

Faculty of Law

RESEARCH QUALITY REVIEW

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<p>Overview</p>	<p>The ANU was founded in 1946 as a full-time research institution, to which teaching faculties were later added. The Faculty of Law was established in 1960, and engages in the full range of teaching, research and 'outreach' (wider community engagement) activities. Full-time research in law continues to be undertaken in the Law Program in the Research School of Social Sciences (RSSS).</p> <p>Australia has 28 law schools,¹ with varying degrees of commonality (flowing largely from the professional accreditation imperative) and speciality (reflecting particular niches or strengths, historical and strategic). Although there are no rankings as such, official or unofficial, the ANU Law Faculty—as measured by its general reputation for excellence in both teaching and research, the quality and commitment of its students and staff, the impact of its wider community engagement, and the demand for student places—is one of Australia's leading law schools.</p> <p>Given its location in the national capital and its physical proximity to the organs of national government, it is not surprising that one of the Faculty's special strengths, historically and currently, lies in international and public law. This is reflected particularly in the volume of the research output,² though not to the detriment of the quality of the research in other areas, including other areas of special strength. The entire research record of the Faculty's current staff, over the selected period of 1995-2003, falls to be assessed on its merits.</p>
<p>Research</p>	<p>The Faculty's research tradition</p> <p>Research in the Faculty takes place in the context of a busy, complex, and vibrant organisation, with diverse tasks: in addition to its core teaching and research activities, the Faculty includes or hosts 5 Centres, a number of informal networks, 2 interdisciplinary National Institutes, a practical legal training unit (Legal Workshop), and the National Judicial College of Australia.</p> <p>As befits its location in a research-intensive university, however, and in tune with the tradition of legal scholarship established in the Faculty by such luminaries as Patrick Atiyah, Tom Campbell, Ross Cranston, JLR Davis, Julian Disney, Paul Finn, John Fleming, Harold Ford, Jack Goldring, Don Greig, David Hambly, Dennis Pearce, Jack Richardson, Geoffrey Sawyer, Alice Tay, Harry Whitmore, and Leslie Zines, the Faculty takes its research function particularly seriously, both as a creative activity that is a driver for and source of personal and collective satisfaction, and as a contribution to public knowledge and the better understanding of law and legal systems.</p> <p>Viewed in this way, it is easy to understand why the Faculty's research activities are not strictly compartmentalised from its other activities. The teaching task obviously takes time away from research, but Faculty endeavours to exploit the synergies between its teaching, research and outreach activities, so that its wider tasks enrich that research as much as they compete with it. This is assisted by an unusual degree of collegiality that has seen, for example, the production of a number of major collective outputs (eg <i>The Oxford Companion to the High Court of Australia</i> (OUP, 2001)).</p> <p>Research in the context of a teaching Faculty</p> <p>The Faculty has a relatively large teaching task: a student body in 2004 of around 1400 LLB students and 600 postgraduate coursework masters and diploma students, including the students in the Legal Workshop. At the same time, the Faculty has a staff</p>

complement—currently around 43 on a full-time equivalent basis—that is a little smaller than its major competitor law schools in Sydney and Melbourne. Despite this unfavourable student/staff ratio, the Faculty's commitment to excellence has kept it in the top rank of Australian law schools, both in teaching and research.

The Faculty's good performance on the teaching side can be seen, for example, by:

- Law Faculty staff winning the Vice-Chancellor's Award for Teaching Excellence for four successive years (1998-2001)
- recognition of the LLB by other countries for admission to practice (eg one of only 8 Australian law degrees so recognised in Singapore)
- diversity in the LLB curriculum, covering not only the required core areas but also a wide range of electives and special programs, including internships, clinical opportunities, and overseas exchanges (including an ABA-accredited program in the US)
- a large postgraduate coursework program
- the innovative use of technology, including WebCT, for the flexible delivery of courses, especially in Legal Workshop
- special support schemes, such as that for Indigenous Australians
- a high level of employment for ANU Law Faculty graduates, in a very competitive environment.

This commitment to the teaching task might be seen to create difficulties for the research effort. However, as noted earlier, the Faculty has endeavoured to develop a mindset in which teaching is not resented as an insidious thief of precious time for research, but integrated as far as possible into our research agenda,³ for the benefit of both students and staff.

