically a rather personal experience and can be carried out in many different ways, consciously or unconsciously, utilising a variety of methods. In his insightful 1997 article, *Legal scholarship for new law teachers*, Ross Buckley outlines five reasons why legal scholarship is written:

1. For enjoyment;
2. For advancement of one's career;
3. As a self-education tool;
4. To contribute to the development of the law; and
5. To contribute to others' understanding of the law.¹

To this could be added that many articles may be written as a result of research being a requirement for academic staff; that is, academics not seeking promotion are required to produce legal scholarship just to meet their duties.

Regardless of the motivation behind the article, some articles are written due to the author having been specifically invited to address a particular topic by a journal. Further, some authors write their articles with a particular journal in mind. However, more frequently (at least for junior academics), articles are written with the author only deciding where to submit the article once it has been written.

In this latter case, and were the author's article does not get accepted by an intended journal, authors are faced with the sometimes daunting task of trying to decide which journal is the most appropriate one to submit to.

From 2010, authors in Australia were provided with one tool to decide where to publish. I am here referring to the Australian Research Council's (ARC's) controversial, and now abolished, ranking of journals. This article aims to provide some further, more balanced, guidance on journal article publishing for Australian authors, particularly those who fall into the category of junior academics.

The articles can be divided into two parts. First, I will highlight some truisms on matters to be considered in the context of legal writing and publishing. While mainly stating the obvious, I hope that, in particular, junior academics will find the collection of advice useful. In the second part I present some findings from my research into the

¹ Ross P. Buckley, 'Note: Legal scholarship for new law teacher's' (1997) 8(2) *Legal Education Review* 181-212.

consequences of the ARC's ranking system and related matters. In more detail, I analyse what areas of research were favoured through the ranking scheme and what areas of research are negatively affected by the ARC's approach. My conclusions in that part prompted the alternative title for this article, and important lessons can be learned from the fundamentally flawed ranking exercise.

Both parts serve two distinct purposes. Most obviously, both parts contain useful information for those who publish or intend to publish in Australian law journals. Second, the article amounts to a commentary on the publishing landscape for Australian law journal articles.

II SOME THOUGHTS ON STRATEGIES FOR LEGAL RESEARCHERS

In this part of the article, I outline some more or less obvious issues to consider in legal research and journal article publishing and provide some advice on how to approach those issues.

A Take care in deciding what you spend your time writing on

One of the most important, and most difficult, things to do when planning your research strategy is to decide what to write about. Should you focus your writing in one area, or should you try to show mastery over a range of areas by having a diverse publication record? Should you only research your specific areas of interest or should you seek out those topics you think will be most interesting to your peers?

The short answer to this matrix of issues is probably that you need to take a balanced approach. Writing only in your area of interest may not be fruitful if it is so narrow that no one else is remotely interested in your findings no matter how interesting you personally find them. On the other hand, it is my view that a researcher who has a genuine interest in a specific area will find it easier to research that area than will someone who has no interest in that area. Furthermore, it is of course much more enjoyable to research something one finds interesting.

In light of this, every researcher must carefully balance *interest* and *impact*. In most cases, it should be possible to find a reasonable compromise between the two by finding a research angle with impact on a topic of interest. That may mean either broadening your focus or making it narrower. In other cases, it may require a slight change of direction for the research angle as such.

Similarly, there needs to be a balance between adopting a focused research strategy and striving for diversity. That is, over a researcher's career, there may be periods of great research focus, and other periods of a diverse research output. A strict research focus has the advantage of increasing the author's chance of becoming recognised as an expert in that particular field. It can also be used, and indeed be necessary, to achieve a particular goal such as law reform in relation to a specific area of law.

The risk with a strict research focus is that you are placing all the colloquial eggs in the same basket. First, you will typically only ever reach a very small audience. Second, if your area of research-focus gains limited attention, your status as expert in that field may be of limited value.

As to the goal of diversity, it must be noted that law has become such a large discipline that no one these days is a true generalist; the age of the generalists is over, and we are now in the age of specialists.² This means that all researchers must specialise to some degree. That is, however, not to say that a diverse approach to research is impossible or discouraged. In fact, researching one area will doubtlessly help with your understanding of other areas as you start making comparisons and noticing differences. Furthermore, diversity means exposure to a broader audience, and as correctly pointed out by Buckley 'a degree of diversity is desirable and often essential if one is to discover the areas in which one loves to write'.³

Combining what has been said above, it is my view that a researcher benefits from a balance between periods of research diversity and periods of research focus on a handful of topics, where each publication contains a research angle with impact on a topic of interest. In addition, it is obviously of great value for an author to be able to look forward and identify topics coming up, or about to come up, on the horizon; that is, the ability to be 'one step ahead' sometimes separates a great article from just another good article.

Finally, when it comes to choosing a topic for your research, you may wish to have a look at the second part of this article where I present some findings as to the publishing culture in Australia. I show that certain categories of topics are more likely to be accepted for publication than others. Further, I highlight that the Australian government's Excellence in Research for Australia (ERA) journal ranking created an inequality between various areas of research so that the ERA made it easier to publish in highly ranked journals in some areas than in others.

B Doctrinal research v 'trendy' research

The trends, contra-trends and recycling of the fashion world are well documented. But a similar modus operandi can also be seen in legal research, be as it may that the trends change less rapidly.

These trends in legal research are often identifiable by reference to buzzwords such as 'multi-disciplinary' and 'socio-legal' research, and there are trends in both research topics and research methodologies.⁴ The question for researchers is whether or not we adapt to these trends or simply let them run their course and pass into history.

² Susan Bartie, 'The Lingering Core of Legal Scholarship' (2010) 30(3) *Legal Studies* 345, 345.

³ Buckley, above n 1, 191.

⁴ See, eg, Martin Partington, 'Back to the Future: The Success and Challenge of Socio-Legal Scholarship' (2008) 40(1) *Bracton Law Journal* 27, 27; Richard Posner, 'Legal Scholarship Today'

In making that decision, it may be useful to bear in mind that the choice to ignore the trends may have severe implications for the likelihood of getting your work published, and even your prospect of promotion. For example, these days, pure doctrinal legal research is commonly met with peer-reviewers commenting that the paper is 'merely descriptive' with the result that it is not accepted for publication. The unfortunate truth is that doctrinal research, no matter how crucial it is for the legal community, seems to be frowned upon by many legal academics. This is somewhat ironic considering that anecdotal evidence suggests that the majority of journal articles referred to by Australian courts – arguably the ultimate sign of a useful article – are doctrinal in nature.⁵

This places researchers in a difficult situation; if you write something doctrinal, it is less likely to get accepted for publication. Further, the article itself is less likely to be held in high esteem by colleagues and promotions committees. At the same time, should it be published, it is more likely to be referred to by the courts and thereby generate the type of indirect 'social impact' valued by the ARC, the academic community and promotions committees.

If I allow myself to speculate as to the forces behind the current focus on multi-disciplinary and quantitative research methodologies in law, I suspect that their main attraction is that they are comparatively more expensive. As bizarre as this seems at first glance, the simple truth is that we as researchers are largely assessed by reference to our ability to spend money.

One of the measurements applied by the ERA scheme is the amount of external research funding an institution has attracted.⁶ By focusing on research income, it is the obtaining of funds that is of importance – not how well the money is utilised, or indeed, the production of (quality) research. Thus, we are in a sense encouraged to structure our research in an as expensive manner as possible, and it is typically rather difficult to come up with suitable expenses for doctrinal research.

It is, of course, true that the funding bodies generally are seeking to get the best value for their money. However, the simple truth is that, where a project can be carried out without external funding (ie in the manner with the least impact on the funding country's economy), or with minimal additional resources (making it inefficient or impossible to seek external funding), that project is not as favourable to the host

(2002) 115(5) *Harvard Law Review* 1314, 1317; Albert Brecht, 'Changes in Legal Scholarship and Their Impact on Law School Library Reference Services' (1984 - 1985) 77 *Law Library Journal* 157, 158.

⁵ For an interesting general discussion of the impact legal scholarship has on judges, See Edward Rubin, 'Seduction, Integration and Conceptual Frameworks: The Influence of Legal Scholarship on Judges' (2010) 29(1) *University of Queensland Law Journal* 101, 105.

⁶ See Dan Svantesson, Paul White 'Entering an era of research ranking - will innovation and diversity survive?' (2009) 21(3) *Bond Law Review* 173, 175.

institution as if the same research was produced in a more expensive manner justifying an external grant.

In the end, it may be difficult for junior academics to resist the pressure to adopt a trendy, and expansive, research methodology or pursue a trendy research question. Personally, every time I write something untrendy such as a doctrinal law journal article, I take some comfort in the fact that the trends will change, and until then, at least my writing is likely to be useful to the legal profession.

C To collaborate or not to collaborate?

Legal research can be a lonely undertaking and the option to collaborate may be tempting. Collaboration may also be a necessity where the research task lies outside your area of expertise, and in the current climate multi-disciplinary research is, as noted above, strongly encouraged both by the Government and by university research offices.⁷

However, collaboration is associated with several risks. For example:

- The collaborators may have different agendas;
- The collaborators may have different ideas about their respective responsibilities; and
- The collaborators may have strongly opposing views.

Therefore it is crucial to be very selective in choosing whom to collaborate with.

Having said that, collaborations can be very rewarding and may give a junior researcher great assistance in the pursuit of research grants and in the pursuit of having their work accepted for publication. Further, as Buckley points out, academics ‘often have interesting ideas without the time to pursue them’.⁸ Thus, a junior academic teaming up with a senior academic to pursue projects the latter does not have time to pursue on her/his own, can be a very worthwhile endeavour for both parties involved.

D Seek feedback

As law students we were used to getting feedback on our work whether we asked for it or not. I wonder how many law students actually realise how valuable such

⁷ Australian Government, Department of Innovation, Industry, Science and Research, *Powering Ideas: An Innovation Agenda for the 21st Century* (12 May 2009)

<<http://www.innovation.gov.au/Innovation/Policy/Pages/PoweringIdeas.aspx>>.

⁸ Buckley, above n 1, 187.

feedback is. Those who start their academic path by writing a PhD or SJD thesis continue to get feedback, in particular from their supervisors.

However, when people take the step from being doctoral candidates to being an early career academic, the automatic flow of feedback typically stops. At that stage, it is very important to consciously seek out feedback, from colleagues at work or specialists or friends at other faculties.

Where given carefully, such feedback will not only improve the quality of the particular piece of writing you get feedback on, but your writing and research skills will develop where you take the feedback on board.

Having said that, not everyone is well suited to provide feedback for young academics. And it may be the case that not all advice is to be acted upon, but at least the feedback will bring attention to matters you can consider. And unlike students and PhD candidates, you have virtually complete control over your work and what aspects of given feedback you adopt.

Furthermore, you obviously also have control over who you approach for feedback, and you can choose people who you respect or even look up to. After all, as noted by Napoleon Bonaparte: 'It is easier to put up with unpleasantness [and sometimes feedback, eg where it identifies the need for major rewrites, can be unpleasant indeed] from a man of one's own way of thinking than from one who takes an entirely different point of view.'⁹ That is, of course, not to say that one should only seek feedback from those likely to agree with your approach.

Finally on the topic of feedback, it is common to acknowledge the feedback one receives in a footnote. Not only is this good form, but in some cases it may actually be beneficial for the article's prospects of getting published. After all, feedback having been provided by a skilled colleague works as a quality assurance for the article as such.

E Publish broadly

When it comes to choosing where to publish, my advice would be to publish broadly in both books¹⁰ and academic journals, as well as in practitioner journals – each form of publication has its specific audience and for most academics it is valuable to reach the broadest audience possible.¹¹

⁹ Elizabeth Knowles (ed), *The Oxford Dictionary of Quotations* (Oxford University Press, 5th ed, 1999) 538.