The diversity of legal research in the Faculty

The integration of its research into its broader activities is reflected in the Faculty's high reputation as one of the leading centres of conference activity in the discipline of law in Australia; in the high level of participation of staff in public inquiries, law reform activities, and related consultancies; and in the overall diversity of its research and publication agenda.

Underlining how law as a discipline straddles the humanities and the social sciences, legal research in the Faculty ranges from the empirical to the theoretical, from the doctrinal to the contextual, from the historical to the contemporary, and from the local to the international. This quality review is subdivided on a substantive subject-matter basis, but most of those subdivisions contain many different kinds of research. Moreover, the self-selection by colleagues of their 'best' publications may also have seen some diversity in the unspoken criteria underpinning this selection, ranging from the deep scholarship of a traditional law review article to the impact of a working paper, a leading text, or a major submission to a law reform agency.

Many colleagues have also made an easy transition from their legal research to its practical application, such as the three colleagues—the latest being Professor John McMillan—who have been appointed to the prestigious office of Commonwealth Ombudsman.

Research Continues

The Faculty's research centres and other research activities

The Faculty's research effort is organised both through its specialist centres and through informal groupings and individual efforts. The specialist centres include the Centre for International and Public Law (CIPL), the Centre for Commercial Law (CCL), the Centre for Law and Economics (CLE), the Australian Centre for Environmental Law (ACEL), and the Australian Centre for Intellectual Property in Agriculture (ACIPA, externally funded by a \$3.4 million grant over five years from the Grains Research and Development Corporation). Also established in 2003 was the Australian Network for Japanese Law (ANJeL), a collaborative

venture between ANU, the University of Sydney, and the University of New South Wales, with the University of Melbourne's Asian Law Centre joining as an affiliate member in 2004.

All of the staff associated with these Centres and Networks are fully engaged on the teaching side of the Faculty's activities, other than four essentially research-only staff in ACIPA (who do, however, teach intellectual property in the postgraduate program) and the Centre Directors, who have reduced teaching loads, including a substantial reduction in the case of the CIPL Director.

The Faculty's research effort is also manifested in:

- the Faculty's production of two of Australia's leading law reviews, the *Federal Law Review* and the *Australian Yearbook of International Law*
- the growing number of higher degree research students (currently 25)
- the vigorous visitors program and faculty seminar program
- the location in and hosting by the Faculty of two major interdisciplinary research institutes, the National Institute of Social Sciences and Law (NISSL, Chair Professor Michael Coper) and the Australian National University Institute for Indigenous Australians (ANUIIA, Chair Professor Mick Dodson).

Although newly established and initially more focused on training than research, a further body hosted by the Faculty is the National Judicial College of Australia (NJCA).

Sub-disciplinary organisation of the Faculty's research for this review

The Faculty is not divided into separate divisions or departments, but for the purposes of this review, the research output of the Faculty has been organised into 12 sub-disciplines.⁴

Table 1: Breakdown of ANU Law Faculty Published Research Output 1995-2003 of current staff, by Sub-disciplinary Area

	Sub-disciplinary area	Staff with starred items	Number of starred items	Total publications of all staff in area
1.	Administrative Law	8	19	124
2.	Commercial and Contract Law, Corporations, Taxation & Equity			
	Commercial and Contract	6	10	26
	Corporations	4	9	35
	Taxation	1	3	18
	Equity	2	4	10
3.	Constitutional Law & Indigenous Law			
	Constitutional Law	12	32	174
	Indigenous Law	2	6	17
4.	Criminal Law	4	8	44
5.	Criminology	2	7	20
6.	Environmental Law	3	10	22
7.	Evidence and Procedure	7	13	41
8.	Family Law, Labour Law, Legal Theory, Legal Education			
	Family Law	3	8	30
	Labour Law	4	13	26
	Legal Theory	4	10	27
	Legal Education	3	7	22
9.	Intellectual Property Law	7	23	95
10.	International Law & Human Rights			
	International Law	11	27	108
	Human Rights	14	32	126
11.	Law and Society	5	11	38
12.	Tort Law	9	15	44
	TOTAL	(not meaningful because of overlap)	267	1047 ⁵

Research by type of publication

The publications themselves break down in the following way:

Table 2: Breakdown of ANU Law Faculty Published Research Output 1995-2003 of current staff, by type of publication

Authored books	64
Edited books	30
Book chapters ⁶	362
Refereed articles	317
Articles not refereed or of uncertain status	140
Book reviews	40
Published conference papers (otherwise than in book or article)	21
Reports	31
Other ⁷	9
TOTAL	1014

Even this breakdown does not reveal the diversity within each category. This can be seen simply from a small sample of the 94 books produced by current members of the Faculty⁸ over the period, ranging from comprehensive texts and treatises such as Bottomley on *Corporations Law*, Davis on *Torts*, Pearce on *Statutory Interpretation*, and Sherman on *Intellectual Property*; to innovative combinations of text, cases and commentary such as Behrens on *Family Law in Context*, Bronitt on *Principles of Criminal Law*, Kobetsky on *Income Tax*, Hambly on *Torts*, Creyke on *Laying Down the Law*, and Bayne on *Evidence*; to specialised monographs such as Greig on *Intertemporality and the Law of Treaties*, Weeks on *Trade Union Security Law*, Seymour on *Childbirth and the Law*, Dietrich on *Restitution*, Fitzpatrick on *Land Claims in East Timor*, and Charlesworth on *The Boundaries of International Law* (winner of the American Society of International Law Prize); to edited collections such as Barker's *China and the World Trading System*, Wheeler's *Australian Federal Judicial System*, and the Faculty's collective work, *The Oxford Companion to the High Court of Australia*.⁹ The other categories of publications manifest a similar diversity.

Staff included and excluded

The staff profile of the Law Faculty, and the number of staff, have varied over the review period. The current and average full-time equivalent is around 43 members of academic staff. The number of actual members of staff included in the review is 51 (including 5 in Legal Workshop), together with 13 Adjunct Professors and Visiting Fellows, making 64 staff in total. These figures cover current staff only—that is, staff at the ANU in the last 12 months—but all of their output over the period, other than for the Adjuncts and Visiting Fellows, in relation to whom only their output during their tenure at ANU was counted.

This means that the research output presented for the purpose of review is not the entire output of the Faculty over the period, as it omits the output of a number of former members of staff, namely, those who were at ANU for some part of the period 1995-2003, but not in the last 12 months. The review has opted instead for the research output of current members of staff, including, for those who were not at ANU for the whole period, the output they brought with them. Either course is defensible, but taking the latter means that the Faculty has not been able to include the work of eminent and productive scholars such as Phillip Alston, Deborah Cass, Julian Disney, Tom Campbell, Peter Drahos (included in RSSS), Neil Gunningham (included in RSSS), Robert McCorquodale, Ann Orford, Nick Seddon, Gerry Simpson, Veronica Taylor, George Williams, and other distinguished former ANU Law Faculty members of the past nine years.

Although not shown in Table 3 below, many of the staff included have had broken periods of service (for example, because of family responsibilities or secondments to other institutions), or were part-time, or were not research-active over the whole period (for example, new starters or retirees), or held senior administrative positions (such as Dean or Associate Dean). This is why, for the purpose of any averaging, the full-time equivalent figure should be used, though even that does not compensate for all of these factors. Indeed, given the idiosyncrasies in the aggregation of the data, and the diversity in the types of publications, any concept of average output is likely to be somewhat shaky and unhelpful.

The 64 staff included represent 90% of the total eligible of 71 staff.¹⁰ Of this eligible total, five had no publications (two in Legal Workshop and three new starters), one further staff member is on leave at RSSS and that staff member's output is included in the RSSS figures, and one staff member is on a long-term secondment to an international organisation.

The review is concerned with quality, not quantity, but the following table is given as an overview of productivity.