¹⁰ Including the now much underrated textbook.

¹¹ Neil Sargent, 'The Possibilities and Perils of Legal Studies' (1991) 6 *Canadian Journal of Law and Society* 1, 1.

I acknowledge that promotions committees and the like may undervalue, or even question, an author’s decision to publish in eg a non-ranked practitioner journal.¹² Further, it seems to have been common place for Australian universities to encourage their staff to publish only in highly ranked journals and bonus schemes etc may have been linked to the ARC’s journal ranking system. As noted by Senator Carr:

There is clear and consistent evidence that the rankings were being deployed inappropriately within some quarters of the sector, in ways that could produce harmful outcomes, and based on a poor understanding of the actual role of the rankings. One common example was the setting of targets for publication in A and A* journals by institutional research managers.¹³

It may be seen as worrying that this ‘inappropriate’ use of the ERA journal ranking was not foreseeable to the decision-makers. After all, it can hardly come as a surprise that actors in a highly competitive marketplace adjust their behaviour according to the criteria by which their performance is being judged. Thus, it is arguable that the decision-makers who put the ranking in place are as much to blame for the harmful outcomes it produced as are those research managers who all too willingly embraced the ranking exercise.

Returning to the broader question of whether one should publish broadly or not, my personal thinking is, however, that useful publications will be rewarded in the end, at least indirectly in the form of industry recognition and societal impact of your research.

A related question is how long a journal article should be. The answer is that it depends on several factors, not least the topic. One important thing to consider in this context is that Australian law journals, unlike for example their US counterparts, typically do not accept lengthy journal articles.

To provide some assistance in finding a journal that accepts the nature, and length, of article you have written, I asked a research assistant, Paul White, to construct the following table:

Table 1

Title	Topics	Previous Ranking	Article Length	Comments / Notes	Book Reviews	Stated time frame for review	Issues per year
Adelaide	Law	General	B	Yes	Yes		2

¹² See also Bartie, above n 2, 351.

¹³ Senator Kim Carr, ‘Ministerial statement to the Senate Economics Legislation Committee Improvements to Excellence in Research for Australia (ERA)’ (Media Statement, 30 May 2011) <<http://minister.innovation.gov.au/carr/mediareleases/pages/improvementstoexcellenceinresearchforaustralia.aspx>>.

Review							
Alternative Law Journal	Public Policy / Politics and the Law	B	4000	Yes	Yes		4
Asia Pacific Journal of Environmental Law	Environment, Natural Resources and Land Use / Asian law	C	8000-10000	Yes	Yes		2
Australasian Journal of Natural Resources Law and Policy	Environment, Natural Resources and Land Use	B		Yes	Yes		1 to 2
Australian Administrative Law Bulletin	Administrative Law	B		Yes	Yes		12
Australian and New Zealand Sports Law Journal	Sports Law	C	5000-12000	Yes			1
Australian Animal Protection Law Journal	Animal Law	Not ranked					1 to 2
Australian Bar Review	Legal doctrine and procedure	C		Yes	Yes		3
Australian Business Law Review	Commercial Law	B	10000	Yes	Yes		6
Australian Civil Liability	Torts	C	1200 - 3000	Yes	Yes		10
Australian Indigenous Law Review	Indigenous Legal Issues / Native Title	C	5000 - 15000	Yes			2
Australian Intellectual Property Journal	Intellectual Property	B	10000	Yes	Yes		4
Australian International Law Journal	International law	C	6000 - 12000	Yes	Yes		1
Australian Journal of Administrative Law	Administrative Law	B	15000	Yes	Yes		4
Australian Journal of Asian Law	International Law	B	8000 - 12000	Yes	Yes		2
Australian Journal of Corporate Law	Corporations and Associations	B		Yes	Yes		3
Australian Journal of Human Rights	Human Rights / International	A	6000 - 8000	Yes	Yes	6 weeks	2

	Law						
Australian Journal of Labour Law	Employment	A	10000	Yes	Yes		3
Australian Journal of Maritime and Ocean Affairs	Maritime Law / Law of the Sea	Not ranked	5000 - 7000	Yes	Yes		4
Australian Law Journal	General	B	10000	Yes	Yes		12
Australian Law Librarian	Research Writing and Libraries	C		Yes	Yes		4
Australian Property Law Journal	Property Law	B		Yes			3
Australian Resources and Energy Law Journal	Energy and Resources Law	C	3000 - 10000	Yes	Yes		2
Australian Superannuation Law Bulletin	Superannuation	C		Yes			10
Australian Tax Forum: a journal of taxation policy, law and reform	Tax	A					4
Australian Tax Review	Tax Law	B	15000	Yes	Yes		4
Australian Yearbook of International Law	International Law	C		Yes	Yes		1
Bond Law Review	General	C					2
Building and Construction Law Journal	Commercial Law	C	10000	Yes	Yes		6
Canberra Law Review	General	C	5000 - 10000	Yes	Yes		1 to 2
Commercial Law Journal	Commercial Law	C	4000 - 6000	Yes	Yes		3
Company Securities and Law Journal	Corporations and Associations	B	15000	Yes	Yes		8
Competition and Consumer Law Journal	Commercial Law	B		Yes	Yes		3
Corporate Governance eJournal	Corporate Governance	C					Online
Criminal Law Journal	Criminal Law	A	10000	Yes	Yes		6

Deakin Law Review	General	C	1000 - 12000	Yes	Yes		2
ELaw Journal	General	C	4000 - 10000	Yes	Yes		2
Elder Law Review	Elder Law / Tax / Superannuation	C			Yes		
Environmental and Planning Law Journal	Environment / Natural Resources and Land Use	B	15000	Yes	Yes		6
Family Law Review	Family Law	C	4000 - 8000	Yes	Yes		4
Federal Law Review	Constitutional Law / Public Policy, Politics and the Law	A*		Yes	Yes		3
Flinders Journal of Law Reform	Public Policy, Politics and the Law	B		Yes	Yes		2
Griffith Law Review	General	A*	10000		Yes	4 weeks	2
Indigenous Law Bulletin	Minority, Race and Ethnic Issues	C	600-2800	Yes	Yes		6
Insolvency Law Journal	Bankruptcy	B	15000	Yes	Yes		4
Insurance Law Journal	Insurance	C		Yes	Yes		3
James Cook University Law Review	General	C	5000 - 8000	Yes	Yes		1
Journal of Contract Law	Commercial Law	A		Yes	Yes		3
Journal of Equity	Civil Litigation and Dispute Resolution / Estates and Trusts	A		Yes	Yes		3
Journal of Law and Medicine	Health / Medicine / Psychology and Psychiatry	A	10000	Yes	Yes		4
Law in Context	Socio-legal	B	8000-12000	Yes	Yes		1 to 2
Local Government Law Journal	Governmental Law	B	15000	Yes	Yes		3

Macquarie Journal of Business Law	Commercial Law / International Law / International Trade	C	8000	Yes	Yes		1
Macquarie Journal of International and Comparative Environmental Law	Comparative Law / International Law / Environment Natural Resources and Land Use	C	8000		Yes	4 - 6 weeks	2
Macquarie Law Journal	General	C	10000	Yes	Yes	6 weeks	1
Media and Arts Law Review	Communications Law Media and Journalism	B	4000 - 15000	Yes	Yes		4
Melbourne Journal of International Law	International law	B	10000-18000	Yes	Yes		2
Melbourne University Law Review	General	A*	8000 - 12000	Yes	Yes		3
Monash University Law Review	General	A	6000 - 15000	Yes	Yes		2
Public Law Review	Public Policy / Politics and the Law	A*	8000 - 10000	Yes	Yes		4
Queensland Lawyer	General	C	10000	Yes	Yes		4
Queensland University of Technology Law and Justice Journal	Public Policy / Politics and the Law	C	4000 - 8000	Yes	Yes		2
Revenue Law Journal	Taxation	B			Yes		1
Southern Cross University Law Review	General	C	3000-6000	Yes	Yes		1
Sports Law eJournal	Sports Law	C					Online
Telecommunications Journal of Australia	Communications Law	C	5000	Yes	Yes		4
The Sydney Law Review	General	A*	8000 - 12000	Yes	Yes	4 - 12 weeks	4
Tort Law Review	Torts	B	10000	Yes	Yes		3
Torts Law Journal	Torts	B		Yes	Yes		3

University of New South Wales Law Journal	General	A*	10000	Yes	Yes	8 - 12 weeks	3
University of Notre Dame Australia Law Review	General	C	12000	Yes	Yes		1
University of Tasmania Law Review	General	B		Yes	Yes		2
University of Western Australia Law Review	General	B	7000 - 10000		Yes		2
University of Western Sydney Law Review	General	C		Yes	Yes		1

F Publish internationally or only domestically?

One important question to consider is whether to focus one's publications domestically, or whether to pursue publication in international journals. The topic one writes on may, of course, be of central importance for the answer to this question. Furthermore, to some degree, this choice may be decided by reference to the length of the article one has written. As seen in the table above, Australian law journals do not accept particularly lengthy articles. In contrast many US journals accept articles up to 35,000 words.¹⁴ An additional benefit of seeking publication in US law journals is that they typically consider articles submitted to multiple journals simultaneously.

Where the length of the article is not an issue, the question remains whether to publish in domestic journals or international journals. The first thing to note in this context is that, most 'international' journals are in fact more correctly described as being domestic to a foreign jurisdiction. Thus, what we really are considering is whether to publish in Australia or in other jurisdictions.

I acknowledge that this article here reaches its most subjective part, but allow me to make two observations from the perspective of a non-native Australian. It seems to me that Australian's are (1) too easily impressed by some foreign content, and, at the same time, (2) too quick to dismiss other foreign content.

These two observations are based solely on personal experiences and anecdotal evidence, but they are clearly backed-up by the results reached in the ERA's ranking

¹⁴ See, eg, The Georgetown Law Journal, *Articles* <<http://www.georgetownlawjournal.com/submissions/articles/>>. However, the trend in the US seems to go towards somewhat shorter articles. For example, recently 12 leading US law journals adopted a policy 'to play an active role in moderating the length of law review articles'.

of law journals.¹⁵ It highlighted that Australians have a great, not to say exaggerated, respect for US and English journals. Further it highlighted that other foreign journals, particularly those in another language than English, are under-valued or more commonly simply ignored.

It is, for example, simply staggering that journals focused on domestic US law, such as the *George Washington Law Review*¹⁶, *Washington Law Review*¹⁷ and *the Supreme Court Review* were ranked *A*, while a journal like *Juridisk Tidskrift*¹⁸, that is fundamental to the entire Swedish legal community, was unranked – publications relating to the domestic law of one country are thus held in high regard, while publications relating to the domestic law of another country are ignored.

G Broad or narrow scope for the articles?

One question authors have to consider in relation to each and every journal article they write is whether to write on a narrow topic with great depth, or whether to write on a broader topic with less depth. For example, one option is to write with great depth on a narrow topic such as whether software can be classed as ‘goods’ for the purpose of the Sale of Goods Acts. A broader option would be, for example, to write an assessment of how well the *Trade Practices Act* protected consumers, seeking to identify gaps in the approach taken in that piece of legislation.

Unfortunately, articles painting a broad-brushed picture providing an overview of a legal question are typically not favoured by law journal editors. They are often met by calls from the reviewer(s) for more details on each issue raised in the article. This has some logic; after all, there will, of course, be more that could be said on each topic discussed, and thus, the picture painted is not complete.

The problem, which many reviewers seem to overlook, is that law journals impose word limits on the articles they accept. As Australian journals, as illustrated above, only accept rather short articles (ie up to 15,000 words), the consequence is that one simply cannot write articles providing an overview of a legal question which meets the requirements put in place by that type of misguided and overambitious reviewer; academic rigour is confused with an exhaustive treatment of each issue raised. Yet articles providing an overview of a broad topic, rather than a detailed study of a narrow topic, require as much academic rigour and can be immensely valuable.¹⁹

¹⁵ Refer to: Australian Research Council, *ERA Ranked Journal List* (30 May 2011) Australian Government <http://arc.gov.au/era/era_2010/archive/era_journal_list.htm>.