Table 3: Breakdown of ANU Law Faculty Published Research Output 1995-2003 by current staff, by category of staff

Category level	Number of staff included	Starred items	Total publications
A (Tutor/Associate Lecturer)	1	1	4
B (Lecturer)	21	76	208
C (Senior Lecturer)	13	60	172
D (Reader/Associate Professor)	9	39	192
E (Professor)	7	34	248
Adjunct Professor	5	19	106
Visiting Fellow	8	26	98
TOTAL	64	255	1028

Indicators of Esteem

External recognition of quality

The Faculty's research performance has varied over the decade as the staff profile has varied. In recent years, there has been a relatively high proportion of junior researchers, but even in promise, one constant has been their quality. Amongst the many honours by which senior staff have been recognised are election as Fellows of the Academy of Social Sciences in Australia (for example, Professors Don Greig and Hilary Charlesworth), appointment to one or more of the Orders of Australia (for example, Professors Peter Bailey, Dennis Pearce and Jack Richardson), and election to the American Law Institute (Professor Michael Coper).

Competitive Funding

The recognition of research excellence has also come, for staff at senior and junior levels, in the award of research grants. Only a summary table is included here, as this review is focused on outputs rather than inputs, but details can be supplied on request. The inputs compare favourably with competitor law schools.

Table 4: External competitive grant funding for ANU Law Faculty

1997	1998	1999	2000	2001	2002	2003
\$385,081	\$527,021	\$493,733	\$1,198,459	\$412,403	\$832,483	\$832,409

Self Assessment

Assessors are asked to rate the starred publications in their field on a scale as follows:¹¹

5	4	3	2	1
Exceptionally significant (ES)	Internationally excellent (IE)	High quality (HQ)	Acceptable (A)	Poor quality (PQ)

ES represents the top 5%, and IE the top 25% (other than the top 5%), of research in the field internationally, or research that makes an 'equivalently excellent contribution' in an area of particular significance to Australia. HQ represents higher than average quality but not in the top 25%.

It is widely acknowledged that this kind of rating scale is readily applicable to the science disciplines, and that many areas of the discipline of law have a distinctly national or local orientation that present a challenge for international comparisons. Assessors in many of the sub-disciplinary areas, all of whom are themselves international assessors, are therefore likely to fall back on the 'equivalently excellent contribution' part of the rating descriptor, and to make a judgment about how the Australian publications compare with the quality of their national or local counterparts in the jurisdictions with which the assessors are familiar. There will be exceptions to this, for example in the area of international law, where the international benchmarks and comparisons are more apparent.

The above presents a similar challenge for self-assessment, which the Faculty has never undertaken in a rigorous, scientific way, but doing the best we can, with a mixture of impressionism, anecdotal evidence, and informal feedback,¹² and a reasonable balance between buoyant optimism and hard-nosed realism, we would tentatively offer the following overall rating:¹³

World Class: 80%				
Exceptionally Significant	Internationally Excellent	High Quality	Acceptable Quality	Poor Quality
30%	50%	20%	0%	0%

¹ See Michael Coper, 'Legal Education and Training: Meeting the Challenges of the 21st Century', paper presented to *Australia-India Legal Dialogues*, Delhi and Mumbai, March 2004 (available on request).

² See Table 2 below.

³ For example, the internship program allows students to work with members of staff on a research project of the staff member.

⁴ The sub-disciplines have no magical coherence about them; they are the product both of the Faculty's research output considered on its own terms, and of a combination of the need to mesh with the research output of RISS, guidance from the quasi-official research field codes used for statistical purposes, and some fortuitous groupings according to the expertise of particular assessors.

⁵ Slight variations in the totals of publications in the various tables are due to factors such as co-authorship and some items being starred in more than one sub-discipline.

⁶ Includes 1 book supplement.

⁷ Includes discussion papers, encyclopedia entries, commissioned essays, occasional papers, commentaries and editorials.

⁸ Joint authorship of some of the following is omitted.

⁹ The above gives only the flavour; perusal of the complete list is necessary for the full taste. Our impression, although not tested or verified, is that a disproportionately high number of Australia's leading law texts have come out of ANU.

¹⁰ Some further Visiting Fellows and Adjunct Professors with teaching duties only have not been included.

¹¹ See Guidelines for Assessors for full details.

¹² Had time permitted, a literature search and compilation of the relevant book reviews would have been useful hard information, as would citations in, for example, judicial decisions. There is no systematic collection of citation data in the discipline of law.

¹³ The overall rating will not necessarily correlate with the ratings of any of the particular sub-disciplines separately considered, some of which may be higher and some of which may be lower. We look forward to the individual assessors' independent judgments on these sub-disciplinary ratings, and to the aggregation of these ratings to test our overall self-assessment.