¹⁶ ‘We publish articles that are national in scope’, (George Washington Law Review, *Manuscript Submissions*, <<http://groups.law.gwu.edu/LR/Pages/Submissions.aspx>>).

¹⁷ ‘The Law Review publishes Articles and Comments of national and regional interest’ (Washington Law Review, *Home* <<http://www.law.washington.edu/wlr/>>).

¹⁸ *Juridisk Tidskrift* <<http://www.jt.se/>>.

¹⁹ The situation is similar for legal textbooks. Many textbooks make tremendous contributions to the systematisation and organisation of the law. But as they cannot go into as much depth as ‘scholarly’ monographs, they are not even viewed as research at all. See further the ill-advised HERDC system

Long term, if this attitude amongst Australian law journals continues, the law will doubtless suffer since significant opportunities for law reform can be identified through the type of broad topic overview articles discussed here.

H Make the most of your research

A researcher would typically invest a considerable amount of time in the research required to write a good quality law journal article. One approach to ensure maximum value is to use the research for more than one article. That is, instead of following the natural inclination to want to move to a new area of research once an article has been written and submitted, it is useful to write a second or even third article on the same topic, taking a different angle and aimed at a different audience.

Thus, most articles suitable for submission in Australian university law journals contain elements that can be brought out and refocused so as to form the basis for a short practitioner-oriented article.

In writing the related articles one must, of course, take care to avoid repetition and must ensure that the second or third article actually adds to the research findings of the first article.

I Dealing with rejections

Rejections are a part of academic life. Our applications for promotion may be rejected; as can our great ideas for a new course or our book proposals. The publishing of journal articles is no different and most, if not all, academics experience their articles being rejected from time to time.

Particularly for junior academics such rejections may cause us to doubt ourselves. However, it is important to remember that a rejection merely signals that one or a small number of people are unwilling to let the article in question be published. It does not necessarily mean that no journal will publish the article:

Rejection does not mean an article is worthless. It may mean the next issue of the journal is full, or the topic does not suit the intended future profile of the journal, or the journal has published too much in that field recently, or simply that one editor or one referee did not like either what you have written or how you have written it.²⁰

(Department of Innovation, Industry, Science and Research, *Higher Education Research Data Collection* 2011
<<http://www.innovation.gov.au/Research/ResearchBlockGrants/Documents/2011HERDCSpecification.pdf>>).

²⁰ Buckley, above n 1, 210.

Consequently, where an article is rejected the two main alternatives may be to either (1) re-submit to the same journal taking account of the feedback provided, or (2) submit the article to a different journal. After all, re-submitting an already written article takes much less time than writing a completely new article, even where one needs to adjust the focus of the already written article somewhat.

In any case, it is important to make use of the feedback typically received through the peer-review system used by most Australian law journals.

Finally, it is important to remember that academics today are spoilt for choice as to which journal they submit to. First, modern communications technologies, primarily the Internet, make it possible to communicate with foreign journals with ease. Second, looking domestically, there is much choice. For example Table 1 above contains more than 70 Australian law journals.

This is an astonishing number when contrasted with how many law journals Australia used to have: 'It has been calculated that there were eight law journals in Australia in 1960, nine in 1970, fourteen in 1980 and about 50 in 1994'.²¹

III THE AUSTRALIAN PUBLISHING CLIMATE FOR LAW JOURNAL ARTICLES POST ERA'S JOURNAL RANKING

For the 2010 ERA exercise, the ARC officially launched its ranking of journals, including law journals. Looking at the ranking scheme, one has to wonder whether it, if carried out in a different setting, would not be considered as being anti-competitive, if not under the law, at least in spirit.

Elsewhere²² I have raised further concerns about the ERA's journal ranking. My main concerns were as follows:

- The ranking was highly subjective and lacked transparency – it is, for example, utterly unclear how *Griffith Law Review* managed the journey from being ranked B in the CALD draft ranking to its A* ranking in the final ERA version;
- The ranking represented a self-fulfilling prophecy as authors will target journals with high ranking *regardless of how* well regarded those journals were prior to the ranking exercise;
- It is not possible to compare general journals and specialist journals;

²¹ Buckley, above n 1, 207 referring to J Gava, 'Scholarship and Community' (1995) 16 *Sydney Law Review* 443, at 459. The numbers referred to in the quote are of course derived at through a more scientific method. However, the point that the number of Australian law journal has increased in recent years cannot be disputed.

²² Dan Svantesson, 'International ranking of law journals – can it be done, and at what cost?' (2009) 29(4) *Legal Studies* 678-691.

- The journal ranking was incomplete; and
- The ERA ranking was overstating the comparative importance of several Australian, British and American journals compared to their overseas counterparts (particularly those from non-English speaking countries).

In addition to these serious issues, obvious mistakes were made in the construction of the final ranking. For example, in the draft ranking the *Computer Law and Security Review* was ranked 'A'. However, in the final version that journal was not even included. Instead, reference was made to the journal's earlier name, *Computer Law and Security Report* which gained a 'B' ranking.

While this is bizarre on several levels, it is interesting to consider the impact it has on individual researchers. In effect, it means that every single researcher who has published in that journal has her/his research regarded as being a little bit less valuable than it was under the draft ranking. That is, the same authors and the same research output lose part of their prestige at the stroke of a pen without the actual research output having been examined. An unscientific approach indeed.

Furthermore, the now abolished and discredited ERA ranking was also causing an uneven playing field between various legal sub-disciplines., Where the journals of one specialist area are all highly ranked, research in that area is automatically more highly valued than research in another area where the relevant journals are given a lower ranking.

A ERA's ranking caused an uneven playing field

As this consequence of the ERA ranking indirectly impacted on the career prospects of, particularly junior, academics, and affected the research strategies outlined above, I have conducted some research into just how serious the impact of the ERA's ranking was.

The aim of my research in this regard was to statistically prove that in certain research fields it is easier to get published in highly ranked journals as the journals in those fields have on average gained a higher ranking than the journals in another category. And then it is an easy step to show what areas they are.

To achieve this, I used the categorisation system adopted by the well-known Washington & Lee list of law journal ranking.²³ I asked two research assistants, Paul White and Michael Coccetti, to match the ERA ranking to the journals in the various journal categories used by the Washington & Lee list. In more detail, they were asked

²³ Washington and Lee University School of Law, *Law Journals: Submissions and Rankings* <<http://lawlib.wlu.edu/lj/index.aspx>>.

to look up the ERA ranking of all the journals of each category of law journals in the Washington & Lee list.

The table below shows:

1. the number of journals in each of the Washington & Lee list categories
2. how many of them are ranked A* (expressed both as number and percentage);
3. how many of them are ranked A (expressed both as number and percentage);
4. how many of them are ranked B (expressed both as number and percentage);
5. how many of them are ranked C (expressed both as number and percentage);
6. how many of them are not ranked for ERA purposes (expressed both as number and percentage).

Table 2²⁴

Category	Total	A*	A* %	A	A%	B	B%	C	C%	Not Ranked	Not Ranked %
Administrative Law	15	1	7%	4	27%	2	13%	5	33%	3	20%
African Law	27	0	0%	1	4%	2	7%	8	30%	16	59%
Agriculture	5	0	0%	0	0%	0	0%	3	60%	2	40%
Air and Space	4	0	0%	2	50%	1	25%	1	25%	0	0%
Animals	5	0	0%	0	0%	0	0%	1	20%	4	80%
Arts, Entertainment and Sports	35	0	0%	3	9%	3	9%	8	23%	21	60%
Asian Law	54	0	0%	1	2%	4	7%	11	20%	38	70%
Banking and Finance	15	0	0%	0	0%	1	7%	6	40%	8	53%
Bankruptcy	12	0	0%	1	8%	2	17%	0	0%	9	75%
Civil Litigation and Dispute Resolution	47	1	2%	6	13%	4	9%	8	17%	28	60%
Civil Rights	16	1	6%	0	0%	3	19%	3	19%	9	56%
Commercial Law	137	2	1%	9	7%	12	9%	39	28%	75	55%
Communications	20	0	0%	1	5%	4	20%	4	20%	11	55%
Comparative Law	39	1	3%	1	3%	10	26%	13	33%	14	36%
Constitutional Law	36	2	6%	6	17%	7	19%	7	19%	14	39%
Corporations and	32	0	0%	3	9%	5	16%	7	22%	17	53%

²⁴ This Table is currently in draft form only with some refinement of the figures needed. However, such refinements will not alter the general picture it paints.

Associations											
Criminal Law and Procedure	59	0	0%	6	10%	5	8%	15	25%	33	56%
Criminology	63	1	2%	5	8%	9	14%	20	32%	28	44%
Economics	42	0	0%	8	19%	8	19%	6	14%	20	48%
Education Law	13	0	0%	1	8%	3	23%	5	38%	4	31%
Elder Law	4	0	0%	0	0%	0	0%	2	50%	2	50%
Employment	20	0	0%	2	10%	2	10%	6	30%	10	50%
Energy Law	17	0	0%	0	0%	2	12%	2	12%	13	76%
Environment, Natural Resources and Land Use	89	0	0%	4	4%	9	10%	23	26%	53	60%
Estates and Trusts	14	0	0%	1	7%	1	7%	0	0%	12	86%
Ethics	17	1	6%	3	18%	2	12%	1	6%	10	59%
European Law	60	1	2%	5	8%	6	10%	14	23%	34	57%
Evidence	2	0	0%	0	0%	0	0%	1	50%	1	50%
Family Law	30	0	0%	5	17%	6	20%	5	17%	14	47%
Gender, Woman and Sexuality	31	0	0%	7	23%	12	39%	2	6%	10	32%
General	386	24	6%	15	4%	58	15%	144	37%	145	38%
Government	10	0	0%	0	0%	1	10%	0	0%	9	90%
Health, Medicine and Psychology	71	0	0%	6	8%	7	10%	19	27%	39	55%
Human Rights	46	1	2%	7	15%	6	13%	9	20%	23	50%
Insurance Law	5	0	0%	0	0%	0	0%	3	60%	2	40%
Intellectual Property	76	0	0%	1	1%	8	11%	22	29%	45	59%
International Law	208	6	3%	27	13%	31	15%	57	27%	87	42%
International Trade	33	1	3%	3	9%	1	3%	13	39%	15	45%
Jurisprudence and Legal Theory	37	3	8%	13	35%	2	5%	5	14%	14	38%
Legal History	17	0	0%	2	12%	0	0%	7	41%	8	47%
Legal Profession and Legal Education	28	2	7%	3	11%	2	7%	6	21%	15	54%
Legislation	5	0	0%	0	0%	2	40%	0	0%	3	60%
Maritime Law	15	1	7%	1	7%	4	27%	3	20%	6	40%
Minority, Race and Ethnic Issues	47	0	0%	1	2%	3	6%	13	28%	30	64%
Property Law	10	0	0%	0	0%	2	20%	2	20%	6	60%
Public Policy, Politics and the Law	140	6	4%	13	9%	17	12%	19	14%	85	61%
Research, Writing and Libraries	6	0	0%	1	17%	1	17%	3	50%	1	17%

Religion	11	0	0%	0	0%	1	9%	2	18%	8	73%
Religious Legal Systems	10	0	0%	0	0%	0	0%	6	60%	4	40%
Science, Technology and Computing	68	0	0%	3	4.41%	12	17.65%	20	29.41%	33	48.53%
Social Sciences	25	0	0%	6	24%	4	16%	3	12%	12	48%
Torts	7	0	0%	0	0%	3	43%	0	0%	4	57%
Taxation	52	2	4%	3	6%	7	13%	12	23%	28	54%
Transportation	2	0	0%	0	0%	0	0%	1	50%	1	50%
War, Conflicts and the Military	9	0	0%	0	0%	1	11%	3	33%	5	56%

Several observations can be made from these statistics. For example, about 78% of the 68 journals categorised as *Science, Technology and Computing* are either not ranked or ranked C, leaving merely 22% ranked B, A or A*. In contrast, of the 37 journals falling within the category of *Jurisprudence and Legal Theory*, no less than 43% are either A* or A ranked. The conclusion that it is easier to publish in highly ranked journals if you write on legal theory than if you write on Internet law is inescapable.

Other categories that are particularly favoured by the ARC ranking include *Administrative Law, Air and Space, Civil Litigation and Dispute Resolution, Constitutional Law, Economics, Ethics, Family Law, Gender, Woman and Sexuality, Human Rights, International Law, Legal Profession and Legal Education, Research, Writing and Libraries*, and finally *Social Sciences*. Focusing your research on these categories is thus helpful should you desire to publish mainly in highly ranked journals.

The main 'losers' include researchers in the fields of *African Law, Agriculture, Animals, Asian Law, Banking and Finance, Communications, Comparative Law, Elder Law, Energy Law, Environment, Natural Resources and Land Use, Evidence, Government, Insurance Law, Intellectual Property, Legislation, Minority, Race and Ethnic Issues, Property Law, Religion, Religious Legal Systems, Torts, Transportation, War, Conflicts and the Military*, and as noted above *Science, Technology and Computing*. If publishing in these fields, you will struggle to publish in highly ranked journals.

If this is a conscious decision by the ARC, it should have been disclosed and debated, and if it is an unanticipated consequence, the whole ERA ranking system could be called into question for this reason alone.²⁵

²⁵ It is, of course, possible to argue that the average quality of journals in particular field is higher than the average quality of journals in another field. However, such a comparison is complex and requires open and transparent discussions.

It is also interesting to note that, of the more than 2,000 journals included in the Washington & Lee list of journal ranking about 50% are unranked in the ERA scheme. This is a staggering number when one considers the fact that articles published in unranked journals count for nothing under the ERA scheme; these publications do not even count towards the data collection at all, no matter how perfectly good the peer review process is and how academic and important the article is. The already severe consequences of this are made all the more serious when one considers that the Washington & Lee list of journal ranking is by no means a complete list of all the law journals available around the world. First, new journals are created on a regular basis, and more importantly, the Washington & Lee list of journal ranking contains only a small percentage of the non-English language journals that exist.

Either way, it seems that the ERA ranking encouraged rational researchers to consider angling their articles in such a manner as to make them publishable in more favoured fields. For instance, if you write on legal theory in relation to Internet regulation, you would be far better off, from an ERA ranking perspective, aiming the article at the legal theory sector than the IT and the law sector. That is, if you were in the unfortunate situation of having to take the ERA ranking seriously.

B What do “top” ranked journals publish?

Many of the top ranked Australian law journals are generalist journals, and another interesting set of statistics can be gained if we examine the type of articles those journals favour.

With that aim in mind, I asked the same research assistants to examine all the articles published in 2008, 2009 and 2010 by A* ranked Australian generalist journals²⁶, and assess which of the categories of law each article fits within. Such an assessment is obviously subjective in part, and the statistics presented here can thus merely be seen to give some indication of the publishing habits of the A* ranked Australian generalist journals (that is, Griffith Law Review, Melbourne University Law Review, Sydney Law Review and University of New South Wales Law Review).

Further, it is to be noted that, the total number of articles listed in this table does not necessarily match the total number of journal articles actually published. This is so because some articles fit within more than one category, and in such cases have been included in both categories they fit within. Thus, for example, an article addressing Danish administrative law would be listed both in the category of ‘European Law’ and in the category of ‘Administrative Law’.

²⁶ As the ANU’s Federal Law Review “specialises in matters of federal law” (See *About Us* ANU College of Law <http://www.federallawreview.com.au/about_us.htm>) it has not been considered.

Finally, by way of introducing this table, some journals combine general issues, open to a variety of topics, with specialist or thematic issues focused on a particular area of law. Such specialist issues skew the table below. Yet as they are also of importance for signalling the focus of the various journals, they have been included nevertheless. To provide transparency, the topics of the relevant specialist issues are outlined in a separate table (Table 4) below.

Table 3

Category	MUL R	GU	Syd	UNSW	Totals
Administrative Law	6	0	0	6	12
African Law	0	1	0	1	2
Agriculture	0	0	0	0	0
Air and Space	0	0	0	0	0
Animals	0	2	0	2	4
Arts, Entertainment and Sports	0	0	0	0	0
Asian Law	1	0	0	1	2
Banking and Finance	2	8	0	10	20
Bankruptcy	0	0	0	0	0
Civil Litigation and Dispute Resolution	2	0	1	3	6
Civil Rights	0	0	0	0	0
Commercial Law	8	0	2	10	20
Communications	0	0	0	0	0
Comparative Law	0	0	0	0	0
Consumer and Competition Law	1	0	0	1	2
Conflict of laws	1	0	0	1	2
Constitutional Law	4	2	8	14	28
Contract Law	4	0	0	4	8
Corporations and Associations	3	2	2	7	14
Criminal Law	9	7	4	20	40
Criminology	0	1	0	1	2
Economics	0	0	0	0	0
Education Law	0	0	0	0	0
Elder Law	0	0	0	0	0
Employment	0	1	4	5	10
Energy Law	0	0	0	0	0
Environment, Natural Resources and Land Use	2	1	2	5	10
Estates and Trusts	1	0	1	2	4
Equity	2	0	0	2	4
Ethics	0	1	0	1	2
European Law	0	0	1	1	2

Evidence	1	0	2	3	6
Family Law	1	0	1	2	4
Gender, Woman and Sexuality	0	3	0	3	6
General	0	0	0	0	0
Government	3	1	3	7	14
Health, Medicine and Psychology	0	2	1	3	6
Human Rights	4	5	5	14	28
Insurance Law	0	0	0	0	0
Intellectual Property	2	1	3	6	12
International Law	2	2	2	6	12
International Trade	0	0	3	3	6
Jurisprudence and Legal Theory	2	8	4	14	28
Legal History	0	0	0	0	0
Legal Education	1	6	1	8	16
Legal Profession	1	2	4	7	14
Legislation	0	0	0	0	0
Maritime Law	1	0	0	1	2
Minority, Race and Ethnic Issues	3	6	1	10	20
Property Law	2	1	2	5	10
Public Policy, Politics and the Law	0	2	1	3	6
Research, Writing and Libraries	1	1	0	2	4
Religion	0	2	0	2	4
Religious Legal Systems	0	0	0	0	0
Science, Technology and Computing	0	0	0	0	0
Social Sciences	0	0	1	1	2
TaxationTorts	3	0	2	5	10
Torts	1	0	5	6	12
Transportation	1	1	0	2	4
War, Conflicts and the Military	4	0	0	4	8

Here we see that these journals show a particular interest in articles dealing with topics such as *Banking and Finance*, *Commercial Law*, *Constitutional Law*, *Corporations and Associations*, *Criminal Law and Procedure*, *Government*, *Human Rights*, *International Law*, *Jurisprudence and Legal Theory*, *Legal Profession and Legal Education*, and *Minority, Race and Ethnic Issues*.

Consequently, authors in these fields enjoy a reasonably strong prospect of publishing in highly ranked generalist journals also where that field's specialist journals have

received low rankings. Unfortunately, however, this still leaves a substantial number of research fields without reasonable access to highly ranked publications outlets.

As promised above, here is a table of the specialist/thematic issues published by the Australian generalist A* journals during 2008, 2009 and 2010.²⁷

Table 4

Journal	2008	2009	2010
Griffith Law Review	Invisible Laws, Visible Cities	Fitzgerald Report Twenty Years On	The Future Of Financial Regulation: Lessons From The Global Financial Crisis
Melbourne University Law Review	0	0	0
Sydney Law Review	Special Issue Constitutional law	0	0
University of New South Wales Law Review	Australian Federalism	Saving the System? Law and Regulation after the Credit Crunch	The Future of Human Rights in Australia

C Who do “top” ranked journals publish?

Before concluding this examination of the publishing culture amongst Australia’s highest ranked generalist law journals, it is interesting to make some observations as to what types of authors are favoured by these journals. The table below, research for which was carried out by the mentioned research assistants, based on the published articles for 2008-2010, paints an interesting picture.

Table 5

Category	Griffith Law Review	Melbourne University Law Review	Sydney Law Review	University of New South Wales Law Review
Australian Academic (Assoc. Professor or Professor)	25	36	26	41

²⁷ Note that some journals include special forums/symposiums in their general issues. This table is, however, focused on specialist/thematic issues only and does not include such forums/symposiums contained in general issues.

Australian Academic (Below Assoc. Professor)	39	50	34	39
Non-Australian Academic (Assoc. Professor or Professor)	9	7	4	5
Non-Australian Academic (Below Assoc. Professor)	12	3	3	8
Judges	2	4	3	4
Practitioners	1	0	5	39
Others	0	0	0	4

From the above, it is clear that, as can be expected, the clear majority of articles are written by Australian academics, with the legal profession and foreign academics accounting for only a small portion of the total number of articles published.²⁸

The study resulting in the Table above also revealed a strong tendency for these top-ranked journals to favour articles written by academics employed by their host institutions.²⁹ Thus, of the total number of authors published over the studied three year period 30.68% of authors published in the *Griffith Law Review* were staff members at Griffith University. Similarly, 21% of authors published in the *Melbourne University Law Review* were staff members at Melbourne University, and 19.29% of the authors published in the *University of New South Wales Law Review* were staff members at University of New South Wales. Finally, no less than 32% of the authors published in the *Sydney Law Review* were staff members at Sydney University. The seriousness of the picture emerging from the above increases further if one focuses on the same figures relevant for academic authors only.

Perhaps it is not too bold an assertion to make, to conclude that one's prospect of publishing in a highly ranked journal under the ERA ranking scheme was not exactly hurt by being employed at the university that publishes that journal.³⁰ The potential impact this conclusion may have on the validity of the ARC's ERA ranking goes beyond the scope of this article.

²⁸ However, it seems UNSW Law Review attracts and/or favours articles by practitioners to a considerably greater extent than do the other Australian A* ranked generalist journals.

²⁹ It is possible that a similar trend can be seen in relation also to those university journals that obtained a lower ranking. That has however not been studied here.

³⁰ It is to be acknowledged that the same may be true for all law journals. However, the impact of C ranked journals favouring authors from the host institution is, of course, much less significant.

IV CONCLUDING REMARKS

In this article I have sought to share some thoughts on research strategies that hopefully are of interest, at least, to legal academics at the start of their career. Much of what I have said is stating the obvious. However, perhaps this article can be a useful way to collect those common wisdoms I have included.

Having said that, I am not suggesting that I have expressed only commonly shared views; this article represents my view on the matters discussed, and others are likely to disagree on some of the views I have expressed.

The second part of the article may be of interest also to those who have already had a long life in academia as it presents some new statistics of broad relevance.

I have shown that the ERA's ranking exercise created an uneven playing field in which researchers in some areas of law were placed in an advantageous position while other would only ever be able to publish in a highly ranked journal if they manage to overcome the significant hurdle associated with trying to squeeze a specialist article into a generalist journal. I hope we have learnt something from the fundamentally flawed ranking exercise.

Finally, if I was to summarise my key recommendations in three bullet points, they would be as follows:

- Find a research area you are passionate about – your work will be more enjoyable, and likely, of higher quality;
- Work hard – there are no shortcuts; and

Be lucky – much of what brings your career forward, such as meeting the right people and being cited in the right context, is based on pure luck.